



TESTIMONY OF

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ON

“Trafficking Victims Protection Reauthorization Act (TVPRA) and Exploited Loopholes in
Regards to Unaccompanied Alien Children”

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Introduction

Chairman Tillis, Ranking Member Durbin, and distinguished Members of the Subcommittee: thank you for the opportunity to appear today to discuss the role of U.S. Customs and Border Protection (CBP) in the processing of unaccompanied alien children (UAC).¹

CBP remains committed to safely and efficiently processing and transferring UAC from CBP to U.S. Department of Health and Human Services (HHS)/Office of Refugee Resettlement (ORR) custody pursuant to the requirements of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA).

Executive Actions and Legislative Change

The Southwest border of the United States is a highly diverse environment with equally diverse threats to the security and safety of our border communities. CBP has faced many challenges in recent years, including large-scale flows of foreign nationals from Central America and Mexico.

The U.S. Department of Homeland Security (DHS) is currently implementing a series of border security and immigration-related Executive Orders and directives issued by the President. DHS saw a precipitous drop in unlawful border crossings of 44 percent in the months following the inauguration. However, the number of migrants apprehended after entering unlawfully along the Southwest border and determined to be inadmissible at ports of entry (POE) is on the rise – these numbers have risen from 40 year lows in April 2017 back to previous levels. The rate of increase this Fiscal Year (FY) from February to March 2018 was 40 percent, a level of increase has not been observed since March 2014. April 2018 apprehensions further increased over March levels. These numbers serve as a potential warning sign of challenging times. The number of UAC apprehended between the POEs and presenting at POEs is also rising. Comparing April 2018 to April 2014, CBP has seen a 129 percent increase in UAC presenting at POEs. Further, U.S. Border Patrol (USBP) apprehended 997 UAC in April 2017², while that number stands at 4,314 this year.³ The Office of Field Operations (OFO) encountered 138 UAC in April 2017.⁴ In April 2018, the number stood at 1,015.⁵

These increases have important implications for operational and policy responses, as well as continued engagement with Congress on legal loopholes in the immigration system. DHS leaders have worked closely with other Administration officials and Members of Congress to address existing “loopholes” that allow individuals to exploit our immigration laws. This includes, but is not limited to, the Administration’s repeated calls for amending the TVPRA to treat all UAC the same, regardless of nationality, so that if they are not victims of human trafficking they can be safely returned home or removed to a safe third country; clarifying that alien minors who do not meet the UAC statutory definition are not entitled to the presumptions or protections granted to UAC;

¹ As defined by 6 U.S.C. § 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.

² <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017>

³ <https://www.cbp.gov/newsroom/stats/sw-border-migration>

⁴ <https://www.cbp.gov/newsroom/stats/sw-border-migration-fy2017>

⁵ <https://www.cbp.gov/newsroom/stats/sw-border-migration>

terminating the *Flores* Settlement Agreement by passing legislation stipulating care standards for minors in custody, and clarifying corresponding provisions of the TVPRA that supersede the settlement agreement; amending the definition of “special immigrant,” as it pertains to juveniles, to require that the applicant prove that reunification with both parents is not viable due to abuse, neglect, or abandonment – and that the applicant is a victim of trafficking; and repealing the requirement that a U.S. Citizenship and Immigration Services Asylum Officer have initial jurisdiction over UAC asylum applications.

To enhance USBP's capability in Southwest border sectors and our ability to address this increase in unlawful border crossing attempts, in April, the U.S. Department of Defense (DOD), in conjunction with border state Governors, deployed the National Guard to Texas, New Mexico, Arizona, and California pursuant to the President's April 4, 2018 memorandum, “Securing the Southern Border of the United States.” Initial troops are already supporting the CBP mission. The National Guard assists CBP by executing missions such as logistical and administrative support, operating detection systems, providing mobile communications, and infrastructure support. The National Guard will provide added surveillance, air support, engineering, administrative, and mechanical support to our agents on the frontline. CBP continues to work closely with DHS and DOD to ensure a seamless coordination of efforts.

Operational Challenges and Impacts

After CBP encounters an alien who unlawfully entered or is inadmissible to the United States, the alien is processed and is temporarily held in CBP custody before being transferred to U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) or, in the case of UAC, transferred to HHS/ORR. As the number of aliens held in CBP facilities increases, it causes a strain on CBP and ICE operations and stresses the system at various points in the processing, holding, detention, and placement continuum. Already in FY 2018, the number of encounters is straining CBP and ICE logistically. Increases in unlawful migration divert resources from addressing the many threats to our Nation, such as narcotics smuggling, detecting harmful agricultural products, and countering transnational criminal organization operations, ultimately decreasing DHS's operational effectiveness.

Processing Unaccompanied Alien Children

CBP encounters and apprehends the majority of UAC along the Southwest border. Upon encountering a child at the border, either at or between the POEs, CBP Officers (CBPOs) or Border Patrol Agents (BPAs) interview each child, as well as any adult(s) accompanying the child, to determine familial relationships between the adult(s) and the child. CBPOs and BPAs also review available documentation and conduct electronic record checks to determine familial relationships. If it is determined that the child is under 18 years of age and does not have a parent or legal guardian in the United States, or if there is no parent available in the United States to provide care and physical custody, and the child lacks lawful immigration status in the United States, the child is then considered a UAC and processed accordingly.

CBP processes all UAC in accordance with applicable laws, regulations, court orders, and policies. Processing guidelines are derived from: the TVPRA; the *Flores* Settlement Agreement; CBP Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Holding

Facilities; CBP National Standards on Transport, Escort, Detention and Search; and, if in USBP custody, the USBP Hold Rooms and Short Term Custody Policy.

The *Flores* Settlement Agreement and court orders implementing the Agreement require, among other items, the expeditious processing and transfer of minors and UAC. Similarly, the TVPRA requires that, once a child is determined to be a UAC, and it is determined that the child is not eligible to withdraw his or her application for admission, the child be transferred to HHS/ORR within 72 hours of a determination by DHS that the child is a UAC, absent exceptional circumstances. CBP acts in accordance with the court orders and the TVPRA, and processes and holds all minors and UAC accordingly. For instance, all minors and UAC, or their parents or legal guardians on their behalf, are given the Form I-770 during CBP processing. Form I-770 is a notice of rights, including the right to a bond redetermination hearing, if applicable.

CBP screens all UAC using the Unaccompanied Alien Child Screening Addendum (CBP-93 Form) to implement the requirements of the TVPRA (8 U.S.C. § 1232). The CBP-93 form includes examples of trafficking indicators and requires the processing BPA or CBPO to pursue age appropriate questions to help identify if a UAC may have been, or is likely to be, the victim of trafficking. Based on the totality of the situation, including visual and verbal responses, the BPA or CBPO determines if the UAC is a victim or potential victim of trafficking. CBP conducts these screenings at the processing location – generally at a POE or USBP station.

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 CBP determines that 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 persecution upon return to his or her country of nationality; and has the ability to make an independent decision to withdraw his or her application for admission.

For Mexican and Canadian UAC who cannot be returned immediately because they do not meet one or more of these requirements or do not choose to withdraw their application for admission, and for all UAC from countries other than Mexico or Canada, the TVPRA requires that they be served a Notice to Appear, placed in INA § 240 removal proceedings, and transferred to the care and custody of HHS/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 a UAC is unable to withdraw his or her application for admission, or chooses not to, CBP notifies both the local ICE Field Office Juvenile Coordinator (FOJC) and HHS/ORR. Once HHS notifies CBP and ICE that a bed is available for the UAC, either ICE, CBP, or our contractors transport the UAC to an HHS/ORR shelter facility. CBP maintains custody of the UAC while awaiting notification from HHS/ORR that facilities are available – again, usually within 72 hours, absent exceptional circumstances.

CBP's holding facilities are designed for the temporary holding of individuals. Per the *Flores* Settlement Agreement, minors and UAC are provided access to facilities that are safe and sanitary, and that provide access to functional toilets and sinks; potable drinking water and food;

emergency medical assistance, if needed; and adequate temperature control and ventilation. To ensure their safety and well-being, UAC are supervised and generally segregated from unrelated adults; older, unrelated UAC are generally segregated by gender.

Preventing Human Trafficking

If risk factors indicate that UAC are potential victims of human trafficking, CBP immediately notifies ICE Homeland Security Investigations (HSI), the lead ICE component responsible for investigating claims of human trafficking. If a UAC is identified as a possible victim of human trafficking, the child is referred to HHS/ORR, and a separate notification is made via email or telephone to a case officer. If a BPA or CBPO suspects that any member of the group in which the UAC was travelling is involved or complicit in the trafficking, the agent or officer will generally detain all individuals in the group for further processing and interview by ICE-HSI.

Within CBP, USBP and OFO have developed new training and issued guidance for BPAs and CBPOs on processing for UAC, with topics including human trafficking awareness, UAC encountered at airports, interviewing techniques, fear of return determination, and TVPRA transfer procedures. CBP Agriculture Specialists also receive awareness-level training on UAC.

Enhancing CBP's Processes

CBP continues to implement enhancements to our automated systems to ensure that all custodial actions related to minors and UAC are recorded in electronic systems. These system enhancements have improved CBP's ability to track the length of time minors and UAC remain in CBP custody.

If a UAC is identified as being a member of a gang or being affiliated with a gang, the information is recorded in the CBP electronic system. In addition, this information is conveyed to HHS/ORR and the ICE Field Office Juvenile Coordinator when a placement request is generated. Secure placement will be requested for any UAC who has a known gang affiliation. The decision on placement is made by HHS/ORR, based on the information provided by CBP and ICE in the placement request. Of the approximately 5,600 individuals apprehended by USBP with confirmed or suspected gang affiliations since FY 2012, 167 were UAC. Of those 167, approximately 60 UAC were suspected or confirmed to be affiliated with Mara Salvatrucha, also known as MS-13.

Current Status of UAC Apprehended Between Ports of Entry

CBP continues to take steps to counter those factors in Central America that may lead to migration to the United States. Throughout Central America, CBP leverages its attaché and advisor network to engage local immigration, border management, and police authorities, as well as our federal partners such as the Department of State's (DOS) Bureau of International Narcotics and Law Enforcement Affairs, U.S. Agency for International Development, and ICE to enhance security, improve governance, and promote prosperity in the region.

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 portrays the dangers of the undocumented journey north. The public affairs campaign targets audiences in their home countries. Since April 2014, CBP has held border safety events in South Texas and Arizona to highlight with reporters the dangers of unlawful cross-border activity. Since May 2014, CBP has been proactively engaging Spanish-language news organizations to conduct interviews to warn about the dangers of crossing the border.

In December of 2016, CBP, with the support of DOS, launched a public awareness campaign, *Nuestra Patria, Nuestro Futuro* (Our Country, Our Future), in Guatemala, El Salvador, and Honduras. The objective was to create awareness among families about the harsh realities that migrants of all ages, especially UAC, face when they transit Central America and Mexico to reach the Southwest Border of the United States without documents. This campaign ran through May 2017.

DHS continues to work with DOS and other partners to create opportunities for media in the region using DHS spokespeople to discuss migration to the United States, as well as to update its messaging campaigns and create new media products for use with Central American audiences.

Additionally, DHS’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. DHS-wide border security activities are guided by the Southern Border and Approaches Campaign Plan and coordinated through the Department’s Joint Task Forces to coordinate the efforts of the combined resources of DHS component agencies. CBP remains committed to securing our borders and keeping Americans safe by responding to any and all challenges in the dynamic border environments in which we operate.

Conclusion

With the support of Congress, CBP continues to process UAC in our custody with professionalism and in close coordination with our federal partners. We will also continue to work closely with our federal and international partners to prepare for – and prevent – future UAC surges. Chairman Tillis, Ranking Member Durbin, and distinguished Members of the Subcommittee, thank you for this opportunity to testify today on this important issue. I look forward to answering your questions.