



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

*Commissioner*

MEMORANDUM FOR: See Distribution

FROM: Troy A. Miller  
Senior Official Performing the Duties of the Commissioner  
U.S. Customs and Border Protection

**JUL 05 2024**

SUBJECT: Family Separations Based on an Articulate Threat to the Safety of the Child

The *CBP Family Unity Policy*, signed December 11, 2023, states that, "...CBP, in consultation with [the Office of Refugee Resettlement (ORR)], will develop guidance for CBP personnel to use in assessing whether a separation is warranted due to a child having been or is being abused or if a parent or legal guardian presents an articulable threat to the safety of the child." The purpose of this memorandum is to provide CBP personnel the required guidance pertaining to family separation determinations based on an articulable threat to the safety of a child, including child abuse. Additionally, this guidance is issued consistent with the stipulated settlement agreement in *Ms. L v. ICE*, 3:18-cv-00428 (December 11, 2023).

CBP agents and officers may separate parents or legal guardians from their minor child(ren) when CBP determines based on articulable fact(s) that a parent or legal guardian presents a threat to the safety of the child(ren). A threat to the safety of the child(ren) is defined as a threat to life or health to the extent that injury or harm may be likely if the child(ren) were returned to or left in the custody of his or her parent or legal guardian. Whether a parent or legal guardian presents a threat to the safety of their child(ren) must be assessed on a case-by-case basis by CBP agents and officers, with involvement of the CBP Office of Chief Medical Officer (OCMO), as outlined in this guidance.

CBP personnel may not employ a presumption of a threat to the safety of a child(ren) based on the following:

- A parent or legal guardian's past criminal or immigration history.
- A parent or legal guardian's perceived or actual mental illness, disability, or functional impairment.

CBP agents and officers will utilize their training and experience to determine whether there is a reasonable basis to believe that the parent or legal guardian's conduct or behavior presents an articulable threat to the safety of their child(ren). Examples of articulable threats to the safety of the child(ren) may include, but are not limited to:

- Parent/legal guardian's *statements or actions* indicate an articulable threat to the safety of their child(ren).

- Child(ren)'s *statements* indicate an articulable threat by their accompanying parent/legal guardian.
- Child(ren)'s *physical presentation* indicates suspicious or concerning signs of serious harm and/or acute injury, such as abnormal bruising, bleeding, burns, fractures, or wounds that are or can be reasonably attributed to the parent/legal guardian that cannot otherwise be explained.
- Child(ren) is *demonstrating behaviors* that cause suspicion that the parent/legal guardian poses an articulable threat to their safety.

**Initial Steps:**

*If, during a CBP agent or officer's direct interactions with the family unit<sup>1</sup>, the CBP agent or officer believes the parent/legal guardian presents an articulable threat to the safety of the child(ren), they must take immediate action to:*

- 1) **Ensure the safety of the child(ren).** Following the identification of an articulable threat to the safety of a child(ren), CBP agents and officers should take action to ensure the safety of the child(ren), including, as appropriate, temporarily holding the parent/legal guardian in a separate location from the child(ren) pending review and approval of a separation request.
- 2) **Refer child(ren) for medical evaluation.** Consistent with agency policy, the CBP agent or officer shall refer the impacted child(ren) to receive a medical evaluation, either by an on-site advanced practice medical service contract provider or at a hospital or medical treatment facility. In locations with Border Health System providers to conduct this evaluation, the results of the medical evaluation must be documented in the CBP Electronic Medical Record (EMR) as an "Encounter" consistent with operational procedure.<sup>2</sup> If there is alleged sexual abuse, CBP shall follow the requirements of 6 C.F.R. Part 115 (DHS PREA Standards).

**Separation Procedures:**

*After completing the Initial Steps listed above, if the CBP agent or officer believes, based on their training, experience, and the specific circumstances of the case that a separation due to an articulable threat to the safety of the child(ren) may be warranted, the CBP agent or officer must follow the process outlined below to initiate a family separation request.*

All documentation pertaining to separations, to include all supporting evidence, emails, and appropriate medical documentation, must be documented in the relevant case processing system, consistent with applicable policies and procedures.

- 1) **Document the articulable threat.** CBP agents and officers must document the specific facts of the case and any information provided from the medical evaluation, that support the presence of an articulable threat to the safety of the child. This must include, but is not limited to:

---

<sup>1</sup> Interactions with the family unit should be conducted in the child and/or parent/legal guardian's primary language wherever possible and appropriate translation services should be utilized in compliance with applicable policy (CBP Language Access Directive 2130-031). This includes the Health Intake Interview Questionnaire (CBP 2500).

<sup>2</sup> In instances where a medical evaluation is conducted by non-contracted medical personnel and/or at an external hospital or medical facility, the results of the medical evaluation must be entered into the system of record consistent with operational procedure.

- a. What is the relevant background information on the family unit and their specific situation (age, relationship, time in custody, etc.)?
  - b. What is the threat to the child(ren)'s safety?
  - c. What statements or actions of the parent/legal guardian or statements, physical presentation, and/or behaviors of the child(ren) support the presence of this threat?
  - d. What was the outcome of the medical evaluation conducted (or mental evaluation, if applicable)?
  - e. Is there any other information or extenuating circumstances OCMO should be aware of?
- 2) Provide information to CBP OCMO.** CBP agents and officers must provide this information to OCMO for review. This information should be relayed to OCMO telephonically via (b) (7)(E) to obtain a consultation and recommendation from the Chief Medical Officer (CMO) or his/her federal designee (hereinafter "designee"), per CBP policy.
- 3) Review by CBP OCMO.** The CMO or designee will promptly review the relayed information pertaining to the articulable threat to the safety of the child(ren) and provide relevant medical expertise and, as appropriate, may consult child welfare experts. OCMO review should occur as soon as practicable and no later than 4 hours after receipt of information from the CBP agent or officer. Once OCMO review is complete, the CMO or designee will send an email narrative with a clinical recommendation about the separation based on the data available and a rationale to the appropriate point of contact. The rationale must include any pertinent medical and child welfare information deemed necessary for the operational component's decision-making on the separation.
- 4) Submit a separation request.** If the CBP agent or officer determines after consulting the CMO or designee that a separation is warranted, the CBP agent or officer may submit a separation request to component-designated field leadership at the GS-14 level or above. A separation request based on an articulable threat to the safety of the child should be submitted utilizing the process outlined below. For additional guidance, please reference the *CBP Family Unity Policy*.
- The separation request must contain a clear and concise narrative providing sufficient facts for an independent decision-maker to understand the basis for the proposed separation, OCMO's emailed recommendation and rationale, and any appropriate medical documentation.
  - OCC review, if sought, shall be noted in the separation request, and any legal advice provided should be recorded.
  - All separations must be reported as significant incidents in accordance with current operational guidance.
- 5) Operational Determination.** CBP agents or officers may proceed with the separation after obtaining final approval by component-designated field leadership at the GS-14 level or above. The final separation decision must be captured within the separation request along with the name of the approver, consistent with the *CBP Family Unity Policy* and operational procedure.

**Special Circumstances**

In the rare instance that OCMO is unable to provide a recommendation within 4 hours and there is concern that the child(ren)'s time in custody may extend considerably beyond 72 hours, CBP agents and officers may proceed with the separation request without OCMO's review. If OCMO was unable to review, CBP agents and officers must indicate this in the separation request along with the reasoning.

CBP agents and officers may utilize their law enforcement discretion based on their training and experience when determining an articulable threat. If a situation arises in which OCMO's recommendation does not align with the operational determination, the CBP agent or officer may, at their discretion, submit the separation request to component-designated field leadership for review. CBP agents and officers must document this rationale in the separation request.

**Training**

Consistent with *CBP Family Unity Policy*, CBP agents and officers will be required to take annual training related to this guidance.

**Distribution:** Acting Deputy Commissioner  
Acting Chief Operating Officer  
All Executive Assistant Commissioners  
Chief, U.S. Border Patrol  
Chief Counsel  
Chief Financial Officer  
Assistant Commissioner, Congressional Affairs  
Assistant Commissioner, Office of Professional Responsibility  
Assistant Commissioner, Public Affairs  
Assistant Commissioner, Office of Intelligence  
Executive Director, Policy Directorate  
Executive Director, Trade Relations  
Executive Director, Privacy and Diversity  
Executive Director, Intergovernmental Public Liaison  
Director, Executive Secretariat  
Chief of Staff  
Deputy Chief of Staff