


DRT 130/8.5



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

JAN 10 2020

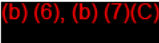

MEMORANDUM FOR: Division Chiefs
Headquarter Staff
Patrol Agents in Charge
Deputy Patrol Agents in Charge
Del Rio Sector
(b) (6), (b) (7)(C)

FROM:  Raul Ortiz
Chief Patrol Agent
Del Rio Sector

SUBJECT: U.S. Border Patrol Family Unit Separation Guidance

The attached memorandum *U.S. Border Patrol Family Unit Separation Guidance* from Chief Carla L. Provost dated January 7, 2020, provides guidance to all Border Patrol Agents (BPA's) on the policies, conditions, authorities, and requirements necessary to effect a family unit separation for aliens that are in U.S. Border Patrol custody.

Additionally, this guidance provides instructions on how to properly document a family unit separation within e3, the system of record.

If you have any questions, please contact Assistant Chief Patrol Agent  at 

Attachments

HQBOR 130-8.5-C



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

JAN 07 2020

MEMORANDUM FOR: All Chief Patrol Agents
All Directorate Chiefs

FROM: *fa* Carla L. Provost (b) (6)
Chief
U.S. Border Patrol

SUBJECT: U.S. Border Patrol Family Unit Separation Guidance

This memorandum provides guidance to all Border Patrol Agents (BPAs) regarding the policies, conditions, authorities, and requirements necessary to effect a family unit separation for aliens that are in U.S. Border Patrol (USBP) custody. Additionally, this guidance provides instructions on how to properly document a family unit separation within e3, the system of record.

The following are USBP definitions of a family unit, family group, and fraudulent family unit:

- **Family Unit**—A group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s).¹
- **Family Group**—Related detainees (e.g., brother and sister, aunt, and nephew) that need to travel together who are non-United States citizens and do not meet the definition of a Family Unit.
 - For the purpose of this memorandum, a parent/legal guardian who is under the age of 18, traveling with his/her minor child are to be recorded in e3 as a Family Group.
 - BPAs are reminded that all Unaccompanied Alien Children (UAC), even those part of a family group, must be transferred to the custody of the Department of Health and Human Services (HHS).
- **Fraudulent Family Unit**—A group of aliens that present themselves to meet the definition of a family unit to deceive the government, but through further investigation, it is revealed that the group does not meet one or more criteria of the family unit definition.

On June 27, 2018, then U.S. Customs and Border Protection (CBP) Commissioner Kevin K. McAleenan issued a memorandum titled *Interim Guidance on Preliminary Injunction in Ms. L. v. ICE*. The memorandum outlined the reasons under which USBP could separate a family unit consistent with the preliminary injunction issued by the court.

¹ See 8 CFR 236.3(b)(7)

As outlined in this memorandum, parents/legal guardians may be separated from their child for the following reasons.

- Referral of a parent/legal guardian for prosecution of a felony:
 - This includes parents/legal guardians referred for prosecution by CBP, and also includes those parents/legal guardians who are transferred to another jurisdiction on an extraditable warrant.
- Parent/legal guardian presents a danger to the child.
- The parent/legal guardian has a criminal conviction(s) for violent misdemeanors or felonies.
 - Any questions about what constitutes a violent misdemeanor or felony should be referred to the local Office of Chief Counsel (OCC).
 - A parent/legal guardian who has been arrested, but not convicted, may not be separated based solely on that arrest.
 - A parent/legal guardian may not be separated based solely on the fact that he/she have had prior removals.
- The parent/legal guardian has a communicable disease.
 - Prior to separation, local OCC should be contacted and the communicable disease should be clearly documented in the system of record.

If a parent/legal guardian has an urgent medical need that requires hospitalization, it may be appropriate to refer the child to HHS pending the parent/legal guardian's medical treatment. All such separations should be thoroughly documented in e3 and the HHS portal. BPAs should work with HHS to attempt to facilitate local placement for the child, if possible.

Similarly, if a parent/legal guardian is being held as a material witness, it may be appropriate to refer the child to HHS pending the parent/legal guardian's time in criminal custody. All such separations should be thoroughly documented in e3 and the HHS portal, and BPAs should work with HHS to attempt to facilitate local placement for the child, if possible

There may also be circumstances where U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations (ERO), consistent with their internal policies, will not accept a family unit for detention at a family residential center, due to a parent's criminal history or other public safety concerns (e.g., gang affiliation). In those instances, BPAs may separate a family unit based on the parent's gang affiliation, criminal history or other public safety concern, and should document all communications with ICE ERO.

The preliminary injunction applies to one and two-parent families. Accordingly, if at the time of apprehension, BPAs encounter a family unit where both parents are present, USBP may not separate the child from either parent, unless the specific criteria listed above is present and articulated in accordance with this directive.

U.S. Border Patrol Family Unit Separation Guidance

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If BPAs encounter a family unit consisting of an adult parent or a parent who is under the age of 18, and their minor child, the agents must refer the parent who is under the age of 18 to HHS as a UAC. Agents should exercise discretion, on a case by case basis and in consultation with OCC, to determine whether the minor child should remain with the adult parent or with the UAC parent.

Consistent with the Commissioner's memorandum, the sector Chief Patrol Agent has the authority to approve all separations. This authority may not be delegated below the Watch Commander position.

Data integrity in all reporting is of paramount importance. Accordingly, all family units and family groups must be properly linked in the e3 family panel. Further, it is imperative that all cases of family separations by USBP are documented in e3 and clearly articulated in the narrative for each family member. This documentation must include the reason for separation, the name and title of the official authorizing the separation, and a thorough description of the factors supporting this decision.

The e3 system has been updated to provide reasons for the separation that are consistent with the CBP Commissioner's June 27, 2018, guidance memo.

Separations:

- FMEW Family Member-Extraditable Warrant
- FMGA Family Member-Gang Affiliation
- FMH Family Member-Hospitalized
- FMCH Family Member-Criminal History
- FMPO Family Member-Prosecuted
- FMMW Family Member-Material Witness
- FMCD Family Member-Communicable Disease
- FMUP – Family Member-Presents danger to the child/Unfit Parent

In accordance with the Trafficking Victims Protection Reauthorization Act, all UAC must be transferred to the custody of HHS. In instances where a family separation results in a UAC, HHS will be notified that there has been a separation and the following information must be relayed to them at the time of placement:

- Name, A#, date of birth of parent/legal guardian
- Location and/or agency where the parent/legal guardian will be manifested to
- Reason for separation using only the above descriptions

Agents are reminded to adhere to the requirements outlined in the Memorandum of Agreement between HHS and the Department of Homeland Security, dated April 13, 2018.

Staff may direct all questions related to this directive to Assistant Chief (b) (6), (b) (7)(C) at

(b) (6), (b) (7)(C)

Attachments



Cancelling a Family Unit Number

Search for the Family Unit

(b) (7)(E)

Search for the Family Unit by
Event #, FIN #, A#, or FMU#.

(b) (7)(E)

The Family Unit Number
is listed next to each
Subject in the event.

Press Delete to cancel
the Family Unit Number.



Identify a Reason

(b) (7)(E)

Select the option from the dropdown that most closely matches the reason for cancelling the Family Unit number.

(b) (7)(E)

Enter the approving official and press "OK."



**USBPHQ provides statistics to other agencies and Congress. Please be mindful when selecting a reason for deletion. **

Cancelled Family Unit Number

(b) (7)(E)

The Family Unit Number has been cancelled.

The FMU # has been removed and the formerly accompanied child is now labeled as an UAC.

Enforcement Systems Division



Separating a Family Unit



Updated: November 12, 2019

Search for the Family Unit

(b) (7)(E)

Search for the Family Unit by
Event #, FIN #, A#, or FMU#.

The Family Unit Number is
listed next to each Subject in
the event.

(b) (7)(E)

The green links next to the
family roles indicate
whether a family is linked or
separated.

Green – Linked
Red – Separated



Separation

(b) (7)(E)

- Separate a member of the family by clicking the green link. The remainder of the family will remain in tact.

-
-
-
-
-
-
-
-
-
-

If you separate the lead member of the family, you will need to either reassign the lead to a different member, or separate all adult members in order to save the change.



Reasons for Separation

Use the drop down menu to specify a reason for separation

- FMEW – Family Member – Extraditable Warran
- FMPO – Family Member - Prosecuted
- FMGA – Family Member – Gang Affiliation
- FMMW – Family Member – Material Witness
- FMH – Family Member – Hospitalized
- FMCD – Family Member – Communicable Disease
- FMCH – Family Member – Criminal History
- FMUP – Family Member – Presents Danger to the Child/Unfit Parent

(b) (7) (E)



**USBPHQ provides statistics to agencies and Congress. Please be mindful when selecting a reason for separation. **

Separated Family Unit

(b) (7)(E)

The family members who have been separated will be listed as "separated" under the FMU number.

To rejoin members, click the red link to turn it green. The lead must be rejoined to rejoin any other members.

Click "Save" to save changes made.



Enforcement Systems Division

