



Statement for the Record

U.S. Senate Homeland Security & Governmental Affairs Committee

"The 2014 Humanitarian Crisis at Our Border: A Review of the Government's Response to Unaccompanied Minors One Year Later"

July 7, 2015

Founded in 1982, the National Immigration Forum (Forum) works to uphold America's tradition as a nation of immigrants. The Forum advocates for the value of immigrants and immigration to the nation, building support for public policies that reunite families, recognize the importance of immigration to our economy and our communities, protect refugees, encourage newcomers to become new Americans and promote equal protection under the law.

Introduction

The National Immigration Forum (the Forum) thanks the Committee for the opportunity to provide its views on the federal government's response to the unaccompanied alien children (UAC) crossing the Southern border last year. In looking back at the reactions to the influx of UAC over the past year, the federal government's response leaves much to be desired: the Obama Administration reacted in a heavy handed way bringing back dehumanizing, ineffective and costly family detention and Congress reacted with partisan proposals and gridlock rather than providing needed solutions. The situation faced by the UAC was a challenging and heart-breaking example of our broken immigration system. Congress should have taken the lead in providing the affected agencies with needed funding and resources to address this humanitarian crisis as well as addressing root causes in Central America. Instead, the House of Representatives attempted to promote faster deportations above all other considerations in a misguided attempt to deter undocumented immigrants from trying to come to the U.S., including rolling back crucial due process protections in the William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA) that protect at-risk refugees and asylees.

We must find a long term solution to UAC coming from Central America seeking refuge in our country, including addressing the root causes in Honduras, El Salvador and Guatemala that created their need to flee their country. Finding a solution to UAC coming from Central America will ensure the safety of these children as well as ensure that our nation's laws are respected. Around the world we are seeing a surge of refugees attempting to make it to safe havens, including individuals flee the Middle East and Africa for Europe. Around the world countries are debating how to respond to this growing crisis with many looking to the United States as an example. The United States has been looked to as a world leader and moral beacon. Unfortunately, the federal government's response to the UAC influx this past year did not live up to this ideal.

The Forum believes a critical part of the solution to the humanitarian issue is legislation to reform our broken immigration system, which includes border security, as well as an earned path to citizenship for those currently residing in the U.S. The current immigration system is supporting a lucrative business for cartels and other criminal organizations rather than

protecting our communities. The lack of legal avenues for family members to be reunited with their loved ones in the U.S. is leading immigrants to the hands of criminal organizations.

Background:

In recent years, increasing numbers of Central American UAC have fled extreme poverty and violence,¹ leading to marked increases in the number of UAC arriving at the southwest border. In FY2014, there were a total of 68,631 UAC apprehensions along the southwest border by Customs and Border Patrol (CBP);² this is almost twice as many UAC who arrived in all of FY2012. In response to this crisis the administration asked for additional funding and additional authority to deport some of the unaccompanied children and families more quickly. This year, partly due to stepped up enforcement by Mexico, the number of unaccompanied children crossing the Southern border is down over 50 percent with under 23,000 children crossing so far this year.³ By comparison, Mexico has apprehended 92,829 Central Americans (UACs and families) from October to April 2015, the United States detained 70,226 “other than Mexican” migrants.⁴

The Trafficking Victims Protection Reauthorization Act Safeguards Children:

The desire by many to change our laws to lessen protections and deport individuals faster showed a fundamental misunderstanding of the situation. The current influx of UAC is not due to a lack of enforcement at our border, but rather, it is because the antiquated immigration system is not set up to deal with the unexpected influx of women and children seeking refuge and the increasingly violent and deteriorating situation in Central America.

The TVPRA was passed with strong bipartisan support, and signed into law by President George W. Bush in 2008. The bill protects victims of human trafficking and specifies protections for unaccompanied children. TVPRA provides important protections for migrant children, and is consistent with America’s strong tradition of protecting and caring for the most vulnerable.

Proposals to weaken the TVPRA to expedite the removal of the children, calling for Central American children to be treated in the same manner of those from Canada and Mexico were misguided. Proposals to change the TVPRA so that Central American children be screened in 48 hours, similar to the screening children from Mexico and Canada receive, were inadequate.⁵ Expediting the screening process of these children will result in more victims going unidentified, leading many to be sent back to unstable, dangerous situations. Honduras, Guatemala, and El Salvador are unsafe countries with spiraling crime and gang activity and some of the highest murder rates in the world.⁶ Gangs, drug cartels and militias will prey upon hundreds, if not thousands of children who are improperly returned to Central America before they are given the

¹ Women’s Refugee Commission. “Forced from Home: the Lost Boys and Girls of Central America” Oct. 2012; and UNHCR “Children on the Run – Unaccompanied children leaving Central America and Mexico and the Need for International Protection.”

² FY2014 (Oct. 1, 2013 – Sept 30, 2014): U.S. Department of Homeland Security, U.S. Border Patrol, Juvenile and Adult apprehensions. <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children-2014>

³ FY2015 (Oct. 1, 2014 – June 30, 2015): U.S. Department of Homeland Security, U.S. Border Patrol, Juvenile and Adult apprehensions <http://www.cbp.gov/newsroom/stats/southwest-border-unaccompanied-children>. Mexico takes lead to stem migrant wave, departs more Central Americans than the United States, US News, June 18, 2015, available at; <http://www.usnews.com/news/world/articles/2015/06/18/mexico-deports-more-central-americans-than-the-united-states>.

⁴ Id.

⁵ Id.

⁶ United Nations Office on Drugs and Crime: <http://www.unodc.org/gsh/>

chance to obtain the humanitarian relief which our laws provide for. This would have endangered children,⁷ the safety of our communities, and further strain our local and federal law enforcement efforts to combat human trafficking and criminal activity. The TVPRA needs to be strengthened so that Mexican and Canadian children receive appropriate screening to ensure they are not being trafficked.

Family Detention:

In response to last year's influx of unaccompanied children and their families along the Southwest border, the administration elected to put thousands of young mothers and their children into family detention. This policy was intended, in part, to deter others from attempting to enter the United States, a rationale a federal court has found to be impermissible under federal law.⁸ In *RILR v. Johnson*, the court issued a preliminary injunction prohibiting DHS from "detaining class members for the purpose of deterring future immigration to the United States and from considering deterrence of such immigration as a factor in [its] custody determinations."⁹

Families seeking refuge should be treated humanely, not subjected to family detention. Family detention is inherently troubling – conditions present in family detention centers are detrimental to the mental health and physical well-being of women and children, especially to those that have been victims of violence and abuse in their home countries. Many of these mothers and children have legitimate asylum claims, yet lack adequate access to representation or reasonable bond.

In particular, ICE opened a large detention facility in Dilley, Texas which will eventually have 2,400 beds. According to President Obama's FY2016 budget, family detention beds will cost just under \$342 per bed per day.¹⁰ The Dilley facility alone could cost upwards of \$300 million every year. Alternatives to detention that cost a fraction of that amount – between 17 cents and \$17.00 per person per day – exist for these mothers and children, and are a superior option to those who pose no flight or public safety risk.

In recent months, DHS and ICE have taken steps to improve family detention, issuing guidance in May to increase oversight of family detention facilities and make improvements to existing facilities.¹¹ In June, DHS Secretary Jeh Johnson went further, announcing "substantial changes" to family detention practices, including offering reasonable bond to families who fear persecution in their home countries, conducting credible fear and reasonable fear interviews within an equitable timeframe and ensuring access to counsel.¹²

⁷ "In 2008 President Bush signed the Trafficking Victims Protection Reauthorization Act. The law provided legal and humanitarian protections to unaccompanied children crossing into the United States from countries outside of Mexico and Canada. The original intent was to prevent the death of young innocent lives. As Harris County Sheriff I agree with President Bush that protecting all innocent lives should be our concern, and that's why protecting all lives remains my No. 1 priority today. This is also why I have made fighting human trafficking a priority of mine, because we must be ever vigilant and mindful of the dangerous people who will exploit children for profit or to gain access to our country." Sheriff Adrian Garcia (Harris County, TX), BBB Press Release: Law Enforcement Leaders Respond to Situation at the Border. 6/17/2014. http://bbbimmigration.org/press/press_post/law-enforcement-leaders-respond-to-situation-at-border

⁸ https://www.aclu.org/sites/default/files/assets/rilr_advisory_final.pdf

⁹ https://www.aclu.org/sites/default/files/assets/order_0.pdf

¹⁰ <http://www.dhs.gov/dhs-budget>

¹¹ <http://www.ice.gov/news/releases/ice-announces-enhanced-oversight-family-residential-centers>

¹² http://www.nytimes.com/2015/06/25/us/us-to-reduce-long-stays-for-families-at-immigration-centers.html?_r=2

While these changes, if fully implemented, represent a step in the right direction, the National Immigration Forum continues to believe that family detention is inherently costly and unworkable and should ultimately be phased out in its entirety.

Conclusion

The federal government response to UAC this past year was troubling. Congress should take the lead in providing the affected agencies with needed funding and resources to address this situation humanely. However, in addressing these challenges, officials should not make the mistake of taking rash steps that threaten UAC and families. Promoting faster deportations above all other considerations, including rolling back crucial due process protections that protect at-risk refugees and asylees, is not the solution. A functioning immigration system should be one part of the long term solution to this problem. Structured properly, reform of the immigration system could lessen the number of UAC entering the U.S. illegally and could allow the authorities to determine, in a timely way, which of them are eligible to remain in the U.S. and which are not. In addition, immigration reform could provide protections to this particularly vulnerable population from organized crime and trafficking as well as allow law enforcement and border officials to focus on the true criminal and terrorist threats rather than expending excessive resources on UAC fleeing violence.