

- d. Legal guardian with juvenile(s)
- e. Aunt and/or uncle with juvenile(s)—nephew/niece

6.24.13 Documentation. Times of meals, showers, telephone use, and visual checks of juveniles who are held in custody will all be recorded.

7. PERFORMANCE MEASUREMENTS. All detainees will be held under safe and humane conditions. Unaccompanied alien children in Border Patrol custody will be treated with dignity, respect and special concern for their particular vulnerability as minors.

7.1. Performance Measurement 1: All detainees will be held in appropriate conditions of confinement that ensure their safety and security. Juveniles will be held in the least restrictive setting appropriate for their age and special needs as minors.

7.1.1. Detainees are segregated according to sex, age, risk, family group.

7.1.2. Detention space capacity will not be exceeded.

7.1.3. Hold rooms will be kept clean and free of contraband and other potentially hazardous or dangerous materials.

7.2. Performance Measurement 2: All detainees will be held under humane conditions of confinement that provide for their well being and general good health.

7.2.1. Detainees have access to sanitary facilities and restrooms.

7.2.2. Detainees are provided food and water.

7.2.3. Detainees have access to appropriate medical services, prescriptions, medications, and emergency medical treatment.

7.2.4. Detention spaces are appropriately maintained and provide detainees with appropriate comfort items – housekeeping and clean bedding.

7.3. Performance Measurement 3: The time of detention for detainees is minimized.

7.3.1. The period of detention does not exceed (b)(2), (b)(7)(E) and commonly does not exceed (b)(2), (b)(7)(E) for UACs.

7.4. Performance Monitoring Tools:

- a. Sector and/or Station Detention Logs

- b. Form I-216 Record of Persons and Property Transferred
- c. Supervisor oversight
- d. Local inspection programs
- e. Reporting of deficiencies
- f. Periodic compliance summary reports

8. **CANCELLATION.** This policy remains in effect until cancellation by an updated version.

9. **NO PRIVATE RIGHTS CREATED.** This document is an internal policy statement of U.S. Customs and Border Protection and does not create or confer any rights, privileges, or benefits on any person or party.

10. **ATTACHMENTS.**

Appendix 1: Unaccompanied Alien Children Detention Log

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

David V. Aguilar
Chief
U.S. Border Patrol



U.S. Customs and
Border Protection

Commissioner

June 27, 2018

MEMORANDUM FOR:

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

Chief
U.S. Border Patrol

Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations

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

FROM:

Kevin K. McAleenan
Commissioner

SUBJECT:

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

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

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- (b)(7)(E)

- (b)(7)(E)

- (b)(7)(E)

- (b)(7)(E)

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

cc: All Executive Assistant Commissioners and Assistant Commissioners

From: (b)(6);(b)(7)(C)
To: (b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
Subject: FW: June 20, 2018 Executive Order – Updated Operational Guidance
Date: Wednesday, June 20, 2018 9:57:07 PM

Team,

FYSA.

VR

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

(b)(6);(b)(7)(C)
Deputy Chief, Operational Programs
US Border Patrol Headquarters
Law Enforcement Operations Directorate
(b)(6);(b)(7)(C) Office
(b)(6);(b)(7)(C) Cellular
(b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Wednesday, June 20, 2018 9:53:46 PM
To: BP Field Chiefs; BP Field Deputies
Cc: MCALEENAN, KEVIN K; VITIELLO, RONALD D (USBP); (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: June 20, 2018 Executive Order – Updated Operational Guidance

Chiefs, Deputies,

Please see the below guidance for immediate dissemination and implementation.

Please reply to Deputy Division Chief (b)(6);(b)(7)(C) and I that you have received and understand.

Please feel free to call if you have any questions.

June 20, 2018 Executive Order – Updated Operational Guidance:

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

3.

(b)(7)(E)

4.

(b)(7)(E)

5.

(b)(7)(E)

V/r,
(b)(6);(b)(7)(C)

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

From: (b)(6);(b)(7)(C)
Sent: Thursday, July 12, 2018 6:38 AM
To: (b)(6);(b)(7)(C)
Subject: FW: NTA/WA for FMUAs

From: (b)(6);(b)(7)(C)
Sent: Wednesday, July 11, 2018 7:54:34 PM
To: BP Field Chiefs; BP Field Deputies
Cc: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: NTA/WA for FMUAs

Chiefs,

We have received a request from ERO for assistance in the reunification effort for UAC and parents that were previously separated. As you know, the US Government has been ordered to reunite all UAC with parents by 26 July 2018. ERO and HHS have developed a plan to reunite at FRCs. In order to do so, ERO must create space within the FRCs. ERO is in the process of repatriating as many FMUA as possible to make space. Additionally, ERO has made a request for all USBP SWB sectors to (b)(7)(E) all FMUAs from 12 July until 26 July 2018. These cases will be TOT to ERO for further disposition. (b)(7)(E)

(b)(7)(E)

(b)(7)(E)

(b)(7)(E)

Please ensure dissemination to the appropriate level for execution.

If you have any questions, please let me know.

VR

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

(b)(6);(b)(7)(C)
Acting Chief
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters
(b)(6);(b)(7)(C) Office
(b)(6);(b)(7)(C) Cellular
(b)(6);(b)(7)(C)

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

From: (b)(6);(b)(7)(C)
Sent: Tuesday, July 17, 2018 1:31 PM
To: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
USBP Prosecutions Workgroup; (b)(6);(b)(7)(C)
Subject: RE: URGENT: Chief Teleconference
Attachments: Custody Redeterm.pptx

Chiefs, touching base on the request from Chief (b)(6);(b)(7)(C), I have CC'd the email address for the USBP prosecutions workgroup, please include them, your associates and I in your responses by 1400 HRS (EST). We need to review and provide to leadership as a single brief prior to full implementation/ path forward.

The attached presentation shows how to select the custody redetermination from 2 different work flows. The first is for those sectors using the Intake screen and the second is the legacy processing screen.

Please let us know if you, or your team, have any questions or require assistance. Thank you

(b)(6);(b)(7)(C) | Associate Chief | HQ-Operations-West Division | Office (b)(6);(b)(7)(C) Cell (b)(6);(b)(7)(C)

From: (b)(6);(b)(7)(C)
Sent: Tuesday, July 17, 2018 11:07 AM
To: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: RE: URGENT: Chief Teleconference

Please note - your CONOP/discussion notes are due today. Actual execution orders will follow pending a scheduled C1 meeting at 11:45a. Please coordinate and document plans as discussed.

Regards,

(b)(6);(b)(7)(C)
(Acting) Deputy Chief
Law Enforcement Operations Directorate

(b)(6);(b)(7)(C)office
(b)(6);(b)(7)(C)cellular

From: (b)(6);(b)(7)(C)
Sent: Tuesday, July 17, 2018 10:01:27 AM
To: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: URGENT: Chief Teleconference

Chiefs-

An invite will arrive very shortly for a teleconference at 10:30 am EST. Please make sure you or a member of your staff is present and prepared to execute upon the guidance provided during the teleconference. The invite will arrive shortly.

Regards,

(b)(6);(b)(7)(C)
(Acting) Deputy Chief
Law Enforcement Operations Directorate - Ops
U.S Border Patrol
1300 Pennsylvania Ave, N.W.
Washington, DC 20229

(b)(6);(b)(7)(C)office
(b)(6);(b)(7)(C)cellular

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

From: (b)(6);(b)(7)(C)
Sent: Friday, June 29, 2018 5:56 PM
To: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Cc: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
Subject: RE: Plan for the Path Forward for Zero Tolerance as Discussed during C-1 Call
Follow Up Flag: Follow Up
Flag Status: Flagged

Chiefs,

Thank you for providing your sector specific information on the below tasker. It was very helpful.

We have been asked to provide additional follow up information which will be used by C-1 in his discussions “up the chain” to set expectations of what our true capabilities are with respect to FMUA prosecutions.

By Monday, July 2, 2018, 0800 EDST, please provide Assistant Chief (b)(6);(b)(7)(C) (cc to (b)(6);(b)(7)(C) and Associate Chief (b)(6);(b)(7)(C) the following information:

(b)(7)(E)

If you have any questions, please contact me at your convenience. Staff may direct questions to Associate Chief Sandi (b)(6);(b)(7)(C)

Thanks in advance. We appreciate all you and your teams do to keep the country safe.

VR

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

(b)(6);(b)(7)(C)
Deputy Chief
Operational Programs
Law Enforcement Operations Directorate
U.S. Border Patrol Headquarters

(b)(6);(b)(7)(C) office
(b)(6);(b)(7)(C) cellular

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From: (b)(6);(b)(7)(C)

Sent: Wednesday, June 27, 2018 7:14 PM

To: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

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

Cc: (b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)
(b)(6);(b)(7)(C)

Subject: Plan for the Path Forward for Zero Tolerance as Discussed during C-1 Call

Chiefs, Deputies,

I apologize for the quick turnaround and ask here, but as most of you heard during the teleconference call, LEOD was tasked with consolidating sector information for a path forward for zero tolerance taking into consideration the EO and the injunction.

Please provide the following by 0800 a.m. tomorrow morning to Assistant Chiefs (b)(6);(b)(7)(C) (b)(6);(b)(7)(C) and (b)(6);(b)(7)(C) with a cc to me, Deputy Chief (b)(6);(b)(7)(C) and Associate Chief (b)(6);(b)(7)(C)

1. Assess your ability to prosecute and return FMUA related adults back to USBP custody within 72 hours in order to be compliant with FLORES.
 - a. Provide challenges such as time and distance from the courthouse, sentences greater than time served that impact your ability to prosecute and maintain compliance with FLORES.
 - b. Provide Operational impacts such as needing to use BPAs to transport to and from court causing an operational impact and staffing drain on sector
2. Provide any partner resourcing constraints or court requirements constraints (DOJ, Courts-Chief Judge, Marshals)—short bullets please.

3. Provide any feedback as to if this is a good idea and any other operational concerns in making this happen, (b)(7)(E)

(b)(7)(E)

HQ will compile all responses for a consolidated response to C1/C2 for their discussions with S1, the Deputy Attorney General and the Administration.

V/r,

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

~~FOR OFFICIAL USE ONLY~~



**Homeland
Security**

APR 23 2018

DECISION

MEMORANDUM FOR THE SECRETARY

FROM:

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

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

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

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

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

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

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.

~~FOR OFFICIAL USE ONLY~~

Background: Recent presidential direction and guidance from the Attorney General (AG) instruct the U.S. Government to increase the consequences for dangerous illegal crossings. On April 6, 2018, the President signed a Presidential Memorandum titled Ending Catch and Release at the Border of the United States and Directing Other Enhancements to Immigration Enforcement. This memorandum directed Cabinet departments to apply all available resources and tools toward enhancing immigration enforcement and ending catch and release practices.

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

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

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

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

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

³ See, e.g., 8 U.S.C. §§ 1325, 1326.

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:

(b)(7)(E)

(b)(7)(E)

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.

~~FOR OFFICIAL USE ONLY~~

(b)(7)(E)

(b)(7)(E)

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.

~~FOR OFFICIAL USE ONLY~~

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

Approve/_____ Disapprove/date _____

Modify/date _____ Needs discussion/date _____