



January 6, 2023

CBP-2022-022233

American Oversight
Hart Wood
1030 15th St., NW, Suite B255
Washington, DC 20005

Dear Mr. Wood:

This is the final response to your Freedom of Information Act (FOIA) request to U.S. Customs and Border Protection (CBP), submitted and received in our office on May 2, 2022. In your request you are seeking the “after-action report” prepared by Border Patrol's El Paso Sector in late 2017 at the conclusion of a pilot program in which Customs and Border Protection agents separated migrant families in order to prosecute adult family members.

A search of CBP databases produced records responsive to your request. CBP has considered the foreseeable harm standard when reviewing the record set and has applied the FOIA exemptions as required by the statute and the Attorney General’s guidance¹. CBP has determined that 11 pages of the records are partially releasable, pursuant to Title 5 U.S.C. § 552 (b)(5), (b)(6), (b)(7)(C) and (b)(7)(E).

FOIA Exemption (b)(5) exempts from disclosure information considered to be predecisional and deliberative, and inter-agency or intra-agency memoranda or letters which would not be available by law to a party other than an agency in litigation with the agency.

Pursuant to DHS Instruction 262-11-004, FOIA Officers at DHS have been instructed to withhold personally identifiable information (PII) and sensitive personally identifiable information (SPII) of DHS personnel unless a determination is made that the disclosure does not raise security or privacy concerns, or if those concerns are outweighed by any public interest in that information. [This policy is available online](#). Under this policy, the names of senior leaders, spokespersons, and political appointees are generally releasable. With respect to this FOIA request, DHS may have applied FOIA Exemption 6 to protect PII of DHS employees, including names and contact information. To the extent that has DHS withheld employee PII within these records, it has been determined that the

¹ Department of Justice (DOJ), "Freedom of Information Act Guidelines," March 15, 2022, <https://www.justice.gov/ag/page/file/1483516/download>



employee(s) has/have substantial and legitimate privacy interests and that these interests are not outweighed by any public interest in the operations of the Department.

FOIA Exemption (b)(6) exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right privacy. The types of documents and/or information that we have withheld may consist of email addresses, phone numbers, home addresses, dates of birth, or various other documents and/or information belonging to a third party that are considered personal. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption (b)(7)(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate.

FOIA Exemption (b)(7)(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions, or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. CBP has determined that disclosure could reasonably be expected to risk circumvention of the law.

This completes the CBP response to your request. You may contact CBP's FOIA Public Liaison, Charlyse Hoskins, by sending an email via your FOIAonline account, mailing a letter to 90 K St, NE MS 1181, Washington DC, 20229 or by calling 202-325-0150. The FOIA Public Liaison is able to assist in advising on the requirements for submitting a request, assist with narrowing the scope of a request, assist in reducing delays by advising the requester on the type of records to request, suggesting agency offices that may have responsive records and receive questions or concerns about the agency's FOIA



process. Please notate file number CBP-2022-022233 on any future correspondence to CBP related to this request.

For your information, Congress excluded three discrete categories of law enforcement and national security records from the requirements of the FOIA. See 5 U.S.C. 552(c). This response is limited to those records that are subject to the requirements of the FOIA. This is a standard notification that is given to all our requesters and should not be taken as an indication that excluded records do, or do not, exist.

If you are not satisfied with the response to this request, you have a right to appeal the final disposition. Should you wish to do so, you must file your appeal within 90 days of the date of this letter following the procedures outlined in the DHS regulations at Title 6 C.F.R. §5.8. Please include as much information as possible to help us understand the grounds for your appeal. You should submit your appeal via FOIAonline by clicking on the "Create Appeal" button that appears when you view your initial request. If you do not have a FOIAonline account, you must send your appeal and a copy of this letter to: FOIA Appeals, Policy and Litigation Branch, U.S. Customs and Border Protection, 90 K Street, NE, 10th Floor, Washington, DC 20229-1177. Your envelope and letter should be marked "FOIA Appeal." Copies of the FOIA and DHS regulations are available at www.dhs.gov/foia. Additional information can be found at the following link https://www.cbp.gov/sites/default/files/assets/documents/2019-Dec/definitions-exemptions-foia_0.pdf.

Additionally, you have a right to seek dispute resolution services from the Office of Government Information Services (OGIS) which mediates disputes between FOIA requesters and Federal agencies as a non-exclusive alternative to litigation. If you are requesting access to your own records (which is considered a Privacy Act request), you should know that OGIS does not have the authority to handle requests made under the Privacy Act of 1974. You may contact OGIS as follows: Office of Government Information Services, National Archives and Records Administration, 8601 Adelphi Road-OGIS, College Park, Maryland 20740-6001, e-mail at ogis@nara.gov; telephone at 202-741-5770; toll free at 1-877-684-6448; or facsimile at 202-741-5769. Please note that contacting the CBP FOIA Public Liaison or OGIS **does not** stop the 90-day appeal clock and **is not** a substitute for filing an administrative appeal.

Sincerely,

FOIA Division
U.S. Customs and Border Protection



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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 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 blanket 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 to 25 Misdemeanor cases per month and 150 Felony cases of 8 USC 1326 (a)(1) cases per month 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 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, infers 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.

- 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.

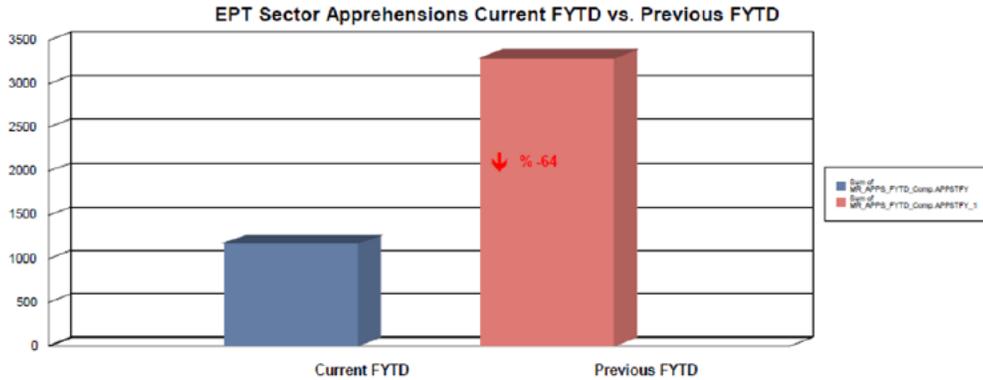
- October 1, 2016 to May 30, 2017, there were a total of (b) (7)(E) apprehensions with only (b) (7)(E) or 10% of those subjects being prosecuted.
- June 1, 2017 to September 30, 2017, there were a total of (b) (7)(E) apprehensions with (b) (7)(E) or 63% of those subjects being prosecuted

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.

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 infers that the recent increase in prosecutions has a direct correlation to the decrease in attempted illegal entries into the United States. 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 serve but can be sentence This is dependent on other 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

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's 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-PAIC (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)ACPA (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
- Fraudulent documents or altered documents nullify the custodial legal requirement

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

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)
- 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
 - o Sponsors are limited to immediate family members (uncle/aunt, grandfather/grandmother, older brother/sister, etc...)
 - o 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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U. S. CUSTOMS AND BORDER PROTECTION
OFFICE OF BORDER PATROL
EL PASO SECTOR

**Texas and New Mexico FMUA
Apprehension Assessment**

Date: December 8, 2017
From: SOS (b)(6);(b)(7)(C)
To: ACPA (b)(6);(b)(7)(C)
Subject: El Paso Sector FMUA Assessment

BACKGROUND:

On July 6, 2017, District of New Mexico, Acting United States Attorney removed all restrictions imposed for El Paso Sector Prosecutions, which was limited to 25 Misdemeanor cases per month and 150 Felony cases of 8 USC 1326 (a)(1) cases per month 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.

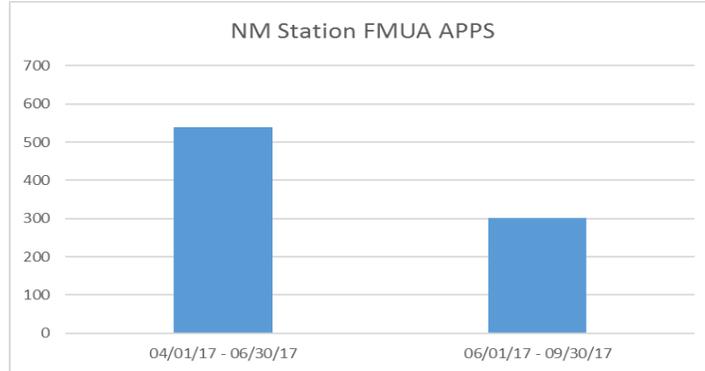
During this same time, the Western District of Texas El Paso Division continued to maintain 100 percent prosecutions of all amenable subjects entering the United States illegally. Their prosecution efforts increased in felony charges for all amenable subjects who have a prior removal with or without 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 prosecuted all amenable adults who entered as part of a family unit. Prior to this, FMUA separation was limited to adults with prior criminal and/or immigration history.

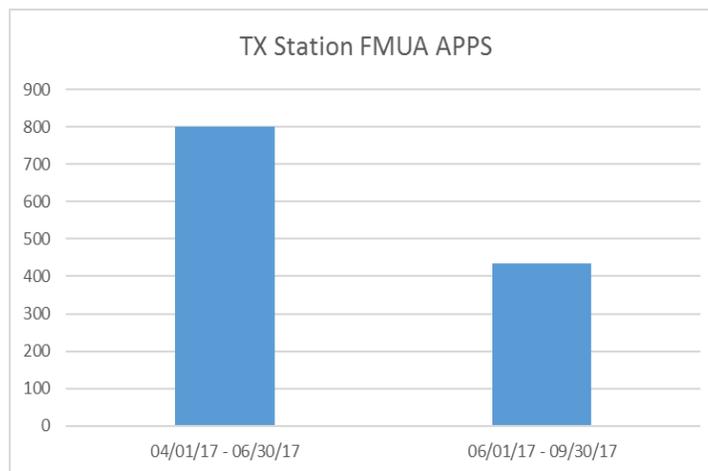
The combined actions above allowed the Border Patrol to apply the most appropriate post-arrest consequence to an individual to break the smuggling cycle and end their desire to attempt further illegal entry.

A comparison of FMUA apprehensions versus prosecution cases during the third and fourth quarters of FY 17 and the first month of FY18 suggests the aforementioned strategies had an immediate effect on illegal entries of FMUAs into the U.S. through the El Paso Sector area of responsibility.

- NM Station FMUA Apprehensions -
 - April 1, 2017 to June 30, 2017 – 539 FMUA apprehensions
 - 9 or 2% FMUA apprehensions were prosecuted.
 - June 1, 2017 to September 30, 2017 - 301 FMUA apprehensions
 - 77 or 26% of FMUA apprehensions were prosecuted.



- TX Station FMUA Apprehensions -
 - April 1, 2017 to June 30, 2017 - 802 FMUA
 - 10 or 1.3% of FMUA apprehensions were prosecuted.
 - June 1, 2017 to September 30, 2017 - 434 apprehensions
 - 131 or 30% of those FMUA apprehensions were prosecuted.

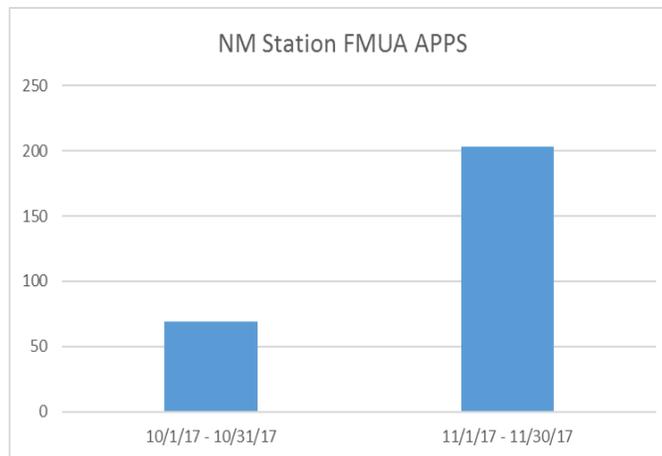


There was a 44% decrease in FMUA apprehension by NM stations between the third and fourth quarters of FY 17. There was a 46% decrease in FMUA apprehensions by TX Stations during this same time frame. The decreases in FMUA apprehensions can be attributed to the separation of FMUAs for prosecution in both the Western District of Texas and the District of New Mexico.

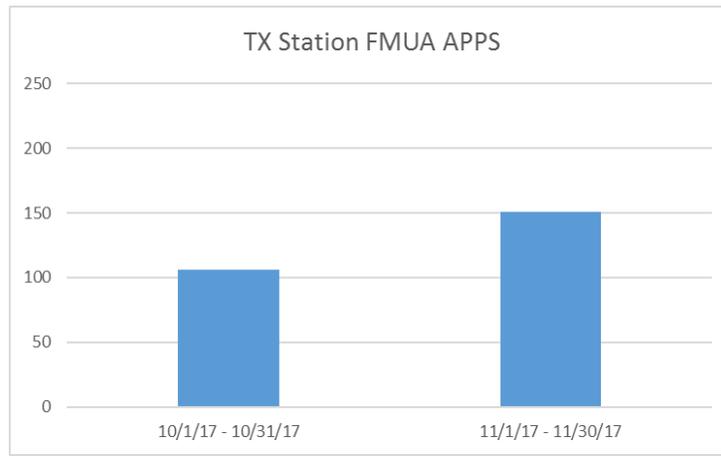
CURRENT STATUS:

On November 18, 2017, as per USBP HQ guidance, EPT stopped separating FMUAs for prosecution. Coincidentally, after seeing a steady decrease of FMUA apprehension during the previous months, there was a sudden spike of FMUA apprehensions by both the NM and TX Stations during the month of November.

- NM Stations FMUA Apprehensions –
 - October 1, 2017 to October 31, 2017 - 69 FMUA apprehensions
 - 28 or 41% of those FMUA apprehension were prosecuted.
 - November 1, 2017 to November 30, 2017, 203 FMUA apprehensions
 - 29 or 14% of those FMUA apprehensions were prosecuted (prior to November 18, 2017 guidance)



- TX Stations FMUA Apprehensions –
 - October 1, 2017 to October 31, 2017, 106 FMUA apprehensions
 - 9 or 8% of those FMUA apprehension were prosecuted.
 - November 1, 2017 to November 30, 2017, 151 FMUA apprehensions
 - a total of 6 or 4% of those FMUA apprehensions were prosecuted (prior to November 18, 2017 guidance).



Issues/Concerns:

The spike in FMUA Apprehensions during the month of November suggests that ASOs are privy to the fact that EPT has stopped separating FMUAs for prosecution and will revert to utilizing EPTs AOR to push their groups through.

Recommendation:

(b) (5)