

# 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**.
- The second PIA, released in September 2021, continues this practice through laboratories rather than on-site rapid DNA instruments.
- 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 DNA test compares DNA data from each parent-child pair generating statistics that show **genetic kinship**.
  - If using a rapid DNA test, the swabs are put into a rapid DNA instrument to test for genetic variation in a set of 20 DNA markers. This takes about two hours. Sometimes the results are inconclusive, requiring retesting or review by experts.
  - If using a laboratory DNA test, the DNA swabs are mailed to a DNA laboratory for a similar 20 DNA marker test (or more). This test will take about 2 weeks or longer. Tests are usually conclusive and carried out by expert personnel.
- DHS has set a threshold percentage that is required to conclusively 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 for 20 years. It is unclear whether statistics indicating the likelihood of a genetic relationship are provided with results.

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

- Department of Homeland Security. Privacy Impact Assessment for the Operational Use of Familial DNA. DHS/CBP/PIA-071. 10 Sep 2021
- Department of Homeland Security. Privacy Impact Assessment for the Rapid DNA Operational Use. DHS/ICE/PIA-050. 25 Jun 2019
- Department of Homeland Security. Collection and use of biometrics by U.S. Citizenship and Immigration Services. *85FR56338*. Sep 11, 2020
- Electronic Frontier Foundation v. United States Department of Homeland Security. United States District Court for the Northern District of California San Francisco Division. Complaint for injunctive relief for violation of the Freedom of Information Act, 5 USC §552. 3:19-cv-07431-JSC. Nov 12, 2019
- Berger D, Hu M, Katsanis SH, and Wagner J. Midnight regulations and mass biometric data collection by DHS. *The Regulatory Review*. Mar 11, 2021

## 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.
- 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. The newest PIA (Sept 2021) requires the DNA samples to be **destroyed**. It is unclear what point the samples are destroyed.
- 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 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 is faster than sending the sample out to a laboratory. With a laboratory test, families can potentially be detained for weeks while waiting for test results.
- 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 clear with the new PIA that DHS intends to **continue this practice**, but it is not yet authorized under any formal legislation.