



September 10, 2020

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

Scott K. Falk  
Chief Counsel  
U.S. Customs and Border Protection

FROM: Peter E. Mina (b)(6)  
Deputy Officer for Programs and Compliance  
Officer for Civil Rights and Civil Liberties

Susan Mathias /s/  
Assistant General Counsel, Legal Counsel Division  
Office of the General Counsel

SUBJECT: CBP's Treatment of Children with Disabilities  
Complaint Nos. 18-09-CBP-0354, 18-09-CBP-0366,  
18-09-CBP-0473, and 18-09-CBP-0565

*Purpose*

Pursuant to 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, this memorandum provides policy recommendations to protect the well-being of children with disabilities and promote the family unity of families including children with disabilities “to the greatest extent operationally feasible”<sup>1</sup> while in U.S. Customs and Border Protection (CBP) custody. Accordingly, this memorandum provides policy recommendations with an aim to reinforce existing CBP policy as stated in CBP’s *National Standards on Transportation, Escort, Detention, and Search* (TEDS) (October 2015) to maintain family unity to the greatest extent operationally feasible.<sup>2</sup>

*Authorities*

CRCL oversees compliance with constitutional, statutory, regulatory, policy, and other requirements relating to the civil rights and civil liberties of individuals affected by the programs

---

<sup>1</sup> CBP National Standards on Transport, Escort, Detention, and Search (TEDS), Section 1.9 (October 2015).

<sup>2</sup> See TEDS, section 1.9 (“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.”). The constitutional issues raised by family separation are beyond the scope of these recommendations.

and activities of the Department of Homeland Security (DHS), 6 U.S.C. § 345(a)(4). CRCL investigates complaints and information indicating possible abuses of civil rights or civil liberties, 6 U.S.C. § 345(a)(6). CRCL investigated the complaints addressed in this memorandum pursuant to this authority. CRCL also has broad authority to oversee matters related to section 504 of the Rehabilitation Act of 1973, as amended, throughout the Department. While each of the complainants has a disability, CRCL determined that these complaints did not satisfy the procedural requirements that must be met for CRCL to review them as Section 504 complaints.<sup>3</sup>

### *Background and Investigation*

Since 2008, CRCL has been investigating allegations of family separation. On June 12, 2018, CRCL sent a draft memorandum to CBP and U.S. Immigrations and Customs Enforcement (ICE) providing analysis and recommendations in response to those allegations, which CRCL ultimately issued in final on July 25, 2019.

Within this larger investigation, CRCL has reviewed allegations that CBP separated children with disabilities from their parents or legal guardians. These incidents allegedly occurred both prior to, and after, the preliminary injunction in *Ms. L v. ICE*, 310 F.Supp.3d 1133 (S.D. Cal. June 26, 2018), and the Administration's Executive Order on June 20, 2018, stating that it is "the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources."<sup>4</sup>

### Complaint No 18-09-CBP-0354

On July 2, 2018, CRCL received correspondence from the Young Center for Immigrant Children's Rights on behalf of a mother and her two minor children, ages six and three, for whom the Center served as the federally appointed child advocate. According to the correspondence, the six-year-old suffers from Stage Five Retinopathy of Prematurity and is blind in both eyes. According to the advocate, the mother and her two children presented themselves for inspection and requested asylum at the DeConcini Port of Entry in Nogales, Arizona, on March 1, 2018. CBP separated the mother from her children, transferring the mother to the custody of ICE, and the children to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), based on CBP's representation that ICE could not detain the mother in a family residential center due to her criminal history.

(b)(5)



---

<sup>3</sup>Federal regulations require CRCL to investigate allegations that a DHS program or activity has violated Section 504 of the Rehabilitation Act. 6 C.F.R. § 15.70(d)(2) These allegations must be a "complete complaint," which the Federal regulations define as "a written statement that contains the complainant's name and address and describes the Department's alleged discriminatory action in sufficient detail to inform the Department of the nature and date of the alleged violation of section 504." In addition, the complaint must be signed by the complainant or by someone authorized by the complainant. 6 C.F.R. § 15.3(b). In some instances in which disability-related allegations do not meet these requirements or specifically allege a violation of Section 504, CRCL may open a complaint using its authority pursuant to 6 U.S.C. § 345(a)(6).

<sup>4</sup> "Affording Congress an Opportunity to Address Family Separation." Available at <https://www.whitehouse.gov/presidential-actions/affording-congress-opportunity-address-family-separation/>.

(b)(5)



Complaint No 18-09-CBP-0366

On June 13, 2018, the *Texas Tribune* published an article regarding a grandmother and her grandson who has severe epilepsy and autism who presented themselves for inspection at the Santa Teresa Port of Entry in August 2017 and expressed fear and an intent to apply for asylum. The article reported that the grandmother presented CBP with documents from Brazil that identified her as her grandson's legal guardian, but that CBP did not process them as a family unit and instead processed her grandson as a UAC and the grandmother as a single adult.


(b)(5)



---

<sup>5</sup> It is unclear whether she was prosecuted for the 2010 charges.

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



Complaint No 18-09-CBP-0473

On June 29, 2018, CRCL received correspondence from the Arab American Institute, which included allegations that CBP separated a girl with Down syndrome from her mother. The correspondent alleged: “A 10-year old girl, diagnosed with Down Syndrome, tried to cross the border from Mexico into Texas. . . . When they were apprehended at the border, the siblings were separated from their mother, with the children going to McAllen and the mother sent to a detention center in Brownsville, Texas.”

(b)(5)



---

<sup>6</sup> Ability Magazine, *Children with Disabilities Amongst Those Separated from Families at US Border*. Available at <https://abilitymagazine.com/children-with-disabilities-amongst-those-separated-from-families-at-us-border/>

(b)(5)

Complaint No 18-09-CBP-0565

On June 15, 2018, CRCL received correspondence from the Florence Immigrant and Refugee Rights Project on behalf of a minor who is deaf and mute, who alleged that CBP separated him from his father.<sup>7</sup> The complaint alleged that CBP failed to consider the child's disability when determining whether to separate the child from his parent, and that the resulting ORR placement reportedly caused issues with the child receiving appropriate accommodations. (b)(5), (b) (7)(E)

(b)(5)

(b)(5)



### CBP Informational Briefing

(b)(5)



### Additional Documents Reviewed

In investigating the above complaints, CRCL reviewed records and policies provided by CBP, including memoranda from Todd A. Hoffman, Executive Director, Admissibility and Passenger

Programs, Office of Field Operations on the following topics: Guidelines for processing two parent families – *Ms. L* litigation (undated); Inspecting Inadmissible Family Units and Updates to Secure Integrated Government Mainframe Access (SIGMA) (June 29, 2018); and Admissibility Processing and Family Units (February 25, 2016). CRCL also reviewed a muster on Inspecting Inadmissible Family Units and Updates to Secure Integrated Government Mainframe Access (SIGMA).

*Analysis*

(b)(5)



---

<sup>8</sup> See, e.g., 18-11-DHS-0537 (CRCL issued recommendations regarding language access for a father who spoke an indigenous language whom CBP separated from his daughter who was nonverbal).

<sup>9</sup> Ira T Lott, MD & Mara Dierssen, MD. *Cognitive deficits and associated neurological complications in individuals with Down's syndrome*, 9 *The Lancet, Neurology: Review* 6, at 623-633 (June 1, 2010). Available at [https://doi.org/10.1016/S1474-4422\(10\)70112-5](https://doi.org/10.1016/S1474-4422(10)70112-5)

<sup>10</sup> American Speech-Language-Hearing Association, *Autism*. Available at [https://www.asha.org/PRPSpecificTopic.aspx?folderid=8589935303&section=Signs\\_and\\_Symptoms](https://www.asha.org/PRPSpecificTopic.aspx?folderid=8589935303&section=Signs_and_Symptoms)

(b)(5)

### *Conclusion*

(b)(5)

---

<sup>11</sup> Adverse Childhood Events (ACEs) include parental separation and divorce. “Research has demonstrated a strong relationship between ACEs, substance use disorders, and behavioral problems. When children are exposed to chronic stressful events, their neurodevelopment can be disrupted. As a result, the child’s cognitive functioning or ability to cope with negative or disruptive emotions may be impaired” leading to life-long adverse health consequences.

*Adverse Childhood Events*, SAMHSA. Available at [https://irp-cdn.multiscreensite.com/f5198d45/files/uploaded/Adverse%20Childhood%20Experiences%20\\_%20SAMHSA.pdf](https://irp-cdn.multiscreensite.com/f5198d45/files/uploaded/Adverse%20Childhood%20Experiences%20_%20SAMHSA.pdf). (Accessed February 20, 2020). *See also, generally, Report of the ICE Advisory Committee on Family Residential Centers* (October 7, 2016). Available at: <https://www.ice.gov/sites/default/files/documents/Report/2016/acfrc-report-final-102016.pdf>. (Accessed February 20, 2020).

<sup>12</sup> *See Adverse Childhood Events*, SAMHSA. For more information on the early childhood trauma and PTSD, *see also* Erin R. Barnett, Ph.D. & Jessica Hamblen, Ph.D., *Trauma, PTSD, and Attachment in Infants and Young Children*, U.S. Department of Veterans Affairs. Available at:

[https://www.ptsd.va.gov/professional/treat/specific/attachment\\_child.asp](https://www.ptsd.va.gov/professional/treat/specific/attachment_child.asp). (Accessed February 20, 2020).

<sup>13</sup> In certain cases, if an individual with a disability requests an accommodation, to comply with Section 504, CBP should determine whether a reasonable accommodation is required.

<sup>14</sup> Memorandum for: Directors, Field Operations, Office of Field Operations; Director, Field Operations Academy, Office of Training and Development; From: Todd A. Hoffman, Executive Director, Admissibility and Passenger Programs, Office of Field Operations; Subject: Inspecting Inadmissible Family Units and Updates to Secure Integrated Government Mainframe Access (SIGMA) (June 29, 2018). *See also* 6 U.S.C. § 279(g)(2)(c) (defining which minors may be categorized as unaccompanied alien children).



*Findings*

1. (b)(5)
- 2.
- 3.
- 4.
- 5.

*Recommendations*

1. CBP should provide training to ensure that front-line employees (b)(5) continue to document (b)(5) disabilities (b)(5) in the systems of record.
2. (b)(5)

---

<sup>15</sup> CBP National Standards on Transport, Escort, Detention, and Search (TEDS), released by CBP in October 2015.

3. CBP should implement the CBP Disability Access Plan and ensure that the training is delivered to those officers and agents who may interact with, screen, or supervise actions involving children with disabilities.
4. Especially in cases in which a child with a disability cannot speak or communicate effectively, or otherwise articulate his or her needs, CBP should take extra care in processing the family unit and verifying documents. Consistent with existing policy,<sup>16</sup> CBP should require a CBP OFO senior manager (GS-14 or above) to be notified of and approve the separation of a minor with a disability in writing. Prior to approving the separation, the manager should be required to review and verify all supporting documentation.
5. (b)(5) [REDACTED]
6. While CRCL recognizes that separation is a law enforcement decision, (b)(5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED] CBP should fully and accurately document the basis for the separation in the appropriate electronic system(s) of record, and in all cases on both the minor child's and the parent's or guardian's I-213.<sup>18</sup>  
(b)(5) [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]
7. If CBP separates a family unit absent an affirmative finding that "the parent is unfit or presents a danger to the child," CBP should facilitate contact between a parent or legal guardian and child while both parent or legal guardian and child are in CBP custody. CBP should provide assistance necessary to facilitate that contact.
8. On a quarterly basis, (b)(5) [REDACTED]  
[REDACTED] CBP should coordinate (b) information with the receiving agency.  
(b)(5) [REDACTED]  
[REDACTED]

---

<sup>16</sup> *Id.*

<sup>17</sup> See Memorandum re Inspecting Inadmissible Family Units and Updates to Secure Integrated Government Mainframe Access (SIGMA) (June 29, 2018), *supra* n.15.

<sup>18</sup> See *id.*; see also TEDS standards 4.2, 4.3 and 5.6, "Family Units." 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.

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 pursuant to that role; we believe they can assist you in making CBP the best agency possible. We look forward to continuing to work with CBP on these important issues. Please inform us within 60 days whether you concur or non-concur with these recommendations by emailing a response to (b)(6) [REDACTED] at (b)(6) [REDACTED]. If you concur, please include an action plan outlining how you plan to implement these recommendations.

Copy to:

Rodney S. Scott  
Chief  
U.S. Border Patrol  
U.S. Customs and Border Protection  
(b)(6), (b) (7)(C) [REDACTED]

Raul L. Ortiz  
Deputy Chief  
U.S. Border Patrol  
U.S. Customs and Border Protection  
(b)(6), (b) (7)(C) [REDACTED]

Jon Roop  
Chief of Staff  
U.S. Border Patrol  
U.S. Customs and Border Protection  
(b)(6), (b) (7)(C) [REDACTED]

William A Ferrara  
Executive Assistant Commissioner  
Office of Field Operations  
U.S. Customs and Border Protection  
(b)(6), (b) (7)(C) [REDACTED]

Robert W. Harris  
Chief of Staff  
Office of Field Operations  
U.S. Customs and Border Protection  
(b)(6), (b) (7)(C) [REDACTED]

Debbie Seguin  
Acting Chief of Staff  
U.S. Customs and Border Protection  
(b)(6), (b) (7)(C) [REDACTED]

Rebekah Salazar  
Executive Director  
Privacy and Diversity Office  
Office of the Commissioner  
U.S. Customs and Border Protection  
(b)(6), (b) (7)(C)

Jeffery R. Egerton  
Acting Deputy Executive Director  
Office of Professional Responsibility  
U.S. Customs and Border Protection  
(b)(6), (b) (7)(C)

Kristy Montes  
Director, Custody Support and Compliance Division  
Privacy and Diversity Office  
U.S. Customs and Border Protection  
(b)(6), (b) (7)(C)