

**ICE Did Not Consistently
Provide Separated Migrant
Parents the Opportunity to
Bring Their Children upon
Removal**





OFFICE OF INSPECTOR GENERAL

Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

May 18, 2021

MEMORANDUM FOR: Tae D. Johnson
Acting Director
U.S. Immigration and Customs Enforcement

FROM:


Joseph V. Cuffari, Ph.D.
Inspector General

SUBJECT: *ICE Did Not Consistently Provide Separated Migrant Parents the Opportunity to Bring Their Children Upon Removal*

Attached for your information is our final report, *ICE Did Not Consistently Provide Separated Migrant Parents the Opportunity to Bring Their Children Upon Removal*. We incorporated the formal comments provided from U.S. Immigration and Customs Enforcement in the final report.

The report contains two recommendations to ensure ICE documents separated migrant parents' decisions regarding their minor children upon removal from the United States, and develops a process to share information with Government officials to contact parents for whom ICE lacks documentation about reunification preferences. Based on information provided in your response to the draft report, we consider these recommendations resolved and open. Once your office has fully implemented the recommendations, please submit a formal closeout letter to us within 30 days so that we may close the recommendations. The memorandum should be accompanied by evidence of completion of agreed-upon corrective actions. Please send your response or closure request to SREFollowup@oig.dhs.gov.

Consistent with our responsibility under the *Inspector General Act*, we will provide copies of our report to congressional committees with oversight and appropriation responsibility over the Department of Homeland Security. We will post the report on our website for public dissemination.

Please call me with any questions, or your staff may contact Tom Kait, Deputy Inspector General for Inspections and Evaluations, at 202-981-6000.

Attachment



DHS OIG HIGHLIGHTS

ICE Did Not Consistently Provide Separated Migrant Parents the Opportunity to Bring Their Children upon Removal

May 18, 2021

Why We Did This Special Review

We conducted this review because removed migrant parents alleged that U.S. Immigration and Customs Enforcement (ICE) did not afford them the opportunity to bring their children back with them to their home country, contradicting claims by the Department of Homeland Security and ICE.

What We Recommend

We made two recommendations to ensure ICE documents separated migrant parents' decisions regarding their minor children upon removal from the United States, and develops a process to share information with Government officials to contact parents for whom ICE lacks documentation about reunification preferences.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov

What We Found

We confirmed that before July 12, 2018, migrant parents did not consistently have the opportunity to reunify with their children before removal. Although DHS and ICE have claimed that parents removed without their children chose to leave them behind, there was no policy or standard process requiring ICE officers to ascertain, document, or honor parents' decisions regarding their children. As a result, from the time the Government began increasing criminal prosecutions in July 2017, ICE removed at least 348 parents separated from their children without documenting that those parents wanted to leave their children in the United States. In fact, ICE removed some parents without their children despite having evidence the parents wanted to bring their children back to their home country. In addition, we found that some ICE records purportedly documenting migrant parents' decisions to leave their children in the United States were significantly flawed. For example, some records reflect that removed parents orally waived reunification prior to removal, but did not include the information ICE provided to the parent before the parent had to make the decision, or whether ICE gave the parent the option to reunify with his or her child.

ICE Response

ICE concurred with the two recommendations, which are resolved and open.



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Abbreviations

AFOD	Assistant Field Office Director
CBP	U.S. Customs and Border Protection
C.F.R.	Code of Federal Regulations
DO	Deportation Officer
FOD	Field Office Director
HHS	U.S. Department of Health and Human Services
ICE	U.S. Immigration and Customs Enforcement
ORR	Office of Refugee Resettlement
SDDO	Supervisory Detention and Deportation Officer
U.S.C.	United States Code



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Background

Historically, when U.S. Customs and Border Protection (CBP) apprehended migrant family units¹ attempting to enter the United States illegally, it placed most family units in civil immigration proceedings. While these proceedings were pending, the Government typically detained the families together or released them.² If the detained migrants ultimately received final removal orders, U.S. Immigration and Customs Enforcement (ICE) returned them to their home country.

However, beginning in July 2017, the Department of Homeland Security began referring some parents entering the United States illegally with their children for criminal prosecution, primarily under a pilot program in El Paso, Texas.³ Because minor children could not be held in criminal custody with their parents,⁴ CBP separated the parents and children, and transferred the children to the custody of the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR).⁵ Upon resolution of the parents' criminal charges, the Government transferred the parents to the custody of ICE, while their children typically remained in the custody of ORR.

In May 2018, DHS expanded criminal referrals beyond its El Paso pilot program when it adopted the Administration's *Zero Tolerance Policy*.⁶ This

¹ When CBP apprehends a child younger than 18 years old with his or her parent or legal guardian, the child and parent or guardian are classified as a family unit.

² In this context, release means parole. Parole allows the inadmissible alien to enter and temporarily remain in the United States pending the outcome of his or her immigration proceeding. 8 United States Code (U.S.C.) § 1226(a)(2); 8 Code of Federal Regulations (C.F.R.) § 212.5(d).

³ "Border Patrol officials in the El Paso, Texas, sector reached an agreement with the District of New Mexico U.S. Attorney's Office to refer more individuals who had been apprehended, including parents who arrived with minor children, for criminal prosecution. Prior to this initiative, the U.S. Attorney's Office in this district had placed limits on the number of referrals it would accept from Border Patrol for prosecution of immigration offenses." *Unaccompanied Children: Agency Efforts to Reunify Children Separated from Parents at the Border*, GAO-19-163, p. 14, Oct. 2018.

⁴ *Senate Judiciary Committee Hearing on Oversight of Immigration Enforcement and Family Reunification Efforts*, 115th U.S. Cong., 2nd sess., July 31, 2018.

⁵ Upon separation from their parents, the children were deemed unaccompanied alien children, who are children younger than 18 years of age with no lawful immigration status in the United States who do not have a parent or legal guardian in the United States "available" to provide care and physical custody for them. 6 U.S.C. § 279(g)(2).

⁶ On April 6, 2018, the U.S. Attorney General issued a memorandum directing all Federal prosecutors' offices along the Southwest Border to work with DHS to adopt a *Zero Tolerance Policy*, which required criminal prosecution of DHS referrals of 8 U.S.C. § 1325(a) violations, to the extent practicable. See Dept. of Justice, *Memorandum for Federal Prosecutors Along the Southwest Border*, Apr. 6, 2018.



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policy required DHS to refer all parents apprehended entering the country illegally for criminal prosecution — and consequently, greatly increased the number of separated parents and children.

On June 20, 2018, the President signed an Executive Order that ended the Government’s practice of separating most families apprehended at the border, stating that it was the Administration’s policy to detain migrant families together unless child welfare concerns outweighed maintaining family unity.⁷ Shortly thereafter, a Federal court issued an order in *Ms. L v. ICE* prohibiting the Government from detaining most separated parents apart from their children, and ordered the Government to reunify many separated families within 30 days.⁸ Because CBP did not consistently track families it separated as a result of *Zero Tolerance*, this order required the Government to undertake a largely manual effort to identify and locate separated parents and children across multiple agencies’ files and data systems.⁹

Around this time, the *Ms. L v. ICE* court also approved a notice and election form for the Government to provide to detained parents affected by its orders, often referred to as “class members.”¹⁰ The election form allowed class members to document whether they wanted to take their children with them; return to their home country without their children; or speak with an attorney before making a decision. ICE field offices received this court-approved election form on July 11, 2018.

⁷ Exec. Order No. 13841, *Affording Congress an Opportunity to Address Family Separations*, was announced and became effective on June 20, 2018, and was published in the Federal Register at 83 FR 29,435 on June 25, 2018.

⁸ Order Granting Plaintiffs’ Motion for Classwide Preliminary Injunction, *Ms. L v. U.S. Immigration & Customs Enforcement (Ms. L v. ICE)*, 18-cv-428 (S.D. Cal. June 26, 2018). The court’s order covered “[a]ll adult parents who enter the United States at or between designated ports of entry who (1) have been, are, or will be detained in immigration custody by the DHS, and (2) have a minor child who is or will be separated from them by DHS and detained in ORR custody, ORR foster care, or DHS custody absent a determination that the parent is unfit or presents a danger to the child.” Hereinafter, when this report attributes actions to a court, it refers to the orders and other decisions of the Federal judge in the *Ms. L v. ICE* litigation.

⁹ See, e.g., *Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*, OIG-18-84, Sept. 2018; *DHS Lacked Technology Needed to Successfully Account for Separated Migrant Families*, OIG-20-06, Nov. 2019; *Children Waited for Extended Periods in Vehicles to Be Reunified with Their Parents at ICE’s Port Isabel Detention Center in July 2018*, OIG-20-65, Aug. 2020.

¹⁰ The *Ms. L v. ICE* court’s orders did not apply to parents deemed unfit or a danger to their child; parents with a criminal history or communicable disease; or parents apprehended in the interior of the country. See Order Granting in Part Plaintiffs’ Motion for Class Certification, *Ms. L v. ICE*, 18-cv-428 (S.D. Cal. June 26, 2018).



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The Government has acknowledged that prior to the issuance of the orders ending most family separations, ICE removed some separated parents without their children.¹¹ But in subsequent public testimony and statements, DHS and ICE officials maintained that, pursuant to long-standing ICE policy,¹² all separated migrant parents removed without their children chose to leave their children in the United States. However, some removed parents have challenged those assertions, stating that they were not afforded the opportunity to bring their children back with them to their home country¹³ — and some separated parents removed to their home countries have subsequently requested the Government reunify them with children still in the United States.¹⁴

In light of these allegations, we reviewed whether ICE consistently ascertained and honored migrant parents' decisions regarding their minor children before removing them,¹⁵ and the extent to which ICE policies required it to do so. Because the process became more standardized after ICE field offices received the court-ordered election form on July 11, 2018, we focused our review on ICE's practices before July 12, 2018. This report does not evaluate DHS' compliance with any court order or the adequacy of any election form signed by parents removed on or after July 12, 2018. We also did not evaluate ICE's efforts to reunite families after the parent's removal from the United States.

Results of Review

We confirmed that before July 12, 2018, migrant parents did not consistently have the opportunity to reunify with their children before removal. Although DHS and ICE have claimed that parents removed without their children chose to leave them behind, there was no policy or standard process requiring ICE officers to ascertain, document, or honor parents' decisions regarding their children. As a result, from the time the Government began increasing criminal prosecutions in July 2017, ICE removed at least 348 parents separated from their children without documenting that those parents wanted to leave their children in the United States. In fact, ICE removed some parents without their

¹¹ See, e.g., Joint Status Report, *Ms. L v. ICE*, 18-cv-428 (S.D. Cal. March 6, 2019), at 6.

¹² The relevant ICE directive, 11064.2, entitled *Detention and Removal of Alien Parents or Legal Guardians*, was revised in August 2017, <https://www.ice.gov/doclib/detention-reform/pdf/directiveDetainedParents.pdf>.

¹³ See, e.g., Plaintiffs' Supplemental Memorandum In Support of Classwide Preliminary Injunction, *Ms. L v. ICE*, 18-cv-428 (S.D. Cal. June 25, 2018), at 43, 50, 232-33.

¹⁴ See, e.g., Joint Status Report, *Ms. L v. ICE*, 18-cv-428 (S.D. Cal. Oct. 15, 2018), at 13.

¹⁵ In some instances, ICE provided information about migrant parents that could affect ICE's ability to honor parents' wishes to be removed with their minor children, including a criminal record or a potential false claim of parentage. See Appendix A. ICE officials also explained that ORR makes decisions regarding child custody that impacts the reunification process.



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children despite having evidence the parents wanted to bring their children back to their home country. In addition, we found that some ICE records purportedly documenting migrant parents' decisions to leave their children in the United States were significantly flawed. For example, some records reflect that removed parents orally waived reunification prior to removal, but did not include the information ICE provided to the parent before the parent had to make the decision, or whether ICE gave the parent the option to reunify with his or her child.

Lack of Clear ICE Guidance Resulted in Inconsistent Opportunities for Migrant Parents to Elect or Waive Reunification with Their Children before Removal

Although DHS claims that parents removed without their children chose to leave them behind, ICE policy did not include clear guidance or a prescribed procedure for parents to elect or waive reunification with their children prior to removal. Between July 2017 and July 11, 2018, the lack of a clearly defined process led to inconsistent practices across ICE, with migrant parents' experiences varying widely depending on the timing of their removal and the ICE field office effecting it.

DHS and ICE Stated that ICE Policy Allowed Separated Parents to Bring Their Children upon Removal, but ICE Did Not Have a Standard Process for the Parents to Elect Reunification

In the months following *Zero Tolerance*, DHS and ICE leaders repeatedly maintained that ICE policy provided migrant parents with the opportunity to bring their children with them upon removal to their home country. Therefore, per DHS and ICE officials, any instance of a child left behind was the result of a parent's affirmative decision not to have the child accompany them, which would be documented in ICE records. Here are examples of such public statements:

- During congressional testimony on December 20, 2018, then-DHS Secretary Kirstjen Nielson stated, "Every parent had the choice to bring the child back with them when they were removed. The ones who did not bring the children with them made the choice not to have the child accompany them."¹⁶
- On March 6, 2019, then-Secretary Nielson stated, "[T]here was no parent who has been deported, to my knowledge, without multiple opportunities

¹⁶ *House Judiciary Committee Hearing on Oversight of the Department of Homeland Security*, 115th U.S. Cong., 2nd sess., December 20, 2018.



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to take their children with them.” In providing examples of these opportunities, then-Secretary Nielsen cited parents’ conversations with U.S. Government officials effecting their removal; communications with their home country’s consulate or embassy; and court orders requiring the Government to confirm migrant parents’ decisions regarding their children.¹⁷

- In July 31, 2018 testimony to Congress, ICE’s then-Executive Associate Director of Enforcement and Removal Operations Matthew Albence stated that “longstanding ICE policy ... dictates how reunification may occur.” When asked whether ICE could produce documentation that parents waived reunification with any children who remained in the United States, he implied that it could, indicating ICE could “go into each [paper] file and see the records that are there” as well as DHS’ electronic record system in which “officers will make a note that the parent declined reunification as well.”¹⁸
- In a June 23, 2018 DHS news release entitled, “Fact Sheet: Zero-Tolerance Prosecution and Family Reunification,” DHS indicated that upon conclusion of a parent’s immigration case, ICE would “seek to reunite verified family units and link their removal proceedings so that family units can be returned to their home countries together.”¹⁹

Despite DHS and ICE statements, ICE did not have clear guidance to include any prescribed process or procedure requiring officers to ascertain, document, or honor parents’ decisions as to whether to leave their children in the United States when they were removed. In fact, the ICE policy pertaining to parental rights provides only broad guidance regarding the removal of alien parents, granting significant discretion to ICE Field Office Directors (FOD).

The only relevant ICE policy we identified is the August 2017 directive *Detention and Removal of Alien Parents or Legal Guardians* (“Directive”). The

¹⁷ *House Homeland Security Committee Hearing on The Way Forward on Border Security*, 116th U.S. Cong., 1st sess., March 6, 2019.

¹⁸ *Senate Judiciary Committee Hearing on Oversight of Immigration Enforcement and Family Reunification Efforts*, 115th U.S. Cong., 2nd sess., July 31, 2018.

¹⁹ See DHS Press Release, *Fact Sheet: Zero-Tolerance Prosecution and Family Reunification* (June 23, 2018), <https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification>. Note that this precise language was added to the press release on DHS’s website on June 26, 2018. However, the messaging in the original version was similar: “A parent who is ordered removed from the U.S. may request that his or her minor child accompany them[,]” and ICE would work with HHS and foreign consulates to coordinate “the reuniting of the child prior to the parents’ departure from the United States.” See DHS Press Release, *Fact Sheet: Zero-Tolerance Prosecution and Family Reunification* (June 23, 2018), <https://web.archive.org/web/20180624034204/www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification>.



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Directive includes a section regarding the coordination of children's travel pending their parents' removal and has several specific provisions:

- For detained parents with a final order of removal, FODs or their designees "should accommodate, to the extent practicable," detained parents' "individual efforts to make arrangements for their minor child(ren)," including parents' attempts to arrange care for their children in the United States or to obtain travel documents so their children can travel with them to their home country.
- The FOD "must coordinate, to the extent practicable," to allow detained parents "access to counsel, consulates and consular officials, courts and/or family members in the weeks preceding removal," so parents are able to make arrangements for their children, to include executing documents and purchasing airline tickets.
- The FOD may, subject to security considerations, provide detained parents with "sufficient notice of the removal itinerary" to allow them to coordinate their children's travel.

Beyond this broad, discretionary Directive, ICE does not have any guidance on procedures requiring field offices to take particular steps before removing migrant parents. For example, the existing policy does not require ICE officers effecting parents' removals to do any of the following:

- to ask whether parents want to bring their children back to the home country;
- to honor parents' requests even when the parents express that they want to bring their children; or
- to document comprehensively matters relating to the separated children of detained parents.

The existing ICE policy also lacks any standardized forms or other processes for parents to request reunification with their children; prescribed methods for documenting any parent's waiver of reunification, meaning a parent's voluntary removal without his or her child; and uniform procedures for instances when the Government determines parents present a danger to their child.

This policy void is particularly notable when compared to other ICE policies and procedures relating to detainees' processing for removal. For example, ICE's *2011 Performance-Based National Detention Standards* include more than a page of detailed guidance regarding the return of a detainee's personal property, requiring ICE officers to use a standardized property receipt form; obtain the detainee's signature; verify both the detainee's identity and signature; and obtain the approval of a shift supervisor. In contrast, when it



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comes to separated children, under the current Directive, an ICE officer might choose to memorialize a parent’s oral request to waive reunification in ICE’s electronic record before removing the parent without his or her child — or choose to never ask the parent about the child at all. Indeed, in its June 26, 2018 order prohibiting the Government from detaining most separated parents apart from their children, the *Ms. L v. ICE* court observed that “the unfortunate reality is that under the present system migrant children are not accounted for with the same efficiency and accuracy as property.”²⁰

Although ICE Provided More Separated Migrant Parents with Opportunities to Elect or Waive Reunification Later in the *Zero Tolerance* Period, the Lack of Initial Guidance Resulted in Inconsistencies

The absence of prescribed removal procedures led to ICE’s dissimilar treatment of separated parents and inconsistent documentation of parents’ decisions. Before July 12, 2018, separated parents’ ability to bring their children with them upon removal varied widely, largely depending on how early during *Zero Tolerance* the parent was removed. Also, although the documentation of parents’ decisions generally improved over time, initially it varied depending on the particular field office effecting removals.

The timing of the parents’ removal played a major part in whether they had the opportunity to elect or waive reunification. ICE officers explained that early in the *Zero Tolerance* period, ICE did not typically try to ascertain or honor parents’ wishes with respect to bringing their children or leaving them in the United States. For example, one Assistant Field Office Director (AFOD) said that early in the *Zero Tolerance* period, without any policy or court order requiring ICE to determine parents’ wishes with respect to their children, in that field office, ICE typically removed parents without asking if they wanted to be joined by their children.

Likewise, in an email dated May 25, 2018, a Supervisory Detention and Deportation Officer (SDDO) in another ICE field office advised Deportation Officers (DO) that it was the parent’s responsibility “to validate his/her association with the child and gain support from the[ir] consulate” for the family to be removed together. The SDDO explained that ICE would “make the effort” if a consulate “requests we attempt to reunite the adult and the child for removal” — but once a consulate issues travel documents for a parent, the

²⁰ Order Granting Plaintiffs’ Motion for Classwide Preliminary Injunction, *Ms. L v. ICE.*, 18-cv-428 (S.D. Cal. June 26, 2018), at 14-15.



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SDDO said the DOs should proceed with the removal of the parent, with or without his or her child.

However, during the course of the *Zero Tolerance* period, ICE's practices changed. For example, on June 18, 2018, the same SDDO who directed DOs to remove any parent with travel documents just a month earlier, "rescinded" this order, stating it was "imperative" that ICE officers make an effort to identify separated parents, and in cooperation with HHS ORR, "attempt to reunify parents and children prior to removal." Similarly, a DO in the same field office reported that early in *Zero Tolerance*, he was told to stop taking separated parents off removal flights; but as the number of separated parents grew, his management reversed course, and he received orders to remove detainees from flights if they said they had been separated from a child.

Our review of records and interviews with ICE staff indicated that ICE procedures for documenting parents' wishes with respect to their children also changed over time, but lack of initial guidance created inconsistencies among ICE field offices. Although no such documentation was required during the *Zero Tolerance* period, some ICE officers in various field offices nevertheless documented parents' oral decisions regarding their children in ICE's electronic record system. In mid-June 2018, officials in at least one ICE field office decided that all officers should take this step before removing any parent who requested removal without his or her child. That field office also created its own election form, to memorialize parents' decisions in writing before their removal. An AFOD told us the field office took this step because it had not yet received guidance from ICE headquarters, but wanted ICE to document any separated parent's decision to be removed without his or her child.

Shortly thereafter, on June 29, 2018, all ICE field offices received an election form drafted with input from ICE's Office of the Principal Legal Advisor.²¹ About 2 weeks later, on the evening of July 11, 2018, ICE headquarters distributed the court-approved election form to all field offices, directing them to use this form to memorialize the decisions of *Ms. L v. ICE* class members before they were removed.²²

²¹ ICE's creation and use of these various forms was not required by policy, court order, or law, but rather represented a voluntary attempt to improve record keeping with respect to separated families. However, as discussed in more detail later, some of these early forms had deficiencies, and there were allegations that parents who signed them did not always make a knowing, voluntary decision to do so.

²² As noted previously, some separated parents were not *Ms. L v. ICE* class members, including parents deemed unfit or a danger to their child; parents with a criminal history; parents with a communicable disease; or parents apprehended in the interior of the country. Therefore, ICE was under no obligation to use the court-approved election form or otherwise document those parents' decisions regarding their children.



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However, the absence of comprehensive guidance and defined processes created inconsistencies in how ICE conducted removals and documented the wishes of separated parents, because individual ICE field offices and officers were left to exercise considerable discretion. Without clear guidance, separated migrant parents will continue to have inconsistent outcomes depending on factors unrelated to their wishes or the safety of their children, including whether the parent is a part of any ongoing litigation or which individual ICE officer happens to effect the parent's removal.

ICE Removed Some Separated Migrant Parents without Allowing Them to Bring Their Children

For at least 348 separated parents removed without their children before July 12, 2018, ICE has no records demonstrating that they wanted to leave their children in the United States. In some cases, ICE removed separated parents without their children even though ICE officers effecting their removal knew the parents wanted to bring their children with them. Further, even when ICE documented a parent's choice to leave the child behind, some of the available records are significantly flawed, suggesting that not all parents who purportedly waived reunification did so knowingly and voluntarily.

ICE Removed Some Separated Parents without Their Children despite Knowing the Parents Wanted to Bring Their Children

ICE records reflect that in some cases, parents told ICE officers they wanted their children to accompany them back to their home country — but ICE nevertheless removed the parents without reunifying them, leaving their children in the United States. Therefore, at least some of ICE's removals of parents without their children were intentional, and not just inadvertent incidents resulting from human error or inaccurate records.

For example, during *Zero Tolerance*, a DO charged with effecting removals in one ICE field office told the Office of Inspector General (OIG) that he began encountering detainees on a daily basis who claimed they had been separated from their children, but who had no information about their children's whereabouts. In late May 2018, the DO sent the SDDO a series of emails regarding two mothers and three fathers, advising that their consulates had issued their travel documents, but that they were all asking to be removed with their children. The DO advised the SDDO that he told the mothers that removal with their children was "not possible." In his reply to DO's email about the three fathers, the SDDO confirmed DO's understanding of his orders, stating, "As previously instructed, when we gain knowledge of an adult



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traveling with a minor, we will process the final order as any other; cycle the case through the consulate interview and onward toward removal.” The SDDO emphasized that “[o]nce a case is referred to [DO’s] team for removal, every effort shall be made to execute the removal,” indicating that any adult whose consulate issues his or her travel documents “must go.”

In other cases, comments in ICE’s electronic record system indicated that detained separated parents had requested their children be removed with them, but ICE removed these parents without their children anyway. For example, according to ICE’s electronic records:

- On September 26, 2017, ICE documented that it received a letter from a father “requesting to be removed with his son.” On October 11, 2017, ICE received an additional letter from the father “inquiring about his son.” However, ICE removed the father on October 16, 2017, without his son.
- On December 12, 2017, ICE documented that a father “requested to be returned to Guatemala WITH child [sic],” yet ICE removed the father without his child on February 9, 2018.
- On May 29, 2018, ICE documented that a father “wished to be removed with his child.” ICE also noted this in his daughter’s record. Nevertheless, ICE removed the father on June 18, 2018, without his daughter.

ICE Could Not Provide Documentation for Hundreds of Separated Parents Demonstrating They Did Not Want to Bring Their Children

In the course of our review, although ICE examined both its electronic records and paper alien files²³ for any documentation regarding whether parents wanted to reunify with their child or leave them in the United States, ICE still could not provide a well-documented parental decision for 348 separated parents.²⁴ Because ICE records are incomplete, it is unclear whether ICE presented these parents with the option of bringing their children back to their home country, or whether these parents wanted to be reunified with their children. Though we lack records of these parents’ preferences before their

²³ Alien files contain records of migrants as they move through the immigration process. The files may contain visas, photographs, affidavits, immigration forms, and correspondence.

²⁴ Due to incomplete data regarding separated family units, ICE may have removed some of these 348 detainees before the Government identified them as separated parents.



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removal, some parents later opted to return their children to their home country.

As discussed previously, one reason that no records of parental decisions could be found is that ICE had no clear policy requiring officers to ascertain these detainees' wishes with respect to their children. Further, even if ICE officers gave all these separated parents the opportunity to reunite upon removal, ICE's existing policy did not require the officers to document either offering parents the choice or their subsequent decisions.

Given the lack of records, we could not determine whether all of these parents wanted to bring their children back to their home country.²⁵ As we found, some parents removed without their children later opted to leave their children in the United States, rather than return them to their home country. Although the scope of our review differs from parents included in the *Ms. L v. ICE* class,²⁶ filings in the *Ms. L v. ICE* case suggest that at least some separated, removed parents would have preferred to bring their children with them back to their home country. In the *Ms. L v. ICE* case, a steering committee worked to locate parents who had already been removed to their home country without their children.²⁷ Their counsel subsequently filed affidavits on their behalf, advising the court as to whether the parents wanted the Government to reunify them with children who remained in the United States.²⁸ While subsequent events are not necessarily indicative of what parents might have chosen before their removal in 2018, those affidavits indicate that at least 15 removed parents requested reunification with children still in the United States, while at least 66 removed parents opted for their children to remain in the United States without them.

Some ICE Records Documenting Migrant Parents' Purported Waivers Were Significantly Flawed

²⁵ As noted previously, we did determine that *some* of these parents wanted to bring their children, as documented by their unfulfilled requests to ICE officers.

²⁶ Our review focused on parents separated and removed before July 12, 2018, who may or may not be *Ms. L v. ICE* class members.

²⁷ The court stated that *Ms. L v. ICE* class members removed without their children were located through the "herculean efforts of the parties," with many parents "located in remote villages in the recesses of Central America." Order Granting in Part and Denying in Part Plaintiff's Motion to Allow Parents Deported Without Their Children to Travel to the United States, *Ms. L v. ICE*, 18-cv-428 (S.D. Cal. Sept. 4, 2019), at 2.

²⁸ The *Ms. L v. ICE* court noted these parents had to make "the difficult decision either to reunify with their children in their home countries or to waive reunification and allow their children to remain in the United States to pursue their own claims for asylum." Order Granting in Part and Denying in Part Plaintiff's Motion to Allow Parents Deported Without Their Children to Travel to the United States, *Ms. L v. ICE*, 18-cv-428 (S.D. Cal. Sept. 4, 2019), at 2.



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For 149 migrant parents, ICE was able to produce some documentation suggesting that they decided to waive reunification with their children before removal. However, we also identified substantive issues with ICE's documentation of purported waivers in this period.²⁹

ICE's electronic case records reflect that 63 detained and removed parents either orally waived reunification prior to removal, or signed a waiver form that ICE cannot locate. However, these case comments entered by ICE officers are an imperfect record of these parents' decisions. These case comments do not consistently include, for example:

- what information ICE provided to the parent before the parent had to make the decision;
- whether ICE gave the parent the option to reunify with his or her child;
- whether the ICE officer making the case comment spoke the same language as the parent; or
- the identity of the individual who purportedly heard the parent's oral waiver or witnessed the parent signing the waiver.

Additionally, as with any manual process, information received orally is susceptible to human error when officers record it; the accuracy of these case comments wholly depends on the competency of each ICE officer entering the information and the officer's understanding of the parents' wishes. The flaws we identified in recording such critical information stands in stark contrast to, for example, the need for supervisor approval before releasing a detainee's personal property.

In the course of this review, ICE provided to us copies of written waivers signed by 86 parents. These documents represent ICE's voluntary attempt to create a contemporaneous, written record of parents' decisions regarding their children.³⁰ The substance of these documents varies, but at least some records appear to comprehensively document the parents' desire to leave their children in the United States. Other records are less comprehensive. For example, although some forms outline the parents' options in both English and Spanish, others are only in English, and instruct the ICE officer to translate and read the English text to the parent in a language the parent understands. Other waiver forms are missing children's names, are undated, or are missing the

²⁹ See Appendix A for more information regarding the scope DHS OIG's review, and its analysis of ICE data.

³⁰ While there were some similarities between these documents and the election form ICE implemented on July 12, 2018, these documents pre-dated that court-approved form.



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name of the ICE official present during the signing. Additionally, we cannot substantiate other concerns relating to these forms, including allegations of coercion or misunderstanding.³¹

Conclusion

Before July 12, 2018, migrant parents did not consistently have the opportunity to be removed with their children because ICE had no clear guidance or procedure requiring officers to ascertain, document, or honor parents' decisions regarding their children. As a result, ICE removed at least 348 separated parents without documenting that those parents wanted to leave their children in the United States, and in some cases, removed parents without their children even after parents told ICE officers that they wanted their children to accompany them upon removal. Additionally, some ICE records have significant flaws, making it difficult to determine whether they truly represent an accurate record of a parent's knowing, voluntary decision regarding their child.

Recommendations

We recommend the Acting Director of ICE:

Recommendation 1: Ensure that before removing parents who have minor children in the United States, ICE staff document and obtain supervisory acknowledgement for each parent's preference for whether the children should remain in the United States or be removed with the parent.

Recommendation 2: For parents already removed without documentation of reunification preferences, develop a process to share information with the relevant Government officials, and assist with Government efforts to coordinate reunification, if requested and appropriate.

³¹ See, e.g., Order Granting In Part And Denying In Part Plaintiffs' Motion To Allow Parents Deported Without Their Children To Travel To The United States, *Ms. L. v. ICE*, 18-cv-428 (S.D. Cal. Sept. 4, 2019), at 14, 15, 17, 18-19.



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Management Comments and OIG Analysis

ICE provided technical comments and formal management comments in response to our draft report and concurred with our recommendations. We addressed the technical comments throughout our report as appropriate and included a copy of ICE's management comments in their entirety in Appendix B. A summary of ICE's response and our analysis follows.

ICE Comments to Recommendation 1: Concur. In October 2020, ICE ERO deployed a web-based management application system, and modified the ENFORCE database Alien Removal Module (EARM), to receive flags on cases which U.S. Customs and Border Protection identifies as Family Units. The new application and EARM update allow ICE users to create and manage records for family units. In particular, the new application collects, tracks, and stores data on family units and other members of family groups. Through this new application, ICE is now able to create family unit identification numbers, track family members, designate familial relationships among family members, and annotate a family separation and reunification, which will help ICE ensure that separated parents who are subject to removal are able to make arrangements for their minor child or children (including being removed with them), pursuant to ICE Policy 11064.2, "Detention and Removal of Alien Parents and Legal Guardians."

OIG Analysis: We acknowledge ICE's efforts to manage records for family units and annotate family separations and reunifications. We consider this recommendation resolved, but it will remain open until ICE provides documentation ensuring that staff record and obtain supervisory acknowledgement for each parent's preference for whether the children should remain in the United States or be removed with the parent.

ICE Comments to Recommendation 2: Concur. Pursuant to the February 2, 2021, Executive Order 14011, "Establishment of Interagency Task Force on the Reunification of Families," ICE representatives from ERO, Homeland Security Investigations, and the Office of the Principal Legal Advisor participate on the Family Reunification Task Force. Functions of the task force include "identifying all children who were separated from their families at the United States-Mexico border between January 20, 2017, and January 20, 2021, in connection with the operation of the "Zero-Tolerance" policy; and "to the greatest extent possible, facilitating and enabling the reunification of each of the identified children with their families..." ICE referenced the Secretary of Homeland Security press release, dated March 1, 2021, announcing principles and Executive Director for the Task Force for additional insights, available at www.dhs.gov under "News/Press Releases." The Task Force anticipates issuing



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an initial progress report in early June 2021, and interim progress reports every 60 days thereafter until it issues a final report when its mission is completed.

OIG Analysis: We consider these actions responsive to the recommendation, which is resolved and open. We will close this recommendation when we receive documentation confirming that ICE representatives share information and assist with the Family Reunification Task Force's efforts to coordinate reunification.



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Appendix A

Objective, Scope, and Methodology

The Department of Homeland Security Office of Inspector General (OIG) was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

We conducted this review to determine whether ICE gave migrant parents the option of bringing their children with them when they were removed from the United States.

We conducted fieldwork for this review between September 2018 and December 2020, in Washington, D.C., and on site in Texas. We interviewed more than 40 ICE employees, separated parents, and members of the private sector involved with family separations. The ICE employee interviews included both headquarters and field office personnel at all levels, including senior management officials, supervisors, and detention officers.

We reviewed communications and guidance related to the July 2018 family reunifications, as well as documents and communications related to the *Zero Tolerance Policy* and *Ms. L. v. ICE* Federal court pleadings and orders.

During the course of our fieldwork, ICE produced approximately 15 datasets identifying family units, and provided data regarding their apprehension, separation, detention, and removal. We focused our review from July 2017, when DHS began referring parents entering the United States illegally with their children for criminal prosecution, until July 11, 2018, when ICE field offices received the court-ordered election form. OIG did not analyze data or documentation relating to parents removed after July 11, 2018; review whether ICE used the court-approved election form on or after July 12, 2018; or conduct a comprehensive substantive review of all documented waivers, either written or oral.

To determine how many removed parents may not have been given the option to bring their children, we reviewed ICE's data to identify parents who were removed without their children before July 12, 2018. For these parents, ICE represented that it comprehensively reviewed its files for any evidence that the parents waived reunification with their children, including both paper alien files and electronic case records. ICE provided OIG with copies of all written waivers it could find for these parents. We independently reviewed these waivers, but had no way to confirm whether the signature on each form was, in



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fact, the signature of the detainee.³² For detainees with evidence of waivers in electronic case records, ICE compiled officer case comments relating to parents' waivers into a spreadsheet that it provided to OIG. These case comments included, for example, oral waivers made to ICE officers and/or conversations ICE officers had with detainees' consulates regarding their children. While we independently reviewed some records in ICE's electronic record system, we generally relied on ICE's compilation of these comments, and did not comprehensively review all parents' case comments in ICE's electronic records.

While we make no recommendation as to whom any new ICE policy should apply, for the purposes of determining how many parents ICE removed without a reunification waiver, we did not include 51 parents who had a criminal history beyond illegal entries or reentries. We also excluded 26 detainees who, based on information provided by ICE, may have made a false claim of parentage. We did not independently confirm either these detainees' criminal history or their purportedly false claims of parentage.

This review was initiated in 2018 by the former DHS OIG Special Reviews Group (SRG) and was conducted in accordance with SRG's quality control standards and the *Quality Standards for Federal Offices of Inspector General* (Silver Book) issued by the Council of the Inspectors General on Integrity and Efficiency. These standards require work to be carried out with integrity, objectivity, and independence, and provide information that is factually accurate and reliable. This report reflects work performed by SRG pursuant to Section 2 of the *Inspector General Act of 1978*, as amended.

This report provides information related to ICE's policies, procedures, and practices relating to the removal of separated alien families to determine whether such parents were given the option of bringing their children when they were removed from the United States, for the purpose of keeping the Secretary of DHS and Congress fully and currently informed about problems and deficiencies relating to the administration of DHS programs and operations and the necessity for and progress of corrective action. This report is designed to promote the efficient and effective administration of, and to prevent and detect fraud, waste, and abuse in, the programs and operations of DHS.

³² ICE indicated that because of human error, there may be some additional waivers that it overlooked and, therefore, may not be reflected in its data.



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Appendix B
ICE Comments to the Draft Report

Office of the Chief Financial Officer


U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

April 30, 2021

MEMORANDUM FOR: Joseph V. Cuffari, Ph.D.
Inspector General

FROM: Stephen A. Roncone 
Chief Financial Officer and
Senior Component Audit Official

SUBJECT: Management Response to Draft Report: "ICE Did Not
Consistently Provide Separated Migrant Parents the
Opportunity to Bring Their Children upon Removal"
(Project No. 18-120-SRE-CBP(a))

Thank you for the opportunity to comment on this draft report. U.S. Immigration and Customs Enforcement (ICE) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

Following the June 20, 2018, Executive Order 13841 "Affording Congress an Opportunity to Address Family Separation," ICE made a number of efforts toward facilitating family reunification, as well as achieving cross-agency objectives to overcome operational and humanitarian impacts stemming from the former "Zero-Tolerance" policy. For example, on July 26, 2018, the ICE Enforcement and Removal Operations (ERO) Removal Division stood up a Diplomatic Engagement Task Force (DETF) to serve as the primary point of contact to address Mexican, Honduran, Guatemalan, and El Salvadoran consulates' inquiries related to family reunification, travel document issuance, and removal facilitation. The DETF also provided location and available information regarding impacted individuals in ICE ERO custody, undergoing removal proceedings, or with a final order of removal. The Removal Division continues to be committed to fostering an information sharing process with the pertinent foreign governments regarding parents already removed without documented reunification preferences to facilitate reunification, as appropriate.

The draft report contained two recommendations with which ICE concurs. Attached find our detailed response to each recommendation. ICE previously submitted technical

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Management Response to Draft Report: "ICE Did Not Consistently Provide Separated Migrant Parents the Opportunity to Bring Their Children upon Removal" (Project No. 18-120-SRE-CBP(a))
Page 2

comments addressing accuracy, contextual, and other issues under a separate cover for
OIG's consideration.

Again, thank you for the opportunity to review and comment on this draft report. Please
feel free to contact my OIG audit liaison Seth Winnick at seth.a.winnick@ice.dhs.gov
with any questions. We look forward to working with you again in the future.

Attachment

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Management Response to Draft Report: “ICE Did Not Consistently Provide Separated Migrant Parents the Opportunity to Bring Their Children upon Removal” (Project No. 18-120-SRE-CBP(a))
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Attachment: Management Response for Recommendations Contained in 18-120-SRE-CBP(a)

OIG recommended that the Acting Director of ICE:

Recommendation 1: Ensure that before removing parents who have minor children in the United States, ICE staff document and obtain supervisory acknowledgement for each parent’s preference for whether the children should remain in the United States or be removed with the parent.

Response: Concur. In October 2020, ICE ERO deployed a web-based management application system, and modified the ENFORCE database Alien Removal Module (EARM), to receive flags on cases which U.S. Customs and Border Protection identifies as Family Units. The new application and EARM update allow ICE users to create and manage records for family units. In particular, the new application collects, tracks, and stores data on family units and other members of family groups. Through this new application, ICE is now able to create family unit identification numbers, track family members, designate familial relationships among family members, and annotate a family separation and reunification, which will help ICE ensure that separated parents who are subject to removal are able to make arrangements for their minor child or children (including being removed with them), pursuant to ICE Policy 11064.2, “Detention and Removal of Alien Parents and Legal Guardians.”

ICE requests that the OIG consider this recommendation resolved and closed, as implemented.

Recommendation 2: For parents already removed without documentation of reunification preferences, develop a process to share information with the relevant Government officials, and assist with Government efforts to coordinate reunification, if requested and appropriate.

Response: Concur. Pursuant to the February 2, 2021, Executive Order 14011, “Establishment of Interagency Task Force on the Reunification of Families,” ICE representatives from ERO, Homeland Security Investigations, and the Office of the Principal Legal Advisor participate on the Family Reunification Task Force. Functions of the task force include “identifying all children who were separated from their families at the United States-Mexico border between January 20, 2017, and January 20, 2021, in connection with the operation of the “Zero-Tolerance” policy; and “to the greatest extent possible, facilitating and enabling the reunification of each of the identified children with their families....” See the Secretary of Homeland Security press release, dated March 1,

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Management Response to Draft Report: “ICE Did Not Consistently Provide Separated Migrant Parents the Opportunity to Bring Their Children upon Removal” (Project No. 18-120-SRE-CBP(a))
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2021, announcing principles and Executive Director for the Task Force for additional insights, available at www.dhs.gov under “News/Press Releases.” The Task Force anticipates issuing an initial progress report in early June 2021, and interim progress reports every 60 days thereafter until it issues a final report when its mission is completed.

ICE requests that the OIG consider this recommendation resolved and closed, as implemented.

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Appendix C

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