



U.S. Immigration and Customs Enforcement

STATEMENT

OF

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REGARDING A HEARING ON

“Oversight of Immigration Enforcement and Family Reunification”

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON THE JUDICIARY

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226 Dirksen Senate Office Building

Introduction

Chairman Grassley, Ranking Member Feinstein, and distinguished members of the Committee:

My name is Matthew T. Albence, and I am the Executive Associate Director of the Enforcement and Removal Operations (ERO) division of the U.S. Immigration and Customs Enforcement (ICE) agency. Thank you for the opportunity to appear before you today to discuss ICE's role in the Administration's family reunification efforts, as well as its critical mission of protecting the homeland and ensuring the integrity of our nation's immigration system through the enforcement of our country's immigration laws.

Our nation's immigration laws are extremely complex, and in many cases, outdated and full of loopholes. This often makes it difficult for people to understand all that ICE does to protect the people of this great country. Nowhere is this more evident than in the recent events surrounding the Zero Tolerance policy. Today, I would like to discuss: the impact that this policy and the *Ms. L* case have had on ICE operations; the tremendous efforts made and successes achieved by the dedicated men and women of ICE; the progress made and challenges faced by our agency in implementing the family reunification process; and the issue of immigration enforcement as a whole.

ICE's immigration enforcement efforts are led by more than 7,700 proud, professional law enforcement officers and support personnel of ERO. To ensure the national security and public safety of the United States, ICE ERO officers faithfully execute the immigration laws enacted by Congress. They may take enforcement action against any alien encountered in the course of their duties who is present in the United States in violation of immigration law.

Pursuant to its statutory responsibilities, ICE is one of several agencies involved in the processing of unaccompanied alien children (UACs) and family units, and plays a critical role by quickly and safely transporting UACs from U.S. Customs and Border Protection (CBP) custody to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), and also works with HHS to vet potential UAC sponsors. ICE also houses alien families together at family residential centers, manages the non-detained docket, and effectuates removal orders following the conclusion of immigration proceedings.

ICE's interior enforcement efforts are essential to DHS' overall border security strategy. It is impossible to have true border security without strong interior enforcement. Those who seek to illegally enter the United States must know that there is no free pass, and that should they successfully evade enforcement at the border, ICE will find, arrest, and upon the issuance of a final removal order, repatriate them to their home countries. Additionally, those that enter the country lawfully must know that should they violate the terms of their admission—whether through criminal activity, overstaying their lawful period of admission, or failing to comply with the terms of their visa—they too will be targeted for arrest, detention, and removal.

Executive Orders and Zero Tolerance Policy

During his first two weeks in office, President Trump signed a series of Executive Orders (EOs) that laid the policy groundwork for the Department of Homeland Security (DHS) and ICE

to carry out the critical work of securing our borders, enforce our immigration laws, and ensure that individuals who pose a threat to national security or public safety, or who are otherwise in violation of the immigration laws, are not permitted to enter or remain in the United States. These EOs established the Administration's policy of effective border security and immigration enforcement through the faithful execution of the laws passed by Congress.

In furtherance of this goal, on April 6, 2018, the Attorney General announced a "Zero Tolerance" policy, in which each United States Attorney's Office along the Southwest Border would prosecute, to the extent practicable, all offenses referred for prosecution under 8 U.S.C. § 1325. Subsequently, on May 4, 2018, Secretary of Homeland Security Kirstjen Nielsen directed officers and agents to ensure that all adults deemed prosecutable for improper entry in violation of 8 U.S.C. §1325(a) are referred to the Department of Justice (DOJ) for criminal prosecution. On May 5, 2018, CBP began implementation of this policy, resulting in the transfer of adults who had entered illegally to U.S. Marshals Service custody pending prosecution. When adults are transferred to the U.S. Marshals Service for prosecution, their children become UAC as defined in section 279(g)(2) of Title 6 of the U.S. Code, and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), which mandates that DHS generally must transfer any UAC in its custody to the Department of Health and Human Services (HHS) for care and custody within 72 hours, absent exceptional circumstances.

On June 20, 2018, President Trump signed an Executive Order entitled, *Affording Congress an Opportunity to Address Family Separation*. This Order clarified that it is the policy of the Administration to rigorously enforce our immigration laws, including by pursuing criminal prosecutions for illegal entry under 8 U.S.C. § 1325(a), until and unless Congress directs otherwise. At the same time, the Administration will maintain family unity, including by detaining alien families together during the pendency of criminal improper entry or immigration proceedings, where appropriate and consistent with law and available resources. In practice, this allows DHS to continue its judicious enforcement of U.S. immigration laws, while maintaining family unity for those crossing the border.

Family Reunification Efforts and Associated Challenges

On February 26, 2018, the American Civil Liberties Union (ACLU) filed a lawsuit in the U.S. District Court for the Southern District of California, *Ms. L vs. ICE*, alleging that the separation of parents and children who were apprehended at or between ports of entry violated the constitutional rights of the parents to family integrity. The lawsuit asked the court for an order prohibiting such separations. On June 6, 2018, the court denied the government's motion to dismiss, finding that the plaintiffs had alleged sufficient facts and a cognizable legal theory giving rise to a plausible claim for relief.

In addition, on June 26, 2018, the court certified a class of plaintiffs consisting of parents who have been, are, or will be detained in DHS custody, and whose children were separated from them at the border and are detained in HHS custody. The court excluded parents with criminal history or communicable diseases, or those apprehended in the interior, from the class definition. The court further ordered the reunification of class members with their children where there had been no determination that the parent was unfit or presented a danger to their

child, unless the parent affirmatively, knowingly, and voluntarily declined reunification. Under the court's order, HHS was directed to work with DHS to reunify eligible parents with their minor children under the age of five within 14 days, and to reunify eligible parents with their minor children age five and older within 30 days—or by July 26, 2018.

Phase One of this process, reunifying eligible parents with their minor children under the age of five, was completed on July 12, 2018. HHS and DHS successfully reunified 57 alien minors under five years old in the custody of HHS with those eligible parents in the custody of DHS, per the court order. Of the 103 children covered by Phase One of the court order, 57 children were reunified, and the parents of the remaining 46 children were ineligible for reunification under the court-approved criteria or could not then be reunified because the parents are in criminal custody or had already have been removed.

ICE and its federal partners are currently implementing Phase Two of the reunification process. During this phase, three ICE ERO Areas of Responsibility (AORs) in San Antonio, El Paso, and Phoenix will serve as primary centers of reunification for children ages five to seventeen with their parents in DHS custody, after HHS has evaluated parentage, fitness, and safety considerations, and had determined that the parents are eligible for reunification. Those parents who were not in ICE custody in one of the three designated AORs were transported into one of those AORs for the purposes of reunification. Where reunified families are to be released, ICE will work with local non-governmental organizations (NGOs) to effectuate a safe release plan, and will ensure that necessary services such as food, shelter, clothing assistance, and travel resources are available to those who have been reunited.

As of the July 26, 2018 Joint Status Report filed with the Court, 1,820 of the 2,551 children age five and above whose parents were identified as class members, have been reunified with their parent(s) or eligible sponsor. 1,442 children were reunified with parents in ICE custody (HHS reported as of 0600 EST hours) and none of these family units have been removed. Of the remaining 445 parents in ICE custody (as of 0630 EST on 7/27/2018), 353 have final orders of removal and 120 have declined reunification.

The court's order to reunite these families has required DHS to prioritize these reunions over other pressing operational needs, including the removals of individuals determined to have no lawful right to remain in the United States. These reunifications have required an unprecedented level of coordination between HHS and ICE, including the temporary assignment of nine ICE law enforcement officers and eight ICE data analysts to the HHS Special Operations Center. Additionally, the three ICE AORs have been operating 24/7 to support reunification operations, and will do so as long as necessary to effectuate efficient reunification of children with parents.

The key steps in the Government's plan for reunifying a parent and child in its custody included:

ICE creates a criminal background synopsis for the adult parent.

1. HHS reviews the ICE criminal background synopsis.

2. HHS reviews its case file to determine parentage or to identify red flags of possible non-parentage or trafficking.
3. HHS reviews its case file to determine fitness and safety or to identify red flags that the adult is unfit or poses a danger to the child.
4. Absent red flags, HHS conducts an in-person interview of the adult in ICE custody at an ICE reunification location.
5. Absent red flags, HHS, or an HHS contractor, also conducts a follow-up interview in an effort to confirm that the parent of a child would like to be reunified, as some parents elect to not reunify with their child(ren).
6. Absent red flags, and upon affirmation by the parent that they do wish to be reunified, HHS moves the child to the reunification location, where the child is turned over to ICE custody, and reunification is completed by ICE.

Throughout the reunification process, the Government's primary goal is the protection and care of the children. ICE approaches its role in this mission with attention to detail, care, and concern, and as the reunification process continues, DHS will continue to provide updates on the progress made.

Challenges and Legislative Fixes

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 and 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. Additionally, many Central American nationals seek protection under our asylum laws, and those who are found to have credible fear require careful adjudication by United States Citizenship and Immigration Services (USCIS).

With regard to UACs, the problem is exacerbated as those 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. The *Flores* Settlement Agreement only

permits the short-term detention of UACs and ICE simply lacks the resources to locate, arrest, and remove the thousands of UACs who have been ordered removed but are not in ICE custody.

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.

Amendments to the laws and judicial processes are needed to help ensure the successful repatriation of persons ordered removed by an immigration judge. Specifically, the following specific legislative changes are needed:

- Amend the TVPRA to provide for the expedited removal of any UACs who are not victims of human trafficking and who do not express a fear of return to their home country, and provide for similar treatment of all UACs, whether from contiguous or noncontiguous countries, to ensure they are swiftly and safely returned to their countries of origin.
- Terminate the *Flores* Settlement Agreement (FSA) by passing legislation specifying UAC care standards, and clarifying the corresponding provisions of the TVPRA that supersede the FSA.
- Amend the definition of “special immigrant juvenile” to require that the applicant meet the definition of a UAC, and mandate that the applicant must demonstrate that reunification with either parent is not viable due to abuse, neglect, or abandonment, and that the applicant is a victim of trafficking. The current legal requirement is not operationally viable.
- Repeal the current requirement that an asylum officer have initial jurisdiction over cases involving UACs, in order to expedite processing of UAC asylum applications and shorten lengthy court timelines.

Conclusion

Thank you again for the opportunity to appear before you today, and for your continued support of ICE and its essential law enforcement mission. We continue to respond to the trend of family units and UAC who are apprehended while illegally crossing into the United States, and to address this humanitarian and border security issue in a manner that is comprehensive, coordinated, and humane. While DHS and ICE are continuing to examine these issues in light of ongoing litigation and recent court decisions, a permanent fix from Congress is essential to providing operational clarity for officers in the field. Congress must act to eliminate the loopholes that incentivize illegal immigration, and must also provide ICE with the lawful

authority and requisite funding needed to ensure that families can be kept together throughout the course of their immigration proceedings.

I would be pleased to answer any questions.