

**CBP Separated More
Asylum-Seeking Families
at Ports of Entry Than
Reported and for Reasons
Other Than Those
Outlined in Public
Statements**





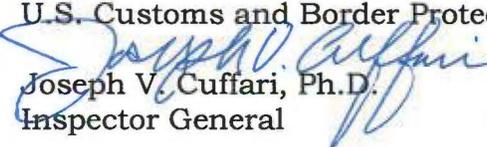
OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 29, 2020

MEMORANDUM FOR: Mark A. Morgan
Acting Commissioner
U.S. Customs and Border Protection

FROM: 
Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *CBP Separated More Asylum-Seeking Families at Ports of Entry Than Reported and for Reasons Other Than Those Outlined in Public Statements*

For your action is our final report, *CBP Separated More Asylum-Seeking Families at Ports of Entry Than Reported and for Reasons Other Than Those Outlined in Public Statements*. We incorporated the formal comments provided by U.S. Customs and Border Protection (CBP).

The report contains one recommendation aimed at improving CBP data collection. CBP concurred with the recommendation. Based on information provided in your response to the draft report, we consider the recommendation open and resolved. Once your office has fully implemented the recommendation, please submit a formal closeout letter to us within 30 days so that we may close the recommendation. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to OIGSREFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Jackson Eaton, Acting Assistant Inspector General for Special Reviews and Evaluations, at (202) 981-6000.



DHS OIG HIGHLIGHTS

CBP Separated More Asylum-Seeking Families at Ports of Entry Than Reported and for Reasons Other Than Those Outlined in Public Statements

May 29, 2020

Why We Did This Review

In response to congressional requests, we conducted this review to determine the extent to which U.S. Customs and Border Protection (CBP) Office of Field Operations (OFO) personnel at CBP ports of entry were separating families seeking asylum, the justifications for such separations, and whether the separations were documented appropriately.

What We Recommend

We made one recommendation that CBP complete its data assessment to identify all families separated since FY 2016.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

Despite CBP OFO's claim it had only separated 7 asylum-seeking parents from their children at ports of entry between May 6 and July 9, 2018, we identified at least 60 asylum-seeking families CBP OFO separated at 11 ports of entry between May and June 2018. We further determined more than half of those separations were based solely on the asylum-seeking parents' prior non-violent immigration violations. Although CBP guidance for family separations at the time was broadly written, separating parents from children based solely on a parent's prior immigration violation(s) was inconsistent with official DHS public messages about the limited circumstances warranting family separation at ports of entry. On June 27, 2018, after a Federal court injunction, CBP issued guidance with more specific instructions, and OFO separated fewer families in the months that followed.

Despite these steps to provide clarity regarding the circumstances for separating asylum-seeking families at ports of entry, we continue to have concerns about DHS' ability to accurately identify and address all family separations due to data reliability issues. Although CBP's system for tracking aliens at the ports of entry included a data field that could be used for separated children, CBP officials said staff did not use the data field consistently. As a result, OFO may have separated more families before June 2018 than those we could identify.

CBP Response

CBP concurred with our recommendation.



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Introduction

In April 2018, then-Attorney General Jeff Sessions directed all Federal prosecutors along the Southwest Border to work with the U.S. Department of Homeland Security “to adopt immediately a zero-tolerance policy” requiring that all improper entry offenses¹ be referred for criminal prosecution “to the extent practicable.” From May to June 2018, DHS and U.S. Customs and Border Protection (CBP) officials publicly emphasized aliens seeking asylum could avoid criminal prosecution under the *Zero Tolerance Policy* by entering the United States legally through ports of entry. Specifically with respect to asylum-seeking family units,² these officials repeatedly said that — barring the parents’ referral for prosecution or circumstances threatening a child’s welfare — CBP would not separate asylum-seeking parents from their children if a family lawfully presented for inspection at a port of entry.³

Shortly after the termination of the *Zero Tolerance Policy* on June 20, 2018,⁴ the Executive Assistant Commissioner, Office of Field Operations (OFO), Todd Owen, asserted, “We have had seven cases, seven cases of family separations across the entire Southwest Border since May 6th.” In fact, CBP separated at least 60 asylum-seeking families at ports of entry between May and June of 2018, 35 of which were for reasons other than the parent’s prosecution or the child’s welfare. Some of the separated children were as young as 5 months old, and at least one was still separated as of July 2019. Furthermore, CBP

¹ Improper entry offenses include (1) entering or attempting to enter the United States at any time or place other than as designated by immigration officers, (2) eluding examination or inspection by immigration officers, and (3) attempting to enter or obtaining entry to the United States by a willfully false or misleading representation or the willful concealment of a material fact. 8 U.S. Code (U.S.C.) § 1325.

² CBP’s *National Standards on Transport, Escort, Detention, and Search (TEDS)* define a 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.”

³ Secretary Nielsen: 1) Senate Testimony, 05/08/2018, <https://www.c-span.org/video/?445189-1/homeland-security-secretary-nielsen-testifies-fiscal-year-2019-budget>; 2) Press briefing with Sarah Sanders, June 18, 2018, <https://www.whitehouse.gov/briefings-statements/press-briefingpress-secretary-sarah-sanders-department-homeland-security-secretary-kirstjen-nielsen061818/>; 3) tweets, 07/17/2018, <https://twitter.com/secnielsen/status/1008467318744240128?lang=en>; Transcript of Todd Owen’s meeting with members of the media, 07/09/2018.

⁴ Executive Order 13841 mandated that families be detained together during the pendency of any criminal improper entry or immigration proceedings, effectively ending the *Zero Tolerance Policy* for family units, but maintaining it for others.



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Department of Homeland Security

acknowledged its data on family separations may be incomplete due to inconsistent reporting by staff, suggesting more asylum-seeking families may have been separated at ports of entry than those identified in our review.

Background

CBP OFO manages the ports of entry through which people and goods enter and exit the United States.⁵ CBP OFO officers perform immigration and customs functions, only allowing entry to people who have valid entry documents, such as visas, permanent resident cards, or U.S. passports, and goods permitted under customs and other laws. In the course of this work, OFO officers may encounter aliens without valid documents who arrive at ports of entry intent on requesting asylum.⁶

CBP processes and holds these asylum-seeking aliens in short-term detention space at ports of entry before transferring them into U.S. Immigration and Customs Enforcement (ICE) or U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) custody pending the asylum process.⁷ CBP's processing includes verifying an alien's identity and familial relationships, checking databases for outstanding warrants or criminal history, searching the alien for drugs or contraband, and requesting follow-on placement.

In May 2018, DHS determined the *Zero Tolerance Policy* would cover all alien adults who crossed into the United States illegally (e.g., between ports of entry or by running past CBP through a port of entry), including those crossing with minor children. Because minor children cannot be held in criminal custody with an adult, alien adults who entered the United States illegally were separated from any accompanying minor children when the adults were referred for criminal prosecution.⁸

In contrast, DHS stated that it would allow an alien who legally entered at a port of entry to present an asylum request and not face criminal

⁵ CBP's Border Patrol detects and prevents the illegal entry of aliens into the United States between ports of entry.

⁶ The *Immigration and Nationality Act* (INA) allows any alien physically present in the United States or who arrives in the United States, irrespective of their status, to apply for asylum in accordance with Section 208 (8 U.S.C. § 1158) or 235(b) (8 U.S.C. § 1225) of the INA.

⁷ ICE takes custody of single adult aliens and family units for long-term detention or for release with an order to appear in court. Unaccompanied alien children are transferred to HHS ORR for long-term custodial care and placement pending their immigration proceedings.

⁸ More information on this issue is available in *Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*, OIG-18-84, September 2018.



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Department of Homeland Security

prosecution and family separation. Accordingly, except in limited circumstances, the *Zero Tolerance Policy* should not have applied to asylum-seeking families at ports of entry. This was reiterated in public statements made at the time by DHS senior leaders. For example, during a June 18, 2018 White House press briefing, then-Secretary Kirstjen Nielsen said:

And finally, DHS is not separating families legitimately seeking asylum at ports of entry. If an adult enters at a port of entry and claims asylum, they will not face prosecution for illegal entry. They have not committed a crime by coming to the port of entry. As I mentioned, DHS does have a responsibility to protect minors. And in that case, as well, we will only separate the family if we cannot determine there is a familial relationship, if the child may be at risk with the parent or legal guardian, or if the parent or legal guardian is referred for prosecution.⁹

However, several media outlets reported CBP was separating families who requested asylum at ports of entry in circumstances other than the limited conditions outlined in the Department's public statements.¹⁰ As a result, Congress asked us to review whether CBP OFO separated asylum-seeking families inappropriately. Between July 2018 and April 2019, we visited 12 land ports of entry where we interviewed OFO staff and observed operations. We also interviewed field office and headquarters officials and obtained documentary evidence, such as policies and procedures related to family separation, as well as data from CBP systems and immigration forms.

Results of Review

During the period the *Zero Tolerance Policy* was in place (May and June 2018), CBP's guidance generally stated OFO should maintain family unity except when the child's safety and well-being is threatened, or the parent has active warrants or other legal requirements which require separation. In the absence

⁹ Press Briefing by Press Secretary Sarah Sanders and DHS Secretary Kirstjen Nielsen, June 18, 2018, <https://www.whitehouse.gov/briefings-statements/press-briefingpress-secretary-sarah-sanders-department-homeland-security-secretary-kirstjen-nielsen061818/>.

¹⁰ "The Trump administration says it's a 'myth' that families that ask for asylum at ports of entry are separated. It happens frequently, records show," *LA Times*, July 1, 2018. "Border Patrol Agents May Have Separated Families at Legal Ports of Entry Despite Promises Not To," *Willamette Week*, June 19, 2018.



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

of more specific guidance, OFO port officials were left to interpret what circumstances necessitated separation, resulting in inconsistent outcomes. We identified 60 asylum-seeking families OFO separated at 11 ports of entry between May and June 2018, with 35 of those families separated solely because of the parents' prior non-violent immigration violations.¹¹ Although CBP's guidance at the time was broadly written, the justifications for these 35 family separations were inconsistent with DHS public messages articulating when asylum-seeking families may be separated. On June 27, 2018, after a Federal court issued a preliminary injunction requiring DHS to stop separating families except in limited circumstances,¹² CBP issued guidance detailing specific situations that constituted a threat to the child's safety or a legal concern justifying separation. Following the release of that guidance, OFO ports of entry separated fewer families.

Despite the steps CBP has taken to provide clarity regarding the circumstances for family separation, we continue to have concerns about OFO's ability to accurately identify and address all family separations prior to June 2018. Since 2015, CBP's system for tracking aliens at the ports of entry included a data field that could be used for separated children, but CBP officials said staff did not use the data field consistently. In late June 2018, CBP modified this tracking system to capture family separation data more consistently, but could not provide a reliable number of families separated before June 2018.

Lacking Clear Guidance, CBP Personnel at Ports of Entry Separated Asylum-Seeking Families for Reasons Other Than Those Communicated to the Public

Between May and June 2018, OFO staff, operating without clear guidance, separated at least 35 asylum-seeking families at ports of entry for reasons other than the children's welfare or a "legal requirement," such as criminal warrants. Instead, OFO separated these families based on the parents' prior

¹¹ The phrase "non-violent immigration violations" or "immigration violations" as used in the report signifies prior removal orders, prior illegal entries, or illegal re-entries following removal orders, some of which can be criminal and civil offenses. According to OFO's records reviewed by the Office of Inspector General (OIG), none of the 35 parents who were separated from their children had criminal histories other than their immigration records of illegal entries or re-entries following removals.

¹² On June 26, 2018, the U.S. District Court in Southern California issued an injunction in the *Ms. L v. ICE* case, which also directed DHS and HHS to reunite separated families and facilitate regular communication pending reunification, among other things. *Ms. L v. ICE*, 310 F. Supp. 3d 1133 (S.D. Cal. 2018).



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

immigration violations, such as previously entering the United States without a visa. After the issuance of a court's injunction on June 26, 2018, CBP revised its guidance and separated fewer families, and improved its electronic tracking system to better record and track separated families.

Prior to June 2018, CBP Followed Vague Guidance about Circumstances Necessitating Family Separation

In May 2018, DHS determined the *Zero Tolerance Policy* would cover all alien adults who crossed into the United States illegally, including those crossing with minor children. At the time CBP ports of entry were relying on CBP guidance published in 2015 and 2016 to make determinations on family separations: CBP's 2015 *National Standards on Transport, Escort, Detention, and Search (TEDS)*¹³ and an August 2016 email restating the TEDS policy. Both documents are written in general terms and indicate family separations should be rare, and should occur only when necessary for the safety or well-being of the child, or due to a legal requirement necessitating separation. Specifically, TEDS states:

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.¹⁴

Similarly, the August 2016 email instructed port directors that: "Separation of child from parent or legal guardian should be a rare occurrence, e.g., safety and well-being of child, active warrant or similar circumstance." Neither document gives examples or additional instruction about the types of circumstances that would pose a threat to a child's safety and well-being, or the types of legal requirements — other than an outstanding warrant — that would necessitate separation. As a result, port officials were left to interpret those circumstances themselves, resulting in inconsistent outcomes.

CBP Ports of Entry Separated 35 Families for Reasons That Appeared Inconsistent with CBP Policy and Official DHS Public Messages

On July 9, 2018, CBP's Executive Assistant Commissioner, Office of Field Operations, Todd Owen, publicly claimed, "[W]e have had seven cases, seven

¹³ TEDS sets the standards for care CBP must provide to all individuals in CBP custody.

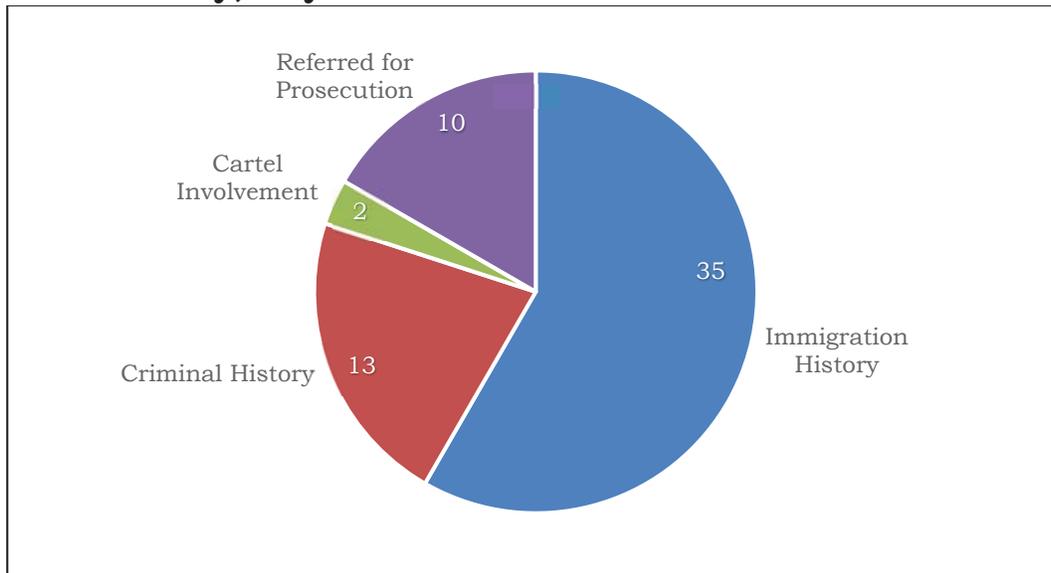
¹⁴ U.S. Customs and Border Protection, *National Standards on Transport, Escort, Detention, and Search (TEDS)*, October 2015, paragraph 1.9



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

cases of family separations across the entire Southwest Border since May 6th.” In fact, of the 5,844 asylum-seeking families who presented at Southwest Border ports of entry between May and June 2018, OFO separated at least 60 asylum-seeking families. The separations of 25 of those families appeared to be consistent with CBP policy and public information at the time, as they were based on a parent’s referral for prosecution after attempting to elude inspection at the ports, criminal history, or cartel involvement. However, the other 35 asylum-seeking families were separated solely due to the parents’ prior immigration violations,¹⁵ such as a prior charge for improper entry. Of the 35 families separated, 34 were separated at six ports of entry overseen by OFO’s Laredo field office, and 1 family was separated at a port of entry under the Tucson field office.¹⁶ These reasons for the separations appeared to be inconsistent with CBP policy and DHS public messages regarding family separations at that time. Figure 1 shows the 60 asylum-seeking families we identified as having been separated at ports of entry, grouped by reason for separation.

Figure 1. Reasons for CBP’s Separations of Asylum-seeking Families at Ports of Entry, May to June 2018



Source: OIG analysis of alien immigration files

¹⁵ 8 U.S.C. § 1325, *Improper Entry by Alien*

¹⁶ CBP OFO has four field offices along the Southwest Border, with each overseeing multiple ports of entry.



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

The immigration violations used as a basis for separating 35 asylum-seeking families ranged from prior immigration history for entering the United States without a visa, to a parent having a prior expedited removal¹⁷ from the United States.

These 35 families included 40 children whom OFO separated from their asylum-seeking parents; the youngest of those children was 5 months old, and the oldest was 17. All of these children were separated from parents for at least 4 weeks, with one remaining separated more than a year later.¹⁸ Table 1 displays the numbers of children in each group and the range of days the children in each group were separated from their parents, as of July 8, 2019.

Table 1. Data for Children Separated from Parents, as of July 8, 2019

Children's Ages	Number of Children	Days Separated from Parent
5 months – 5 years old	10	28 – 50 days
6 – 12 years old	22	29 – 233 days
13 – 17 years old	8	45 – 401 days

Source: CBP Secure Integrated Government Mainframe Access (SIGMA) and EARM data¹⁹

In one specific case, on May 21, 2018, OFO separated a 26-year old Guatemalan mother and her four children, aged 12 years, 8 years, 5 years, and 5 months, who were requesting asylum at a port of entry. CBP's database checks revealed the mother had been apprehended twice by Border Patrol for illegal entry, once in 2009 and again in 2014. She had been deported each time as a result. The CBP officer noted in her file she "was processed for [credible fear] and separated from her children due to having two previous removals from the United States." In June 2018, we interviewed the mother in an ICE detention center, and she said she would no longer be able to nurse her youngest child due to the length of the separation. On July 10, 2018, the family was released and reunited, after 7 weeks apart.

¹⁷ Expedited removal is a process wherein aliens are removed from the United States administratively by DHS (i.e., without appearing before an immigration judge). 8 U.S.C. §1225 (b). *Expedited Removal of Aliens-a Legal Framework*, U.S. Congressional Research Service, R45314, 10/8/2019.

¹⁸ As of July 5, 2019, DHS records indicate all but two families have been reunified: one child turned 18 in custody and was no longer tracked as an unaccompanied alien child, and another was released to an unrelated adult and the parent was deported.

¹⁹ SIGMA is an electronic tracking system in which CBP ports of entry enter information about CBP's encounters with aliens who enter the port. EARM is an electronic system ICE uses to track aliens in ICE custody, among other things.



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Department of Homeland Security

Although CBP's guidance at the time was vague, separations such as the one just described were inconsistent with DHS public messages while the *Zero Tolerance Policy* was in place. According to these statements, CBP would not refer for prosecution adults properly presenting for inspection at a port of entry and, thus, would only separate families in limited circumstances. For example, a June 18, 2018, DHS press release, "Myth vs. Fact: DHS Zero-Tolerance Policy," read:

If an adult enters at a port of entry and claims asylum, they will not face prosecution for illegal entry. DHS does have a responsibility to protect minors we apprehend and will separate in three circumstances: 1) when DHS is unable to determine the familial relationship, 2) when DHS determines that a child may be at risk with the parent or legal guardian, or 3) when the parent or legal guardian is referred for criminal prosecution.²⁰

Prior immigration violations do not fall under one of these three circumstances necessitating family separation. The majority of CBP ports of entry appeared to understand this, as only seven ports of entry in the Laredo and Tucson field offices separated families on this basis. Further, when CBP headquarters officials learned about these separations, a headquarters official orally instructed the Laredo field office to stop separating families based solely on the parent's prior non-violent immigration violations.

After Receiving a Federal Court Injunction, CBP Issued Revised Guidance in June 2018 and the Ports of Entry Separated Fewer Families

On June 26, 2018, a Federal district court issued a preliminary injunction requiring CBP and others to stop separating certain alien families in DHS custody, except when the parents are unfit, pose a danger to the children, or voluntarily decline to be detained with their children. Plaintiffs in the class action suit alleged that in separating families, DHS and HHS violated the families' Fifth Amendment due process rights to family unity, and asked the court to issue a preliminary injunction to prevent DHS from separating additional families and to reunite the families that had been separated. The court found that although the President had issued an Executive Order to stop

²⁰ <https://www.dhs.gov/news/2018/06/18/myth-vs-fact-dhs-zero-tolerance-policy>



OFFICE OF INSPECTOR GENERAL

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the separations²¹ and DHS had issued a “Fact Sheet” assuring reunification of families, neither document overcame a need for the injunction.

Like CBP’s TEDS policy and August 2016 guidance memo, the Federal district court’s preliminary injunction did not provide specific circumstances that would render a parent “unfit” or constitute “a danger” to a child. However, on June 29, 2018, CBP issued detailed guidance detailing the five specific circumstances in which family separations would be appropriate:

1. Adult member is not the parent or legal guardian of the child or the relationship cannot be established.
2. Parent/legal guardian has been accepted for felony criminal prosecution.
3. Parent/legal guardian has a prior criminal history for felonies or violent misdemeanors.
4. Parent/legal guardian has a communicable disease.
5. There is an immediate child safety concern and separation is warranted for the welfare of the child.

This guidance generally comports with DHS public messages regarding the circumstances warranting family separation and provided needed clarity to CBP field offices.

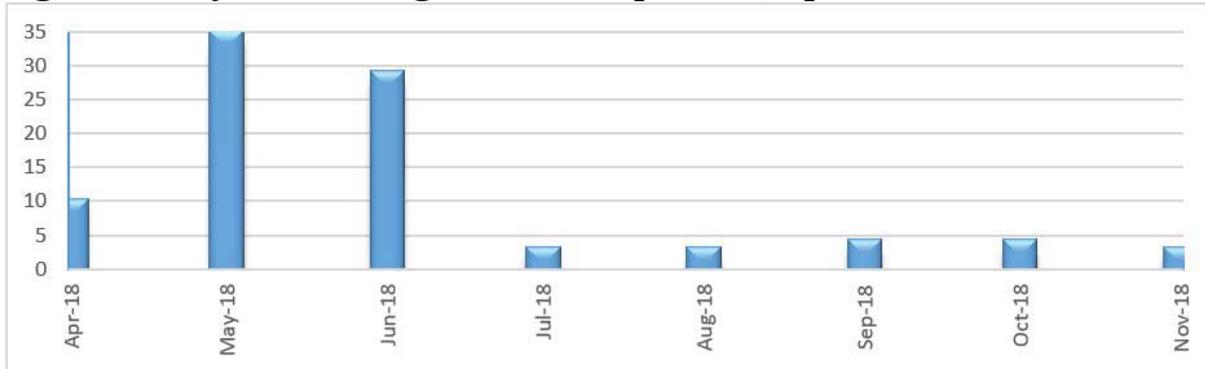
In the following months, the number of asylum-seeking families separated at the Southwest Border ports of entry significantly decreased, even as the number of asylum-seeking families presenting at ports increased. After separating at least 60 families during the 2-month period of May through June 2018, OFO separated only seven families in the following 5 months, as shown in figure 2. Of those seven, six of the parents had violent criminal histories and one was medically incapacitated.

²¹ On June 20, 2018, President Trump signed an Executive Order halting the prosecution of families who crossed the border between ports of entry.



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Figure 2. Asylum-seeking Families Separated, April – November 2018



Source: CBP SIGMA Database

Unreliable Data Impedes Identification and Reunification of All Children Separated from Parents Prior to June 2018

Although the Department clarified the circumstances warranting family separation, we encountered data reliability issues calling into question DHS’ ability to accurately identify and address all family separations prior to June 2018. Before then, OFO’s system for tracking aliens at the ports of entry included a data field that could be used to indicate a child was held separately from his or her parent. However, OFO officials said staff did not use the data field consistently, and as a result, OFO could not provide a reliable number of families separated before June 2018. At that time, CBP modified the ports of entry tracking system to capture family separation data more consistently.

OFO uses an electronic records system, SIGMA, to document and store information about individuals collected during processing at ports of entry. Before June 2018, SIGMA had a data field for “juveniles held separately,” which could be selected to indicate the separation of parents and children. However, according to OFO officials, staff at ports of entry did not use that data field consistently. As a result, OFO was unable to provide the definitive number of asylum-seeking families at ports of entry who were separated before June 2018. Because CBP staff underused this data field, which resulted in incomplete data, the agency likely separated more asylum-seeking families at ports of entry during this period than the 60 families that were reflected in the SIGMA system.

On June 28, 2018, after the Federal court’s injunction, CBP modified SIGMA to include additional data fields that document family separations with greater



OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

accuracy. CBP also issued guidance to the field for recording information about families in SIGMA, including reasons for separation.

Because of concerns over CBP data reliability, we cannot be certain our analysis of separations occurring between May and June 2018 captures all family separations during that period, and it is even less certain that we have a clear picture of the separations occurring before 2018. In addition to our analysis of OFO's family separation data, DHS OIG also reviewed CBP's Border Patrol data in a recent audit to determine the effectiveness of DHS' information technology systems in tracking detainees and supporting efforts to reunify unaccompanied alien children with separated families.²² As part of this audit, DHS OIG's Data Analytics team conducted an independent analysis of DHS' apprehension data, revealing hundreds of possible family relationships that CBP had not recorded in its systems.

The information requested in the following recommendation would assist DHS and DHS OIG in determining whether, and how many, additional separations actually took place, the basis for those separations, and whether reunification has occurred.

Recommendation

Recommendation: We recommend the CBP Executive Assistant Commissioner, Office of Field Operations complete the evaluation of SIGMA data dating back to fiscal year 2016 to identify all separated families, and provide DHS OIG with the following data elements for all separated family members:

- A. alien number;
- B. family relationship, e.g., mother/father/son/daughter;
- C. date of birth;
- D. reason(s) for separation;
- E. port of entry at which separated;
- F. date of separation;
- G. date of reunification, if applicable; and
- H. for families not reunified, the reasons why they are still separated.

²² [*DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families, OIG-20-06*](#), November 25, 2019.



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Department of Homeland Security

Management Comments and OIG Analysis

We have included a copy of CBP's Management Response in its entirety in appendix A. We also received technical comments from CBP and incorporated them in the report where appropriate. We consider the recommendation to be resolved and open. A summary of CBP's responses and our analysis follows.

In its response, CBP concurred with the recommendation and reiterated the many changes the agency has implemented since 2018. For example, CBP stated it has implemented a new secondary processing system that addresses documentation issues, and released policies to comply with court orders from the "*Ms. L v. ICE*" litigation that specify how family units at ports of entry should be handled. CBP stated it has also implemented procedures that aim to improve supervisory and headquarters oversight of family separations.

CBP Response to Recommendation: CBP concurred with the recommendation. OFO will provide OIG with the data researched and submitted to the "*Ms. L v. ICE*" court in response to the court's order. CBP believes the data required by the court will be sufficient for meeting the goals of our recommendation. CBP anticipates completing these actions by July 31, 2020.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. We will close this recommendation when we receive documentation (1) showing that CBP has completed its review and identified all separated family units from 2016 through 2018, and (2) providing the requested data elements for the identified family units, including the reason(s) for their separation.

Objective, Scope, and Methodology

Department of Homeland Security Office of Inspector General was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

While the *Zero Tolerance Policy* was in place, DHS OIG received several requests from multiple members of Congress relating to DHS' implementation of the *Zero Tolerance Policy*, treatment of asylum-seekers, and separation of families. This review answers key questions from three congressional requests received on



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Department of Homeland Security

June 26, June 29, and September 26, 2018. Our office is addressing remaining requests in subsequent projects.

Our objective was to determine whether CBP staff at ports of entry were separating families seeking asylum and, if so, whether they were documenting the separations appropriately. Between July 2018 and April 2019, we visited 12 land ports of entry where we interviewed CBP staff and observed operations. We also interviewed field office and headquarters officials to learn about CBP policy and guidance for separations, as well as numbers of asylum-seeking families separated at the ports of entry.

We also obtained documentary evidence, such as policies and procedures related to family separation, as well as data from SIGMA. We corroborated the SIGMA data with separate immigration documents CBP officers produced at the ports of entry and analyzed the I-213 forms (Record of Deportable/Inadmissible Alien)²³ for all asylum-seeking families CBP separated at ports of entry between April and November 2018 to identify the reasons for separation. We also reviewed the complete alien files for two separated families whose I-213 forms were unclear.

We conducted this review under the authority of the *Inspector General Act of 1978*, as amended, and according to the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

The Office of Special Reviews and Evaluations' major contributors to this report are Tatyana Martell, Elizabeth Kingma, Adam Brown, Stephen Farrell, Paul Lewandowski, Jason Wahl, Jon Goodrich, and Donna Ruth.

²³ A Form I-213, Record of Deportable/Inadmissible Alien, is an immigration form CBP generates when processing an alien. It contains demographic data as well as details and narratives of CBP's interactions with an alien.



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Appendix A
CBP Comments to the Draft Report

1300 Pennsylvania Avenue NW
Washington, DC 20229

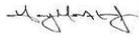


**U.S. Customs and
Border Protection**

April 14, 2020

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Henry A. Moak, Jr.
Senior Component Accountable Official
U.S. Customs and Border Protection

X 

4/14/2020

Signed by: HENRY A. MOAK, JR.

SUBJECT: Management Response to Draft Report: “CBP Separated More Asylum-Seeking Families at Ports of Entry than Reported and for Reasons Other than Those Outlined in Public Statements” (Project No. 18-122-ISP-CBP (a))

Thank you for the opportunity to comment on this draft report. The U.S. Customs and Border Protection (CBP) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

CBP is concerned the OIG’s report implies that CBP personnel separated families without regard for the health, welfare, safety, and reunification of inadmissible asylum-seeking applicants for admission, which is incorrect. CBP is committed to the care and processing of individuals in its custody with the utmost dignity and respect, and has taken steps to ensure an enhanced standard of care in response to the humanitarian crisis at the Southwest Border. For example, since 2018, CBP has issued numerous policies and other guidance documents, and implemented a new secondary processing system to strengthen processing and address reporting gaps identified as a result of the unprecedented migrant surge. CBP remains committed to continuing collaborative efforts with major stakeholders to improve the processing of family units and collection of data, while safeguarding the American people, our homeland, and our values.

More specifically, on June 28, 2018, CBP’s Office of Field Operations (OFO) issued, “Inspecting Inadmissible Family Units and Updates to Secure Integrated Government Mainframe Access (SIGMA),” which is guidance incorporating the requirements of the June 26, 2018, preliminary injunction in the “*Ms. L v. ICE*” litigation. On September 27, 2018, CBP OFO followed this guidance with the memorandum, “Guidelines for



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Processing Two Parent Families - Ms. L litigation,” which addressed processing two parent families under the “*Ms. L v. ICE*” injunction.

CBP also implemented changes to SIGMA on June 29, 2018, to address:

- Processing a family unit in a single event in SIGMA;
- Recording if a parent/legal guardian and child were separated;
- Creation of mandatory check boxes to record such a separation;
- Documenting whether a child was held separately from his or her parent for short term operational issues or was separated, such that and the child required g placement with the Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR); and,
- Recording the approving official for separations at the GS14 or higher level.

Around the same time, CBP OFO started the distribution of a daily report to OFO senior leadership, consisting of lists of all separations of parents/legal guardians and their child(ren), the port of entry where the separation occurred, and monthly and fiscal year cumulative totals for separations. OFO leadership reviews these reports to ensure all separations comply with the guidelines of the “*Ms. L v. ICE*” injunction, and that OFO personnel notify relevant offices to initiate corrective actions if a separation does not comply with both the “*Ms. L v. ICE*” injunction and CBP policy.

Additionally, on April 1, 2019, CBP OFO issued guidance entitled: “Documenting Family Units and Properly Recording Separations,” intended to further follow up on the system changes related to the proper processing, documenting, and recording of family separations. OFO also plans to merge the functionality of SIGMA and the Consolidated Secondary Inspection System, into a single data entry system called Unified Secondary that will consolidate the complete admissibility secondary case life cycle into one system, therefore, improving data integrity. As an example, one function is recording the referral time from primary to secondary directly into the custody log to provide an accurate recording of the time in custody.

Furthermore, CBP improved its data accountability via the creation of the Operations Support, Planning, Analysis and Requirements Directorate, CBP STAT Division as well as the Migration Data Oversight Group, established by the OFO Admissibility and Passenger Programs (APP) to review and make recommendations on the reporting of OFO statistical data to minimize incorrect reporting.

The draft report contained one recommendation with which CBP concurs. Attached find our detailed response to the recommendation. CBP previously submitted technical comments under a separate cover for OIG’s consideration.



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Again, thank you for the opportunity to review and comment on this draft report. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

Attachment



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Attachment: Management Response to Recommendations Contained in 18-122-ISP-CBP (a)

OIG recommended that the CBP Executive Assistant Commissioner, OFO:

Recommendation 1: Complete the evaluation of SIGMA data dating back to Fiscal Year 2016 to identify all separated families, and provide DHS OIG with the following data elements for all separated family members:

- A. alien number;
- B. family relationship, e.g., mother/father/son/daughter;
- C. date of birth;
- D. reason(s) for separation;
- E. port of entry at which separated;
- F. date of separation;
- G. date of reunification, if applicable; and
- H. for families not reunified, the reasons why they are still separated.

Response: Concur. CBP's OFO, APP will provide OIG with the data researched and submitted in accordance with the ongoing "*Ms. L v. ICE*" litigation. To solely conduct research in the CBP OFO SIGMA database would produce incomplete and erroneous results; therefore, as agreed to with the OIG, the "*Ms. L v. ICE*" is more complete and is considered the official data for the period involved. CBP compiled the "*Ms. L v. ICE*" data, by researching multiple data systems across CBP, ICE, and HHS. As CBP is subject to limitations such as consent of the plaintiffs in the "*Ms. L v. ICE*" litigation, the data will be provided after the litigation is finalized.

CBP cannot provide family reunification status that is being requested in parts G and H of the recommendation, as these data elements are not captured by CBP and are outside of CBP's area of responsibility. CBP suggests that OIG reach out to the appropriate entity to obtain the family reunification status.

Estimated Completion Date: July 31, 2020.



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