



U.S. Customs and Border Protection

Commissioner

January 18, 2019

The Honorable Ron Wyden
United States Senate
Washington, DC 20510

Dear Senator Wyden:

Thank you for convening our January 17 meeting to discuss the humanitarian crisis along the Southwest Border and U.S. Customs and Border Protection's (CBP) response. I found the dialogue with you and your Senate Finance Committee colleagues to be productive in discussing several aspects of the current challenges on the border.

During our meeting, you requested additional information related to the occurrence of family separation in CBP custody, specifically referencing the recently released report from the Department of Health and Human Services (HHS) Inspector General pertaining to separated children placed in Office of Refugee Resettlement (ORR) care. Specifically, you asked for our current policy and practice, as well as available data on separations and whether we could track the reasons for separations. I will detail our efforts to do that before and after the Zero Tolerance prosecution initiative last year below.

You also asked about the concerning statement in the HHS Inspector General's report that "thousands of children may have been separated during an influx that began in 2017" in addition to the approximately 2,700 separated children reported to the court in the *Ms. L* litigation by HHS. I would like to state at the outset, that CBP is not aware of any data to substantiate this estimate. Further context is offered below on this point as well.

First, while separations have occurred historically for decades in the interest of child safety and welfare, the occurrence was limited, as it is currently. Additionally, prior to April 19, 2018, when the U.S. Border Patrol implemented changes to its e3 Detention Module, separations were not consistently recorded in the U.S. Border Patrol systems of record. These changes were implemented in April 2018, in coordination with Health and Human Services, to improve record keeping and information sharing on these cases.

With regard to current policy and practice, CBP ensures the safety of alien children it encounters and will only separate children from parents, or those who purport to be parents, in the best interests of the child, or when the adult is subject to prosecution beyond simple unlawful entry. With regard to child safety and welfare, CBP may separate an alien child from an adult who claims to be that child's parent or legal guardian in certain circumstances, such as where the adult is determined to not actually be the parent or legal guardian, the child's safety is at risk, the adult or child has urgent medical issues, or the adult has a serious criminal history. The judicial rulings under *Ms. L v. ICE*, which required the United States Government to reunify families



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separated under the zero tolerance policy, recognized that it may be necessary for CBP to separate some children in the interests of child safety.

To explain some of the numbers that you asked about, and that are referenced in the HHS IG report, CBP acknowledges that Office of Refugee Resettlement may have experienced a slight increase in referrals in summer and fall 2017 due to U.S. Border Patrol's referral for prosecution of adults crossing with children in the El Paso Sector. These prosecutions were initiated at the field level with the Department of Justice following guidance from the Attorney General to U.S. Attorneys directing the prioritization of immigration prosecutions. Accordingly, following an increase in family unit apprehensions in El Paso, U.S. Border Patrol's El Paso Sector undertook a limited effort to pursue prosecutions against all amenable adults, including parents in family units. CBP records indicate that this led to approximately 283 parents referred for prosecution between July and November 2017. At the same time, however, the number of unaccompanied children that CBP encountered across the Southwest Border in almost every month of 2017 was lower than the corresponding month in 2016, so it is not surprising that the increase was apparent to HHS Office of Refugee Resettlement staff.

More recently, as directed under the Attorney General's April 6 memorandum on Zero-Tolerance for Offenses under 8 U.S.C 1325(a), from May 5 through June 20, 2018, the U.S. Border Patrol referred a number of adults who entered with children for prosecution for unlawful entry, resulting in a significant increase in separations and placements of UACs with HHS. This practice was ended on June 20, 2018, with the issuance of the President's Executive Order, *Affording Congress an Opportunity to Address Family Separation*.

With regard to current practice, separations for child safety are rare, fewer than one per day, and in all cases, the family relationship and reason for separation is captured in CBP Systems of Record and made available to HHS. CBP and HHS leadership are in constant communication about child welfare issues. We have also initiated efforts to better connect our systems of record to streamline sharing and increase consistency, and anticipate that this will be a long-term effort.

I welcome the opportunity to continue to work with you to ensure full transparency on these important issue. Should you have any additional questions or concerns, I can be reached at

Sincerely,

A handwritten signature in black ink, appearing to read "KRM", followed by a horizontal line.

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