



TESTIMONY OF

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BEFORE

U.S. House
Committee on Homeland Security

ON

“The Way Forward on Border Security”

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Chairman Thompson, Ranking Member Rogers, and distinguished Members of the Committee:

It is an honor to appear before you today.

I want to start by thanking the men and women of the Department of Homeland Security (DHS) for their exceptional service to our nation. Last week, we celebrated the Department's 16th anniversary, and we marked the extraordinary progress that has been made to protect our nation against a vast array of threats and hazards. In the past year alone, DHS has made notable strides and reached new milestones. For example, we:

- Responded decisively to record-breaking natural disasters and helped Americans rebuild when they needed our help the most;
- Prevented the hacking of U.S. elections and guarded against foreign interference in our democracy;
- Hardened our digital defenses, organized ourselves for the interconnected era with the Cybersecurity and Infrastructure Security Agency, and pushed for tougher consequences against cyber adversaries;
- Created a new hub—the National Risk Management Center—to identify and mitigate the most serious risks to our nation's critical infrastructure;
- Thwarted terrorist plotting and helped bring dangerous individuals to justice;
- Launched new, sophisticated efforts to block terrorists and criminals from reaching the United States, including through our new National Vetting Center;
- Ramped up security measures to protect Americans against emerging threats—from weaponized drones to chemical and biological weapons;
- Reorganized our intelligence and science & technology organizations to better meet the needs of frontline defenders;
- Strengthened our campaigns against human trafficking and smuggling, child exploitation, drugs, and transnational criminal organizations;
- Raised the baseline of aviation security across the board—and around the world;
- Took decisive action to enhance school safety and security nationwide in order to stop attacks before they happen;
- ...and much, much more.

We have also undertaken historic efforts to secure our borders and enforce our nation's immigration laws. This is the subject of today's hearing, and this morning I want to outline for you the very real humanitarian and security crisis we face, how we are responding, and what's urgently needed from Congress to fix the situation.

The men and women of my Department will tell you that it is no easy task to secure the more than 7,000 miles of America's shared border with Mexico and Canada while facilitating legal trade and travel. Each day, dedicated DHS officers and agents inspect hundreds of tons of cargo for illegal substances or explosives, process thousands of individuals for admission, and patrol many miles of remote border. They do this in order to answer a crucial question: who and what is coming into the country? This mission—safeguarding our territory—is one of the most critical charges of our Department and one of the most fundamental responsibilities of any government.

The Humanitarian and Security Crisis at our Southern Border

Let me start by saying, the United States leads the world in welcoming individuals fleeing persecution. In the 2017 calendar year, the U.S. granted asylum and refugee status to more individuals than any other country in the world. We welcome those who come to us legally, especially those who are truly fleeing persecution and who seek refuge in our country.

Illegal and uncontrolled migration, however, poses a serious and growing risk to U.S. public safety, national security, and the rule of law. This cannot be a partisan issue. Every secretary of this Department has sounded the alarm about our unsecured border and highlighted the associated threats and consequences to our national security. Today we are seeing the results of a failure to act and a broken system.

Our nation is facing a dire humanitarian and security crisis at our southern border. In the first four months of the fiscal year, we saw approximately 60,000 migrants each month cross illegally or present at ports of entry without documents. Moreover, the numbers are rising. In February, agents apprehended or encountered more than 76,000 aliens, a 31 percent increase over January, and CBP is forecasting the problem will get even worse this spring. The agency is now on track to apprehend more migrants crossing illegally in the first six months of this fiscal year than the entirety of FY17. Our capacity is already severely strained, but these increases will overwhelm it completely.

What's different about the current migration flow is not just *how many* people are coming but *who* is arriving. For most of recent history, the majority of individuals arriving illegally or without documentation were single adults, who we could quickly detain and remove. This is how the immigration system is supposed to work. However, in recent years we have seen the proportion of vulnerable populations—children and families—skyrocket. Because of outdated laws and misguided court decisions, we are often forced to release these groups into the interior of the United States and we have virtually no hope of removing them.

The details here are critically important. Historically, illegal aliens crossing into the United States were predominantly single adult males from Mexico, and they were generally removed within 48 hours if they had no legal right to stay. Now over 60 percent are family units and unaccompanied alien children, and 60 percent are non-Mexican. Many of these families are from the Northern Triangle countries (Guatemala, Honduras, El Salvador) and claim asylum, so they are released into the United States—as required by the *Flores* court decision—while they await a court date that can be years away. Only *one in ten* individuals from the Northern Triangle are ultimately granted asylum by an immigration judge. Unfortunately, when it comes time to remove the other 90 percent—who have been determined by an immigration judge to have no legal right to stay in the United States—they have absconded from their last known location. And we do not have sufficient resources to find and remove them.

Make no mistake: the problem is getting worse. The smugglers and traffickers have caught on, realizing this is a “free ticket” into America. As a result, the flow of families and children has become a flood. In the past five years, we have seen a 620 percent increase in families—or those

posing as families—apprehended at the border. This last fiscal year was the *highest on record*. Children are being used as pawns to get into our country. We have even uncovered “recycling rings” where innocent young people are used multiple times to help aliens fraudulently gain entry. As a nation, we cannot stand for this.

The phenomenon of large groups (which is defined as a group of 100 or more aliens apprehended together in a single event) of migrants organized into caravans arriving along our southern border provides a window into the widespread challenges faced everyday by DHS personnel. For example, in FY17, CBP encountered only two large groups. By FY18, this grew to 13 groups. And this fiscal year through February 28th, CBP has experienced 68 groups in the U.S. Border Patrol’s El Paso, Rio Grande Valley, Tucson, and Yuma Sectors. This is not a manufactured crisis. It is real, it is serious, and it is overwhelming our frontline personnel.

Apprehending large groups places a tremendous strain on CBP’s limited resources, pulling frontline personnel to conduct humanitarian efforts and drawing resources away from frontline enforcement, effectively placing border security at risk. Associated with the increase in large groups and caravans, we saw a 21-percent increase in the number of unaccompanied alien minors from the year prior, and a 40 percent increase in number of family units in FY 2018 compared to FY 2017. To make matters worse, we know that transnational criminal organizations (TCOs) are taking advantage of these large groups as a distraction in order to conduct criminal activity elsewhere on the border, as they know CBP resources will be tied up.

Today’s migration flows have created a humanitarian catastrophe. Criminals are targeting vulnerable populations along the dangerous journey to our borders. In one study, more than 30 percent of women reported sexual assault along the way, and 70 percent of all migrants reported experiencing violence. Smugglers and traffickers are exploiting these migrants. They are forcing them into inhumane conditions, demanding large sums of money, and putting their lives in danger every day. Vulnerable populations – especially children – are coming into DHS custody sicker than ever before, arriving with illnesses and injuries. In recent weeks, an average of 56 aliens a day have required emergency medical care at the southern border.

The care of those in DHS custody is paramount, and the United States Border Patrol is doing everything in its power to handle this crisis, but our facilities along the southern border were not designed to support such large vulnerable populations. These facilities are short-term processing facilities, designed to hold individuals for 72 hours or less. I am grateful for the \$415 million in humanitarian assistance Congress provided in the most recent DHS appropriations bill. The bottom line is that Border Patrol stations built decades ago are not designed to handle this crisis and are not the best facilities to house children with their parents for extended periods.

This is also a public safety and national security crisis. TCOs are using this situation to line their pockets, fueling a rise in other illegal activity and the spread of violent crime into our country. The results are disturbing. Across the nation, Immigration and Customs Enforcement (ICE) officers made approximately 266,000 arrests of aliens with various criminal charges or convictions in 2017 and 2018 – which included roughly 100,000 charges or convictions for assault, 30,000 for sex crimes, and 4,000 for homicides. Many of these were individuals who came across illegally at our southern border.

DHS personnel have also witnessed an increase in the trafficking of illegal drugs into our communities. Alarming, CBP has reported that fentanyl smuggling between ports of entry at the southern border has more than *doubled* over our last fiscal year, from FY17 to FY18. Although these seizures represent just a quarter of fentanyl seizures along the border, the rate at which they have increased is concerning. Fentanyl was responsible for more than 28,400 overdose deaths of Americans in 2017. Just a few weeks ago, CBP made its largest fentanyl bust in U.S. history, seizing 254 pounds of fentanyl – enough for 115 million fatal doses – in a truck trailer compartment. These drugs are smuggled at and between ports of entry, but our officers and agents are not able to devote the full resources and attention they could to interdicting them because of the migration crisis that is taxing our resources.

A tough border security posture is essential to keep other potential threat actors out of the United States. There are thousands of individuals on the terrorist watch list that traveled through our Hemisphere last year alone, and we work very hard to keep these individuals from traveling on illicit pathways to our country. While most terror suspects attempting to reach the United States do so by air, terrorist groups are clearly interested in exploiting deficiencies along our borders to enter the United States. We must vigilantly guard against any such efforts.

Moreover, last year alone, DHS encountered 3,000+ “special interest aliens” (SIAs)—individuals with suspicious travel patterns who could pose a national security risk—at our southern border. Foreign partners throughout the Western Hemisphere continue to share their concerns with me about the growing volume of SIAs. Often these partners lack the ability to determine the identities and intentions of such individuals before they cross international borders and make their way towards our own.

Responding to the Crisis

DHS is grateful that Congress was finally able to pass a budget for the Department, but the crisis is getting worse and our current funding neither provides adequate resources nor the additional authorities that our DHS personnel need to gain full operational control of our border. Congress has repeatedly failed to give DHS the resources needed to confront this situation and to handle the influx of aliens, drugs, and other illicit traffic into our country. That is why I strongly support the President’s decision to unlock additional funding for physical barriers, including resources from the Department of Treasury and the Department of Defense.

Moreover, I applaud the President’s decision to declare a national emergency. This is a crisis—pure and simple—and we need to respond accordingly. We cannot stand idly by as our border security is further compromised and our immigration laws are exploited. Now is the time to act and to uphold our fundamental responsibility to our citizens and our nation to safeguard U.S. territory. Although we may disagree on solutions, I hope there can be a consensus that the current system requires immediate attention.

Despite these challenges, DHS personnel have worked hard to keep our communities safe and have done their best to uphold our nation’s laws. Our agents, officers and enlisted personnel—those from CBP, ICE, USCIS, USCG, and beyond—have done an extraordinary job of

prioritizing the highest threats and risks in their operating areas and going after them. Whether they are apprehending illegal aliens, interdicting smugglers, conducting lifesaving rescues of migrants, or arresting dangerous individuals sneaking between our ports of entry – the work by our DHS personnel on the border is imperative to our continued security and prosperity as a nation. DHS is taking an end-to-end approach to the humanitarian and security crisis at our southern border. Below are examples of the actions we have been taking:

Constructing Border Barriers and Leveraging Technology: The United States has long built barriers along its southern border, first in 1909 and regularly since then according to need. DHS is now constructing the first new border wall in nearly a decade, which will improve our ability to impede and deny illegal entry. Since the first barriers were constructed in San Diego in 1991, U.S. Border Patrol field commanders have continued to advocate for border wall and the enduring capability it creates to prevent illegal entry while allowing additional time for agents to respond. At the same time, we are aggressively pursuing the deployment of new technology at our borders to increase the situational awareness of our agents and officers and to detect illicit activity.

Deploying the U.S. Military: DHS is grateful for the robust involvement of Department of Defense (DOD) and National Guard personnel who have been deployed to support our border security mission. Every administration since President Ronald Reagan has sent troops to the border, and other presidents before him, including President Woodrow Wilson who deployed 150,000 guardsmen to secure our southern border in 1916. Our nation's troops and enabling personnel are assisting with surveillance, force protection, logistics, medical response, and much more. Already these deployments have enabled thousands of drug interdictions and apprehensions of illegal aliens. We are continuing to work closely with DOD on expanding barrier protections, as well as exploring additional ways to collaborate to ensure CBP personnel are freed up to perform their border security mission effectively and supported in crisis conditions.

Amplifying Regional Cooperation: As Secretary, I engage almost weekly with my counterparts in Mexico and the Northern Triangle governments of Central America to work towards addressing the migration crisis at the source. Last month, I met with security ministers from the Northern Triangle in El Salvador to discuss an action plan to deal with the crisis. I am pleased to report we reached a breakthrough and agreed to negotiate a Memorandum of Cooperation (MOC) to address the smuggling, trafficking, irregular migration, and formation of caravans. These efforts will include a whole-of-government approach to addressing the security related drivers of migration and improving border security in the region. Our Joint Statement, which outlined a clear path toward increased collaboration between the United States and Northern Triangle, emphasized four areas of increased collaboration: Combatting Human Trafficking and Migrant Smuggling, Countering Organized Crime and Gangs, Expanding Information and Intelligence Sharing, and Strengthening Border Security. I look forward to reporting back to Congress on the signing of the final regional MOC.

Instituting the Migrant Protection Protocols: Late last year, we announced a major milestone—the Migrant Protection Protocols (MPP)—to address the urgent humanitarian and security crisis at the southern border. We have begun to implement MPP, which relies on long-standing

statutory authority to allow us to return migrants to Mexico to await the conclusion of their U.S. immigration proceedings while ensuring they receive all appropriate humanitarian protections. Ultimately, MPP will allow us to focus more attention on individuals legitimately fleeing persecution, dissuade those who intend to file false claims, and bring order to a chaotic flow.

Protecting Vulnerable Populations: At my direction, DHS personnel have put in place new policies, procedures, and resources to protect children and families. This includes surging medical assistance to the southern border to deal with the arrival of large groups and sick individuals, as well as protocols to ensure that unaccompanied alien children are not held with individuals who could pose a danger to them while in DHS custody. We have also doubled-down on our efforts to crack down on human smuggling and trafficking, including the abuse of children. And every day the extraordinary men and women of CBP go above and beyond the call of duty to save lives of migrants in trouble, including women, children, and infants found abandoned in the desert by smugglers. These rescue missions, which take place between ports of entry in remote locations on our southern border, are extremely difficult but also demonstrate our commitment to upholding America's values and rescuing those who need our protection.

Combating Transnational Criminals: DHS is stepping up its efforts to dismantle TCOs. We have reached agreements with governments in the region to increase action against TCOs, including through greater intelligence sharing, integrated units of U.S. personnel and partner agencies, joint investigations, and more. Here at home, we have also worked with other departments and agencies to take a more holistic approach to combating TCOs, including improving interagency coordination structures to take down nefarious groups with greater precision and coordination.

Countering Illegal Drug Smuggling: DHS continues to seize thousands of pounds of illegal and dangerous drugs, including fentanyl, as they are smuggled into the United States. We are deploying additional technology and resources at the southern border both at and between ports of entry to help detect and disrupt drug-smuggling activity. This also includes deeper cooperation throughout the U.S. Government and with regional partners to find and bring drug smugglers to justice and dismantle cartels.

Confronting Asylum Fraud: DHS is putting in place important measures to reduce asylum fraud and frivolous filings. For example, we have implemented a "Last In, First Out" approach, which means we prioritize the most recently filed applications when scheduling affirmative asylum interviews. The aim is to deter individuals from using our nation's large asylum backlogs solely to obtain employment. By cutting down on asylum fraud, we will be able to devote more attention to applicants who are legitimately fleeing persecution and require U.S. protection under our laws.

Increased Local Cooperation: DHS recognizes the inordinate impact that the surge of illegal migration has had on our border communities, and we have stepped up cooperation to enlist state and local officials in our border security efforts. For instance, DHS has doubled the number of 287(g) agreements with local law enforcement to enlist their voluntary cooperation on immigration enforcement. At the same time, we have increased available funds for southwest border localities to provide assistance on border protection through grant programs. DHS is also

working with partner agencies in states, and especially with county, local, and tribal agencies to share information, provide resources, and build communication capacity.

A Comprehensive Solution

Despite all of our efforts, DHS cannot fix this crisis on its own. That is why I respectfully request, and will continue to ask, that Congress pass legislation to fix outdated laws and gaps in our authorities. These legal impediments hamper enforcement of the law, weaken border security, and endanger both the American public and the illegal aliens making the dangerous journey to the Southwest border. They are also “pull” factors that drive illegal migration and undermine the territorial integrity of the United States. Only Congress has the Constitutional authority to enact immigration law. We are, therefore, completely dependent on Congress to change the outdated statutes that impede our ability to enforce the law and that handicap our ability to keep America safe.

There are several key legislative reforms that we need to address this crisis. Among other actions, we ask Congress to do the following:

Promote Family Unity: One of the main challenges is the inability of DHS to keep families together during the immigration proceedings. In 1997, the Immigration and Naturalization Service (INS) entered into the *Flores* settlement agreement relating to detention of minors and their release. Since that time, litigation on this agreement has continued, and multiple court decisions interpreting the agreement have impeded the United States Government’s ability to maintain custody of minors and, now, based on the most recent interpretation, families. The provisions of the settlement agreement should be superseded by legislation. Legislation on this issue should be focused on allowing us to keep families *together* during their immigration proceedings and promoting a uniform standard of care and accommodation for minors in custody, while ensuring our laws are enforced.

Ensure the Safe and Prompt Return of Unaccompanied Alien Children (UAC): We must also update our laws to ensure that all UACs who are not victims of trafficking or persecution (regardless of their country of origin) can be returned home and reunited with their families. Current law has created a financial incentive for TCOs, smugglers, and traffickers to transport UACs to and across our border. The result is that children are exploited by criminals for their own gain, and are put in danger. We must stop this exploitation and ensure the safe and prompt removal of UACs. Government officials in Central America continue to express to me their urgent desire to have their children returned home, not harbored in the United States. This requires a legislative fix.

Crack Down on Asylum Fraud and Protect Those Who Need It: We have requested that Congress reform asylum standards to deter fraud and otherwise ensure that those truly eligible for protection have prompt access to the judicial system to adjudicate their claim. Specifically, Congress should legislate a standard that requires that it is more probable than not that the statements made by the alien in support of the alien’s claims are true. Reforming this standard helps promote the adjudication of meritorious asylum claims by ensuring those who are statutorily ineligible for asylum are not found to have a credible fear of removal.

Safeguard Americans from Dangerous, Criminal Aliens: We also need Congressional assistance to update laws that allow criminal aliens to circumvent the removal process. Right now, the system is broken, and because of a series of misguided court decisions, DHS is forced to release dangerous criminal aliens from custody and is unable to remove others from the United States even when they have been convicted of serious criminal offenses. Specifically, we must clarify the definition of “conviction” in the *Immigration and Nationality Act* to address aliens who receive post-conviction relief or sentence modifications for the purpose of flouting immigration consequences. In addition, we must remedy U.S. Courts of Appeals and U.S. Supreme Court decisions, including *Mathis v. United States*, 136 S. Ct. 2243 (2016), that have made it increasingly difficult for ICE to remove convicted aliens on criminal grounds of removal.

We must also urgently close loopholes created by the U.S. Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). This decision generally requires that DHS release a criminal alien ordered removed who has been detained for 180 days after the period for removal began unless DHS can show that there is a significant likelihood that removal can be effectuated in the reasonably foreseeable future. The result is that we have been forced to release dangerous individuals—including those responsible for terrible crimes—back into the population. We must close loopholes created by the *Zadvydas* decision to give DHS authority to keep dangerous criminal aliens who are subject to final orders of removal off our streets and keep our communities safe. Finally, for the safety and security of the American people, Congress should ensure that DHS has full authority to detain and remove alien criminal gang members, alien gang associates, and aliens who participate in gang-related activities. We must be able to safeguard Americans from aliens associated with criminal gangs, including detaining and removing violent gang members such as MS-13.

Conclusion

Make no mistake: despite the challenges DHS faces, we *welcome* those who come to us legally—including those who are truly fleeing persecution. America is a beacon of hope and freedom to the entire world, and we welcome more immigrants every year than any other nation on earth. Nevertheless, we must be able to uphold our values and the rule of law while also maintaining our security.

That is why I call for commonsense solutions—including physical barriers, fixes to outdated laws, and the resources needed to bring order to the chaos. Today, I implore Congress to listen to the solutions offered by those who see this security crisis up close. The humanitarian crisis can no longer be ignored. The security crisis cannot be wished away. We must change the status quo now. It will require bold action to address gaps in our border security that are being taken advantage of every day.

I thank this Committee again for its leadership on this issue, and I look forward to your questions.