



## **FAQs on Continuing Family Separations**

**March 2019**

### **Are family separations still occurring?**

Yes. In some situations, families arriving at and between ports of entry to the United States are being separated by U.S. government officials. This includes parents separated from children, and children separated from other adult caretakers or guardians.

### **Why are family separations still happening?**

The “Zero Tolerance” policy officially ended on June 20, 2018, and a court order in *Ms. L v. Sessions*, a case brought by the ACLU, on June 26, 2018, prohibited the government from further separating families. However, the court order does not cover parents who are alleged to have a criminal history, a communicable disease, or are unfit or dangerous.

Currently, there are no specific criteria in place to define the scope of these exceptions. These determinations are made at U.S. Border Patrol stations without any particular guidelines, protocols, or procedures, and without a full analysis of the best interests of the child. Border Patrol also sometimes separates a parent and child when they are unable to confirm the family relationship, or when a child trafficking situation is suspected, as required under the Trafficking Victims Protection Reauthorization Act (TVPRA).

### **How many family separations have occurred since the court-ordered injunction in the *Ms. L v. Sessions* case?**

In a joint status report filed in *Ms. L v. Sessions* on February 20, 2019, the government asserted that 245 new separations of children from their parents occurred between June 27, 2018 and January 31, 2019.

It is unclear how many children were separated from other guardians, caretakers, or family members during this timeframe. The definition of an unaccompanied child, according to the Homeland Security Act of 2002, is “a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom—there is no parent or legal guardian in the United States; or no parent or legal guardian in the United States is

available to provide care and physical custody.” As such, grandparents and other family members who are not legal guardians may be separated from child, according to this definition.

### **Who decides when a family is separated?**

Border Patrol agents at or between ports of entry make the life-altering determination to separate a parent and child. These agents have no specialized training to make child welfare determinations, and as far as KIND is aware, do not have any special training to assess the terms outlining *Ms. L* class membership, including “fitness,” “dangerousness” and “criminal history.”

### **What happens after a parent and child are separated?**

After a separation by Border Patrol, children are referred to the Office of Refugee Resettlement (ORR), a part of the U.S. Department of Health and Human Services (HHS). A child may then be taken to an ORR shelter facility hundreds or even thousands of miles away. The adult remains in DHS custody and placed in an Immigration and Customs Enforcement (ICE) adult detention facility, or in some cases is transferred to Department of Justice Bureau of Prison’s custody if being prosecuted with federal criminal entry or reentry.

### **Can families be reunified after they are separated?**

In KIND’s experience, reunifying families is extremely complicated and sometimes impossible. KIND has worked with dozens of children whose parents were deported after separation, and it remains unclear whether those children will ever see their parents again. Other children remain separated from their parents because their parents are in federal custody or ICE custody and it remains to be seen if and when those parents will be released and reunified with their children.

### **KIND’s Recommendations:**

Above all, DHS should stop separating parents and children unless there is a clear danger presented to the child, as assessed by a child welfare professional. Any separations should be temporary—with the adult and child housed in the same facility—until this full assessment can occur. The adult and child should be presented with specific information regarding the alleged reasons for the separation, and a meaningful opportunity to challenge the separation. Both should have access to legal counsel during this time. If the decision to separate is ultimately made, the following should occur:

- Tracking: Robust tracking systems to ensure that DHS and ORR know at all times which adult was separated from which child.

- Adequate information sharing between agencies: DHS should provide ORR with information clearly flagging the case as a separated case, and should provide detailed information to ORR regarding the reasons for the separation. DHS should update ORR whenever a change in status occurs regarding the parent, such as when a parent is transferred to or from the custody of the Bureau of Prisons.
- ORR and ORR contractors at facilities should ensure that a legal service provider is immediately made aware of the presence of a newly separated child in its custody. ORR should share all information regarding the circumstances of the separation with the child's attorney.
- Reunification: DHS should work with ORR to expedite reunification of the adult and child immediately after the condition causing the initial separation—such as an illness or condition that rendered the parent temporarily unfit, or the serving of a federal sentence—is resolved. However, the child should have the opportunity to consult with their attorney before the reunification occurs.

#### **For separated children**

- ***Access to legal screenings and counsel:*** Children separated from their parents have their own legal cases apart from their parents. In some cases, children may share claims for legal relief with their parents or rely on information and documentation in the parent's possession to substantiate their cases. However, children may also be eligible for additional or different legal protections from their parents. In order to ensure meaningful access to due process, separated children should be provided free legal screenings with an opportunity to consult with an attorney both before and after reunifying with their parents so they can better understand their rights and ability to pursue their cases on their own or joined with their parents. Consolidation of parents' and children's legal cases should not occur automatically upon reunification, but rather, only when both parents and children desire. Government officials and administrators should never pressure or encourage children to relinquish their cases or claims for legal relief as a condition for reunifying with parents or speeding their release from custody.
- ***Reunification outside of detention and support services:*** Separated families should be reunified using community-based alternative to detention programs, and not in detention. Families should be provided social services support upon reunification to address the trauma resulting from their separation and to facilitate their access to community-based services, including medical and mental health services, family support, and legal service referrals.
- ***Information and communication while awaiting reunification:*** Children should be provided information about the location of their parents and be afforded meaningful

and regular opportunities for communication and/or visitation until reunification is achieved.

### **For detained parents**

- ***Communication about children:*** Parents should be provided information about the location of their children and be provided regular opportunities to communicate or visit with their children until reunification is achieved, except in cases of safety concerns.
- ***Access to counsel:*** Parents should be provided an opportunity for a legal screening to evaluate their eligibility for legal relief and the options available to them. Parents should never be pressured or encouraged to abandon claims for humanitarian protection as a condition of release or reunification with their children.
- ***Reasons for separation and challenges:*** Parents and their counsel should be provided the reasons for the separation from their child and given the ongoing opportunity to challenge these determinations.

### **For deported parents**

- ***Opportunity for humanitarian parole:*** Parents who were deported from the U.S. prior to being reunified with their children should be provided an opportunity to reenter the United States through humanitarian parole and be given an opportunity to meaningfully apply for protection, including through potential coordination with their children's cases. Advocates have documented several instances in which parents were instructed, encouraged, or coerced to drop their cases for asylum and other humanitarian protection in order to be reunited with their children or released from detention.
- ***Communication and access to counsel:*** The government should work with community service providers in home countries as well as consulates to locate deported parents of separated children still in the United States. The government should facilitate regular communication between deported parents and their children. Contact information for deported parents should be provided to the child, the child's legal counsel, and child advocates to assist children and families in decision-making about the child's legal case and to ensure the best interests of the child regarding reunification.