



U.S. Customs and
Border Protection

Commissioner

June 27, 2018

MEMORANDUM FOR: Carla L. Provost
Chief
U.S. Border Patrol

Todd C. Owen
Executive Assistant Commissioner
Office of Field Operations

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.

- Both at and between the ports of entry, adults who enter the United States illegally as part of a family unit (including adults who are members of two parent families) should not be referred for prosecution for 8 U.S.C. § 1325. However, ports of entry and stations may refer parents/legal guardians for prosecution for felonies.
- Parents/legal guardians may be separated from their child only for the following reasons:
 1. Referral of a parent/legal guardian for prosecution for a felony, as stated above.
 2. Parent/legal guardian presents a danger to the child.
 3. 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.
 4. The parent/legal guardian has a communicable disease.
 - Prior to separation, local Office of Chief Counsel should be contacted, and the communicable disease should be clearly documented in all appropriate systems of record.

- In cases in which the parent/legal guardian has an urgent medical need that is not a communicable disease, officers and agents should attempt to keep the family together in CBP custody, or parole both for medical care or contact the local Office of Chief Counsel.
- Fraudulent claims of parental or legal guardianship relationship should be processed under current policies and procedures, consistent with the Trafficking Victims Protection Reauthorization Act (TVPRA), and should be well-documented to support such claims.
- In any instance where individuals are or claim to be a parent/legal guardian and child, any separation must be approved by a GS-14 Watch Commander/Port Director or equivalent (OFO), or a Watch Commander (USBP).
- All other claims of familial relationships (*i.e.*, not parent/legal guardian) should be processed under current policies and procedures, consistent with the TVPRA.
- Nothing in this guidance changes existing policies and procedures related to processing and holding at the ports of entry and stations, including where individuals may be held in these facilities.

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