



TESTIMONY OF

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ON

“Oversight of HHS and DHS Efforts to Protect Unaccompanied Alien Children from Human
Trafficking and Abuse”

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Introduction

Chairman Portman, Ranking Member Carper, and distinguished Members of the Subcommittee, thank you for the opportunity to testify at today's hearing to examine efforts by the Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS) to protect unaccompanied alien children (UACs) from human trafficking and abuse. DHS appreciates the Subcommittee's interest in and dedication to this issue, as evidenced by its 2016 staff report and continued engagement with our Departments.

UAC Definition and Special Considerations

A UAC is defined in statute as 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. UAC policies and procedures are directly impacted by the Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and the 1997 *Flores* Settlement Agreement. The *Flores* Settlement Agreement established a nationwide policy for the custody and treatment of UACs and required, among other things, that UACs be provided with food and drink, emergency medical assistance, toilets and sinks, adequate temperature control and ventilation, adequate supervision, and separation from unrelated adults whenever possible. In 2002, the Homeland Security Act divided responsibilities for UAC processing and treatment between DHS and HHS' Office of Refugee Resettlement, or ORR. DHS became responsible for the apprehension, transfer, and repatriation of UACs whereas HHS became responsible for coordinating and implementing care and placement, maintaining a list of legal service providers, and collecting

relevant statistical information, among other responsibilities. In 2008, Congress passed the TVPRA, which directed the Secretary of Homeland Security, in conjunction with other agencies, to develop policies and procedures to ensure UACs are safely repatriated to their country of origin or last habitual residence. It also set forth different sets of rules for UACs from contiguous countries versus non-contiguous countries.

Under the TVPRA, a UAC who is a national or habitual resident of Canada or Mexico and who is apprehended at the border may be permitted to withdraw an application for admission and be returned to his or her country of origin if there are no human trafficking indicators or claims of fear of return, and the child is able to make an independent decision to withdraw the application. UACs who are not nationals or habitual residents of contiguous countries, and who are not eligible to be voluntarily returned, are required to be placed in removal proceedings. Consistent with the TVPRA, a UAC from a non-contiguous country who is encountered at the border is generally issued a Notice to Appear (NTA) and placed in removal proceedings before a Department of Justice (DOJ) Immigration Judge. Like all individuals, UACs are afforded an opportunity to claim asylum, humanitarian relief, or other forms of removal relief consistent with our immigration laws.

Designation as a UAC does not confer lawful immigration status, but UACs are afforded certain procedural safeguards and certain substantive advantages with respect to immigration processing and other benefits, like voluntary departure, that are not available to other aliens, including accompanied minors. For example, the Unaccompanied Alien Child Screening Addendum, known as CBP Form 93, is used to screen UACs for human trafficking indicators – including trafficking by transnational criminal organizations such as MS-13. If a U.S. Border Patrol Agent or U.S. Customs and Border Protection (CBP) Officer suspects that any member of

the group in which the UAC is traveling is involved or complicit in the trafficking act, they will detain all individuals for further processing and interview by U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI), which is the Department's primary investigative arm responsible for the investigation of human smuggling and trafficking.

UAC Encounters and DHS Custody

Typically, UACs are first encountered when presenting themselves to CBP at the border or a port-of-entry. However, ICE may encounter UACs in the interior of the United States during immigration enforcement actions. Although most UACs are age 14 or older – with the vast majority originating from Mexico and the Northern Triangle countries of Guatemala, Honduras, or El Salvador – apprehensions of UACs under the age of 13 have increased in recent years. Upon encounter, the apprehending agency must first determine whether the individual meets the statutory definition of a UAC. Absent exceptional circumstances, once a determination is made that the individual is indeed a UAC, DHS is then required by law to notify HHS of the encounter within 48 hours, and must transfer custody of the child to HHS within 72 hours.

Once HHS notifies ICE that a shelter bed is available, it is ICE's responsibility to quickly and safely transport the UAC to a shelter funded by HHS. ICE transports UACs by ground, commercial air, and ICE charter flights. In order to avoid the potential strain that UAC transfers can place on ICE's resources at times – which occurred during the 2014 influx, for example – ICE has implemented a contract for such transfers, which has alleviated the need for ICE personnel to effectuate such transportation duties and has freed up ICE officers to continue performing essential law enforcement responsibilities.

All 24 ICE Enforcement and Removal Operations field offices have primary and back-up juvenile coordinators, each of whom receive annual, specialized training with respect to the unique vulnerabilities of children. These Field Office Juvenile Coordinators serve as local subject matter experts on the proper processing, transportation, and placement of UACs; monitor operational practices for compliance with regulations, standards, and policies; and are on-call 24 hours a day, seven days a week.

UAC Challenges and Opportunities

When DHS encounters UACs – including known or suspected gang members within the UAC population – biographic information is collected and stored in the electronic systems of record. Biometric information is also collected for certain UACs. This approach allows DHS to readily identify known or suspected gang members or aliens who admit to having a gang affiliation – or other individuals who may pose a threat to public safety. The electronic system collects fingerprint information and runs record checks on these individuals to ensure criminals are prosecuted to the fullest extent of the law. This information is conveyed to HHS and other interagency partners, as appropriate, when a placement request is generated via an HHS intake form. Secure placement will be requested by DHS for any UAC who has a known gang affiliation, but the decision on placement is ultimately made by HHS.

On February 19, 2016, DHS and HHS signed a Memorandum of Agreement (MoA) regarding the care, custody, and transfer of UACs between our respective Departments. The purpose was to continue addressing the needs of UACs; ensure the safe and expedited transfer and placement from DHS to HHS custody; maximize efficiency in the allocation and expenditure of respective program costs; ensure information is transmitted to facilitate appropriate placement

decisions so HHS can promptly place the child in the least restrictive setting that is in the child's best interest until the UAC is released to an appropriate sponsor; continue the statutorily required consultation between Departments with respect to UAC placement determinations; protect UACs in the custody of the United States or released to sponsors from mistreatment, exploitation, and trafficking; and promote effective immigration processing as well as the safe repatriation and/or reintegration of UACs. Since this MoA was signed, DHS has continued to work with HHS to make meaningful improvements to our information sharing arrangements, in line with the Administration's immigration principles and priorities, and in accordance with applicable law.

It is also important to note that UAC designations are not permanent. Permitting individuals to maintain a UAC designation when they are not, or no longer, statutorily qualified enables them and/or their parents and sponsors to exploit U.S. immigration laws and processes. DHS continues to emphasize that UAC designations must only be applied to those individuals who meet – and continue to meet – the statutory definition of a UAC. This not only safeguards the child, it protects the integrity of our immigration system.

DHS Responsibilities During Removal

With regard to removals, the TVPRA requires DHS to ensure that each UAC removal is fully coordinated with host government authorities. Coordination with foreign government officials includes: providing the UAC with an opportunity to communicate with a consular officer prior to departure; repatriating at a designated port-of-entry; and ensuring that a receiving government official or designee signs for custody to record the transfer; in addition to other requirements specific to each country, such as certain hours during which repatriations may be conducted.

Recent UAC Metrics

Finally, it is important to have these discussions within the context of recent UAC flows. Between October 1, 2017 and March 31, 2018, a total of 21,720 UACs were apprehended on the Southwest Border, and an additional 4,605 UACs were deemed inadmissible at U.S. ports-of-entry. Of note, in March 2018, the number of UAC apprehensions and inadmissibility determinations increased by 41 percent compared to February 2018. This upward trend presents serious concerns for border security and public safety, and DHS is working closely with the White House and interagency partners to address it – including but not limited to the recent deployment of the National Guard on our nation’s Southwest Border.

Furthermore, it often takes several years to effectuate a UAC removal, when appropriate. For example, while UACs from the Northern Triangle accounted for the vast majority of the 2014 surge, only one-percent of Northern Triangle UACs were repatriated within 90 days – and within three years only three-percent were repatriated versus 54 percent of non-UACs. Many remain stuck in the immigration enforcement lifecycle or simply fail to appear for their proceedings.

The Need for Congressional Action

DHS has worked closely with the Trump Administration 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 (1) amending the TVPRA to treat all UACs 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; (2) clarifying

that alien minors who do not meet the UAC statutory definition are not entitled to the presumptions or protections granted to UACs; (3) 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; (4) 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 (5) repealing the requirement that a USCIS Asylum Officer have initial jurisdiction over UAC asylum applications.

Conclusion

DHS takes its role seriously and works with our interagency and foreign counterparts on a daily basis to ensure the humane treatment of UACs while simultaneously enforcing the laws Congress has passed. We fully understand that this responsibility carries great weight. We look forward to continuing our work with Congress, and our other federal partners, to protect UACs from transcontinental smuggling operations, and perhaps most importantly, to improve federal immigration law by eliminating the loopholes that have contributed to some of our immigration challenges. Thank you for the opportunity to testify. I look forward to answering your questions.