

DNA Testing of Migrant Family Units Using Rapid DNA

When a family arrives at a U.S. border entry point, a U.S. government agent might request a DNA test to verify the relationship of minor children with their parents.

The number of family units migrating to the United States has increased since 2015. Family units are often one or both parents with at least one minor child. Amidst claims that migrants were using unrelated children to pose as family units, the Department of Homeland Security (DHS) proposed DNA testing to verify parent-child relationship claims within a travel group as part of screening under the Trafficking Victims Protection Act of 2000.

What we do know...

- In 2019 the U.S. government piloted the practice of rapid DNA testing at border entry points. A Privacy Impact Assessment (PIA-050.25) followed in June 2019, extending **Operation Double Helix**.
- The PIA only covers the use of rapid DNA to **verify genetic parent-child relationships**.
- In November 2019 the Electronic Frontier Foundation sued DHS for failing to respond to their FOIA on rapid DNA use at the border.
- According to the latest information released by the U.S. government, 1,747 family units were tested between July and November 2019; 432 of these were deemed “fraudulent,” meaning the child’s DNA did not “match” to the claimed parents. (85FR56338)

Process

- A DHS agent **selects families** to undergo rapid DNA testing.
- According to the PIA, a signed consent form and privacy statement are collected from the accompanying parent.
- A **mouth swab** is used to collect DNA from each parent and child pair.
- The swabs are put into a rapid DNA instrument to test for genetic variation in a set of 20 DNA markers.
- The instrument compares the DNA data from each parent-child pair generating statistics that demonstrate **genetic kinship**. This takes about two hours. Sometimes the results are inconclusive, requiring retesting or review by experts.
- DHS has set a threshold percentage that is required to verify a genetic parent-child relationship.
- Government agents **retain results** indicating parentage or non-parentage in the Alien-File (A-File) and if relevant, the investigative case file. It is unclear whether statistics indicating the likelihood of a genetic relationship are provided with results.

What we don't know...

- It is unclear how families are selected for rapid DNA testing and at which stage of a border crossing testing occurs. The selection process could be biased.
- It is unclear whether samples are **destroyed** or whether samples might be retained for retesting. Some instruments consume the entire sample as part of the testing process, but others do not. If the sample is not consumed, it can be retested.
- It is unclear how DNA test results are **weighted** in determinations made by CBP or ICE. It is also unclear how DNA test results might factor into later immigration proceedings. DNA test results are supposed to be considered in combination with other forms of evidence, such as paper documentation.

Things to keep in mind

- The use of rapid DNA to verify family relationship claims at border entry points is **distinct** from other DNA-related DHS practices, such as detainee DNA collection for the federal criminal database CODIS.
- A DNA test **cannot verify** a child’s relationship with step- or adoptive parents.
- Rapid DNA instruments can verify a child’s relationship with siblings, aunts/uncles, and cousins. In practice, however, DHS only uses rapid DNA instruments to verify parent-child relationships.
- While testing is voluntary, refusal to test could **weaken** a family’s claim and lead to deportation or family unit separation.
- If a family refuses a test, ICE personnel can seek a court issued warrant authorizing rapid DNA testing. For a warrant to be issued, ICE personnel must demonstrate probable cause of family unit fraud.
- Even if the test verifies the relationship, deportation or family separation is still a possibility.
- It is unclear to what extent the practice is ongoing and whether it will be formalized into written policy.

DNA testing cannot verify social or legal relationships or even all types of genetic relationships. There is no right way to be a family. Policies that emphasize genetic parent-child relationships can lead to discrimination against families who do not fit the concept of a heteronormative, nuclear family.

References

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