



TESTIMONY OF

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BEFORE

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Committee on the Judiciary

ON

“Oversight of Immigration Enforcement and Family Reunification Efforts”

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Introduction

Chairman Grassley, Ranking Member Feinstein, and distinguished Members of the Committee, thank you for the opportunity to appear before you today on behalf of U.S. Customs and Border Protection (CBP).

On April 6, 2018, the U.S. Department of Justice (DOJ) instituted Zero Tolerance, a policy to prosecute all violations of 8 U.S.C. § 1325(a), which prohibits both improper entry and *attempted* improper entry by an alien. Zero Tolerance was and is necessary to combat decades of policies that failed to enforce the law and emboldened transnational criminal organizations and human smugglers. By the end of May 2018, the Border Patrol had seen a 178 percent increase in illegal border crossings in a month-to-month comparison to May 2017.

The rise in illegal crossings is, in part, a consequence of the gaps created by layers of laws, judicial rulings and policies. For example, the 1997 *Flores* Settlement Agreement, requires the government to release unaccompanied alien children (UAC) from detention without unnecessary delay, or to transfer them to non-secure, licensed programs “as expeditiously as possible.” The settlement agreement was initially drafted to apply only to unaccompanied minors. Years later, in 2014, the Department of Homeland Security (DHS) increased the number of family detention facilities in response to the surge of alien families crossing the border. Soon after, a court ruling interpreted *Flores* as applying not only to UAC, but to those children who arrived with their parents. This ruling limited DHS’s ability to detain family units through their immigration proceedings. In general, pursuant to a judicial interpretation of the *Flores* Settlement Agreement, DHS rarely holds accompanied children for longer than 20 days.

CBP Implementation of Zero Tolerance

On May 5, 2018, in response to DOJ’s Zero Tolerance Policy for illegal entry, and based on guidance from DHS, the U.S. Border Patrol (USBP) began referring greater numbers of violations of 8 U.S.C. § 1325(a) for prosecution.

If a parent traveling with their child was accepted for prosecution by DOJ under Zero Tolerance, and thus, transferred to U.S. Marshals Service custody, the child could not remain with the parent during criminal proceedings and the service of any potential sentence upon conviction. That child would then be placed in the care of the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) to arrange for safe, longer-term placement of the child pending immigration proceedings.

During processing, USBP agents collect basic biographical data, including but not limited to name, date of birth, and country of birth. This information is recorded in the CBP electronic system of record, and conveyed to HHS/ORR and U.S. Immigration and Customs Enforcement (ICE) when a placement request is generated.

We worked hand-in-hand with ICE—which generally took custody of parents following prosecution—and HHS to identify individuals who arrived as part of a family unit.

Family Reunification and Current Guidance

On June 20, 2018, President Trump issued Executive Order *Affording Congress the Opportunity to Address Family Separation*. Within hours of receipt of the Executive Order, leadership of U.S. Customs and Border Protection (CBP) issued guidance to the field directing that parents who entered with children were no longer to be referred for prosecution under Zero Tolerance. Following issuance of the Executive Order, CBP reunified more than 500 children in our custody with their parents.

CBP's prosecution priorities under the Zero Tolerance initiative will continue to focus on achieving 100 percent prosecution of single adult aliens who cross the southwest border without inspection at a port of entry. In compliance with the Executive Order and the preliminary injunction of *Ms. L v. ICE*, CBP may separate a parent if that parent poses a danger to their child, has a criminal history, or has a communicable disease.

Importance of Zero Tolerance and Border Security

Illegal immigration is dangerous, both to the security of the United States and the welfare of those making the journey. The risks of illegally crossing the border—especially in the hot summer months—or entrusting one's life to ruthless human smuggling organizations are significant for adults, and even more deeply concerning for children. In May and June of this year, Border Patrol Agents provided life-saving assistance to 896 people, compared to 621 instances of life-saving assistance during those months in 2017. In addition, increased levels of illegal border crossings divert resources from addressing the many other threats to our nation, such as narcotics smuggling, detecting harmful agricultural products, and countering transnational criminal organization operations.

Ultimately, enforcement of immigration laws is the foundation of a secure border and a secure nation. Each action taken by lawmakers, the judiciary, policymakers and operators—while made in good faith by people grappling with complex issues—can have unintended consequences on the functioning of the immigration system as a whole. Consistent application of clear immigration laws enables access to the system's resources by those legitimately seeking its benefits while diminishing chaos on our border sought by transnational criminal organizations. I look forward to continuing to work with the Committee toward this goal.

Thank you for the opportunity to appear before you today. I look forward to your questions.