



Homeland
Security

July 25, 2019

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

This memorandum discusses the outcome of the investigation conducted by the U.S. Department of Homeland Security (DHS), Office for Civil Rights and Civil Liberties (CRCL), into allegations that U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) violated the civil rights or civil liberties of family members who were separated after crossing the U.S. border, based on inadequate or outdated policies and procedures, and with inadequate training, oversight, and documentation. On June 12, 2018, CRCL provided CBP and ICE with a draft

Findings and Recommendations Memorandum (Memorandum) that discussed our findings and made two detailed recommendations. The recommendations addressed problems found with policy and procedure, documentation, oversight and information sharing.

On August 13, 2018, CBP responded to the recommendations by providing edits and comments in the CRCL Memorandum. On August 29, 2018, and March 29, 2019, ICE responded to the Memorandum in the same manner. CRCL subsequently met with both CBP and ICE to discuss the findings and recommendations. The CBP meeting was held with management staff from the CBP Office of Field Operations (OFO) and U.S. Border Patrol (USBP), and the meeting with ICE was with the ICE Juvenile and Family Residential Management Unit (JFRMU) leadership. Both Components expressed frustration with the findings, asserting that the Attorney General's Zero-Tolerance policy,¹ Executive Orders,² the Trafficking Victims Protection Act of 2008,³ the *Flores* Settlement Agreement,⁴ and court filings all impacted their immigration responsibilities and actions, further complicating and sometimes overriding, but not diminishing their responsibilities toward policy and procedure requirements. The Components also stressed that new policies and procedures were developed prior to the Executive Order and afterward, which address some CRCL findings. CRCL notes however that CRCL was not made aware of any changes prior to development of the Memorandum and, therefore, the Memorandum did not recognize them. CBP and ICE both suggested that CRCL should issue a new document to reflect the new policies and procedures.

CRCL agrees that many changes were occurring and have occurred since the investigation, regarding the policies and procedures regulating family separation within DHS as a whole, and within CBP and ICE. These changes, in particular those made during the spring of 2018, render some discussion areas in the Memorandum outdated. However, CRCL does not believe that the recommendations made in the Memorandum are moot or obsolete. In fact, CRCL has continued to receive allegations claiming wrongful family separation since family separations related to Zero Tolerance officially ended on June 21, 2018 (a total of 267). CRCL has reviewed the CBP and ICE arrest and detention records for many of those new separations, and believes the Memorandum's recommendations are still relevant and critically important.⁵

¹ In April, 2018, the Trump administration formally adopted a "zero-tolerance" policy for illegal border crossings, to end what it called "catch and release" border practices. On April 11, 2018, then U.S. Attorney General Jeff Sessions issued the "Zero-Tolerance for Offenses Under 8 U.S.C. § 1325(a)" policy memorandum to all U.S. Attorneys' Offices nationwide directing the prosecution of all adults who crossed the border "illegally," thus leading to the separation of parents and their children when the family illegally entered the U.S. The former misdemeanor, codified at 8 U.S.C. § 1325(a), made it a crime to "improper[ly]" enter, or attempt to enter, the U.S. without appearing before an immigration officer or through the making of "willfully false or misleading representations."

² On June 20, 2018, President Trump signed Executive Order 13841. *See* 83 Fed. Reg. 29435 (2018) (the "Executive Order"), ending family separation, stating, "It is the policy of this Administration to rigorously enforce our immigration laws ... It is also the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources." (s. 1)

³ Trafficking Victims Protection Act of 2000, 22 U.S.C. (b) (2) § 7101 (2000). (Reauthorized in 2003, 2005, 2008, and 2013, under 22 U.S.C. 7107.)

⁴ *Flores v. Reno* (the "Flores Settlement"). *See, e.g., Flores v. Reno*, 681 F. Supp. 665 (C.D. Cal. 1997).

⁵ CBP informed CRCL, and ICE confirmed, that CBPs I-213 encounter information automatically populates in the EARM Encounter record. If, as CBP stated in its responses to CRCL, information is not being transferred from CBP's systems to ICE's EARM system, this is problematic since separations are generally initiated by CBP and, without the

The CRCL reviews make relevant the CRCL recommendations, which are broad in nature and address areas related to implementation of policies and procedures and documentation, which, based on our investigation and reviews of current allegations, still remain problematic. Therefore, this revised Memorandum does not re-evaluate the components' policies and procedures, or lack thereof, rather it contains only CRCL's revised Recommendations.

CRCL Recommendations

1. *Joint Operations* (b)(5)

- a. CBP's Office of Field Operations (OFO), U.S. Border Patrol (USBP), and ICE JFRMU should convene a Family Separation Joint Workgroup, (b)(5)

[Redacted]

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[Redacted]

- b. (b)(5)

transfer of family unit information, ICE may be unaware that aliens in their custody are parents who could be detained with their children in Family Residential Centers rather than being separated.

⁶ On June 25, 2019, CRCL Officer Cameron Quinn sent an email to CBP, ICE, and HHS leadership following up on testimony from Acting Secretary McAleenan to the Senate Homeland Security and Governmental Affairs Committee suggesting that CRCL review DHS and HHS procedures related to family separation. Officer Quinn requested the establishment of a high-level working group to begin the process. This effort is currently underway and tracks Recommendation #1 in this memorandum. CRCL expects the first meeting to occur in July 2019.

c. (b)(5)

2. Process Improvements

- a. OFO and USBP officers and agents should ensure that family separation decisions, the reasons underlying decision, and the separation processes are relayed to the family members in a language they understand, and allow, when appropriate, the family members to communicate before physical transfer to ICE or ORR custody occurs. These actions should be recorded in the component's electronic record system.⁷
- b. OFO and USBP should ensure that the family information sections within their electronic systems (SIGMA, e3DM, or any newly developed system) require officers and agents to input complete and detailed family information into the I-213, including:
 - Accurate spelling of each separated family member's name, date of birth, and A-number.⁸
 - 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.
 - (b)(5)
 - The name and location of placement facilities for each family member (when known) to include transfers between CBP facilities.

c. (b)(5)

d.

⁷ During the investigation, CRCL was informed of various processes to ensure these actions occurred, yet all seem to no longer be in practice. For example, CRCL was told that all information for members of a group presenting themselves as a family, would be listed in the I-213s, but we have found during investigations since initial issuance of the Recommendation Memo that this is often not the case. CRCL was also informed that the I-213s contain a "FMU" flag, which they did for a period of time, but not currently, as far as we know. CRCL was then told that some family member/family unit information is not in the I-213s, but is recorded in other areas of e3DM.

⁸ If the subject does not have any documents, CBP may confirm with the subject about the spelling of their name.

(b)(5)

3. (b)(5)

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 appreciate the work that has already been done by CBP and ICE to address family separation, but more needs to be done to ensure clarity, consistency, and accurate recordkeeping. We look forward to working with you to develop the Joint Operations Guide. If you have any questions, please contact the Director of the Compliance Branch, Dana Salvano-Dunn, at (b)(6) or (b)(6).

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