

Government Documents Submitted As Summary Judgment Exhibit

Through the litigation, the government has produced thousands of pages of records regarding the <u>family</u> <u>separation policy</u> that reveal:

- The government began <u>discussing separating families as a tool</u> for deterring future migrants early in the Trump administration.
- An <u>pilot program in El Paso</u> in which parents were prosecuted and families were separated was considered a success and high-level officials pushed aggressively to expand the program.
- The government implemented family separation despite <u>repeated warnings that doing so would cause</u> <u>severe trauma to children and parents</u> and despite lacking adequate systems for ensuring that parents and children could communicate while separated and could be reunited.
- Even though the purported justification for separating families was to allow for the prosecution of the parent, in fact <u>families were separated before Border Patrol agents knew if the parent would be prosecuted</u> and many families were separated and remained separated even though the parents were never prosecuted or spent only a few hours in criminal custody.
- In fact, <u>high level officials expressed concern that families might be reunited too quickly</u> and intended to reunite families only for the purpose of deportation.

Exhibit 19

From

Sent: Friday, May 4, 2018 1:27 PM To: MCALEENAN, KEVIN K; VITIELLO, RONALD D (USBP) Subject: FW: [S1 Decision] Increasing Prosecutions of Immigration Violations Attachments: 18-2408 S1 Signed Action Memo Increasing Prosecutions 05.04.18.pdf

C1/C2,

Signed memo.

C1—would you like BP to begin implementation efforts effective tomorrow morning? V/R



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From: Krause, Scott

Sent: Friday, May 4, 2018 1:23 PM To: FLANAGAN, PATRICK S <Patrick.Flanagan@dhs.gov> Subject: FW: [S1 Decision] Increasing Prosecutions of Immigration Violations

Scott Krause Executive Secretary LLS, Department of Homeland Se

U.S. Department of Homeland Security (cell)

(office)

From:

Sent: Friday, May 04, 2018 1:13:55 PM To: MCALEENAN, KEVIN K; Homan, Thomas; Mitnick, John; Cissna, Francis; Cc: Krause, Scott; Subject: [S1 Decision] Increasing Prosecutions of Immigration Violations



Good Afternoon,

Attached is a memo signed by the Secretary indicating her decision regarding increasing prosecutions of immigration violations. The front office asked that we transmit directly instead of uploading into our tracking system. Please let us know if you have any questions. Thanks,

Office of the Executive Secretary Department of Homeland Security



U.S. Department of Homeland Security Washington, DC 20528

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APR 2 3 2018

DECISION

MEMORANDUM FOR THE SECRETARY

FROM:

	Kevin K. McAlcenan //
	Acvin A. INCALCENSIN
_ 1	Commissioner / /
	U.S. Customs and Horder Protection

L. Francis Cissna 2. Fr.C. Director U.S. Citizenship and Immigration Servives

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.

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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

³ See, e.g., 8 U.S.C. §§ 1325, 1326.

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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.⁴ 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.⁵

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

- a. Option 1 Scalable Approach: Work with DOJ and other interagency partners to develop a quickly scalable approach to increase prosecution in accordance with USAO capacity. CBP would increase amenable referrals in accordance with this approach. This would have modest initial impact, increasing over time as USAOs add capacity.
- b. Option 2 Refer All Amenable Single Adults: Work with DOJ and other interagency partners to develop a quickly scalable approach to achieve 100% immigration violation prosecution referral for all amenable single adults.
- c. Option 3 Refer All Amenable Adults, including those presenting as part of a FMUA: Work with DOJ, the Department of Health and Human Services, and other interagency partners to develop a quickly scalable approach to achieve 100% immigration violation prosecution referral for all amenable adults, including those initially arriving or apprehended with minors.

These options have different characteristics in terms of feasibility and legal risk, as well as potential impact on the reduction of current illegal crossings. Option 1, the Scalable Approach, offers appreciable improvement in consequences for illegal crossings over time, with minimal legal risk, but is unlikely to have a deterrent impact in the immediate term. It also would require the most limited resource adjustments for DOJ.

Option 2, Referring All Amenable Single Adults, would require significant operational effort from DOJ and DHS, but has the potential to increase consequences and deterrence for crossings of single adults broadly and consistently across the southwest border. That said, if FMUA are excluded from this initiative, the potential for an increase in fraudulent/fictitious FMUA could be an unintended consequence.

Option 3, Referring All Amenable Adults, including those that cross illegally with minors and present as FMUA would likely have the most effective impact, while requiring significant resources and presenting increased legal risk. Given challenges presented by *Flores* decisions, backlogs in overall protection systems and immigration court processes, and other

⁴ 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).

⁵ For full legal analysis of this initiative, please see Attachment.

considerations, it is very difficult to complete immigration enforcement proceedings and remove adults who are present as part of FMUAs at the border. In fact, only 2.3 percent of non-Mexican FMUA apprehended during the Fiscal Year (FY) 2014 surge have been repatriated in the three-plus years after their illegal crossing. Of these options, prosecuting all amenable adults will increase the consequences for illegally entering the United States by enforcing existing law, protect children being smuggled by adults through transnational criminal organizations, and have the greatest impact on current flows.

For context on the effectiveness of this approach, the U.S. Border Patrol (USBP) El Paso Sector experienced a significant increase in apprehensions of FMUAs through its area of responsibility during the beginning of FY2017. In order to maintain an effective level of operational control, the El Paso Sector launched a prosecution initiative from July 2017–November 2017. This initiative focused on the prosecution of all adults, regardless of country of origin, that were amenable to 8 U.S.C. §1325 criminal charge of attempting to exploit the FMUA/unaccompanied alien children migration crisis. Through this prosecution initiative, the local USAOs in New Mexico and the Western District of Texas committed to accepting all cases amenable for prosecution to include prosecutions under 8 U.S.C. §1325. Among the results of this initiative, the number of illegal crossings between ports of entry of FMUAs dropped by 64 percent. This decrease was attributed to the prosecution of adults amenable to prosecution for illegal entry while risking the lives of their children. Of note, the numbers began rising again after the initiative was paused.

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.

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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 all amenable adults who cross our border illegally, including those presenting with a family unit, 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:	
Approve/date 5/4/18	Disapprove/date
Modify date	_ Needs discussion/date

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Subject: RE: Southwest Border Prosecutions

10-4

Desi D. DeLeon Acting Patrol Agent In Charge JYuma Station

From: DARLING, TRAVIS S. Sent: Monday, May 7, 2018 2:59 PM To: DELEON, DESI D <DESI.D.DELEON@CBP.DHS.GOV>;

C+LOPET ALEXIS < ALEXIS LOPET@CRP.DHS.GOV> EARRAR CHANCER < CHANCER EARRAR@chp.dbs.gov> GRAMLEY_MICHAELC

Subject: Southwest Border Prosecutions

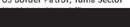
PAICs,

Attached you will find the Southwest Border Prosecutions ConOps, along with Yuma sector's individual ConOps to immediately begin presenting for prosecution, all eligible adult aliens. We understand the workload this will add to an already busy processing and prosecuting effort. Steps are being taken immediately to identify additional manpower to either return to the stations or assign directly to the processing/prosecution effort. You are to direct your station's personnel to immediately begin identifying and processing all eligible adult aliens for prosecution, regardless of accompanying family members or nationality. For the purposes of identifying adults eligible for prosecution, those accompanied by tender age children, age 4 and younger, will not be processed for prosecution. If an adult alien has been identified and processed for prosecution who was accompanied by a child, ERO has asked that we add a sentence in the I-213 narrative explaining this and note the child(ren) names, DOB and A#.

I have attached a spreadsheet to give you an idea of the level of metrics and data we are required to capture. PST (Shawn Jordan) and Prosecutions Unit will be responsible for capturing this data. As of this email, this data is to be captured daily and reported to HQ weekly. Lastly, I also attached the draft Public Affairs Guidance (PAG). Please familiarize yourselves with this guidance to ensure message consistency. If you have questions, give me a call.

Travis Darling

Division Chief – Law Enforcement Operational Programs US Border Patrol, Yuma Sector



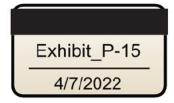


Exhibit 23

From: Sent: Thursday, May 10, 2018 2:08 PM To: Subject: FW: Yurra Sector ConOps re: Increasing Prosecutions

Attachments: Southwest Border Prosecutions 05042018.docx; Southwest Border Prosecutions Yuma ConOps.docx

Please print three copies of each attachment and bring them into VTC

From: Sent: Thursday, May 10, 2018 7:04:34 PM To: Cc:

Subject: FW: Yuma Sector ConOps re: Increasing Prosecutions

As requested.

Adjutant to the Chief, Yuma Sector U.S Border Patrol Office: Work Cell: Personal Cell:	
From: Sent: Sunday, May 06, 2018 8:41:03 PM To: Cc: Subject: Yuma Sector ConOps re: Increasing Prosecutions	
Please find attached, Yuma sector's Concept of Operations for increasing prosecutions. Please note that w under the Execution Timeline, Yuma sector was listed as Immediate 100% all zones. This was not accurate, are, limited by a 30 per day cap at the Yuma Federal Court, ordered by the Chief Judge in the District of Aria If you have any questions, please call me.	as we have been and currently still
Division Chief – Law Enforcement Operational Programs US Border Patrol, Yuma Sector Office Cell	Plaintiffs_ Exhibit_155 5/12/2022
From: Sept: Eriday, May 4, 2018 4-38 PM Tolenneme, manager, ender a plansinger, ender a plansinger, ender a plansinger, ender a plansinger a plansinger Cc:	,
Subject: (Inform + Action) S1 Signed Action Memo Increasing Prosecutions For Action	
From: HASTINGS, BRIAN S Sent: Friday, May 4, 2018 3:01 PM To: BP Field Chiefs BP Field Deputies Cc: PROVOST, CARLA (USBP)	UFFMAN, BENJAMINE 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% immig for <u>all amenable adults</u> . Border Patrol is authorized to implement increased Southwest Border Prosecutions, as outlined in the second 2018.	

We respectfully request a CONOP from all nine SWB Sectors (Use the same Format as attached) addressed to Associate Chief

In a few moments, we will be sending out a manual spreadsheet to record declinations and purposes for declinations. I apologize ahead of time as we do NOT yet have the ability to pull the data we need from E-3. That change order has been submitted and we should only have to manually enter the data for approximately one month. 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,

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Southwest Border Prosecutions May 3, 2018

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 phased prosecutorial priorities to achieve an end state of 100% prosecution of all amenable aliens on a phased timeline consistent with DOJ partners' capacity.

- Within 48 hours of issuance of this guidance, Sectors will provide a concept of operations to the Deputy Chief of Operational Programs within the Law Enforcement Operations Directorate (LEOD), United States Border Patrol Headquarters, identifying targeted zones within their area of responsibility with the highest concentration of potential prosecutions consistent with the below listed priorities.
- Sectors will provide localized, phased plans to reach 100% referrals of all amenable adults based on capacities of their U.S. Attorney offices (USAOs) and the federal courts. The goal is to initiate increased prosecutions immediately, 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 according to traffic patterns to achieve maximum effect until 100% prosecutions of all amenable aliens is achieved.
- 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 zones with respect to enforcement activities and prosecutions.
- All aliens referred for prosecution within each sector will be entered into the *e3 Prosecution* module, with reasons for declinations recorded accurately.
- All appropriate humanitarian considerations and policies remain in place. Discretion on appropriate referrals for sensitive cases, including but not limited to adults who are traveling with tender age children, remains with the CPAs or their designees within their command staffs.

Prosecution Priorities in the following order:

- 1. All adult aliens (with criminal history)
- 2. All adult aliens (with smuggling activity)

Authored by: Associate Chief and Assistant Chiefs Approved by: LEOD Deputy Chief

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Southwest Border Prosecutions May 3, 2018

- 3. Single adult aliens and adults aliens accompanying children (non-contiguous country/OTM)
- 4. Single adult aliens (contiguous country/Mexico and Canada)
- 5. Adult aliens accompanying children (contiguous country/Mexico and Canada)

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 zones, by sector.
- Report the total number of prosecution referrals by sector for each priority in targeted and non-targeted zones, by sector.
- Report the percentage of referred prosecutions for each priority in targeted and non-targeted zones.
- 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:

o: rande Valley:	Phased – USAO limit of 90 per day Phased – USAO limit of 40 per day. Limiting factors are
	operational tempo and partner support
ı: tro:	Immediate 100% all zones Phased – USAO limit of 75 per day Immediate 100% all zones; will be limited by detention space and USAO support Phased ramp up to 100%, all zones; will be limited by detention

Authored by: Associate Chief and Assistant Chiefs Approved by: LEOD Deputy Chief Distant Matter

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Southwest Border Prosecutions May 3, 2018

space and USAO support

Authored by: Associate Chief and Assistant Chiefs Approved by: LEOD Deputy Chief I

Southwest Border Prosecutions

Yuma Sector Concept of Operations

May 6, 2018

Objective:

• Achieve increased level of border security in the Yuma Sector Area of Operation. Yuma sector will support the larger, Southern Border scalable approach to achieve 100% prosecution referral of immigration violations.

Current situation:

- Yuma sector is currently bound by a cap of 30 referred prosecution cases presented per day in the Yuma Federal courthouse.
- The Chief Judge's Court in Arizona set this limit after factoring in the impact to all of the court's stakeholders, e.g. USMS, USAO, Federal Public Defenders (FPD), Interpreters, Judge, Clerks, Probation, Pre-Trial Services etc.
- FYTD 2018 Yuma sector has referred the following prosecution cases:
 - Total: 2,101 (Represents a ~106% increase from 2017 FYTD)
 - 1,582 District of Arizona
 - 280 Southern District California
 - 239 Charges associated with 1324 smuggling cases (Both districts)
 - Average cases referred per week: 67 or 13.4 per day (M-F, excl. Holidays)
- To achieve this current level of prosecutions, Yuma Station has regularly dedicated ~33% of its daily manpower to processing/transport/detention duties, often relying on Wellton station to augment, and/or detain and process at Wellton station.
- Yuma sector regularly experiences surge days in OTM apprehensions where 100% prosecution referral is not currently possible due to logistical and manpower capacity and capability.

Execution:

- Yuma sector will immediately refer all, or up to, 30 cases per day that are eligible for criminal prosecution in Arizona, using the Prosecution Priority breakdown below:
 - 1. Adult aliens (With Criminal history) Regardless of entry zone
 - 2. Adult aliens (With smuggling activity) Regardless of entry zone
 - 3. Single adult aliens and adult aliens accompanying children (Non-contiguous country/OTM) Targeting Zones 4, 8, 9 and 10
 - Single adult aliens (Contiguous/Mexico and Canada) Targeting Zones 4, 8, 9 and 10

Authored by: SOS SOS DC LEOP Approved by: DC LEOP

- 5. Adult aliens accompanying children (Contiguous/Mexico and Canada) Targeting Zones 4, 8, 9 and 10
- Yuma Sector will work with partner stakeholders to incrementally increase and achieve 100% prosecution referral in the Southern District of California by utilizing the following steps:
 - Increase the number of 1325/1326 flip cases being presented in ELC court to 50 per month. This includes cases presented by YUM and ELC and will be achieved through revised criteria for what will be accepted for prosecution.
 - This will condition the FPD, court system, and USMS in CA to handling an increased number of cases over what is currently seen.
 - CA FPDs are a significant obstacle in all criminal immigration cases by aggressively forcing litigation so particular emphasis is placed on conditioning the FPD office to plea 1325 cases that have the potential of felony consequences.
 - After several weeks of successfully pleading an increased number of flip cases, begin flipping some 1324 cases to further conditioning FPDs.
 - In approximately 8-10 weeks, SDCA USAO should be in a position to present straight 1325 prosecutions.
- Yuma sector will meet with affected Arizona stakeholders the week of May 6 -12 to discuss increasing collective capacity and capabilities to reach 100% referral of eligible aliens for prosecution daily.

Reporting and Data Integrity:

- Yuma sector will capture and report on the following data points on a weekly basis:
 - Requests from stakeholders for CBP assist/resources.
 - o Number of apprehensions in targeted and non-targeted zones
 - Total number of prosecution referrals
 - o Percentage of referred prosecutions for each priority
 - Total and percentage of declinations for each priority
- Yuma sector will capture the following metrics:
 - o Total number of Prosecutions and the resulting change
 - o Total number of apprehensions in relation to this prosecution initiative
 - Alien demographic change as a result of this prosecution initiative:
 - OTM totals
 - FAMU totals
 - Change in presentations at POEs

SOS I

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Exhibit 11

Case 2:19-cv-05217-SRB Document 404-2 Filed 04/24/23 Page 86 of 213

Page 1 UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA CASE No. CV-20-00065-PHX-SRB -x A.P.F. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, O.B.; J.V.S., ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD H.Y.; J.D.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, M.G.; H.P.M. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.D.; M.C.L. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.J.; AND R.Z.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, B.P., PLAINTIFFS, -against-UNITED STATES OF AMERICA, DEFENDANT. -x CONFIDENTIAL VIDEOTAPED DEPOSITION OF C APPEARING REMOTELY FROM YUMA, ARIZONA THURSDAY, APRIL 7, 2022 12:13 p.m. REPORTED BY: DANIELLE GRANT APPEARING REMOTELY FROM RICHMOND COUNTY, NEW YORK JOB NO.: SY 4556

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12	April 7, 2022
13	12:13 p.m.
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17	Confidential Remote Videotaped
18	Deposition of Control, held remotely with
19	all parties appearing from their respective
20	locations, pursuant to Notice before DANIELLE
21	GRANT, a Stenographic Reporter and Notary Public
22	of the State of New York.
23	
24	
25	

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Page 91 1 2 So a child who shows up at Ο Okay. 3 the border with an adult who has custody over that child; is that correct? 4 5 Correct. Α What does -- what does the phrase 6 Ο 7 amenable to prosecution mean? It refers to an adult that meets 8 А 9 our prosecution guidelines. 10 Are the prosecution guidelines set 0 11 out in some manual or directive somewhere? 12 Α In a manual or -- in a manual? 13 No, to my knowledge no. Various 14 directives and guidance have come out over 15 the years to various degrees. 16 And I take it that changes over Ο 17 time; is that correct? 18 Α Yes. 19 All right. So amenable means that 0 20 they meet the prosecution guidelines. 21 It doesn't necessarily mean that 22 they have been referred for prosecution; is that correct? 23 24 А Correct. 25 And just to return what we said --Q

Page 157 1 2 neglected to ask you before, back in that 3 time frame, who was your direct supervisor if you recall? 4 It probably would have been Shawn 5 Α 6 Jordan. 7 Okay. All right. 0 8 So you see in the email on Monday, 9 May 7th, that the directive supplied by 10 border patrol, Travis Darling at the Yuma 11 sector, is that all eligible adult aliens 12 are going to referred for prosecution, even 13 in family units; is that correct, sir? 14 Α Yes. 15 And it looks like the only Ο 16 exception that's provided in this email is 17 that, if an adult was accompanied by a 18 tender-aged child age four and younger, 19 there would not be a prosecution; is that 20 correct? 21 Α Yes. 22 0 So to flip that around, do I 23 understand correctly that the guidance that 24 was provided, as of May 7th, required you, 25 everyone in the Yuma Station to refer for

Page 158 1 2 prosecution all adults in family units who 3 had children five and over? 4 Based on this email, it would Α 5 appear so. 6 Okay. And I assume that, given Q 7 our discussion early on in the deposition 8 where we talked about the separation of 9 family units, that you recall receiving notification some time in this time frame; 10 11 is that correct? 12 Α Again, very vague. 13 When this notification came out, Ο 14 do you recall whether there was discussion 15 among your colleagues at Yuma Station about 16 this directive? 17 Α Not that I recall. 18 What, if anything, do you remember Q 19 people saying? 20 In regards to this directive? Α 21 Q Yes. 22 Α I don't really recall much being 23 said about it. 24 There is reference in Travis 0 25 Darling's email, the last paragraph of the

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1	
2	through the UAC portal, which was a separate
3	database. At some point, it was integrated
4	into e3. I don't recall the time frame when
5	that happened.
6	Q All right. Let's put a pin in
7	that and come back to it because I think I
8	have some documents which will help us
9	understand that time frame. Let me ask you
10	just I want to return to the topic that
11	we were talking about for the last several
12	minutes about what happened in terms of
13	separations.
14	I'll represent to you, Agent
15	Comella, that two of our clients, two
16	mothers expressed that, when their children
17	were taken away from them in May of 2018,
18	they were crying and an officer laughed at
19	them and jokingly said, Happy Mother's Day,
20	to them.
21	Did you ever hear that happen?
22	A No.
23	Q Would you agree that, if that
24	happened, that would be completely
25	inappropriate?

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Page 230 1 2 Α Yes. 3 Q Some of our clients have also 4 alleged that border patrol agents mocked 5 their accents, their indigenous accents. 6 Did you -- did you ever see that 7 happen? 8 Α No. 9 Would you agree that, if that 0 10 happened, it would be completely 11 inappropriate? 12 Α Yes. 13 Some of our clients have alleged Ο 14 that they were detained in highly 15 overcrowded cells to the point that it was 16 impossible for them to lay down. 17 Do you recall observing anything like that? 18 19 А I recall our cells being maxxed 20 out on capacity --And would -- and would you 21 Q 22 agree -- so when you say maxxed out, that 23 means there was -- there would be no space 24 for people to lay down? 25 Α Potentially.

Page 232 1 2 that border patrol agents screamed at them 3 and refused to do anything to address their parent's distress about the loss of their 4 child. 5 6 Did you ever see that happen? 7 Α No. 8 Q Would you agree that that would be 9 completely inappropriate? 10 Α Yes. Some of our clients have alleged 11 0 12 that their children were ripped from their 13 arms while their children were clutching 14 onto their parents. 15 Did you ever see that happen? 16 Α No. 17 Would you agree that that would be Q 18 completely inappropriate? 19 Α Yes. 20 Ο Some of our clients have alleged 21 that they waited weeks or months before they 22 were ever able to speak to their children 23 once they were separated. 24 Did you ever hear about that 25 happening?

Page 314 JOSEPH COMELLA 1 2 Well --Α 3 Q -- to --Yeah. Correct. 4 Α 5 And in any event, in either Okay. Q 6 circumstance, once the child was separated 7 and taken to an ORR facility, as we've 8 established before, border patrol, it would 9 not -- under your practices that were 10 prevailing in May of 2018, would not have 11 gone and rescinded the separation to reunite 12 the family, correct? 13 MR. MACWILLIAMS: Objection. 14 Form. Foundation. 15 That's correct, sir? Q 16 Yes, that's what I said. Α 17 Okay. And so we've established Q 18 that for each of our client families, the 19 clients that I represent with my cocounsel. The children were sent to ORR custody. And 20 21 in each circumstance, prosecution of the 22 mother was either declined or we have no 23 idea what happened because there's no 24 documentation. 25 Would you agree that, in summary,

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Page 315 1 2 that's what we've reviewed over the past 3 half-hour, 45 minutes or so? 4 MR. MACWILLIAMS: Objection. 5 Form. 6 Α Yes. 7 0 And in each of those cases, the 8 separation of those children from those 9 parents was mandated by the directives that 10 had been given to you from the chain of 11 command, correct? 12 MR. MACWILLIAMS: Objection. 13 Form. 14 А Yes. 15 MR. FEINBERG: Let's go off the 16 record. 17 VIDEOGRAPHER: The time is 7:09. We're off the record. 18 19 (Whereupon, at 7:09 p.m., a recess 20 was taken to 7:26 p.m.) 21 (The proceeding resumed with all 22 parties present.) 23 VIDEOGRAPHER: The time is 7:26. 24 We're back on the record. 25 Okay. Agent Common, we're back Q

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Exhibit 79

From: Wynne, Maggie (HHS/IOS)

Sent: Thursday, February 16, 2017 7:57 PM To: who.eop.gov)

To: CC: :

Subject: Unaccompanied children

I should have more details to provide tomorrow, but the basics are a bit different from what I said on the phone, but only in DHS motivation. DHS met earlier this week with ORR staff to see how HHS could support actions the department is contemplating to deter illegal cross-border entries.

Lots of details are still unclear or not described to HHS, such as when this might happen, what stage it's at (but NSC and DPC were mentioned as looped in already), and if it will be done across the board or started in one location.

(1) DHS proposes separating children in family units from their parents and referring them to ORR as Unaccompanied Alien Children (UACs). Previously I thought HHS would get involved to help a likely overflow problem from limited DHS housing for families, but DHS would do this regardless as a deterrent to families who have not yet entered the U.S.

(2) CBP will re-implement a requirement that all undocumented UAC sponsors come forward to be processed and given a notice to appear (NTA). (Side note: Wade Horn was instrumental in getting DHS to back off of this practice in the mid-2000s because it led to parents using paid U.S. citizen or LPR sponsors to get their children out of ORR care.)

DHS stressed told ORR that the overall intent of the actions is to serve a deterrent in the longer term, but ORR believes the immediate impact is certain to have capacity and budgetary impacts for the UAC Program.

ORR requested white papers from DHS on both proposals but will also write up something for me to share with the Policy Team here and with you.

Maggie

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Exhibit 33

Case 2:19-cv-05217-SRB Document 404-3 Filed 04/24/23 Page 32 of 55

Message	
From:	Blank, Thomas [/O=IRMMAIL/OU=EXCHANGE ADMINISTRATIVE GROUP
	(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BLANK, THOMASF81]
Sent:	8/14/2017 10:30:11 PM
То:	Homan, Thomas [/O=IRMMAIL/OU=MBX Servers - COW/cn=Recipients/cn=thoman]
Subject:	RE: Enforcement Strategy Meeting

You might consider calling Gene too. Worried about loss of momentum.

Tom Blank ICE/DHS 202 591-6747

From: Homan, Thomas <u>< Thomas. Homan@icc.dhs.gov</u>> Date: Monday, Aug 14, 2017, 5:51 PM To: Blank, Thomas <u>< Thomas. Blank@icc.dhs.gov</u>> Subject: RE: Enforcement Strategy Meeting

Thanks. I will give Matt a call

Sent with BlackBerry Work (www.blackberry.com)

From: Blank, Thomas <<u>Thomas.Blank@ice.dhs.gov</u>> Date: Monday, Aug 14, 2017, 5:14 PM To: Homan, Thomas <<u>Thomas.Homan@ice.dhs.gov</u>> Subject: Enforcement Strategy Meeting

Tom:

As you know, Pete, Tracy and Matt attended the Enforcement Strategy meeting today with AS1. This was the follow-on to the meeting we had with Gene last week. I was curious how this would come out in terms of making decisions or authorizing the separation of families. Matt **gave** me an brief and It appears this was not a good meeting in terms of decisions. Calls for more paper and "kicking the can down the road". No authorization to separate families.

When you get a minute you might want to be updated. I can do it or you might give Matt a call.

Tom

PLF EXHIBIT 294

Gene Hamilton Date: May 25, 2022 Case 2:19-cv-05217-SRB Document 404-3 Filed 04/24/23 Page 33 of 55

Exhibit 34

From: Hamilton, Gene Sent: Wednesday, September 6, 2017 3:02 PM To: Wolf, Chad Subject: RE: Border Enforcement Memos- Status Update

But if 1 had to guess, Policy's immigration team is woefully understaffed. They just don't have enough people to handle the volume. It doesn't matter to me if they hire direct, if they get a bunch of detailees from the three immigration components, or if they shift resources around within policy, but they need more people. So long as they have a team of three or four—they can only do so much. They could probably use another 10 people to get adequate coverage.

Gene P. Hamilton Senior Counselor to the Secretary U.S. Department of Homeland Security

From: Hamilton, Gene Sent: Wednesday, September 6, 2017 2:18 PM To: Wolf, Chad <Chad.Wolf@hq.dhs.gov> Subject: RE: Border Enforcement Memos- Status Update Not sure yet. Gene P. Hamilton Senior Counselor to the Secretary U.S. Department of Homeland Security

From: Wolf, Chad

Sent: Wednesday, September 6, 2017 10:49 AM To: Hamilton, Gene <<u>gene.hamilton@hq.dhs.gov</u>> Subject: RE: Border Enforcement Memos- Status Update Understand, Who's the sticking point in PLCY?

Chad F. Wolf (Acting) Chief of Staff Department of Homeland Security

From: Hamilton, Gene Sent: Wednesday, September 6, 2017 10:46 AM To: Wolf, Chad <<u>chad.wolf@hg.dhs.gov</u>> Subject: RE: Border Enforcement Memos- Status Update I am happy to write out some memos for her and cut off Policy from the process, because what was sent up is not acceptable

Gene P. Hamilton Senior Counselor to the Secretary U.S. Department of Homeland Security

From: Wolf, Chad Sent: Wednesday, September 06, 2017 9:59:35 AM To Hamilton, Ge

Hamilton, Gene; Nealon, James; Dougherty, Michael

Construction Shah, Dimple Subject: RE: Border Enforcement Memos- Status Update

We are now over three and half weeks since the enforcement meeting with CBP and ICE regarding the uptick in UAC numbers on the border. The process that provides recommendations to the FO is broken. And I'm beyond frustrated and AS1 keeps asking for updates. Meanwhile, we have operational elements of the Department that are begging us for help. I'm told by different folks that these packages are not "ready" for review. Either you guys come up with a solution (today) or one will be provided. Keep in mind that when you submit to the FO, the process is NOT complete. AS1 reads everything and will have questions and comments. Adjudication of those comments will push decisions to the right. I understand everyone is working hard, long hours but we need to get better on this front.

Chad F. Wolf (Acting) Chief of Staff Department of Homeland Security

From

Sent: Tuesday, September 5, 2017 7:04 PM

Wolf, Chad < chad.wolf@hg.dhs.gov>; Hamilton, Gene

<gene.hamilton@hq.dhs.gov>

Cc: Nealon, James <iames.nealon@hq.dhs.gov>

Subject: Border Enforcement Memos- Status Update

Chad,

Wanted to provide you an update on where we are with memos- forgive me for the length but since the decisions we are teeing up have changes some, we wanted to level set and provide status.

- ICE's Anti-Human Smuggling Operation Targeting Those Who Facilitate the Illegal Entry of UACs- currently not teed up for an AS1 decision. The operation is within ICE's authorities and is underway- does not require AS1 decision.
- 2. 235(h)(2)(c)- Will be combined with Safe Third Country decision as two different ways to get at similar issue, per DHS coordination on the memos.
- 3. Safe Third Country- combined with above memo.

PLF EXHIBIT 297

Gene Hamilton

Date: May 25 2022

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4. Eliminate Abuses of the Special Immigration Juvenile Program-attached as final and will be routed to ESEC first thing AM.

5. Family Separation/Detention- with PLCY and will be signed out tomorrow.

- 6. <u>Align DHS Parole Policies with Expeditious Processing of Asylum Claims</u> separated into two decision memos (parole policy changes and credible fear) in light of parole needed to wait for a SCOTUS decision in Oct. both attached as final and routed to ESEC.
- 7. Expedited Removal- with PLCY and will be signed out tomorrow.
- 8. UAC Asylum- under review in OGC.
- 9. Flores Settlement Agreement- attached as final and will be signed out by OGC tomorrow.

10. <u>Repatriation Efforts of International Partners</u>- currently not teed up for an AS1 decision. This planning has been underway, was reinforced when AS1 signed out the SSA plan to DoD and State, and continues to be worked by PLCY and CBP.

In total, we are at 8 memos currently. 3 are attached and we will have 5 more from PLCY/OGC tomorrow. Again, all are being routed formally as well.

Thanks,

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Exhibit 81

Case 2:19-cv-05217-SRB Document 404-5 Filed 04/24/23 Page 45 of 61

Message	
From:	Blank, Thomas [/O=IRMMAIL/OU=EXCHANGE ADMINISTRATIVE GROUP
	(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=BLANK, THOMASF81]
Sent:	8/9/2017 3:28:55 PM
To:	Homan, Thomas [/O=IRMMAIL/OU=MBX Servers - COW/cn=Recipients/cn=thoman]
Subject:	FW: Monthly border apprehensions release

Tom Blank ICE/DHS 202 591-6747

From: Date: Wednesday, Aug 09, 2017, 11:12 AM To: Blank Thomas < Thomas Blank@ice dbs gov>

Subject: RE: Monthly border apprehensions release

Tom - we talked through several potential messaging ideas on the call today, and Gene said there will be a policy discussion later today with Homan and McAleenan.

Here's a quick rundown of what was discussed:

- DHS will review previous marketing materials used by CBP in prior campaigns aimed at deterring UACs and family units and evaluate their effectiveness. Note that there may be an ask for \$ to be used for paid media.

- DHS will also identify target audiences and the most effective means of communicating with them.

- ICE will continue conversations with USAO offices about ways to publicly highlight the UAC op (this is ongoing as we speak).

-ICE will develop a sustained Spanish language social media plan specifically focused on this topic that includes visuals.

- ICE and CBP will also be coordinating with DHS on TV opportunities (including Spanish language interviews with Barb) on this topic over the next 1-2 weeks.

Regarding your Q about separation of family units, it would likely send a strong message south of the border, but there would definitely be a severe negative reaction domestically.

From: Blank, Thomas <<u>Thomas.Blank@ice.dhs.gov</u>> Date: Tuesday, Aug 08, 2017, 4:21 PM To:

Subject: RE: Monthly border apprehensions release

If possible, I'd like to hear any ICE OPA ideas ahead of the call. Tom has been advocating that we need to separate family units and send the adults to adult detention and the children to HHS. If we announced that, how bad do you think it would get??

From: Johnson, Liz

Sent: Tuesday, August 08, 2017 4:09 PM To:

Subject: RE: Monthly border apprehensions release

DHS, CBP and ICE comms are getting together tomorrow to discuss this and put together a joint strategy. The press products will be developed based on tomorrow's strategy call and will be a joint effort between the components and HQ. We'll keep you in the loop.

From: Blank, Thomas <<u>Thomas.Blank@ice.dhs.gov</u>> Date: Tuesday, Aug 08, 2017, 4:02 PM To: The Control of the Co

Subject: FW: Monthly border apprehensions release

Fill me in on what's happening tomorrow and I will need the comms strategy asap along with a press release on this issue.

From: Homan, Thomas Sent: Tuesday, August 08, 2017 3:51 PM To: Blank, Thomas Subject: FW: Monthly border apprehensions release

FYSA

Sent with BlackBerry Work (www.blackberry.com)

From: Hamilton, Gene <<u>Gene.Hamilton@hq.dhs.gov</u>> Date: Tuesday, Aug 08, 2017, 3:44 PM To: Hoffman, Jonathan <<u>Jonathan Hoffman@hq.dhs.gov</u>>, Homan, Thomas <<u>Thomas.Homan@ice.dhs.gov</u>>, MCALEENAN, KEVIN K <<u>KEVIN.K.MCALEENAN@cbp.dhs.gov</u>>, Wolf, Chad <<u>Chad.Wolf@hq.dhs.gov</u>> Subject: RE: Monthly border apprehensions release

The comms strategy will make or break all of this

Gene P. Hamilton Senior Counselor to the Secretary U.S. Department of Homeland Security

From: Hoffman, Jonathan
Sent: Tuesday, August 08, 2017 3:39:24 PM
To: Homan, Thomas; MCALEENAN, KEVIN K; Wolf, Chad; Hamilton, Gene
Subject: RE: Monthly border apprehensions release

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The comms teams from DHS, cbp and ice are getting together tomorrow to discuss enhanced messaging. We have some ideas to push the existing policies and will incorporate new policies as soon as they are ready.

Your comms teams should have a progress report on some ideas late tomorrow or Thursday. Will likely involve a serious earned media push next week w principals using the foreign press center at state and remote interviews.

From: Homan, Thomas
Sent: Tuesday, August 08, 2017 3:11:10 PM
To: MCALEENAN, KEVIN K; Wolf, Chad; Hamilton, Gene; Hoffman, Jonathan
Subject: RE: Monthly border apprehensions release

Very concerning. Gene, we need to discuss my proposal for separation,

Sent with BlackBerry Work (www.blackberry.com)

From: MCALEENAN, KEVIN K <<u>KEVIN.K.MCALEENAN@cbp.dhs.gov</u>> Date: Tuesday, Aug 08, 2017, 3:06 PM To: Wolf, Chad <<u>Chad.Wolf@hq.dhs.gov</u>>, Hamilton, Gene <<u>Gene.Hamilton@hq.dhs.gov</u>>, Hoffman, Jonathan <<u>Jonathan.Hoffman@hq.dhs.gov</u>> Cc: Homan, Thomas <<u>Thomas.Homan@ice.dhs.gov</u>> Subject: RE: Monthly border apprehensions release

PRE-DECISIONAL//DELIBERATIVE

Chad/Gene,

	Case 2:19-cv-05217-SRB		
From: Wolf,			

Sent: Monday, August 7, 2017 4:02 PM To: MCALEENAN, KEVIN K <<u>KEVIN.K.MCALEENAN@cbp.dhs.gov</u>>; Hamilton, Gene <<u>gene.hamilton@hq.dhs.gov</u>>; Hoffman, Jonathan <<u>jonathan.hoffman@hq.dhs.gov</u>> Subject: FW: Monthly border apprehensions release

Thanks, Kevin. I believe during our last discussion on this topic folks were pulling together both policy options and messaging options for consideration. Is there a timeline on where we stand on that front?

Chad Wolf Department of Homeland Security (w) 202.447.3687 (c) 202.875.9132

From: MCALEENAN, KEVIN K	
Sent: Monday, August 7, 2017 3: <u>07 PM</u>	
To: S2ECD <s2ecd@hq.dhs.gov></s2ecd@hq.dhs.gov>	, Wolf, Chad < <u>chad.wolf@hq.dhs.gov</u> >;
Hoffman, Jonathan <jonathan.hoffman@hg.dhs.gov></jonathan.hoffman@hg.dhs.gov>	
Hamilton. Gene <gene.hamilton@hg.dhs.gov></gene.hamilton@hg.dhs.gov>	
Cc:	Homan, Thomas < Thomas. Homan@ice.dhs.gov>
Subject: Monthly border apprehensions release	, and a second

PRE-DECISIONAL//DELIBERATIVE

Madam Secretary,

From	
Sent: Friday, August 4, 2017 4:41 PM To:	
CC , CHAVEZ, GLORIA I < <u>GLORIA.I.CHAVEZ@CBP.DHS.GOV</u> >;	

Subject: UAC/FMUA page for JULY

Dave/Jenny,

The Migration stats for July are ready – with your concurrence, we will post on Monday at noon. BLUF:

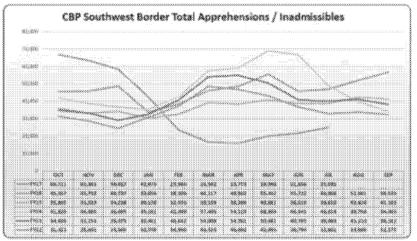
U.S. Customs and Border Protection (CBP) saw a 16 percent increase in apprehensions and inadmissible persons at ports of entry along the Southwest Border in July.

However, these numbers represent a 47 percent decrease as compared to July of 2016, and year-to-date totals for FY 2017 are 22 percent lower than the same period in FY 2016.

https://edit.staging.cbp.gov/newsroom/stats/sw-border-migration

U.S. Customs and Booker Protection (CBP) saw a 16 percent increase in approhemotors and inadmissible persons at ports of entry along the Southwest Biodes in July.

However, these numbers represent a 47 percent decrease as compared to July of 1016, and year to date totals for FY 2017 are 22 percent form the same period in FY 2024.



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U.S. Bonder Patrol Approbansions FY2017 VTD(Catabas 1 - July 31)

0000	0		***		JAN		ww		W XY	am		local
Scottwest	986	8,358	1,346	3,587	4,305	8,368	1,042	9997	3,878	1,882	2,8%	38,837
Bunder	Canady Wests	\$3,535	15,569	16,139	3,390	3,323	1,336	3,118	1,380	2,322	3,397	66,388
Suithures Appro	t Bander Total Annaisea	*6,382	**,200	43,249	38,388	38,755	\$2,397	11,125	14,523	16,897	38,398	2000,2:07

Wembers are subject to change during agency reconciliation of individual records, these numbers reflect the current status and numbers as of \$7/17.

in July, a total of 18,100 milliobalic wave approhemized between poets of entry on our Southwest Bander, compared with 16,000 in Jone and 14,521 in May, in Fincal Year (FY) 2016, USBP approhemized 400,071 in FY16, and 475,372 in FY16.

For breakdown by Sector, whit USBP Southward Darder Apparthemics by Sector

Office of Field Operations Inadmissibles FY2017 Y10(October 1 - Judy 31)

field Operations		or i	832			***	****		****			
Southment	SINC	3,839	0.838	963	3883	364	328	139	232	253	3386	6,287
Border	Family Units	8,500	\$,887	3,898	2,258	3,854	368	283	8,875	8,386	3,683	24,000
Southaren I Inadro	border Total Insibles	28,529	34,333	13,348	13.889	A,3886	4,386	4,548	3,422.	5.58X	8,833	34,435

Numbers are subject to change theing agency reconclusion of infinitesia records, these numbers reflect the current status and numbers as of 4/37.

in July, a total of UREE proper presenting themselves at ports of entry on the Southernet Border were desceed inadmissible compared to S.Salein June and S.A.F. in May. to Face (37) 2016, 180,875 were deemed inadmissible compared to 134,486 in FTIS and WebBE in FTIS.

(PC) inadmissibility reptrice includes includes incomposed at parts of entry who are seeking landed advisation into the United States has are determined to be incadmissible, individuals presenting themselves to seek furnamination protection under our laws; and individuals who withdraw an application for admission and return to their countries of origin within a short time/hame.

For breakdown by Field Office, whit Scotlement Director tradeministics by Field Office.

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Exhibit 47

Case 2:19-cv-05217-SRB Document 404-4 Filed 04/24/23 Page 10 of 83

it can'		
rom:	Short, Tracy [/O=IRMMAIL/OU=EXCHANGE ADMINISTRATIVE GROUP (FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=TRACY.SHORT.HQ.DHS.GOV744]	
ent	12/9/2017 9:49:34 PM	
'o:		P Blank, Thomas
		Dougherty, Michael
		; ESEC-BBIC
CC:	MCALEENAN, KEVIN K [/O=IRMMAIL/OU=First Administrative Group/cn=Re Homan, Thomas [/O=IRMMAIL/OU=MBX Servers - COW/cn=Recipients/cn= [/O=IRMMAIL/OU=EXCHANGE ADMINISTRATIVE GROUP	cipients/cn=kevin.mcaleenan.dhs.gov]; thoman]; Cissna, Francis
	(FYDIBOHF23SPDLT)/CN=RECIPIENTS/CN=Dimple.Shah.hg.dhs.gov2871; Wo	If, Chad [/O=IRMMAII /OU=FXCHANGF

Subject: RE: Heads Up - S1 briefing next Mon Attachments: Immigration and Border Security Briefing for S1.pptx

Components,

Please see the revised agenda below to assist you in preparing briefing material, which will be inserted into the attached slide deck. I have inserted each subsection of the agenda below in the attached slide deck for reference purposes only for each component. Some of the agenda items may need to be consolidated or revised. Please add relevant information, graphics, charts, etc. Components are allocated <u>8 slides</u>, but use less if possible. This should be no more than 25 slides total. Please focus the majority of your respective presentations to discussing the "DHS Initiated Solutions" in each of your respective categories and, to a lesser extent, needed legislative solutions. For briefing purposes, be prepared to move quickly through the "Snapshot" of the current situation on the ground, to afford the majority of your time to discussing solutions.

Some of these issues have already been briefed recently, so if you use previous briefing materials please update the information.

Each component should send me their respective briefing slides by 4:00 p.m., tomorrow, Sunday. Please let me know If you have questions._____

PLCY/ESEC

If there are existing slide decks that would be more appropriate for this material, please let me know ASAP.

EXHIBIT

Once I get the material from the components, I will reach out to you to assist in packaging this up for review before it goes through the formal ESEC clearance process.

Thank you.

Tracy

I.President's Enforcement Priorities (brief summary) II.Border Enforcement Snapshot of current border environment (Jan-Apr 2017, and post-Apr 2017) a. i.Stats (include charts, graphs) ii.Increased crossings/inadmissibles since April iii.Operational challenges: TVPRA, UACs, FUMAs, bed space limitations b. **DHS Initiated Solutions** i.Expanded enforcement under the E.O.s; end "catch and release" ii.Border security enhancements: Wall improvements, technology iii.Separation of families proposal iv.Prosecution of parents/sponsors v.Expansion of ER proposal Legislative Solutions - outlined in the President's Principles and Policies C. i.Border wall expansion and funding, increased personnel ii.TVPRA reform; Protection of Children Act iii.Authorizing foreign assistance to Central American countries for detention and removal III.Interior Enforcement Snapshot of current interior enforcement limitations a. i.Stats (include charts, graphs) ii.Sanctuary cities; detainer litigation iii.Detention space limitations iv.Flores restrictions v.Recalcitrant countries; Zadvydas **DHS** Initiated Solutions b. i.Expanded enforcement under the E.O.s ii.Ending broad PD policy; "catch and release"; ending admin closure of removal cases iii.Background checks for sponsors proposal iv.Prosecution of parents/sponsors v.Expanded worksite operations vi.Flores regs c. Legislative Solutions - outlined in the President's Principles and Policies i.Incentivize cooperation by state/local jurisdictions: eliminate sanctuary cities, authorizing detainers, authorizing state/locals to enforce federal law and providing immunity/indemnification of state/locals ii.Zadvydas fix iii.Flores fix iv.Expand categories of removable aliens: gang members, criminals, require mandatory detention of criminals v.Concerns with SECURE Act IV.Fraud/Abuse in the immigration system Snapshot of current challenges a. i.Stats (include charts, graphs) **DHS Initiated Solutions** b. i.Enhanced vetting of benefits applicants ii.Expansion of FDNS

- iii.Reform credible fear process
- iv.End abusive parole policies

c. Legislative Solutions - outlined in the President's Principles and Policies

i.Merit-based immigration; end chain migration; end DV; reform USRAP

ii.Asylum reform, Protection of Children Act iii.Mandatory E-verify

From: Short, Tracy
Sent: Friday, December 8, 2017 3:28 PM
To: FLANAGAN, PATRICK S <Patrick.Flanagan@dhs.gov>; Blank, Thomas <Thomas.Blank@ice.dhs.gov>; Ries, Lora L
<lora.l.ries@uscis.dhs.gov>
Cc: MCALEENAN, KEVIN K <KEVIN.K.MCALEENAN@cbp.dhs.gov>; Homan, Thomas <Thomas.Homan@ice.dhs.gov>;
Cissna, Francis <D1LFC@uscis.dhs.gov>; Hunter, Theresa <Theresa.Hunter@hq.dhs.gov>; Shah, Dimple
<Dimple.Shah@hq.dhs.gov>; Wolf, Chad <Chad.Wolf@hq.dhs.gov>; Neumann, Elizabeth
<elizabeth.neumann@hq.dhs.gov>
Subject: RE: Heads Up - S1 briefing next Mon

All,

Please send your responses ASAP.

Tracy

From: Short, Tracy
Sent: Friday, December 8, 2017 1:14 PM
To: FLANAGAN, PATRICK S <Patrick.Flanagan@dhs.gov>; Blank, Thomas <Thomas.Blank@ice.dhs.gov>; Ries, Lora L <lora.l.ries@uscis.dhs.gov>
Cc: MCALEENAN, KEVIN K <KEVIN.K.MCALEENAN@cbp.dhs.gov>; Homan, Thomas <Thomas.Homan@ice.dhs.gov>; Cissna, Francis <D1LFC@uscis.dhs.gov>; Hunter, Theresa <Theresa.Hunter@hq.dhs.gov>; Shah, Dimple <Dimple.Shah@hq.dhs.gov>; Wolf, Chad <Chad.Wolf@hq.dhs.gov>; Neumann, Elizabeth <elizabeth.neumann@hq.dhs.gov>
Subject: RE: Heads Up - S1 briefing next Mon

All,

Attached is a draft agenda for the Immigration and Border Security briefing for S1 next Monday at 12:45. These copied it into this email for ease. This will be a 90 minute briefing. These probably over-included most of the relevant agenda items that I could think of based on prior briefings, but some may be missing or incomplete. Please review this draft agenda, revise, and consolidate the attached Word document into one document and return it to me ASAP, as once it is in final form it will be tasked back out to you through ESEC to prepare the briefing materials. Please consolidate issues for efficiency.

Thanks.

Tracy

Secretary's Immigration and Border Security Briefing

I. President's Enforcement Priorities

Summary of President's immigration enforcement agenda

(5 min)

b. Slide deck(s)

11,	Immigration Enforcement Challenges	
a.	Border Enforcement	(1 0 min)
	environment (Jan-Apr 2017, and post-Apr 2017)	
	Enforcement	
1.	Border stats	
2.	Surge of UACs, family units, single adults	
3.	Criminal activities: trafficking, smuggling (sponsored by U/	AC parents); TCOs
4.	Flores limitations, TVPRA	
5.	HHS capacity concerns	
6.	Foreign assistance efforts for detention and removal	
b.	Interior Enforcement	(10 min)
i.Interio	r enforcement operations	
1.	Enforcement stats for apprehensions, removals	
2.	Sanctuary cities; non-cooperation by state/local jurisdiction	ons
з.	Flores limitations	
4.	Lack of detention space (adults, families)	
5.	Backlog of immigration removal cases	
с.	Fraud/Abuse in the immigration system	(10 min)
i.Asylum	abuse, credible fear rates	
ii.sus, u	visas, etc.	
111.	Solutions	
а.	Border Wall and security enhancements	(5 min)
i.Slide d	eck	
b.	Revise detention policies	(5 min)
i.Separa	ting family units, placing adults in detention and placing chi	Idren in HHS custody as UACs.
С.	Increase criminal prosecution of parents for smuggling/tra	fficking. (5 min)
d.	ICE to perform background checks on UAC sponsors	(5 min)
i.ICE/HH	S MOU	
e.	Ensure cooperation by state/local jurisdictions	(10 min)
i.Targeti	ng sanctuary jurisdictions for enforcement operations	
ii.MOU v	vith cooperative sheriffs to honor detainers	
iii.ldentif	uncooperative jurisdictions for DOJ enforcement action	
f.	Restore integrity to immigration benefits programs	(5 min)
i.Merit-ł	based immigration system	
ii.Reform	is in credible fear, asylum, UAC/SIJS processes	
g.	Increase removals	(10 min)
i.243(d)	sanctions	
ii.Expand	ER	
h.	Legislative fixes	(5 min)
	Diver, other enforcement legislation	
ii.Concer	ns with SECURE Act	
i.	International engagements	(5 min)
	a Safe Third Country Agreement with Mexico	
ii.Engage	DOS to provide assistance to Mexico and Central American	partners to enhance detention and re

ii.Engage DOS to provide assistance to Mexico and Central American partners to enhance detention and removal of migrants transiting through to enter the U.S.

From: Short, Tracy	
Sent: Friday, December 8, 2017 10:49 AM	
To:	Blank, Thomas <thomas.blank@ice.dhs.gov>;</thomas.blank@ice.dhs.gov>
<lora.l.ries@uscis.dhs.gov></lora.l.ries@uscis.dhs.gov>	
Cc: MCALEENAN, KEVIN K <kevin.k.mcaleena< td=""><td>N@cbp.dhs.gov>; Homan, Thomas <thomas.homan@ice.dhs.gov>;</thomas.homan@ice.dhs.gov></td></kevin.k.mcaleena<>	N@cbp.dhs.gov>; Homan, Thomas <thomas.homan@ice.dhs.gov>;</thomas.homan@ice.dhs.gov>
Cissna, Francis <d1lfc@uscis.dhs.gov>;</d1lfc@uscis.dhs.gov>	
Subject: Heads Up - S1 briefing next Mon	

All,

S1 has requested an immigration/border security briefing on Monday afternoon. I am working on an agenda and will share it soon. It will involve a discussion on (1) current operational picture (issues/concerns) for each component; and (2) solutions (short-term policy fixes and long-term, such as regs and legislation). Please stand-by for further information.

Thanks.

Tracy

Document Produced In Native Format

T)

Immigration and Border Security Briefing

Current Challenges and Effective Solutions

7/5/2022

President's Enforcement Priorities (brief summary)

- Border Enforcement
 - Snapshot of current border environment (Jan-Apr 2017, and post-Apr 2017)
 - Stats (include charts, graphs)
 - Increased crossings/inadmissibles since April
 - Operational challenges: TVPRA, UACs, FUMAs, bed space limitations

- DHS Initiated Solutions
 - Expanded enforcement under the E.O.s; end "catch and release"
 - Border security enhancements: Wall improvements, technology
 - Separation of families proposal
 - Prosecution of parents/sponsors
 - Expansion of ER proposal

- Legislative Solutions outlined in the President's Principles and Policies
 - Border wall expansion and funding, increased personnel
 - TVPRA reform; Protection of Children Act
 - Authorizing foreign assistance to Central American countries for detention and removal

- Interior Enforcement
 - Snapshot of current interior enforcement limitations
 - Stats (include charts, graphs)
 - Sanctuary cities; detainer litigation
 - Detention space limitations
 - Flores restrictions
 - Recalcitrant countries; Zadvydas

- DHS Initiated Solutions
 - Expanded enforcement under the E.O.s
 - Ending broad PD policy; "catch and release"; ending admin closure of removal cases
 - Background checks for sponsors proposal
 - Prosecution of parents/sponsors
 - Expanded worksite operations
 - Flores regs

- Legislative Solutions outlined in the President's Principles and Policies
 - Incentivize cooperation by state/local jurisdictions: eliminate sanctuary cities, authorizing detainers, authorizing state/locals to enforce federal law and providing immunity/indemnification of state/locals
 - Zadvydas fix
 - *Flores* fix
 - Expand categories of removable aliens: gang members, criminals, require mandatory detention of criminals
 - Concerns with SECURE Act

- Fraud/Abuse in the immigration system
 - Snapshot of current challenges
 - Stats (include charts, graphs)

- DHS Initiated Solutions
 - Enhanced vetting of benefits applicants
 - Expansion of FDNS
 - Reform credible fear process
 - End abusive parole policies

- Legislative Solutions outlined in the President's Principles and Policies
 - Merit-based immigration; end chain migration; end DV; reform USRAP
 - Asylum reform, Protection of Children Act
 - Mandatory E-verify

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Exhibit 55

From

Sent: Friday, January 19, 2018 9:14 AM To: Short, Tracy Subject: RE: TP UAC Attachments: UAC Options Talking Points (Updated 1.19.2018).docx.

Tracy,

Please find the updated UAC TPs for items 1-7. Note that item 5 relates to the MOU with HHS. In addition, the document includes the talking points for items 9 and 10 (Flores and Trilateral Safe Country Agreement). Please let me know if you have additional questions, concerns, or tasks for me. Thank you. Jaired

From: Short, Tracy

Sent: Friday, January 19, 2018 7:49 AM

To

Subject: RE: TP UAC

Anticipating a potential fire drill, can you put together a document that has bullets for the first 7 items on this list, inclusive of the ones you have already done? Just high-level bullets. Thanks. Tracy

From Sent: Thursday, January 18, 2018 6:13 PM To: Short, Tracy <u><tracy_short@hg.dks.gov</u>>. Subject: TP UAC

Initial draft for UAC Policy Options. Thank you!

Special Advisor | Office of the Secretary Department of Homeland Security **Detailed from U.S. Immigration and Customs Enforcement**

6869	EXHIBIT
00-631	603
IGAD 8	0-2
Na l	

Upcoming DHS UAC Policy Decisions Talking Points

Increase Federal Criminal Prosecution of Family Unit Adults:

- Significantly increase the prosecution of family unit parents when encountered between the ports of entry.
- DHS would refer parents to DOJ for criminal prosecution and for placement in the custody of the U.S. Marshals Service to await trial. Due to the parents' unavailability, minors would be referred to HHS care and custody as unaccompanied alien children (UACs).
- CBP executed a limited pilot program implementing this policy with great success.
- Although not all parents could be criminally prosecuted, the significant increase in prosecutions would have a substantial deterrent effect.

Limit Reliance on Family Detention:

- To avoid applying "catch and release" to aliens illegally crossing the border with their minor children, announce and then implement a plan to scale back family detention to ease operational challenges for ICE in detaining minors, place the adults in adult detention, and refer the minor children to the care and custody of HHS as UACs.
- The implementation of this policy will likely generate significant opposition, therefore, proper external messaging will be critical to success of the policy.

Revise UAC Designation:

- Rescind a 2013 memo (Kim memo) that prevents USCIS adjudicators from making independent UAC determinations.
- Under the current policy memorandum, adjudicators must recognize a minor as a UAC when an immigration officer makes a UAC determination during the initial encounter with a minor ("once a UAC, always a UAC"). Consequently, the initial determination applies throughout the minor's asylum application processing, despite the minor's failure to meet the statutory definition of a UAC.
- Rescission of the memo would allow DHS components to withdraw the initial UAC designation when HHS releases the minor or the minor reaches age 18.

MOA with HHS on Requirements for Releasing UACs:

- Complete the MOA between DHS and HHS providing for HHS to require that all
 potential UAC sponsors report to ICE for criminal and immigration background checks.
- Appropriate immigration enforcement action will be taken against removable alien sponsors, including detention and initiation of removal proceedings, where legally required or otherwise appropriate.
- This policy would reduce the motivation for parents to subject their children to the dangers associated with being smuggled into the United States and ensure that UACs are placed in a safe and secure environment with a suitable sponsor to prevent minors from being exploited, abused, or neglected.

Abuses in the SIJ Program:

- To prevent potential abuses in the SIJ program and save resources, DHS could bolster the vetting and adjudication aspects of the SIJ program including improving the biometrics and security/vetting procedures, ensuring the identity of SIJ petitioners, and carefully scrutinizing the possibility of gang membership/affiliation.
- If a gang membership/affiliation issue is identified, USCIS adjudicators should implement the Referral to ICE (RTI) process to ensure any potential threat to public safety is referred to the proper ICE component for enforcement action.
- Develop and implement a formal process to encourage DHS components (e.g., ICE attorneys, CBP officers, etc.) to report cases of suspected SIJ program fraud to USCIS.

Repatriation Assistance:

- Provide financial assistance to countries along illicit human smuggling pathways, including Brazil, the Northern Triangle, Panama, and Mexico, to fund efforts by those countries to interdict, detain, and remove aliens transiting through those countries *en route* to the United States.
- DHS lacks the statutory authority and budget to provide funding to third countries to repatriate foreign nationals and the Department of State's (DOS) ability to provide this type of assistance is unclear.
- DHS will engage with the DOS to explore possible solutions, however, a legislative fix may be necessary if the DOS is unable to provide this assistance.
- This will reduce continued illegal immigration flow from the Northern Triangle countries.

Adjudication of Claims on "Last In, First Out" Basis:

- USCIS could adjudicate the asylum claims of illegal entrants in a "last in, first out" basis and DHS could engage with EOIR to encourage adjudication of all immigration removal cases on a "last in, first out" basis.
- These policies would disincentivize aliens from illegally entering the United States and serve as a substantial deterrent because their claims for protection before USCIS and their removal proceedings before an immigration judge would be adjudicated promptly.
- This policy would have an even greater impact if implemented in conjunction with the policy limiting reliance on family detention as these aliens would not remain in the United States for several years while their cases are pending.

Flores Regulations:

- CBP, ICE, and USCIS are developing draft regulations implementing the Flores Settlement Agreement (FSA), in conjunction with DOJ and HHS.
- New regulations may ameliorate some of the operational and legal difficulties imposed by the FSA. Specifically, DHS may be able to provide flexibility with regard to the FSA's requirement that family detention centers be state licensed, a requirement which has been impossible to satisfy.
- Removing this obstacle would enable DHS to detain family units throughout the course of their removal process, rather than be limited to the 20-day period set by the district court.

Trilateral Safe Third Country Agreement:

- If the DOS provides negotiating authority pursuant to Circular 175, DHS components will be authorized to begin discussions with Mexico and Canada for the purpose of entering into a Trilateral Safe Third Country Agreement with the parties.
- This will involve long-term negotiations with those countries which will likely take years to conclude. If a trilateral agreement effort does not prove fruitful in early negotiations, DHS will consider bilateral negotiations with Mexico to enter into a safe third country agreement.

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Exhibit 87

Case 2:19-cv-05217-SRB Document 404-6 Filed 04/24/23 Page 4 of 53

Message	
From:	
Sent:	11/30/2017 6:43:40 PM
То:	

• Limiting Reliance on Family Detention

> ICE recommends a change regarding the detention of family units, by separating detained parents from their children during removal proceedings. This change would be intended to deter families from illegally entering the United States, as well as address operational challenges for ICE in detaining minors.

> Under this recommendation, ICE would scale back the use of family detention and instead make custody determinations for parents consistent with how all adult aliens are considered for detention and release.

• On a case by case basis ICE will make a custody determination for the family, and unless there are extenuating circumstances the parent will generally be detained for proceedings. When this occurs the child(ren) will be referred to ORR for placement, while the parent and the immigration cases move forward with the detained immigration docket.

• Minors would be transferred from DHS to Department of Health and Human Services custody, which has authority over the care and custody of unaccompanied alien children.

➤ It has been determined that the Department is within its legal authorities, to separate parents from children; there is inherit risk of potential litigation challenging the legality of "creating" an unaccompanied alien child; rendering a parent / guardian incapable of providing care without due process; It is believed that the litigation would be directed at CBP assuming the separation occurs at the time of encounter. There is also an operational risk (e.g., HHS capacity and impact to detain UACs beyond 72 hours statutory mandate under "exceptional circumstances" if DHS self-designates child UAC; parent / guardian subject to removal rending the UAC without either parent; responsibility of DHS versus HHS regarding gaining physical custody of a previously released to HHS) to both CBP and the Department.

Deputy Assistant Director Custody Programs Division Enforcement and Removal Operations (ERO) U.S. Immigration and Customs Enforcement (ICE) | Department of Homeland Security (DHS)

ERO.Info@ice.dhs.gov - General Inquiries



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Exhibit 88

From: Short, Tracy

Sent: Saturday, December 16, 2017 12:58 PM To: Shah, Dimple; Wolf, Chad

CC: Subject: RE: UAC response

Attachments: UAC_Options(v.2)_.docx

With a few additional edits and comment

From: Shah, Dimple

Sent: Saturday, December 16, 2017 12:25 PM

To: Wolf, Chad <chad.wolf@hq.dhs.gov>; Short, Tracy <tracy.short@hq.dhs.gov>

Cc:

Subject: RE: UAC response

Updated and attached. I also cross-walked this with the PLCY/ESEC memos. Please review as the baby is needing my attention now and I was not able to proof as thoroughly as I would like to. Thank you!!

From: Wolf, Chad

Sent: Saturday, December 16, 2017 11:30 AM To: Shah, Dimple <dimple.shah@hq.dhs.gov>; Short, Tracy <tracy.short@hq.dhs.gov> Cc:

Subject: RE: UAC response

Yikes. Thanks for the reminder. Was working on a separate issue.

Chad F. Wolf (Acting) Chief of Staff Department of Homeland Security

From: Shah, Dimple

Sent: Saturday, December 16, 2017 11:28 AM To: Wolf, Chad <<u>chad.wolf@hq.dhs.gov</u>>; Short, Tracy<<u>tracy.short@hq.dhs.gov</u>>

Cc:

Subject: RE: UAC response

Chad – I am about 20 mins out from finishing my changes/edits. Feel free to flip me the policy/esec proposal list. I'd be happy to cross walk it with the document when I am done. Thanks! -Dimple

From: Wolf, Chad

Sent: Saturday, December 16, 2017 10:38 AM

To: Short, Tracy <<u>tracy.short@hg.dhs.gov</u>>; Shah, Dimple <<u>dimple.shah@hg.dhs.gov</u>>

Cc: Neumann, Elizabeth <<u>elizabeth.neumann@hq.dhs.gov</u>>

Subject: RE: UAC response

Dimple – latest document attached.

I am also going to forward an email for ESEC that lists the previous PLCY memo's that have been signed or under consideration. Can you ensure all are reflected in this document?

Chad F. Woll (Acting) Chief of Staff Department of Homeland Security

From: Short, Tracy

Sent: Saturday, December 16, 2017 9:50 AM

To: Wolf, Chad <chad.wolf@hq.dhs.gov>; Shah, Dimple <dimple.shah@hq.dhs.gov>

Cc:

Subject: RE: UAC response Attached are my edits.

From: Wolf, Chad

Sent: Friday, December 15, 2017 11:24 PM

To: Shah, Dimple <<u>dimple.shah@hg.dhs.gov</u>>; Short, Tracy <<u>tracy.short@hg.dhs.gov</u>>

Cc: N

Subject: RE: UAC response

Tracy,

Please see that attachment. I began putting your work into a format for S1 to easily read and digest. Please finish the initial ideas you included and areas that have "???". Would recommend that you kick it over to Dimple tomorrow morning so she can fully incorporate her changes / edits.

I would then send the document to a wider audience for comments / edits by early Sunday. My plan is to provide to S1 on Sunday. I need both yours and Dimple's help to get the options paper in good shape.

Chad F. Wolf

(Acting) Chief of Staff Department of Homeland Security

From: Shah, Dimple

Sent: Friday, December 15, 2017 6:41 PM To: Wolf, Chad <<u>chad.wolf@hq.dhs.gov</u>>; Short, Tracy <<u>tracy.short@hq.dhs.gov</u>>

Cd

Subject: RE: UAC response

I made some tweaks to the text below the break. Nothing major as it is a great start. Some other bullets below to consider. I leave it to your discretion to add/subtract.

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Special Immigrant Juvenile Visas

- USCIS should consider revising its interpretation of the Special Immigrant Visa Statute to align with Congress' original intent of the
 program (Long term as rulemaking is likely required). This re-interpretation would allow the SIJ program to better support those
 children who are truly abandoned and do not have a single parent available to care for them. USCIS is consulting with OGC on the
 availability and of such a revised interpretation, as well as the appropriate procedure for making the change (e.g., a revised policy
 memo or a notice-and-comment rulemaking), especially in light of the 2011 NPRM.
- To prevent potential abuses in the SIJ program and save resources, DHS could bolster the vetting and adjudication aspects of the SIJ program as follows (short term):
 - Review and improve the entire biometrics and security/vetting procedures for the SIJ population, including obtaining foreign criminal history information for SIJ petitioners.
 - Before addressing adjudication concerns, DHS should ensure the identity of SIJ petitioners and carefully scrutinize the possibility of gang membership/affiliation. If a gang membership/affiliation issue is identified, USCIS adjudicators should understand and implement the Referral to ICE (RTI) process, specific to the SIJ population, to ensure any potential threat to public safety is referred to the proper component of ICE—which oftentimes is Homeland Security Investigations (HSI).
 - Separate from the security/vetting procedures, review whether USCIS' consent function can be used to deny a case involving
 gang membership or otherwise poses a threat to public safety or national security.
 - Develop a formal process to encourage DHS components (e.g., ICE trial attorneys, ICE or CBP officers, etc.) to report cases of
 suspected SIJ program fraud to USCIS. For example, the process would provide that an ICE trial attorney who notices a child
 seeking SIJ classification attending immigration court with two parents should report this factor to USCIS for further
 investigation.

Asylum

- Work with EIOR to adjudicate all cases on last in first out basis. In the meantime, USCIS can adjudicate the asylum cases they receive in
 order of last in first out also. Both processes must be consistent in order to effectuate prompt removal and to have a deterrent impact.
- Detain arriving aliens in a manner consistent with statute such that they are detained for the duration of the adjudication of their asylum claims. This would require rescission of the 2009 Morton memo which allows for parole of all such aliens contrary to statute. Rescission must occur following a decision in the Jennings vs. Rodriguez case as DOJ relied on the memo in its arguments in October. A decision by the SCOTUS should be issued this summer.
- Instruct CBP and ICE to significantly increase the prosecution of family unit parents when they are encountered at the border. The parents
 would be prosecuted for illegal entry (misdemeanor) or illegal reentry (if they have been previously deported) and the minors with
 them would be placed in HHS custody as UACs. Since the parents would be criminally prosecuted, they would be placed in the custody
 of the U.S. Marshal to await trial. Not all parents could be criminally prosecuted because of the large number of families illegally
 entering, but the increase would be reported and it would have a deterrent effect. A public announcement of the policy could be
 made before implemented. This is already being done by CBP on a limited scale.
- •Announce that DHS will begin separating family units, placing the adults in adult detention and placing the minors under the age of 18 in the custody of HHS as unaccompanied alien children (UAC) because the minors will meet the definition of "unaccompanied alien child," i.e., (1) has no lawful immigration status in the U.S.; (2) has not attained the age of 18; and (3) has no parent or legal guardian in the U.S.; or no parent or legal guardian in the U.S. is available to provide care and physical custody. See 6 USC § 279(g)(2). This will require close coordination with HHS, to ensure that sufficient capacity is available to detain the UACs.
- Begin separating family units, as stated above. This option could be presented to S1 and a decision could be made within a few weeks, but operational coordination between the components and HHS and DOJ (consolidating the cases of parents and minors in immigration court proceedings) would be key.
- There is an S1 decision memo awaiting signature, which would: (1) direct USCIS to rescind a 2013 memo that prevents their staff from making independent UAC determinations (thereby allowing for the redesignation of children who no longer meet the statutory UAC definition); and (2) allow ICE to redesignate UACs as "accompanied alien juveniles" if/when HHS releases them to a parent or legal guardian.

Near-term response:

- Complete the MOU between ICE and HHS to fingerprint sponsors of UACs, conduct background checks on those individuals, and place them into removal proceedings. This would deter parents/sponsors from taking custody of their children, requiring HHS to keep the UACs in custody longer. It would also deter parents from smuggling their children.
- •DOJ is currently considering placing video teleconference (VTC) units at or near HHS facilities to allow immigration judges to conduct removal hearings in these facilities remotely. ICE could work with DOJ to expeditiously facilitate this policy.
- Request that the State Department provide financial assistance to countries like Panama and Mexico, to fund efforts by those countries to interdict, detain, and remove aliens from the Northern Triangle who are transiting those countries en route to the United States.
 Long-term response:
 - •On September 25, 2017, Acting Secretary Duke signed a decision memo directing CBP, ICE, and USCIS to develop and draft regulations implementing the Flores Settlement Agreement and TVPRA, in conjunction with DOJ and HHS. ICE is currently drafting the regulations.
 - Conclude a Safe Third Country Agreement with Mexico. Acting Secretary Duke recently authorized DHS to request authority from the State Department to begin discussions with Mexico and Canada for the purpose of entering into a trilateral Safe Third Country Agreement with the parties. This will involve long-term negotiations with those countries.
 - Begin negotiations with Mexico to implement INA § 235(b)(2)(C), which authorizes immigration officers to return aliens to the country
 from which they entered the U.S., pending a determination of their removability in removal proceedings. This would require the
 assent of Mexico because it would require aliens from the Northern Triangle to remain in Mexico until their removability and claims
 for relief have been decided by an immigration judge, which will likely hold hearings at the ports of entry (port courts). There are
 litigation risks associated with this proposal, as it would implicate refugee treaties and international law.
 - •Seek a legislative fix for Flores and the TVPRA (Trafficking in Victims Protection Reauthorization Act). ICE can seek to expand detention capacity by entering into contracts with detention vendors along the border.

From: Wolf, Chad

Sent: Friday, December 15, 2017 5:51 PM

To: Short. Tracy <tracy.short@hg.dhs.gov>

Cc:

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Subject: RE: UAC response

Thank you, Tracy. Great starting point. //II work to put these into a package and resend for comment tonight / tomorrow morning.

Chard F Wolf LActingiCloor or Staff Department of Homeland Socurity 1:202 447 3687 C 102 875 9132

From: Short, Tracy Sent: Friday, December 15, 2017 5:36 PM To: Wolf, Chad <chad.wolf@hg.dhs.gov>

Shah, Dimple <dimple.shah@hg.dhs.gov>

Subject: UAC response

Cc

As requested, below are options to respond to the current border crisis:

Immediate response:

- •Instruct CBP and ICE to significantly increase the prosecution of family unit parents when they are encountered at the border. The parents would be prosecuted for illegal entry (misdemeanor) or illegal reentry (if they have been previously deported) and the minors with them would be placed in HHS custody as UACs. Since the parents would be criminally prosecuted, they would be placed in the custody of the U.S. Marshal to await trial. Not all parents could be criminally prosecuted because of the large number of families illegally entering, but the increase would be reported and it would have a deterrent effect. A public announcement of the policy could be made before implemented. This is already being done by CBP on a limited scale.
- Announce that DHS will begin separating family units, placing the adults in adult detention and placing the minors under the age of 18 in the custody of HHS as unaccompanied alien children (UAC) because the minors will meet the definition of "unaccompanied alien child," i.e., (1) has no lawful immigration status in the U.S.; (2) has not attained the age of 18; and (3) has no parent or legal guardian in the U.S., or no parent or legal guardian in the U.S. is available to provide care and physical custody. See 6 USC § 279(g)(2). This will require close coordination with HHS, to ensure that sufficient capacity is available to detain the UACs.
- Begin separating family units, as stated above. This option could be presented to S1 and a decision could be made within a few weeks, but operational coordination between the components and HHS and DOJ (consolidating the cases of parents and minors in immigration court proceedings) would be key.
- •There is an S1 decision memo awaiting signature, which would: (1) direct USCIS to rescind a 2013 memo that prevents their staff from making independent UAC determinations (thereby allowing for the redesignation of children who no longer meet the statutory UAC definition); and (2) allow ICE to redesignate UAC as "accompanied alien juveniles" if/when HHS releases them to a parent or legal guardian.

Near-term response:

- Complete the MOU between ICE and HHS to fingerprint sponsors of UACs and place them into removal proceedings. This would deter parents/sponsors from taking custody of their children, requiring HHS to keep the UACs in custody longer. It would also deter parents from smuggling their children.
- •DOJ is currently considering placing video teleconference (VTC) units at or near HHS facilities to allow immigration judges to conduct removal hearings in these facilities remotely. ICE could work with DOJ to expeditiously facilitate this policy.
- •Request that the State Department provide financial assistance to countries like Panama and Mexico, to fund efforts by those countries to interdict, detain, and remove aliens from the Northern Triangle who are transiting those countries en route to the United States. Long-term response:

- On September 25, 2017, Acting Secretary Duke signed a decision memo directing CBP, ICE, and USCIS to develop and draft regulations implementing the Flores Settlement Agreement and TVPRA, in conjunction with DOJ and HHS. ICE is currently drafting the regulations.
- Conclude a Safe Third Country Agreement with Mexico. Acting Secretary Duke recently authorized DHS to request authority from the State Department to begin discussions with Mexico and Canada for the purpose of entering into a trilateral Safe Third Country Agreement with the parties. This will involve long-term negotiations with those countries.
- Begin negotiations with Mexico to implement INA § 235(b)(2)(C), which authorizes immigration officers to return aliens to the country from which they entered the U.S., pending a determination of their removability in removal proceedings. This would require the assent of Mexico because it would require aliens from the Northern Triangle to remain in Mexico until their removability and claims for relief have been decided by an immigration judge, which will likely hold hearings at the ports of entry (port courts). There are litigation risks associated with this proposal, as it would implicate refugee treaties and international law.

Seek a legislative fix for Flores and the TVPRA (Trafficking in Victims Protection Reauthorization Act).

ICE can seek to expand detention capacity by entering into contracts with detention vendors along the border.

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Exhibit 97

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Message	
From:	
Sent:	1/17/2018 8:42:49 PM
To:	Johnson, Tae D [/O=IRMMAIL/OU=First Administrative Group/cn=Recipients/cn=tdjohnso]; Harper, Mellissa B
Subject:	RE: Task for component information

Tae,

I thought we were supposed to stay away from any mention of separating families as a deterrence tool? Also, after mentioning Flores, maybe we should insert "...which requires the department to release detained juveniles within 20 days of apprehension."

Sent with BlackBerry Work (www.blackberry.com)

From: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>> Date: Wednesday, Jan 17, 2018, 3:05 PM To:

Harper, Mellissa B < Mellissa B. Harper(a)ice.dhs.gov>

Subject: FW: Task for component information

Any issues with these TPs?

From Sent: Wednesday, January 17, 2018 2:57 PM To: Johnson, Tae D Cc

Subject: FW: Task for component information

AD Johnson,

Below is the most recent stock language we have on *Flores* for your review, limited to three talking points per the OD's request. This is based on the prep materials for S1's hearing yesterday.

In recent years, there has been a significant increase in the arrival of family units and unaccompanied alien children (UAC) across the southern border exploiting loopholes that allow them to remain in the United States.
 While the majority of those intending to cross the border illegally between the ports of entry are adults, the largest percentage increase has been among family units and UACs. DHS estimates that approximately 71,500 members of family units were apprehended at the Southern Border in FY 2017, and the vast majority were released into the country.
 ICE recommends a change regarding the detention of family units to ensure efficient compliance with the June 27, 2017 decision of the U.S. District Court for the Central District of California in *Flores v. Sessions*. This change would separate detained parents from their children during removal proceedings and would be intended to deter families from illegally entering the United States, as well as alleviate operational issues stemming from limited family bed space.

Thanks so much, and please let us know if we can be of additional assistance.



From:
Sent: Wednesday, January 17, 2018 1:26 PM
То
Cc:ohnson, Tae D;
#ERO CHIEFS OF STAFF; Albence, Matthew;
Subject: RE: Task for component information

All,

Unfortunately, we only have cleared language on hand for #4-Flores. If <u>ENF and RMD</u> could please provide brief writeups on the other identified topics by <u>4:30 today</u>, that would be much appreciated. The front office has requested a draft by COB today.

Tae, we will send you our stock Flores language for review shortly.

If there's anything or I can do to assist in the meantime, please let us know.

Many thanks,



From
Sent: Wednesday, January 17, 2018 1:13 PM
<u>Cc</u> Johnson, Tae D;
#ERO CHIEFS OF STAFF; Albence, Matthew;
Subject: FW: Task for component information
Subject. I W. Task for component information

ERO support will provide what they have for each topic as soon as possible.

- 1. Single scheme prosecutions (ENF)
- FTC
- Lowering thresholds
- Other commonly occurring immigration violation (1546, 1028, 922g5)
- 2. Public Defender interference with ERO Officer arrests (ENF)
- 3. DOJ/OIL to vigorously argue for immediate dismissal of TRO's that impact ICE's Removal Mission (RMD)
- 4. Flores litigation (DMD)

From:

Sent: Wednesday, January 17, 2018 12:28 PM

To: Albence, Matthew < Matthew.Albence@ice.dhs.gov>;

ohnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>>;

Cc: #ERO CHIEFS OF STAFF Subject: RE: Task for component information	
10-4, We are working to get examples now.	
From: Albence, Matthew Sent: Wednesday, January 17, 2018 12:25 PM	
Cc: #ERO CHIEFS OF STAFF;	Johnson, Tae D

Subject: RE: Task for component information

We need to be specific w regard to those jurisdictions that have those high thresholds-we can't just throw that out there without support, since this goes against the AG memo. Ideally, we will have some declined cases that we can present.

Sent with BlackBerry Work (www.blackberry.com)

From:	
Date: Wednesday, Jan 17, 2018, 11:48 AM	
To:	Johnson,
Tae D	
Cc: #ERO CHIEFS OF STAFF	Albence, Matthew
< <u>Matthew.Albence@ice.dhs.gov</u> >	
Subject: RE: Task for component information	

We're putting some things together for consideration to include Public Defender interference with ERO Officer arrests as well as expansion of some USAs more higher prosecutions thresholds eg. Current minimum of 2 agg felonies and 3 reentries' before accepting a 1326 case.

From
Sent: Wednesday, January 17, 2018 9:48 AM
To: Down Dohnson, Tae D;
Cc: #ERO CHIEFS OF STAFF; Albence, Matthew;
Subject: FW: Task for component information
Importance: High

Sorry.....another quick tasking.

Phil recommended the following.

- Flores legislation
- Expand the acceptance of single scheme prosecutions

Thoughts?

I want the topics and I'll have support provide some cleared language.

From: Sent: Wednesday, January 17, 2018 9:07 AM To:

Cc:	#ICE DD STAFF <
	; #ICE COS Staf

Subject: Task for component information Importance: High

Patricia,

Due to the quick turnaround and importance of the meeting below, we wanted to push this through ES for assistance. Can you please task out the below to HSI, ERO and OPLA for the below meeting between D1 and the Attorney General's Advisory Committee (AGAC), also attached is the list of AGAC members (which might be helpful to the components).

During the week of January 22, ICE's Deputy Director and Senior Official Performing the Duties of the Director, Thomas Homan, will be meeting with the Attorney General's Advisory Committee (AGAC), a group of U.S. Attorneys who convene periodically with a view to advising the Attorney General on novel and significant issues. A list of current AGAC members is included with this tasking. Mr. Homan's attendance will offer ICE an opportunity to hear from U.S. Attorneys about ICE-related issues arising in their districts, as well as an opportunity for ICE to raise our equities with the U.S. Attorneys. <u>ERO and HSI are each requested to provide a short paper listing the 3-5 most significant topics they believe are likely to be raised or which they wish to have raised by Mr. Homan at the meeting.</u> While an agenda is pending, we anticipate that most of the topics will relate to immigration/border enforcement matters. For reference, OPLA is also working to identify issues and plans to cover detainer and sanctuary jurisdiction litigation and legal issues and border search authority in its own write-up. The ERO/HSI write-ups should be concise (no more than 2 pages total), with each topic raised in the following format:

Topic (title)

- Background (single explanatory bullet)
- Talking Points
- o These are the items that Mr. Homan will raise affirmatively or in response to likely AGAC topics
- o Additional Talking Points...
- As needed (try to limit to 3 Talking points per topic)

Write-ups should be provided to ES for consolidation by 5 PM on Thursday, January 18.

Thanks and call if you have any questions.

Office of the Director U.S. Immigration and Customs Enforcement

Exhibit 8

From: Sent: Friday, July 14, 2017 2:47 PM To: _______; DELEON, DESI D.

CC: Subject: RE: Call to El Paso Sector

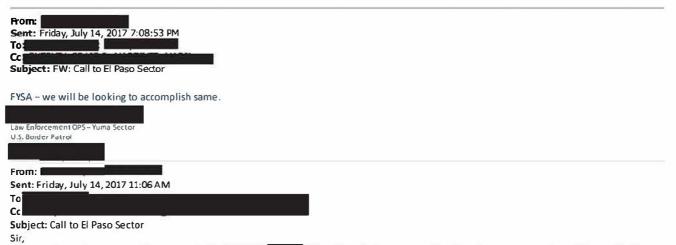
Sirs,

This will definitely make an impact, would also allow for higher consequence to be delivered in the future.

It appears to be effective with the family units we currently separate (reinstatements).

I will have SBPA Medrano look into family separation guidance from HQ and Flores compliance.

Respectfully,



Per your instructions, I was able to get a hold of (A)PAIC **Control** of the Ysleta Station who verified that they are currently splitting up family units. He referred me to the Prosecutions Unit and I spoke with SOS **Here they** and SPBA **Control** They both stated that they began spitting up family units approximately one week ago after they had a meeting with the Texas USAO. During this meeting, it was agreed upon that the USAO has the onus of deciding who should be prosecuted under their current initiative, which involves criminally prosecuting as many illegal entrants for 1325 as possible. Therefore, it was agreed upon with the USAO that BP would present all adults amenable to 1325, which meant separating accompanied children so that the adults could be sent to court.

Typically, their first time entrant 1325s are getting 7-10 day sentences and the separated juveniles are then sent to ORR for placement as unaccompanied juveniles. They stated that since the program started a week ago they have been fielding a lot of questions about it from the judges and Defense Attorneys.

Respectfully,

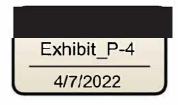


Exhibit 9

From: Sent: Wednesday, December 13, 2017 11:16 AM

To:

Subject: FW: ELP Initiative

Attachments: EPT FMUA Prosecution Initiative INFORMATIONAL version.doc; EPT FMUA Prosecution Initiative.doc

Please read ASAP and let us meet.

(A)Associate Chief U.S. Border Patrol Headquarters – Specialty Programs office reli

From: HASTINGS, BRIAN S Sent: Wednesday, December 13, 2017 10:31 AM

To: Subject: ELP Initiative

Attachment 1 was with the final version (Without COA's as requested by C-1_ Attachment 2 was with COA's and was sent back to us for scrub. \ Thanks, Brian







U. S. CUSTOMS AND BORDER PROTECTION UNITED STATES BORDER PATROL

El Paso Sector Family Unit Initiative

Date:November 29, 2017From:LEOD Ops West SectorsTo:Chief Brian S. HastingsSubject:El Paso Sector FMUA Initiative

BRIEFING TOPIC:

El Paso Sector (EPT) experienced a significant increase in apprehensions of family units (FMUAs) through its area of responsibility during the beginning of FY2017. EPT apprehended 11,929 through the end of May 2017, with most apprehensions by New Mexico Stations. As a result, it caused FMUA/UAC holding facilities in the El Paso AOR to reach capacity quickly and EPT having to convert Expedited Removals (ERs) to Warrants of Arrests/Notice to Appear (WA/NTA) to meet ICE ERO's placement/custody redetermination requirements and to alleviate overcrowding and time in custody constraints. EPT quickly adjusted their operations and launched a prosecution initiative (July 07, 2017 to November 18, 2017). The initiative was not intended to separate families, but to maintain operational control of their AOR prosecuting criminal adults who attempt to exploit the FMUA/UAC crisis in order to avoid prosecution.

EPT expects an increase in the apprehension of family units (FMUA) for FY 18 claiming credible fear as a consequence of ending the aforementioned prosecution initiative. As of FY 18, ninety-two (92) individuals claiming credible fear have been converted.

BACKGROUND:

As stated in CBPs Transport, Escort, Detention Standards, "Generally, family units with juveniles should not be separated. When it is necessary to separate juveniles from the parent(s) and/or legal guardian(s), officers/agents must follow their operational office's policies and procedures and appropriate legal requirements. In circumstances where family units must be separated due to different immigration dispositions, such separation much be documented in the appropriate electronic system(s) of record." Aside from different processing dispositions as mentioned in the Policy, other considerations that may warrant separation would be the welfare and safety of the juvenile. Processing individuals in EPT's custody varied on a case by case basis.

• In the April 11, 2017, memo from the United States Attorney General, all Federal Prosecutors were directed to renew their commitment to criminal immigration enforcement.

FOR OFFICIAL USE ONLY - INFORMATIONAL -

- AG Sessions made it a high priority for the Department of Justice to establish lawfulness in the immigration system, specifically for immigration offenses. After discussions with the local OCC, EPT management approached the New Mexico AUSAs office to discuss the possibility of lifting restrictions on prosecution cases.
- On July 6, 2017, District of New Mexico, Acting United States Attorney removed all
 restrictions imposed for El Paso Sector Prosecutions, which was limited to 25
 Misdemeanor cases per month and 150 Felony cases of 8 USC 1326 (a)(1) cases per
 month for New Mexico Border Patrol Stations.
- The lifting of all restrictions allowed New Mexico Border Patrol Stations to prosecute all amenable subjects in an effort to increase the consequences of entering in NM illegally to deter first time and/or repeat offenders.
- During this same time, the Western District of Texas El Paso Division continued to maintain 100 percent prosecutions of all amenable subjects entering the United States illegally. EPT expanded the prosecution initiative of Family Units (FMUA) for all TX BP Stations in response to an internal assessment which revealed a significant increase in FMUA entries.
- The combined actions above allowed the El Paso Sector Border Patrol to apply the most appropriate post-arrest consequence to an individual to break the smuggling cycle and end the desire to attempt further illegal entry.
- All amenable subjects were generally prosecuted for criminal immigration violations such as, Misdemeanor 8 USC 1325 Illegal Entry, 8 USC 1325 (a)(1) Illegal Entry, 8 USC 1325 (a)(2) Eluding Inspection, 8 USC 1326 (a)(1) Illegal Re-Entry, 8 USC 1326 (b)(1) Illegal Re-Entry of a Felon, 8 USC 1326 (b)(2) Illegal Re-Entry of an Aggravated Felon.
- Debriefs of apprehended subjects during the initiative revealed that many of them would have chosen to illegally enter the U.S. through a different sector had they known about EPTs prosecution efforts. This further indicated that prosecution of immigration related offenses is an effective deterrence to illegal entry.
- There was a 64% decrease in apprehensions throughout the El Paso Sector since the prosecution initiative was enacted.
- From August through November of FY 17, EPT processed 1,803 FMUAs. Only 281 (15.58 %) FMUAs were separated under this initiative.

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<u>**CURRENT STATUS:</u>** As of November 18, 2017, El Paso Sector is **No** longer executing prosecutions as described above. No other USBP sectors are engaged in similar operations at this time. USBP HQ has notified the El Paso Sector to stand down on the continuation of this prosecutions initiative until further review and to revert to the previous FMUA processing procedures (attached) prior to the launch of this initiative.</u>

FOR OFFICIAL USE ONLY - INFORMATIONAL -





U. S. CUSTOMS AND BORDER PROTECTION UNITED STATES BORDER PATROL

El Paso Sector Family Unit Initiative

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BRIEFING TOPIC:

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EPT expects an increase in the apprehension of family units (FMUA) for FY 18 claiming credible fear as a consequence of ending the aforementioned prosecution initiative. As of FY 18, ninety-two (92) individuals claiming credible fear have been converted.

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 Misdemeanor cases per month and 150 Felony cases of 8 USC 1326 (a)(1) cases per
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- There was a 64% decrease in apprehensions throughout the El Paso Sector since the prosecution initiative was enacted.
- From August through November of FY 17, EPT processed 1,803 FMUAs. Only 281 (15.58 %) FMUAs were separated under this initiative.

<u>CURRENT STATUS</u>: As of November 18, 2017, El Paso Sector is **No** longer executing prosecutions as described above. No other USBP sectors are engaged in similar operations at this time. USBP HQ has notified the El Paso Sector to stand down on the continuation of this prosecutions initiative until further review and to revert to the previous FMUA processing procedures (attached) prior to the launch of this initiative.

COURSE OF ACTION #1:

COURSE OF ACTION #2:

RECOMMENDATION:

Exhibit 10

CONFIDENTIAL

Page 1 Brian Hastings UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA CASE No. CV-20-00065-PHX-SRB -x A.P.F. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, O.B.; J.V.S., ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD H.Y.; J.D.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, M.G.; H.P.M. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.D.; M.C.L. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.J.; AND R.Z.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, B.P., PLAINTIFFS, -against-UNITED STATES OF AMERICA, DEFENDANT. - - -x CONFIDENTIAL VIDEOTAPED DEPOSITION OF BRIAN HASTINGS APPEARING REMOTELY FROM YUMA, ARIZONA THURSDAY, MAY 12, 2022 10:08 a.m. REPORTED BY: DANIELLE GRANT APPEARING REMOTELY FROM RICHMOND COUNTY, NEW YORK JOB NO.: SY 4723

	Page 2
1	Brian Hastings
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12	MAY 12, 2022
13	10:08 a.m.
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15	
16	
17	Confidential Remote Videotaped
18	Deposition of BRIAN HASTINGS, held remotely with
19	all parties appearing from their respective
20	locations, pursuant to Notice before DANIELLE
21	GRANT, a Stenographic Reporter and Notary Public
22	of the State of New York.
23	
24	
25	

CONFIDENTIAL

Page 3 1 Brian Hastings 2 **REMOTE APPEARANCES:** 3 CM PLAINTIFFS' COUNSEL: 4 KAIRYS, RUDOVSKY, MESSING, FEINBERG & LIN LLP 5 The Cast Iron Building 6 718 Arch Street 7 Suite 501 South 8 Philadelphia, Pennsylvania 19106 9 BY: NOT PRESENT 10 11 AMERICAN IMMIGRATION COUNCIL 12 1331 G Street, NW, Suite 200 Washington, DC 20005 13 14 EMMA WINGER, ESQ., of COUNSEL BY: ewinger@immcouncil.org 15 GIANNA BORROTO, ESQ., of COUNSEL gborroto@immcouncil.org 16 ARNOLD & PORTER 17 18 250 West 55th Street 19 New York, New York 10019-9710 20 SEAN MORRIS, ESQ., of Counsel BY: sean.morris@arnoldporter.com 21 BRIAN AURICCHIO, ESQ., of Counsel brian.auricchio@arnoldporter.com 22 NATIONAL IMMIGRATION LITIGATION ALLIANCE 23 10 Griggs Terrace 24 Brookline, Massachusettes 02446 25 BY: MARY KENNEY, ESQ., of COUNSEL

Page 4 1 Brian Hastings 2 **REMOTE APPEARANCES:** 3 APF PLAINTIFFS' COUNSEL: 4 SOUTHERN POVERTY LAW CENTER P.O. BOX 1287 5 DECATUR, GEORGIA 30031 6 7 BY: JIM KNOEPP, ESQ., of COUNSEL Jim.Knoepp@splcenter.org 8 9 COVINGTON & BURLING LLP 10 One CityCenter 11 850 Tenth Street, NW Washington, DC 20001-4956 12 13 BY: TERRA FULHAM, ESQ., of COUNSEL tfulham@cov.com 14 AUSTIN PLIER, ESQ., of COUNSEL 15 16 DEFENDANT'S COUNSEL: 17 UNITED STATES DEPARTMENT OF JUSTICE 18 BEN FRANKLIN STATION P.O. BOX 888 19 20 WASHINGTON, D.C. 20044 BY: PHILIP D. MACWILLIAMS, ESQ., of COUNSEL 21 Phil.MacWilliams@usdoj.gov 2.2 SARAH KLEIN, ESQ., of COUNSEL Sarah.E.Klein@usdoj.gov 23 24 ALSO PRESENT: ADRIAN BELTRAN, VIDEOGRAPHER 25

	Page 5
1	Brian Hastings
2	FEDERAL STIPULATIONS
3	
4	IT IS STIPULATED AND AGREED by and
5	between the attorneys for the respective parties
6	herein that the filing, sealing, and
7	certification of the within deposition be waived.
8	IT IS FURTHER STIPULATED AND AGREED
9	that all objections, except as to the form of the
10	question, shall be reserved to the time of the
11	trial.
12	IT IS FURTHER STIPULATED AND AGREED
13	that the within deposition may be sworn to and
14	signed before any officer authorized to
15	administer an oath, with the same force and
16	effect as if signed to before the court.
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Page 44 1 Brian Hastings definition, correct? 2 3 Α Correct. 4 And that there is no parent or a 0 5 legal guardian in the United States who is 6 available to provide care had physically 7 custody. 8 Is that the third aspect of the definition? 9 10 I believe that's it. Α 11 What renders a parent unavailable 0 for purposes of the TVPRA? 12 13 Three categories that I -- that I Α 14 can recall off the top of my head is: One, 15 the adult would require immediate medical care or extended medical care of a 16 17 humanitarian-type situation; two, there's some type of former criminal activity, 18 19 criminal activity could be there is a want 20 or warrant out by an agency for the parent; 21 three, there is a prosecution of the family 22 member which will not allow the child to go 23 through the prosecution process with them. 24 For the third portion of that, \bigcirc 25 when there is a prosecution of the parent,

Page 45 1 Brian Hastings at what point does, in your understanding, 2 3 the child become a UAC? 4 Α My understanding is as soon as you 5 know -- as soon as you realize the adult it 6 is amenable for prosecution and you know 7 that you're going to set that adult up to be 8 prosecuted, it's at the earliest time frame 9 possible because we -- by TVPRA, we have 72 hours to place that child into Health and 10 11 Human Services or our care and custody. That's the only thing -- the only thing that 12 13 we have available to us if -- by law, we 14 have to place them within 72 hours. 15 0 What -- what triggers the 72-hour 16 time period for the child to be placed into -- with ORR? 17 My understanding is that the 18 Α 19 clock, so to speak, begins as soon as the arrest is made or the encounter is made with 20 21 the unaccompanied alien child. 22 0 So as soon as the arrest is made, 23 if they are amenable for prosecution but 24 before even being referred to prosecution, 25 your understanding is the 72 hours for

Page 46 1 Brian Hastings 2 placement into ORR begins to run? 3 My understanding is, as soon as Α 4 you encounter the unaccompanied alien child, the clock begins to tick for the 72 hours 5 6 mandatory by TVPRA. And that encounter with a UAC is 7 0 8 at the moment that they are apprehended and 9 the parent is amenable for prosecution. 10 Is that how I'm understanding what 11 vou have said? 12 Again, my understanding is А 13 immediately upon the encounter with the 14 child, if the adult is amenable, then the 15 clock starts ticking at that point. That's 16 my understanding. 17 Okay. Well, let's talk then, when 0 you say amenable to prosecution, what does 18 19 that term mean? 20 That they -- that they can be Α 21 prosecuted. 22 0 They can be prosecuted but they 23 have not yet been referred for prosecution. 24 Is that how I'm understanding what 25 you are -- what you're saying?

Page 229

1	Brian Hastings
2	Q And on the third or sorry.
3	The A few more bullets down, the bullet
4	point that begin: Debriefs of apprehended
5	subjects. I'm just going to read that one.
6	Debriefs of apprehended subjects
7	through the initiative reveal that many of
8	them would have chosen to illegally enter
9	the U.S. through a different sector had they
10	known about ETPs prosecution effort. This
11	further indicated that prosecution of
12	immigration-related offenses is in an
13	effective deterrence to illegal entry.
14	Did you ever see any interview
15	notes of individuals who had entered
16	illegally in the El Paso sector noting that
17	they would have chosen a different sector
18	had they known about the policy or the
19	initiative?
20	A I don't know.
21	Q As part of the El Paso initiative,
22	were family units being separated?
23	A My understanding is that single
24	adults were being set up for prosecution
25	creating an unaccompanied alien child that
i	

Page 230 1 Brian Hastings 2 was being handed over or given to HHS by 3 TVPRA, yes. 4 The bullet point immediately below 0 5 says there was a 64 percent decrease in 6 apprehensions. That's the same 64 percent we saw in the earlier memo we were talking 7 8 about before. And my question is whether this 9 10 jogs your memory as to whether or not you 11 saw how that 64 percent was calculated as a result of being provided with this document. 12 13 And I would, again, say I don't Α recall if it was from this document or 14 15 numbers that we ran at Border Patrol 16 headquarters. I don't recall which. 17 If you go to the last page, under Q 18 recommendation, do you see that, where it 19 says recommendation? 20 Α T do. 21 The second to last sentence says: 0 22 EPTs prosecution initiative has proven to be 23 effective in deterring criminal aliens and 24 reducing the flow of FMUAs -- family 25 units -- in their AOR.

Exhibit 12

From: HASTINGS, BRIAN S Sent: Saturday, November 18, 2017 4:52 PM To: PAYAN, EDUARDO Subject: FW: DHS Seperating Families

Told you doug would get I □n trouble for ops.

From: LUCK, SCOTT A (USBP) Sent: Saturday, November 18, 2017 4:31:05 PM To: CHAVEZ, GLORIA I; PROVOST, CARLA (USBP) Cc: HULL, AARON A; HASTINGS, BRIAN S Subject: RE: DHS Seperating Families

Please check with the other sectors as well so we don't have to answer that question again.

Thanks.

Scott A. Luck Acting Deputy Chief U.S. Border Patrol Headquarters 1300 Pennsylvania Ave. NW Washington, D.C. 20229

Sent via iPhone

From: CHA VEZ, GLORIA I Sent: Saturday, November 18, 2017 2:10:13 PM To: PROVOST, CARLA (USBP); LUCK, SCOTT A (USBP) Cc: HULL, AARON A; HASTINGS, BRIAN S Subject: FW: DHS Seperating Families

Chiefs - FYSA. Stand down order has been sent to EPT leadership (below) and they have acknowledged receipt. I also had a phone conversation with Chief Harrison and reminded him about notification to Headquarters when new initiatives are launched that could have a national impact to our operations.

GC

Regards, Gloria I. Chavez Deputy Chief – LEOD / Operations U.S. Border Patrol Headquarters office) cell)

From: CHA VEZ, GLORIA 1 Sent: Saturday, November 18, 2017 3:55 PM To: HARRISON, DOUGLAS E <DOUGLAS.E.HARRISON@CBP.DHS.GOV>; BLANCHARD-JR, KENNETH W <KENNETH.W.BLANCHARD-JR@CBP.DHS.GOV> Cc: HASTINGS, BRIAN S <BRIAN.S.HASTINGS@CBP.DHS.GOV>; GOLD, MICHAEL T <MICHAEL.T.GOLD@CBP.DHS.GOV> Subject: FW: DHS Seperating Families

Chief Harrison – As discussed during our call. I have reviewed the attached document and email train below. Effective immediately, please stand down on the continuation of this EPT prosecutions program until USBP - HQ leadership has had an opportunity to review all aspects of this program and brief up the chain at the appropriate level. This is one that USBP HQ should have been consulted with prior to implementation so that Headquarters could have had the opportunity to review and comment.

Please begin processing FMUAs as you were doing prior to the launch of this program.

EPT - Please confirm receipt of this message.

GC Regards, Gloria I. Chavez Deputy Chief – LEOD / Operations U.S. Border Patrol Headquarters (office) (cell)

From: SCHNEIDER, JASON E Sent: Friday, November 3, 2017 12:27 PM To: CHA VEZ, GLORIA I <GLORIA.I.CHA VEZ@CBP.DHS.GOV<mailto:CLORIA.I.CHA VEZ@CBP.DHS.GOV>> Subject: RE: DHS Seperating Families



Chief,

Per our discussion, please see attached Issue Paper outlining our proactive measures instituted towards Family Units. I'll be available via cell if you have any follow

up questions.

CURRENT STATUS:

El Paso Sector does not have a policy that requires separation of FMUAs. The April 11, 2017, memo from the United States Attorney General, directed all Federal Prosecutors to renew their commitment to criminal immigration enforcement. AGSessions made it a high priority for the Department of Justice to establish lawfulness in the immigration system, specifically for immigration offenses. With this in mind, Border Patrol management approached the NM AUSAs office to discuss the possibility of lifting restrictions on prosecution cases.

On July 6, 2017, District of New Mexico, Acting United States Attorney removed all restrictions imposed for El Paso Sector Prosecutions, which was limited to 25 Misdemeanor cases per month and 150 Felony cases of 8 USC 1326 (a)(1) cases per month for New Mexico Border Patrol Stations. The lifting of all restrictions allowed New Mexico BP Stations to prosecute all amenable subjects in an effort to increase the consequences of entering in NM illegally in the hopes of deterring first time and/or repeat offenders.

During this same time, the Western District of Texas El Paso Division continued to maintain 100 percent prosecutions of all amenable subjects entering the United States illegally. Their prosecution efforts increased in felony charges for all amenable subjects who have a prior removal with or without criminal history (Prior cases were restricted to misdemeanor cases for subjects with the same immigration history).

Additionally, El Paso Sector expanded the separation of Family Units (FMUA) for all TX BP Stations in response to an internal assessment which revealed a significant increase in FMUA entries. Both the Western District of Texas and District of New Mexico are prosecuting all anenable adults who entered as part of a family unit. Prior to this agreement, FMUA separation was limited due to the fact that parents were required to have prior criminal and/or immigration history before separation was approved.

The combined actions above allow the Border Patrol to apply the most appropriate post-arrest consequence to an individual to break the smuggling cycle and end their desire to attempt further illegal entry.

Respectfully,

Jason

From CHAVEZ, GLORIA 1 Sent: Friday, November 03, 2017 10:21 AM To: SCHNEIDER, JASON E <JASON.E.SCHNEIDER@CBP.DHS.GOV<mailto:JASON.E.SCHNEIDER@CBP.DHS.GOV>> Subject: FW: DHS Seperating Families

Chief - Please see the below based on our discussion. Please send us the IP that you submitted earlier this week.

GC

Regards, Gloria I. Chavez Deputy Chief – LEOD / Operations U.S. Border Patrol Headquarters (office) (cell)

From: HULL, AARON A Sent: Friday, November 3, 2017 1:02 AM To: CHA VEZ, GLORIA 1 <CLORIA.LCHA VEZ@CBP.DHS.GOV<mailto:GLORIA.LCHA VEZ@CBP.DHS.GOV>>; GOLD, MICHAEL.T <MICHA EL.T.GOLD@CBP.DHS.GOV<mailto:MICHA EL.T.GOLD@CBP.DHS.GOV>> Cc: WOODY, MARK A <MARK.A.WOODY@CBP.DHS.GOV<mailto:MARK.A.WOODY@CBP.DHS.GOV>>; LUCK, SCOTT A (USBP) <SCOTT.A.LUCK@CBP.DHS.GOV<mailto:SCOTT.A.LUCK@CBP.DHS.GOV>>; PROVOST, CARLA (USBP) <CARLA.PROVOST@CBP.DHS.GOV<mailto:CARLA.PROVOST@CBP.DHS.GOV>> Subject: RE: DHS Seperating Families

Chief Chavez:

We got caught up with other issues since yesterday and are still pending this response to Phil Miller. Please confirm with EPT and respond to him directly tomorrow. Please copy me. This will be a good lead-in for us to follow up on the ERO and HHS contingency plans.

Thanks.

Aaron A. Hull Acting Chief Law Enforcement Operations Directorate U.S. Border Parcol

From: HULL, AARON A Sent: Wednesday, November 1, 2017 9:47 AM To: CHA VEZ, GLORIA 1 <CLORIA.1.CHA VEZ@CBP.DHS.GOV<mailto:GLORIA.1.CHA VEZ@CBP.DHS.GOV>>; GOLD, MICHAEL T <MICHAEL.T.GOLD@CBP.DHS.GOV<mailto:MICHAEL.T.GOLD@CBP.DHS.GOV>>> Cc: WOODY, MARK A <MARK.A.WOODY@CBP.DHS.GOV<mailto:MARK.A.WOODY@CBP.DHS.GOV>>; LUCK, SCOTT A (USBP) <SCOTT.A.LUCK@CBP.DHS.GOV<mailto:SCOTT.A.LUCK@CBP.DHS.GOV>>; PROVOST, CARLA (USBP) <CARLA.PROVOST@CBP.DHS.GOV<mailto:CARLA.PROVOST@CBP.DHS.GOV>> Subject: FW: DHS Seperating Families

Chiefs:

Please see the inquiry below from Phil Miller and follow up with EPT to get further information for our response. We can combine this response with our ask for Phil

about their surge capability and HHS ORR concerns.

Thanks.

Aaron A. Hull Acting Chief Law Enforcement Operations Directorate U.S. Border Patrol

From: HULL, AARON A Sent: Wednesday, November 1, 2017 9:41 AM To: Miller, Philip T <Philip.T.Miller@ice.dhs.gov<mailto:Philip.T.Miller@ice.dhs.gov>>> Subject: RE: DHS Seperating Families

Phil:

We don't like to separate family units, but we will do so, if necessary. Let me get some further information from El Paso Sector.

Coincidentally, I was planning to follow up with you on some of the things that we discussed a few weeks ago. We are thinking about potential surge impacts to us, ERO, and HHS ORR.

I will follow up with El Paso Sector and get back to you.

Thanks.

Aaron A. Hull Acting Chief Law Enforcement Operations Directorate U.S. Border Patrol

From: Miller, Philip T [mailto:Philip T.Miller@ice.dhs.gov] Sent: Tuesday, October 31, 2017 10:41 PM To: HULL, AARON A <AARON.A.HULL@cbp.dhs.gov<mailto:AARON.A.HULL@cbp.dhs.gov>> Subject: FW: DHS Seperating Families

Aaron,

Do you know about this practice in El Paso Sector? Although I agree philosophically, it appears the the judiciary may react adversely to the Department's efforts to thwart these smuggling networks. Let me know if you have any additional information that could help the USAO.

Thanks, Phil

Sent with BlackBerry Work (www.blackberry.com<http://www.blackberry.com>) From: Asher, Nathalie R <Nathalie.R.Asher@ice.dhs.gov<mailto:Nathalie.R.Asher@ice.dhs.gov>> Date: Tuesday, Oct 31, 2017, 21:58 To: Miller, Philip T <Philip T.Miller@ice.dhs.gov<mailto:Philip.T.Miller@ice.dhs.gov>> Subject: FW: DHS Seperating Families

Hey Phil -

Buzz from ELP re: BP and their enforcement actions on some of the inbound family units where HOH is father ...

See you tomorrow in lovely Newark ..

NRA

From Jennings, David W <David.W.Jennings@ice.dhs.gov<mailto:David.W.Jennings@ice.dhs.gov>>> Date: Tuesday, Oct 31, 2017, 9:45 PM To: Asher, Nathalie R <Nathalie.R.Asher@ice.dhs.gov<mailto:Nathalie.R.Asher@ice.dhs.gov>>> Subject: FW: DHS Seperating Families

FYSA

One of the items I mentioned in our discussion about ELP and their detained numbers below ...

Sent with BlackBerry Work (www.blackberry.com<http://www.blackberry.com>)

From: Capicchioni, Paul L <Paul L Capicchioni@ice.dhs.gov<mailto:Paul L Capicchioni@ice.dhs.gov>> Date: Tuesday, Oct 31, 2017, 18:28 To: Joyce, William P <William P.Joyce@ice.dhs.gov<mailto:William P.Joyce@ice.dhs.gov>>, Jennings, David W <David.W Jennings@ice.dhs.gov<mailto:David.W.Jennings@ice.dhs.gov>>>

Subject: RE: DHS Seperating Families

Thanks Bill.

Sent with BlackBerry Work (www.blackberry.com</br>

From: Joyce, William P <William P.Joyce@ice.dhs.gov<mailto:William P.Joyce@ice.dhs.gov>>>

Date: Tuesday, Oct 31, 2017, 8:27 PM

To: Jennings, David W <David.W.Jennings@ice.dhs.gov<mailto:David.W.Jennings@ice.dhs.gov>>>, Capicchioni, Paul LPaul.L.Capicchioni@ice.dhs.gov<mailto:Paul.L.Capicchioni@ice.dhs.gov>>>Subject: FW: DHS Seperating Families

Gentlemen -

FYSA, in case this gets launched up that way, you'll know of it.

In a nutshell, the Border Patrol in the El Paso Sector has been separating some illegal entrant families to prosecute the adult HOH (normally the father) which, in turn, creates some UACs. They don't apparently do it with all, but, enough of an uptick that it has made the NGO community (and now, apparently a USDC judge, somewhat displeased.

So far, seems to be a local issue, however.... should there be any changes for the worse, I'll keep you in the loop.

Bill

From: Joyce, William P <William P.Joyce@ice.dhs.gov<mailto:William P.Joyce@ice.dhs.gov>>

Date: Tuesday, Oct 31, 2017, 18:02

To: Castelo, Elias S Jr <Elias.S.Castelo@ice.dhs.gov<mailto:Elias.S.Castelo@ice.dhs.gov>>, Witte, Diane L

<Diane.L.Witte@ice.dhs.gov<mailto:Diane.L.Witte@ice.dhs.gov>>>, Farmer, Floyd S <Floyd.S.Farmer@ice.dhs.gov<mailto:Floyd.S.Farmer@ice.dhs.gov>>> Cc: Tavarez_Jose J <Jose.J.Tavarez@ice.dhs.gov<mailto:Jose.J.Tavarez@ice.dhs.gov>>>, Diaz, Jaime NMI

Subject: RE: DHS Seperating Families

Hi Elias,

I'm sure that Diane is still driving. This was brought up previously at the Beato meeting as well, and we indicated that we would be willing to work with ORR if and when such things occurred.

One of the NGOs had indicated that our Juvenile Coordinators had been helpful in cases like these, but, I'm thinking the onus should be placed squarely on ORR to keep the parents informed of the custodial location of the children. We can speak to when the parent is in our custody, but, while they are remanded to the USM and housed by BOP, we've little control over them.

Bill

From: Gastelo, Elias S Jr < Elias.S.Gastelo@ice.dhs.gov < mailto:Elias.S.Gastelo@ice.dhs.gov >>>

Date: Tuesday, Oct 31, 2017, 17:30

To: Witte, Diane L <Diane.L.Witte@ice.dhs.gov<mailto:Diane.L.Witte@ice.dhs.gov>>, Farmer, Floyd S

<Floyd.S.Farmer@ice.dhs.gov<mailto:Floyd.S.Farmer@ice.dhs.gov>>

Cc: Joyce, William P < William P. Joyce@ice.dhs.gov < mailto: William P. Joyce@ice.dhs.gov >>, Tavarez, Jose J

Subject: DHS Seperating Families

Hi Diane,

Let me know at your earliest convenience.

Thank you and have a safe and Happy Halloween,

[cid:image003.png@01D35268.22B3EE10]

Elias

*** Warning *** Attorney/Client Privilege *** Attorney Work Product ***

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SENSITIVE/PRIVILEGEDPRE-DECISIONAL***ATTORNEY WORK PRODUCT***

Exhibit 46

From: MCALEENA	N, KE	VIN K	
Sent Wednesday In	ne 13	2018 1.51 PM	

To:

Subject: FW: CRCL Memorandum - The Separation of Family Units

Attachments: CRCL MEMORANDUM - SEPARATION OF FAMILY MEMBERS RESULTING FROM DHS ENFORCEMENT ACTIONS.docx

From:

Sent: Wednesday, June 13, 2018 1:48:12 PM To: MCALEENAN, KEVIN K Subject: FW: CRCL Memorandum - The Separation of Family Units

Kevin - I missed sending this to you last night - it's the draft of our long-awaited rec memo on the various iterations of the zero tolerance issues at the border about which we're getting complaints.

Best,	
From:	
Sent: Tuesday, June 12, 2018	5:37 PM
Td	
CC	
Subject: FW: CRCL Memorand	lum - The Separation of Family Units
	of this being issued in draft today to both CBP and ICE. Attached is the Memo that you can send as a courtesy
copy,	
Thank you for all your support	t on this!
From:	
Sent: Tuesday, June 12, 2018	
To: PDOTASKING	ERO Tasking
Cc	
Subject: CBCI Memorandum	- The Separation of Family Units
Dear CBP and ICE Colleague	
	s, so Memorandum on "The Separation of Family Members Resulting from DHS Enforcement Actions." Please
	lue to CRCL within 60 days of this Memorandum's transmittal.
	please contact me by telephone at the property of the property
Regards,	rease contact the by telephone at the by by email at
Moreen	
Woreen	
Senior Policy Advisor	
Office for Civil Rights and Civil Li	
U.S. Department of Homeland Sec	urity Headquarters
Washington, DC Cell:	
Office:	
Homel	and
Securi	tv
	will safeguard the American people, our homeland, and our values

and not subject to disclosure outside the agency or to the public. Please consult with the Department of Homeland Security, Office of the General Counsel before disclosing any information contained in this email.

Office for Civil Rights and Civil Liberties **U.S. Department of Homeland Security** Washington, DC 20528



June 12, 2018

MEMORANDUM FOR:	Kevin K. McAleenan Commissioner U.S. Customs and Border Protection
	Scott Falk Chief Counsel U.S. Customs and Border Protection
	Thomas D. Homan Acting Director U.S. Immigration and Customs Enforcement
	Michael P. Davis Executive Deputy Principal Legal Advisor U.S. Immigration and Customs Enforcement
FROM:	Veronica Venture Deputy Officer Office for Civil Rights and Civil Liberties
	Susan Mathias Assistant General Counsel (Legal Counsel Division) Office of General Counsel
SUBJECT:	Complaint Nos. 15-08-ICE-0495, 16-05-CBP-0176, 16-06-CBP-0275, 16-07-CBP-0366, 16-07-CBP-0372, 16-08-CBP-0368, 16-08-CBP-0367, 16-08-CBP-0404, 16-08-CBP-0405, 16-08-CBP-0596, 16-09-CBP-0579, 16-09-CBP-0580, 16-09-CBP-0597, 16-09-CBP-0632, 16-10-CBP-0443, 16-10-CBP-0630, 16-10-CBP-0631, 16-10-CBP-0578, 16-10-CBP-0464, 16-11-CBP-0496, 16-11-CBP-0577, 16-11-CBP-0581, 17-01-CBP-0018, 17-01-CBP-0044, 17-01-CBP-0071, and 17-02-CBP-0019

Purpose

This memorandum provides analysis and recommendations in response to the above-referenced complaints concerning the issue of family separation, which were submitted to the DHS Office for Civil Rights and Civil Liberties (CRCL) by immigration advocacy organizations, private attorneys and legal service representatives, individual complainants, and the U.S Department of Health and Human Services Office of Refugee Resettlement (HHS/ORR) Headquarters staff and shelter facility management. The 26 complaints listed above were chosen for investigation by CRCL because they

best exemplified the varied types of family separation allegations in the 421 items of correspondence that CRCL received between December 2008 and December 2016, when the formal Retention Documents were issued.¹ In sum, the allegations concern both policy and procedural inadequacies regarding the separation of family units, inconsistencies in the manner by which separations were reportedly occurring, and the resulting potential harm to children who were separated from the only caretakers they ever knew.² In accordance with CRCL's statutory authority, we opened an investigation to assess whether U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) have effective policies, procedures and training in place to ensure that enforcement actions involving families are consistently carried out, that such decisions and actions are based on sound policy and procedure, and that separations are well documented. We also considered the potential for further harm to children if appropriate policies and procedures were not in place, including the potential for separated children to become orphaned if their parents remain detained or are removed from the United States (U.S.) while the child either remains in the U.S. or is removed to their country of origin alone. Thus, the recommendations provided by CRCL focus on the policy and process limitations found in CBP and ICE practices when dealing with family separation from the point of separation onward, as of the time of our investigation.

This memorandum does not address the civil rights implications of separating children from their parents, the potential harm to children being separated, the legal ramifications of that separation for the parent and child, or the appropriateness of the separation.

Background

For purposes of this investigation, CRCL reviewed the numerous allegations that CBP arbitrarily, and without appropriate policy or procedure, separated families after apprehension or seeking entry at a CBP Port of Entry (POE), that ICE failed to assess those separations for appropriateness, and that ICE lacked the type and number of family facilities needed to maintain family unity when justified. The allegations span two-parent families, single parent families, families composed of adult parents and their adult children, grandparents and their grandchildren, aunts and uncles and their nieces and nephews, cousins, and siblings. Allegations concern both families apprehended following illegal entry between POEs and those who presented for admission at a POE. Several

¹ Between January 1, 2017 and March 12, 2018, CRCL received an additional 605 family separation complaints.

² Although not the subject of this memorandum, it is important to note that immigration advocates and legal service providers have asserted that such family separations wrongfully sever parental and children's rights without regard for the devastation caused to those families; especially for the minor-age children who lose their parents and caretakers. Some mental health professionals also voiced concern that those separated children would likely experience lifelong emotional and psychological problems. According to the American Academy of Pediatrics, the American Academy of Child and Adolescent Psychiatry (AACAP), and the American Psychological Association (APA) there are medical and scientific bases for a general principle of family unity. All have recognized the negative consequences of separating immigrant families (Council on Community Pediatrics, 2013; AACAP, 2017; APA, 2013). As an example, the APA stated, "The immigration process involves separation from country of origin, family members, and familiar customs; exposure to a new physical environment; and navigation of unfamiliar cultural contexts. Stresses involved in the immigration experience can cause or exacerbate mental health difficulties, including anxiety, depression, posttraumatic stress disorder (PTSD), substance abuse, suicidal ideation, and severe mental illness." *Working With Immigrant-Origin Clients An Update for Mental Health Professionals*, based on the report of the APA Presidential Task Force on Immigration, *Crossroads: The Psychology of Immigration in the New Century*, p.2 (2013).

include instances where the family claimed fear of return to their country of origin and requested asylum or other protection from removal.

In approaching these complaints, CRCL is aware that the processing of relatives is governed in substantial part by statutory and regulatory requirements, and that different familial groupings are subject to different treatment under federal immigration law. In particular, we understand the difference between children who are accompanied by, or otherwise have a parent or legal guardian capable of providing care and physical custody in the U.S., and those who do not; the latter, even if accompanied by another close relative, are liable to classification as unaccompanied alien children (UAC).³ Our recommendations are calibrated to address each of these situations.

Recording, Communication, and Reunification Concerns

Certain complainants alleged that CBP officers and agents separated family units but did not relay the reasons for the separation to the family members, or record the personal identifying information for each separated family member; sometimes making communication and reunification difficult, if not impossible. The complaints reported that, as a result, separated family members were transferred to different detention facilities across the U.S., unaware of the reasons for the family's separation, unaware of each other's welfare, location, or immigration status, and lacking the ability to communicate with each other; even to coordinate legal representation or other matters related to asylum or removal proceedings. While some complaints reported that separated mothers and children were transferred into ICE custody together, and detained in ICE Family Residential Centers (FRC), other complaints asserted that when a family was composed of a mother, father, and their children, the fathers were commonly placed in adult detention centers located at great distances from the FRC holding their remaining family members. Other complaints alleged that parents were separated from each other and from their children, entering ICE detention in separate ICE adult detention facilities located at great distances from each other and from their children, rendering the children as UAC who were then placed in the custody of HHS/ORR and transported to ORR shelter facilities in various U.S. locations. Similar scenarios were alleged in complaints reporting separations involving other types of family configurations (e.g. grandparents with grandchildren, aunts and uncles with nieces and nephews, siblings, etc.).⁴ In those cases, it was not alleged that CBP erroneously classified the children as UAC, or that the groups should have been sent to an FRC. Other considerations involving processing, coordination, and communication, however, may still apply.

³ Unaccompanied Alien Child means a child who has no lawful immigration status in the U.S., has not attained 18 yearsof-age, and with respect to whom there is no parent or legal guardian in the U.S., or no parent or legal guardian in the U.S. is available to provide care and physical custody. 6 U.S.C. § 279 (g)(2). Two statutes and a settlement agreement influence CBP and ICE policy regarding the treatment and processing of UAC. They are the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) of 2008, Pub. L. No. 110-457); the Homeland Security Act (HSA) of 2002, Pub. L. No. 107-296); and the *Stipulated Settlement Agreement, Flores v. Sessions, No. 85-4544* (C.D. Cal. Jan. 17, 1997). DHS and HHS have responsibility for the processing, treatment, and placement of UAC. After CBP apprehends and processes UAC at the border, custody is transferred to ICE for transport to HHS ORR, depending on the circumstances. Outside of the expedited removal context, ICE represents the federal government in removal proceedings. HHS/ORR is responsible for coordinating the placement and care of UAC in their custody.

⁴ See March 22, 2017 letter from 184 national, state, and local organizations addressed to then DHS Secretary John F. Kelly, August 10, 2017 letter from 377 national, state, and local organizations addressed to then Acting DHS Secretary Elaine Duke, and January 18, 2018 Human Rights First letter to DHS Secretary Kirstjen Nielsen and CBP Commissioner Kevin McAleenan.

Procedural Concerns

The majority of the 421 allegations and 26 sample complaints raised issues with how CBP's Office of Field Operations (OFO) officers and U.S. Border Patrol (USBP) agents make initial decisions to separate families. Other complaints asserted that ICE made detention placement decisions that further aggravated the problem by not holding mothers, fathers and their children together in FRCs, by increasing the distances between separated family members, or by failing to reunify family members in instances where they were inappropriately separated. Additionally, some complaints asserted that ICE's placement of family members in different jurisdictions prejudiced the family's ability to effectively present their claims for relief from removal by serving as testifying witnesses, which resulted in valid claims being denied or abandoned. In some instances family members detained in one jurisdiction were granted relief, such as asylum, and allowed to remain in the U.S. while their other family members who had the same claim but were detained in a different jurisdiction, were denied relief and removed. Other complaints alleged that after ICE had separated children from their family members, children were removed from the U.S. without their parent(s), or parents were removed without their child.⁵ If true, such instances would be inconsistent with ICE policy and congressional expectations.⁶ (See infra p. 6.)

Investigation

CRCL Notification and Request for Information

On March 31, 2017, CRCL notified CBP and ICE Headquarters of its investigation via a Retention Memorandum and submitted a formal "Document and Information Request" for policies, procedures, directives, training, and any other guidance pertaining to family separation. CRCL wanted to closely review the primary policies and procedures relied upon by component personnel when considering family separation decisions. CRCL also wanted to better understand the immigration actions following a separation decision, to include record-keeping, family member notifications, coordination between ICE and ORR when transferring a child to ORR custody, ICE coordination of facility placements, and transport needs. Finally, CRCL also sought clarity on how CBP and ICE coordinate their efforts and immigration responsibilities. Anticipating that formalized protocols existed, CRCL planned to assess whether the policies and procedures were consistently adhered to by cross-checking them against the family members' information, found in ICE's EARM

⁵ EARM records for CRCL Complaint No. 16-09-CBP-0632 document that a six-year-old was separated from his father, by USBP agents at Yuma, Arizona. He was placed in DHS/ORR custody and, on November 30, 2016, was removed to Guatemala unaccompanied. EARM records for CRCL Complaint No.16-10-CBP-0630 report that a nine-year-old was separated from his father by CBPOs at the Paso Del Norte Port of Entry in El Paso, Texas, and was transferred to ORR custody as a UAC, where he remained for approximately 225 days. EARM documents that the nine-year-old's father was removed to Guatemala without his son.

⁶ In 2005, the House Appropriations Committee stated "The Committee expects DHS to release families or use alternatives to detention such as the Intensive Supervised Appearance Program whenever possible. When detention of family units is necessary, the Committee directs DHS to use appropriate detention space to house them together." H.R. REP. NO. 109-79, at 38 (2005), *available at* https://www.congress.gov/109/crpt/hrpt79/CRPT-109hrpt79.pdf. *See also*, Lisa Seghetti, Cong. Research Serv., R43599, Unaccompanied Alien Children: An Overview (July 28, 2014), available at https://fas.org/sgp/crs/homesec/R43599.pdf.

system, which contains the information from OFO's and USBP's I-213 encounter records in addition to the detention records created by ICE.⁷

As preliminary work, while awaiting the requested information, CRCL reviewed the available EARM records for information on the families discussed in the complaints, as well as to gauge the level of consistency, completeness, and accuracy of the information entered in those records. Specifically, CRCL looked for proper recording of the family members' names and A-numbers, articulation of the reasons for separating the families, details regarding determinations of a child to be a UAC, and additional information that would help connect the family members for communication needs, court needs, or for removal coordination. We also reviewed the CBP Form I-213 and other documented narratives for evidence that family separation decisions were reviewed and approved by supervisory or management staff and recorded, as required.⁸ Additionally, we assessed the thoroughness and consistency of the EARM Comments records, which contain information input by ICE personnel, who record information from the point of each family member's initial transfer from CBP to ICE custody and, if released or removed, to their exit point from detention.

Component Responses to the Information Request

By June 2017, CBP and ICE had responded to CRCL's "Document and Information Request." Together, the DHS components provided a total of 31 documents that each represented as their governing policies and procedures. (See Appendix A for the 17 policies and procedures sent by OFO. See Appendix B for the two policies sent by USBP. See Appendix C for the 12 policies and procedures sent by ICE.)

CBP OFO

OFO Headquarters, field offices and ports of entry referenced 17 separate documents in the form of policies, directives, memorandums, musters and emails, as well as the 1997 Flores Settlement Agreement (Flores),⁹ and the 2015 CBP National Standards on Transport, Escort, Detention, and Search (TEDS). Fourteen of the documents referenced are dated between 2008 and 2017, while two lack dates.

USBP

⁷ When ICE personnel are assigned cases, CRCL was informed that those personnel are responsible for reviewing the EARM Encounter records to, among other things, ensure appropriateness of the information entered, and for discrepancies. However, in ICE's response to CRCL's "Document and Information Request," we were informed that ICE personnel are *not* required to perform that review.

⁸ See, CBP responsive documents in Appendix A, #16, #17, and Appendix B, #2 requiring that family separations must be approved by the on-duty supervisory personnel or Watch Commander/Port Director at the time the decision is made to separate family members. CBPs TEDS Standards require that separations "must be documented in the appropriate electronic system(s) of record" *CBP National Standards on Transport, Escort, Detention, and Search* (TEDS), released by CBP in October, 2015. *See* TEDS standards 4.2, 4.3 and 5.6, "Family Units."

⁹ *Flores* stipulates appropriate holding conditions for children and requires that release occurs within three days, if the minor is apprehended in an INS district in which a licensed program is located and has space available; and otherwise within five days pursuant to Paragraph 19. Many of the *Flores* Agreement's terms have been codified at 8 CFR §§236.3, 1236.3.

USBP Headquarters provided a general email response to CRCL stating, "It is the USBP assertion that there is no regulation that prohibits the separation of children from parents. CBP Policies allow for the separation. Separation decisions are made on a case-by-case basis at the discretion of the processing agent and supervisor, based on the totality of the facts and circumstances surrounding the specific instance." USBP referenced two main policies as governing its family separation decisions and actions. Aside from TEDS, USBP commonly referenced the 2008 Hold Rooms and Short Term Custody policy as governing family separation decisions and procedures.

ICE

ICE provided several targeted responses, and 12 separate documents in the form of policies, directives, memorandums, email broadcasts, and several undated documents that lacked information or did not appear relevant to ICE's family separation decisions and actions. The main policy referenced was titled *"11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities"* (Parental Interests Directive), which was released in 2013 and is reportedly under revision as of the date of this report.

CRCL Analysis and Findings

Specific Analysis of the Policies and Guidance Provided by ICE and CBP

CBP OFO

The guidance available to officers making and implementing family separation decisions is not readily available in a single or sufficiently detailed document. There are several TEDS standards that reference family separation and family unity. However, none contain detailed guidance for officers that are faced with making family separation decisions, nor do any provide specific procedures to follow when the decision is made and the family members are separated, whether due to a CBP decision or operation of law. Moreover, CRCL is concerned that TEDS has not been thoroughly implemented through OFO policy revisions, or properly trained on, despite its being cited as OFO's governing policy. Further, there is no single OFO manual or policy that combines the pieces of information found among the 17 separate pieces of information that officers can easily access for guidance when considering whether or not to separate a family. There is also no single family separation policy, procedure or reference manual that combines the pieces of relevant information found in the 17 separate documents that CRCL received from OFO, which promotes process accuracy and consistency.

USBP

USBP cited the 2008 Hold Rooms and Short Term Custody policy most often as the predominant policy governing agents' family separation decisions and actions; however this policy was developed, according to its written "purpose," to establish "national policy for the short-term custody of persons arrested or detained by (USBP) agents and detained in hold rooms at (USBP) stations, checkpoints, processing facilities, and other facilities that are under the control of (CBP)." The purpose or intent of this policy is *not* to provide agents with guidance on family separation. As guidance on hold room assignments, it does describe "family groups" as grandparent(s) with grandchildren; mothers and/or fathers with juvenile(s) children; adult siblings with juvenile(s) siblings, legal guardian(s) with juvenile(s), and aunt and/or uncle with juvenile(s) nephews/nieces.

USBP also referenced TEDS as the governing policy for seven of the complaints. The referenced excerpt states:

Generally family units with juveniles should not be separated. When it is necessary to separate juveniles from the parent(s) and/or legal guardian(s), officers/agents must follow their operational office's policies and procedures and appropriate legal requirements. In circumstances where family units must be separated due to different immigration dispositions, such separation much (sic) be documented in the appropriate electronic system(s) of record.¹⁰

There is no unifying single family separation policy, procedure or reference manual that is easily accessible to agents and contains all of the necessary guidance from the point when a family unit is encountered, to the family separation decision-making process, to the process for requesting ICE family detention space or ORR shelter space. Although several additional TEDS standards reference family separation and family unity, none contain the detailed guidance needed when agents are faced with making family separation decisions and are performing the relevant procedures once that decision is made. Moreover, USBP's internal policies and procedures have not been revised to include the details agents need to execute family separations that demonstrate consistency in practice.

ICE

As policy, the Parental Interests Directive is both comprehensive and detailed regarding family separation and family unity. The Directive asserts that family separation decisions are at the discretion of the applicable ICE Field Office. Where the Field Office determines that separation is required and the parents enter ICE custody, the Directive states, "the child becomes a UAC and is referred to HHS-ORR." With that said, in addressing family separation generally, the Directive defines "parental rights" as "fundamental." This seems incongruous with allegations that ICE has participated in the unnecessary separation of families. The Directive defines "parental rights" as:

The fundamental rights of parents to make decisions concerning the care, custody, and control of their minor children without regard to the child's citizenship, as provided for and limited by applicable law.

The Directive includes in its definition of "parental rights," the rights of legal guardians of minor children "to make decisions concerning those children as provided for and limited by applicable law."

The Directive also mandates a point of contact in each Field Office to oversee parental-interests matters; detention placement determinations; facilitating the parents' court participation; allowing parent-child visitation; assisting parents, legal guardians or primary caretakers facing removal to plan for their child's needs; and it stresses the importance of recording relevant information. An additional piece of relevant guidance that ICE provided is a broadcast message to ICE personnel at ICE FRCs that was issued and reissued in 2014 and 2016, titled "Family Separations at Residential Facilities," which acknowledges the importance of the Parental Interest Directive.

¹⁰ TEDS, standard 4.4, "Family Units."

All three DHS components reported to CRCL that no specific training targeted at family separation is conducted.

Over-Arching Concerns with Referenced Policies and Procedures

CRCL finds that, while each component has pieces of policy and procedure that touch on family separation in some way, most address the topic only in part, and most do not directly or clearly provide comprehensive and unified, or easily accessible guidance on enforcement responsibilities that are connected to the separation of families. Some of the documents submitted to CRCL do not even contain the term "family separation" or any similar term. Nor do they address the topic of processing family members as a family unit, or as separate individuals within a family unit. It is apparent that those policies and procedures were not developed to provide the type of detailed guidance or instruction that was needed when the reported separations occurred, nor are they adequate for the current environment where families are illegally entering the U.S. in record numbers. Moreover, many of the policies and procedures submitted to CRCL require updating and consolidation – in a collaborative effort – involving all three DHS elements (USBP, OFO, and ICE), because the execution of enforcement obligations that require the separation and custody of family members is interconnected between CBP, ICE, and in many circumstances, HHS.

Record-Keeping and Communication Issues

Through our review of CBP's completion of the I-213s and other documents associated with the complaints, CRCL found that the information entered by officers and agents was inconsistent in detail and amount, incomplete in many instances, and sometimes obviously incorrect. In several instances, the inconsistencies were demonstrated through the manner in which the need for separation was articulated. In most instances the I-213s lacked any articulation of the reasoning behind the separation. Very few I-213s articulated the separation need clearly and with sufficient detail. The lack of thorough information entered in the I-213 narratives by officers and agents who made the separation decisions is notable because the I-213 automatically populates in USBP's e3DM and OFO's SIGMA, as well as in ICE's EARM systems, where it becomes the official record. These failures to appropriately record complete information is in contravention to TEDS, which states:

In circumstances where family units must be separated due to different immigration dispositions, such separation much be documented in the appropriate electronic system(s) of record.¹¹

For example, as part of its response to CRCL's request for information, USBP sent an email to CRCL explaining its reasons for separating families discussed in 10 of the complaints. However, rarely were those reasons stated in those families' I-213 or other relevant records. Again, this information should have been entered in e3DM as the official record, rather than reported in an email directed only at CRCL.

An OFO document titled "*Inadmissible Aliens with Medical Conditions and Family Units*" also requires the family's encounter information and each family member's personal identity information to be entered in the I-213. As previously discussed, TEDS also explicitly requires that CBP officers

¹¹ TEDS 4.3 "General Detention Procedures," and 5.6 "Detention."

and agents record all custodial actions, and notifications in their electronic record systems, stating that such information "must be accurately recorded in the electronic systems of record as soon as practicable."¹² However, even given these directions, many of the I-213s were void of the personal identity information that is required for separated family members. This was particularly notable when the family unit included both the mother and father. As would be expected, and as discussed in the first paragraph of this section, EARM's Encounter records would also be missing this information.¹³

Finally, the I-213s are missing other important information such as family members' complete names and A-numbers, which is the primary identification source used by ICE and CBP, and can be critical information needed by HHS when attempting to match children with adult family members or the immigration courts in coordinating cases. It was also common for I-213 narratives to contain misspelled names and incorrect pronouns, or a mixture of male and female pronouns for the same individual.¹⁴ In one complaint, two minor-age brothers reported during processing that they were apprehended together, but were separated. The associated I-213 records did not mention a sibling, and therefore the brothers were separated and sent to two different ORR facilities.¹⁵ In three complaints involving USBP, where the family unit included a mother and father, USBP reported via email in response to CRCL's request for information, that they were forced to separate the father from the family because the ICE Family Residential Center (FRC) could not take the father. However, the I-213s for those cases were devoid of that essential information. USBP also reported that, due to Flores Settlement Agreement time restrictions on holding minors, at times they had no choice other than to separate the children and place them in ORR custody, or place the mother and children in FRCs that could not accommodate the fathers. Again, although those might be acceptable reasons for separating the family, the reasons were not recorded in the I-213.

Without good record-keeping at the apprehension and processing stage, ICE cannot follow through with its follow-on responsibilities at the transportation or custody stages. However, even if critical information recording in the I-213 is improved, it is not clear that ICE personnel assigned to handle cases in which family separation was initiated by CBP are required to review the associated I-213s in order to ensure the placement request appropriately conforms to ICE's operational requirements. In response to CRCL's request for information regarding whether ICE is required to review CBP's family separation decisions for accuracy or mistakes (e.g. separating family members when they could have been detained together in a FRC), ICE stated, "ICE ERO does not review family separation decisions by CBP." However, a 2010 memo titled, "Sharing Information with the Department of Health and Human Services, Office of Refugee Resettlement," which ICE provided to CRCL in response to our Request for Information, requires that procedures be in place to review the apprehending agency's apprehension information in the I-213 "for accuracy and completeness."

¹² TEDS 4.5, Electronic System(s) of Record, p. 15.

¹³ For example, *see* CRCL Complaint Nos. 16-08-CBP-0404, 16-08-CBP-0405, 16-10-CBP-0443, 16-10-DHS-0464, 16-08-CBP-0404, 16-08-CBP-0596, 16-09-CBP-0597, 16-07-CBP-0366, 16-09-CBP-0632, 16-10-CBP-0631, 17-01-CBP-0071, 16-09-CBP-0580, 16-11-CBP-0581.

¹⁴ For example, *see* CRCL Complaint Nos. 16-08-DHS-0405, 16-09-CBP-0632, 16-1 0-CBP-0443, 16-10-DHS-0464, 16-08-CBP-0596, 16-09-CBP-0597, 16-09-CBP-0580, 16-11-CBP-0581.

¹⁵ Complaint No. 16-11-CBP-0577.

It is critically important that ICE personnel review this information. If the ICE officer sees that the information denotes an unnecessary family separation (e.g., the father of a family unit detained at a FRC who may have been able to be detained with his family at Berks instead of separately at an adult male facility in Arizona, or a child placed with ORR who could have been detained with his or her parent and other siblings in a FRC), that ICE officer should act to correct the problem. Similarly, if the ICE officer sees that a child should not have been separated from his or her only parent, who is detained in an adult facility, that officer should act to reinstate the UAC as accompanied and reunify him or her with the parent in a FRC (e.g. a nursing mother and infant).¹⁶ CRCL found in many instances that this type of review had not occurred, leading to confusion, missed opportunity, and in the worst cases, continued and unnecessarily prolonged separations.

Credible Fear Implications

Lack of record-keeping also has implications for credible fear processing. If ICE becomes aware that the family presented as a group requesting asylum, without proper records, ICE cannot ensure those family members have the opportunity to communicate. Such communication is critical to the family members' ability to exercise their due process right to share evidence, coordinate legal counsel, and present their case as a family, rather than as single individuals, as appropriate to their particular case. CRCL saw instances of different parts of a family being separated and receiving asylum—for example, a father being removed while his wife and children received asylum—despite the original claim being made together, based on a common set of facts, which should have resulted in the different family members being eligible to obtain derivative benefits based on the asylum granted to the primary applicant.¹⁷ However, if as ICE stated, "ICE ERO does not review family separation decisions by CBP," a proper review of the documentation will not occur and these inconsistent actions will be repeated.

Conclusion

CRCL concludes that CBP and ICE lack updated, clear, cohesive, comprehensive, and readily accessible policy and procedure covering family separation. Based on the concerns CRCL found through its investigation, we note that such policies and procedures are critical, and should extend from the point of the decision to separate families through the resulting separation and custody processes. Because the responsibilities of CBP and ICE in this area are interconnected and flow from each other's responsibilities, the two agencies should work collaboratively to develop and formalize a "one DHS" cohesive approach to family separation that describes each agency's responsibilities, policies and procedures, and includes ORR as appropriate.¹⁸ CRCL suggests that the most effective

¹⁶ See CRCL Complaint No. 16-11-CBP-0496. In a collaborative effort between CRCL, ICE JFRMU and ORR, a nursing mother and infant were reunited on August 9, 2016 when it was discovered that CBPOs at the Matamoros POE inappropriately separated them; a decision that was approved by the supervising CBPO (SCBPO) and the POE Chief. ICE was unaware of the inappropriate separation when CRCL brought it to their attention. *Also see*, CRCL Complaint No. 17-01-CBP-0444 which CRCL received from ORR shelter staff, reporting that a nine-month-old nursing infant in their custody was separated by OFO officers from his mother due to suspicions that the mother was not the bona fide parent. ORR eventually arranged for a DNA test and verified the mother-child relationship. After 33 days of separation, mother and child were reunited.

¹⁷ For example, see CRCL Complaint Nos: 16-06-CBP-0275, 16-08-CBP-0405, 16-08-CBP-0368.

¹⁸ ORR must be included at some point in the manual's development as some of their responsibilities also flow from or are dependent on CBP and ICE's actions and interactions.

way in which to address this critical issue is through the collaborative development of a joint "manual" which would be easily accessible to both CBP and ICE officers and agents as they conduct their duties utilizing their electronic systems of record.

CRCL Recommendations

1. Family Separation Reference Manual

- a. OFO, USBP, and ICE should collaboratively develop a manual that lists and describes each DHS component's operational policies and procedures that are applicable to immigration enforcement actions that result in family separation.
 - The manual should clearly describe the various criteria that officers and agents should consider when making a family separation decision and the subsequent separation procedures in a manner that relays the flow of responsibilities between agencies.
 - The manual should prescribe the amount and type of detail that each agency should enter in their electronic record system (to include information discussed in #4 and #5 below).
 - The manual should include contact information for each agency's decision-making authority when necessary for high level decisions, approvals, and next steps for those instances when disagreements arise.
 - The manual should be readily available in each DHS components' electronic processing/records system so that, during processing, officers and agents can easily access the manual to ensure that enforcement actions requiring family separation are appropriate, consistently implemented, and well-documented.
 - CBP and ICE should create and provide training on the manual's policies and procedures to ensure consistency and efficiencies.

2. Process Improvements

- a. OFO and USBP officers and agents should ensure their family separation decisions, the underlying reasons, and the separation processes are relayed to the family unit members effectively and in a language they understand, and allow the family members to communicate, as appropriate, before physical transfer to ICE or ORR custody. This action should also be recorded in the component's electronic record system.
- b. OFO and USBP should ensure that the Family Unit and Family Group sections within their electronic systems (SIGMA and e3DM) require officers and agents to input complete and detailed family information into the I-213 narrative, n including:
 - Accurate spelling of each family member's name, date of birth, and A-number and correct use of pronouns.
 - Complete and detailed articulation of the reasons for the family separation, which should include the identity of the OFO or USBP supervisor, Chief, or Watch Commander who reviewed and approved the separation decision.
 - Complete and detailed articulation of the reasons for change in status from an "accompanied child" to a "UAC" or vice versa.

- Information regarding communications with ICE or ORR for family and/or UAC placement, attempts to coordinate family member communication, or assistance with reunification, when necessary.
- The name and location of placement facilities for each family member, when known.
- c. ICE should require ICE personnel who are assigned to cases initiated by OFO or USBP to review the I-213 information as soon as possible after the assignment is made, for the purpose of determining if the case involved a family separation, appropriateness and accuracy of the separation decision and processes (e.g. if the separated family members might have instead been detained together in a FRC).
 - If those assigned ICE personnel determine that the separation was unnecessary because family detention space was available at the time, isn't available when the case is reviewed, or because a different placement is required or more appropriate, those personnel should quickly coordinate with CBP and ORR to make the necessary adjustments, which may include family reunification efforts. All relevant information should be recorded in EARM.
- d. ICE should attempt to better ensure that members of the same family unit are detained in facilities within the same jurisdiction and coordinate with ORR, as necessary to accomplish this objective.
- e. ICE should consider the need for family facilities that could hold fathers with their children, whether the fathers are the sole parent, or part of a two-parent family in custody.
- f. ICE and CBP should collaboratively develop a 'Family-Member Locator System' (with all of the necessary privacy protections). ORR should be allowed access to this information as CBP and ICE deem appropriate and as permitted by law, to address needs such as reunification for asylum or family hearings, removal, or release.
- g. ICE should establish a streamlined process that allows for communication among separated family members who are placed in separate facilities, including children in ORR custody.
- h. ICE should develop decision-making criteria/policies/procedures that address family reunification (e.g. for immigration court, asylum hearings, family release, family removal).
 - ICE should also work collaboratively with ORR to develop a process that better ensures family members are removed together, whenever possible.
- i. CBP should revise their internal policies and procedures to reflect TEDS principles with regard to enforcement operations that result in family separation or require family reunification, as needed to support these recommendations.

Please inform us within 60 days whether you concur or non-concur with these recommendations by emailing your response to Moreen Murphy at <u>moreen.murphy@hq.dhs.gov</u>, or by telephone at (202) 357-7770. If you concur, please include an action plan.

It is CRCL's statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions, and

implementation of those decisions. These recommendations are issued pursuant to that role; we believe they can assist in making CBP and ICE the best agencies possible. We look forward to continuing to work with CBP and ICE on these important issues.

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APPENDIX A

<u>CRCL SUMMARY AND ASSESSMENT OF CBP OFO RESPONSIVE</u> <u>POLICIES/PROCEDURES/GUIDANCE</u>

CBP OFO provided the following documents in response to CRCL's request for information. CRCL has summarized and assessed them below, in terms of their usability and relevance to CBP Officers with regard to the separation of family units:

1. 2008 CBP-OFO Directive No. 3340-030B

This directive, sent by CBP Headquarters in response to two complaints involving CBP OFO, discusses family separation in three sections. However, it is broad in character and lacks specificity.

Section 8.5 provides CBP employees the general authority to separate family units, stating generally and without detailed guidance that, "the totality of the circumstances will dictate whether (the parent or legal guardian) should be separated from a juvenile who is not detained," suggesting that the juvenile is a U.S. Citizen but no further clarification is provided. Further, it states, "Normally, CBP will strive to keep family units together; however, there may be times when it is necessary to separate juveniles from the parent(s) and/or legal guardian(s)." When that occurs out of necessity, the Directive reminds staff, generally, that the *Flores* provisions must be adhered to.

Section 9.7.10 directs CBP employees not to release a minor to anyone or any agency if there is reason to believe they may harm or neglect the minor or fail to present the child for proceedings.

Section 9.7.11 directs CBP employees not to separate nursing infants from their mothers unless the mother poses a danger to the child. It also adds that, "Alien children who must be separated from the family unit become unaccompanied alien minors and must be treated according to *Flores.*"

(Three sections are relevant to family separation)

2. 2009 CBP-OFO Memorandum – "Implementation of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)"

This memo from the CBP/OFO Assistant Commissioner was addressed to Executive Directors, Acting Director of Preclearance Operations, OFO Directors of Field Operations, and the OFO Director of Field Operations Academy. It directs implementation of the TVPRA, regarding UAC and mandates the required process and procedures for the processing and treatment of UAC per the TVPRA. Only 2 sentences *indirectly* touch on the topic of family separation:

"If a parent or legal guardian is available to provide care and custody for an alien child, then the child does not meet the definition of a UAC. However, Field Operations must assess the immigration status of the parent or legal guardian to determine an appropriate disposition for the entire family unit."

(Two sentences are applicable, although not directed at family separation)

3. 2010 CBP-OFO Memorandum and Muster, "UAC Interim Guidance reissue – Responses to OIG Report"

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This 2010 memorandum from the Executive Director, Admissibility and Passenger Programs, to OFO Field Operations Directors and the Preclearance Operations Director was cited most often (8) by OFO as the primary policy guiding officers' actions regarding family separation. The memo addresses recommendations from a September 2010 Office of the Inspector General (OIG) report (OIG-10-117) and stresses important factors relevant to processing UAC that are required by the TVPRA, and to protecting the rights and welfare of children under the TVPRA and Flores. The muster was attached to the memorandum. Neither document directly addresses family separation, however the muster discusses some related issues, such as:

- "Although CBP may accept verifiable permission slips and other equivalent proof as appropriate documentation indicating temporary guardianship, this practice should be limited to those adults who are traveling with the respective UAC."
- "CBP may only reunify UAC with legal guardians who are in possession of supporting documentation within the United States. Supporting documentation must be sufficient to withstand the legal review processes (i.e. original or certified copies of documents issued by a competent legal authority."
- "Parents or legal guardians may arrive at the port of entry to provide care and physical custody for a child initially identified as a UAC. If this occurs, then the child no longer meets the definition of UAC."
- The importance of the narrative portion of the Form I-213 generated in ENFORCE/SIGMA to address the specifics of each case, including: the credible fear screening, and the record of transfer of custody, including the document used to establish legal guardianship

(Not applicable to family separation; Directed at UAC.)

4. 2010 CBP-OFO Memorandum - "Sharing Information with the Department of Health and Human Services Office of Refugee Resettlement"

This memo was sent by the OFO Executive Associate Director to Field Office Directors. As stated in its purpose, the memo describes procedures that were newly developed in 2010, that would allow HHS ORR to access certain information on UAC in HHS ORR custody, by allowing them to view the Form I-213 in the ENFORCE electronic record system. To that purpose, the memo directs Field Offices to ensure the accuracy of information entered in the I-213 relating to (among other things), the UAC's family information. It also requires that all disclosures to HHS ORR are annotated in ENFORCE and EARM.

(Discusses family separation information regarding accuracy of information.)

5. 2011 CBP-OFO Muster – "Care of Admissible Children Left Unattended as a Result of the Arrest, Detention or Removal of a Parent or Guardian"

This muster addresses an (unidentified) OFO Field Office. It explains procedures for the care of admissible children (U.S. citizens, LPRs, etc.) arriving from a foreign country who are rendered unattended because their parent(s) or legal guardian(s) is detained or removed. It clarifies that such a scenario is uncommon. It also addresses inadmissible parents or guardians who will be removed, but are unwilling or unable to depart with their child. The muster clarifies that CBP officers are not qualified to, and may not, determine if a relative or friend is fit to take responsibility for the admissible child and may not turn an admissible child over to a relative or family friend. The muster instead directs officers to contact the Division of Child and Family

Services Hawthorne Office, and provides several telephone numbers within the 310, 323, and 213 area codes. *(Specific to a particular CBP Field Office and limited in scope)*

6. 2013 CBP-OFO Memorandum and Muster – "Expedited Removals with Fear Claim"

This memo and muster from the Tucson Field Office Director of Field Operations, addressed to All Port Directors in the Tucson Field Office, reminds CBP personnel, in that AOR, of their responsibilities regarding aliens who indicate fear.

(Does not distinguish between individuals, a parent and child, or a family unit. Neither the memo nor muster address how to handle asylum claims when a family unit presents and reports the family is claiming fear or seeking asylum)

7. 2015 CBP-OFO Passenger Operations Muster – "Lawful permanent Resident Aliens Arriving with Nonimmigrant Child(ren)"

This muster reminds officers of the procedures to follow when inspecting a Lawful Permanent Resident (LPR) who arrives with nonimmigrant children and, more specifically, directs procedures to follow when the parent has or has not abandoned residence. (*Does not discuss family separation*)

8. 2015 CBP-OFO Memorandum and Muster – "Implementation and Court Order regarding Flores Settlement Agreement"

This memo and muster from the Assistant Commissioner of the Office of Field Operations, addressed to Directors of Field Operations, and the Director of Preclearance Operations, is to ensure that officers comply with *Flores* and the August 2015 *Flores* court ruling regarding detained juveniles in CBP holding facilities. The memo and muster reminds OFO officers that OFO holding facilities must be maintained in sanitary conditions with appropriate temperatures and ventilation, and provide appropriate medical care, nutrition and comforts such as toilets, drinking water, food, access to family apprehended simultaneously, and protection from non-related adults, and that those compliance actions be accurately recorded in the Secure Integrated Government Mainframe Access (SIGMA) electronic records system.

Specific to family separation, the muster directs that "Any separation of a juvenile from his/her family for reasons other than processing or other short, routine removal from a holding area where the family is otherwise held together requires OFO to facilitate contact between the family members and the juvenile, which must be facilitated even where the family members do not have a custodial relationship (i.e. siblings, aunts, grandparents). CBPOs must document any separations in SIGMA. It further directs that, "If family contact with the juvenile cannot be facilitated, the reason must be documented in the drop down box by selecting one of the following reasons" and 6 drop down options are provided that include the minor's physical safety; the family member is receiving medical care offsite; the family relationship is in question; or contact is unfeasible for some other reason that has been approved by a supervisor. *(Family separation is discussed in this single section)*

9. 2015 CBP-OFO Laredo Field Office Memorandum and Muster – "Inadmissible Aliens with Medical Conditions and Family Units"

This email from the Laredo Field Office Program Manager of the Admissibility Unit, to Assistant Port Directors Laredo Field Office AOR Port Directors, is described in the email's first paragraph as, "an effort to establish uniformity in submitting family unit placement requests to

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ICE-ERO." Two additional attachments to the email, "ERCF Detention Denial Steps" and "Sample Placement Request Family Unit" email contain information that the Program Manager asks SCBPOs to ensure are being followed by the port's passport control staff to ensure that ICE-ERO is provided with "all of the information required to take custody of the family unit." The email narrative contains a "Things to remember" list that includes such items as what to do if detention placement is denied, the importance of adding points of contact in the placement request, and mandatory SIGMA information. (Note: The list states that email requests for placement are not required to include the I-213. Another 2015 memo from the Acting Executive Director of Admissibility and Passenger Programs addressed to Directors of OFO Field Operations is included in the email and stresses that if ICE-ERO denies space due to medical conditions or family placement restrictions, the memo instructs that, "the family unit is to be processed for an NTA - Detained in accordance with OFO policy/requirements." Then, it instructs that "the family unit and paperwork are to be turned over to ERO at which time they will exercise their prosecutorial discretion and release from their facility." The additional two pieces of guidance for requesting family placement with ICE seem specific to Laredo Field Office operations, as they were only provided to CRCL as a Laredo Field Office response. Neither document indicates its origin. (The same family placement email request directions and detention denial steps are also discussed by the Laredo Field Office in #14 below.) (Specific to Laredo AOR)

10. 2015 CBP-OFO Port of Del Rio Response – "Standard Operating Procedure (SOP), Processing Unaccompanied Alien Children (UAC)"

In response to CRCL's Document and Information Request, the Del Rio POE submitted an SOP that lays out CBPO responsibilities for the care and custody of UAC, including to ensure that family contact information is documented in SIGMA.

(Does not discuss family separation. Contains general direction to record family contact information)

11. 2016 CBP-OFO Email - "Action and Guidance: Separation of Family Units"

This blast email was sent by a Port of El Paso Supervisory CBP Passenger Inspection Division Officer. The email contains a summary which states, "Effective immediately, the separation of family units (creating UACs of children and placing parents or legal guardians in camp or jail) must be approved by GS-14 Watch Commanders and above." Further, it instructs that, "Station Managers may elect to seek separation of the family unit in order to detain or prosecute the adult parent or legal guardian when sufficient aggravating factors exist warranting the separation" but no factors are given. Once the decision has been made to separate the family unit, the email instructs that, "all involved children will be treated as Unaccompanied Children (UACs) and handled according to provisions in the TVPRA. The deciding official will be required to notify the local ERO Juvenile Coordinator and also submit the required information regarding the creation of UAC(s) to the ERO Group Mailbox indicated below." Three ICE Juvenile Coordinators' contact information is provided. Further guidance on the separation of family units instructs that: 1) the reason for separating the family unit must be "clearly documented in the I-213 (listing the criminal history/violations that led to the decision, etc.); 2) the ICE ERO Juvenile Coordinator must be notified of the separation, and; 3) the ICE ERO Juvenile Coordinator must be provided with a copy of the I-213.

(Relevant to family separation)

12. **2016 CBP-OFO Blast Email –** "ACTION and GUIDANCE: Separation of Family Units" "Effective immediately, the separation of family units (creating UACs of children and placing parents or legal guardians in camp or jail) must be approved by GS-14 Watch Commanders and above. Station Managers may elect to seek separation of the family unit in order to detain or prosecute the adult parent of legal guardian when sufficient aggravating factors exist warranting the separation. The authority for any determination to separate the family units under such circumstances rests solely with GS-14 Watch Commanders and above at the Port level and may not be delegated lower."

(Relevant to family separation)

13. 2016 CBP-OFO Memorandum, Muster, and Power Point – "Admissibility Processing and Family Units"

This emailed memo from the Executive Director of OFO Admissibility and Passenger Programs, addressed to Directors of Field Operations and the Director of the Field Operations Academy, included a muster and Power Point slides, regarding of improvements made to SIGMA specifically for recording the processing of individuals within a FAMU in a single event even when multiple officers are processing individual members of the same family. Both the memo and muster relay the importance of careful and detailed processing and recording of family members in SIGMA, not only for statistical analysis, but also to conform to the *Flores* litigation requirements regarding families, and because ICE uses the information for detention actions. The Power Point demonstrates SIGMA's capabilities per the memo and muster directives. (*Relevant to family separation*)

14. 2017 CBO-OFO Memorandum - "Mandatory Use of I-216/SIGMA Enhancements"

This memo from the Executive Director of OFO Admissibility and Passenger Programs, addressed to Directors of Field Operations and the Director of the Field Operations Academy, is a reminder that OFO Form "I-216 is the only appropriate mechanism to record the repatriation of individuals in OFO custody and/or the transfer of custody from OFO to any other law enforcement agency or other CBP locations" and it provides directions and requirements for initiating the I-216 in SIGMA. The memo does not discuss family separation or a family unit's repatriation. (The memo indicates an attached muster, however a muster document associated with the memo's title was not provided.) (*Relevant to family separation*)

(Relevant to family separation)

15. 2017 CBP-OFO Laredo Field Office Response

The Field Office responded generally to CRCL's request for information regarding allegations implicating POEs within the Laredo Field Office AOR (Brownsville, Del Rio, Eagle Pass, Laredo, Roma, Rio Grande City, Hidalgo, and Progreso): "The Laredo Field Office has not developed any local policy, procedures, musters, memos, training etc. as guidance for the ports of entry on how to determine when to separate family units: our ports of entry adhere to INA Section 235(b)(1(A)(i), Title 8 CFR 235.3(b) and HQ-Enforcement Programs Division-Admissibility & Passenger Programs policy guidance for processing all arriving aliens subject to removal but who claim asylum, regardless (of) fear of persecution, or fear (of) return to his or her country." It further states, "The Field Office has outlined procedures for the ports of entry for requesting family unit placement with ICE-ERO." The Eagle Pass POE responded individually stating, "The Eagle Pass Port of Entry does not have local policy or muster material addressing the separation of families or family members. ICE/ERO approves or denies placement on

families." Further, they report that all details associated with family separations "are entered in SIGMA and case details are annotated in the Form I-213 narrative." In response to CRCL's request for the criteria applied by CBP personnel for making decisions to separate family members in custody or to maintain family members together, Eagle Pass replied, "There are no musters or local policy addressing this issue. HQ...policy guidance is applied." (*Specific to Laredo AOR*)

16. 2017 CBP-OFO Los Angeles Field Office Response

The CBP LA Field Office provided CRCL with 10 listed responses to the request for information. Regarding criteria utilized for making decisions to separate members of a family in CBP custody, the Field Office states that LA AOR personnel follow TEDS (TEDS has not been formally implemented by CBP as of the date of this CRCL Recommendations Memo), CBP Directive 3340-030B (see #1), and a local muster, titled "Care of Admissible Children Left Unattended as a Result of the Arrest, Detention or Removal of a Parent or Guardian" when making decisions to separate families. They note that separation of families in the LA AOR is minimal and limited to rare situations but, when it occurs, a GS-14 Watch Commander/Manager/Port Director must authorize the separation. In turn, the Watch Commander notifies the ICE-ERO Juvenile Coordinator of the child placement need and provides the detailed I-213 narrative. The LA Field Office states that, in general, family members with the same status will not be separated unless a family member poses a danger to a child or for other safety purposes. If siblings are separated, the separation is annotated in SIGMA. If family members with children are non-parental adults, they will be separated "if the family relationship cannot be vetted" or "if the CBP Supervisor determines that it would be inappropriate for them to remain together." The criteria utilized for verifying a family relationship, or for determining that keeping the family members together would be inappropriate, is not provided. The Field Office also reports that they "refer family units as a whole to ICE-ERO for detention." Regarding a child's change in status from a family member to a UAC, the Field Office states, "If a minor enters as a member of a family, their status would not change to UAC since they are not unaccompanied. Similar to the information provided by the Laredo Field Office regarding requests for ERO placement or denials for placement, the LA Field Office responded that a similar request process is in place. Note that CRCL asked what steps CBP takes if mistakes are made in the I-213 narrative, such as omitting the family members names, the LA Field Office responded that they do not maintain access to modify, review or approve information that ends up in ICE's owned and managed EARM system. Finally, if a family is separated, but the separation is found to have occurred inappropriately and reunification is required, whether due to the mistake or for removal purposes, the Field Office responded that they would not be involved in a reunification process. Along with the list of 10 responses, the Field Office provided the musters discussed in #4 and #6, the "Mandatory Use of I-216/SIGMA Enhancements."

(Specific to Los Angeles AOR)

17. 2017 CBP-OFO Tucson Field Office Response

The Field Office responded by email to CRCL's request for information stating that they issued family separation guidelines to all POEs within the Tucson AOR stressing that "separations of a child from a parent or legal guardian should be a rare occurrence and only for the safety and well-being of child, active warrant or similar circumstance." When a family separation leads to the reclassification of a child to a UAC, the Field Office cited the TVPRA, which requires that a

GS 14 Watch Commander or equivalent concurs with the status change; that the reasons for the separation must be clearly and well documented on I-213 and supported by appropriate facts such as those previously stated (e.g. safety and well-being or active warrant or something similar); and that notification, to include the I-213, will be provided to the regional ICE-ERO Field Office Juvenile Coordinator by the GS-14 Watch Commander or equivalent. The Field Office notes that all POEs use the UAC Portal (https://ucportal.acf.hhs.gov/) to notify ICE-ERO and HHS-ORR of the UAC in custody needing placement, and custody of the UAC is then transferred to ICE-ERO either at the ERO Office or the placement facility. Regarding families, the Tucson Field Office reports that POEs notify the ICE-ERO Phoenix or Tucson Office via email about family unit placement requirements and custody is subsequently transferred to ERO. The Field Office also attached a Memorandum and Muster from the Acting Director of Field Operations at the Tucson Field Office, addressed to all Tucson Field Office Port Directors titled, "Expedited Removals with Fear Claim" which reminds CBPOs, supervisors and managers of their responsibilities regarding aliens who indicate the intent to apply for asylum, or a fear of persecution or torture. Neither the memo nor muster discuss family units who present at a POE and indicate fear of return to their country of origin and state their wish to apply for asylum. (Specific to Tucson AOR)

APPENDIX B

CRCL SUMMARY OF USBP's RESPONSIVE POLICIES/PROCEDURES/GUIDANCE

USBP provided the following documents in response to CRCL's request for information. CRCL has summarized and assessed them below, in terms of their usability and relevance to agents with regard to the separation of family units:

1. 2017 CBP-USBP San Diego Sector Response

The USBP Headquarters Office forwarded an email from the San Diego Sector, in response to CRCL's request for information regarding family separation allegations implicating the Sector's Chula Vista Station. The station's response to a 9-month-old child's status change from family child to UAC was that, generally, "station processing operations re-designate a minor to UAC status when it is determined to be in the best interest of the health and welfare of the child at the time of processing. Such circumstances include the accompanying adult failing to provide documentation and/or sufficient information to verify the claimed parental or legal guardianship right, and/or situations where agents perceive a threat to the child's welfare. Based on agent observations at the time of processing, both the relationship and the welfare of the child were in question. Therefore, the re-designation of the child from accompanied to unaccompanied was required by law/in the best interest of the child/due to governing directive(s), policy(s)/etc." The Sector also cut and pasted CRCL's account of the separation from CRCL's investigation Retention Memo, which CRCL compiled from the I-213 Encounter information in ICE's EARM system and from the complaint sent to CRCL from HHS-ORR. Although CRCL is not aware of the reason, the original I-213 (which contained no reasons for the separation) was amended and an addendum was added to the original I-213 narrative. With that added information, CRCL concluded that this particular separation was supported by the significant amount of detail that was added.

(Specific to SD Sector)

2. 2015 National Standards on Transport, Escort, Detention, and Search (TEDS)

USBP most often (9 times) referenced TEDS in response to the complaints. The following TEDS Standards discuss family separation and/or family unity and are relevant to the complaints:

1.0 General Standards

"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. (TEDS, 1.9 Family Unity)

4.0 Secure Detention

"Generally, family units with juveniles should not be separated. When it is necessary to separate juveniles from the parent(s) and/or legal guardian(s), officers/agents must follow their operational office's policies and procedures and appropriate legal requirements. In circumstances where family units must be separated due to different immigration dispositions, such separation must be documented in the appropriate electronic system(s) of record." (TEDS, 4.2 At-Risk Detainee Determination Process, Family Units; Note: This language is repeated in TEDS 5.6 Detention, Family Units)

5.0 At-Risk Populations

"UAC must be held separately from adult detainees. A juvenile may temporarily remain with a non-parental adult family member where: 1) the family relationship has been vetted to the extent feasible, and 2) the CBP supervisor determines that remaining with the non-parental adult family member is appropriate, under the totality of the circumstances." (TEDS, 5.6 Detention, Detention – UAC and Juveniles)

8.0 Definitions

TEDS defines "family unit" as, "A group of detainees that includes one or more non-United States citizen juvenile(s) accompanied by his/her/their parent(s) or legal guardian(s), whom the agency will evaluate for safety purposes to protect juveniles from sexual abuse and violence." (TEDS, 8.0 Family Unit) (*Relevant to family separation*)

3. 2008 Hold Rooms and Short Term Custody Policy

USBP also often (8) referenced their hold room policy, Section 6.3 titled, "Exceptions to Short-Term Detention in Border Patrol Hold Rooms":

"In cases where family groups are encountered but only the parent or legal guardian is detained, circumstances will dictate whether family members should be separated from the juvenile who is not detained. In cases where the juvenile must be separated from the family member(s), immediate arrangements should be made to care for the juvenile until an adult family member arrives to take custody of, custody is turned over to the Office of Refugee Resettlement or a social services agency." (6.3.4.) (*Policy as a whole is not applicable to family separation*)

APPENDIX C

CRCL SUMMARY OF ICE'S RESPONSIVE POLICIES/PROCEDURES/GUIDANCE

ICE provided the following documents in response to CRCL's request for information. CRCL has summarized and assessed them below, in terms of their usability and relevance to ICE personnel with regard to the separation of family units:

1. 2010 ICE Memorandum - "Sharing Information with the Department of Health and Human Services, Office of Refugee Resettlement"

This memorandum from the ICE Executive Associate Director does not state to whom it addressed. Its purpose is stated as "to delineate the types of information and the manner this information will be transferred to the Department of Health and Human Services, Office of Refugee Resettlement (HHS ORR), as it relates to the care and custody of unaccompanied alien children (UAC)." The memo describes that HHS-ORR requested that ICE-ERO share private and law enforcement sensitive information with them, per directives in the Homeland Security Act of 2002 (HSA) and the TVPRA to assist them to gather needed information to make appropriate shelter facility placements. Because neither the HSA nor the TVPRA required that ICE share the information, DHS relays that they allowed, through a Federal Register Notice, that various law enforcement agencies could access ICE's ENFORCE system to facilitate the transfer of custody from ICE to that other agency. This move allowed HHS-ORR to access information on UAC transferred to their custody from DHS.

(Relevant to family separation)

2. 2013 ICE Policy – "11064.1: Facilitating Parental Interests in the Course of Civil **Immigration Enforcement Activities" (ICE Parental Interests Directive)**

This comprehensive and detailed Directive served as ICE's main policy regarding family separation and family unity, where family separation decisions are at the discretion of the applicable ICE Field Office. If the Field Office decides to separate the parents and child, and takes the parent(s) into custody, the child becomes a UAC and is referred to HHS-ORR. With that said, The Directive defines "parental rights" as, "The fundamental rights of parents to make decisions concerning the care, custody, and control of their minor children without regard to the child's citizenship, as provided for and limited by applicable law," and the rights of legal guardians of minor children "to make decisions concerning those children as provided for and limited by applicable law." The Directive's purpose is further described by ICE as "establishing policy and procedures to address the placement, monitoring, accommodation, and removal of certain alien parents or legal guardians who are: 1) primary caretakers of minor children without regard to the dependent's citizenship; 2) parent and legal guardians who have a direct interest in family court proceeding involving a minor or child welfare proceedings in the United States; and 3) parents or legal guardians whose minor children are U.S. citizens (USCs) or lawful permanent residents (LPRs)." It mandates such things as, a point of contact in each Field Office to oversee parental-interests matters, it stresses the importance of recording relevant information, detention placement determinations, facilitating the parents' court participation, allowing parent-child visitation, and assisting parents, legal guardians or primary caretakers facing removal to plan for their child's needs.

(Relevant to family separation)

3. 2014 and 2016 (updated) ICE Broadcast Message – "Family Separations at Residential Facilities"

This message from the ICE Assistant Director for Custody Management to ICE Field Office Directors and Deputy Field Office Directors for the PHI, SNA, and ELP Field Offices states that the ICE Family Residential Centers' (FRC) goal is to maintain family unity whenever possible, however it acknowledges that there are times when a family that has already been placed in a FRC must be separated "due to circumstances beyond ICE's control," such as "acute medical conditions, allegations of physical abuse/violence, or when certain residents become otherwise ineligible for housing in a residential setting, etc." It directs that, in accordance with *Flores* and "best practices," in all such instances the best interest of the child must be considered when contemplating family separation. At any time parents are unable to care for their children due to the situations as outlined above, FRC staff must establish and ICE approved care plan, which provides direct one-on-one supervision by staff of all affected children within the family unit." Finally, it directs that when family separation is considered for extended periods or permanently, the Chief of the ICE JFRMU must be notified. Both renditions of this message were nearly identical.

(Relevant to family separation)

4. **2015 and 2016 ICE Broadcast Message – "Seeking Placement at a Family Center"** This message from the ICE Assistant Director for Custody Management to ICE Field Office Directors and Deputy Field Office Directors, provides contact information for the three FRCs and directs that a family placement request must be completed and submitted to one of the FRCs listed. It also provides direction for those instances when a family unit cannot be placed in a FRC within the required 72-hour time restriction mandated by *Flores*. (*Relevant to family separation*)

5. JFRMU Flowchart (updated in 2015) – "Custody Transfer Process for Unaccompanied Alien Children"

This flowchart clearly describes the immigration processes that UAC encounter as they move through the immigration system while in DHS custody, including transport to their eventual transfer of custody and placement HHS-ORR. It does not specifically address processes for UAC that are separated from their detained family members. *(Relevant to family separation)*

6. JFRMU Flowchart (updated in 2015) - "Operational Process for Family Units"

This flowchart clearly describes the immigration process for families, from their apprehension to removal, and includes the immigration court process. It does not specifically address processes involved when the family members are separated, or the various possible outcomes. *(Relevant to family separation)*

7. JFRMU Flowchart (updated in 2014) – "Operational Process for Unaccompanied Alien Children"

This flowchart clearly describes the immigration process for UAC in CBP custody as they move through the immigration system, including ORR placement and immigration court processes until their eventual repatriation.

(Relevant to family separation)

8. ICE Response to CRCL – Reversal of CBP Status Changes to UAC

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When ICE is notified or becomes aware that a child may have been separated from a family unit that is detained in an FRC, and the child is in the care of the Office of Refugee Resettlement (ORR), ERO will work with ORR on possible reunification. However, ORR makes all decisions regarding custody and reunification of UACs. (*Relevant to family separation*)

9. ICE Response to CRCL – ICE Review of CBP Family Separation Decisions

ICE/ERO does not review family separation decisions by CBP. ERO approves space for housing of any family unit, adult male or female alien when requested by the arresting agency. Placement with ORR is made by the apprehending agency. ICE/ERO contractors assist with transportation once ORR placement approved. (*Relevant to family separation*)

10. ICE Response to CRCL – Collaborating with ORR to reunify children in ORR custody with their family members who are in ICE or CBP custody, and are about to be released, have already been released from custody, or are about to be removed from the U.S. ORR makes all decisions regarding UAC custody and reunification. ICE/ERO does not make custody determinations or reunification decisions in those cases. (*Relevant to family separation*)

11. ICE "Fact Sheet: Unaccompanied Alien Children" (undated)

This undated Fact Sheet provides definitions laws applicable to UAC, including the TVPRA general protection requirements. It also generally describes the applicable policies and procedures involved when DHS encounters UAC, again reflecting the TVPRA requirements, including requirements to transfer custody of UAC to HHS-ORR and the various immigration processes and procedures that could apply when that occurs and the UAC seeks benefits that could allow them to remain in the U.S.

(Not applicable to family separation)

12. ICE Message – "Ensuring Confidentiality of Information Regarding VAWA Selfpetitioners and Applicants for T or U nonimmigrant status"

This message from Acting Assistant Director for Field Operations to all ERO Employees was a reminder to ensure that information regarding a VAWA self-petitioner or applicant to T or U non-immigrant status must be treated as confidential and directs Field Office Directors to ensure that the proper protection coding is included in A-files as a VAWA confidential alert. (Not directly related to family separation and does not specifically address family separation at any point)

Exhibit 25

Page 1 1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA 2 Case No. CV-20-000065-PHX-SRB 3 APF on his own behalf and on behalf of : his minor child OB; JVS on his own behalf 4 and on behalf of his minor child HY JDG • 5 on his own behalf and on behalf of his minor child, MG; HPM on his own behalf 6 behalf and on behalf of his minor child • AD; MCL on his own behalf and on behalf 7 of his minor child AJ and RZG on his own behalf and on behalf of his minor child 8 BP, 9 Plaintiffs, 10 vs. 11 12 13 United States of America, 14 Defendant. 15 16 ______ DEPOSITION UNDER ORAL EXAMINATION OF: 17 ROBERT GUADIAN September 2, 2022 _____ 18 REPORTED BY: JENNIFER L. WIELAGE, CCR, RPR, CRR 19 _____ 20 21 22 JOB # 5632 23 24 25

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1	(CONTINUED)
2	and
3	UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA
4	
5	Case No. CV-19-05217-PHX-SRB
6	CM an han ann habalf and an habalf af han minan
7	CM on her own behalf and on behalf of her minor child, BM; LG on her own behalf and on behalf of her minor child background; MR, on her own behalf and on
8	behalf of her minor child, JR; OA, on her own behalf and on behalf of her minor child, LA; and VC on her
9	own behalf and on behalf of her minor child GA,
10	Plaintiffs,
11	VS.
12	United States of America,
13	Defendants.
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	Page 3
1	TRANSCRIPT of the videotaped deposition of
2	the above-named witness, called for Oral Examination
3	in the above-entitled matter, said deposition being
4	taken pursuant to Federal Court Rules, by and before
5	JENNIFER L. WIELAGE, Certified Shorthand Reporter and
6	Notary Public, on Friday, September 2, 2022,
7	commencing at 9:00 in the forenoon.
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Page 37 1 reunified quickly. 2 You provided a number of observations Ο. 3 in your declaration. Did you undertake 4 appropriate -- did you undertake -- strike that. 5 You provided a number of observations 6 in your declaration. 7 Did you undertake diligence to 8 confirm the accuracy of the representations that you 9 were making? 10 Can you -- can you restate the Α. I'm not sure I understand that. 11 question? 12 Ο. When writing this declaration, were 13 you satisfied that the information that you were 14 providing in your declaration was accurate? 15 Yes. Α. 16 I want to direct your attention to Ο. 17 Paragraph 4, you noted that in order to reunify 18 separated families that ICE was, quote, working 19 closely with U.S. Customs and Border Protection, CBP 20 and the U.S. Department of Health and Human Service, 21 HHS, office of refugee resettlement ORR; is that 22 accurate? 23 That's correct. Α. 24 Was that type of close collaboration Ο. 25 among ICE, CBP, HSS, ORR necessary to reunite

1 separated families?

2 A. Yes.

3 Q. Why was that?

So customs and border protection has 4 Α. 5 the responsibility of securing our southwest border and that's in locations between the ports of entry, 6 7 so when a -- they were the ones that had separated these families and had the lists of what parents were 8 9 separated, those documents and those systems were not accessible to HHS and ORR at the time so we had to 10 11 communicate daily, hourly with the Customs and Border 12 Protection to get updated lists, to get updated 13 locations of parents, of what -- where -- where these 14 parents were -- who they were turned over to, where 15 they were prosecuted and to add to that, HHS's 16 systems don't talk to border patrol -- border patrol 17 or ICE either at that time. So we had to reconcile that list with HHS to determine where the children 18 19 were and of course the ICE don't talk to any of those 20 two so -- or at least at the time, they didn't. So 21 we would have to get a third list from ICE to 22 reconcile the border patrol and HHS list. 23 So very difficult process and needed 24 a lot of coordination in order to get -- to get this 25 done.

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Page 39 Is it fair to say that it was a 1 Ο. 2 primarily manual process? 3 Α. It was, yes, that would be fair. In Paragraph 5, you explained that to 4 Ο. 5 reunite separated families for ICE reunification, as you've indicated, involved several labor-intensive 6 7 steps. Can you read what types of labor intensive 8 steps were required as you've detailed in Paragraph 9 5? Sure, so the reviewing of actual 10 Α. 11 alien files or records of proceedings, the printing 12 out of arrest records or I213s and reviewing the 13 narratives and this is primarily border patrol, A 14 files and border patrol I213s, capturing that 15 information, writing it down and gathering it into a 16 It was very manual and labor intensive list. 17 process, but it was the best process that we have since there wasn't -- this was -- this event had --18 19 this was a unique event that had never occurred in my 20 career, in many people's career. We didn't have the 21 capability to quickly determine where the parents and 22 the children were -- or if they were even related or 23 if they were even separated, so the labor intensive 24 steps include manual review of documents, files, 25 databases, phone calls to stations, phone calls to

Page 40 HHS or phone calls to shelters; very difficult, very 1 2 difficult and labor intensive. 3 Q. In addition to those that you've mentioned, you listed, in Paragraph 5, that one of 4 5 the labor intensive steps was to, quote, developing a reunification plan for class members with children 6 7 five years of age and over, closed quote. Another area appeared to be, quote, facilitating 8 communication between class members and their 9 children, closed quote? 10 11 Α. Yes. 12 Ο. Do you see that? 13 Yes, I see that. Α. 14 Q. Do you agree today? 15 I'm sorry. Could you repeat that? Α. 16 Would you agree today that those were Ο. 17 still challenges that -- or would you agree today 18 that those were challenges that you were facing at that time? 19 20 Α. Yes. 21 And as of July 6, 2018, the date of Q. 22 your declaration, these were steps in progress, 23 right? 24 Α. Correct. 25 You were not affirming that these Q.

Page 41 were completed as of the date of your declaration, 1 2 right? 3 Α. I'm sorry. I don't understand the question. 4 5 These were not completed, these steps Ο. that you indicated, were not completed as of the date 6 7 of your declaration, right? 8 Α. Correct, they were ongoing processes and we were building new processes, too, as we went. 9 So for example, when we -- when you 10 Ο. had written and I had read the -- that ICE needed to 11 12 redevelop a unification plan for class members for 13 families with children five years of age or older, 14 there had been no reason unification plan prior to this? 15 I don't recall seeing a reunification 16 Α. 17 plan. I'm sorry. I don't remember the time frames. 18 In Paragraph 6, you noted that the Q. 19 first step toward unifying separated families was identifying potential class members, right? 20 21 Α. Correct. 22 0. And consistent with what you've 23 described, you called this, quote, a difficult and 24 time consuming task, closed quote; is that right? 25 Correct, yes. Α.

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Q. And as you had mentioned, this was because the data necessary to determine the separated families within -- to determine the separated families was not maintained as a part of ICE's regular business process, correct?

No, that's correct. 6 Α. So just a little 7 background and context. The border patrol under the 8 Zero Tolerance program and the hundred percent prosecution program had separated their adults and 9 The adults for the most parted come into 10 children. 11 ICE ERO custody and the children had come into HHS 12 custody and there was no unified record of what 13 parent went where and what child went where. So that was the beginning of this process. So we had to 14 15 create a process to track and then go back -- to 16 track any future separations and to go back and actually account for everyone that had already been 17 18 separated and that was a very labor intensive process 19 to include HHS counselors at the shelters actually 20 talking to the kids to determine if they were 21 separated parents and us -- ICE putting fliers in the 22 detention centers where -- and we have many, many, 23 detention centers across the U.S., with a phone 24 call -- with a phone number that a parent company 25 call and asking information for -- about a potential

Page 43 separated child in their case. So we were using any 1 2 means in our -- in our -- within our capabilities to 3 try to capture that data. And prior to your efforts, there had 4 Q. 5 not been a system that could capture all that information? 6 7 Α. That's correct. 8 Ο. In Paragraph 7, you detailed -- which is on the next -- on page 3 of the document, you 9 10 detailed the resources needed to review the cases, 11 identify separated families and facilitate 12 communications between a separated parent and child. 13 Can you describe what resources were 14 needed? 15 Sure. So we needed every -- there Α. 16 are many different divisions -- operational units at 17 headquarters supervised by an assistant director. Mv 18 division, field ops, had the responsibilities over the field office directors. The custody management 19 20 division has its own chain of command and then its 21 own responsibilities. They're responsible for the --22 supervising the detention capacities across the ICE 23 spectrum. We operate a large nationwide network of 24 detention beds where we keep adults in county jails, 25 state jails, contracted facilities. They're

responsible for that. So they had a piece in it as 1 2 well because they also have the juvenile family --3 the JFRMU, the Juvenile Family Residential Management 4 So they have a piece as well in this, and we Unit. 5 also have a division within ICE, an operational unit called LESA, Law Enforcement Statistical Analysis. 6 7 And those are our statisticians. They also had a 8 role because they were creating the lists, reconciling the lists from the border patrol, 9 10 reconciling the list from HHS and any other list that 11 was -- we could get our hands on and merit getting 12 those into one unified list that we could look at at 13 the operations center at the Hubert Humphrey building 14 and getting those families reunified quickly. So 15 yeah, it was a very difficult process. It was not 16 easy and it was a unique challenge. In Paragraph 7 and 8, it appears that 17 Ο.

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18 you discuss how certain field office directors would 19 have to reassign officers from other duties in order 20 to track the separated families and to undertake the 21 various steps that would be necessary in order to 22 facilitate the communication between the separated 23 parent and child and to re -- ultimately to reunify 24 the separated parent and child; is that correct? 25 Α. That's correct.

Page 60 Can we refer that when I refer to the 1 Ο. Family Separation Policy, you understand that I'm 2 3 referring to the policy that I just described? 4 MR. PARKER: Objection; form; 5 foundation. I'm not sure I understand. 6 Α. Zero 7 Tolerance under prosecution -- a hundred percent 8 prosecution programs primarily a border patrol program, so I refer -- I really don't have an answer 9 for that. 10 11 Ο. So let me rephrase. 12 When I refer to the Zero Tolerance 13 policy, you'll understand that I'm referring to the 14 set of policies and the procedures that we've just talked about; is that fair? 15 16 I don't know if I could agree to that Α. 17 because I don't know that a whole scope of when --18 when border patrol -- I don't want to speak for 19 border patrol when there are other circumstances that 20 maybe require family separation, so I can't speak to 21 that or I can't agree to that. 22 Q. Sure. What would you like to call 23 the policy that we've just talked about? 24 Separation under Zero Tolerance. Α. 25 Okay. So I'll refer to it as Q.

Page 61 separation or Zero Tolerance? 1 2 How did you learn about the Zero 3 Tolerance Policy? I don't recall how I learned about 4 Α. I think -- I think we found out about it -- at 5 it. least my division found out about it the same time 6 7 the media found out about it. There was no proactive like email to my knowledge or memo or a heads-up that 8 this was going to be occurring. I think we found out 9 at the same time that everyone else found out. 10 And this -- we is my division in ICE. 11 12 Q. Do you recall whether you were 13 serving as the acting DAD when you learned about the 14 Zero Tolerance Policy? 15 Yes, I was the acting DAD. Α. 16 Did you have a role in developing the Ο. 17 Zero Tolerance Policy? 18 Α. No. 19 Were you involved in meetings to Ο. 20 develop the family -- or the Zero Tolerance Policy 21 prior to April of 2018? 22 Α. No, I wasn't. 23 Were you involved in communications Q. 24 regarding the Zero Tolerance Policy prior to 2018? 25 No, no, I wasn't. Α.

Page 62 1 Did you have any discussions with Ο. 2 others regarding the Zero Tolerance Policy prior to 3 2018, April of 2018? 4 Α. No. 5 Do you otherwise have any knowledge 0. of how the Zero Tolerance Policy was developed? 6 7 Α. No, I don't. 8 Ο. Have you ever personally witnessed any of the separations of family units pursuant to 9 10 the Zero Tolerance Policy? No, I haven't. 11 Α. 12 Ο. I'm going to direct your attention to 13 what's being -- what's been previously marked as Plaintiff's Exhibit P-639. 14 15 (Exhibit P-639, Email, was previously 16 for Identification marked at a prior 17 deposition.) BY MS. PARK: 18 19 Ο. And you'll see that come up on the 20 e-Depoze screen. 21 Α. Okay, I see it now. You'll want to go to the bottom of 22 Ο. 23 page 5, which carries over to page 6. You'll see 24 that this is an email chain. 25 Okay, I'm there at page 5. Α.

Page 88 personnel to help do this and taking a whole 1 2 government approach to try to reunify these families 3 consistent with the judge's order out of California. A lot of hard work, you know, I was working seven 4 5 days a week, many hours, going into this -- not just myself, many other people. But yeah, the -- I think 6 7 the thought of it, because normally -- I think in the course of normal operations I think before an 8 operation of any scale is kicked off, there is some 9 preliminary discussion about how best to kick off 10 11 those type of operations but I was not included in 12 any of those. 13 You've had an extensive background Ο. From your experience, was the Zero 14 within ICE. 15 Tolerance Policy a significant policy change? 16 Yes. Α. 17 Ο. In your experience, was the level of 18 preparation standard for the kind of policy change 19 that was being implemented? 20 I'm sorry, can you reask the Α. 21 question? 22 Ο. From your experience, was the level 23 of preparations, I think you indicated that you were 24 caught unaware, for this significant kind of policy 25 change, was that standard in your experience?

Exhibit 32

From: Shuchart, Scott Sent: Thursday, May 31, 2018 12:30 PM To: Quinn, Cameron CC: Venture, Veronica; Salvano-Dunn, Dana; Sultan, Jennifer; Merson, Gary Subject: RE: Family Separation

Cameron,

1) The interagency meetings I'm alluding to in that paragraph include one today with HHS, DOJ, and the DHS components (ICE, CBP, USCIS). Seemingly DHS PLCY isn't participating! But we understand from contacts that the subject is UAC and family apprehension and detention. I don't actually think we needed to be at that meeting in particular, but the point is that there is a large volume of operational planning going on right now from which we are inappropriately frozen out – a point you know I've made before and was just trying to reiterate here.

2) On the Chertoff memo – I believe you're referring to the designation of the CRCL Officer as the DHS single point of contact under E.O. 13107? Please see the attached – it's actually a Sept. 22, 2006 signature by Sec. Chertoff on a decision memo from Dan Sutherland dated a couple weeks earlier.

Scott

From: Quinn, Cameron Sent: Wednesday, May 30, 2018 10:27 PM To: Shuchart, Scott <Scott.Shu

Exhibit 43

Message	
From:	Jones, Marla M [Marla.M.Jones@ice.dhs.gov]
Sent:	5/9/2018 11:41:10 PM
То:	Johnson, Tae D [Tae.D.Johnson@ice.dhs.gov]
CC:	Moore, Stevie [Stevie.Moore@ice.dhs.gov]; Caudill, Dewey [Dewey.Caudill@ice.dhs.gov]
Subject:	RE: Reprogramming Question

Tae,

I'm removing everyone else as I wasn't sure of their roles. However, we will keep these questions in mind when conducting our initial analysis. In reviewing BPs data there are several of these that we will not be able to address at all without HHS input. Since I don't want to overload BP, as both components have been heavily tasked this week. Once we receive their data, I'm going to compile a few follow-on questions for both BP and HHS review. Our initial response for this request will be our quick assessment of the impacts. Any subsequent information received after our initial analysis will increase the accuracy of our data model and optimize the output. We will circle back with you all on tomorrow after we solidify our approach.

Let me know if you have any additional questions or need further clarification.

Best,

-MJ

From: Johnson, Tae D
Sent: Wednesday, May 9, 2018 7:35 PM
To: Moore, Stevie <Stevie.Moore@ice.dhs.gov>; Caudill, Dewey <Dewey.Caudill@ice.dhs.gov>
Cc: Cates, Harold <Harold.Cates@ice.dhs.gov>; Harris, Andrea <Andrea.Harris@ice.dhs.gov>; Jones, Marla M
<Marla.M.Jones@ice.dhs.gov>; Parsons, Robert L <Robert.L.Parsons@ice.dhs.gov>; Aguilar, Michelle
<Michelle.Aguilar@ice.dhs.gov>
Subject: RE: Reprogramming Question

A lot if this information is unknown. Below is all the information I have at this time.

From: Moore, Stevie
Sent: Wednesday, May 9, 2018 5:23 PM
To: Caudill, Dewey <<u>Dewey.Caudill@ice.dhs.gov</u>>
Cc: Cates, Harold <<u>Harold.Cates@ice.dhs.gov</u>>; Harris, Andrea <<u>Andrea.Harris@ice.dhs.gov</u>>; Jones, Marla M
<<u>Marla.M.Jones@ice.dhs.gov</u>>; Parsons, Robert L <<u>Robert.L.Parsons@ice.dhs.gov</u>>; Johnson, Tae D
<<u>Tae.D.Johnson@ice.dhs.gov</u>>; Aguilar, Michelle <<u>Michelle.Aguilar@ice.dhs.gov</u>>
Subject: RE: Reprogramming Question

Hi Tim,

Reviewing this on our end and it would be helpful if the questions below were answered to assist with our assumptions & analysis. Please let me know the status of your review/response when you get a chance.

1. How many USAO's on the SWB will take and prosecute cases?

I don't know. As I understand it some border locations will be able to do 100% prosecutions while other much busier locations like RGV will require a more phased approach.

2. Is DHS/DOJ prosecuting all adults (including both parents) and are they seeking remand of the adults to USMS custody? If they split the family units, is ICE prepared to hold the remaining adults in ICE detention or will they release them to reunite with the UAC's?

100% prosecutions of adults will occur in some places. If the families are separated, ICE will be required to house the adults after they have served their sentences. Chances are that most of these individuals will plea out and be time served, but we don't know for certain how this will play out. It is not clear whether they will be reunited after prosecution, but I suspect not, particularly when the child has already been placed with ORR. More internal discussion between ICE and CBP is needed on this last piece.

3. Can ORR (HHS) handle the temporary increase in their foster housing program? Do they have locations near the SWB or are they interior and will need to have ICE increase contract transportation to accompany the UAC to the necessary housing?

ORR will need to expand their capacity or consider the use of DoD sites. Not sure what additional options are available along the SWB. There will likely be a need for increased transportation of UACs.

4. Will CBP be completing Expedited Removal (ER) orders at processing? If not will DOJ seek a Federal Judicial Order (FJO) of removal as part of the 1325 prosecution? If not, then ICE might have to "present the alien" to an IJ for a removal hearing, increasing bed space.

Considering that most of these individuals will claim asylum, they will need to appear before an IJ.

5. Even if you get ER or FJO as noted above, ICE will need to house them after federal case to effectuate removal. Will there be a plan to use beds near the border or hub areas that ICE can secure a travel doc and put them on an Air Ops flight quickly?

Ideally, beds along the SWB can be used, but they must be activated first – which will take some time.

6. If USAO's can't take the cases directly from CBP, then ICE will need to house adults for a few days and present for prosecution – increasing bed space.

The way prosecutions are done will vary by sector and judicial district. ICE should prepare for an increase in detention of single adults

r, Stevie

From: Caudill, Dewey
Sent: Tuesday, May 8, 2018 5:53 PM
To: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>>; Moore, Stevie <<u>Stevie.Moore@ice.dhs.gov</u>>
Cc: Cates, Harold <<u>Harold.Cates@ice.dhs.gov</u>>; Harris, Andrea <<u>Andrea.Harris@ice.dhs.gov</u>>; Jones, Marla M<<<u>Marla.M.Jones@ice.dhs.gov</u>>
Subject: RE: Reprogramming Question

We are currently reviewing to determine if we believe any of the alternatives could drive us outside of the upper bound of 50% CI, which is the level we had requested funding for. We should have an initial response by tomorrow morning.

Tim Caudill Chief, Strategy & Operations Analysis Law Enforcement Systems & Analysis DHS-ICE- ERO Desk 202-732-6462 Mobile 202-487-8417 dewey.caudill@ice.dhs.gov

From: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>>
Date: Tuesday, May 08, 2018, 5:48 PM
To: Moore, Stevie <<u>Stevie.Moore@ice.dhs.gov</u>>, Caudill, Dewey <<u>Dewey.Caudill@ice.dhs.gov</u>>
Cc: Cates, Harold <<u>Harold.Cates@ice.dhs.gov</u>>, Harris, Andrea <<u>Andrea.Harris@ice.dhs.gov</u>>
Subject: RE: Reprogramming Question

My take is the bed model has no way of factoring in the new prosecutions policy. In speaking with OMB today we only get one chance at this reprogramming so I would suggest we add in the cost of 2500 extra beds for the last quarter of the FY to be safe.

Sent with BlackBerry Work (www.blackberry.com)

From: Moore, Stevie <<u>Stevie.Moore@ice.dhs.gov</u>> Date: Tuesday, May 08, 2018, 4:23 PM To: Caudill, Dewey <<u>Dewey.Caudill@ice.dhs.gov</u>> Cc: Cates, Harold <<u>Harold.Cates@ice.dhs.gov</u>>, Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>>, Harris, Andrea <<u>Andrea.Harris@ice.dhs.gov</u>> Subject: FW: Reprogramming Question

Hi Tim,

Can you please take a look at this when you get a chance. The Dept. is asking if our cost implications account for the "new policy on prosecutions". With the shortfall provided – Custody Operations makes up \$134M out of \$197M total. I'm not sure if the "new policy" is taken into consideration when developing the ADP projection.

Please let me know when you get a chance.

Thanks

r, Stevie

From: Mencher, Daniel
Sent: Tuesday, May 8, 2018 3:24 PM
To: Moore, Stevie <<u>Stevie.Moore@ice.dhs.gov</u>>
Cc: Aguilar, Michelle <<u>Michelle.Aguilar@ice.dhs.gov</u>>; Parsons, Robert L <<u>Robert.L.Parsons@ice.dhs.gov</u>>; Blotzer,
Allison <<u>Allison.Blotzer@ice.dhs.gov</u>>
Subject: Reprogramming Question

Stevie

DHS and OMB are asking if the opening salvo number that has been floated (\$197M) includes the cost implications of the new policy on prosecutions (see attached). We will most certainly be asked about the implications when we brief DHS and OMB should a reprogramming go forward.

Thanks.

Daniel A. Mencher Deputy Budget Director (Controls) Office of Budget and Program Performance Immigration & Customs Enforcement

(E) daniel.mencher@ice.dhs.gov

Exhibit 47

Message	
From:	Lloyd, Scott (ACF)
Sent:	6/16/2018 11:10:45 AM
To:	Homan, Thomas
CC:	Albence, Matthew f
Subject:	Fwd: Connecting parents and kids

Attachments: Copy of Pending Contact of Family of UC Separated 6-14-18.xlsx

Matt and Tom:

Elevating for you visibility.

We have 790 kids in our shelters who are not able to contact their parents. We sent this list to night— it is updated from an original list of 300.

Please advise if there is anything else we can do to have better success getting through to these parents.

Thank you, Scott

Begin Forwarded Message:

From: Subject: RE: Connecting parents and kids Date: 15 June 2018 22:34 To: "Lloyd, Scott (ACF)"

Here is the latest list that was provided to Mr.

in DHS. 790 cases.

DHHS/ACF/ORR/DCS Senior Federal Field Specialist Supervisor Office of Refugee Resettlement Division of Children's Services Mary E. Switzer Building, 5th Floor (Room: 5223) 330 C Street SW Washington, DC 20201 Office: Cell: Fax: http://www.acf.hhs.gov/programs/orr/programs/ucs

From: (ACF) Sent: Thursday, June 14, 2018 8:35 PM

696	EXHIBIT	
PENGAD 800-631-6989	P-674	

To: Lloyd, Scott (ACF) Subject: RE: Connecting parents and kids

Here you go Scott,

There are at least 350 cases reported.

Here is what the field reported. 350 cases. Hopefully the flyer we provide to PHS staff will help connect parents to the shelters.

DHHS/ACF/ORR/DCS

Senior Federal Field Specialist Supervisor Office of Refugee Resettlement Division of Children's Services Mary E. Switzer Building, 5th Floor (Room: 5223) 330 C Street SW Washington, DC 20201 Office: Cell: Fax:

http://www.acf.hhs.gov/programs/orr/programs/ucs

From: Lloyd, Scott (ACF) Sent: Thursday, June 14, 2018 2:28 PM To:

Subject: RE: Connecting parents and kids

Any others, or should I just go to them with this case?

Thank you, Scott

From: ACF)
Sent: Thursday, June 14, 2018 2:23 PM
To: Lloyd, Scott (ACF);
Subject: Re: Connecting parents and kids

Hello,

The FFS informed me that the care provider has not been able to locate the father.

On: 14 June 2018 07:58, "Lloyd, Scott (ACF)" <<u>Scott.Lloyd@acf.hhs.gov</u>> wrote: Have we found the dad?

Thank you, Scott

From (ACF) Sent: Wednesday, June 13, 2018 10:49 PM To Lloyd, Scott (ACF) Subject: RE: Connecting parents and kids
lagree with
It has been difficult to connect with parents but we are working hard on this matter. See the attachment.
DHHS/ACF/ORR/DCS Senior Federal Field Specialist Supervisor Office of Refugee Resettlement Division of Children's Services Mary E. Switzer Building, 5th Floor (Room: 5223) 330 C Street SW Washington, DC 20201 Office: Cell: Fax: http://www.acf.hhs.gov/programs/orr/programs/ucs
From: (ACF)

From: [ACF] Sent: Wednesday, June 13, 2018 8:23 PM To: Lloyd, Scott (ACF) <<u>Scott.Lloyd@acf.hhs.gov</u>>; Subject: Re: Connecting parents and kids

I guess it would depend on who they are contacting. If it's the hotline, then it will take time to connect parent and child since the hotline will not provide PII and will forward info to the shelter. They should provide ORR direct a list of parents, their location and contact with the UAC name and A# to facilitate quick contact.

We should mention that we've had situations where we have been unable to get parent locations from them and cases where parents are deported without notification or coordination with us.

On: 13 June 2018 20:06, "Lloyd, Scott (ACF)" <<u>Scott.Lloyd@acf.hhs.gov</u>> wrote: Any insight?

Thank you, Scott

From: MCALEENAN, KEVIN K [mailto:KEVIN.K.MCALEENAN@cbp.dhs.gov] Sent: Wednesday, June 13, 2018 7:21 PM To: Lloyd, Scott (ACF) Subject: Connecting parents and kids

Scott,

We are being told by ICE delays are happening once we find the parent and connect to child in ORR - the ORR case manager tells us it could take days to get child to the phone to connect to parent. Do you have any info on this? Any way DHS can assist?

KM

.

a

Exhibit 49

Message	
From:	
Sent:	6/20/2018 12:28:03 AM
To:	Johnson, Tae D [Tae.D.Johnson@ice.dhs.gov];
CC:	
Subject:	RE: RE:

This came up during the call today with SNA and the work we are going to do at PIDC -- SNA said this is a mess. No tracking at all.

Do we have the ability to link parent and child in EARM? I thought no -- that's it's coming.

If we can't link -- how would we track -- EARM comments -- no reportable.

Thus I see we would need to develop a spreadsheet and manually count. My shop can put together if JFRMU hasn't.

Just some thoughts.

Deputy Assistant Director

DHS/ICE/ERO/Custody Programs 202.431.4761

Sent with BlackBerry Work (www.blackberry.com)

From: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>> Date: Tuesdav. Jun 19, 2018, 8:20 PM To:

Subject: RE: RE:

See below. Can this information be pulled from EARM? Thoughts on having this reported regularly?

From: Johnson, Tae D
Sent: Tuesday, June 19, 2018 8:18 PM
To: Albence, Matthew <Matthew.Albence@ice.dhs.gov>;
Subject: RE: RE:

We should probably have them report on all the FAMU related removals both with and w/o their kids. I don't believe it can be pulled from EARM.

From: Albence, Matthew
Sent: Tuesday, June 19, 2018 8:15 PM
To: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>>;
Subject: RE: RE:

10-4. Thoughts about having the FODs report this? Something worth tracking? Can we pull from EARM? Since we are publicly stating all the things we are doing to facilitate reunification, I expect it's only matter of time before we are asked to report on those efforts.

Sent with BlackBerry Work (www.blackberry.com)

From: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>> Date: Tuesday, Jun 19, 2018, 7:11 PM To: Albence, Matthew <<u>Matthew.Albence@ice.dhs.gov</u>> Subject: RE: RE:

Ok, I am not sure about whether any have been reunited for removal. We would have to canvass the field offices for this info. I only know of a few cases where the parent has elected to be removed without their "child". Not sure if there have been any efforts yet to coordinate removal as a family.....

Sent with BlackBerry Work (www.blackberry.com)

From: Albence, Matthew <<u>Matthew.Albence@ice.dhs.gov</u>> Date: Tuesday, Jun 19, 2018, 8:05 PM To: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>>, Subject: RE: RE:

Sorry-I think what he's really getting at is the reunification for removal-I expect the number is small since not many removals yet.

Sent with BlackBerry Work (www.blackberry.com)

From: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>> Date: Tuesday, Jun 19, 2018, 7:02 PM To: Albence, Matthew <<u>Matthew.Albence@ice.dhs.gov</u>>, Subject: RE: RE:

How about this:

1. We would like to know how many adults have been reunified with their children following prosecution.

ICE would have to defer to CBP for this information as we have no way to track the number of individuals who have been reunited following a prosecution.

2. Where the family units are today (released into United States, removed, in FRC, etc.).

Any family unit that has been reunited following a prosecution would normally be detained in an FRC for about 15 days before being released into the United States. Not

many, if any, are ever removed from an FRC immediately following prosecution within the short period of time ICE is permitted to detain a family unit.

3. Whether any were not reunified following prosecution.

While ICE does not track the number of individuals that have been reunified following prosecution, we believe there are far more individuals who are separated (not reunified) following a prosecution as evidenced by the over 1,500 parents that are in ICE adult detention facilities today, who were initially part of a family unit.

Sent with BlackBerry Work (<u>www.blackberry.com</u>)
From: Albence, Matthew < <u>Matthew.Albence@ice.dhs.gov</u> > Date: Tuesday, Jun 19, 2018, 7:04 PM To: Johnson, Tae D < <u>Tae.D.Johnson@ice.dhs.gov</u> > Subject: FW: RE:
Do have this by any chance?
Sent with BlackBerry Work (www.blackberry.com)
From: Hamilton, Gene (OAG) < <u>Gene.Hamilton@usdoj.gov</u> > Date: Tuesday, Jun 19, 2018, 5:58 PM To: Homan, Thomas < <u>Thomas.Homan@ice.dhs.gov</u> > Cc: MCALEENAN, KEVIN K < <u>KEVIN.K.MCALEENAN@cbp.dhs.gov</u> >, Albence, Matthew < <u>Matthew.Albence@ice.dhs.gov</u> >, VITIELLO, RONALD D (USBP) < <u>RONALD.D.VITIELLO@cbp.dhs.gov</u> > Subject: RE: RE:
Hey y'all,
Any updates?
Gene P. Hamilton Counselor to the Attorney General U.S. Department of Justice
From: Hamilton, Gene (OAG) Sent: Sunday, June 17, 2018 10:56 AM To: Homan, Thomas < <u>Thomas.Homan@ice.dhs.gov</u> > Cc: MCALEENAN, KEVIN K < <u>KEVIN.K.MCALEENAN@cbp.dhs.gov</u> >; Albence, Matthew < <u>Matthew.Albence@ice.dhs.gov</u> >; VITIELLO, RONALD D (USBP) < <u>RONALD.D.VITIELLO@cbp.dhs.gov</u> > Subject: Re: RE:
Thanks. I think this data will be critical.

Gene P. Hamilton Counselor to the Attorney General

U.S. Department of Justice

On Jun 17, 2018, at 10:19 AM, Homan, Thomas <<u>Thomas.Homan@ice.dhs.gov</u>> wrote:

Let me check and see what we can provide

Sent with BlackBerry Work (www.blackberry.com)

From: Hamilton, Gene (OAG) <<u>Gene.Hamilton@usdoj.gov</u>> Date: Sunday, Jun 17, 2018, 7:53 AM To: MCALEENAN, KEVIN K <<u>KEVIN.K.MCALEENAN@cbp.dhs.gov</u>>, Homan, Thomas <<u>Thomas.Homan@ice.dhs.gov</u>>, Albence, Matthew <<u>Matthew.Albence@ice.dhs.gov</u>>, VITIELLO, RONALD D (USBP) <<u>RONALD.D.VITIELLO@cbp.dhs.gov</u>> Subject:

Can any of y'all talk today? Or provide some stats? We would like to know how many adults have been reunified with their children following prosecution. And where the family units are today (released into United States, removed, in FRC, etc.). And whether any were not reunified following prosecution.

Thank you!

Gene P. Hamilton Counselor to the Attorney General U.S. Department of Justice Case 2:19-cv-05217-SRB Document 404-2 Filed 04/24/23 Page 44 of 213

Exhibit 9

Case 2:19-cv-05217-SRB Document 404-2 Filed 04/24/23 Page 45 of 213

Page 1 1 UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA 2 Case No. CV-20-000065-PHX-SRB 3 APF on his own behalf and on behalf of his minor child OB; JVS on his own behalf 4 and on behalf of his minor child HY JDG 5 on his own behalf and on behalf of his minor child, MG; HPM on his own behalf behalf and on behalf of his minor child 6 AD; MCL on his own behalf and on behalf 7 of his minor child AJ and RZG on his own behalf and on behalf of his minor child 8 BP, 9 Plaintiffs, 10 vs. 11 12 13 United States of America, 14 Defendant. 15 16 _____ DEPOSITION UNDER ORAL EXAMINATION OF: 17 ROBERT GUADIAN September 2, 2022 _____ 18 REPORTED BY: JENNIFER L. WIELAGE, CCR, RPR, CRR 19 _____ 20 21 22 JOB # 5632 23 24 25

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Page 2
(CONTINUED)
and
UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA
Case No. CV-19-05217-PHX-SRB
CM on her own behalf and on behalf of her minor child, BM; LG on her own behalf and on behalf of her minor child background; MR, on her own behalf and on
behalf of her minor child, JR; OA, on her own behalf and on behalf of her minor child, LA; and VC on her
own behalf and on behalf of her minor child GA,
Plaintiffs,
VS.
United States of America,
Defendants.

Page 3 TRANSCRIPT of the videotaped deposition of the above-named witness, called for Oral Examination in the above-entitled matter, said deposition being taken pursuant to Federal Court Rules, by and before JENNIFER L. WIELAGE, Certified Shorthand Reporter and Notary Public, on Friday, September 2, 2022, commencing at 9:00 in the forenoon.

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Page 101 in CD-US-0058841A. 1 2 (Exhibit P-656, CD-US-0058841A, was 3 marked for Identification by the court 4 reporter.) 5 Opening now. Okay. Α. Okay. I've got it. 6 7 Again, this is another longer email. Q. 8 So if you go all the way back to page 11, this will 9 be the last page? 10 Okay, can I get a few minutes to Α. 11 read? 12 Certainly. Let me know when you're Q. ready. And I can direct your attention to the 13 relevant place where you enter the discussion. 14 15 Okay, I'm finished. Α. 16 So if you start at page 11, which is Ο. 17 the last page, this is a June 13, 2018 email from 18 Kevin McAleenan to Scott Lloyd. Do you see that? 19 Α. Yes. 20 Subject line is connecting parents Ο. 21 and kids and Mr. McAleenan states: We are being told 22 by ICE delays are happening once we find the parent 23 and connect to child in ORR. The ORR case manager 24 tells us it can take days to get child to the phone 25 to connect to parent. Do you have any info on this?

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Page 102 Anyway DHS can assist? Then Scott Lloyd forwards it 1 2 to some individuals, including what must be 3 ? 4 Α. Uh-huh. 5 Who replies on June 13, 2018: Ο. Ι guess it would depend on who they are contacting. 6 Ιf 7 it's the hotline, then it will take time to connect 8 the parent and child since the hotline will not provide PII and will forward info to the shelter. 9 10 She then, in the second paragraph 11 indicates: We should mention that we've had 12 situations where we have been unable to get parent 13 locations from them and cases where parents are 14 deported without notification or coordination with 15 This is cop cyst tent with what you've told us us: 16 about -- with the challenges of communications and of 17 tracking that we discussed early on in your 18 deposition; is that right? 19 Α. Correct. If you go to the third page. 20 Ο. 21 Α. I'm there. 22 Q. In the middle of the page, you'll see that after much discussion about some of the 23 24 challenges connecting parents and kids, Tae Johnson 25 emails you and CM chondromalacia and David Jennings

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Page 103 on June 16, 2018 and he notes: Looping ops into 1 2 this. Major issues with communication. 3 Do you see that? Α. I do. 4 5 And again, that's consistent with Ο. what you've described to us as problems that were 6 7 encountered during the course of the family of the 8 Zero Tolerance policy regarding communications among 9 separated families? 10 Α. Correct, so as little background, some of the parents that we had in our custody were 11 12 unknown to us or are -- or Border Patrol had not 13 identified them as separated parents so ICE had no 14 idea that they were separated parents or ORR may have 15 had kids at their shelters that were asking to 16 communicate with their parent that were in ICE 17 custody but ICE had no idea that we even had that 18 particular parent or custody. It was a very 19 challenging time to try to connect all the dots. 20 Then if you go up in the email chain, Ο. 21 you reply with some thoughts on some of these cases, 22 and then if you go to the first -- I'm sorry, the 23 first page of this email --24 Α. Okay. 25 -- there's an email from Q.

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Exhibit 18

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	Page 1
1	THE UNITED STATES DISTRICT COURT
2	FOR THE DISTRICT OF ARIZONA
3	C.M., on her own behalf and on behalf of her minor child,
4	B.M.; L.G., on her own behalf
5	and on behalf of her minor child, B.G.; M.R., on her own
6	behalf and on behalf of her minor child, J.R.; O.A., on
7	her own behalf and on behalf of her minor child, L.A.; and
8	V.C., on her own behalf and behalf of her minor child., G.A.,
9	Plaintiffs,
10	vs. NO: 2:19-cv- 05217-SRB
11	UNITED STATES OF AMERICA,
12	Defendant.
13	/
14	
15	REMOTE VIDEOTAPED DEPOSITION OF
16	Thursday, June 24, 2022
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18	
19	
20	
21	
22	
23	Reported By:
24	LINDA VACCAREZZA, RPR, CLR, CRP, CSR. NO. 10201
25	JOB NO. SY005075

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	Page 2
1	
2	
3	
4	
5	June 24, 2022
6	8:03 a.m.
7	
8	
9	Remote Videotaped Deposition of
10	C held REMOTELY BY ALL PARTIES, pursuant to
11	Notice, before Linda Vaccarezza, a Certified
12	Shorthand Reporter of the State of California.
13	
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Page 64 Other than the challenges that you've 1 Ο. 2 mentioned today about locating and obtaining contact information for separated parents, did you 3 4 encounter any other challenges to your 5 09:36 responsibilities as a case manager as a result of that policy? 6 7 MR. HALL: Objection. Form. 8 THE WITNESS: It was very difficult to 9 maintain contact with the parents after the 10 separation, even after locating them. It was very 09:36 11 difficult to identify families. If the minor was 12 too young to report or did not have a phone number, we would not be able to locate anybody here in the 13 U.S. or in their home country. 14 BY MS. SCHAEFFER: 09:36 15 Did the change -- did the policy change 16 Q. 17 lead to -- excuse me. Did the policy change lead to any other 18 problems at LSS? 19 09:36 20 Α. Not that I can recall. 21 MS. SCHAEFFER: Okay. And do you mind 22 introducing s case file. 23 This is an exhibit marked CN Plaintiff's 24 Exhibit 2. 25 (Exhibit 2 was marked for identification.) 09:37

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Page 69 1 old might experience being physically removed from his mother's arms by government officials as 2 possibly traumatic? 3 Yes, I agree. 4 Α. 5 Do you know how children are typically 09:44 Q. transferred from DHS custody from places along the 6 7 southwest border to facilities in New York such as 8 LSS during this time period? 9 Α. I do not know specifics. But I was aware 10 that they would travel in large planes with several 09:44 11 -- sometimes dozens or hundreds of kids. 12 Do you know the circumstances of Q. journey to LSS from DHS custody? 13 14 Α. I do not know the specific circumstances 09:45 15 that he experienced. 16 MS. SCHAEFFER: Ana, do you mind 17 introducing the next exhibit which the -- so this is an exhibit marked CM Plaintiff's Exhibit 4. 18 (Exhibit 4 was marked for identification.) 19 BY MS. SCHAEFFER: 20 09:45 21 Q. This is a document that was produced to us 22 by the government in this case. And do you see 23 that it says about a third of the way down the 24 page, it says, "MBM Inc. will be transporting the 25 following minors to," among other places, "LSS"? 09:45

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Page 70 1 Α. Yes. 2 Thank you. Do you see that it says that Q. 3 the minors will be picked up at approximately 3:00 a.m.? 4 09:45 5 Α. Yes. Would you agree that transporting children 6 Q. 7 at 3:00 o'clock in the morning is not the best time 8 to transport children because children should be 9 sleeping at 3:00 o'clock in the morning? 10 Α. I agree. 09:46 11 If you turn to Page 2 of this document, do Q. 12 you see see 's name listed about in the middle of the page? 13 Yes, I do. 14 Α. 15 If you scroll down to the bottom, do you 09:46 Ο. see where it says, "Please ensure that the 16 17 juveniles are fit to fly"? 18 Α. Yes. Did you know that s journey to LSS 19 Q. 20 was the first time he had been on an airplane in 09:46 his life? 21 22 MR. HALL: Objection. Form. 23 THE WITNESS: I was not aware specifically 24 but typically, it is the first time for for 25 all of our minors in care. 09:46

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		Page 71
1	BY MS. SCHAEFFER:	
2	Q. Would you agree with me that a five-year-	
3	old child's first flight on an airplane might be a	
4	stressful and scary event?	
5	A. I agree.	09:47
6	Q. Would you agree with me that being picked	
7	up at 3:00 o'clock in the morning and put on an	
8	airplane for the first time ever immediately after	
9	being physically separated from his mother would be	
10	a traumatic event?	09:47
11	MR. HALL: Objection. Form.	
12	THE WITNESS: I agree.	
13	BY MS. SCHAEFFER:	
14	Q. We are going to return to scase	
15	file which is Plaintiff's CM Plaintiff's Exhibit	09:47
16	2. If you could reopen that. Thank you.	
17	And if you could turn again to Page 3	
18	which is the page that we looked at before.	
19	So was admitted on May 11, 2018,	
20	right?	09:48
21	A. Yes.	
22	Q. And it says here that you're identified as	
23	his case manager?	
24	A. Yes.	
25	Q. And his assigned clinician was	09:48

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Page 134 1 Typically, it would be via e-mail. Α. So if I can't identify any e-mail that 2 Q. transmits that information to you, there's no way 3 for me to -- or strike that. 4 12:28 5 If I can't identify an e-mail that transmits information to you, letting you know that 6 7 has been transferred to a different 8 facility, fair to assume that nobody informed you? 9 MR. HALL: Objection. Form. 10 MR. NAZAROV: Joined. 12:28 11 THE WITNESS: It is likely. 12 BY MS. SCHAEFFER: Do you think it would have been helpful if 13 Q. the federal government informed you of when 14 12:29 15 separated parents were transferred to different facilities? 16 17 MR. HALL: Objection. Form. MR. NAZAROV: Joined. 18 19 THE WITNESS: Yes. BY MS. SCHAEFFER: 12:29 20 21 Q. Will you agree with me that the federal government's failure to provide you with 22 23 information about s location and her 24 whereabouts Hindered your ability to facilitate 25 calls between 12:29

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Page 135 1 MR. HALL: Objection. Form. 2 MR. NAZAROV: Joined. THE WITNESS: Yes. 3 BY MS. SCHAEFFER: 4 5 Would you agree with me that speaking with 12:29 Q. his mother benefited ? 6 7 Α. Yes. 8 Would you say that it's important for Q. 9 children and their parents to be able to 10 communicate? 12:30 11 Α. Yes. 12 Q. Especially perhaps when a child is very 13 young? 14 Α. Yes. 15 Ο. Did you have any concerns about how being 12:30 separated for weeks without communication or 16 17 information about a parent's location could harm a young child? 18 19 MR. HALL: Objection. Form. 20 THE WITNESS: Can you repeat the question, 12:30 21 please. BY MS. SCHAEFFER: 22 23 Ο. Yes. Did you have any concerns about how 24 being separated from a parent for weeks without 25 information about the parent's location or 12:30

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Page 136 communication with the parent could harm a young 1 2 child? 3 MR. HALL: Same objection. MR. NAZAROV: Joined. 4 5 THE WITNESS: Yes. 12:31 BY MS. SCHAEFFER: 6 7 Could you please turn to Page 263. Q. (Witness complies.) 8 Α. Q. 9 These are your notes from a May 24, 2018 10 meeting with ; is that right? 12:31 11 Α. Correct. 12 Q. And your notes here reflect that you had not been able to locate ; is that right? 13 Correct. 14 Α. Do you recall how reacted to the 12:31 15 0. news that you didn't know where his mother was or 16 17 how to reach her? He -- he appeared 18 Α. sad that he had not been able to establish contact 19 12:31 20 with his mother again. 21 Q. Your recollection was that was sad when you told him that information? 22 23 I don't see a note in your notes from this 24 meeting that was sad when you conveyed that 25 information to him. But it's still the case that 12:32

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		Page 137
1	was sad, correct?	
2	A. Correct.	
3	Q. So just because something is not in your	
4	notes, just because there's no indication in your	
5	notes that was sad, that doesn't mean that	12:32
6	was not in fact sad, correct?	
7	MR. HALL: Objection. Form.	
8	THE WITNESS: Correct.	
9	BY MS. SCHAEFFER:	
10	Q. Can you please turn to Page 265.	12:32
11	A. (Witness complies.)	
12	Q. These are your notes from a call with	
13	who is 's cousin on May 25th, 2018,	
14	correct.	
15	A. Yes.	12:33
16	Q. And it looks like during this call, you	
17	asked Margain if could let you know if	
18	she was able to contact	
19	A. Yes.	
20	Q. And during this call, reported to	12:33
21	you that was very concerned about n?	
22	A. Yes.	
23	MS. SCHAEFFER: Ana, could you please	
24	introduce the next exhibit.	
25	So this is an exhibit marked CM	12:33

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		Page 138
1	Plaintiff's Exhibit 6.	
2	(Exhibit 6 was marked for identification.)	
3	BY MS. SCHAEFFER:	
4	Q. Do you recognize this as an e-mail that	
5	sent to you and several other people on	12:33
6	May 25th, 2018?	
7	A. Yes.	
8	Q. Who is ??	
9	A. She was my supervisor at the time.	
10	Q. And can you tell me who the other people	12:33
11	on this e-mail are?	
12	THE REPORTER: I'm sorry. I didn't hear	
13	the answer.	
14	THE WITNESS: So the people on the e-mail,	
15	the first person is the second s	12:34
16	Lead case manager and she was also supervisor of	
17	the case management department. Then	
18	were two case managers and was a	
19	case management intern that I was working with at	
20	the time.	12:34
21	BY MS. SCHAEFFER:	
22	Q. And if you could please turn to the second	
23	page. It looks like as of this date, you had	
24	located at the Nevada Southern Detention	
25	Center; is that right?	12:35
_		

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Page 139 1 Α. Correct. 2 Do you recall how you became aware that Q. she had been transferred to the Nevada Southern 3 Detention Center? 4 12:35 5 I do not recall, no. Α. Do you recall when you became aware? Q. 6 7 No, I do not. Α. Did you ever use the ICE locator to try 8 Q. 9 and locate detained parents? 10 Α. In the past, I have, yes. 12:35 Do you think it's possible you may have 11 Q. 12 used it in this situation? It's possible. 13 Α. And the ICE locator is a publicly 14 Q. available website? 12:35 15 Α. Yes. 16 17 Q. Do you recall whether you attempted to use the ICE locator to locate a separated parent during 18 this time frame from April 2018 to July 2018? 19 12:36 20 MR. HALL: Objection. 21 THE WITNESS: Yes, it was common practice. BY MS. SCHAEFFER: 22 23 So were you aware of other case managers Ο. 24 at LSS using the ICE locator to try to locate 25 separated parents? 12:36

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Page 140 1 Can you repeat the question? Α. 2 Yes. You said it was common practice. So Q. 3 from my understanding, during this time period, approximately April to July of 2018, were you aware 4 5 of other case managers at LSS that used the ICE 12:36 locator to try and locate separated parents? 6 7 Α. Yes. Was there ever a time that you recall 8 Ο. 9 where you tried to locate a separated parent using 10 the ICE locator but received zero results? 12:36 11 Α. Yes. 12 Are you aware of this happening to other Q. people as well? 13 14 Α. Yes. 15 So fair to say that the ICE locator was 12:37 Ο. not a particularly reliable way to locate a 16 17 separated parent? MR. HALL: Objection. Form. 18 THE WITNESS: Yes. 19 12:37 20 BY MS. SCHAEFFER: 21 So even though as of this date, you had Q. 22 's full name and her A-number, it could 23 still be difficult to locate her; is that right? 24 Α. Correct. 25 Q. And even as a government contractor --12:37

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E

		Page 147
1	sent back to Guatemala?	
2	A. Correct. Yes.	
3	Q. And she wanted to go with her	
4	because she didn't want to be apart from him?	
5	A. Yes.	12:46
6	Q. And it looks like you say here in your	
7	notes that you told you would continue to	
8	attempt to call ??	
9	A. Correct.	
10	Q. So were you still having difficulty	12:46
11	contacting as of June 8th?	
12	A. I do not recall.	
13	Q. Does your note here suggest that you were	
14	having trouble contacting her as of June 8th?	
15	A. Yes. It does.	12:46
16	Q. Did the difficulty locating and getting	
17	contact information for prevent you from	
18	facilitating conversations between C	
19	as much as you would have liked to?	
20	A. Yes.	12:47
21	Q. Is it fair to say that sometimes you had	
22	issues finding somebody at ICE to help facilitate	
23	calls with ?	
24	A. Yes.	
25	Q. Could you please turn to Page 143.	12:47

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		Page 148
1	A. (Witness complies.)	
2	Q. Do you recognize this document?	
3	A. Yes.	
4	Q. And this is 30-day case review?	
5	A. Correct.	12:47
6	Q. Can you tell me how this document is	
7	prepared? For example, is this is there a	
8	specific evaluation that's done or is this	
9	generated based on previous meetings with	
10	A. The case review, the information listed in	12:48
11	the body of the case review is pulled from the UAC	
12	assessment so a lot of the answers will be the	
13	same. Typically what we update in the case review	
14	are specific boxes, not the entire assessment.	
15	Q. And for the purpose of updating the	12:48
16	assessment, do you have a specific meeting with	
17	to do that or do you add that new information	
18	based on your previous meetings with	
19	A. The information is added based on the	
20	meetings with .	12:48
21	Q. Could you please turn to the last page of	
22	this document which is Page 147.	
23	A. (Witness complies.)	
24	Q. Do you see that it says, "Case manager was	
25	able to contact the minor's biological mother on	12:49

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	Page 149
one occasion"?	
A. Correct.	
Q. And the case manager is you, correct?	
A. Correct.	
Q. So as of the date of this case review	12:49
which you can see underneath the signature is June	
8th, 2018, you had only been able to contact	
once?	
A. Yes.	
Q. Looking at the first section of text under	12:49
"care plan" next to "reunification," can you tell	
me what "reunification" means?	
A. The reunification section is the section	
where we list updates for the minors to in	
reference to their case to be reunified with their	12:50
families. Either they are going to be released	
here or returned back to home country.	
Q. And as of the date of this evaluation,	
June 8, 2018, were you aware of any reunification	
option pursuant to which and C	12:50
be reunified in the United States?	
A. No, I was not.	
MS. SCHAEFFER: Ana, could we please	
introduce the next exhibit which is a document	
Bates-stamped LSS, string of zeros, and then 683.	12:50
	 A. Correct. Q. And the case manager is you, correct? A. Correct. Q. So as of the date of this case review which you can see underneath the signature is June 8th, 2018, you had only been able to contact on energ? A. Yes. Q. Looking at the first section of text under "care plan" next to "reunification," can you tell twist "reunification" means? A. The reunification section is the section where we list updates for the minors to in reference to their case to be reunified with their families. Either they are going to be released to control. Q. And as of the date of this evaluation, you date a section is the section of the section of the under section is the section where we list updates for the minors to in reference to their case to be reunified with their families. Either they are going to be released to the or returned back to home country. Q. And as of the date of this evaluation, you date section is the section of the section

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		Page 158
1	Q. The date on the top. Can you show me what	
2	you're referring to?	
3	A. The date where it says 6-21-2018.	
4	Q. On these notes?	
5	A. Yes.	01:02
6	Q. So your recollection is that you e-mailed	
7	the southern Nevada Detention Center, wrote these	
8	notes, and then they called you back and you	
9	recorded the call that you had; is that right?	
10	A. Yes.	01:02
11	Q. Okay. And it looks like reading through	
12	your notes here that you were able to obtain some	
13	additional contact information for during	
14	this call; is that correct?	
15	A. I'm sorry. I'm reading the note.	01:03
16	Q. Yeah. Take your time. I am I'm	
17	looking more towards the bottom of your notes here.	
18	A. Okay.	
19	Can you repeat the question, please?	
20	Q. Yes. When I read your notes, it looks to	01:03
21	me like you obtained some additional contact	
22	information to be able to contact second ; is	
23	that right?	
24	A. Yes.	
25	Q. So even though you already had some	01:03

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Page 159 contact information from her, you obtained 1 additional contact information; is that correct? 2 Yes. I obtained contact information for 3 Α. 4 her Assigned case manager. 01:04 5 Is that because you had had so much Q. trouble getting in contact with her that you wanted 6 7 to have as much contact information for her as 8 possible? 9 MR. HALL: Objection. Form. 10 THE WITNESS: Yes. 01:04 11 BY MS. SCHAEFFER: 12 Q. And your notes here suggest that you 13 talked to about voluntary departure and joint repatriation; is that right? 14 01:04 15 A. Yes. Q. And it looks like didn't want 16 17 to be going back to Guatemala by himself; is that correct? 18 19 A. Yes. Correct. 20 So fair to say she changed -- no. --01:04 Q. strike that. 21 22 Fair to say O wanted to go to 23 Guatemala with -- no. Strike -- never mind. 24 Strike that. 25 Your notes reflect that 01:04 was

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		Page 168
1	Q. And if I wanted to know whether	
2	participated on this call with provide a constant , because	
3	your notes don't suggest that he does, I would look	
4	on the call log; is that correct?	
5	A. Correct.	01:17
6	Q. Could you please turn to Page 291.	
7	A. (Witness complies.)	
8	Q. Do you recognize these as your notes from	
9	a meeting with B on July 12, 2018?	
10	A. Yes.	01:17
11	Q. And these notes reflect that was	
12	able to talk to his mom, correct?	
13	A. Correct.	
14	Q. Do you recall approximately how long this	
15	call lasted?	01:17
16	A. I do not.	
17	Q. And you testified earlier, correct, that	
18	calls typically lasted three minutes?	
19	A. Yes. But I'm not aware how long this call	
20	lasted.	01:18
21	THE WITNESS: I'm sorry. Is there any way	
22	I can take a quick break?	
23	MS. SCHAEFFER: Of course, yes.	
24	You want ten minutes?	
25	THE WITNESS: Just five minutes is okay.	01:18

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Page 170 1 says on Page 299, it seems like two pages were 2 scanned together and I'm not sure if maybe that's where it was documented. 3 ' call log is on Page 299, 301 4 Q. So 01:32 5 and 303. Okay, okay. So based on the documents that we have 6 7 looked at today, it looks like was able to 8 speak to his mother a handful of times while they 9 were separated, correct? 10 Α. Correct. 01:32 11 Q. So when we reviewed your case notes from 12 May 17, that was a call that lasted approximately 13 three minutes; is that right? Correct. 14 Α. And we reviewed your notes from a call on 01:32 15 Ο. July 12, 2018. And we are not sure exactly how 16 17 long that call may have lasted because there's not a record of the length of time? 18 19 A. Correct. 20 And you said calls with the detention 01:32 Ο. 21 centers were frequently about three minutes long; is that right? 22 23 Α. Correct, yes. 24 And looking at this call log on Page 303, Q. 25 do you see at the very bottom of the page, it looks 01:33

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Page 171 1 like there's a record of a call with on May 31st, 2018? 2 3 Α. Correct. That lasted approximately eight minutes? 4 Q. 01:33 5 Α. Yes. 6 Q. Do you happen to know whether was 7 able to speak to his mother during this call? 8 Yes. If it was documented on the call log Α. 9 that those eight minutes were provided to the 10 minor. 01:33 11 Q. And I know that we -- sorry. Strike that. 12 We reviewed an e-mail earlier that -where people at LSS were working to facilitate a 13 14 call between and on June 28, 2018. I didn't see a record of that call on this log 01:34 15 either. 16 17 Α. I'm not sure why. I was not working that week so I'm not sure what happened to that log. 18 Is it possible it didn't happen? 19 Q. 20 It's possible it didn't happen; that it 01:34 Α. 21 was documents on another page or just not documented. 22 23 Ο. So based on the records that we have 24 available, we have determined that **the set of the set** 25 able to speak to his mother for -- he was able to 01:34

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Page 172 1 speak to his mother three times while he was at 2 LSS, correct? 3 Α. Correct. On May 17th for approximately three 4 Q. 5 minutes; on May 31st for approximately eight 01:34 minutes; and then again on July 12 for an 6 7 undetermined period of time; is that right? 8 Correct. Α. 9 Q. And assuming that could only speak 10 to his mother for three minutes consistent with 01:35 11 some other -- well, strike that. 12 Assuming he was able to speak to her for 13 eight minutes, consistent with the longest record 14 of a call that we have with Control , he was able to speak to his mother for a total of 19 minutes 01:35 15 total; is that correct? 16 17 Α. Correct. 18 Ο. Do you agree with me that that's not a lot of time? 19 I agree. 01:35 20 Α. 21 Q. During the period between approximately May and July of 2018, did you have other children 22 23 who had been separated from their parents that were 24 not able to speak to their parents for very much 25 time? 01:36

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Exhibit 19

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Page 1 IN THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF ARIZONA NO. 2:19-cv-05217-SRB - - x C.M., on her own behalf and on behalf : of her minor child, B.M.; L.G., on her: own behalf and on behalf of her minor : child, B.G.; M.R. on her own behalf and on behalf of her minor child, J.R.: O.A., on her own behalf and on behalf : of her minor child, L.A.; and V.C. on : her own behalf and on behalf of her : minor child, G.A., Plaintiff, v. UNITED STATES OF AMERICA, : Defendant. - x Videotaped Zoom Deposition of L Monday, July 11, 2022 1:02 p.m. Reported by: Cassandra E. Ellis, CSR-HI #475, CSR-CA #14448, CCR-WA #3484, RPR #823848, CRR, Realtime Systems Administrator Job No.: 5080

		Page	2
1	Videotaped Zoom Deposition of		
2	, held pursuant to		
3	agreement, before Cassandra E. Ellis,		
4	Certified Shorthand Reporter - Hawaii		
5	#475, Certified Court Reporter -		
6	Washington #3484, Certified Shorthand		
7	Reporter - California - #14448,		
8	Registered Professional Reporter		
9	#823848, Certified Realtime Reporter,		
10	Realtime Systems Administrator.		
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were, and then so you could contact the 1 2 detention center. 3 So there were, like, ways of establishing that connection from the 4 5 beginning. Now, it was -- it was --6 sometimes it's difficult to get in 7 contact when we would call, but we would 8 know where they were and -- yeah. 9 Is the ID, is that the A number Q 10 that the parent --11 Correct. Correct. Α Yes. 12 And you said sometimes you 0 13 weren't able to get in contact with the 14 parent at the detention center, even if 15 you had the A number? 16 MR. NAZAROV: Objection. 17 Α Yes. Correct. 18 How often were you not able to Q 19 establish contact? 20 I don't remember exactly how Α 21 often, but I -- I know that it happened a 22 couple of times, where I called and there 23 was just -- there was no way for them to 24 connect me to the parent, yeah. 25 Do you know why they weren't Q

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Page 91 able to connect you with the parent? 1 2 MR. NAZAROV: Objection, form, 3 foundation. Yeah, I'm not sure why. 4 Α 5 They didn't give you any Ο 6 explanation when you called? 7 Α No. Yeah, they didn't give me 8 explanation. 9 0 And were you -- was -- were you 10 using the ICE detainee locator to find 11 the parent? 12 Α Correct. Yes. I believe that's what it was, yeah. 13 14 And was it an important part of 0 15 your job ensuring communication between the child and the parent? 16 17 MR. SILVER: Objection. 18 Α Yeah, I -- I believe it was --19 it was an important part of our job, even 20 before the separation. We always made 21 sure that we had sort of communication 22 with the -- the minor's family or the 23 sponsor so that they, you know, knew that 24 they -- they still were able to 25 communicate with them and that that was

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1 you're muted. 2 Sorry. That was THE WITNESS: 3 a fire truck. MS. KINDLON: It happens. 4 I --5 I completely understand. I have 6 lived near a hospital. It gets loud 7 on the Zoom calls. BY MS. KINDLON: 8 9 Q So I just wanted to skip ahead 10 to the end of the second paragraph, the 11 sentence that starts -- you have: "CI 12 educated minor about the process of 13 finding his mother in detention and being 14 able to give him communication with her 15 and ensured minor that C.M. was trying to 16 locate her to give him the chance to speak with her"; do you see that section? 17 18 Α Yes. 19 Do you know who -- what "CI" is Ο 20 there? 21 Α I don't. 22 Ο But M -- what is "C.M."? 23 "C.M." is case manager. Α 24 So that would have been you, in Q 25 this instance?

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		Page 153
1	A Correct.	
2	Q And it says you were trying to	
3	locate s mother; is that correct?	
4	A Correct.	
5	Q So just for do you think	
6	is there any chance that "CI" is actually	
7	"CL"? Could that be the clinician, do	
8	you know?	
9	A I'm not sure.	
10	Q So do you remember your efforts	
11	to try to locate smother?	
12	A I don't remember, specifically,	
13	no.	
14	Q But do you remember anything	
15	generally about it?	
16	A No. I only only remember	
17	generally what the experience was like	
18	trying to get in contact with a parent	
19	that was in the detention center, but I	
20	don't remember any specific case or	
21	anything like that.	
22	Q What was the general experience	
23	like?	
24	A It was often difficult. Like,	
25	we would call and, like, not be able to	

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1 get connected to the parent, or we would 2 have to leave a message or something to 3 get -- be able to get a call back. But that often didn't work, because we had to 4 schedule those times, because we had to 5 be with the minor at the time that the 6 7 call was made. 8 And depending on where the 9 minor was, like, where the minor's 10 classroom was, it could have been, like, 11 you know, across town. 12 So it -- it -- it made it very 13 difficult to -- to schedule those conversations when -- yeah, when it -- it 14 15 felt like they weren't, like, helping us make that connection. 16 17 And who is the "they" there? 0 18 I don't -- I'm not sure who I Α 19 spoke to when I called the detention 20 center, but I guess just ICE or whoever 21 runs those places, yeah. 22 Ο In general the detention 23 centers were not -- their process was not 24 making it easy for to you establish 25 contact?

Page 155 1 Α Right. 2 MR. NAZAROV: Objection, form, 3 foundation. BY MS. KINDLON: 4 5 And so it sounds like the Ο 6 issue -- the issues were both not being 7 able to reach the mother if they were 8 there, not being able to schedule a time 9 to -- for them to call back, the child 10 might not have been there, you might not 11 have been able to reach the parent; is --12 is that generally correct? 13 MR. SILVER: Objection. 14 Α Yes. 15 Any -- anything else that was a Q 16 problem? 17 Ά I think there were occasions when parents were transferred, but this 18 19 is -- I mean, I don't remember that clearly, but that also, I think, made it 20 21 difficult to get in contact with them, if 22 they were transferred and we weren't, 23 like, aware or the records weren't, like, 24 updated, yeah. 25 So in your experience as case Q

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Page 156 manager, sometimes the records you had 1 2 were -- were not actually where the 3 individual was? MR. NAZAROV: Objection. 4 5 MR. SILVER: Join. 6 THE WITNESS: Sorry. Can you 7 repeat that? 8 MS. KINDLON: Yeah. 9 BY MS. KINDLON: 10 Just in your experience, you 0 11 said sometimes the person had been 12 transferred and the paperwork wasn't up 13 to date, so are you saying that, in your 14 experience as case manager, sometimes the 15 documents you had about where a parent was located was not actually where they 16 17 were? 18 Objection, form. MR. SILVER: Join. 19 MR. NAZAROV: 20 I think I was referring to Α 21 the -- I was -- can you hear me? 22 Ο Yeah. Yeah. 23 Okay. I was referring to Α 24 the -- the system that I used to -- to 25 find the parent. So that was what I

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1	would be referring to, because I know		
2	that that would be updated more		
3	frequently, so yeah.		
4	Q Is it the ICE detainee locator?		
5	A Correct, you got it.		
6	Q So you're saying sometimes they		
7	were transferred and you wouldn't have		
8	that information yet?		
9	MR. NAZAROV: Objection, form.		
10	THE REPORTER: I didn't hear		
11	the witness.		
12	BY MS. KINDLON:		
13	Q Yes. Could you just repeat		
14	your answer. It didn't come through.		
15	A Yes.		
16	Q And so here it says you were		
17	still trying to locate s mother; is		
18	that correct?		
19	A Where?		
20	Q Sorry. In the sentence you		
21	were just looking at, the end of the		
22	second paragraph: "C.M. was trying to		
23	locate her to give him the chance to		
24	speak with her."		
25	A And the question was?		

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		Page 158
1	Q Does that were you having	
2	trouble based on this document and	
3	your recollection, were you having	
4	trouble locating smother?	
5	MR. SILVER: Objection.	
6	MR. NAZAROV: Join.	
7	A Yeah, like I said earlier, I	
8	don't recall any of the specifics for	
9	each, like, case that I had, so I don't	
10	remember.	
11	Q So what does: "C.M. was trying	
12	to locate her to give her to give him	
13	the chance to speak with her," mean to	
14	you, then?	
15	MR. SILVER: Objection.	
16	A It means that the clinician	
17	communicated to the minor that I was	
18	trying to locate his mother to give him	
19	the chance to speak to her.	
20	Q Does that mean had not	
21	spoken to his mother yet?	
22	MR. SILVER: Objection.	
23	A I don't remember, exactly, and	
24	I think yeah, it might also be just	
25	the language that was used, because it	

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Page 159 could have been that we already located 1 2 where she was but just haven't gotten in contact with her, so I -- I don't 3 remember exactly. 4 5 Q But it suggests that and 6 his mother had been having difficulty 7 connecting? 8 MR. SILVER: Objection. 9 Α Yes. 10 And in your opinion, as case Ο 11 manager, connection to your --12 communication with your parent would be 13 important? 14 MR. SILVER: Objection. 15 THE WITNESS: Sorry. Repeat 16 that. 17 BY MS. KINDLON: 18 Just in your experience, as Q 19 case manager -- and we -- we still have 20 gone through this, but communication 21 between the separated childs and their 22 parent is important? 23 MR. SILVER: Objection. I mentioned earlier that 24 А Yeah. 25 it was important for all of the minors

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Page 160 that came into the Cayuga Centers 1 2 program, yeah. 3 Q And, here, this is -- this report is dated 5/31, and as we saw, 4 5 was admitted 5/11. So about 20 days into 6 his time at Cayuga there were -- there 7 were still difficulties establishing communication with his mother? 8 9 MR. SILVER: Objection. 10 Yeah, I don't remember exactly. Α 11 So this document suggests there 0 12 might -- there may have been some difficulties? 13 14 MR. SILVER: Objection. 15 Α Yes. 16 So if we skip ahead to the Q 17 report from 6/11, this is on page 7 of 18 the document. 19 Α Okay. 20 The -- the first sentence says 0 21 that: "CL met with minor and his older 22 sibling for the initial session to administer risk assessments and the UAC 23 24 assessment"; do you see that? 25 Α I do, yes.

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Exhibit 83

DHS FAMILY SEPARATION WORKGROUP

Summary:

The Compliance Branch (Compliance) will be issuing recommendations on behalf of CRCL resulting from our investigation into the separation of family members in DHS custody. In order to ensure implementation of the recommendations, which involve multiple DHS Components and inter-agency partners, CRCL believes the establishment of a working group, preferably run or co-chaired by DHS Policy, would be an effective tool to meet this goal.

Context:

The forthcoming Recommendations Memo (Rec Memo) will discuss the investigative findings resulting from our 2017 investigation into 27 of the 950 family separation matters that Compliance has received since 2016. CRCL will also issue recommendations to address the investigation's findings, highlighting that voids exist in current DHS policy and procedure regarding the separation of families. As stated above, these recommendations will form the basis for an interagency DHS/HHS ORR workgroup.

Findings and Recommendations:

Compliance expects the following general areas to be addressed in the findings and recommendations.

Findings

- Inadequate Protocols: There is a lack of clear family separation protocols to guide CBP and ICE agents and officers in their decisions whether or not to separate family members. There is also no uniform and clear understanding within CBP and ICE regarding their legal obligations under the *Flores* Settlement Agreement and the TVPRA
- Inconsistency: CRCL found significant inconsistency in agents'/officers' separation decisions and custody placements, complicated by an array of miscellaneous and outdated internal instructions as well as with record-keeping.
- Lack of Collaboration: CBP, ICE and ORR, are not communicating, which can lead to family fragmentation, with members of the same family placed in facilities in different legal jurisdictions across the U.S. Additionally, there is a lack of coordinated, timely, and effective inter-agency coordination and information-sharing protocols.
- Resources: There are an inadequate number of two-parent family detention centers for families in ICE detention.

Recommendations:

CRCL's Rec Memo will recommend that a workgroup be formed in order to address the problems noted in the findings. Given DHS HQ Policy's history in leading and oversight of the Department's treatment of unaccompanied children (previous DHS HQ Workgroup on Unaccompanied Minors), this coordinated effort to address family separation would be most effective if directed by DHS HQ leadership.

• DHS/ORR Workgroup

Form a DHS/ORR Family Separation Protocols Workgroup to address and implement the actions detailed above. Workgroup Members should be operational personnel within ICE and CBP (adding ORR when required) who have both the authority and expertise to create family separation protocols that may require policy and process changes and possibly additional resources. Key personnel should include: ICE, CBP OFO and OBP HQ Juvenile Coordinators; ICE JFRMU HQ and onsite SMEs and CORs (from the Karnes, Dilley, and Berks Family Residential Centers); ICE ERO Supervisory Family Case Managers; CBP and ICE IT Systems Managers; the HQ Director for the HHS Office of Refugee Resettlement, and additional personnel the agencies deem appropriate.

- Specifically, the workgroup will address implementation of the following actions:
 - a. Add a Family Separation Section to the I-213/EARM systems
 - b. Formalize decision-making criteria and separation procedures (CBP/ICE)
 - c. Formalize separation review (I-213 and EARM) requirements (CBP/ICE)
 - d. Require timely I-213/EARM Review/Updates (CBP/ICE)
 - e. Develop coordinated jurisdiction/custody placement procedures (CBP/ICE/ORR)
 - f. Address options for needed duo-parent Family Residential Centers (ICE)
 - g. Develop "Family-Member Locator System" (CBP/ICE/ORR)

h. Establish streamlined process to ease communication among separated family members (CBP/ICE/ORR)

i. Develop decision-making criteria/policies/procedures for family reunification (for needs e.g. immigration court, approved asylum, family release, family removal) (CBP/ICE/ORR)

j. Publish and train on developed protocols, policies, and procedures to ensure consistency, efficiency and effectiveness

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Exhibit 90

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Office for Civil Rights and Civil Liberties U.S. Department of Homeland Security Washington, DC 20528



June 12, 2018

MEMORANDUM FOR:

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



FROM:

SUBJECT:

Complaint Nos. 15-08-ICE-0495, 16-05-CBP-0176, 16-06-CBP-0275, 16-07-CBP-0366, 16-07-CBP-0372, 16-08-CBP-0368, 16-08-CBP-0367, 16-08-CBP-0404, 16-08-CBP-0405, 16-08-CBP-0596, 16-09-CBP-0579, 16-09-CBP-0580, 16-09-CBP-0597, 16-09-CBP-0632, 16-10-CBP-0443, 16-10-CBP-0630, 16-10-CBP-0631, 16-10-CBP-0578, 16-10-CBP-0464, 16-11-CBP-0496, 16-11-CBP-0577, 16-11-CBP-0581, 17-01-CBP-0018, 17-01-CBP-0044, 17-01-CBP-0071, and 17-02-CBP-0019

Purpose

This memorandum provides analysis and recommendations in response to the above-referenced complaints concerning the issue of family separation, which were submitted to the DHS Office for Civil Rights and Civil Liberties (CRCL) by immigration advocacy organizations, private attorneys and legal service representatives, individual complainants, and the U.S Department of Health and Human Services Office of Refugee Resettlement (HHS/ORR) Headquarters staff and shelter facility management. The 26 complaints listed above were chosen for investigation by CRCL because they

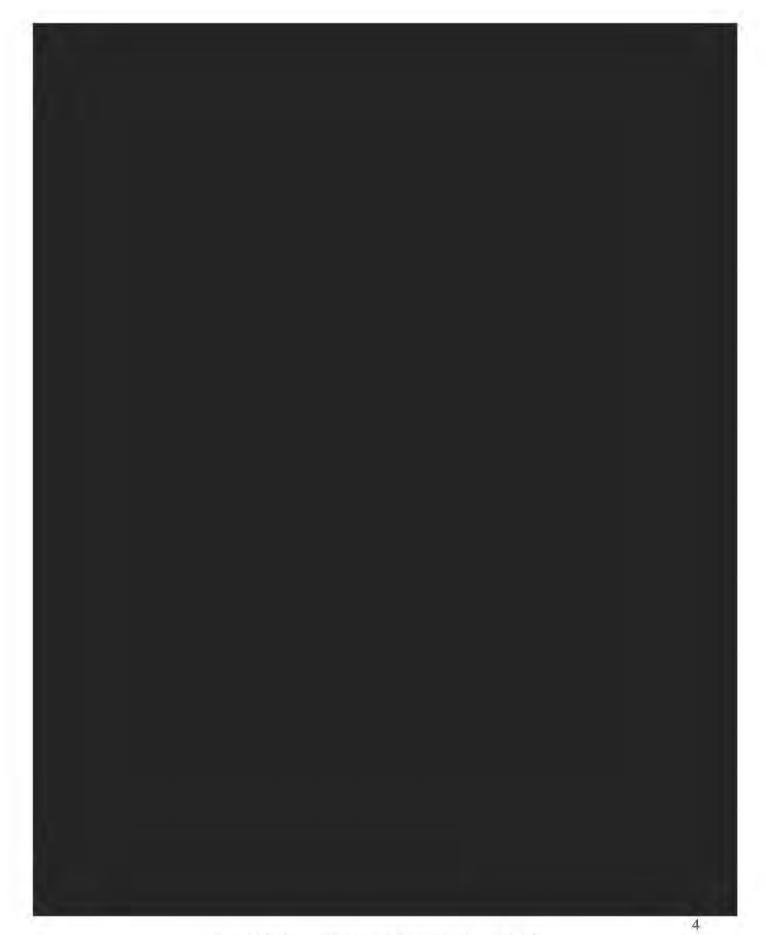
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system, which contains the information from OFO's and USBP's I-213 encounter records in addition to the detention records created by ICE.⁷

As preliminary work, while awaiting the requested information, CRCL reviewed the available EARM records for information on the families discussed in the complaints, as well as to gauge the level of consistency, completeness, and accuracy of the information entered in those records. Specifically, CRCL looked for proper recording of the family members' names and A-numbers, articulation of the reasons for separating the families, details regarding determinations of a child to be a UAC, and additional information that would help connect the family members for communication needs, court needs, or for removal coordination. We also reviewed the CBP Form I-213 and other documented narratives for evidence that family separation decisions were reviewed and approved by supervisory or management staff and recorded, as required.⁸ Additionally, we assessed the thoroughness and consistency of the EARM Comments records, which contain information input by ICE personnel, who record information from the point of each family member's initial transfer from CBP to ICE custody and, if released or removed, to their exit point from detention.

Component Responses to the Information Request

By June 2017, CBP and ICE had responded to CRCL's "Document and Information Request." Together, the DHS components provided a total of 31 documents that each represented as their governing policies and procedures. (See Appendix A for the 17 policies and procedures sent by OFO. See Appendix B for the two policies sent by USBP. See Appendix C for the 12 policies and procedures sent by ICE.)

CBP OFO

OFO Headquarters, field offices and ports of entry referenced 17 separate documents in the form of policies, directives, memorandums, musters and emails, as well as the 1997 Flores Settlement Agreement (Flores),⁹ and the 2015 CBP National Standards on Transport, Escort, Detention, and Search (TEDS). Fourteen of the documents referenced are dated between 2008 and 2017, while two lack dates.

USBP

⁷ When ICE personnel are assigned cases, CRCL was informed that those personnel are responsible for reviewing the EARM Encounter records to, among other things, ensure appropriateness of the information entered, and for discrepancies. However, in ICE's response to CRCL's "Document and Information Request," we were informed that ICE personnel are *not* required to perform that review.

⁸ See, CBP responsive documents in Appendix A, #16, #17, and Appendix B, #2 requiring that family separations must be approved by the on-duty supervisory personnel or Watch Commander/Port Director at the time the decision is made to separate family members. CBPs TEDS Standards require that separations "must be documented in the appropriate electronic system(s) of record" *CBP National Standards on Transport, Escort, Detention, and Search* (TEDS), released by CBP in October, 2015. *See* TEDS standards 4.2, 4.3 and 5.6, "Family Units."

⁹ *Flores* stipulates appropriate holding conditions for children and requires that release occurs within three days, if the minor is apprehended in an INS district in which a licensed program is located and has space available; and otherwise within five days pursuant to Paragraph 19. Many of the *Flores* Agreement's terms have been codified at 8 CFR §§236.3, 1236.3.

USBP Headquarters provided a general email response to CRCL stating, "It is the USBP assertion that there is no regulation that prohibits the separation of children from parents. CBP Policies allow for the separation. Separation decisions are made on a case-by-case basis at the discretion of the processing agent and supervisor, based on the totality of the facts and circumstances surrounding the specific instance." USBP referenced two main policies as governing its family separation decisions and actions. Aside from TEDS, USBP commonly referenced the 2008 Hold Rooms and Short Term Custody policy as governing family separation decisions and procedures.

ICE

ICE provided several targeted responses, and 12 separate documents in the form of policies, directives, memorandums, email broadcasts, and several undated documents that lacked information or did not appear relevant to ICE's family separation decisions and actions. The main policy referenced was titled *"11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities"* (Parental Interests Directive), which was released in 2013 and is reportedly under revision as of the date of this report.

CRCL Analysis and Findings

Specific Analysis of the Policies and Guidance Provided by ICE and CBP

CBP OFO

The guidance available to officers making and implementing family separation decisions is not readily available in a single or sufficiently detailed document. There are several TEDS standards that reference family separation and family unity. However, none contain detailed guidance for officers that are faced with making family separation decisions, nor do any provide specific procedures to follow when the decision is made and the family members are separated, whether due to a CBP decision or operation of law. Moreover, CRCL is concerned that TEDS has not been thoroughly implemented through OFO policy revisions, or properly trained on, despite its being cited as OFO's governing policy. Further, there is no single OFO manual or policy that combines the pieces of information found among the 17 separate pieces of information that officers can easily access for guidance when considering whether or not to separate a family. There is also no single family separation policy, procedure or reference manual that combines the pieces of relevant information found in the 17 separate documents that CRCL received from OFO, which promotes process accuracy and consistency.

USBP

USBP cited the 2008 Hold Rooms and Short Term Custody policy most often as the predominant policy governing agents' family separation decisions and actions; however this policy was developed, according to its written "purpose," to establish "national policy for the short-term custody of persons arrested or detained by (USBP) agents and detained in hold rooms at (USBP) stations, checkpoints, processing facilities, and other facilities that are under the control of (CBP)." The purpose or intent of this policy is not to provide agents with guidance on family separation. As guidance on hold room assignments, it does describe "family groups" as grandparent(s) with grandchildren; mothers and/or fathers with juvenile(s) children; adult siblings with juvenile(s) siblings, legal guardian(s) with juvenile(s), and aunt and/or uncle with juvenile(s) nephews/nieces.

USBP also referenced TEDS as the governing policy for seven of the complaints. The referenced excerpt states:

Generally family units with juveniles should not be separated. When it is necessary to separate juveniles from the parent(s) and/or legal guardian(s), officers/agents must follow their operational office's policies and procedures and appropriate legal requirements. In circumstances where family units must be separated due to different immigration dispositions, such separation much (sic) be documented in the appropriate electronic system(s) of record.¹⁰

There is no unifying single family separation policy, procedure or reference manual that is easily accessible to agents and contains all of the necessary guidance from the point when a family unit is encountered, to the family separation decision-making process, to the process for requesting ICE family detention space or ORR shelter space. Although several additional TEDS standards reference family separation and family unity, none contain the detailed guidance needed when agents are faced with making family separation decisions and are performing the relevant procedures once that decision is made. Moreover, USBP's internal policies and procedures have not been revised to include the details agents need to execute family separations that demonstrate consistency in practice.

ICE

As policy, the Parental Interests Directive is both comprehensive and detailed regarding family separation and family unity. The Directive asserts that family separation decisions are at the discretion of the applicable ICE Field Office. Where the Field Office determines that separation is required and the parents enter ICE custody, the Directive states, "the child becomes a UAC and is referred to HHS-ORR." With that said, in addressing family separation generally, the Directive defines "parental rights" as "fundamental." This seems incongruous with allegations that ICE has participated in the unnecessary separation of families. The Directive defines "parental rights" as:

The fundamental rights of parents to make decisions concerning the care, custody, and control of their minor children without regard to the child's citizenship, as provided for and limited by applicable law.

The Directive includes in its definition of "parental rights," the rights of legal guardians of minor children "to make decisions concerning those children as provided for and limited by applicable law."

The Directive also mandates a point of contact in each Field Office to oversee parental-interests matters; detention placement determinations; facilitating the parents' court participation; allowing parent-child visitation; assisting parents, legal guardians or primary caretakers facing removal to plan for their child's needs; and it stresses the importance of recording relevant information. An additional piece of relevant guidance that ICE provided is a broadcast message to ICE personnel at ICE FRCs that was issued and reissued in 2014 and 2016, titled "Family Separations at Residential Facilities," which acknowledges the importance of the Parental Interest Directive.

¹⁰ TEDS, standard 4.4, "Family Units."

All three DHS components reported to CRCL that no specific training targeted at family separation is conducted.

Over-Arching Concerns with Referenced Policies and Procedures

CRCL finds that, while each component has pieces of policy and procedure that touch on family separation in some way, most address the topic only in part, and most do not directly or clearly provide comprehensive and unified, or easily accessible guidance on enforcement responsibilities that are connected to the separation of families. Some of the documents submitted to CRCL do not even contain the term "family separation" or any similar term. Nor do they address the topic of processing family members as a family unit, or as separate individuals within a family unit. It is apparent that those policies and procedures were not developed to provide the type of detailed guidance or instruction that was needed when the reported separations occurred, nor are they adequate for the current environment where families are illegally entering the U.S. in record numbers. Moreover, many of the policies and procedures submitted to CRCL require updating and consolidation – in a collaborative effort – involving all three DHS elements (USBP, OFO, and ICE), because the execution of enforcement obligations that require the separation and custody of family members is interconnected between CBP, ICE, and in many circumstances, HHS.

Record-Keeping and Communication Issues

Through our review of CBP's completion of the I-213s and other documents associated with the complaints, CRCL found that the information entered by officers and agents was inconsistent in detail and amount, incomplete in many instances, and sometimes obviously incorrect. In several instances, the inconsistencies were demonstrated through the manner in which the need for separation was articulated. In most instances the I-213s lacked any articulation of the reasoning behind the separation. Very few I-213s articulated the separation need clearly and with sufficient detail. The lack of thorough information entered in the I-213 narratives by officers and agents who made the separation decisions is notable because the I-213 automatically populates in USBP's e3DM and OFO's SIGMA, as well as in ICE's EARM systems, where it becomes the official record. These failures to appropriately record complete information is in contravention to TEDS, which states:

In circumstances where family units must be separated due to different immigration dispositions, such separation much be documented in the appropriate electronic system(s) of record.¹¹

For example, as part of its response to CRCL's request for information, USBP sent an email to CRCL explaining its reasons for separating families discussed in 10 of the complaints. However, rarely were those reasons stated in those families' I-213 or other relevant records. Again, this information should have been entered in e3DM as the official record, rather than reported in an email directed only at CRCL.

An OFO document titled "Inadmissible Aliens with Medical Conditions and Family Units" also requires the family's encounter information and each family member's personal identity information to be entered in the I-213. As previously discussed, TEDS also explicitly requires that CBP officers

¹¹ TEDS 4.3 "General Detention Procedures," and 5.6 "Detention."

and agents record all custodial actions, and notifications in their electronic record systems, stating that such information "must be accurately recorded in the electronic systems of record as soon as practicable."¹² However, even given these directions, many of the I-213s were void of the personal identity information that is required for separated family members. This was particularly notable when the family unit included both the mother and father. As would be expected, and as discussed in the first paragraph of this section, EARM's Encounter records would also be missing this information.¹³

Finally, the I-213s are missing other important information such as family members' complete names and A-numbers, which is the primary identification source used by ICE and CBP, and can be critical information needed by HHS when attempting to match children with adult family members or the immigration courts in coordinating cases. It was also common for I-213 narratives to contain misspelled names and incorrect pronouns, or a mixture of male and female pronouns for the same individual.¹⁴ In one complaint, two minor-age brothers reported during processing that they were apprehended together, but were separated. The associated I-213 records did not mention a sibling, and therefore the brothers were separated and sent to two different ORR facilities.¹⁵ In three complaints involving USBP, where the family unit included a mother and father, USBP reported via email in response to CRCL's request for information, that they were forced to separate the father from the family because the ICE Family Residential Center (FRC) could not take the father. However, the I-213s for those cases were devoid of that essential information. USBP also reported that, due to Flores Settlement Agreement time restrictions on holding minors, at times they had no choice other than to separate the children and place them in ORR custody, or place the mother and children in FRCs that could not accommodate the fathers. Again, although those might be acceptable reasons for separating the family, the reasons were not recorded in the I-213.

Without good record-keeping at the apprehension and processing stage, ICE cannot follow through with its follow-on responsibilities at the transportation or custody stages. However, even if critical information recording in the I-213 is improved, it is not clear that ICE personnel assigned to handle cases in which family separation was initiated by CBP are required to review the associated I-213s in order to ensure the placement request appropriately conforms to ICE's operational requirements. In response to CRCL's request for information regarding whether ICE is required to review CBP's family separation decisions for accuracy or mistakes (e.g. separating family members when they could have been detained together in a FRC). ICE stated, "ICE ERO does not review family separation decisions by CBP." However, a 2010 memo titled, "Sharing Information with the Department of Health and Human Services, Office of Refugee Resettlement," which ICE provided to CRCL in response to our Request for Information, requires that procedures be in place to review the apprehending agency's apprehension information in the I-213 "for accuracy and completeness."

¹² TEDS 4.5, Electronic System(s) of Record, p. 15.

¹³ For example, *see* CRCL Complaint Nos. 16-08-CBP-0404, 16-08-CBP-0405, 16-10-CBP-0443, 16-10-DHS-0464, 16-08-CBP-0404, 16-08-CBP-0596, 16-09-CBP-0597, 16-07-CBP-0366, 16-09-CBP-0632, 16-10-CBP-0631, 17-01-CBP-0071, 16-09-CBP-0580, 16-11-CBP-0581.

¹⁴ For example, *see* CRCL Complaint Nos. 16-08-DHS-0405, 16-09-CBP-0632, 16-1 0-CBP-0443, 16-10-DHS-0464, 16-08-CBP-0596, 16-09-CBP-0597, 16-09-CBP-0580, 16-11-CBP-0581.

¹⁵ Complaint No. 16-11-CBP-0577.

It is critically important that ICE personnel review this information. If the ICE officer sees that the information denotes an unnecessary family separation (e.g., the father of a family unit detained at a FRC who may have been able to be detained with his family at Berks instead of separately at an adult male facility in Arizona, or a child placed with ORR who could have been detained with his or her parent and other siblings in a FRC), that ICE officer should act to correct the problem. Similarly, if the ICE officer sees that a child should not have been separated from his or her only parent, who is detained in an adult facility, that officer should act to reinstate the UAC as accompanied and reunify him or her with the parent in a FRC (e.g. a nursing mother and infant).¹⁶ CRCL found in many instances that this type of review had not occurred, leading to confusion, missed opportunity, and in the worst cases, continued and unnecessarily prolonged separations.

Credible Fear Implications

Lack of record-keeping also has implications for credible fear processing. If ICE becomes aware that the family presented as a group requesting asylum, without proper records, ICE cannot ensure those family members have the opportunity to communicate. Such communication is critical to the family members' ability to exercise their due process right to share evidence, coordinate legal counsel, and present their case as a family, rather than as single individuals, as appropriate to their particular case. CRCL saw instances of different parts of a family being separated and receiving asylum—for example, a father being removed while his wife and children received asylum—despite the original claim being made together, based on a common set of facts, which should have resulted in the different family members being eligible to obtain derivative benefits based on the asylum granted to the primary applicant.¹⁷ However, if as ICE stated, "ICE ERO does not review family separation decisions by CBP," a proper review of the documentation will not occur and these inconsistent actions will be repeated.

Conclusion

CRCL concludes that CBP and ICE lack updated, clear, cohesive, comprehensive, and readily accessible policy and procedure covering family separation. Based on the concerns CRCL found through its investigation, we note that such policies and procedures are critical, and should extend from the point of the decision to separate families through the resulting separation and custody processes. Because the responsibilities of CBP and ICE in this area are interconnected and flow from each other's responsibilities, the two agencies should work collaboratively to develop and formalize a "one DHS" cohesive approach to family separation that describes each agency's responsibilities, policies and procedures, and includes ORR as appropriate.¹⁸ CRCL suggests that the most effective

¹⁶ See CRCL Complaint No. 16-11-CBP-0496. In a collaborative effort between CRCL, ICE JFRMU and ORR, a nursing mother and infant were reunited on August 9, 2016 when it was discovered that CBPOs at the Matamoros POE inappropriately separated them; a decision that was approved by the supervising CBPO (SCBPO) and the POE Chief. ICE was unaware of the inappropriate separation when CRCL brought it to their attention. *Also see*, CRCL Complaint No. 17-01-CBP-0444 which CRCL received from ORR shelter staff, reporting that a nine-month-old nursing infant in their custody was separated by OFO officers from his mother due to suspicions that the mother was not the bona fide parent. ORR eventually arranged for a DNA test and verified the mother-child relationship. After 33 days of separation, mother and child were reunited.

¹⁷ For example, see CRCL Complaint Nos: 16-06-CBP-0275, 16-08-CBP-0405, 16-08-CBP-0368.

¹⁸ ORR must be included at some point in the manual's development as some of their responsibilities also flow from or are dependent on CBP and ICE's actions and interactions.

way in which to address this critical issue is through the collaborative development of a joint "manual" which would be easily accessible to both CBP and ICE officers and agents as they conduct their duties utilizing their electronic systems of record.

CRCL Recommendations

1. Family Separation Reference Manual

- a. OFO, USBP, and ICE should collaboratively develop a manual that lists and describes each DHS component's operational policies and procedures that are applicable to immigration enforcement actions that result in family separation.
 - The manual should clearly describe the various criteria that officers and agents should consider when making a family separation decision and the subsequent separation procedures in a manner that relays the flow of responsibilities between agencies.
 - The manual should prescribe the amount and type of detail that each agency should enter in their electronic record system (to include information discussed in #4 and #5 below).
 - The manual should include contact information for each agency's decision-making authority when necessary for high level decisions, approvals, and next steps for those instances when disagreements arise.
 - The manual should be readily available in each DHS components' electronic processing/records system so that, during processing, officers and agents can easily access the manual to ensure that enforcement actions requiring family separation are appropriate, consistently implemented, and well-documented.
 - CBP and ICE should create and provide training on the manual's policies and procedures to ensure consistency and efficiencies.

2. Process Improvements

- a. OFO and USBP officers and agents should ensure their family separation decisions, the underlying reasons, and the separation processes are relayed to the family unit members effectively and in a language they understand, and allow the family members to communicate, as appropriate, before physical transfer to ICE or ORR custody. This action should also be recorded in the component's electronic record system.
- b. OFO and USBP should ensure that the Family Unit and Family Group sections within their electronic systems (SIGMA and e3DM) require officers and agents to input complete and detailed family information into the I-213 narrative, n including:
 - Accurate spelling of each family member's name, date of birth, and A-number and correct use of pronouns.
 - Complete and detailed articulation of the reasons for the family separation, which should include the identity of the OFO or USBP supervisor, Chief, or Watch Commander who reviewed and approved the separation decision.
 - Complete and detailed articulation of the reasons for change in status from an "accompanied child" to a "UAC" or vice versa.

- Information regarding communications with ICE or ORR for family and/or UAC placement, attempts to coordinate family member communication, or assistance with reunification, when necessary.
- The name and location of placement facilities for each family member, when known.
- c. ICE should require ICE personnel who are assigned to cases initiated by OFO or USBP to review the I-213 information as soon as possible after the assignment is made, for the purpose of determining if the case involved a family separation, appropriateness and accuracy of the separation decision and processes (e.g. if the separated family members might have instead been detained together in a FRC).
 - If those assigned ICE personnel determine that the separation was unnecessary because family detention space was available at the time, isn't available when the case is reviewed, or because a different placement is required or more appropriate, those personnel should quickly coordinate with CBP and ORR to make the necessary adjustments, which may include family reunification efforts. All relevant information should be recorded in EARM.
- d. ICE should attempt to better ensure that members of the same family unit are detained in facilities within the same jurisdiction and coordinate with ORR, as necessary to accomplish this objective.
- e. ICE should consider the need for family facilities that could hold fathers with their children, whether the fathers are the sole parent, or part of a two-parent family in custody.
- f. ICE and CBP should collaboratively develop a 'Family-Member Locator System' (with all of the necessary privacy protections). ORR should be allowed access to this information as CBP and ICE deem appropriate and as permitted by law, to address needs such as reunification for asylum or family hearings, removal, or release.
- g. ICE should establish a streamlined process that allows for communication among separated family members who are placed in separate facilities, including children in ORR custody.
- ICE should develop decision-making criteria/policies/procedures that address family reunification (e.g. for immigration court, asylum hearings, family release, family removal).
 - ICE should also work collaboratively with ORR to develop a process that better ensures family members are removed together, whenever possible.
 - CBP should revise their internal policies and procedures to reflect TEDS principles with regard to enforcement operations that result in family separation or require family reunification, as needed to support these recommendations.

Please inform us within 60 days whether you concur or non-concur with these recommendations by emailing your response to Moreen Murphy at <u>moreen.murphy@hq.dhs.gov</u>, or by telephone at (202) 357-7770. If you concur, please include an action plan.

It is CRCL's statutory role to advise department leadership and personnel about civil rights and civil liberties issues, ensuring respect for civil rights and civil liberties in policy decisions, and

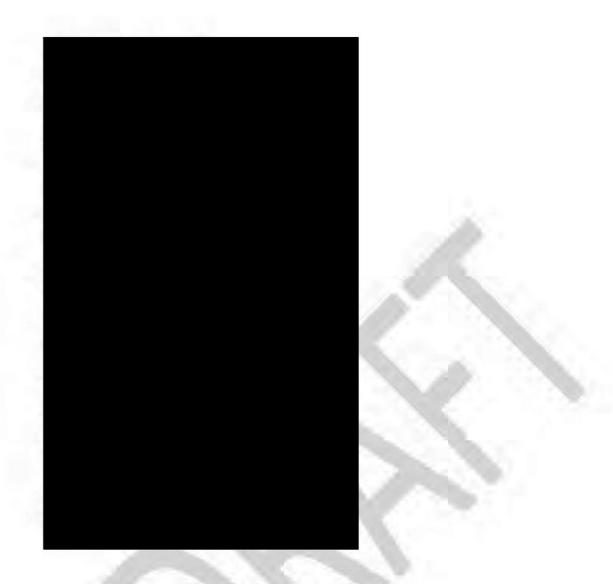
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implementation of those decisions. These recommendations are issued pursuant to that role; we believe they can assist in making CBP and ICE the best agencies possible. We look forward to continuing to work with CBP and ICE on these important issues.

Copies to:

Carla Provost Acting Chief U.S. Border Patrol U.S. Customs and Border Protection carla.provost@cbp.dhs.gov



APPENDIX A

CRCL SUMMARY AND ASSESSMENT OF CBP OFO RESPONSIVE POLICIES/PROCEDURES/GUIDANCE

CBP OFO provided the following documents in response to CRCL's request for information. CRCL has summarized and assessed them below, in terms of their usability and relevance to CBP Officers with regard to the separation of family units:

1. 2008 CBP-OFO Directive No. 3340-030B

This directive, sent by CBP Headquarters in response to two complaints involving CBP OFO, discusses family separation in three sections. However, it is broad in character and lacks specificity.

Section 8.5 provides CBP employees the general authority to separate family units, stating generally and without detailed guidance that, "the totality of the circumstances will dictate whether (the parent or legal guardian) should be separated from a juvenile who is not detained," suggesting that the juvenile is a U.S. Citizen but no further clarification is provided. Further, it states, "Normally, CBP will strive to keep family units together; however, there may be times when it is necessary to separate juveniles from the parent(s) and/or legal guardian(s)." When that occurs out of necessity, the Directive reminds staff, generally, that the *Flores* provisions must be adhered to.

Section 9.7.10 directs CBP employees not to release a minor to anyone or any agency if there is reason to believe they may harm or neglect the minor or fail to present the child for proceedings.

Section 9.7.11 directs CBP employees not to separate nursing infants from their mothers unless the mother poses a danger to the child. It also adds that, "Alien children who must be separated from the family unit become unaccompanied alien minors and must be treated according to *Flores*."

(Three sections are relevant to family separation)

2. 2009 CBP-OFO Memorandum – "Implementation of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)"

This memo from the CBP/OFO Assistant Commissioner was addressed to Executive Directors, Acting Director of Preclearance Operations, OFO Directors of Field Operations, and the OFO Director of Field Operations Academy. It directs implementation of the TVPRA, regarding UAC and mandates the required process and procedures for the processing and treatment of UAC per the TVPRA. Only 2 sentences *indirectly* touch on the topic of family separation:

"If a parent or legal guardian is available to provide care and custody for an alien child, then the child does not meet the definition of a UAC. However, Field Operations must assess the immigration status of the parent or legal guardian to determine an appropriate disposition for the entire family unit."

(Two sentences are applicable, although not directed at family separation)

3. 2010 CBP-OFO Memorandum and Muster, "UAC Interim Guidance reissue – Responses to OIG Report"

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This 2010 memorandum from the Executive Director, Admissibility and Passenger Programs, to OFO Field Operations Directors and the Preclearance Operations Director was cited most often (8) by OFO as the primary policy guiding officers' actions regarding family separation. The memo addresses recommendations from a September 2010 Office of the Inspector General (OIG) report (OIG-10-117) and stresses important factors relevant to processing UAC that are required by the TVPRA, and to protecting the rights and welfare of children under the TVPRA and *Flores*. The muster was attached to the memorandum. Neither document directly addresses family separation, however the muster discusses some related issues, such as:

- "Although CBP may accept verifiable permission slips and other equivalent proof as appropriate documentation indicating temporary guardianship, this practice should be limited to those adults who are traveling with the respective UAC."
- "CBP may only reunify UAC with legal guardians who are in possession of supporting documentation within the United States. Supporting documentation must be sufficient to withstand the legal review processes (i.e. original or certified copies of documents issued by a competent legal authority."
- "Parents or legal guardians may arrive at the port of entry to provide care and physical custody for a child initially identified as a UAC. If this occurs, then the child no longer meets the definition of UAC."
- The importance of the narrative portion of the Form I-213 generated in ENFORCE/SIGMA to address the specifics of each case, including: the credible fear screening, and the record of transfer of custody, including the document used to establish legal guardianship

(Not applicable to family separation; Directed at UAC.)

4. 2010 CBP-OFO Memorandum – "Sharing Information with the Department of Health and Human Services Office of Refugee Resettlement"

This memo was sent by the OFO Executive Associate Director to Field Office Directors. As stated in its purpose, the memo describes procedures that were newly developed in 2010, that would allow HHS ORR to access certain information on UAC in HHS ORR custody, by allowing them to view the Form I-213 in the ENFORCE electronic record system. To that purpose, the memo directs Field Offices to ensure the accuracy of information entered in the I-213 relating to (among other things), the UAC's family information. It also requires that all disclosures to HHS ORR are annotated in ENFORCE and EARM.

(Discusses family separation information regarding accuracy of information.)

5. 2011 CBP-OFO Muster – "Care of Admissible Children Left Unattended as a Result of the Arrest, Detention or Removal of a Parent or Guardian"

This muster addresses an (unidentified) OFO Field Office. It explains procedures for the care of *admissible children* (U.S. citizens, LPRs, etc.) arriving from a foreign country who are rendered unattended because their parent(s) or legal guardian(s) is detained or removed. It clarifies that such a scenario is uncommon. It also addresses inadmissible parents or guardians who will be removed, but are unwilling or unable to depart with their child. The muster clarifies that CBP officers are not qualified to, and may not, determine if a relative or friend is fit to take responsibility for the admissible child and may not turn an admissible child over to a relative or family friend. The muster instead directs officers to contact the Division of Child and Family

Services Hawthorne Office, and provides several telephone numbers within the 310, 323, and 213 area codes. (Specific to a particular CBP Field Office and limited in scope)

6. 2013 CBP-OFO Memorandum and Muster – "Expedited Removals with Fear Claim" This memo and muster from the Tucson Field Office Director of Field Operations, addressed to All Port Directors in the Tucson Field Office, reminds CBP personnel, in that AOR, of their responsibilities regarding aliens who indicate fear.

(Does not distinguish between individuals, a parent and child, or a family unit. Neither the memo nor muster address how to handle asylum claims when a family unit presents and reports the family is claiming fear or seeking asylum)

7. 2015 CBP-OFO Passenger Operations Muster – "Lawful permanent Resident Aliens Arriving with Nonimmigrant Child(ren)"

This muster reminds officers of the procedures to follow when inspecting a Lawful Permanent Resident (LPR) who arrives with nonimmigrant children and, more specifically, directs procedures to follow when the parent has or has not abandoned residence. (*Does not discuss family separation*)

8. 2015 CBP-OFO Memorandum and Muster – "Implementation and Court Order regarding Flores Settlement Agreement"

This memo and muster from the Assistant Commissioner of the Office of Field Operations, addressed to Directors of Field Operations, and the Director of Preclearance Operations, is to ensure that officers comply with *Flores* and the August 2015 *Flores* court ruling regarding detained juveniles in CBP holding facilities. The memo and muster reminds OFO officers that OFO holding facilities must be maintained in sanitary conditions with appropriate temperatures and ventilation, and provide appropriate medical care, nutrition and comforts such as toilets, drinking water, food, access to family apprehended simultaneously, and protection from non-related adults, and that those compliance actions be accurately recorded in the Secure Integrated Government Mainframe Access (SIGMA) electronic records system.

Specific to family separation, the muster directs that "Any separation of a juvenile from his/her family for reasons other than processing or other short, routine removal from a holding area where the family is otherwise held together requires OFO to facilitate contact between the family members and the juvenile, which must be facilitated even where the family members do not have a custodial relationship (i.e. siblings, aunts, grandparents). CBPOs must document any separations in SIGMA. It further directs that, "If family contact with the juvenile cannot be facilitated, the reason must be documented in the drop down box by selecting one of the following reasons" and 6 drop down options are provided that include the minor's physical safety; the family member is receiving medical care offsite; the family relationship is in question; or contact is unfeasible for some other reason that has been approved by a supervisor. *(Family separation is discussed in this single section)*

9. 2015 CBP-OFO Laredo Field Office Memorandum and Muster – "Inadmissible Aliens with Medical Conditions and Family Units"

This email from the Laredo Field Office Program Manager of the Admissibility Unit, to Assistant Port Directors Laredo Field Office AOR Port Directors, is described in the email's first paragraph as, "an effort to establish uniformity in submitting family unit placement requests to

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ICE-ERO." Two additional attachments to the email, "ERCF Detention Denial Steps" and "Sample Placement Request Family Unit" email contain information that the Program Manager asks SCBPOs to ensure are being followed by the port's passport control staff to ensure that ICE-ERO is provided with "all of the information required to take custody of the family unit." The email narrative contains a "Things to remember" list that includes such items as what to do if detention placement is denied, the importance of adding points of contact in the placement request, and mandatory SIGMA information. (Note: The list states that email requests for placement are not required to include the I-213. Another 2015 memo from the Acting Executive Director of Admissibility and Passenger Programs addressed to Directors of OFO Field Operations is included in the email and stresses that if ICE-ERO denies space due to medical conditions or family placement restrictions, the memo instructs that, "the family unit is to be processed for an NTA - Detained in accordance with OFO policy/requirements." Then, it instructs that "the family unit and paperwork are to be turned over to ERO at which time they will exercise their prosecutorial discretion and release from their facility." The additional two pieces of guidance for requesting family placement with ICE seem specific to Laredo Field Office operations, as they were only provided to CRCL as a Laredo Field Office response. Neither document indicates its origin. (The same family placement email request directions and detention denial steps are also discussed by the Laredo Field Office in #14 below.) (Specific to Laredo AOR)

10. 2015 CBP-OFO Port of Del Rio Response – "Standard Operating Procedure (SOP), Processing Unaccompanied Alien Children (UAC)"

In response to CRCL's Document and Information Request, the Del Rio POE submitted an SOP that lays out CBPO responsibilities for the care and custody of UAC, including to ensure that family contact information is documented in SIGMA.

(Does not discuss family separation. Contains general direction to record family contact information)

11. 2016 CBP-OFO Email - "Action and Guidance: Separation of Family Units"

This blast email was sent by a Port of El Paso Supervisory CBP Passenger Inspection Division Officer. The email contains a summary which states, "Effective immediately, the separation of family units (creating UACs of children and placing parents or legal guardians in camp or jail) must be approved by GS-14 Watch Commanders and above." Further, it instructs that, "Station Managers may elect to seek separation of the family unit in order to detain or prosecute the adult parent or legal guardian when sufficient aggravating factors exist warranting the separation" but no factors are given. Once the decision has been made to separate the family unit, the email instructs that, "all involved children will be treated as Unaccompanied Children (UACs) and handled according to provisions in the TVPRA. The deciding official will be required to notify the local ERO Juvenile Coordinator and also submit the required information regarding the creation of UAC(s) to the ERO Group Mailbox indicated below." Three ICE Juvenile Coordinators' contact information is provided. Further guidance on the separation of family units instructs that: 1) the reason for separating the family unit must be "clearly documented in the I-213 (listing the criminal history/violations that led to the decision, etc.); 2) the ICE ERO Juvenile Coordinator must be notified of the separation, and; 3) the ICE ERO Juvenile Coordinator must be provided with a copy of the I-213.

(Relevant to family separation)

12. 2016 CBP-OFO Blast Email – "ACTION and GUIDANCE: Separation of Family Units" "Effective immediately, the separation of family units (creating UACs of children and placing parents or legal guardians in camp or jail) must be approved by GS-14 Watch Commanders and above. Station Managers may elect to seek separation of the family unit in order to detain or prosecute the adult parent of legal guardian when sufficient aggravating factors exist warranting the separation. The authority for any determination to separate the family units under such circumstances rests solely with GS-14 Watch Commanders and above at the Port level and may not be delegated lower."

(Relevant to family separation)

13. 2016 CBP-OFO Memorandum, Muster, and Power Point – "Admissibility Processing and Family Units"

This emailed memo from the Executive Director of OFO Admissibility and Passenger Programs, addressed to Directors of Field Operations and the Director of the Field Operations Academy, included a muster and Power Point slides, regarding of improvements made to SIGMA specifically for recording the processing of individuals within a FAMU in a single event even when multiple officers are processing individual members of the same family. Both the memo and muster relay the importance of careful and detailed processing and recording of family members in SIGMA, not only for statistical analysis, but also to conform to the *Flores* litigation requirements regarding families, and because ICE uses the information for detention actions. The Power Point demonstrates SIGMA's capabilities per the memo and muster directives. (*Relevant to family separation*)

14. 2017 CBO-OFO Memorandum - "Mandatory Use of I-216/SIGMA Enhancements"

This memo from the Executive Director of OFO Admissibility and Passenger Programs, addressed to Directors of Field Operations and the Director of the Field Operations Academy, is a reminder that OFO Form "I-216 is the only appropriate mechanism to record the repatriation of individuals in OFO custody and/or the transfer of custody from OFO to any other law enforcement agency or other CBP locations" and it provides directions and requirements for initiating the I-216 in SIGMA. The memo does not discuss family separation or a family unit's repatriation. (The memo indicates an attached muster, however a muster document associated with the memo's title was not provided.) (*Relevant to family separation*)

15. 2017 CBP-OFO Laredo Field Office Response

The Field Office responded generally to CRCL's request for information regarding allegations implicating POEs within the Laredo Field Office AOR (Brownsville, Del Rio, Eagle Pass, Laredo, Roma, Rio Grande City, Hidalgo, and Progreso): "The Laredo Field Office has not developed any local policy, procedures, musters, memos, training etc. as guidance for the ports of entry on how to determine when to separate family units: our ports of entry adhere to INA Section 235(b)(1(A)(i), Title 8 CFR 235.3(b) and HQ-Enforcement Programs Division-Admissibility & Passenger Programs policy guidance for processing all arriving aliens subject to removal but who claim asylum, regardless (of) fear of persecution, or fear (of) return to his or her country." It further states, "The Field Office has outlined procedures for the ports of entry for requesting family unit placement with ICE-ERO." The Eagle Pass POE responded individually stating, "The Eagle Pass Port of Entry does not have local policy or muster material addressing the separation of families or family members. ICE/ERO approves or denies placement on

families." Further, they report that all details associated with family separations "are entered in SIGMA and case details are annotated in the Form I-213 narrative." In response to CRCL's request for the criteria applied by CBP personnel for making decisions to separate family members in custody or to maintain family members together, Eagle Pass replied, "There are no musters or local policy addressing this issue. HQ...policy guidance is applied." (*Specific to Laredo AOR*)

16. 2017 CBP-OFO Los Angeles Field Office Response

The CBP LA Field Office provided CRCL with 10 listed responses to the request for information. Regarding criteria utilized for making decisions to separate members of a family in CBP custody, the Field Office states that LA AOR personnel follow TEDS (TEDS has not been formally implemented by CBP as of the date of this CRCL Recommendations Memo), CBP Directive 3340-030B (see #1), and a local muster, titled "Care of Admissible Children Left Unattended as a Result of the Arrest, Detention or Removal of a Parent or Guardian" when making decisions to separate families. They note that separation of families in the LA AOR is minimal and limited to rare situations but, when it occurs, a GS-14 Watch Commander/Manager/Port Director must authorize the separation. In turn, the Watch Commander notifies the ICE-ERO Juvenile Coordinator of the child placement need and provides the detailed I-213 narrative. The LA Field Office states that, in general, family members with the same status will not be separated unless a family member poses a danger to a child or for other safety purposes. If siblings are separated, the separation is annotated in SIGMA. If family members with children are non-parental adults, they will be separated "if the family relationship cannot be vetted" or "if the CBP Supervisor determines that it would be inappropriate for them to remain together." The criteria utilized for verifying a family relationship, or for determining that keeping the family members together would be inappropriate, is not provided. The Field Office also reports that they "refer family units as a whole to ICE-ERO for detention." Regarding a child's change in status from a family member to a UAC, the Field Office states, "If a minor enters as a member of a family, their status would not change to UAC since they are not unaccompanied. Similar to the information provided by the Laredo Field Office regarding requests for ERO placement or denials for placement, the LA Field Office responded that a similar request process is in place. Note that CRCL asked what steps CBP takes if mistakes are made in the I-213 narrative, such as omitting the family members names, the LA Field Office responded that they do not maintain access to modify, review or approve information that ends up in ICE's owned and managed EARM system. Finally, if a family is separated, but the separation is found to have occurred inappropriately and reunification is required, whether due to the mistake or for removal purposes, the Field Office responded that they would not be involved in a reunification process. Along with the list of 10 responses, the Field Office provided the musters discussed in #4 and #6, the "Mandatory Use of I-216/SIGMA Enhancements."

(Specific to Los Angeles AOR)

17. 2017 CBP-OFO Tucson Field Office Response

The Field Office responded by email to CRCL's request for information stating that they issued family separation guidelines to all POEs within the Tucson AOR stressing that "separations of a child from a parent or legal guardian should be a rare occurrence and only for the safety and well-being of child, active warrant or similar circumstance." When a family separation leads to the reclassification of a child to a UAC, the Field Office cited the TVPRA, which requires that a

GS 14 Watch Commander or equivalent concurs with the status change; that the reasons for the separation must be clearly and well documented on I-213 and supported by appropriate facts such as those previously stated (e.g. safety and well-being or active warrant or something similar); and that notification, to include the I-213, will be provided to the regional ICE-ERO Field Office Juvenile Coordinator by the GS-14 Watch Commander or equivalent. The Field Office notes that all POEs use the UAC Portal (https://ucportal.acf.hhs.gov/) to notify ICE-ERO and HHS-ORR of the UAC in custody needing placement, and custody of the UAC is then transferred to ICE-ERO either at the ERO Office or the placement facility. Regarding families, the Tucson Field Office reports that POEs notify the ICE-ERO Phoenix or Tucson Office via email about family unit placement requirements and custody is subsequently transferred to ERO. The Field Office also attached a Memorandum and Muster from the Acting Director of Field Operations at the Tucson Field Office, addressed to all Tucson Field Office Port Directors titled, "Expedited Removals with Fear Claim" which reminds CBPOs, supervisors and managers of their responsibilities regarding aliens who indicate the intent to apply for asylum, or a fear of persecution or torture. Neither the memo nor muster discuss family units who present at a POE and indicate fear of return to their country of origin and state their wish to apply for asylum. (Specific to Tucson AOR)

APPENDIX B

CRCL SUMMARY OF USBP's RESPONSIVE POLICIES/PROCEDURES/GUIDANCE

USBP provided the following documents in response to CRCL's request for information. CRCL has summarized and assessed them below, in terms of their usability and relevance to agents with regard to the separation of family units:

1. 2017 CBP-USBP San Diego Sector Response

The USBP Headquarters Office forwarded an email from the San Diego Sector, in response to CRCL's request for information regarding family separation allegations implicating the Sector's Chula Vista Station. The station's response to a 9-month-old child's status change from family child to UAC was that, generally, "station processing operations re-designate a minor to UAC status when it is determined to be in the best interest of the health and welfare of the child at the time of processing. Such circumstances include the accompanying adult failing to provide documentation and/or sufficient information to verify the claimed parental or legal guardianship right, and/or situations where agents perceive a threat to the child's welfare. Based on agent observations at the time of processing, both the relationship and the welfare of the child were in question. Therefore, the re-designation of the child from accompanied to unaccompanied was required by law/in the best interest of the child/due to governing directive(s), policy(s)/etc." The Sector also cut and pasted CRCL's account of the separation from CRCL's investigation Retention Memo, which CRCL compiled from the I-213 Encounter information in ICE's EARM system and from the complaint sent to CRCL from HHS-ORR. Although CRCL is not aware of the reason, the original I-213 (which contained no reasons for the separation) was amended and an addendum was added to the original I-213 narrative. With that added information, CRCL concluded that this particular separation was supported by the significant amount of detail that was added.

(Specific to SD Sector)

2. 2015 National Standards on Transport, Escort, Detention, and Search (TEDS)

USBP most often (9 times) referenced TEDS in response to the complaints. The following TEDS Standards discuss family separation and/or family unity and are relevant to the complaints:

1.0 General Standards

"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. (TEDS, 1.9 Family Unity)

4.0 Secure Detention

"Generally, family units with juveniles should not be separated. When it is necessary to separate juveniles from the parent(s) and/or legal guardian(s), officers/agents must follow their operational office's policies and procedures and appropriate legal requirements. In circumstances where family units must be separated due to different immigration dispositions, such separation must be documented in the appropriate electronic system(s) of record." (TEDS, 4.2 At-Risk Detainee Determination Process, Family Units; Note: This language is repeated in TEDS 5.6 Detention, Family Units)

5.0 At-Risk Populations

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"UAC must be held separately from adult detainees. A juvenile may temporarily remain with a non-parental adult family member where: 1) the family relationship has been vetted to the extent feasible, and 2) the CBP supervisor determines that remaining with the non-parental adult family member is appropriate, under the totality of the circumstances." (TEDS, 5.6 Detention, Detention – UAC and Juveniles)

8.0 Definitions

TEDS defines "family unit" as, "A group of detainees that includes one or more non-United States citizen juvenile(s) accompanied by his/her/their parent(s) or legal guardian(s), whom the agency will evaluate for safety purposes to protect juveniles from sexual abuse and violence." (TEDS, 8.0 Family Unit) (*Relevant to family separation*)

3. 2008 Hold Rooms and Short Term Custody Policy

USBP also often (8) referenced their hold room policy, Section 6.3 titled, "Exceptions to Short-Term Detention in Border Patrol Hold Rooms":

"In cases where family groups are encountered but only the parent or legal guardian is detained, circumstances will dictate whether family members should be separated from the juvenile who is not detained. In cases where the juvenile must be separated from the family member(s), immediate arrangements should be made to care for the juvenile until an adult family member arrives to take custody of, custody is turned over to the Office of Refugee Resettlement or a social services agency." (6.3.4.) (*Policy as a whole is not applicable to family separation*)

APPENDIX C

CRCL SUMMARY OF ICE's RESPONSIVE POLICIES/PROCEDURES/GUIDANCE

ICE provided the following documents in response to CRCL's request for information. CRCL has summarized and assessed them below, in terms of their usability and relevance to ICE personnel with regard to the separation of family units:

1. 2010 ICE Memorandum - "Sharing Information with the Department of Health and Human Services, Office of Refugee Resettlement"

This memorandum from the ICE Executive Associate Director does not state to whom it addressed. Its purpose is stated as "to delineate the types of information and the manner this information will be transferred to the Department of Health and Human Services, Office of Refugee Resettlement (HHS ORR), as it relates to the care and custody of unaccompanied alien children (UAC)." The memo describes that HHS-ORR requested that ICE-ERO share private and law enforcement sensitive information with them, per directives in the Homeland Security Act of 2002 (HSA) and the TVPRA to assist them to gather needed information to make appropriate shelter facility placements. Because neither the HSA nor the TVPRA required that ICE share the information, DHS relays that they allowed, through a Federal Register Notice, that various law enforcement agencies could access ICE's ENFORCE system to facilitate the transfer of custody from ICE to that other agency. This move allowed HHS-ORR to access information on UAC transferred to their custody from DHS.

(Relevant to family separation)

2. 2013 ICE Policy - "11064.1: Facilitating Parental Interests in the Course of Civil Immigration Enforcement Activities" (ICE Parental Interests Directive)

This comprehensive and detailed Directive served as ICE's main policy regarding family separation and family unity, where family separation decisions are at the discretion of the applicable ICE Field Office. If the Field Office decides to separate the parents and child, and takes the parent(s) into custody, the child becomes a UAC and is referred to HHS-ORR. With that said, The Directive defines "parental rights" as, "The fundamental rights of parents to make decisions concerning the care, custody, and control of their minor children without regard to the child's citizenship, as provided for and limited by applicable law," and the rights of legal guardians of minor children "to make decisions concerning those children as provided for and limited by applicable law." The Directive's purpose is further described by ICE as "establishing policy and procedures to address the placement, monitoring, accommodation, and removal of certain alien parents or legal guardians who are: 1) primary caretakers of minor children without regard to the dependent's citizenship; 2) parent and legal guardians who have a direct interest in family court proceeding involving a minor or child welfare proceedings in the United States; and 3) parents or legal guardians whose minor children are U.S. citizens (USCs) or lawful permanent residents (LPRs)." It mandates such things as, a point of contact in each Field Office to oversee parental-interests matters, it stresses the importance of recording relevant information, detention placement determinations, facilitating the parents' court participation, allowing parent-child visitation, and assisting parents, legal guardians or primary caretakers facing removal to plan for their child's needs.

(Relevant to family separation)

3. 2014 and 2016 (updated) ICE Broadcast Message – "Family Separations at Residential Facilities"

This message from the ICE Assistant Director for Custody Management to ICE Field Office Directors and Deputy Field Office Directors for the PHI, SNA, and ELP Field Offices states that the ICE Family Residential Centers' (FRC) goal is to maintain family unity whenever possible, however it acknowledges that there are times when a family that has already been placed in a FRC must be separated "due to circumstances beyond ICE's control," such as "acute medical conditions, allegations of physical abuse/violence, or when certain residents become otherwise ineligible for housing in a residential setting, etc." It directs that, in accordance with *Flores* and "best practices," in all such instances the best interest of the child must be considered when contemplating family separation. At any time parents are unable to care for their children due to the situations as outlined above, FRC staff must establish and ICE approved care plan, which provides direct one-on-one supervision by staff of all affected children within the family unit." Finally, it directs that when family separation is considered for extended periods or permanently, the Chief of the ICE JFRMU must be notified. Both renditions of this message were nearly identical.

(Relevant to family separation)

4. 2015 and 2016 ICE Broadcast Message – "Seeking Placement at a Family Center" This message from the ICE Assistant Director for Custody Management to ICE Field Office Directors and Deputy Field Office Directors, provides contact information for the three FRCs and directs that a family placement request must be completed and submitted to one of the FRCs listed. It also provides direction for those instances when a family unit cannot be placed in a FRC within the required 72-hour time restriction mandated by *Flores*. (*Relevant to family separation*)

5. JFRMU Flowchart (updated in 2015) – "Custody Transfer Process for Unaccompanied Alien Children"

This flowchart clearly describes the immigration processes that UAC encounter as they move through the immigration system while in DHS custody, including transport to their eventual transfer of custody and placement HHS-ORR. It does not specifically address processes for UAC that are separated from their detained family members. *(Relevant to family separation)*

6. JFRMU Flowchart (updated in 2015) - "Operational Process for Family Units"

This flowchart clearly describes the immigration process for families, from their apprehension to removal, and includes the immigration court process. It does not specifically address processes involved when the family members are separated, or the various possible outcomes. *(Relevant to family separation)*

7. JFRMU Flowchart (updated in 2014) – "Operational Process for Unaccompanied Alien Children"

This flowchart clearly describes the immigration process for UAC in CBP custody as they move through the immigration system, including ORR placement and immigration court processes until their eventual repatriation.

(Relevant to family separation)

8. ICE Response to CRCL - Reversal of CBP Status Changes to UAC

Protected by Attorney-Client and Deliberative Process Privileges

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When ICE is notified or becomes aware that a child may have been separated from a family unit that is detained in an FRC, and the child is in the care of the Office of Refugee Resettlement (ORR), ERO will work with ORR on possible reunification. However, ORR makes all decisions regarding custody and reunification of UACs. (*Relevant to family separation*)

9. ICE Response to CRCL - ICE Review of CBP Family Separation Decisions

ICE/ERO does not review family separation decisions by CBP. ERO approves space for housing of any family unit, adult male or female alien when requested by the arresting agency. Placement with ORR is made by the apprehending agency. ICE/ERO contractors assist with transportation once ORR placement approved.

(Relevant to family separation)

10. ICE Response to CRCL – Collaborating with ORR to reunify children in ORR custody with their family members who are in ICE or CBP custody, and are about to be released, have already been released from custody, or are about to be removed from the U.S. ORR makes all decisions regarding UAC custody and reunification. ICE/ERO does not make custody determinations or reunification decisions in those cases. (Relevant to family separation)

11. ICE "Fact Sheet: Unaccompanied Alien Children" (undated)

This undated Fact Sheet provides definitions laws applicable to UAC, including the TVPRA general protection requirements. It also generally describes the applicable policies and procedures involved when DHS encounters UAC, again reflecting the TVPRA requirements, including requirements to transfer custody of UAC to HHS-ORR and the various immigration processes and procedures that could apply when that occurs and the UAC seeks benefits that could allow them to remain in the U.S.

(Not applicable to family separation)

12. ICE Message – "Ensuring Confidentiality of Information Regarding VAWA Selfpetitioners and Applicants for T or U nonimmigrant status"

This message from Acting Assistant Director for Field Operations to all ERO Employees was a reminder to ensure that information regarding a VAWA self-petitioner or applicant to T or U non-immigrant status must be treated as confidential and directs Field Office Directors to ensure that the proper protection coding is included in A-files as a VAWA confidential alert. (Not directly related to family separation and does not specifically address family separation at any point)

Exhibit 24

Page 1 UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA CASE No. CV-20-00065-PHX-SRB - -x A.P.F. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, O.B.; J.V.S., ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD H.Y.; J.D.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, M.G.; H.P.M. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.D.; M.C.L. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.J.; AND R.Z.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, B.P., PLAINTIFFS, -against-UNITED STATES OF AMERICA, DEFENDANT. - -x CONFIDENTIAL VIDEOTAPED DEPOSITION OF APPEARING REMOTELY FROM YUMA, ARIZONA THURSDAY, APRIL 7, 2022 12:13 p.m. REPORTED BY: DANIELLE GRANT APPEARING REMOTELY FROM RICHMOND COUNTY, NEW YORK JOB NO.: SY 4556

Page 25 1 that my -- something about my question was 2 3 not proper. 4 Unless he tells you otherwise, 5 you're free to answer my question, okay? Moving on, sir. 6 7 Was there -- there was a change in 8 May of 2018 where you received instructions 9 to separate families to the maximum possible extent; is that correct? 10 11 I don't recall specifics but I А 12 believe that's correct. 13 Okay. And to your understanding, Q 14 that was mandatory; you were required to do 15 it? 16 MACWILLIAMS: Objection as to MR. 17 form. 18 0 You can answer. 19 А Correct. 20 Sir, I would like you to put 0 21 yourself back in that time frame, April and 22 May and June of 2018. 23 Can I assume that that time frame 24 stands out in your memory? 25 Not really, no. Α

Page 178 1 2 case was declined or not referred, no, that 3 usually wasn't relay to them. 4 Okay. So as far as if -- and I 0 5 will take myself out of the picture. 6 To your understanding, detainees 7 who are in cells in the Yuma Station, once 8 their prosecution gets declined, they have 9 no idea that that's happened; is that 10 correct? 11 For the most part. Α 12 0 Are there any exceptions to that 13 rule that make you qualify your answer 14 there? 15 Not that I can think of unless Α 16 there was some sort of type of is a medical 17 issue. 18 All right. Let's switch topics, Ο 19 sir. I want to make sure I understand 20 21 how family units were handled as of May 2018 22 after the issuance of the guidance that we 23 reviewed a short while ago, the email that 24 was replied to by , okay? 25 So we're in that period after

Page 179
May 7 of 2018. It sounds like, at that
point, as we've reviewed, you knew and your
colleagues knew that the U.S. attorneys
office might not prosecute family adults
that were referred prosecute for
prosecution for all the reasons that we have
discussed, correct?
MR. MACWILLIAMS: Objection as to
form.
A I mean, I wouldn't say everyone
was aware, but I guess according to that
email, some people were.
Q Okay. And you and other border
patrol agents, then, were aware that those
adults, who were not going to be prosecuted
or prosecution was declined, would, as we've
just discussed, remain in border patrol
custody, and it was basically status quo; is
that correct?
A For the most part.
Q And you also you and other
border patrol agents knew that people could
go to court and receive time served
sentences and then come right back to border

	Page 180
1	
2	patrol custody; is that correct?
3	MR. MACWILLIAMS: Objection as to
4	form.
5	A Can you repeat the question?
6	Q Sure. We discussed at length
7	before the break that people who would be
8	prosecuted for 1325 violations, if
9	prosecution was accepted, would often be
10	receive sentences that equated to time
11	served sentences, correct?
12	A Correct.
13	Q And you were aware of that in May
14	of 2018; is that correct?
15	A Correct.
16	Q All right. Now, as of May of
17	2018, is it accurate to say that, regardless
18	of what happened with the prosecution, your
19	directive was to separate parents and
20	children?
21	MR. MACWILLIAMS: Objection as to
22	form.
23	A Those amenable, yeah.
24	Q Okay. And by amenable, it sounds
25	like what we have reviewed is that the

Page 181 1 2 definition of amenable to prosecution changed as of May 7th to include adults and 3 4 family units, correct? 5 According to the last email, yes. Α Okay. And that's -- that's not 6 0 7 just in the email. 8 You recall that being the directive in May of 2018; is that correct? 9 10 Aside from the email you showed А 11 me, I don't recall the specific guidance I 12 received at that particular time. 13 Okay. But that email is Q 14 certainly -- it's not inconsistent with your 15 recollection; is that right? 16 Correct. Α 17 And in fact, you told me within Ο 18 probably the first ten minutes of this 19 deposition -- or 15 minutes of this 20 deposition, that your recollection is that, 21 as of May of 2018, your directive was 22 separate to the maximum extent possible; is 23 that correct? 24 MR. MACWILLIAMS: Objection as to 25 form.

Page 182 1 2 I don't recall as to the maximum А 3 extent possible. 4 Adult and family units were to Q 5 be -- were to be separated from children as of May of 2018; is that correct? 6 7 А Correct. And let's show -- I'm going to 8 0 9 assume that you recall the flowchart that we 10 looked at. And if you need to look, you can 11 actually go on to the eDepoze screen and 12 look at P-1. I won't ask you to do that at 13 the present moment. 14 MR. FEINBERG: First, I would like 15 you to introduce another exhibit which 16 is P-17. 17 Ά You know what? 18 I actually got somehow logged out 19 of eDepoze. 20 MR. FEINBERG: Okay. Let's go off 21 the record then. VIDEOGRAPHER: The time is 4:10. 22 23 We're off the record. 24 (Whereupon, at 4:10 p.m., a recess 25 was taken to 4:14 p.m.)

Page 191 1 2 don't recall one way or the other when that 3 conversation took place; is that right? 4 Ά No. 5 In any event, after he sends the Ο 6 email, you respond 13 minutes later and note 7 that, as I think you indicated before -- at least intimated, that it's rare that the 8 9 adult that was initially part of the family 10 unit would go to court and return, while the 11 UAC was. Still there. 12 Did I summarize that correctly? 13 Α Right. 14 Ο And do I understand correctly, 15 also from your email, that, even if that did 16 happen, if the adult came back to border 17 patrol custody and the child was still 18 there, the separation would remain in place? 19 Α Most likely. Again --20 0 Okay. 21 -- I think I've outlined that it's Α 22 very rare or if there was any instances that 23 could even be recalled where that happened. 24 Okay. And the key phrase --Q 25 And, in fact, Emma, MR. FEINBERG:

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1	
2	can I ask you to highlight this
3	language, please, starting from however
4	in that middle paragraph?
5	Q And, sir, you see what's
6	highlighted there in that second portion of
7	that or the second portion of the second
8	sentence in that middle paragraph.
9	In the rare instances would
10	that when this would happen where the
11	adult would come back, the unaccompanied
12	child would remain an unaccompanied child
13	and be placed at the juvenile facility
14	regardless of what happened with the adult's
15	criminal proceedings; is that correct?
16	A Most likely.
17	Q Is it accurate to say, then at
18	that point, that once a parent and child
19	were separated in this time frame, it did
20	not matter what happened with the
21	prosecution?
22	MR. MACWILLIAMS: Objection as to
23	form and foundation.
24	A I don't believe so.
25	Q Well, that's isn't that what

Page 193 1 2 your email says? 3 Α I mean, that's just covering a 4 hypothetical. It's not pointing to a 5 particular instance where it did occur. Well, you say, in the clause that 6 0 7 proceeds it. I believe we have had rare instances of the adult returning while the 8 9 UAC is in custody, right? So you're describing instances 10 11 which you believe may have happened? 12 Α Correct. 13 And in those instances, didn't Ο 14 matter what happened with the prosecution, 15 the child was staying an unaccompanied 16 child, correct? 17 Α Again, I don't recall any 18 particulars but possibly, yes. 19 Okay. And, of course, at this 0 20 point in the government's treatment of 21 family units, we've already talked about the 22 directive was separation to the maximum 23 extent possible, agreed? 24 А Yes. 25 So if -- by the way let's go back Q

Page 199 1 2 To your knowledge, did anyone from 0 3 border patrol ever go out and try to track 4 down a child after learning that a parent --5 that prosecution had been declined for a 6 parent? 7 MR. MACWILLIAMS: Objection. Form. Foundation. 8 The child's information and 9 Α No. 10 parent's information were entered into the 11 databases, so ERO had information on the 12 subject child. 13 We'll come back to that. Ο 14 In any event, is it fair -- fair 15 to say, sir, that everything we have just 16 been describing, about the requirement to 17 refer adults for prosecution was mandatory 18 at that time? 19 Α Based on what you have shown me, 20 yes. 21 All right. And you've got no Q 22 reason to disagree with any of the things 23 I've shown you; is that correct? 24 No. Based on the memorandums Α 25 displayed here today, that was -- appear to

Page 221 1 2 referral happens before the minor is 3 processed. 4 WA is a warrant of arrest; is that Ο 5 correct? 6 Α Correct. 7 Ο All right. So when an agent --8 sorry. 9 When a minor gets a -- an ORR 10 placement, they're entered into removal 11 proceedings at the same time they're given 12 that placement; is that correct? 13 Correct. Α 14 Do you know whether border patrol Q 15 agents have any training about how to 16 deal -- how to explain to children the 17 consequences of a -- of an ORR placement? 18 Training? А No. 19 Ο Yeah. 20 Okay. Do you recall observing --21 hang on. 22 Let me ask it a different way. Α 23 five-year-old child taken away from their 24 mother is screaming and crying about the 25 fact that they want their mom.

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1 2 What is an agent supposed to do? 3 Α Usually the child is placed with other children of, you know, similar 4 5 backgrounds, and they're able to communicate with each other. Often they're given toys 6 7 or other amenities to help them. 8 0 So sounds like two things: One is 9 they're placed with other kids who are --10 the expectation is will explain what's 11 happening to the children who've just been 12 separated. 13 Is that what you are saying? 14 Not explain it, but -- because Α 15 it's -- it is explained to them during the 16 process. But if they're able to -- they're 17 not alone. They're with other children. 18 They see the other children. They're able to interact and play and it usually puts 19 20 them at ease. 21 So the consoling of children is 0 22 done by, one, placing them with other kids 23 and, two, giving them toys; is that correct? 24 I wouldn't say its consoling, А 25 it's -- it's just a way to -- I don't know

Page 223 1 2 the right words that explain it. But, yeah, 3 that's generally what happens. They're placed with other children and sometimes 4 5 that's really all it takes. We've seen a number of photos of 6 0 7 the children who we represent who -- and all 8 of them appear to be wearing a dark blue or 9 a navy blue t-shirt. Is there a uniform or a set of 10 11 clothing that's given to children after 12 they've been separated from their parents? 13 Today or back then? Α 14 Back then. Ο 15 Α No. 16 All right. I'll show you some Ο 17 photos in a little bit to see you we -- what 18 we're -- what I'm talking about. 19 Do you remember anything about 20 uniforms given to children for their -- in 21 connection with their ORR placement? 22 Α No. The only thing I can think of 23 is we had clothing on hand. We purchase 24 clothing. Oftentimes, we specifically 25 purchased clothing and shoes and items for

Exhibit 26

Page 1 UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA CASE No. CV-20-00065-PHX-SRB -x A.P.F. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, O.B.; J.V.S., ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD H.Y.; J.D.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, M.G.; H.P.M. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.D.; M.C.L. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.J.; AND R.Z.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, B.P., PLAINTIFFS, -against-UNITED STATES OF AMERICA, DEFENDANT. - - x CONFIDENTIAL VIDEOTAPED DEPOSITION OF APPEARING REMOTELY FROM YUMA, ARIZONA THURSDAY, MAY 26, 2022 8:15 a.m. REPORTED BY: DANIELLE GRANT APPEARING REMOTELY FROM RICHMOND COUNTY, NEW YORK JOB NO.: SY 4813

Page 34 1 Agent 2 constitutional rights, the constitutional --3 the rights of folks that you would be 4 apprehending or prosecuting? 5 Α Yes. 6 Ο Did you get any training on how to 7 work with children? I don't recall. 8 Α 9 Did you get training on the 0 Trafficking Victims Protection 10 Reauthorization Act the TVPRA? 11 12 Do you remember? I don't recall. 13 Α 14 Okay. Did you get any training on Q how to care for children? 15 16 During the Academy, I don't А 17 believe so. 18 Okay. So I understand that there Ο 19 are a number of different -- how long were 20 you at El Centro Station? 21 Α Eight years. 22 0 And in those eight years, did you 23 rotate through different positions within 24 El Centro? 25 Α Yes. Yes.

Page 140 1 Agent 2 Do you know what time the actual 3 initial appearances were held, was the 4 standard time? 5 It's varied for initial А appearances depending on their -- the 6 court's scheduling. 7 8 Do you remember what it was back Ο 9 in May of 2018? 10 Α No. 11 You mentioned that, in May of 0 12 2018, that both you and the U.S. Attorney's 13 Office were pretty overwhelmed and were 14 taking longer to review cases and process 15 cases and decline or accept. I was 16 wondering if you could tell me a little bit 17 more about how you sort of managed to triage 18 that. 19 Did you send smaller batches of 20 cases or, every time a case was ready, would 21 you -- or would you -- you know, I guess, 22 maybe you could talk me through how did you 23 managed that work load. 24 To some extent, we try to -- we Α 25 try to highlight any potential discrepancies

Page 141 1 Agent 2 on the case that we might see prior to 3 them -- prior to the attorney's office 4 seeing it -- or receiving it so that they 5 can -- that can expedite their review 6 process. What do you mean by discrepancies? 7 0 8 Α If there was something lacking or, 9 like, for example, if something was -- I don't know. For example, like, let's say an 10 11 attempted case that might not have received a Miranda within a -- or a Miranda warning 12 13 or advisement within the required time 14 frame, so your statements -- and we believe 15 that that might be an issue. We would 16 highlight something like that or let them --17 make them aware of it. 18 So you would -- you would still Ο 19 refer the case but you would sort of flag, 20 Hey, this person didn't get a Miranda 21 warning? 22 Α Correct. 23 Would you ever not refer a case Q 24 based on -- at that time period, would 25 you -- would you ever not refer a case

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Page 142 1 Agent because there was, you know, a potential 2 3 discrepancy? 4 MR. MACWILLIAMS: Objection. 5 Form. 6 А Initially, no. Did that change at some point? 7 0 8 Α Yes. 9 When did that change? 0 10 I don't recall a specific date, Α 11 but it was --12 Q Okay. -- somewhere around that same time 13 Α 14 period. 15 0 So in May of 2018, when you had a 16 case that had a potential problem, like a 17 Miranda violation or some other potential flaw in the charge, you would highlight that 18 19 for the U.S. Attorney's Office but you would 20 make the referral anyway? 21 А Yes. 22 You mentioned that you didn't 0 23 recall what the U.S. Attorney's Office 24 guidelines were about prosecuting families 25 back in May of 2018.

Page 178 1 Agent 2 then some of the others. But --3 Q Okay. 4 Α -- the Miranda advisement, the 5 date of arrest, things of that nature just 6 to see where -- if they're still presentable 7 or what the case may be -- or I'm sorry --8 where they were at with time frames and 9 whatnot. 10 Q I'm sorry. 11 Where they're at with what? 12 Time frames and whatnot. Like, Α 13 you know, if they're beyond the 48 hours, 14 something we needed to note to the attorney, 15 the Miranda advisement, things that the 16 attorneys -- we would highlight for them. 17 Okay. So I think we talked about 0 18 this earlier. 19 But as you reviewed the file, if 20 you noticed a problem with the Miranda 21 warnings, if you noticed that they were 22 outside the 48-hour window, you would --23 this is in May of 2018 -- you would 24 highlight that and flag that for the U.S. 25 Attorney's Office?

Page 179 1 Agent 2 Yes, we make notes of things of А 3 that nature. 4 Q Okay. Did you make a separate 5 determination of whether the person was 6 amenable for prosecution? What do you mean? 7 А 8 0 Well, the -- would you -- would someone in the prosecution unit review the 9 decision that this person was amenable for 10 11 prosecution? 12 Yes, but we referred -- we would Α 13 refer everything to the attorney's office 14 for their ultimate review initially? 15 Q When you -- when you say 16 initially, you mean in May of 2018? 17 А Correct. 18 Did you determine if a case had Ο 19 enough facts to support a 1325 prosecution at all? 20 21 Repeat it again. I'm sorry. Α 22 Ο Sure. 23 Did you review the case file to 24 make sure that the -- there were enough 25 facts there to support a 1325 prosecution?

Page 180 1 Agent 2 MACWILLIAMS: Objection. MR. 3 Form. Foundation. 4 Α Yes. It's -- I mean, if it --5 they have nothing -- no prior histories, 6 obviously -- or we would -- I'm sorry. We would present them for '25. But if they had 7 8 something other than -- you know, other 9 criminal histories or immigration histories, we might present them for more charges. 10 So 11 that review was May. 12 Sure. 0 13 Did you review to make sure that 14 there was enough to charge with illegal 15 entry or attempted entry? 16 Initially, yes or --А Yes. 17 0 And that -- would that be an issue 18 that you would, then, flagged for the U.S. 19 Attorney's Office issue if you thought there 20 were not enough facts to support the charge? 21 We wouldn't -- well, we А 22 wouldn't -- I don't think that's stated 23 correctly. It's not --24 Ο Okay. 25 -- that we would -- it's not that А

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1	Agent
2	we would flag the whether there was
3	enough facts to support the charge. The
4	charge was the illegal entry, so that was
5	that was there. It's just a matter of
6	highlighting different elements of the
7	charge and things that the attorney
8	assistant attorney make it a more expedited
9	review.
10	Q Okay. So areas of concern or
11	things they should look at more closely?
12	A Correct.
13	Q Okay. So my understanding, then,
14	is your instructions back in May 2018 is, if
15	you noticed a problem with a criminal case,
16	your instructions were to refer those
17	cases to still refer those case to the
18	U.S. Attorney's Office but to highlight the
19	areas of concern for the U.S. Attorney's
20	Office to review?
21	MR. MACWILLIAMS: Objection.
22	A Correct.
23	THE WITNESS: Sorry.
24	Q I think you've already said this
25	but you did you determine whether or not

Page 182 1 Agent 2 the Miranda warnings were timely given? 3 Generally, yes --Α 4 (Cross-talking.) 5 -- I believe so. Α And did your office -- your agency 6 Q 7 supervise come up -- ever come across files 8 where the Miranda warnings were not timely? 9 MR. MACWILLIAMS: Objection. 10 Form. 11 А I believe so. 12 And in May of 2018, were your 0 13 instructions, then, to, again, sort of flag 14 that issue for the U.S. attorney but nevertheless refer the criminal case to 15 them? 16 17 А Correct. 18 What do expect -- what did you Ο 19 expect the U.S. Attorney's Office to do with those cases where, for example, there was no 20 21 Miranda warning given? 22 MR. MACWILLIAMS: Objection. 23 Form. Foundation. 24 I expect them to do their review Α 25 process and then give us the ultimate

Page 184 1 Agent 2 If a case didn't meet the Okay. 0 3 U.S. attorney's guidelines, would you still 4 refer the case but highlight the issue for the U.S. Attorney's Office back in May of 5 6 2018? 7 А Yes. 8 MR. MACWILLIAMS: Objection. 9 Objection. Form. 10 Okay. Did you -- did the Q 11 prosecution unit make any determination, 12 before sending it over, whether the case 13 would likely be accepted for prosecution? 14 Not initially. Α 15 Q At some point, did you? 16 Eventually, we were given some А 17 leeway in regards to presenting or assisting 18 in presenting only those that were -- didn't 19 have discrepancies, I guess. 20 Do you remember when that was? 0 21 Some time during 2018 after А 22 this -- after May. I don't recall a specific time. 23 24 Okay. Okay. Would you make any Ο 25 determination about whether the court, the

Page 187 1 Agent 2 Objection. Form. Foundation. 3 It's generally yes. А 4 And what happened if you reached Q 5 the cap? 6 Α Again, I don't recall if we ever did or not, so I don't recall what -- what 7 8 occurred. 9 Okay. Were there any situations 0 back in May of 2018 where you would not 10 11 refer a case that was given to you by the 12 processing? In May 2018. 13 Α 14 Uh-huh. 0 15 Α Not that I can recall. 16 And was that basically from 0 17 instructions and from your chain of command to refer all these cases? 18 19 Α Initially, yes. 20 MR. MACWILLIAMS: Objection. 21 Objection. Form. 22 0 And you say initially because you 23 mentioned earlier that, at some point, you 24 were given more leeway about screening cases 25 and not presenting all cases?

Page 188 1 Agent 2 Α Correct. 3 Q Do you need some water or 4 anything? 5 Are you okay? 6 Α I -- sometimes during this date -about this time allergies start kicking in 7 8 so I'm okay. Okay. 9 0 10 Α Sorry. 11 Ο If you need -- no, no. No. 12 If you need a break just -- or for 13 water or anything, let I -- let me know. 14 Α Okay. 15 Q So it sounds like, during that 16 time, you didn't have any authority to 17 refuse to refer cases to the U.S. Attorney's 18 Office in May of 2018? 19 MR. MACWILLIAMS: Objection. 20 Form. 21 Correct. We don't make a Α determination on cases. We -- whenever is 22 23 presented to us is presented to the 24 attorney's office. 25 You mentioned that you prepare Q

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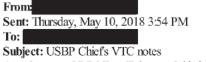
Page 240 1 Agent 2 you can take my word for it. 3 There is no e3 printout for this 4 case. 5 MS. WINGER: And, Julia, if you 6 want to introduce P42? You'll see here is an email from 7 0 8 your attorney, Mr. MacWilliams, explaining that the -- that for V.C. -- and I will 9 10 represent to you that that's 11 , and also our client , who we'll talk about in a minute, 12 13 the prosecution disposition forms were not found in e3. 14 Is it is fair to say that if there 15 16 is no e3 referral, that Ms. was 17 never referred for prosecution? 18 MR. MACWILLIAMS: Objection. 19 Form. Foundation. 20 We never -- yeah. So it wouldn't А 21 have come -- she -- it's possible she didn't 22 came through our unit because we didn't 23 input into the -- into the module. Okay. So if she came through your 24 Ο 25 unit, she would have gone into the e3

Page 241 1 Agent 2 module? 3 Α Yes. 4 Q And she would have had to go 5 through your unit in order to be referred 6 for prosecution? 7 Α Correct. 8 Q Okay. If Ms. was never 9 even referred for prosecution, why was she separated from her son? 10 11 MR. MACWILLIAMS: Objection. 12 Form. Foundation. 13 I can't answer that. Α 14 All right. Let's pull up P35, Q 15 Julia. 16 Again, this is another subject 17 activity log. This is for 18 19 Well -- and, again, I'm going to 20 ask you to jump right to Page 7, okay? 21 Α Yes. Okay. 22 You go -- this is the beginning of 0 23 the I-213. I'm going to have you jump right 24 to Page 8. And it -- and I'm actually 25 sorry. I'm going to refer to you Page 9.

Page 295 1 Agent And so in this case, we're already 2 0 3 past the 48-hour mark; is that right? 4 MR. MACWILLIAMS: Objection. When the processing was complete? 5 Ο 6 MR. MACWILLIAMS: Objection. Foundation. 7 Form. 8 0 Let me -- let me do the question 9 over again. 10 Based on the information in this 11 exhibit that says the processing was 12 complete at 4:08 p.m., that's past -- that's more than 48 hours after the time that this 13 14 individual was apprehended; is that right? 15 Α Yes. 16 Would that -- the fact that the Ο 17 prosecution unit would pick up a case file 18 that was -- where the 48-hour point had 19 already been reached, would that trigger 20 anything within the prosecution unit as far 21 as whether or not to prepare a complaint and 22 a referral to the U.S. Attorney's Office? 23 Α Not initially. 24 What do you mean by initially? Ο 25 So we would still refer everything А

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1	Agent
2	to the attorney's office for them to make
3	that review and then and, again,
4	highlight any discrepancies and have them
5	or possible discrepancies for them to
6	expedite the review process. And so we
7	would just refer it to the for them to
8	make the decision.
9	Q So if I understand, I think the
10	instructions through the chain of command at
11	this time in May was to refer all of the
12	cases for prosecution irrespective of
13	whether there might be an issue related to
14	timeliness like this, correct?
15	A Correct. We would refer
16	everything so to the attorney could review
17	it and make a decision.
18	Q I would like show you what's been
19	previously marked as Exhibit P60.
20	Again, I'm sorry. This is the
21	best screen shot we have here and you're
22	going to have to zoom in on it a little bit.
23	But this is the e3 prosecutions
24	entry for Mr. ; is that right?
25	A Yes.

Exhibit 39



Attachments: YUM Zero Tolerance Initiative LIMFACs.docx

Please see attached document regarding Zero Tolerance and LIMFACs specific to YUM. Notes

- Any Criminal Chief's pushing back against Zero Tolerance will be removed from position
- •SDC, ELC, YUM and TCA are dealing with shackling security rule
- •OT may become available when HQ deems necessary to help us make the last push for 100% prosecutions
- TCA currently has a 75 "hard cap"

HQ's intent was to hear current issues from the field & push out to associated entities to help get the field to 100% prosecutions sooner. They weren't enthused about position.

I have one get back pending and will update if pertinent.

Thanks,

Adjutant to the Chief, Yuma Sector

U.S Border Patrol	
Office:	
Work Cell:	_
Personal Cell:	



YUM Zero Tolerance Initiative LIMFACs

• Yuma Federal Court

- "Hard Cap" of 30 cases per day at the order of Chief Judge Raner Collins, District of AZ
- Judge Collins considered all entities involved to determine capacity
 - Magistrate Judge
 - Yuma County has one Magistrate Judge for current federal caseload
 - Interpreters
 - Specialized demand for varying languages & dialects
 - County Clerk
 - Overburdened with scheduling due to language barriers, workload etc.
- ERO
 - Increased demand to *quickly* clear out subjects from YUM processing areas
 - Tender age for USBP is 4 years of age, ERO is 10
 - ERO will see an increase in children from 5-10 years of age
 - Local ERO has been advised that once a child has been separated YUM will not try to reunite if prosecution is denied for parent

• U.S. Marshalls

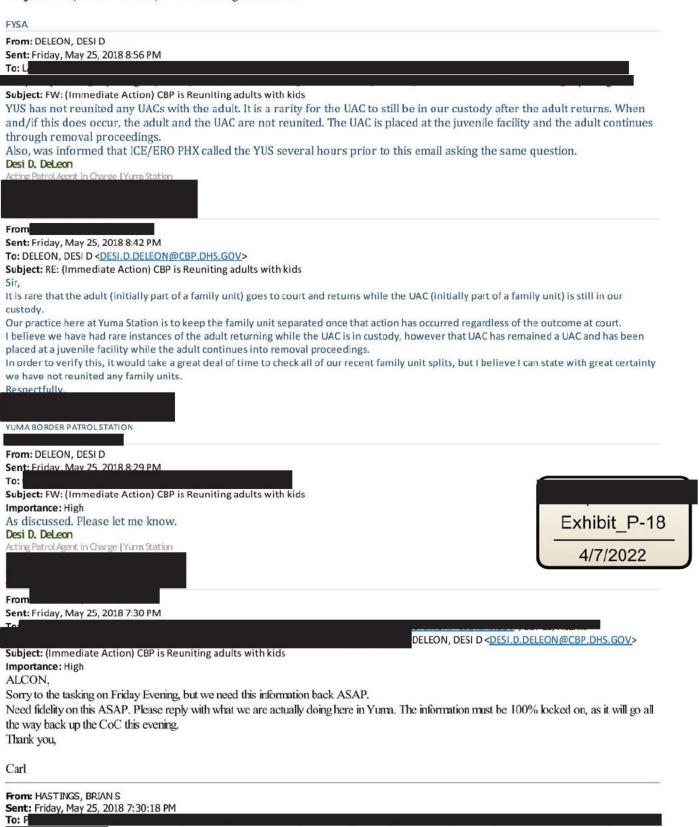
- Shackling Rule increases manpower requirements
- YUM
 - Currently exceeding sector capacity of 300, by 101 subjects
 - Strain on personnel due to meal preparation, and feeding
 - Creation of additional UACs has created an equal or greater amount of cases that need prioritization
 - Casework limited by 12 workstations @ YUS (currently adding 4-6 additional)
 - Increased Time in Custody if WEL utilized
 - Additional personnel assigned to Prosecutions and the Processing, Screening and Transport Unit
- 9th Circuit
 - TB screening for all subjects attending court (CA only)
 - o 24 hour due process timeline
 - Security Shackling Rule 1 officer per subject, plus one officer. (Ex. 10 subjects, 11 officers)

Exhibit 40

From: Sent: Wednesday June 20, 2018 2:29 PM

To:

Subject: FW: (Immediate Action) CBP is Reuniting adults with kids



Subject: FW: CBP is Reuniting adults with kids

Chiefs, Deputies,

I apologize for pinging this late, on a holiday weekend, but can you please provide some insight as to the questions below? Respectfully request a

V/r, Brian

From: VITIELLO, RONALD D (USBP) Sent: Friday, May 25, 2018 9:17:56 PM To: PROVOST, CARLA (USBP); HASTINGS, BRIAN S; DIKMAN, SABRI Y; LUCK, SCOTT A (USBP); HUFFMAN, BENJAMINE C; HUDSON, RICHARD M Subject: FW: CBP is Reuniting adults with kids

Need some fidelity on this

Ronald Donato Vitiello Acting Deputy Commissioner Customs and Border Protection

From: Albence, Matthew Sent: Saturday, May 26, 2018 2:01:35 AM To: MCALEENAN, KEVIN K; Homan, Thomas; VITIELLO, RONALD D (USBP) Subject: FW: CBP is Reuniting adults with kids

FYSA. Not sure if you are aware. It sounds like ORR is refusing to take the children as UAC if the parent arrives back that the processing site and the child is still there. This is happening at the CPC as indicated below and have also heard in AZ.

Sent with BlackBerry Work

(www.blackberry.com)

From: Johnson, Tae D < Tae. D. Johnson@ice.dhs.gov>

Date: Friday, May 25, 2018, 8:29 PM

To: Asher, Nathalie R <<u>Nathalie.R.Asher@ice.dhs.gov</u>>, Albence, Matthew <<u>Matthew.Albence@ice.dhs.gov</u>>

Subject: CBP is Reuniting adults with kids

CBP is Reuniting adults with kids after prosecution in McAllen. My guess is there is no place to house the adult, so they are bringing them back to the station and since the child is still there, they are joining them. These kids have already been designated and are awaiting transportation to HHS. Transportation arrangements are now being cancelled and presumably the males HoHs are being released......

Exhibit 42

From: Hamilton, Gene (OAG) Sent: Thursday, May 10, 2018 9:11 PM To: (ODAG) Subject: RE: Yurra FAMU Adult Prosecutions

Will be good to discuss. Thanks! Gene P. Hamilton Counselor to the Attorney General U.S. Department of Justice

From: ODAG)

Sent: Thursday, May 10, 2018 8:28 PM

To: Hamilton, Gene (OAG) <ghamilton@jmd.usdoj.gov> Subject: Re: Yuma FAMU Adult Prosecutions

Subject: Re: Tullia FAINO Adult Prosecutions

Per US Attorney - and we can also discuss further with her on tomorrow's call:

First, it turns out there were significant evidentiary problems with the six cases that were presented this morning—problems unrelated to the "family unit" issue that would likely prevent us from pursuing the cases. Among other things, CBP did not provide sufficient evidence that the defendants were caught illegally entering the country (as required under Ninth Circuit law). Second, we just learned that CBP now considers all of its arrests in Yuma to be for criminal prosecution (as opposed to pursuant to the agency's power to conduct administrative arrests pursuant to 8 U.S.C. § 1357).

On May 10, 2018, at 3:46 PM, Hamilton, Gene (OAG) <<u>ghamilton@imd.usdoj.gov</u>> wrote:

Why would they be declining these cases? Gene P. Hamilton Counselor to the Attorney General U.S. Department of Justice

From: Albence, Matthew <<u>Matthew.Albence@ice.dhs.gov</u>> Sent: Thursday, May 10, 2018 3:44 PM To: Hamilton, Gene (OAG) <<u>ghamilton@imd.usdoj.gov</u>> Subject: FW: Yuma FAMU Adult Prosecutions Gene:

Are you aware of this? Seems to conflict with the guidance. Not trying to get into DOJ's lane, but just trying to figure out what the process is going to be so we can adapt ours accordingly. Thanks. Matt

Iviatt

From: Sent: Thursday, May 10, 2018 2:34 PM To: Guadian, Robert <<u>Robert.Guadian@ice.dhs.gov</u>>;

Subject: Yuma FAMU Adult Prosecutions

As a follow up from yesterday.

A few issues have arisen.

Yuma Sector has presented FAMU adults for prosecution but all have been declined. However, it appears after the declination that the adults are not being reunited with the children and they have not cancelled the placement requests for the children in the ORR portal.

According to Yuma Sector, the AUSAs declined these cases because they had no guidance. Apparently, the AUSAs have received guidance and they won't prosecute on any FAMU adults if there is only one adult parent. If there are two adults with the FAMU they will prosecute one of the adults. USAO has indicated they will not prosecute if it will cause a separation of the child and adult, in other words the breaking up of the FAMU. Tucson Sector has indicated that they have not heard of this but are checking with USAO in that region.

USAO in Yuma indicated to ERO Yuma that they have an emergency conference call today regarding this endeavor. More to follow as it is received.

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Exhibit 10

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Page 1

UNITED STATES DISTRICT COURT

DISTRICT OF ARIZONA

A.P.F. on his own behalf and on behalf of his minor child, O.B.; et al.,

Plaintiffs,

vs. Case No. CV-20-00065-PHX-SRB United States of America,

Defendant.

C.M. on her own behalf and on behalf of her minor child, B.M.; et al.,

Videotaped Deposition of SHAWN J. JORDAN Taken via Remote Videoconference Commencing at 11:06 a.m. Eastern Tuesday, March 21, 2023 Before Paula S. Raskin, CSR Ref. No. 6847

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Page 2

1 A P P E A R A N C E S (All Remote): 2 3 JONATHAN H. FEINBERG, ESQ. Kairys Rudovsky Messing Feinberg & Lin LLP 4 The Cast Iron Building 718 Arch Street, Suite 501 South Philadelphia, Pennsylvania 19106 5 (215) 925-4400 6 jfeinberg@krlawphila.com Appearing on behalf of CM, et al. 7 8 LUCY MCMILLAN, ESQ. 9 DIANA REITER, ESQ. Arnold & Porter Kaye Scholer LLP 250 West 55th Street 10 New York, New York 10019 (212) 836-8000 11 diana.reiter@arnoldporter.com lucy.mcmillan@arnoldporter.com 12 13 Appearing on behalf of CM, et al. 14 15 JAMES KNOEPP, ESQ. NORMA VENTURA, ESQ. SHARADA JAMBULAPATI, ESQ. 16 Southern Poverty Law Center PO Box 1287 17 Decatur, Georgia 30031 18 (404) 521-6700 jim.knoepp@splcenter.org 19 Appearing on behalf of APF, et al. 20 21 22 23 24 25

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Page 3

A P P E A R A N C E S (Continued): 1 2 3 TERRA FULHAM, ESQ. SHADMAN ZAMAN, ESQ. 4 AUSTIN PLIER, ESQ. Covington & Burling LLP One City Center 5 850 Tenth Street, NW 6 Washington, DC 20001 (202) 662-5581 7 tfulham@cov.com szaman@cov.com 8 aplier@cov.com Appearing on behalf of APF, et al. 9 10 PHILIP MacWILLIAMS, ESQ. US Department of Justice 11 175 N Street, NE 12 Washington, DC 20001 (202) 616-4285 phil.macwilliams@usdoj.gov 13 On behalf of the United States 14 15 16 ALSO PRESENT: Emma Winger, AIC 17 Trina Realmuto, NILA Mary Kenney, NILA Mark Flemming, NIJC 18 Mark Feldman, NIJC Carolyn Jackson, CBP 19 Divyesh Lalloobhai, CBP 20 Angeline Etienne Ashley Garmin [ph] 21 Rachel Berson Paul Baker, Videographer 22 23 24 25

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Page 59 SHAWN J. JORDAN 1 2 further questions. 3 Is it accurate to say, sir, that prior to May of 2018, Yuma Sector separated 4 5 families in limited circumstances as described in what we've just reviewed? 6 7 And, yes, that was what I said, was Α. 8 that we separated families on a case-by-case basis. 9 10 Okay. In May of 2018, was there a Ο. 11 change to the degree to which you would separate 12 families? 13 MR. MacWILLIAMS: Objection; form. 14 BY MR. FEINBERG: 15 Answer, please. Ο. 16 So I believe in April or -- in late Α. 17 April, the Attorney General issued a directive 18 that the US Attorneys Office would accept all 19 cases for illegal entry, and the Border Patrol 20 issued a directive to refer all amenable illegal 21 entrants for a prosecution on those criminal 22 charges. 23 The change also was with regard to Ο. 24 family units. Is that correct? 25 The change was -- the direction was Α.

Page 60 SHAWN J. JORDAN 1 2 that we'd refer all subjects that were alleged 3 to have illegally entered the United States regardless of their family unit status. 4 5 Were there any exceptions to that Ο. directive? 6 7 Α. I believe in the initial iteration, 8 that we excluded anyone with a child, that was 9 traveling with a child under the age of four. 10 What other exceptions were there? Ο. 11 I don't recall any lined out Α. 12 exceptions besides that condition. 13 Okay. Does that mean, sir, that any Ο. 14 adult who was found to have entered the country 15 without inspection -- I'm sorry, let me restate 16 that. Let me ask this, sir: What does "amenable" mean? 17 18 Α. "Subject to." 19 What does -- well, I'm not asking you Q. to give me a dictionary definition. You used a 20 21 phrase "amenable to prosecution." What does 22 that mean, to your understanding? 23 For me, that would -- my Α. 24 understanding would be that anyone that is 25 presumed, based on the evidence that we had at

Page 61 SHAWN J. JORDAN 1 2 hand, to have violated a known statute would 3 have been referred. 4 Would it be accurate to say then that Ο. 5 an adult is amenable to prosecution if they have 6 not entered at a port of entry, meaning that 7 they can be prosecuted, right? 8 Α. So if that adult is an illegal alien 9 who has no right to be or remain in the 10 United States, is not a citizen or national of 11 the United States, has no documents showing that 12 they've been admitted, and entered in between a 13 port of entry without inspection, then, yes, 14 they have violated several of the criteria in 15 the illegal entry statute. 16 Under the directives that were issued Ο. 17 in May of 2018, any adult in a family unit would 18 be amenable to prosecution, is that correct, 19 except for adults with children four and under? 20 Α. Correct. 21 The question of amenable to Q. 22 prosecution is a different question from whether 23 a person will actually be prosecuted. Is that 24 correct, sir? 25 Α. Yes.

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Page 62 SHAWN J. JORDAN 1 2 Ο. Have you ever worked in the 3 Prosecutions Unit for Yuma? 4 Α. T have not. 5 Are you familiar with the legal Ο. 6 requirements for a prosecution under 7 Section 1325? 8 Α. Never having worked in the 9 Prosecution Unit, I have a familiarity of what 10 it takes. 11 Did you ever participate in meetings Ο. 12 or trainings with the US Attorneys Office about 13 preparing a case for prosecution? 14 At that time, I -- I don't recall. Α. Ι 15 know I've met with the US Attorneys Office. On 16 several occasions, they've come out and given 17 training sessions, but I don't recall whether 18 they were before or after this time frame. 19 Are you familiar with any of the Ο. 20 reasons that would be cited by the US Attorneys 21 Office for declining to prosecute cases? 22 Α. I am. 23 Can you give me an example of one of 0. 24 those reasons why a case might be declined. 25 A timeliness issue. Α.

Page 70 SHAWN J. JORDAN 1 2 when the Prosecutions Unit had to refer cases to 3 the US Attorneys Office? 4 So my understanding is that these Α. 5 subjects needed to be presented in front of a magistrate within 48 hours of their arrest, so 6 7 the referral to the US Attorneys Office would 8 need to happen in a timely manner to permit 9 that. 10 Did you have any understanding about Ο. 11 a specific time of day by which the Prosecutions 12 Unit was expected to refer cases to the 13 US Attorneys Office? 14 Α. I don't recall a specific hour or 15 time, but it was early in the morning that day that they needed to refer -- they needed to 16 draft complaints and refer all of those 17 18 complaints and documents over to the US attorney 19 that was on duty on authorizing the prosecutions. 20 21 And was it your understanding that Q. 22 the US Attorneys Office would email a response back to the prosecution referral within a matter 23 24 of hours? 25 Objection; MR. MacWILLIAMS:

1 SHAWN J. JORDAN 2 pardon me, I read the wrong portion -- pursuing 3 criminal prosecution and seeking placement of a 4 minor with ORR? 5 So, as we discussed, during early Α. May, we began referring all amenable single 6 7 adults who had violated 8 USC 1325 for 8 prosecution if we were able to present them in a 9 timely manner and they didn't -- were not 10 traveling with a minor -- with a minor child 11 that was under the age of four or five, I 12 believe, and did not have any compelling 13 humanitarian concerns that would prevent their 14 prosecution. 15 So the directive at that time was to Ο. refer all amenable single adults -- all amenable 16 17 adults, correct? 18 That did not have the young minor Α. 19 child with them and did not have any other 20 humanitarian concerns, yes. 21 Okay, and let me review. That was a Q. 22 bad question the way I asked it before, so let 23 me try to state that again. 24 I think you identified three 25 qualifiers to the directive to refer amenable

Page 91 SHAWN J. JORDAN 1 2 adults. One was in a timely manner, two was if 3 they had a child four years or younger, and 4 three was if there were other compelling 5 humanitarian concerns. Is that correct? 6 Α. Yes. 7 Were there any other factors that Q. 8 would justify an exception to that rule 9 requiring the referral of all amenable adults? 10 Not that I recall. Α. 11 What did you mean when you said in a Ο. 12 timely manner? 13 Α. Say if the prosecution case could be 14 referred to the US Attorneys Office within the 15 time frame. 16 What time frame are you referring to? Q. 17 Α. That would be the 48-hour time frame. 18 Sir, I'll just note rather than Ο. 19 showing you testimony, I will represent to you 20 that Gabriel Ramirez, who I mentioned to you 21 before, testified that in this time period, he 22 was instructed to refer every case to the US 23 Attorneys Office regardless of whether the 24 48 hours had passed. Does that sound familiar 25 to you?

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Page 92 SHAWN J. JORDAN 1 2 I do believe at one point we were Α. 3 directed to refer all cases to the US Attorneys Office, now that you mention it. 4 5 Okay. Now, I understand you were not Ο. in the Prosecutions Unit. Is that correct? 6 7 Α. Correct. 8 Q. And would you -- given that that was 9 not your role, would you trust Mr. Ramirez's 10 representation about what he was instructed more 11 than your own recollection? 12 Α. Yes. 13 In other words, if Ramirez says this Ο. 14 is what we were supposed to do, you'd have no 15 reason to dispute what he's saying, right? 16 I would have no reason to doubt his Α. 17 recollection. 18 Okay. So then let's move on from Ο. 19 that qualifier. 20 Four-year-olds or younger, that was a 21 straightforward determination. Is that correct? 22 Α. How do you mean? 23 Yeah, let me restate that question. 0. 24 That's fair. 25 If you determined an adult shows up

Page 93 SHAWN J. JORDAN 1 2 with a child, part of a family unit, who is four 3 or younger, that adult's not getting referred for prosecution. Is that correct? 4 5 That was correct. Α. 6 Ο. That's an absolute rule, right? 7 There were no exceptions to that rule. 8 I don't know that that was an Α. 9 absolute rule. I can't say with any degree of 10 certainty five years later that no one with a 11 four-year-old child was presented for 12 prosecution during that time frame. Someone may 13 have had criminal activity that required them to 14 be separated and referred for prosecution, so I 15 can't say with any degree of certainty that that 16 never happened. 17 Okay. And that would have been a Ο. 18 rare exception to that rule. Is that correct? 19 Α. I can't say how rare that would have 20 been five years on. 21 Q. I'll come back to that. 22 The other factor that you mentioned 23 was compelling humanitarian concerns? Did I 24 hear you correctly? 25 Α. Yes.

	Page
1	SHAWN J. JORDAN
2	Q. What does that mean?
3	A. So I would characterize someone with
4	a medical issue, someone with a child that
5	required that had special needs, someone that
6	had an elderly parent that also had additional
7	care needs, those types of situations would have
8	been evaluated on a case-by-case basis.
9	Q. Can you tell me in the period of May
10	and June of 2018 and, by the way, before I
11	ask that question, I may have misspoken before.
12	I think I used the phrase April through June.
13	It ought to be clear we're talking about May and
14	June of 2018 after the con ops memo was issued.
15	Do you understand what I said?
16	A. I do. I believe I prefaced my first
17	answer regarding May and beyond.
18	Q. Thank you, and I appreciate knowing
19	that we're on the same time period.
20	Can you tell me how many people were
21	subjected to that humanitarian determination
22	based on the factors that you outline, including
23	medical issues, a child with special needs, or
24	an elderly parent?
25	A. I don't recall an exact number, but I

Page 95 SHAWN J. JORDAN 1 2 recall there being an email that evaluated the 3 number of people coming through, and it was somewhere around half were excluded from 4 5 referral for prosecution. On what basis? 6 Ο. 7 Α. I don't recall what the basis was, 8 but that only about half of the amenable adults 9 that came through during that time frame were 10 referred for prosecution. 11 Okay. On that --0. 12 It may have been 40 percent or 50. Α. Ι 13 don't recall. Somewhere in that range. 14 Ο. All right. Let me ask you to bear 15 with me for just one moment, sir. 16 Are you able to say, sir, how many of 17 those families that were not separated due to 18 humanitarian concerns were not separated because 19 there was a child four years and under versus 20 one of the other factors that you mentioned? 21 I do not recall whether there was Α. 22 that level of granularity in that analysis. 23 Do you have any data on that issue? Q. 24 Α. Not -- not with me or not available 25 to me readily.

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Page 96 1 SHAWN J. JORDAN 2 Do you have -- do you know of anyone Q. 3 who might have that data? 4 Α. I don't know if that type of analysis 5 ever --6 (Technical interruption.) 7 MR. FEINBERG: All right, I'm going 8 to pause for a minute or so until we get him back. 9 10 BY MR. FEINBERG: 11 Sir, you froze for a little bit, so 0. 12 I'm going to pause for another 60 seconds or so 13 and then come back to you. 14 Mr. Jordan, can you hear me? 15 Yes, I can hear you. Α. 16 Okay. Let me restate the last Ο. 17 question I asked. 18 Are you aware of anyone who collected 19 data on the reasons why people not have been 20 separated for humanitarian -- on a humanitarian 21 basis? 22 Α. So five years later, I do not recall 23 if anyone collected that data. 24 So if -- let's just -- let's recap Q. 25 what makes up the humanitarian reason for not

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Page 97 1 SHAWN J. JORDAN 2 separating a family. One factor is a child four 3 years or younger. Is that correct? 4 Α. Yes. 5 That factor, just to confirm, was Ο. considered within this humanitarian category. 6 7 Is that correct? 8 Α. Yes. One other factor was a serious 9 Ο. medical issue. Is that correct? 10 11 Α. Yes. 12 Ο. That's something that would require 13 hospitalization? 14 Yes, something that would require Α. 15 hospitalization or a chronic condition that 16 didn't require hospitalization, but required 17 constant assistance. The third factor --18 Ο. 19 Α. [Indiscernible] --20 I'm sorry, I spoke over you. Q. 21 Continue, please. 22 Α. I was going to say someone with mobility issues, someone with impairments, 23 24 something of that. 25 The third factor was a child with Q.

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Page 98 SHAWN J. JORDAN 1 2 special needs. Is that correct? 3 Α. Yes. The fourth factor was someone with an 4 Ο. 5 elderly parent. Is that right? 6 Α. Not necessarily an elderly parent, 7 but a parent -- parent or other relative that 8 was dependent on someone in that family unit for 9 their daily care. 10 Got it, all right. And, by the way, Ο. 11 we were talking about someone else within that 12 family unit. We have a parent and child, and 13 then another member of that family unit. That's 14 who you're referring to. Is that correct? 15 So if we had a grandparent, the Α. grandparent wouldn't be a part of the family 16 17 unit as the Border Patrol defines it, but that 18 may be another factor that was taken into account to make that humanitarian decision. 19 20 What other factors would be Ο. 21 considered besides the ones that we've 22 mentioned? 23 I -- anything else that was apparent Α. 24 to the agents and supervisors at the time. 25 Can you give me an example of Q.

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1 SHAWN J. JORDAN 2 anything else? 3 Α. I can't think of anything else at 4 this time. 5 Was there any specific guidance Ο. issued to agents about what would constitute one 6 7 of these humanitarian factors? 8 Α. I don't recall issuing any specific 9 quidance other than the age factors. Agents 10 were instructed to raise these issues as they 11 encountered them to their supervisors, and the 12 supervisors would make the evaluations. When you made -- when you're talking 13 Ο. 14 about supervisors, are you talking about the 15 supervisory Border Patrol agents or are you 16 talking about someone at your level? 17 Α. The supervisory Border Patrol agents. 18 So, for instance, Joseph Comella, who Ο. 19 we've already identified, he is one who would be 20 in the position to make the decision about 21 whether one of these bases would justify not 22 separating. Is that correct? 23 Α. Correct. 24 Do you know whether -- and I may have Q. 25 already said this.

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Page 103 SHAWN J. JORDAN 1 2 sir, that you sent to Casey Roloff on June 29th 3 of 2018? 4 Α. It appears to be, yes. 5 Did you review this email in Ο. 6 preparation for this deposition? 7 Α. No, I have not. 8 Ο. Having reviewed the statistics --9 well, first, can we agree that when you sent 10 this email, you were discussing the total number 11 of apprehended family units, the total number of 12 separated family units, and then drawing some conclusions from there? 13 14 Α. I don't know that I drew any 15 conclusions. I believe these are just fact-based representations of what the data 16 17 showed. 18 That's a bad question. Let me -- you Ο. 19 mention in this email, the bottom bullet, which 20 is indented to the right of the others: 21 "Over 40 percent of the family units 22 encountered during this time frame were not 23 separated due to humanitarian reasons." 24 Is that correct? 25 That is what I read here on the Α.

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Page 104 1 SHAWN J. JORDAN 2 exhibit, yes. 3 Ο. And is that consistent with your recollection? 4 5 That is consistent with my Α. 6 recollection, yes. 7 I say that because I think you used Q. 8 the figure 40 percent a short while ago in your 9 testimony. 10 So is it correct to say that you have 11 a general recollection that 40 percent of 12 families, give or take, were not separated? Is 13 that right? 14 Α. Yes. 15 All right. In terms of where that Ο. 16 40 percent number comes from, this calculation 17 doesn't appear, but if 664 family units were 18 separated out of 1,142 apprehended, that means 19 that 478 were not apprehended. Can I ask you to 20 trust my math? 21 I believe you misspoke, sir. Α. They 22 were all apprehended. 23 Okay, you're right, I did misspeak. Q. 24 1,142 apprehended, 664 separated. Is 25 that correct?

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Page 105 SHAWN J. JORDAN 1 2 According to the document, yes. Α. 3 Q. Okay. Meaning 478 not separated. Looks good, yes. 4 Α. 5 All right. 478 I calculate as being Q. 6 just under 42 percent of that 1,142 number. 7 Will you accept my representation on that? 8 Α. Okay. 9 All right. So when you were saying Q. 10 40 percent of the family units encountered were 11 not separated, that's how you did that 12 calculation. Is that correct? I believe so. I do not recall 13 Α. 14 exactly how I came up with the math, and it does 15 not appear that I showed my work here. 16 And sitting here today, you can't Ο. 17 tell us how many of those 478 were not separated because of a child four or under or some other 18 reason. Is that correct? 19 20 That is correct. So looking at the Α. 21 reasons for non-referral on the next page, it 22 does not have that level of granularity. 23 Ο. Okay. So would you agree it's 24 entirely possible that all of those -- what's 25 the number I used, 478? All those 478 could

Page 106 1 SHAWN J. JORDAN 2 have not been separated because they presented 3 with a child four or under? 4 I would not feel comfortable opining Α. 5 about that type of thing. It could very easily 6 be impugned with empirical data. I do not have 7 that empirical data in front of me, and I -- so 8 I would not give an opinion on that. 9 Q. Okay. 10 It's something that could be easily Α. 11 refuted and... 12 Well, you're saying it could be Ο. easily refuted. Do you know of anyone who has 13 14 that data who could refute you? 15 No, not that I'm aware of. Α. 16 All right, sir. So we got on that Ο. 17 topic in talking about the portion of the expert 18 disclosure which regards the timing of decisions 19 made during the processing of non-citizens, 20 including pursuing criminal prosecution and 21 seeking placement in ORR. 22 What we've just covered is the determinations about prosecutions, and I won't 23 24 rehash all that testimony except to ask you 25 this:

Page 110 SHAWN J. JORDAN 1 2 Α. When have we not agreed on that? 3 Ο. I guess we haven't. So you're 4 confirming that as long as Border Patrol has 5 determined that someone has entered the country 6 unlawfully, you, meaning Border Patrol, believe 7 that person was amenable to prosecution. 8 Α. Yes. Okay. Let's go onto the other topic 9 Ο. 10 which we left hanging, which was timing of 11 decisions regarding seeking placement of a minor 12 with ORR. How did that work in May and June of 13 2018? 14 Α. That worked as it always had. So any 15 minors that were deemed to be unaccompanied were 16 referred to the Office of Refugee Resettlement 17 as soon as practical. 18 When was the determination made that Ο. 19 a child would be deemed unaccompanied? 20 When we brought those people in, they Α. 21 would be booked in, the intake procedures would 22 happen, record checks would be run, and a 23 determination would be made on whether or not 24 the adult in that family unit was going to be 25 prosecuted.

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Page 111 1 SHAWN J. JORDAN 2 (Technical interruption.) 3 MR. FEINBERG: All right. We'll pause for a bit. 4 (Off the written record.) 5 BY MR. FEINBERG: 6 7 Okay, let's give it a try, sir. Q. I'm 8 going to ask you to repeat the answer that you 9 started to give because I believe we lost you. 10 Α. Yeah, you still are frozen there. 11 Q. I'll give it some more time then. 12 Can you hear me now, sir? 13 Α. I can hear you, yes. 14 Let's start over. Ο. 15 When in the process would the 16 determination be made that a child was a UAC? 17 Α. So when the agents and supervisors 18 assigned to the PST determined that the adult in 19 that family was going to be prosecuted, the 20 child would be determined to be a UAC, and they 21 would be referred to the Office of Refugee 22 Resettlement for placement. 23 Ο. When you say, sir, going to be 24 prosecuted, do you mean going to be referred for 25 prosecution?

1	SHAWN J. JORDAN
2	A. So yes. So once we determine that we
3	intended to refer that adult for prosecution,
4	there would be no one to care for that child,
5	and we would refer that child to the Office of
6	Refugee Resettlement as soon as practical.
7	Q. Make sure I understand that.
8	So the moment a decision was made
9	that you intended when I say you, I mean
10	Border Patrol collectively intended to refer
11	for prosecution, that was when the child became
12	a UAC. Is that correct?
13	A. That's not what I said. I said as
14	soon as practical they would be referred to the
15	Office of Refugee Resettlement.
16	Q. What does that mean, as soon as
17	practical?
18	A. So the children may have been just
19	as a matter of efficiency, the children may have
20	been referred in batches as an agent became free
21	to make those referrals to your
22	characterization of "at the moment" is somewhat
23	inaccurate.
24	Q. Okay. So was that standard practice
25	that children would be referred in batches?

		raye
	1	SHAWN J. JORDAN
	2	A. Yes. So as the someone became
	3	free to make the referrals, they would make the
	4	referrals of several children at once and go
	5	through that process.
	6	Q. Is it accurate to say that once the
	7	decision was made to refer the parent, then it
	8	became the intent of Border Patrol to obtain the
	9	ORR referral?
	10	A. Yes.
	11	Q. When it happened would depend on
	12	factors as you've mentioned. Is that correct?
	13	A. Would depend on workflow, manpower
	14	availability, and other tasks. There's other
	15	priorities of dealing with the detention and
	16	care of everyone there in the facility, yes.
	17	Q. But bottom line, once the agent says
	18	this parent's getting referred or determines
	19	this parent's getting referred, then the
	20	intention is refer the child, correct?
	21	A. Correct.
	22	Q. What other factors besides agent
	23	availability would impact the timing of when
	24	that referral was made?
	25	A. The amount of people coming into the
1		

	Page
1	SHAWN J. JORDAN
2	Q. Okay. And that even if their parent
3	was still in Border Patrol custody, you made the
4	determination that you wanted to move the child
5	to a facility that in your words could care for
6	their needs, correct?
7	A. So that is if we had made the
8	determination that we intended to prosecute or
9	refer that adult for prosecution, then, yes, we
10	made the decision to refer the child for
11	placement with the Office of Refugee
12	Resettlement because we believed that that
13	parent would be sent to the US Marshal Service
14	and would be prosecuted for their alleged
15	crimes.
16	Q. All right, we'll come back to that.
17	First, was the decision motivated by
18	any legal rule or legal obligation that you're
19	aware of?
20	A. So there are multiple court orders
21	that charge us with moving children out of our
22	facilities as soon as practical, and our own
23	policies require us to move detainees out as
24	soon as possible as well.
o =	

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Q. Policies, are those regarding all

25

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Page 127 SHAWN J. JORDAN 1 2 We've got a freezing MR. FEINBERG: 3 situation here. Let's give it a little bit. 4 5 (Off the written record.) BY MR. FEINBERG: 6 7 Okay. I think we got your last Q. answer on the record. Let's pick up with my 8 9 next question. 10 I want to go back, sir, to your 11 testimony about the decision to refer a child to 12 ORR once you've decided to refer the adult for 13 prosecution, okay? 14 Was the result of that prosecution 15 referral ever a factor that you considered? 16 So we would not know what the results Α. 17 of the prosecution would be in a timely enough 18 manner for us to move the children out. 19 Ο. Okay. You said the result of the 20 prosecution. I want to be very specific. I'm 21 asking about the prosecution referral. Do you 22 understand what I mean by that, that 23 distinction? 24 Please elaborate. Α. No. 25 When Border Patrol refers a Sure. Q.

	Page 1
1	SHAWN J. JORDAN
2	case to the US Attorneys Office, would you agree
3	that the US Attorneys Office has two things it
4	can do; one, it can accept the case for
5	prosecution or, two, it can decline to prosecute
6	the case?
7	A. So I believe that the US Attorneys
8	Office has more options when a case is presented
9	to them. I don't think it is a binary decision.
10	I think that they can refer a case back for
11	additional follow-up investigation. And there
12	are other avenues of presenting a prosecution
13	that don't involve a direct indictment and/or
14	prosecution, so I think that's somewhat
15	inaccurate.
16	Q. Okay. Well, then let's use your
17	understanding then.
18	Would Border Patrol ever take into
19	consideration that the US Attorneys Office could
20	have done any number of things with the referral
21	for prosecution?
22	A. So that was not practical for us to
23	wait on the pendency of the US Attorneys Office
24	and their decision to prosecute based on the
25	amount of juveniles that we had in custody and

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Page 129 SHAWN J. JORDAN 1 2 just the overall volume of detainees that we had 3 in our station at that time. Okay. So let me just give you a 4 Q. 5 hypothetical case. If an adult and child come in to the 6 7 facility, Border Patrol decides it's going to 8 refer the adult, and the -- that means the child 9 is going to be referred to ORR, correct? 10 Α. Yes. 11 If your Prosecutions Unit sends it to Ο. 12 the US Attorneys Office, that particular adult, 13 and the US Attorneys Office says "Wait a second, 14 you didn't collect the right evidence, you 15 didn't give Miranda warnings in time, we can't prosecute the case." 16 17 Do you follow the hypothetical that 18 I'm explaining here? 19 Α. I follow you, yes. 20 What you're saying is is that Ο. Yeah. 21 that wouldn't matter at all. The child would 22 have been referred to ORR, that's the end of the 23 story. Is that correct? 24 Α. I'm saying that the child would No. 25 have been referred before that information or

Page 130 SHAWN J. JORDAN 1 2 interaction with the US Attorneys Office ever 3 happened, and it was most likely that that child would have already been picked up by ORR and be 4 5 gone before this ever occurred. 6 Ο. So if the parent was never 7 prosecuted, would the justification for 8 declaring the child a UAC still be a valid justification? 9 At the time that we declare the child 10 Α. 11 a UAC, we had every intention of prosecuting --12 or referring that individual for prosecution. 13 Ο. Okay. And that's just --14 Α. As you --15 I'm sorry, continue, please. Q. 16 As you saw from the data that you Α. 17 brought up in the email earlier, obviously we 18 didn't refer a large portion, that 40 percent, 19 for prosecution for various reasons. 20 So what you're saying, and let's Ο. 21 confirm this, it was that the intention to 22 prosecute an adult meant that the child became a UAC. Is that correct? 23 24 Α. We can reasonably expect that the 25 parent would not be there to care for the child,

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Page 131 SHAWN J. JORDAN 1 2 yes. 3 Ο. And if the adult was never prosecuted, that wouldn't change anything. 4 Is 5 that correct? What -- if the child was -- if 6 Α. No. 7 the child was referred to ORR, they would be 8 picked up. Whether or not the parent was there, 9 we often didn't know whether the parent was --10 what was going to come of the parent's case. 11 So and I think we're saying the same Ο. 12 thing, sir. 13 So once the child is sent off to ORR, 14 if the parent is not prosecuted, it's -- did you 15 ever rescind the ORR designation or UAC 16 designation? 17 Α. Sir, not that I'm aware of. 18 Okay. So, in other words, to go back Ο. 19 to the way I was trying to word my previous 20 question, once Border Patrol decides that it 21 is -- it intends to prosecute someone, that is 22 the end of the analysis as to whether someone 23 becomes a UAC -- a child becomes a UAC, correct? 24 Α. So in the majority of these cases, 25 yes, that was -- we had to -- for the welfare of

Page 188 1 SHAWN J. JORDAN 2 Prior to that, Border Patrol 3 typically only encountered adult males primarily, so the facilities were built for 4 They weren't engineered or designed to 5 that. house children for any long-term detention. 6 So 7 we've always strived to get the children through 8 our facilities and get them to an 9 age-appropriate facility as soon as practical. 10 And so far in your testimony, you Ο. 11 referenced the TVPRA. Are you familiar with 12 that statute? 13 Α. Yes. 14 And would you agree that the statute Ο. 15 states that a UAC should be in ORR custody 16 within 72 hours? 17 MR. FEINBERG: Objection to the form. BY MR. MacWILLIAMS: 18 19 Ο. You can answer. 20 Α. Yes, I agree. 21 Okay. And your recollection of Q. 22 Flores requires transfer as well. Is there a 23 period of time frame, or remind me again what 24 your testimony was regarding Flores. 25 I believe Flores says as soon as Α.

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Exhibit 14

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CONFIDENTIAL

Page 1 Brian Hastings UNITED STATES DISTRICT COURT DISTRICT OF ARIZONA CASE No. CV-20-00065-PHX-SRB -x A.P.F. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, O.B.; J.V.S., ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD H.Y.; J.D.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, M.G.; H.P.M. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.D.; M.C.L. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, A.J.; AND R.Z.G. ON HIS OWN BEHALF AND ON BEHALF OF HIS MINOR CHILD, B.P., PLAINTIFFS, -against-UNITED STATES OF AMERICA, DEFENDANT. - - -x CONFIDENTIAL VIDEOTAPED DEPOSITION OF BRIAN HASTINGS APPEARING REMOTELY FROM YUMA, ARIZONA THURSDAY, MAY 12, 2022 10:08 a.m. REPORTED BY: DANIELLE GRANT APPEARING REMOTELY FROM RICHMOND COUNTY, NEW YORK JOB NO.: SY 4723

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CONFIDENTIAL

	Page 2
1	Brian Hastings
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12	MAY 12, 2022
13	10:08 a.m.
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16	
17	Confidential Remote Videotaped
18	Deposition of BRIAN HASTINGS, held remotely with
19	all parties appearing from their respective
20	locations, pursuant to Notice before DANIELLE
21	GRANT, a Stenographic Reporter and Notary Public
22	of the State of New York.
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Page 46 1 Brian Hastings 2 placement into ORR begins to run? 3 My understanding is, as soon as Α 4 you encounter the unaccompanied alien child, the clock begins to tick for the 72 hours 5 6 mandatory by TVPRA. And that encounter with a UAC is 7 0 8 at the moment that they are apprehended and 9 the parent is amenable for prosecution. 10 Is that how I'm understanding what 11 you have said? 12 Again, my understanding is А 13 immediately upon the encounter with the 14 child, if the adult is amenable, then the 15 clock starts ticking at that point. That's 16 my understanding. 17 Okay. Well, let's talk then, when 0 you say amenable to prosecution, what does 18 19 that term mean? 20 That they -- that they can be Α 21 prosecuted. 22 0 They can be prosecuted but they 23 have not yet been referred for prosecution. 24 Is that how I'm understanding what 25 you are -- what you're saying?

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Page 47 1 Brian Hastings 2 That's my understanding, yes. Α 3 0 If the parent is never actually 4 referred for prosecution after they have 5 been picked up by Border Patrol for 6 potential illegal crossing into the United 7 States, do they cease to be amenable for 8 prosecution? 9 I'm sorry. I don't understand Α 10 your question. 11 Sure. So, for example, if a 0 person has been referred for prosecution but 12 13 the DOJ declines to prosecute, does Border 14 Patrol still consider the parent to be 15 amenable for prosecution? 16 Yes. Also, I'm getting some А 17 background noise. I'm sorry. I'm not sure 18 from where. 19 Okay. Thanks for letting us know. 0 20 MR. MORRIS: If people can make 21 sure that they're on mute, that would 22 be great. 23 Is that better? Q 24 Thank you. Α 25 Okay. Let me go into now showing Q

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	Page 137
1	Brian Hastings
2	they're accepted for prosecution until the
3	prosecution unit takes on the case, presents
4	it to the Department of Justice, and the
5	Department of Justice says, yes, we're going
6	to hear that or, no, we're not going to.
7	But that time line of how quick
8	that happens varies, again, very widely
9	depending upon location, docket, how many
10	people that are on the docket and, in other
11	words, what the flow, how many people are
12	there. So it's heavily dependent. There is
13	no set time frame on how quickly that it
14	happens.
15	Q Understood that the time frame is
16	not set. But once it is once it does
17	occur that the DOJ declines to prosecute,
18	does the individual nevertheless, in Border
19	Patrol's perspective, remain amenable for
20	prosecution?
21	A Yes, they're still amenable by
22	policy. And specifically, under zero
23	tolerance, they were amenable by Border
24	Patrol perspective, but whether or not DOJ
25	accepted that case was up to DOJ.

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CONFIDENTIAL

Page 138 1 Brian Hastings And it remained true that they're 2 0 3 amenable even after DOJ had affirmatively 4 declined the case? 5 А Correct. 6 Ο There's nothing about being deemed 7 amenable to prosecution that made the parent 8 unavailable, correct? 9 MACWILLIAMS: Objection. MR. Form. Foundation. 10 11 Can you reword your question? Α I'm sorry. I don't understand. 12 13 Sure. Let me ask it this way. Q What was it about being deemed 14 15 amenable to prosecution that made the parent unavailable under the TVPRA? 16 17 Α Because you knew you were going to 18 set the individual for prosecution and you 19 were going to turn them over to United States Marshal Service for -- to await 20 21 prosecution or to await going in front of an 22 attorney -- or I'm sorry -- going in front 23 of an immigration judge. 24 Until the moment that the parent Ο 25 was actually taken for prosecution, didn't

Exhibit 44

Message	
From:	Albence, Matthew [Matthew.Albence@ice.dhs.gov]
Sent:	5/10/2018 10:05:11 PM
To:	Homan, Thomas [Thomas.Homan@ice.dhs.gov]
CC:	Blank, Thomas [Thomas.Blank@ice.dhs.gov]; Asher, Nathalie R [Nathalie.R.Asher@ice.dhs.gov]; Flores, Marisa A [Marisa.A.Flores@ice.dhs.gov]
Subject:	Phoenix Prosecution Paper
Attachments:	ES - 1325 Prosecutions and DHS Coordination 5-10-18(MA).docx

Tom:

Per this morning's discussion, attached is a paper that details the issues in PHX with the zero tolerance policy. As this is a new policy, the situation is fluid so we aren't able to fully assess the overall operational impact. Bottom line, our concern is that the adults that were separated from their children due to the prosecution will be returned to the USBP immediately after the guilty plea is accepted by the Court, as the local District Court generally only imposes time-served. This will result in a situation in which the parents are back in the exact same facility as their children—possibly in a matter of hours—who have yet to be placed into ORR custody.

The asks are:

1) CBP: They need to remain flexible and work with the FOD to prevent this from happening. This may mean transporting the UACs to an ORR facility themselves, at an accelerated pace, bringing the adults to ERO after the prosecution is completed, as opposed to back to the USBP station, or any other number of new processes that may need to be established. The traditional BP approach of washing their hands of the aliens once they are done with them is not going to work in this situation.

2) DOJ:

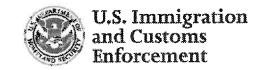
3) DHS: Probably a good idea just to give them visibility that this issue exists, and confirm that the expectation is that we are NOT to reunite the families and release (either pre or post FRC).

Thanks.

Matt

6869	EXHIBIT	
PENGAD 800-631-6989	380	
PENGA		J

Enforcement and Removal Operations U.S. Department of Homeland Security 500 12th Street, SW Washington, DC 20024



Executive Summary

Purpose

To provide an overview of operational issues within the ERO Phoenix area of responsibility that are anticipated to arise due to the increased prosecution requirements impose by the U.S. Department of Justice.

Background

In accordance with the new Attorney General guidelines, U.S. Border Patrol (USBP) in Arizona will start presenting for criminal prosecution any adult caught illegally entering the United States between the ports of entry. Family units will be separated and the now unaccompanied alien children (UAC) processed for transfer to the Office of Refugee Resettlement (ORR) with the parent(s) being held for prosecution.

Arizona District Courts have a streamlined approach to border crimes – aliens are arrested by the USBP, (family separation takes place, if applicable), they are taken to court, and the vast majority are sentenced to time served and returned to a USBP station. At that point, Mexican nationals who do not claim credible fear are removed from the U.S. and the remainder of the aliens are turned over to ERO for detention and removal proceedings.

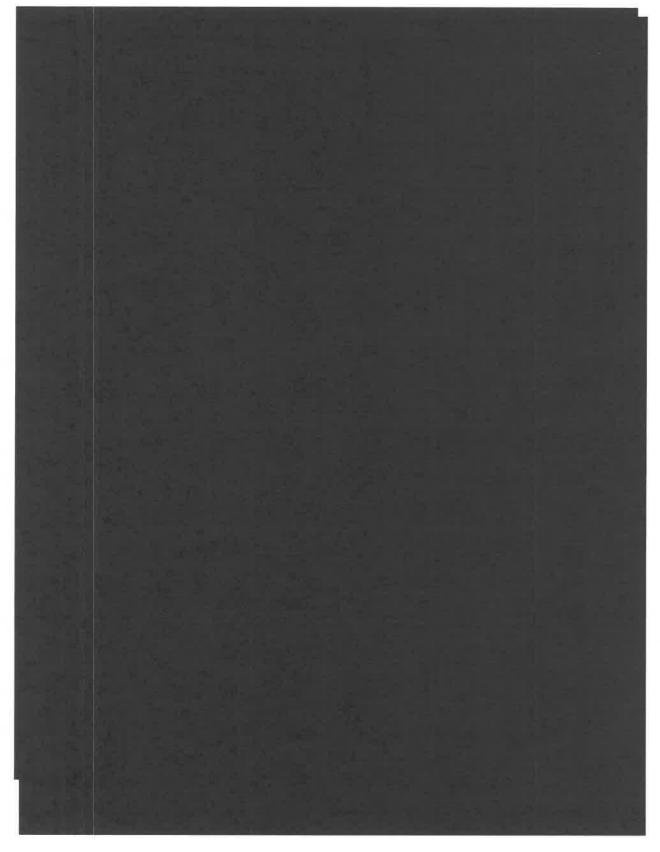
Due to the minimal sentence imposed by the District Courts, the parents who were prosecuted will be returned to the same USBP station where their children will likely still be undergoing processing/awaiting transfer to ORR.

Discussion

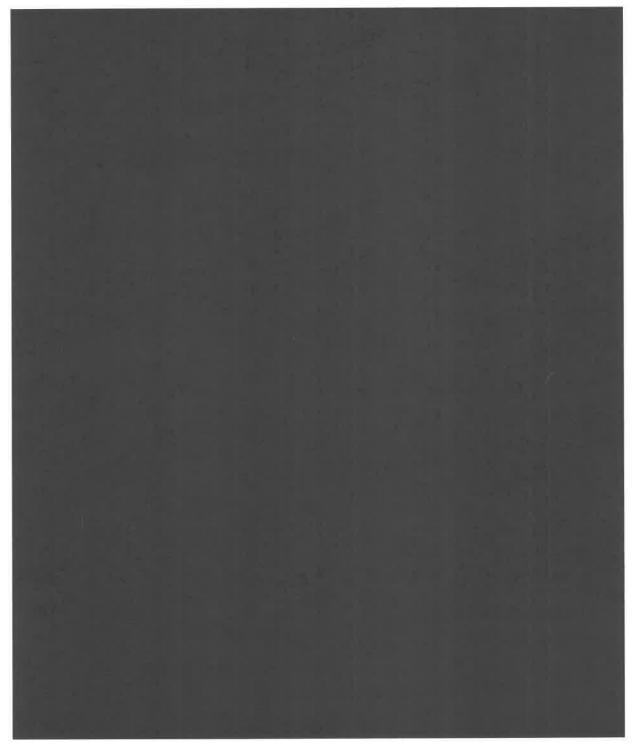
As noted in the April 24, 2018 memorandum from U.S.Department of Homenald Security General Counsel Mitnick to Secretary Nielsen entitled, *Criminal Prosecution of Aliens Who Entered Unlawfully: Legal Guidance on Potential Separation of Family Members*, "it is legally permissible to adopt a policy that all adults who appear to have violated 8 U.S.C. § 1325 be referred to DOJ for prosecution. It is also permissible for minors to be separated from accompanying adults as a result of such a referral." In fact, it is legally permissible to house adults separately from their minor children, even absent referral for prosecution. The ICE Office of the Principal Legal Advisor (OPLA) is

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ERO Family Unit Processing Page 2 of 3



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Exhibit 45

From: HASTINGS, BRIAN S Sent: Friday, May 25, 2018 11:19 PM To: PORVAZNIK, ANTHONY J CC: LANDRUM, CARL E Subject: RE: CBP is Reuniting adults with kids

Thank you, Chief

From: PORVAZNIK, ANTHONY J Sent: Friday, May 25, 2018 11:17 PM To: HASTINGS, BRIAN S <BRIAN.S.HASTINGS@CBP.DHS.GOV> Cc: LANDRUM, CARL E <CARL.E.LANDRUM@CBP.DHS.GOV> Subject: RE: CBP is Reuniting adults with kids Chief,

This is generally the situation in Yuma; however, DCPA Landrum is confirming additional information on the situation in Yuma with ERO and family unity issues.

We'll have that to you shortly.

Tony

Anthony J. Porvaznik Chief Patrol Agent USBP Yuma Sector 928.318.9594 (cell) 928.341.6501 (office)

From: HASTINGS, BRIAN S Sent: Friday, May 25, 2018 8:33:48 PM To: PADILLA, MANUEL JR; ORTIZ, RAUL L; KARISCH, RODOLFO; SELF, JEFFREY D; HUDSON, RICHARD M; ROGGOW, MATTHEW J; PORVAZNIK, ANTHONY J; LANDRUM, CARL E Subject: RE: CBP is Reuniting adults with kids

My response is below....Please let me know if I am off on the below messaging and if TCA and Yuma have the same issues as RGV. V/r,

Brian

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Chief,

What is occurring in RGV is that the parents are being sent to their initial, they are pleading out immediately, and they are being sentenced to time served (sometimes within hours). They are then being remanded back to the CPC before HHS has placed the UAC's (Less than 72 hours). HHS does not place the UAC's at that point as the adult has already plead out.

We don't believe that we have another option, but to reunite the families if the kids are still in our custody after the adult gets back (before HHS has placed the UAC) from time served.

The goal is to prosecute, not separate families. The separation is a byproduct of the prosecution, not the end state. We are dealing with two scenarios. Both of which are outlined below and in the attached.

Scenario 1: The parent is prosecuted and child is gone from BP custody to HHS when parent returns. ERO will reunite families upon removal order.

Scenario 2: (happening in RGV) Parent is prosecuted. Gone for hours and returns after time served at the initial is given by the judge. The child is still in BP custody pending transfer to HHS. The parent, because he or she was not remanded to USMS custody (because at the initial he was given time served), is still, technically in USBP custody. Parent is returned to the station. Both parent and child are in BP custody and the prosecution is complete. We now have a family unit, again.

V/r, Brian



From: HASTINGS, BRIAN S Sent: Friday, May 25, 2018 9:30 PM To: PADILLA, MANUEL JR <<u>MANUEL.PADILLAJR@CBP.DHS.GOV</u>>; ORTIZ, RAUL L <<u>RAULL_ORTIZ@cbp.dhs.gov</u>>; KARISCH, RODOLFO <<u>RODOLFO.KARISCH@CBP.DHS.GOV</u>>; SELF, JEFFREY D <<u>JEFFREY.D.SELF@CBP.DHS.GOV</u>>; HUDSON, RICHARD M <<u>RICHARD.M.HUDSON@CBP.DHS.GOV</u>>; ROGGOW, MATTHEW J <<u>MATTHEW.J.ROGGOW@CBP.DHS.GOV</u>>; PORVAZNIK, ANTHONY J <<u>ANTHONY.J.PORVAZNIK@CBP.DHS.GOV</u>>; LANDRUM, CARL E <<u>CARL.E.LANDRUM@CBP.DHS.GOV</u>>; Subject: FW: CBP is Reuniting adults with kids Chiefs, Depaties, I apologize for pinging this late, on a holiday weekend, but can you please provide some insight as to the questions below? Respectfully request a quick turn around.

V/r, Brian

From: VITIELLO, RONALD D (USBP) Sent: Friday, May 25, 2018 9:17:56 PM To: PROVOST, CARLA (USBP); HASTINGS, BRIAN S; DIKMAN, SABRI Y; LUCK, SCOTT A (USBP); HUFFMAN, BENJAMINE C; HUDSON, RICHARD M Subject: FW: CBP is Reuniting adults with kids

Need some fidelity on this

Ronald Donato Vitiello Acting Deputy Commissioner Customs and Border Protection (202) 344-3129 (202) 465-2328

From: Albence, Matthew Sent: Saturday, May 26, 2018 2:01:35 AM To: MCALEENAN, KEVIN K; Homan, Thomas; VITIELLO, RONALD D (USBP) Subject: FW: CBP is Reuniting adults with kids

FYSA. Not sure if you are aware. It sounds like ORR is refusing to take the children as UAC if the parent arrives back that the processing site and the child is still there. This is happening at the CPC as indicated below and have also heard in AZ. This obviously undermines the entire effort and the Dept is going to look completely ridiculous if we go through the effort of prosecuting only to send them to a FRC and out the door....

Sent with BlackBerry Work (www.blackberry.com)

From: Johnson, Tae D < Tae D. Johnson (arce. dhs. gov>

Date: Friday, May 25, 2018, 8:29 PM

To: Asher, Nathalie R <<u>Nathalie R Asher@ice dhs.gov</u>>, Albence, Matthew <<u>Matthew Albence@ice.dhs.gov</u>>

Subject: CBP is Reuniting adults with kids

CBP is Reuniting adults with kids after prosecution in McAllen. My guess is there is no place to house the adult, so they are bringing them back to the station and since the child is still there, they are joining them. These kids have already been designated and are awaiting transportation to HHS. Transportation arrangements are now being cancelled and presumably the males HoHs are being released..... What a fiasco.

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Exhibit 7

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Page 1 1 IN THE UNITED STATES DISTRICT COURT 2 FOR THE DISTRICT OF ARIZONA 3 - - - - - - - - - - + 4 A.P.F., et al, 5 Plaintiffs, | Case Number: 6 19-cv-5217-SRB vs. 7 UNITED STATES OF AMERICA, 8 Defendant. 9 _ _ _ _ _ _ _ _ _ _ _ _ _ _ C.M., et al, 10 11 Plaintiffs, | Case Number: 12 10-cv-00065-SRB vs. 13 UNITED STATES OF AMERICA, 14 Defendant. 15 16 17 Video Deposition of 18 THOMAS D. HOMAN Friday, September 9, 2022 19 20 9:13 a.m. 21 22 23 Job No. 5633 Reported by: Laurie Donovan, RPR, CRR, CLR 24 25

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	Page 2
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6	September 9, 2022
7	9:13 a.m.
8	
9	Deposition of THOMAS D. HOMAN, held in
10	person, with the witness and all parties
11	participating in person, pursuant to the
12	Rules of the United States District Court for
13	the District of Arizona, subject to such
14	stipulations as may be recited herein or
15	attached hereto, before Laurie Donovan, a
16	Registered Professional Reporter and notary
17	public of the District of Columbia, who
18	officiated in administering the oath to the
19	witness.
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Page 40 Q After an immigration judge makes a 1 2 decision to remove the parent? 3 Α Yes. Did you have that understanding at the 4 Ο 5 time you signed the memo that's in front of you? 6 Α Yes, and the memo in front of me is 7 about detention, prosecution, removal, and then 8 unification would happen upon the judge's decision. 9 10 When you signed the referral memo, it 0 11 was your understanding that the separated family 12 members would be reunified only for purposes of 13 removal; is that correct? 14 Α Yes. 15 Okay. Was that reunification plan Ο 16 written down anywhere? 17 Α You'd have to ask Matt Albence that 18 question. Matt Albence was in charge of 19 implementing the execution of the plan. 20 So you don't know if the reunification 0 21 plan is included in a memo or a manual or directive? 22 23 You'd have to ask Matt Albence. А Once 24 the zero tolerance -- when this was being 25 developed, Matt Albence was the associate director

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Page 41 for Enforcement and Removal Operations. 1 He's in 2 charge of detention removals, so he was to work 3 with HHS and CBP on execution of this plan. 4 If you're going to propose a practice of Q 5 separating families, would you agree that a 6 critical component of that proposal is a plan for 7 reunifying them? 8 MR. MACWILLIAMS: Objection; form. 9 THE WITNESS: There should be a 10 plan. 11 BY MR. WALSH: 12 Do you know what the plan was? 0 13 Α No. Again, Matt Albence was assigned 14 the execution of this. My general understanding 15 was, again, they get arrested, we detain them, we prosecute them, they go to deportation 16 17 proceedings, then the reunification. 18 And again, I didn't get in the weeds on 19 this. I was the director of the agency. I'm 20 running a 20,000-man operation, so I have to count 21 on my senior leaders. Matt was a senior executive 22 service man for two and a half decades. I put a 23 lot of trust in Matt, who is extremely smart and 24 has been in immigration, enforcement of 25 immigration law for at least 25 years. So I got

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Page 42 to trust my leadership to execute this plan. 1 2 So it was ERO, under Matt Albence's Ο 3 leadership, that was responsible for reunifying the separated family members; is that correct? 4 5 To work with HHS to make reunification. Α After Border Patrol transferred the 6 \bigcirc 7 child to ORR custody, the child could be sent to 8 ORR shelters at varying places around the country; 9 is that correct? 10 Yes. Α 11 As far away as New York? Ο 12 I don't know of New York specifically, А 13 but they have facilities all over the country. 14 And while the child was in an ORR 0 15 shelter, their parent would generally be in an ICE 16 detention facility in the southwest border region; 17 is that correct? 18 I would not agree with that. Α I think 19 parents -- with ICE detention, we have facilities 20 all over the country. Depending on the population 21 of any one facility, they may be moved to another 22 facility. If they have special needs, they have a 23 health issue, they may move to a specific facility 24 that has that capability. So I wouldn't say they 25 were all kept at the southwest border. Many were.

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Page 48 prosecution is a consequence. This was never 1 2 about separating families just, just to do it. 3 It's the byproduct of the prosecution. 4 Did, did you understand that under Q 5 option 3, families would be separated? 6 Α Yes. 7 The DHS referral policy is dated 0 April 23, 2018. If you look at the last page 8 9 under option 3, there's a signature there. Do you 10 understand that to be Secretary Neilsen's 11 signature? 12 А I don't recognize her signature. It's 13 probably hers, because it's on the approval line. 14 Q And you see that the date next to her 15 signature is May 4, 2018, right? 16 Α Right. 17 Do you know why Secretary Nielsen didn't Ο 18 sign the memo until May 4, 2018 if this was 19 delivered to her on April 23? 20 Well, one reason is she asked a lot of Α 21 questions, so she was drilling down on this. 22 Q What questions did she ask? 23 How this would be implemented. Α 24 Do you recall specific --Q 25 Do we have, do we have processes in А

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1 place?

For instance, you know, we deal with ORR all the time, so we do have a practice in place of dealing with ORR. We have a practice in place of detaining adults. We have a practice in place to know where those adults are on the Detention Locator system.

8 So these are, you know, things that I 9 answered. I don't know why it took her this long, 10 but I know she did -- we met with her once, I can 11 remember, where questions were asked, how would 12 this be implemented.

13 Q Was one of her questions how would 14 families be reunified?

15 I explained to her that we've done this Α in the past. We have dealt with ORR in the past. 16 17 We have dealt with reunification in the past, with 18 This isn't, this isn't the first time ORR. 19 families have been separated. We've separated 20 families before, and was a parent convicted of a 21 crime? Was a parent a danger to the child? Ιt 22 doesn't happen a lot, but it happens. 23 It certainly never happened on the scale Ο

24 that it happened in May and June of 2018 before, 25 correct?

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Page 50 Correct. 1 Α 2 Who else from ICE was answering her 0 questions about what processes were in place to 3 4 implement family separation? 5 I, I need a minute. Α 6 0 Sure. 7 MR. MACWILLIAMS: Do you want to 8 just go off the record? 9 THE WITNESS: Yes. 10 MR. MACWILLIAMS: Can we take a 11 break? 12 MR. WALSH: Yes. 13 THE VIDEOGRAPHER: The time is 10:06 a.m. We are off the record. 14 15 (Whereupon, a short recess was 16 taken.) THE VIDEOGRAPHER: The time is 17 10:21 a.m. We are back on the record. 18 19 Please proceed. 20 BY MR. WALSH: 21 So the question that was pending when we Q 22 broke was: Who else from ICE was answering 23 Secretary Nielsen's questions about what processes 24 were in place to implement family separation? 25 During this meeting, it was normally me, А

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Page 53 This is just one piece of -- you know, 1 agency. 2 we enforce over 400 statutes, so we have things 3 happening all over the country, so I'm running the agency, and again I take it upon Matt, a senior 4 executive, to handle these operations. He's run 5 operations before, nationwide operations, so I had 6 7 full trust in Matt Albence. 8 Ο The referral memo was signed on May 4, 9 2018, correct? 10 Α Yes. 11 Is it your understanding that option 3 Ο 12 in that memo was implemented shortly thereafter? 13 I don't know the time frame, but option Α 3 was implemented. 14 15 Was it that month, May 2018? Q 16 I don't recall the specific day it Α 17 started. I'm sorry. 18 Ο That's fine. Prior to the implementation of option 3 19 20 in that memo, had you asked Mr. Albence to see the 21 plan for tracking separated family members? 22 А No. 23 Had you asked Mr. Albence to see the 0 24 plan for reunifying separated family members? 25 Α No.

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Page 54 And to be clear, you did not see the 1 Ο 2 plan for tracking or reunifying separated family members at that time, correct? 3 MR. MACWILLIAMS: Objection; form. 4 5 THE WITNESS: No, but again, Matt 6 Albence has run many national operations, so 7 I had full faith that Matt Albence would 8 execute this plan efficiently. 9 BY MR. WALSH: 10 Did Secretary Nielsen express any 0 11 reservations about implementing the referral 12 policy in the memo that you recommended to her? 13 I don't recall specifically. I remember Α 14 she had a lot of questions. 15 It's been reported that Secretary Ο 16 Nielsen was hesitant to sign the referral policy, 17 because she was concerned that the government didn't have sufficient facilities or sufficient 18 19 training to implement family separation. 20 Do you recall her expressing those 21 concerns? 22 А Well, if she had those concerns, why did 23 she sign it? I mean we answered her questions, 24 she seemed to accept out questions -- accept our 25 answers, excuse me, and she signed it. I don't

Page 58 1 conversation? 2 Α I remember we discussed a lot of No. 3 things. 4 So Mr. Lloyd was informed that there was Q 5 a pending policy that would result in an influx of children being sent to ORR shelters, and Mr. Lloyd 6 7 told you ORR could handle it. 8 Is that a fair summary of the 9 conversation you had with him? 10 My recollection is I met with Scott Α 11 Lloyd and we talked about not things. I think 12 this is one of the things we talked about. He 13 certainly didn't give me any reservations. Again, 14 this is the best of my memory. I think we, I 15 think we discussed it. I met with him on one 16 occasion. Went to lunch with him on one occasion. 17 He was aware of this being talked about, so -- and 18 he didn't present any reservations to me. 19 You and Mr. McAlleenan and Mr. Cissna 0 20 presented three options in the referral memo. Do 21 you know why Secretary Nielsen chose option 3? 22 А I don't know why she chose option 3, why 23 she approved option 3. Again, we had a meeting, 24 she asked a lot of questions, and she signed it. 25 You'd have to ask her why she approved option 3.

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Page 68 1 BY MR. WALSH: 2 How would separating families prevent 0 3 the tragedies you just described? MR. MACWILLIAMS: Objection; form. 4 5 The purpose wasn't to THE WITNESS: 6 separate families. The purpose was to 7 prosecute. Detain, prosecute, reunite. BY MR. WALSH: 8 9 And you understood that the prosecution 0 of adults in family units would lead to 10 separation, correct? 11 12 I understood if we prosecuted these А 13 parents and deport them, it provides a 14 consequence. Based on decades of Border Patrol's 15 study on consequence delivery system, it would 16 result in decreased crossings, which would result 17 in decreased deaths, which would result in 18 decreased rapes, which would result in decreased 19 drugs, which would result in decreased criminals 20 coming across the border. 21 So then the consequences that would Q 22 arise under the policy that you and Mr. McAlleenan 23 and Mr. Cissna -- or Vitiello suggested of 24 prosecuting families which would lead to 25 separation would be to discourage other families

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Page 69 from making the journey and entering the United 1 2 States illegally. Is that --3 Α The consequence was deportation. Ιf they see people being deported -- for instance, 4 5 the first family residential center we built was an Artesia, New Mexico at a Border Patrol station. 6 7 We house families there. We held them in custody 30 to 40 days, long enough to see a judge. 8 9 The vast majority lost their cases, I 10 We put them on an airplane and sent remember. 11 them home. The border numbers tanked, decreased 12 because the consequence worked, just like 13 Streamline and other consequences. 14 So based on my experience and based on 15 my understanding of the consequence delivery system, just like the Streamline, deportation has 16 17 a consequence. Deportation affects recidivism. 18 So my hope was doing this would provide a 19 consequence which would prevent more people from 20 coming and putting themselves in harm's way. 21 Do you agree that separating families Q 22 would also be a consequence that would act as a 23 deterrent? 24 Α Oh, I think, yeah, no parent wants to be 25 separated from the child. Absolutely. Ι

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Page 81 clarification is that your view or your 1 2 understanding is that the proposal was about 3 detention primarily, separation as a byproduct? 4 We lost the ability to detain families Α 5 together based on Judge Dolly Gee's --Mr. Homan, I'm sorry. I'm just asking 6 0 7 if -- the policy you're advocating for, that 8 Mr. Blank refers to and that you refer to, it's 9 correct that it's -- I'll withdraw that question. 10 The proposal that's being discussed in 11 this email, regardless if you want to call it a 12 detention proposal or a separation proposal, is 13 the proposal your idea? 14 Yes, I think so. Α 15 The proposal at this time in 2017 Okav. Q involved the adult being detained in ICE custody 16 17 and the child being detained in ORR custody, 18 correct? 19 Α Yes. 20 The proposal at this time did not 0 21 involve a component of referring the adult to DOJ 22 for prosecution, correct? 2017? I don't think so. 23 А 24 Can you explain why that is? And I'll 0 25 add to that that your discussion in proposal with

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Page 100 capacity to handle the influx of detained adults 1 2 and children in ORR custody? 3 Α I don't remember. It would have to depend what the current detention population was 4 5 at the time. If the current detention population was near full, we would turn on other facilities. 6 7 Again, sticking with the April to 0 8 May 2018 time period, were you aware as to whether 9 ICE and HHS personnel, including ORR personnel, 10 were sufficiently trained to handle the influx of 11 detained parents and separated children? 12 That would be Matt Albence's А 13 responsibility. You got to remember in May, I 14 already announced my retirement in May. I spent 15 most of May transitioning to the person that was 16 representing me. So I was, I was busy doing that, 17 plus taking care of the rest of the agency. 18 So again, Matt Albence would be the one 19 to make sure that the process, the process we 20 already had in place is capable of handling an 21 increase. 22 0 You said -- so I guess the answer to the 23 question is, no, you don't know if ICE and HHS had 24 adequate training to handle the influx in April 25 and May of 2018, correct?

Page 146 (Exhibit 663 was marked for 1 2 identification.) 3 BY MR. WALSH: 4 Mr. Homan, you've been handed Q 5 Plaintiffs' Exhibit 663. It's a December 11, 2017 email, subject "Heads-up: S1 briefing next 6 7 Monday," and it attaches a document, "Immigration and Border Security briefing for S1, revised." 8 9 If you look at the bottom email on page 10 1 and then onto the top of page 2. It's a 11 December 9, 2017 email from Tracy Short to you and 12 others, and Mr. Short writes, "Please see the 13 revised agenda below to assist you in preparing 14 briefing material." 15 Do you understand that this email and 16 document attached to it were in connection with a, 17 a meeting to brief Secretary Nielsen? 18 Α Yes. 19 Towards the bottom of page 2, under 0 20 "DHS-Initiated Solutions," do you see a number of 21 solutions listed there? 22 А Yes. 23 And romanette iii is "separation of 0 families proposal." 24 25 Do you see that?

Page 147 1 Α Yes. 2 Do you think that the separation of 0 3 families proposal was raised with Secretary 4 Nielsen in December of 2017, having read this document? 5 6 Α Probably, but again I just want to say 7 the "separation of families" wording, the people 8 at ICE and my staff knew that meant detention of 9 adults. Parents. This email is sent to folks at CBP as 10 0 11 well, too, right? 12 Yes. А 13 And DHS Front Office also? Q 14 Α Yes. 15 So is it your understanding that DHS Ο 16 Front Office, CBP, as well as ICE, also understood 17 what was meant by the use of the phrase "family 18 separation proposal"? They should, because I talked about the 19 А 20 detention of adults. These people have been 21 involved with those meetings, so they knew the 22 proposal was the detention of adults. 23 They knew the separation of families 0 24 proposal as listed here was the detention of 25 adults?

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Page 148 They should. 1 Α 2 0 Going into the meeting --3 Α If I can -- just so you know, so the HQ Front Office, I don't know who -- I see DHS in 4 5 I don't know if these people were in the here. 6 front office. I just don't know. 7 Fair enough. 0 8 Going into the meeting with Secretary 9 Nielsen, did you have any sense as to whether she 10 may be more receptive to the detention proposal 11 than had been Secretaries Johnson, Kelly and Duke? 12 I didn't know what her thoughts were on А 13 it. 14 0 But it's something that you wanted to 15 raise with her anyway, correct? 16 This is something that we wanted to Α 17 discuss based on the continuing numbers on the 18 border, the continuing death on the border, 19 continuing drugs coming across the border, all the 20 things I said before, to try to save lives, and 21 not only of migrants, but citizens of overdose 22 deaths of drugs coming across the border. This is 23 about, again, saving lives and securing the 24 border. 25 And so even though the detention Q

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Page 150 numbers down. That was the consequence. 1 Ιt 2 was never about -- I'll say it a thousand 3 times. It was never about let's just separate families, let's hurt families, let's 4 5 use the separation of a family as a 6 deterrent. It was about arrest, prosecution, 7 and/or immigration proceeding, removal, reunification. 8 9 BY MR. WALSH: 10 And that would result in the separation Ο 11 of family members, correct? 12 А Yes. 13 Q And you often referred to it as 14 "separation policy," correct? 15 Yes. For the same reason I told you. Α Т 16 knew what that meant. I meant that the policy 17 proposal to detain families, and anybody that 18 thinks, when you detain a parent -- I need to 19 explain this -- anybody who thinks -- I'm not a 20 If you're going to detain a parent, the fool. 21 child can't go into custody with them, so there's 22 going to be a separation. Of course, that's a 23 byproduct of this. 24 So yes, the separation issue came up, we 25 used term "separation," because of that was a

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Page 151 byproduct of what we had, but the overall goal was 1 2 not about separating. It was about detaining, 3 prosecuting, removing, or releasing, depending on the judge's order, and make their reunification 4 5 before the removal or release, the time of 6 release. 7 What -- at this time, what was the plan 0 for reunification? 8 9 When they -- if they got prosecuted, А 10 they come to ICE detention, when the decision is 11 to remove or release, then reunification would 12 start. 13 Is that your understanding prior to Q 14 May 2018? 15 That's, that's the process that's always Α 16 been around. 17 Do you know where that's laid out in Ο 18 writing anywhere in a document prior to May 2018? 19 А I don't know if it's in the operation 20 procedures or not -- something --21 THE REPORTER: Can you say that 22 again? I can't hear you very well. 23 THE WITNESS: I'm not sure it's in 24 the operational instructions or not, but 25 separation of families, for various reasons,

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Page 152 has happened before, and we dealt with this 1 2 issue before. There is a process in place. 3 We have worked with ORR in the past. 4 BY MR. WALSH: 5 What was Secretary Nielsen's reaction to 0 6 the detention proposal? 7 Α She asked a lot of questions. 8 Q What questions? Process. Mostly on process. 9 Α Ι 10 explained to her the existing process we had in 11 place. Kevin McAlleenan talked about existing 12 processes he had in place, CBP had in place. 13 Questions like that. She wanted to know how, how 14 will this work. 15 And you were able to answer questions 0 16 regarding the tracking of separated family 17 members? 18 MR. MACWILLIAMS: Objection; form. 19 THE WITNESS: ICE's job is to track 20 people in our detention, that are in our 21 detention. We have the detention locator 22 system and a separate database, I don't 23 remember the name of it, where you can go in 24 anytime to find out where a certain detainee 25 is being held.

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Page 154 the separated children were? 1 2 Α I do not know. 3 0 Did Secretary Nielsen express any moral concerns with the separation of families? 4 5 Ethical, humanitarian, can't stomach it, like --Most of her concern was about making 6 А 7 sure there's a process in place. 8 0 When the detention proposal was 9 presented to Secretary Nielsen in December 2017, 10 did the proposal at that time have the prosecution 11 element to it? 12 А I don't recall. At some point it did, but I don't remember when. 13 14 (Exhibit 664 was marked for 15 identification.) 16 BY MR. WALSH: 17 Mr. Homan, Plaintiffs' Exhibit 664 is a Ο 18 December 4, 2017 email from Kevin McAlleenan to 19 you and others. The subject is "Immigration 20 Priorities Meeting, Follow-up Actions," and I want 21 to direct your attention to the second page, at 22 the top, the second bullet, "Potential for 23 increased prosecution of parents, where 24 appropriate. CBP will evaluate with counsel, ICE, 25 DHS/OGC and DOJ, the potential for prosecution of

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Page 213 THE VIDEOGRAPHER: The time is 1 2 4:31 p.m. We are off the record. 3 (Whereupon, a short recess was 4 taken.) 5 THE VIDEOGRAPHER: The time is 6 4:45 p.m. We're back on the record. Please 7 proceed. BY MR. WALSH: 8 9 In the May/June 2018 time period, if a 0 10 parent in an apprehended family unit was not 11 prosecuted, but that parent was sent to ICE 12 detention and the child was transferred to ORR 13 custody anyway, that's the same detention policy 14 that you and Mr. McAlleenan had been proposing in 15 2017, isn't it? 16 MR. MACWILLIAMS: Objection; form, 17 foundation. 18 THE WITNESS: That portion of it, 19 the sending to ICE detention for removal. 20 BY MR. WALSH: 21 Q So for --Excuse me. For either the removal or a 22 Α 23 decision to grant a relief. 24 So if there are parents who were not 0 25 prosecuted, yet ended up being sent to ICE

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Page 214 custody, and their child was sent to ORR custody, 1 2 it's the same practice that you had been proposing 3 in 2017, correct? 4 MR. MACWILLIAMS: Objection; form. 5 THE WITNESS: Basically. BY MR. WALSH: 6 7 Did it differ in any way from the 0 8 proposal you and Mr. McAlleenan had been 9 suggesting in 2017? It differed at the point that we 10 А 11 recommended prosecution, referred for prosecution. 12 (Discussion was held off the 13 record.) 14 BY MR. WALSH: 15 Can we start that over, that question? 0 Did it differ in any way, and if you could repeat 16 17 your answer, please. 18 The only exception that differed is that Α 19 the adult was referred for prosecution. 20 If the adult was referred for Ο 21 prosecution but wasn't prosecuted, what was the 22 point of the referral? 23 Pardon me? А If the adult was referred for 24 Ο 25 prosecution but wasn't prosecuted anyway, what was

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the point of adding the prosecution component to 1 2 the separation -- excuse me -- the detention 3 proposal that you had been suggesting in 2017? 4 No, I think there's a misunderstanding. Α 5 What I meant was did it differ from the detention plan where the adult goes to detention. 6 I'm 7 saying the only difference is, under zero 8 tolerance, they're recommended for prosecution. 9 In the detention plan we talked about 10 previously, they wouldn't be referred for criminal 11 prosecution. 12 But if that person ends up not being 0 13 prosecuted, what's the point of the referral for prosecution? What, what does that serve? 14 15 Zero tolerance was, you know, everybody Α across the board is going to be referred for 16 17 prosecution. Now, the magistrate can choose not 18 to prosecute, and if he did, he would be moved to 19 deportation proceedings. 20 You testified earlier that you texted 0 21 with Matt Albence and others about work. Is it 22 likely that you would have texted with them about 23 issues related to the detention proposal? 24 А I, I don't know. 25 Do you know if IT preserved your text Q

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Exhibit 93

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Message	
From: Sent:	Johnson, Tae D [Tae.D.Johnson@ice.dhs.gov] 6/23/2018 11:38:40 AM
To: Subject:	[1997] ; Harper, Mellissa B [Mellissa.B.Harper@ice.dhs.gov] RE: 2018 UAC/FMUA List
state	ed that it could be months.
	BlackBerry Work kberry.com)
To: Johnson	day, Jun 23, 2018, 7:29 AM n, Tae D < <u>Tae.D.Johnson@ice.dhs.gov</u> >, Harper, Mellissa B < <u>Mellissa.B.Harper@ice.dhs.gov</u> > : 2018 UAC/FMUA List
	e. This is good to know. Do we have any sense as to when we might receive a response to the AG's appeal of ne 9th Circuit?
	BlackBerry Work kberry.com)
Date: Satur To:	son, Tae D < <u>Tae.D.Johnson@ice.dhs.gov</u> > day, Jun 23, 2018, 6:51 AM larper, Mellissa B < <u>Mellissa.B.Harper@ice.dhs.gov</u> > V: 2018 UAC/FMUA List
See below	
	BlackBerry Work kberry.com)
From: Albence, Matthew < <u>Matthew.Albence@ice.dhs.gov</u> > Date: Friday, Jun 22, 2018, 11:18 PM To: Johnson, Tae D < <u>Tae.D.Johnson@ice.dhs.gov</u> >, Asher, Nathalie R < <u>Nathalie.R.Asher@ice.dhs.gov</u> > Subject: FW: 2018 UAC/FMUA List	
	BlackBerry Work kberry.com)

From: MCALEENAN, KEVIN K <<u>KEVIN.K.MCALEENAN@cbp.dhs.gov</u>> Date: Friday, Jun 22, 2018, 10:57 PM To: Albence, Matthew <<u>Matthew.Albence@ice.dhs.gov</u>> Subject: RE: 2018 UAC/FMUA List

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Yes; we are on the same page. Timing of reunification plan has clear S1 direction and PC support. No issues here.

If this tracker helps tell the story, that's great. It was built with your team and HHS. If you want to do it another way, no problem. We just want to help.

From: Albence, Matthew Sent: Friday, June 22, 2018 10:50:12 PM To: MCALEENAN, KEVIN K Subject: FW: 2018 UAC/FMUA List

Hey Kevin:

This was flipped to me by my troops. I know a lot of moving parts, but wanted to make sure you were aware that we are proceeding based on the guidance from today's PC such that all of our reunification efforts will be directed to reunification at time of removal. Please let me know if you have received different guidance. Thanks!

Matt

Sent with BlackBerry Work (www.blackberry.com)

From: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>> Date: Friday, Jun 22, 2018, 10:29 PM To: Albence, Matthew <<u>Matthew.Albence@ice.dhs.gov</u>>, Subject: FW: 2018 UAC/FMUA List

Here is the string.

Sent with BlackBerry Work (www.blackberry.com)

From: Harper, Mellissa B <<u>Mellissa.B.Harper@ice.dhs.gov</u>> Date: Friday, Jun 22, 2018, 9:24 PM To: Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>>, I Subject: FW: 2018 UAC/FMUA List

Has there been another change in plans? I thought we were reunifying for removal? It seems CBP is tasking us now.

Mellissa Harper Unit Chief- JFRMU Custody Management Division DHS/ICE/ERO



ro
Cc: Guadian, Robert < <u>Robert.Guadian@ice.dhs.gov</u> >, Johnson, Tae D
Tae.D.Johnson@ice.dhs.gov>.

Subject: RE: 2018 UAC/FMUA List

I thought we weren't reunifying until removal per the instructions late today. All day I've gotten one message from ICE and a different message from HHS and CBP.

Mellissa Harper Unit Chief- JFRMU Custody Management Division DHS/ICE/ERO	
From Date: Friday, Jun 22, 2018, 20:55	
То	Harper, Mellissa B < <u>Mellissa.B.Harper@ice.dhs.gov</u> >,
Cc: Guadian, Robert < <u>Robert.Guadian@ice.dhs.gov></u> . < <u>Tae.D.Johnson@ice.dhs.gov</u> > Subject: RE: 2018 UAC/FMUA LIST	<u>Jo</u> hnson, Tae D

Can we all get together maybe Monday and firm up how we're going to ID, coordinate, verify for reunification - all the timelines, obstacles etc?

Assistant Director	
Field Operations	
From: L	
Date: Friday, Jun 22, 2018,	20:47
To: Harper, Mellissa B < <u>Me</u>	llissa.B.Harper@ice.dhs.gov>,
Cc:	Guadian, Robert < <u>Robert.Guadian@ice.dhs.gov</u> >,
<	Johnson, Tae D < <u>Tae.D.Johnson@ice.dhs.gov</u> >, .

Subject: RE: 2018 UAC/FMUA List

My folks can start as we already need to with all the reunification requests. Will loop in your CG folks.

DHS/ICE/ERO/Custody Programs

Sent with BlackBerry Work (www.blackberry.com) From: Harper, Mellissa B <<u>Mellissa.B.Harper@ice.dhs.gov</u>> Date: Friday, Jun 22, 2018, 8:24 PM

To:

Guadian, Robert <<u>Robert.Guadian@ice.dhs.gov</u>> •, Johnson, Tae D <<u>Tae.D.Johnson@ice.dhs.gov</u>>

Subject: RE: 2018 UAC/FMUA List

Cc: J

Do you want my CG team to do this?

Mellissa Harper Unit Chief- JFRMU Custody Management Division DHS/ICE/ERO

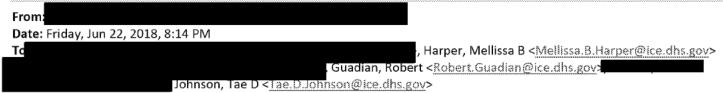
From	
Date: Friday, Jun 22, 2018, 2	0:20
To:	pv>, Harper, Mellissa B < <u>Mellissa.B.Harper@ice.dhs.gov</u> >
C.	iuadian, Robert < <u>Robert.Guadian@ice.dhs.gov</u> >
	Johnson, Tae D <tae.d.johnson@ice.dhs.gov></tae.d.johnson@ice.dhs.gov>

Subject: RE: 2018 UAC/FMUA List

Sending to both Mellissa and I is sufficient I believe. CPD and JFRMU can coordinate.

Deputy Assistant Director DHS/ICE/ERO/Custody Programs

Sent with BlackBerry Work (www.blackberry.com)



Subject: FW: 2018 UAC/FMUA List

Good evening,

Attached is a list of 2018 Zero Tolerance Initiative provided by CBP.

Encryption password:

What Unit should I forward this list?

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Upon completion of vetting & confirming Family Unit, please return to MCAT and Cc: me.

Thank you,

Assistant Field Office Director

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Fra To

Cc: CBP-MCAT-TEAM <<u>CBP-MCAT-TEAM@cbp.dhs.gov</u>> Subject: 2018 UAC/FMUA List

Good Afternoon,

Attached is the list of total people (adults and children) that were separated as a result of the 2018 Zero Tolerance Initiative. I would like to ask you to review the list and let us know the following:

Is the person in your care or custody? If they are, where are they located? Have they been reunited with their family?

We would like to have the report actively tracked and updated and sent to the <u>CBP-MCAT-TEAM@cbp.dhs.gov</u> mailbox by 4:00 pm EST on Mondays, Wednesdays and Fridays. If this is not realistic, please let us know so we can either help you with the data or modify reporting timeline.

Password for spreadsheet will follow.

Thanks again!

