



JOINT TESTIMONY OF

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ON

“Oversight of 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 during the pendency of their immigration court proceedings. DHS is responsible for the protection and well-being of these children from the time they first come into contact with U.S. immigration authorities until they are transferred to the care of HHS, and takes this responsibility very seriously. DHS appreciates the Subcommittee's continued dedication to this issue, and we look forward to continuing the constructive dialogue we have had with you and your staff on this issue over the last several months.

UAC Definition and Special Considerations

A UAC is defined by 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. Designation as a UAC does not provide lawful immigration status, but UACs are afforded certain procedural safeguards with respect to asylum processing that are not available to other aliens, including accompanied minors. For example, U.S. Citizenship and Immigration Services (USCIS) has initial jurisdiction over any asylum application filed by a UAC, regardless of whether the UAC is in removal proceedings, reunites with a parent or legal guardian, or turns 18 after filing the application. For non-UACs in removal proceedings, it is an Immigration Judge from the U.S. Department of Justice (DOJ), not a USCIS Asylum Officer, who adjudicates an asylum application. Additionally, the

Unaccompanied Alien Child Screening Addendum (CBP Form 93) is used to screen UACs for human trafficking indicators – including trafficking by transnational criminal organizations, such as MS-13. If a Border Patrol Agent or CBP Officer suspects that any member of the group in which the UAC was 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), the Department’s primary investigative arm responsible for the investigation of human smuggling and trafficking.

Under the Trafficking Victims Protection Reauthorization Act of 2008 (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. Additionally, UACs who are nationals or habitual residents of Canada or Mexico who are not eligible or wish to be voluntarily repatriated are required to be placed into removal proceedings before a DOJ Immigration Judge. Similarly, and as required by 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 DOJ Immigration Judge. Like all individuals, UACs are afforded an opportunity to claim asylum or other form of relief or protection from removal consistent with our immigration laws.

UAC Encounters and DHS Custody

Typically, UACs are first encountered when presenting themselves to U.S. Customs and Border Protection (CBP) at a port-of-entry (POE), or when apprehended by U.S. Border Patrol when attempting to enter the United States between POEs. However, ICE may also apprehend

UACs in the interior of the United States during immigration enforcement actions. Upon encounter, the apprehending agency must determine whether a child meets the statutory definition of a UAC. Absent exceptional circumstances, once a determination is made that the child is indeed a UAC, DHS is then required by law to physically transfer the child to HHS Office of Refugee Resettlement (ORR) custody within 72 hours of the UAC determination being made. While UACs are in DHS custody pending transfer to HHS, they are placed into a separate holding area apart from adult detainees for their safety.

Protecting UACs from Trafficking and Abuse

DHS takes great care to ensure UACs are treated appropriately and humanely while in our custody, and are safe from trafficking and abuse. This includes, among other things, using CBP Form 93 to screen UACs for indicators of trafficking and/or abuse, identifying gang affiliation or criminal activity, and working with our partners in HHS to ensure appropriate care and protection. CBP facilitates timely placement decisions with HHS, which allows for expeditious custody transfer.

The CBP Form 93 includes examples of trafficking indicators and requires the processing Border Patrol Agent or CBP Officer to ask age appropriate questions to help identify if a UAC may have been, or is likely to be, the victim of trafficking. This screening tool provides a mechanism for officers and agents to consistently and thoroughly screen UACs. This tool contains sections relating to the UAC's fear of return to their country of nationality or last habitual residence as well as indicators of human trafficking. For UACs who are nationals or habitual residents of a contiguous country, it also addresses the UAC's ability to make an independent decision to withdraw their application for admission. This form's use is consistent with the requirements of the TVPRA.

Based on the totality of the situation, including visual and verbal responses, the Border Patrol Agent or CBP Officer determines if the UAC is a victim or potential victim of trafficking. CBP conducts these screenings at the processing location – generally at a port of entry or Border Patrol station. CBP is currently revising this form to ensure Border Patrol Agents and CBP Officers obtain information of the highest integrity.

When DHS encounters known or suspected gang members within the UAC population, biographic information is collected and stored in the electronic systems of record. This approach enables the capture, organization, and presentation of data and allows DHS to readily identify known gang members or aliens who admit to having a gang affiliation. 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 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 child 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 to promote effective immigration processing, as well as the safe repatriation and/or reintegration of UACs, if necessary.

DHS and HHS signed another MoA on April 13, 2018, to address information exchanges between each Department and to enhance cooperation. Several additional safeguards were put in place, including the fingerprinting by ORR of all potential sponsors (including parents and legal guardians) and adult household members. ICE will then use the fingerprints to complete a check for criminal activity in order to ensure the sponsor is suitable to take charge of a UAC, and that the UAC will not be placed in a dangerous situation or fall victim to trafficking. Additionally, if ICE or CBP become aware of any criminal information, such as gang affiliation, that it did not have at the time of initial referral to ORR, they will notify ORR as expeditiously as practicable, using their best efforts to provide information within 48 hours of discovery.

Since these MoAs were 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 the applicable laws. For example, both departments have: (i) clarified procedures surrounding the timely issuance of NTAs; (ii) realigned enforcement priorities so that no class or group of aliens is automatically exempt from possible enforcement actions; and (iii) re-examined the potential threat posed by bad actors posing as sponsors so that the safeguards in place to protect UACs are not exploited.

In order to further ensure that UACs are protected from trafficking and abuse, and pursuant to the 2016 MoA, DHS and HHS have completed and shared with the Subcommittee a Joint Concept of Operations (JCO) which memorializes the existing processes and procedures in areas where the two departments have joint responsibility. This important document lays out the

responsibilities of each Department, and further delineates these responsibilities to the components and agencies within DHS and HHS.

It is also important to note that UAC designations are not permanent. The UAC designation ceases when an individual no longer statutorily meets the definition of a UAC. 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, but it protects the integrity of our immigration system and ensures the protections that were designed for truly vulnerable children are available to them. That said, DHS takes its role in combating human trafficking very seriously, and will continue to take steps to ensure every individual is protected, even if they no longer qualify as a UAC.

UAC Removals

Since the initial surge in FY 2014, there has been a significant increase in the arrivals of both family units and UACs across the southern border, a trend which continues despite the Administration's enhanced enforcement efforts because of the numerous loopholes that currently exist in our immigration laws. Thus far in FY 2018, approximately 44,000 UACs and 106,000 members of family units have been apprehended at the southern border. These numbers represent an increase from FY 2017, when approximately 49,000 UACs and 105,000 members of family units were apprehended throughout the entire fiscal year.

In addition, most of these family units and UACs are nationals of the Central American countries of El Salvador, Guatemala, and Honduras. While historically Mexico was the largest source of illegal immigration to the United States, the number of Mexican nationals attempting to cross the border illegally has dropped dramatically in recent years and the net flow of migration from Mexico, legal and illegal, has decreased. This is significant, because removals of

non-Mexican nationals take longer, and require ICE to use additional detention capacity, expend more time and effort to secure travel documents from the country of origin, and arrange costly air transportation.

Regarding UACs, the issues is exacerbated, as those UACs from countries other than Canada and Mexico are exempt from expedited removal pursuant to the TVPRA, which further encumbers the already overburdened immigration courts. With a backlog of over 700,000 cases on the non-detained docket alone, it takes years for the cases of these UACs to work their way through the system. And even after they receive a final order of removal (which most do), few are ever actually returned to their country of origin.

It is important to note that current laws and court rulings which favor the release of family units and UACs often require the federal government to release illegal alien families and UACs into communities across the United States. This practice has not only led to aliens failing to appear for court hearings and failing to comply with removal orders, but has also incentivized smugglers to place children into the hands of adult strangers so they can pose as families and be released from immigration custody after crossing the border. This creates a safety issue for these children, who have already made an extremely dangerous journey to reach the United States, risking possible trauma, abuse, abandonment, injury, and death along the way.

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.

CONCLUSION

DHS cares deeply about what happens to the children in its custody and takes seriously its responsibility to protect them from human smuggling, trafficking, and other criminal actions. There is perhaps no bigger source of frustration for our Department than encountering children who have been exploited or abused by smugglers and traffickers. DHS is committed to working with our partners in HHS to ensure that UACs are protected from trafficking and abuse while they are in the care of the U.S. Government. We look forward to continuing our work with this Subcommittee, with our partners at HHS, and others throughout the Federal Government to protect UACs from trafficking and abuse. Thank you for the opportunity to testify. We look forward to answering your questions.