

Question#:	1
Topic:	TVPRA Compliance
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: We've heard much talk about children exploiting "loopholes" to enter and remain in the U.S. These so-called "loopholes" are actually the law of the land. The Trafficking Victims Protection Reauthorization Act of 2008 - which passed the Senate by unanimous consent - established procedures for vulnerable unaccompanied children arriving at our border. Far from exploiting these so-called "loopholes," unaccompanied children have instead been routinely denied the protections established pursuant to the TVPRA. A 2015 GAO study concluded that CBP agents failed to consistently screen unaccompanied children for trafficking indicators and fear of return, and neglected to document the rationales for decisions to repatriate children - all in contravention of the TVPRA.

Three years after this GAO study issued recommendations to improve compliance with the TVPRA, the CBP has still not implemented them. Why?

Response: The GAO issued the final report Unaccompanied Alien Children: Actions Needed to Ensure that Children Receive Required Care in DHS Custody in July 2015 (GAO-15-521). The report contained 13 recommendations, 12 of which were assigned to Department of Homeland Security (DHS) and its components. U.S. Customs and Border Protection (CBP) established a working group comprised of representatives from all of the operational components, as well as U.S. Immigration and Customs Enforcement (ICE), the DHS Blue Campaign, and the Department of Health and Human Services (HHS) to examine GAO's recommendations. Of the 12 DHS recommendations, six remain open, and CBP is responsible for five of those six recommendations. CBP continues to work towards implementing the recommendations issued in this report. In April 2018, GAO closed one recommendation pertaining to annual training and the remaining CBP recommendations have estimated completion dates of August 31, 2018 through December 21, 2018. The group continues to work to address the GAO's recommendations.

The Department of Homeland Security takes seriously its responsibility to protect unaccompanied alien children (UACs) from human smuggling, trafficking, and other criminal actions, while ensuring that our immigration laws are enforced. CBP works diligently to ensure that UACs are continuously, effectively, and appropriately screened. CBP uses the Form 93 screening tool to fulfill the statutory requirements for UAC screening. Of note, the Form 93 screening tool is currently under revision and expected to finalize by August 31, 2018.

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Question: Given the White House's intense interest in these so-called "loopholes," have you received any instructions from DHS leadership to postpone or in any way delay the implementation of these measures to improve your agency's compliance with the law?

Response: CBP has not received instruction from DHS leadership to postpone or delay the implementation of the GAO's recommendations.

Question#:	2
Topic:	Family Separation
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: DHS recently announced that it will implement a "zero tolerance" policy and refer 100 percent of adults illegally crossing the border for criminal prosecution - even if they arrive with children. This will establish a de facto family separation policy, forcibly breaking up families and sending children into the custody of the Department of Health and Human Services. DHS has thus far refused to make public its memo outlining this new "zero tolerance" policy.

Please provide any documents within your agency's possession memorializing the new "zero tolerance" policy to this Committee.

Please provide this Committee with any projections by your agency about the number of children expected to be separated from their families as a result of this new "zero tolerance" policy during the remainder of this fiscal year.

Response: On April 6, 2018, the Attorney General notified all U.S. Attorneys' Offices along the Southwest Border of a new "Zero-Tolerance Policy" for offenses under 8 U.S.C. § 1325(a), which prohibits both attempted illegal entry and illegal entry into the United States by an alien. The policy directed each U.S. Attorney's Office along the Southwest Border to prosecute all referrals of section 1325(a) violations, to the extent practicable. Subsequently, on May 4, 2018, the 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 for criminal prosecution. On May 5, 2018, the United States Border Patrol began to increase referrals for prosecution under the Attorney General's policy, including adults who entered illegally as part of a family unit.

Pursuant to the TVPRA and court orders, HHS' Office of Refugee Resettlement (ORR) provided care to separated minors whom DHS transferred to ORR's legal custody.

ZTP builds on an existing 2017 memorandum issued by DOJ, entitled "Renewed Commitment to Criminal Immigration Enforcement", and further implements the President's 2017 Executive Order 13767, "Border Security and Immigration Enforcement Improvements", which directs Executive departments and agencies to "deploy all lawful means to secure the Nation's southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly, consistently, and humanely."

Question#:	3
Topic:	Separated Children
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Amy Klobuchar
Committee:	JUDICIARY (SENATE)

Question: At Wednesday's hearing, you said that between May 6 and May 19 of this year, 658 children were referred for prosecution after the Administration implemented a new policy to refer all those who cross the border illegally to the Justice Department for prosecution. You also said that you did not have statistics on how many children had been separated from their parents this fiscal year at that time.

How many immigrant children have been separated from their parents this fiscal year, and what is the average age of those children?

Response: U.S. Border Patrol's (USBP) data shows that it has separated 848 family members (409 families) for Fiscal Year 2018 up to April 30. The data used to compile this figure was obtained through data calls to each Sector (Oct 1 – April 19) and through the system of record (April 19 –April 30). USBP does not have statistical information in a system of record to provide a more detailed answer for this specific question going back to April 11, 2017. USBP did not collect this data in its system of record until April 19th, 2018.

U.S. Border Patrol (USBP) is unable to provide a breakdown of ages for any timeframe. The data was manually provided from the field as it was not captured in a system of record until late April. Changes were made on April 19, 2018 to the records system to capture this data electronically. During implementation of the Zero Tolerance Policy, the USBP's data shows that it separated 2,706 family units from May 5, 2018 to June 20, 2018. Nationwide from April 19 thru May 23, USBP's data shows that 1273 juveniles were separated due to the adult being prosecuted. The average age of those children separated is approximately 11 years of age.

For May 24, 2018 forward, we will be able to break this data down if requested.

Question#:	4
Topic:	Screening for Trafficking I
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Amy Klobuchar
Committee:	JUDICIARY (SENATE)

Question: In the past few years, we have heard troubling reports about minors from other countries seeking to come to the United States who have fallen victim to human trafficking, and a 2015 Government Accountability Office (GAO) report noted inconsistencies in the screening of unaccompanied alien children by U.S. Customs and Border Protection (CBP) for indicators of human trafficking.

What has CBP done to improve its response in this area, so that officers can respond appropriately in cases involving potential trafficking victims?

Response: CBP takes seriously its responsibility to protect UACs from human smuggling, trafficking, and other criminal actions, while ensuring that our immigration laws are enforced. CBP works diligently to ensure that UACs are continuously, effectively, and appropriately screened. CBP uses the Form 93 screening tool to fulfill the statutory requirements for UAC screening. Of note, the Form 93 screening tool is currently under revision. This particular form is being modified or revised from its current state of (2) pages to more than (4) pages with many additional questions to ensure GAO concerns raised during their audit were captured and more importantly that every possible tool to identify a victim is utilized to assist in protecting all minors. In all instances where a severe form of trafficking is suspected, CBP contacts U.S. Immigration and Customs Enforcement Homeland Security Investigations.

CBP Officers and Border Patrol Agents receive training on the requirements of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), including on screening and identifying potential victims of human trafficking. CBP is continually refining its training materials.

Question#:	5
Topic:	Special Immigrant Juvenile Status
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Richard Blumenthal
Committee:	JUDICIARY (SENATE)

Question: Special Immigrant Juvenile status allows children under the age of 21 who have been abused, abandoned or neglected by one or both parents to obtain a green card. To get the status, applicants must first have a ruling from their state's juvenile court, finding that they have been abused, abandoned or neglected. A judge must declare the young person dependent on the court, or appoint a caretaker. The applicant then submits the judge's order to U.S. Citizenship and Immigration Services (USCIS). The Trump administration is reinterpreting the law to narrow it, stating that in cases where applicants are over 18 they no longer qualify, because family courts lack jurisdiction over people age 18 or older.

Why was the Special Immigrant Juvenile status law reinterpreted to exclude individuals between the ages of 18 and 21?

Response: USCIS has not reinterpreted the law. Children with a qualifying juvenile court order are eligible to petition for SIJ classification up to the age of 21, as specified in the regulations. In order for a child to have a qualifying juvenile court order sufficient for SIJ eligibility, the court must have the authority to make certain rulings about the care and custody of the petitioner as a juvenile under state law. This includes having the jurisdiction to determine whether the child can be reunified with his/her parent(s).

USCIS relies on immigration law to determine eligibility for SIJ classification, and the statute requires that a state court have competent jurisdiction to make a legal conclusion about returning a child to the custody of his or her parent in order for that court to find that reunification is not viable. Because most state courts do not have the authority to place a child in the custody of the child's parent once the child reaches the age of majority (as determined by the state and in most instances that is age 18), those state courts do not have competent jurisdiction to make the reunification finding for purposes of SIJ eligibility.

Question: What was the decision making process for this change? Please provide any documents memorializing the legal reasoning for the decision.

Response: In October 2016, USCIS issued the Policy Manual sections related to Special Immigrant Juveniles. The Policy Manual contains guidance clarifying the required juvenile court rulings on dependency or custody, non-viability of parental reunification, and best interests of the child. The Policy Manual also reaffirmed that these rulings must be made under state child welfare law, which requires competent jurisdiction under state

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law. USCIS centralized adjudication of all SIJ cases in the National Benefits Center (NBC) in November 2016 to more consistently and efficiently process these cases. The NBC requested legal advice related to certain pending cases filed by individuals 18 or older at the time their court orders were issued. In February 2018, the USCIS Office of the Chief Counsel provided legal advice on the statutory requirements for a qualifying juvenile court order for the purpose of SIJ eligibility, which include a sufficient ruling on the viability of reunification with one or both parents.

To establish eligibility for SIJ classification, the statute requires that a state court have the authority to make a legal conclusion about returning a child to the custody of his or her parent. Because most state courts do not have the authority to place a child in the custody of the child's parent once the child reaches the age of majority (as determined by the state and in most instances that is age 18), those state courts do not have competent jurisdiction to make the reunification finding for purposes of SIJ eligibility.

Question: What alternate process is the Administration providing those individuals Congress explicitly protected by statute?

Response: USCIS is committed to its role in protecting vulnerable populations who are eligible to receive immigration benefits under U.S. immigration law, such as those that meet all of the requirements to be classified as an SIJ. Children who seek SIJ classification may also apply for any other immigration benefits that they are eligible for.

Question#:	6
Topic:	Least Restrictive Setting
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Richard Blumenthal
Committee:	JUDICIARY (SENATE)

Question: Due to prolonged stays in Office of Refugee Resettlement (ORR) custody, many children now turn 18 while waiting to be reunified with a family member or a sponsor. The Trafficking Victims Protection Reauthorization Act of 2013 (TVPRA) states that, when unaccompanied immigrant children in ORR custody turn 18, ICE "shall consider placement in the least restrictive setting available after taking into account the individual's danger to self, danger to the community, and risk of flight." Instead of automatically placing teenagers in adult detention facilities, Congress mandated that ORR and ICE consider alternatives, such as placement with sponsors or supervised group homes. Media reports and court documents indicate that the Administration is not complying with the TVPRA's "least restrictive setting" requirement.

How many teenagers are currently held in adult detention facilities?

What steps are DHS and HHS taking to comply with the TVPRA and place minors who have turned 18 in the "least restrictive setting available?"

Response: Under a 2013 amendment to the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), when ICE takes custody of an unaccompanied alien child who reaches the age of 18 while in the custody of ORR, ICE considers placement in the least restrictive setting available after taking into account the alien's danger to self, danger to the community, and risk of flight. *See* 8 U.S.C. § 1232(c)(2)(B).

This provision was added in the 2013 reauthorization of the Violence Against Women Act (VAWA). Specifically, Section 1261 of VAWA includes language pertaining to minors who reach the age of 18 while in the custody of the ORR. When these "age-outs" are transferred back to ICE custody, ICE is to consider placement in the least restrictive setting based on the circumstances of each individual "age-out" case, after taking into account the alien's danger to self, danger to the community, and risk of flight.

When making custody determinations in these cases, ICE considers the least restrictive setting available as well as other traditional detention factors, including identity documents or lack thereof, special vulnerabilities, prior immigration history, suspected gang affiliation, risk to public safety, flight risk, ties to the community, and ORR behavioral reports.

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In light of ongoing litigation, ICE is unable to provide the requested data on the number of teenagers currently held in adult detention facilities.

Question#:	7
Topic:	Family Reunification I
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: Appropriators have already expressed concern over family separation at the border and the procedures in place to reunite separated family members. Despite this, we continue to hear reports and stories in which separated family members are unable to locate one another, contact one another, or reunite with one another. There are even many cases in which very young children are unable to be reunified with their parents for removal. This is of particular concern given that the vast majority of individuals in immigration detention are unrepresented by legal counsel.

What policies and procedures are in place to ensure that U.S. Marshals and DHS coordinate with ORR and cooperate to locate separated family members, facilitate communication between them, and reunite them whether in the US or at the time of removal?

Response: In the event the parent or legal guardian is in U.S. Immigration and Customs Enforcement (ICE) custody and the child(ren) in U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) custody, the two agencies work together to establish multiple options for communication between the parent/guardian and the child. ICE Enforcement and Removal Operations (ERO) officers and ORR staff and contractors will work to schedule communications via telephone, Skype, or FaceTime. ICE ERO has created posters, in multiple languages, that explain to a parent/guardian how to request an opportunity to communicate with his or her child. ICE ERO officers in adult detention facilities, working with the ICE ERO Field Office juvenile coordinators, identify the HHS facility where the child is housed and coordinate with HHS on possible times for the parent/guardian to communicate with the child. Whenever possible, communication is conducted via video, but at a minimum is conducted telephonically.

Further, ICE and HHS are continuing to coordinate reunifications of parents with minor.

ICE and HHS are continuing to comply with all court order and reunifications plans in the *Ms. L.* case.

Question: Furthermore, what policies and procedures are in place to document instances in which families are separated in CBP custody and the reason for the separation? Is this information always included in processing forms/uploaded to internal databases and is it always passed on to ICE and ORR?

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Response: The Homeland Security Act of 2002 defines an unaccompanied alien child (UAC) as a child who has no lawful immigration status, has not attained 18 years of age, and with respect to whom there is no parent or legal guardian in the United States or no parent or legal guardian in the United States is available to provide care and physical custody. Consistent with this statute, minors who are accompanied by an adult relative who is not their parent or legal guardian, are processed as UAC and transferred to the care and custody of ORR under the Trafficking Victims Protection Reauthorization Act. A family unit is defined as a parent or legal guardian along with accompanying minors and the decision to separate is made on a case-by-case basis. U.S. Border Patrol (USBP) agents review all available information to determine the validity of a claimed familial relationship. This includes reviewing any documentation that is provided by the alien such as birth certificates, passports, and any other verifiably legitimate documents that are presented during processing.

U.S. Customs and Border Protection's (CBP) (USBP) and ICE are responsible for the majority of referrals of UACs to ORR. ORR maintains information on UAC in its UAC Portal. The USBP record database is able to push referral information on UAC directly into the UAC Portal's referral page. ICE also has access to the UAC Portal referral page and directly enters UAC information into the system.

In the summer of 2018, ORR added a checkbox to the UAC Portal's referral page to indicate whether a child has been separated from family. The referral page also has a "notes" section where USBP and ICE can type in the name and other information of the separated family member, including their alien number. Additionally, USBP and ICE can enter this information into the parent/relative information section of the referral.

In all instances, it remains that CBP strives to ensure the safety and welfare of any child an agent or officer may encounter, which may result in the separation of an adult from a child.

Question: How does the government ensure communication between family members to ensure documents and other evidence needed for their legal case is available?

Response: USBP policy and procedure requires that familial information, including the alien registration or "A number" of family members, is entered on the I-213 form that follows each individual through their immigration proceedings. At the time of apprehension both parent and child are served with charging documents, which are documents needed for their legal case. The parent receives a copy of their child(ren)'s charging document. For minors under the age of 14, the parent or legal guardian serves

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as their conservator or signatory. Once the charging documents are served, the parent or legal guardian is provided with copies of both charging documents, the child also receives a copy of his or hers.

Question#:	8
Topic:	Form 93 Update
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: Appearing before the HSGAC Permanent Subcommittee on Investigations on April 26, DHS Acting Under Secretary for Office of Strategy, Policy, and Plans James McCament testified that:

CBP uses Form 93, a trafficking screening form for UACs, to screen children apprehended with their parents for trafficking concerns; and

CBP's timeframe for making determinations on whether to separate children from parents is 72 hours, in accordance with the TVPRA. However, in 2015 the GAO found that CBP failed to adequately and effectively screen unaccompanied children for trafficking indicators, fear of return, and ability to make independent decisions. Moreover, CBP failed to adequately track whether agents were completing the existing training on the screening and processing of UACs. The GAO recommended that CBP revise its training materials and Form 93 screening guidance to ensure the adequate screening of UACs for trafficking, capacity, and asylum concerns. Nearly three years later, CBP has still not updated these materials, much less implemented them, with the current projected finalization being the end of June 2018.

Given its failed track record on screening and processing children, how can we expect CBP rely on Form 93 to effectively screen children who came with their parents or other family members for trafficking concerns?

Response: The Department of Homeland Security takes seriously its responsibility to protect alien children from human smuggling, trafficking, and other criminal actions, while ensuring that our immigration laws are enforced. CBP works diligently to ensure that UACs are continuously, effectively, and appropriately screened. CBP uses the Form 93 screening tool to fulfill the statutory requirements for UAC screening. Of note, the Form 93 screening tool is currently under revision and expected to finalize by August 31, 2018.

Question: Does CBP track the use of Form 93 in every case of family separation? (In other words, if CBP claims it is separating families to combat trafficking or smuggling, it's not clear that its existing policies and procedures--and failure to follow them-- are the answer.)

Response: Form 93 is a tool which provides a mechanism for officers and agents to consistently and thoroughly screen UACs. This tool contains sections relating to the

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UAC's fear of return to their country of nationality or last habitual residence, as well as indicators of human trafficking. Form 93 is associated with an alien's record and maintained in the electronic, e3 system. Additionally, for UACs who are nationals or habitual residents of a contiguous country, it also addresses each UAC's ability to make an independent decision to withdraw his or her application for admission. Currently, the form is used to screen every UAC, regardless of how he/she was originally encountered by CBP.

Question: How has training of agents and officers been modified to improve screening?

Response: The Border Patrol Academy and the Field Office Academy provide introductory training on the Form 93. As the Form 93 is associated with the Sigma and e3 tracking systems, CBP Officers and Border Patrol Agents are consistently familiarized with this screening tool. Further training and updates are provided to agents in the field on an on-going basis. For example, additional guidance will be distributed with the finalizing of the updated Form 93. Further, protocol and practices associated with Form 93 are included in various DHS Performance and Learning Management System (PALMS), online training providing constant exposure to agents and officers.

CBP Officers and Border Patrol Agents receive annual training on the requirements of the TVPRA, including on screening and identifying potential victims of human trafficking. CBP is continually refining its training materials, and is currently updating CBP Form 93, UAC Screening Addendum and expected to finalize by August 31, 2018.

Question#:	9
Topic:	Unaccompanied Children
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: Deputy Under Secretary McCament appears to have referred to TVPRA Sec. 235(b)(3), which requires DHS to transfer custody of an unaccompanied child to ORR within 72 hours after the child is determined to be unaccompanied.

At what point does DHS consider that a child they separate from her parent becomes unaccompanied?

Response: DHS considers an alien child to be unaccompanied if the child meets the definition of “unaccompanied alien child” (UAC) found in 6 U.S.C. § 279(g). A UAC is a child who has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom there is no parent or legal guardian in the United States, or no parent or legal guardian in the United States available to provide care and physical custody. If a parent or legal guardian is no longer available to provide care for the minor because of a separation, the minor becomes an unaccompanied alien child.

Question: Does DHS consider the child to be unaccompanied as soon as an agency official identifies any questions as to the family relationship or trafficking indicia?

Response: A child is considered an unaccompanied alien child when there is no parent or legal guardian available to care for the child. Usually this occurs at the moment of separation from his or her parent or legal guardian regardless of the rationale for the separation.

Question: Does DHS consider the child to be unaccompanied until such questions are resolved?

Response: From the point when the decision to separate is implemented, a child is considered an unaccompanied alien child until he or she is released to or reunited with a parent or legal guardian who is able to provide care and physical custody, turns 18 years old, or acquires legal status.

Question: When does the 72-hour statutory period begin running?

Response: The Department of Homeland Security is required to transfer unaccompanied alien children to the Department of Health and Human Services within 72 hours of identifying the minor as an unaccompanied alien child. Once, meaning that once U.S.

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Customs and Border Protection or ICE identifies a minor as an unaccompanied alien child, the 72-hour timeframe begins.

Question#:	10
Topic:	Screening for Trafficking II
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: In 2015 the GAO found that CBP failed to adequately and effectively screen unaccompanied children for trafficking indicators, fear of return, and ability to make independent decisions. Moreover, CBP failed to adequately track whether agents were completing the existing training on the screening and processing of UACs. The GAO recommended that CBP revise its training materials and Form 93 screening guidance to ensure the adequate screening of UACs for trafficking, capacity, and asylum concerns. Nearly three years later, CBP has still not updated these materials, much less implemented them, with the current projected finalization being the end of June 2018.

How does DHS account for this failure to fulfill the most basic requirements of the anti-trafficking and child protection mechanisms in our law?

Response: CBP takes seriously its responsibility to protect UACs from human smuggling, trafficking, and other criminal actions, while ensuring that our immigration laws are enforced. CBP works diligently to ensure that UACs are continuously, effectively, and appropriately screened. CBP uses the Form 93 screening tool to fulfill the statutory requirements for UAC screening. Of note, the Form 93 screening tool is currently under revision and expected to finalize by August 31, 2018. In all instances where a severe form of trafficking is suspected, CBP contacts U.S. Immigration and Customs Enforcement Homeland Security Investigations.

CBP Officers and Border Patrol Agents receive training on the requirements of the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), including on screening and identifying potential victims of human trafficking. CBP is continually refining its training materials, and is currently updating the CBP Form 93, UAC Screening Addendum.

Question: How does the Department expect it could adequately perform such minimal screenings for all children when it can't fulfill these minimal protections for children from contiguous countries?

Response: The Department complies with all TVPRA requirements. Specifically, CBP uses the Form 93 screening tool to fulfill the statutory requirements for UAC screening.

Question#:	11
Topic:	Appearing for Court
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: In recent months DHS has proffered wildly variable statistics on unaccompanied children who do not appear in immigration court. On January 16, Secretary Nielsen claimed that 90% of unaccompanied children do not show up for court. Only a month later on February 15, DHS claimed in a press release that 66% of unaccompanied children fail to appear for court. In either case, it appears that DHS isolates a subset of the overall data--those cases that resulted in a removal order--a misleading characterization, given the reality that with significant court backlogs many unaccompanied children's cases remain pending.

Moreover, this mischaracterization elides the critical importance of legal counsel for children, as data shows that more 95% of unaccompanied children with legal representation show up for court and, more importantly, that children are five times more likely to gain protection when they're represented. This is evidence recognized by the GAO, which recently acknowledged in a Senate hearing that studies show representation helps immigrants move through the process more efficiently. The GAO's acknowledgement is just the latest in a long line of government studies and analyses confirming the critical efficiencies that access to legal counsel and information provides.

Please describe your methodology for arriving at the 90% figure. How do you account for the vast statistical disparity between the Secretary's testimony and your agency's press release?

Response: DHS defers to EOIR regarding the percentage of UAC who fail to show up for immigration court hearings. Further, DHS does not detain UAC beyond the 72 hours (absent exceptional circumstances) specified in the Trafficking Victims Protection Reauthorization Act of 2008. For this reason, DHS defers to the Department of Health and Human Services Office of Refugee Resettlement and EOIR to address concerns related to provision of counsel.

Question#:	12
Topic:	Family Reunification II
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: There is a Catch-22 element to the "zero tolerance" policy. The Administration intends to prosecute people for "illegal entry", which is often the way refugees present themselves when seeking asylum. Many cannot make it to a Port of Entry and have to cross the border at the nearest point in order to surrender to the Border Patrol. If they are then charged with a crime, it makes it impossible for them to get asylum and they are separated from their families. Parents seeking asylum do not set out on a dangerous journey of hundreds of miles with their children with no certainty of refuge if there is not a serious threat at home. I find this policy inhumane, and I'd like to know more about the specifics of what has been going on even without its having taken effect for long.

How many families since Apr. 11, 2017, when the AG announced his recommitment to border prosecutions, have been separated due to the mother, father, or other family member being prosecuted?

Response: U.S. Border Patrol (USBP) data shows that it separated 848 family members (409 families) in Fiscal Year 2018 up to April 30, 2018. The data used to compile this figure was through data calls to each Sector (October 1 – April 19, 2018) and through the system of record (April 19 – April 30, 2018). USBP does not have statistical information in a system of record to break it down for this specific question going back to April 11, 2017. USBP did not collect this data in its system of record until April 19, 2018.

An alien who enters the United States illegally without inspection, admission, or parole is inadmissible, regardless of whether the alien has also been criminally prosecuted for illegal entry pursuant to 8 U.S.C. § 1325. *See* Immigration and Nationality Act (INA or Act) § 212(a)(6)(A)(i). However, unlawful entry, even if it results in a conviction, does not bar an alien from seeking asylum, withholding of removal under the INA, or protection under the regulations implementing the Convention Against Torture (CAT). *See* INA § 208(b)(2) (describing bars, including certain criminal offenses, to asylum); INA § 241(b)(3) (describing bars to withholding of removal under the Act); 8 C.F.R. § 1208.16(b)(2) (describing bars to withholding of removal under the CAT). Even aliens subject to bars to other forms of prosecution may seek CAT deferral. 8 C.F.R. § 1208.17(a).

In contrast, aliens who have been previously removed and later reenter the country illegally are subject to having their prior removal order reinstated, regardless of whether they are also criminally prosecuted for illegal reentry under 8 U.S.C. § 1326. INA § 241(a)(5). However, if such an alien expresses a fear of return to the country designated

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Topic:	Family Reunification II
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in the reinstated order of removal, the alien is immediately referred to an asylum officer for an interview to determine whether the alien has a reasonable fear of persecution or torture. 8 C.F.R. § 1241.8(e). If the asylum officer determines that a reasonable fear of persecution or torture exists, the alien may seek withholding of removal under the Act or CAT protection before an immigration judge. *See* INA § 241(b)(3)(A); 8 C.F.R. § 1208.31(c), (e). Even if the asylum officer finds that no reasonable fear of persecution or torture exists, the alien may seek review of this finding before the Immigration Judge. 8 C.F.R. § 1208.31(f). If the Immigration Judge finds that a reasonable fear exists, the alien may apply for withholding of removal under the Act or CAT protection before the immigration judge. 8 C.F.R. § 1208.31(g)(2). If the immigration judge concurs with the asylum officer’s negative reasonable fear finding, then the case is returned to the Department of Homeland Security for removal. 8 C.F.R. § 1208.31(g)(1).

From April 19, 2018 to May 23, 2018, USBP data shows that 1,273 juveniles were separated as a result of their accompanied adult family member being prosecuted.

Question: How many have since been reunited?

Response: Reunifications are occurring in close coordination with the Department of Health and Human Services (HHS) to facilitate reunification with minor children to ensure compliance with the *Ms. L. v. ICE* ruling, and are reported regularly in the Ms. L vs. ICE Joint Status Report.

Question: How are the agencies working together to ensure separated family members maintain communication, especially to ensure separated children have the information and documents they need to prove their claim for immigration relief?

Response: USBP policy and procedure requires that familial information, including the alien registration number, or “A number,” of family members is entered, on the I-213 form that follows each individual through their immigration proceedings. At the time of apprehension both parent and child(ren) are served with charging documents, which are documents needed for their legal case. For minors under the age of 14, the parent or legal guardian serves as their conservator or signatory. Once the charging documents are served, the parent or legal guardian is provided with copies of their own, as well as the child(ren)’s charging documents and the child also receives a copy of his/hers.

In the event the parent or legal guardian is in U.S. Immigration and Customs Enforcement (ICE) custody and the child(ren) in Department of Health and Human Services Office of Refugee Resettlement (ORR) custody, the two agencies work together

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to establish multiple avenues for communication between the parent/guardian and the child. ICE Enforcement and Removal Operations (ERO) has created posters in multiple languages that explain to a parent/guardian how to request an opportunity to communicate with his or her child. These posters are placed in easily visible areas in ICE ERO's adult detention facilities. ICE ERO officers coordinate with HHS ORR staff and contractors to facilitate communications between parent and child. Whenever possible, communication is conducted via video call (i.e., Skype or FaceTime) but at a minimum, is conducted telephonically.

Question#:	13
Topic:	Parental Relationship
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: DHS officials have asserted that these families have been separated to protect the interests of minor children because CBP is unable to ascertain the parental relationship or otherwise believe that the child is in imminent danger.

Please describe how DHS investigates the veracity of a parent-child relationship.

Response: USBP agents and CBP officers review all available information in order to determine the validity of a claimed familial relationship. This may include reviewing any documentation that is provided by the alien such as birth certificates, passports, and any other verifiably legitimate documents that are presented during processing. Additionally, agents and officers look for any evidence indicating a fraudulent claim of familial relationship.

Question: What time benchmarks or other accountability measures do you use to make sure that children do not languish in ORR custody while DHS fails to take steps to confirm the parent-child relationship, as happened in the case of the Congolese mother and her 7-year-old daughter for months?

Response: Once a child is placed in ORR custody, the responsibility to confirm any parent-child relationship is with ORR so DHS defers to the Department of Health and Human Services for further information.

Question#:	14
Topic:	Change of Interpretation
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: Is the Administration considering taking steps to arrow the interpretation of "unaccompanied alien child" as defined by the Homeland Security Act of 2002?

Wouldn't a change undermine Congress' intent as expressed in the TVPRA and the Homeland Security Act?

Response: CBP is unaware of any intent to change the definition of unaccompanied alien child within the Homeland Security Act of 2002.

Question#:	15
Topic:	Zero Tolerance
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: The Trump Administration has been very aggressive in using the separation of families as a scare tactic, designed to deter immigration from Central America, where children are being targeted by gangs and sex traffickers. With the new "zero tolerance" policy, this can only get worse. Already this fiscal year, according to the New York Times, more than 700 children have been separated from their parents, including more than 100 under the age of four.

If parents in the families that are separated at the border are criminally prosecuted and convicted, won't the children be held in ORR custody indefinitely?

Response: The adults who are criminally charged for crimes unrelated to immigration violations are sent to federal court under U.S. Marshals Service custody. In such cases, minors that were traveling with the charged adult are transferred to ORR custody. USMS places the adult in approved detention centers during the course of the criminal process where, if they are convicted, they complete their sentence. In general, the adult is transferred back to ICE custody for appropriate immigration processing once any sentence has been completed.

In these cases, the adult is not a class member in *Ms. L v. ICE*. The minor child is a UAC who ICE transfers to the custody of ORR. Reunification and removal of the minor and the confirmed, adult parent can only occur when the parent elects to take the child with them. In some instances, a parent may not wish to be removed with their child if they feel it is in the best interest of the child to stay in the U.S. and pursue an independent application for relief or protection.

On June 20, 2018, President Trump issued an Executive Order (EO), *Affording Congress an Opportunity to Address Family Separation*. In this EO, the President directed the DHS Secretary to maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings involving their members, and ordered that the executive departments shall make available, for the housing and care of alien families pending court proceedings for improper entry. In doing so, the President noted that it is the Administration's policy to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources.

On June 26, 2018, the U.S. District Court hearing the case of *Ms. L v. ICE*, No. 18-cv-0428 (S.D. Cal. filed Feb. 26, 2018), ordered the government to reunify all parents separated from their children at the border within a court directed timeframe. DHS and

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HHS successfully reunified all eligible parents and their children aged four and under in accordance with this court order. Other reunifications are in progress.

Question: What instruction has been given to the CBP and ICE agents and officers on how to process families apprehended and/or separated at the border?

Response: Existing statutes, protocols, and court orders address how to process families, and outline the procedures to follow in the event that a family is separated for any reason. If the child is determined to be a UAC at the time of apprehension, DHS coordinates with ORR to ensure that they take custody of the child. When the initiative was announced, CBP agents were only directed to increase prosecution-referrals to the Justice Department.

Question: What sort of training is provided to agents and officers on how to conduct separations?

Response: CBP and ICE agents do not receive formal and dedicated training on this specific topic, but they routinely face scenarios where separations occur and have done so for many years. CBP and ICE agents and officers are aware that alien children may be separated from an adult with whom they are traveling at the time of apprehension when, for instance, DHS is unable to determine the familial relationship, when DHS determines that a child may be at risk with the adult, or when the adult is transferred to a criminal detention setting due to criminal charges.

Question#:	16
Topic:	Interview Children
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: CBP has acknowledged that one main indicator CBP uses when deciding to separate a family is based on interviews with children.

Is a child welfare professional present when the CBP officer is conducting such questioning?

Response: No. Through experience and by observing the conduct of the individuals, USBP agents and CBP officers learn the indicators of deceptive behavior; if deceptive behavior is detected, a more thorough interview is necessary to determine a possible trafficking or false-claim-of-a-relative situation. Agents and officers are trained to question children in an age-appropriate manner. Agents and officers utilize observational techniques and observe the interaction between the adult and children to assess whether a relationship is bona-fide.

Question: Is there a training guide or protocol that CBP officers use to interview children coming across the border to determine whether the parent/child relationship is bona-fide?

Response: There is no training guide specific to interviewing children; however, both USBP agents and CBP Officers receive extensive training on appropriate questioning and interviewing techniques that can be applied to a variety of situations and individuals.

Question: Are children of all ages questioned about family ties to the individual they enter the US with?

Response: Yes, USBP agents, through experience and on the job training question all minors to help determine true family relationships. This includes a review of all physical evidence as well.

Children are questioned in an age-appropriate manner to elicit responses to assist CBP officers in determining their admissibility to the United States. In addition, CBP officers are trained in observational techniques and observe the interaction between the adult and children to determine whether the relationship is bona-fide.

Question#:	17
Topic:	Child Trafficking Victims
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: CBP has been criticized by the United Nations High Commission on Refugees and the GAO over its inability to identify child trafficking victims. Has the agency revamped its screening tools or trainings to improve detection?

Response: The Department complies with all TVPRA requirements. CBP officers and USBP agents receive training on the requirements of the TVPRA, including on screening and identifying potential victims of human trafficking. CBP is continually refining its training materials, and is currently updating CBP Form 93, UAC Screening Addendum.

Question#:	18
Topic:	Databases Used
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	JUDICIARY (SENATE)

Question: Against what databases or sources of data do you pull intelligence to determine who amongst the UAC population have criminal charges or are gang-affiliated?

Response: In general, USBP collects biometric data on subjects 14 years of age or older. The biometrics are searched against three authoritative databases: Automated Biometric Identification System (IDENT); Next Generation Identification (NGI); and Automated Biometric Identification System (ABIS).

Federated Person Query 2 (FPQ2) - allows for the simultaneous biographic search of multiple systems for information on subjects apprehended, then aggregates the results that are received from those resources for presentation to the user.

Question: How do you determine affiliation? What sources of information do you pull from?

Response: Attempts are made to determine affiliation through criminal history and through various methods such as:

- Self-admission through interviews and other sources
- Previous criminal history in the United States
- Indicators linked to possible gang affiliation, such as gang tattoos and clothing patterns

Question#:	19
Topic:	Immigration System
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	JUDICIARY (SENATE)

Question: Is it fair to assume that smugglers and traffickers know how our system work? By that I mean, is it common knowledge to them that if they bring minors to our border, that Border Patrol will apprehend them, ICE will transport them and turn them over to HHS, and then HHS will reunify them with parents who are here illegally or with sponsors who have not been properly vetted?

Response: Yes, much of this information, as well as the dangerous risks of illegal border crossings, is publicly available. However, HHS states that it does not in fact unite children with sponsors who have not been properly vetted.

Question#:	20
Topic:	UAC Parents
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	JUDICIARY (SENATE)

Question: If a parent, who is here in the US illegally, pays smugglers or traffickers, to bring their kids to the US to join them, is that child considered “unaccompanied”? What happens to the parents?

Response: The Department of Homeland Security (DHS) may consider children who attempt to cross the border without a parent or guardian to be unaccompanied, even if it turns out that they have a parent in the United States. In those instances, the parent is usually unidentified or unavailable at the time of apprehension.

Regardless of the desires for family reunification or conditions in other countries, the smuggling of children is illegal and dangerous. Thus, DHS ensures the proper enforcement of our immigration laws against those who — directly or indirectly — facilitate the smuggling or trafficking of any children into the United States. In certain cases, this includes placing sponsors who are removable aliens into removal proceedings or referring them for criminal prosecution, as appropriate.

Question#:	21
Topic:	Operational Challenges
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	JUDICIARY (SENATE)

Question: What are your agency's biggest operational challenges when trying to prevent human trafficking across our borders?

Response: The ability to detect and identify illicit cross-border activity is one of the USBP's mission elements that must be met for border security efforts to be successful. The prevention of cross border traffic is deeply rooted in the master capability impedance and denial section of the USBP operational control doctrine.

USBP mobility into, within, and through the border environment is often difficult and challenging due to the rugged terrain encountered along the border regions. The northern and southern borders contain some of the most rugged areas in the United States, challenging USBP's ability to identify and mitigate illicit border activity in a timely manner. This is further compounded in areas where agents do not have immediate access to the border environment due to lack of roads. When roads are present, they are often minimally maintained due to a lack of funding or access. Access and mobility together comprise another section of master capabilities needed for operational control.

This lack of access to the U.S. border areas limits USBP's ability to prevent narcotics smuggling, illegal entries, and human trafficking. Currently, the USBP lacks access to many areas of both the northern and southern borders that are controlled by Federal agencies, Native American nations, and private landowners. Lack of access roads, and lack of access to several of these border areas, inhibits USBP daily operations and minimizes USBP's ability to gain situational awareness.

For clarification, human trafficking and human smuggling are distinctly different criminal activities. Human trafficking is exploitation based, requiring no border crossing or transportation, and involves the use of force, fraud, and coercion (except for victims under the age of 18 who are involved in commercial sex,) to compel an individual into forced labor or commercial sex. Conversely, human smuggling is the facilitation and transportation of people into the United States by deliberately evading U.S. immigration laws. This offense includes bringing aliens into the U.S. and unlawfully transporting and/or harboring aliens already present. Human smuggling can transition and develop into human trafficking once force, fraud, or coercion are introduced into the scheme to induce participation in forced labor or commercial sex. Therefore, with the reference to "across our borders," we understand the question to mean what are the biggest operational challenges when trying to prevent human smuggling across our borders.

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Topic:	Operational Challenges
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	JUDICIARY (SENATE)

Unaccompanied alien children (UAC) are vulnerable to any number of physical and criminal dangers on their journey to the United States. This can include exploitation by human smugglers, human traffickers and gangs, such as MS-13. Thus, many of the operational challenges facing the United States regarding human smuggling center on UAC. One of DHS's biggest operational challenges in trying to prevent human smuggling is related to the legal loopholes created by the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) regarding UAC. This legislation limits the Department's ability to promptly return some UAC who have been apprehended at the border.

Question: How can Congress help?

Response: As the U.S. Congress continues to support our national security efforts, the USBP would look for assistance in minimizing these access limitations through Congressional language allowing greater border access, and funding to investments in impedance and denial systems—particularly man-made infrastructures such as a physical wall, and the complementary deployment of personnel, roads, and technology—that will help U.S. Customs and Border Protection obtain operational control of the border.

Under the TVPRA, UAC who are from non-contiguous countries (i.e., countries other than Mexico and Canada), are exempt from prompt return to their home country. In cases where UAC cannot be returned immediately, and for all UACs from non-contiguous countries DHS places them in removal proceedings pursuant to section 240 of the Immigration and Nationality Act (INA). Children from Canada and Mexico must be screened for trafficking indicators by CBP and may be permitted to withdraw their admission into the United States if no indicators exist and the child does not have a fear of returning, and is capable of making an independent decision to withdraw their application for admission. This permits their prompt return to their country of origin. Congress could amend the TVPRA so that all UACs who are not victims of human trafficking can be safely and promptly returned to their home countries, regardless of country of origin. Congress could also amend the TVPRA to limit the period to file asylum claims for UACs to one year and limit jurisdiction to immigration courts. A one-year filing deadline would be consistent with other applicants for asylum. Currently, United States Citizenship and Immigration Services has initial jurisdiction over all UAC asylum applications. Finally Congress could ensure that Special Immigrant Juvenile (SIJ) visas require the applicant to meet the statutory definition of UAC at the time the application is filed. Currently, the law permits a minor who resides with a parent to qualify for this visa. Amending SIJ status to require the applicant prove reunification with *each* parent is not viable due to abuse, neglect, or abandonment is necessary, as many

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minors can obtain status through an SIJ visa even though they were smuggled across the border to reunify with one parent who is present and now providing care for them in the United States. Additionally, regulations are silent as to what age the individual must be at the time the requisite state court dependency order is issued. While some states require applicants to be under 18 years old to obtain a dependency order, other states permit *adults* between the ages of 18 to 21 to obtain dependency orders. Congress could amend SIJ visa availability to individuals who obtain a dependency order before they reach 18 years old.

Another operational challenge is the *Flores* Settlement Agreement (FSA) as it encourages parents to send their children on the dangerous journey north, often at the hands of human smugglers or adult strangers so they can pose as families and be released from immigration custody after crossing the border. Once in the United States, these children may then be exploited through forced labor or commercial sex, which are both forms of human trafficking. In 1997, the former Immigration and Naturalization Service entered into the FSA relating to the detention and release of minors. The FSA has now been litigated for more than twenty years, spawning multiple onerous court decisions that severely limit the government’s ability to detain and promptly remove minors and family units. In many cases, DHS can only detain accompanied minors for approximately 20 days before releasing them and their accompanying family member into the interior of the United States. Similarly, the TVPRA requires that DHS transfer any UAC to HHS within 72 hours of determining that the UAC is unaccompanied; HHS then places the UAC in foster or shelter situations until HHS locates a suitable sponsor. When these minors and UAC are released by DHS and HHS, they often fail to appear for court hearings or comply with removal orders. Historical data from EOIR indicates that a majority of final orders of removal are issued to minors in absentia.

Legal loopholes, such as the TVPRA and FSA, act as “pull factors” for illegal immigration, allowing transnational criminal organizations to flourish, and UAC to be exploited by human traffickers, and vulnerable to recruitment by violent gangs, like MS-13. Closing these loopholes could reduce the number of UACs enduring the risk of being smuggled to the United States. Due to the operational challenges posed by the FSA, DHS would support legislation from Congress that terminates the FSA, which currently limits ICE’s ability to detain family units together for more than 20 days.

Question#:	22
Topic:	Workload Increase
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	JUDICIARY (SENATE)

Question: What more can you tell us about your respective increases in workload?

Response: As new policy and direction is given regarding the processing of subjects entering the United States, USBP agents and CBP officers need to adjust accordingly. As adjustments to processing requirements are made, the time needed to process each individual also adjusts. Shifts in demographics of individuals apprehended or encountered by CBP may require agents and officers to be diverted from their primary duties of border security also increases.

In regard to CBP's increased workload, from October 2017 through May 2018, CBP apprehended and processed 38,691 UAC. In FY2017, during this same period, CBP apprehended and processed 36,616 UAC.

Question: How can Congress help?

Response: As the U.S. Congress continues to support our national security efforts, the USBP would look for assistance in minimizing these access limitations through Congressional language allowing greater border access, and funding to maintain current roads utilized within the border environment.

In Fiscal Year (FY) 2014, an unprecedented surge of families and UACs from Central America entered the United States along the Southwest Border. The clear majority of UAC encountered along the Southwest Border come from the Northern Triangle countries of El Salvador, Honduras, and Guatemala. Among the reasons for this increase are push and pull factors, including violence in these countries (i.e., violent street gangs and drug cartels); better economic and educational opportunities in the United States; the desire to be with family members who were already present in the United States; and the knowledge that they are able to exploit the loopholes in our immigration laws and be released into our communities.

This surge of families and UAC coming across the United States and the loopholes within the U.S. immigration system have caused an increased workload for ICE. These loopholes create pull factors that invite more illegal immigration and prevent the lawful and expeditious removal of aliens once they are in the United States. Similarly, due to the surge, there may be times when ICE lacks the detention capacity to detain recent illegal border crossers. Additional detention resources and staff, along with staff needed to remove the aliens, may be needed to handle the increase in apprehensions.

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Committee:	JUDICIARY (SENATE)

Current loopholes in the U.S. immigration system create a strong “pull factor” for aliens to attempt to cross the border illegally. Thus, Congress can help by closing these loopholes through amending the Trafficking Victims Protection Reauthorization Act of 2008 to ensure that all UACs are treated the same regardless of their country of origin; ensuring that Special Immigrant Juvenile status is available only to those minors for whom reunification with both parents is not viable due to abuse, neglect, or abandonment; and terminating the *Flores* Settlement Agreement, which limits ICE’s ability to detain removable families. Further, the 2001 Supreme Court ruling in *Zadvydas v. Davis* significantly restricts DHS from detaining aliens with final orders of removal, including serious felony offenders, if their home countries won’t take them back. It is crucial for DHS to continue working with Congress to eliminate the loopholes that resulted from the *Zadvydas* court decision. Overall, DHS will not be able to close such loopholes without the support of improved legislation, expanded detention space, and increased financial support. Additionally, HSI has been targeting transnational criminal gangs like MS-13 since the inception of ICE, and even longer through our legacy agencies.

As of May 3, 2018, HSI had 135 open criminal investigations targeting MS-13 leaders, members, associates, and their global criminal network. In FY 2017, HSI initiated approximately 26 percent more MS-13 investigations than in FY 2016. In FY 2018 (May 3, 2018), HSI initiated approximately 19 percent more MS-13 investigations than in FY 2017.

Question#:	23
Topic:	Criminal Influence
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	JUDICIARY (SENATE)

Question: In 2015, the Senate Homeland Security & Governmental Affairs Committee found that 40 percent of unaccompanied minors failed to show for immigration hearings over an 18-month period. I am concerned about what happens in the time between when they are released and the day of their hearing, for which many seem not to show up. My concern is during that window, they are typically in communities already populated with MS-13 or other gangs such as the 18th Street Gang.

Is it fair to say that improving follow-up procedures are not enough when more needs to be done in the individual communities to prevent a gang-stronghold?

What should we be doing to limit the influence criminals have in these communities?

Response: The most critical element to securing and preventing gang violence in communities is the development and implementation of a rigorous and sustained gang enforcement strategy. Since 2005, through Operation Community Shield (OCS), U.S. Immigration and Customs Enforcement (ICE), HSI has leveraged its expansive criminal and civil immigration authorities to investigate, prosecute, and where applicable, immediately remove dangerous gang members from our neighborhoods and ultimately from the United States. Additionally, OCS serves as a strong deterrent to those who are considering joining gangs.

While around 1.5-2.0 percent of UACs are gang members at their time of entry into the United States, they present a vulnerable population for the gangs, particularly Mara Salvatrucha (MS-13), to recruit from. These children often do not speak English, are unfamiliar with American culture, sometimes have no familial structure because they may be released to non-familial sponsors, and are placed in communities and schools in communities with a significant presence of Central Americans – the very places where these gangs survive and thrive.

During Operation Raging Bull, approximately 30 percent of MS-13 leaders, members, and associates arrested by ICE HSI within the United States originally entered the United States as UACs. Operation Raging Bull concluded in November 2017, and targeted MS-13 members and associates who posed the greatest public safety threats and provided financial support that funded their violent criminal activity.