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**U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF BORDER PATROL
EL PASO SECTOR**

El Paso Sector Family Unit Assessment

Date: November 1, 2017
From:
To:
Subject: El Paso Sector FMUA Assessment

BACKGROUND:

El Paso Sector (EPT) experienced a significant increase in apprehensions of family units (FMUAs) through its area of responsibility during the beginning of FY2017, EPT apprehended 11,929 through the end of May 2017 with most apprehensions by New Mexico Stations. During the months of June through September 2017, EPT experienced a decline in apprehensions by New Mexico Stations to 631 during that time period. In late January 2017, the El Paso Sector (EPT) experienced a significant decrease in the number of Undocumented Family Units (FMUAs) seeking to enter in the EPT Area of Responsibility (AOR). Soon after the initial decrease in late January, a steady increase began in the number of FMUAs making entry in the EPT AOR.

CURRENT STATUS:

El Paso Sector does not have a policy that requires separation of FMUAs. The April 11, 2017, memo from the United States Attorney General, directed all Federal Prosecutors to renew their commitment to criminal immigration enforcement. AG Sessions made it a high priority for the Department of Justice to establish lawfulness in the immigration system, specifically for immigration offenses. With this in mind, Border Patrol management approached the NM AUSAs office to discuss the possibility of lifting restrictions on prosecution cases.

On July 6, 2017, District of New Mexico, Acting United States Attorney removed all restrictions imposed for El Paso Sector Prosecutions, which was limited (b) (7)(E) (b) (7)(E) for New Mexico Border Patrol Stations. The lifting of all restrictions allowed New Mexico BP Stations to prosecute all amenable subjects in an effort to increase the consequences of entering in NM illegally in the hopes of deterring first time and/or repeat offenders.

During this same time, the Western District of Texas El Paso Division continued to maintain 100 percent prosecutions of all amenable subjects entering the United States illegally. Their prosecution efforts increased in felony charges for all amenable subjects who have a prior

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removal with or without criminal history (Prior cases were restricted to misdemeanor cases for subjects with the same immigration history).

Additionally, El Paso Sector expanded the separation of Family Units (FMUA) for all TX BP Stations in response to an internal assessment which revealed a significant increase in FMUA entries. Both the Western District of Texas and District of New Mexico are prosecuting all amenable adults who entered as part of a family unit. Prior to this agreement, FMUA separation was limited due to the fact that parents were required to have prior criminal and/or immigration history before separation was approved.

The combined actions above allow the Border Patrol to apply the most appropriate post-arrest consequence to an individual to break the smuggling cycle and end their desire to attempt further illegal entry.

A comparison of apprehensions versus prosecution cases during the first and second halves of FY 17, suggests the aforementioned strategies have had an immediate effect on illegal entries into the U.S. through the District of New Mexico's area of responsibility. Debriefs of apprehended subjects revealed that many of them would have chosen to illegally enter the U.S. through a different sector had they known about EPTs prosecution efforts. This further suggests that prosecution of immigration related offenses is an effective deterrence of illegal entry.

- October 1, 2016 to May 30, 2017, there were a total of 11, 929 apprehensions by NM Stations; only 1,650 or 14% of those apprehensions were prosecuted.
- June 1, 2017 to September 30, 2017, there were a total of 3, 631 apprehensions by NM Stations; a total of 2,772 or 76% of those apprehensions were prosecuted.

The (b) (7)(E) Station saw the most dramatic decrease in apprehensions after the guideline changes.

- October 1, 2016 to May 30, 2017, there were a total of 8,628 apprehensions with only 826 or 10% of those subjects being prosecuted.
- June 1, 2017 to September 30, 2017, there were a total of 2,354 apprehensions with 1,480 or 63% of those subjects being prosecuted

The chart below is comparison of apprehensions for Current Fiscal Year to Date Vs Previous Fiscal Year to Date that reveals a 64% decrease in apprehension throughout the El Paso Sector.

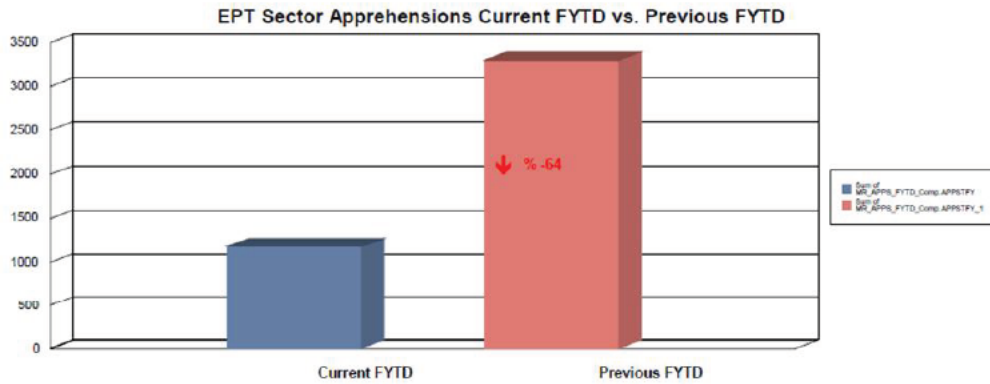
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El Paso Sector Apprehensions Comparison Chart

	Total
Current FY	1,177
Previous FY	3,295

Current FYTD vs. Previous FYTD represents a decrease of **% -64**



*YTDs represent time frame: 10/01 through 10/26

The dramatic decrease in apprehensions suggests that the recent increase in prosecutions has a direct correlation to the decrease in attempted illegal entries into the United States through El Paso Sectors area of responsibility. Based on the current trend identified through the end of the 3rd Quarter, there has been an average of a 50% increase in FMUAs per month:

- April: 391 total (59 BBT apps or 15%)
- May: 537 total (56 BBT apps or 31%)
- June: 742 total (105 BBT apps or 14%)
- **Quarterly Total: 1670** (Of which 331 or 20% were BBT apprehensions)

All amenable subjects are generally prosecuted for criminal immigration violations such as, Misdemeanor 8 USC 1325 Illegal Entry and are sentence to time serve, usually 0-10 days confinement on average.

Subjects with a prior removal from the United States are subject to criminal prosecution for 8 USC 1326 Illegal Re-Entry and also are usually sentenced to time served but can be sentenced up to 20 years; this is dependent on other prior criminal convictions.

KEY ISSUES:

There has been a 29% drop in apprehensions of FMUAs from August to September. There was a 38% decrease of Family Separations (for prosecution) from August to September. The decline in FMUA Totals and Family Separations can be attributed to the separation of FMUAs for prosecution in the Western District of Texas and the District of New Mexico.

JUNE	
FMUA Totals	Family Separations
742	0

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JULY	
FMUA Totals	Family Separations
307	53

AUGUST	
FMUA Totals	Family Separations
496	98

SEPTEMBER	
FMUA Totals	Family Separations
353	61

Current FMUAs prosecution procedures for EPT Texas and New Mexico Stations:

From: (b) (6), (b) (7)(C)
Sent: Saturday, August 05, 2017 3:35:32 AM
To: EPT-PAIC
Subject: NM Family Units Prosecution

New Mexico Stations,

The USAO of the District of New Mexico has sent forth new guidance that will have an impact on the processing and prosecution of family units entering in New Mexico.

Effective immediately, the USAO will accept for prosecution violations of 8 U.S.C. 1325 or 8 U.S.C. 1326 when adults are traveling with minor children if either of the following circumstances are present:

1. there is a minor child in the group and USBP cannot confirm that the child is with a parent, grandparent, adult sibling, or other close relative, and, pursuant to USBP policy, the child will be processed through the Office of Refugee Relocation (“ORR”); or
2. there is a minor child in the group with a parent, grandparent, adult sibling or other close relative, the child is at least 10 years old, and, pursuant to USBP policy, the child will be processed through ORR.

If neither of these circumstances are present, but the agent believes that there are aggravating circumstances that may justify prosecution of adults apprehended with minors, then agents must obtain prior approval from the duty attorney before charging 8 U.S.C. 1325 or 8 U.S.C. 1326.

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With the anticipation that the duty attorney may receive an increased number of phone calls from the NM Border Patrol Stations, we ask the stations that they limit after hours calls for these types of cases whenever possible.

This guidance impacts only adults that are claiming to be part of a family group/unit. Current prosecutorial guidance on single adults remains in place.

From: (b) (6), (b) (7)(C)
Sent: Monday, July 10, 2017 2:16 PM
To: EPT-PAI (b) (7)(E)
Subject: Field Guidance on FMUA

Good Afternoon,

Texas Stations, we are now clear to begin the process below.

Effective immediately, the following steps must be followed when family groups are encountered in Western District of Texas.

- The US Attorney's office will be contacted to seek prosecution for the adults of every family unit arrested.
- There is no longer a requirement for the adult to have an immigration or criminal history.
- The name of the attorney, and the disposition will remain a requirement for all narratives. If prosecution is declined, the reason for the declination must also be documented.
- If prosecution of the parent/s is approved, the family separation request will be sent to (A)ACP (b) (6), (b) (7)(C) for final approval.
- Please have your agents conduct their due diligence when verifying the documentation provided by the adults of the family units
- (b) (7)(E)

With the probable increase in calls to the AUSA, it was requested that discretion be used when deciding to call the duty attorney. Every effort should be made to call the attorneys during or close to normal business hours.

- The best practice for subjects arrested during the day should be to immediately collect the information needed to present the case and call the duty attorney as soon as the information is available.
- For those subjects arrested in the late evening or very early morning, it is not unreasonable to wait until business hours to contact the attorney.
- It should not be common practice for the processing agents to contact the attorney in the middle of the night for a disposition request that could wait a matter of a few hours.

We all understand that we operate 24/7; however; there are several agencies contacting these attorneys for a variety of cases that need immediate attention. It is also understood that should

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there be a more complex case that needs attention, or if guidance is needed regarding a case, there should be no hesitation to contact the duty attorney.

Family Separation:

When a family unit is separated:

The adults are processed through the court system

The children are processed as Unaccompanied Juveniles and remanded to ORR (Office of Refugee Relocation)

- Parents are provided with ORRs contact information and explained how they can get information on their children

ORR provides complete services for the children, to include: medical screening and care, education and counseling (as needed) to deal with any separation issues

ORR identifies potential suitable sponsors for the children

- Sponsors are limited to immediate family members (uncle/aunt, grandfather/grandmother, older brother/sister, etc...)

- Sponsors are vetted to ensure they can adequately care for the child/children

If a sponsor is identified and approved, travel arrangements are made and the children are set up with the necessary support and assistance (Medicaid, food stamps, etc...)

If a suitable sponsor cannot be found, the children remain in the care of ORR until:

1. Reunification and repatriation can be coordinated with the parent(s) ORR and ERO will coordinate
2. If re-unification cannot occur due to venue and/or time limitations, ORR will search for a family member in the home country, if found, the children will be repatriated to the family member in the home country ORR and ERO will work with the home country's consulate to coordinate
3. If a family member cannot be located in the home country, ORR and ERO will work with the home country's consulate for repatriation purposes
4. If arrangements cannot be made with the consulate, ORR has the ability to place the child/children into long term foster care

If the separated parents need to locate their children, they must contact ORR directly at the number listed below and ORR will assist them in locating their children.

Issues/Concerns:

Magistrate Judges in Texas and New Mexico have expressed concerns on the coordinated efforts to unify families for repatriation after prosecution. These concerns were also brought up during the Congressman O'Rourke's Community Foundation Meeting.

Recommendation:

A process/communication plan between all entities, U.S. Border Patrol, ICE/ERO and ORR to address the humanitarian factor or family unification for repatriation reasons.

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End State:

El Paso Sector will continue to utilize the most effective and efficient consequence in conjunction with the Attorney General's memo to ensure consistency and vigorous enforcement of key laws that will disrupt organizations and deter unlawful conduct.

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