



TESTIMONY OF

RONALD VITIELLO  
Acting Chief  
U.S. Border Patrol

U.S. Customs and Border Protection  
U.S. Department of Homeland Security

BEFORE

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ON

“The Unaccompanied Children Crisis: Does the Administration Have a Plan to Stop the Border Surge and Adequately Monitor the Children?”

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## Introduction

Chairman Grassley, Ranking Member Leahy, and distinguished members of the Committee, thank you for the opportunity to appear today to discuss the role of U.S. Customs and Border Protection (CBP), in the care and placement of unaccompanied alien children (UAC)<sup>1</sup> who cross our Nation's Southwest border. The care of UAC in CBP custody is of the highest importance to CBP.

During the spring and summer of 2014, the U.S. Government witnessed a sharp increase of UAC that reached historic proportions along the South Texas portion of the Rio Grande Valley Sector (RGV). The United States Border Patrol (USBP) — the mobile, uniformed law enforcement arm of CBP responsible for securing U.S. borders between ports of entry — managed significantly lower seasonal peaks of UAC in previous years. However, USBP responded to this humanitarian situation by enhancing its capability and coordination with our federal partners, while continuing to carry out its border security responsibilities. The large numbers of UAC — the majority of whom in Fiscal Year (FY) 2014 were by gender, male; by age, between 14 and 17; and by nationality, from El Salvador, Guatemala, and Honduras — challenged existing capabilities of responsible Federal departments and agencies to process, transport, and shelter the UAC. The resulting urgent humanitarian situation required a unified and coordinated Federal whole-of-government response.

On May 12, 2014, DHS Secretary Jeh Johnson authorized a “Level IV” condition of readiness — the highest level of contingency planning within DHS — which was essentially a determination that the capacity of CBP and U.S. Immigration and Customs Enforcement (ICE) to deal with the situation was saturated and that other DHS resources were needed to address this critical situation. Additionally, on June 2, 2014, the President directed the Secretary of Homeland Security to establish an interagency Unified Coordination Group (UCG)<sup>2</sup> to ensure unity of effort across the executive branch in response to the humanitarian situation. USBP took an immediate and active role in the UCG to assist in response coordination.

CBP's facilities are not designed, nor were services in place, to accommodate large numbers of UAC, even for the limited 72-hour period for which CBP is generally expected to have custody.<sup>2</sup> USBP took immediate action to add capacity and create a more suitable environment for the processing of UAC and families through establishment of a Centralized Processing Center in RGV, as well as the Nogales Processing Center in Nogales, Arizona. As high arrivals continued to increase, USBP took steps to augment its processing, such as instituting virtual processing and assigning several stations to assist in the care and custody of UAC while the children were

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<sup>1</sup> As defined by 6 USC § 279(g) (2), an “unaccompanied alien child” means a child who (A) has no lawful immigration status in the United States; (B) has not attained 18 years of age; and (C) with respect to whom (i) there is no parent or legal guardian in the United States; or (II) no parent or legal guardian in the United States is available to provide care and physical custody. For the purposes of consistency, we will use the more common acronym of UC – Unaccompanied Children.

<sup>2</sup> Consistent with the Secretary's authorities, as established in the Homeland Security Act of 2002 and Homeland Security Presidential Directive-5 (Management of Domestic Incidents)(HSPD-5). The Secretary establishes and manages this Unified Coordination Group consistent with the authorities in 6 U.S.C. 111(b)(1)(D), 112(a)(3), 112(b)(1), 112(c), and HSPD-5.

<sup>2</sup> See TVRPA §235(b)(3) regarding transfers to HHS within 72 hours, unless there are exceptional circumstances.

awaiting transfer to the custody of the U.S. Department of Health and Human Services (HHS)/Office of Refugee Resettlement (ORR).

Critical to this Government-wide effort, CBP continues to do everything we can to safely, humanely and efficiently process and transfer UAC from CBP to HHS custody and ultimately into a safe and secure environment that is in the best interest of the child, pursuant to the requirements of the law. USBP continues its engagement in the UCG; it has assigned an Assistant Chief to the position of Deputy Federal Coordinating Official; and it has been directly involved in the development of the UCG response plan for any future influx of UAC. CBP will continue to coordinate closely with ICE, HHS, the U.S. Department of State (DOS), and other agencies, to ensure a coordinated and rapid government-wide response as necessary in response to migration trends.

CBP recognizes that UAC are a particularly vulnerable population and must be treated with special consideration and care. My testimony today will discuss how CBP processes UAC and the changes CBP has made, since the 2014 increase in arrivals, to ensure current and future UAC receive proper care.

### **Processing Unaccompanied Alien Children**

CBP encounters and apprehends the majority of UAC along the Southwest border (SWB). Upon encountering a child attempting to enter the United States, either at or between the ports of entry (POE), CBP officers and Border Patrol agents interview each child to determine the child's status, review available documentation, and determine if the child is accompanied by a parent or legal guardian. UAC are given Form I-770, which is a notice of rights. The form is provided most often in English or Spanish, because the overwhelming majority of UAC are Spanish speakers, or, in the case of indigenous language speakers, it is orally translated for them in their native language. Once CBP determines that the child is alone or unaccompanied, CBP must process the child consistent with the provisions of the *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA), which requires the transfer of UAC into the custody of HHS/ORR, except in unusual circumstances, within 72 hours of determining that the child meets the definition of a UC. CBP conducts a screening of all UAC to assess whether the child might be a victim of human trafficking. The initial screening conducted by CBP occurs at the processing location – generally at a POE or Border Patrol station. If risk factors indicate the unaccompanied child is a potential victim of human trafficking, CBP immediately notifies ICE Homeland Security Investigations (HSI), the lead DHS agency responsible for investigating claims of human trafficking.

UAC who are nationals or habitual residents of Mexico or Canada require additional considerations. Under the TVPRA, a UAC who is a national or habitual resident of Canada or Mexico may be permitted to withdraw his or her application for admission and be repatriated immediately, as long as he or she has not been a victim of a severe form of human trafficking and there is no credible evidence that the UAC is at risk of being trafficked upon return; has no fear of returning to his or her country of nationality owing to a credible fear of persecution; and is determined by CBP to have the ability to make an independent decision to withdraw their application for admission. However, for Mexican and Canadian UAC who cannot be returned immediately because they do not meet one or more of these requirements, and for all UAC from

countries other than Mexico or Canada, the TVPRA requires that they be placed in INA § 240 removal proceedings, and transferred to the care and custody of ORR. If an immigration judge orders a UAC removed or grants voluntary departure, ICE arranges for the UAC's safe return to their country of nationality.

Upon determining that, consistent with the TVPRA, a UAC is unable to withdraw his or her application for admission, CBP jointly notifies an ICE Field Office Juvenile Coordinator (FOJC) and HHS/ORR. Once HHS notifies CBP and ICE that a bed is available for the UAC, ICE transports the UAC to an HHS/ORR shelter facility. CBP maintains custody of the UAC while awaiting notification from ORR that facilities are available.

CBP's detention facilities are designed for the temporary holding of individuals. UAC are provided access to bathrooms; meals, drinks, and snacks; emergency medical assistance; and adequate temperature control and ventilation. To ensure their safety and well-being, UAC are supervised and segregated from unrelated adults; older, unrelated UAC are segregated by gender.

### **Current Status of UAC Apprehended Between Ports of Entry**

In FY 2015, USBP apprehended over 39,970 UAC crossing the border as compared to 68,541 encountered during FY 2014. For FY 2016, as of January 31, 2016, USBP apprehended 20,455 UAC, compared to 10,105 apprehended during the same period in FY 2015. During December 2015 USBP apprehended a total of 6,796 UAC along the Southwest Border, of which 4,090 were apprehended in RGV Sector. In January 2016, USBP apprehended 3,115 UAC along the Southwest Border, of which 1,743 were apprehended in RGV. While the decline in January 2016 is significant, seasonal trends indicate a similar dip in UAC apprehensions during the same time span in FY 2014 and 2015. These figures correlate with an overall rise in illegal migration into the RGV Sector, principally by nationals of Guatemala, El Salvador, and Honduras, who make up approximately three quarters of the UAC population. However, overall apprehensions across the Southwest border are near historic lows.

Apprehensions of Family Unit Aliens (FMUA), consisting of children who are apprehended with one or more parent or legal guardian, were approximately 68,445 in FY 2014; in FY 2015, CBP apprehended over 39,838. FMUA generally kept together unless one member of the family group is deemed harmful to another member. Additionally, family groups are separated if an adult family member is a habitual offender;<sup>3</sup> that family member will be considered for a heightened immigration consequence, as determined by Border Patrol through its Consequence Delivery System (CDS). If both adult family members are habitual offenders, one of those adults would be separately detained and the other would likely remain with the children, depending on the severity of the offenses.

### **Mitigating Efforts**

Since Secretary Johnson's May 12, 2014, designation of the UAC situation as requiring a Level IV response, CBP has worked diligently and closely with our partners to provide services to accommodate higher volumes of UAC. CBP, especially the Border Patrol, has taken measures to mitigate overcrowding conditions and longer detention periods through the utilization of

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<sup>3</sup> A "habitual offender" is a subject apprehended multiple times for illegally entering the United States.

alternate facilities and expeditious processing, as appropriate. Overcrowding is less likely at facilities located at ports of entry, but can happen due to fluctuations in the number of persons presenting themselves for admission.

USBP has also integrated remote technology to increase its processing capabilities. Since its inception in April 2013, the Virtual Processing Initiative has processed approximately 212,533 subjects. Through this initiative, Border Patrol agents at other locations around the country can assist with the initial processing of UAC.

Within CBP, the USBP and Office of Field Operations have developed, and in some cases implemented, new training components and issued guidance for Border Patrol agents and CBP officers on improved processing for UAC, with topics including UAC encountered at airports; interviewing techniques; human trafficking awareness; fear of return determination; and TVPRA transfer procedures.

CBP has also been developing and implementing enhancements to our automated systems to provide better documentation of agent/officer decisions and records of care provided to UAC. For example, USBP is currently working on a pilot program that would enable information about a child, once he or she is processed by USBP, to be directly transmitted to HHS' UC Portal. These system enhancements will also improve CBP's ability to track the length of time UAC remain in CBP custody.

Furthermore, CBP is working with the DOS Bureau of International Narcotics and Law Enforcement Affairs to place nine CBP Advisors throughout Central America to provide capacity building and technical assistance for border control officials to more effectively address migration issues in-country.

And finally, Secretary Johnson's Unity of Effort initiative has put new and strengthened management processes in place to enable more effective DHS component operations to address transnational criminal organizations, human- and drug-trafficking, and other cross-border threats. In addition, DHS-wide border security activities are guided by the new Southern Border and Approaches Campaign Plan and coordinated through the Department's Joint Task Forces (JTF) to coordinate the efforts of the combined resources of DHS component agencies. JTF-West actively engages in the UCG Deputies Level Meetings by providing updates, and works closely with the UCG by seeking input to recommend adjustments to the Southwest Border Land Migration Plan.

### **Reasons for Increased UAC Migration**

Several reasons contribute to the dramatic increase in children crossing alone, including poor economic conditions, violence in their home countries, and misconceptions about U.S. immigration policy, in addition to the desire to be reunited with their families in the United States. These children are regularly exposed to extreme danger and abuse along the long migration journey.

DHS has also initiated a public affairs campaign called "Know the Facts," in both Spanish and English radio, print, and TV, which discusses the truth about U.S. immigration law to counter

misinformation being spread in the region by human smugglers and others. It has also reinitiated the previous “Dangers” campaign, which touches upon the dangers of the undocumented journey north. The public affairs campaign targets audiences in their home countries. Since April 2014, CBP has also held border safety events in South Texas and Arizona to highlight with reporters the dangers of illegal cross border activity. Also, since May 2014, CBP has been proactively engaging Spanish-language news organizations to conduct interviews to warn about the dangers of crossing the border.

DHS recognizes the need to offer safe alternatives to individuals fleeing violence in Central America who seek to make the dangerous journey to the United States. On January 13, 2016, State Department, in partnership with the United Nations High Commissioner for Refugees, announced plans to expand the Refugee Admission Program to vulnerable individuals from El Salvador, Guatemala, and Honduras. DHS continues to work with the Department of State and other partners to create opportunities for earned media in the region using DHS spokespeople to discuss undocumented migration, as well as to update its messaging campaigns and create new media products for use with Central American audiences.

### **Conclusion**

With the support of Congress, CBP continues to work closely with our DHS, federal, and international partners to ensure we have the resources we need to address this humanitarian situation. Together with the Unified Coordination Group, we are leveraging all available capabilities and resources to accommodate the health and welfare of these children as they move through the process.

Chairman Grassley, Ranking Member Leahy, and distinguished members of the Committee, thank you for this opportunity to testify today on this important issue. I look forward to answering your questions.