

Please describe how an alien is encountered and processed by the United States Border Patrol

- Upon detection of individuals crossing the border illegally, attempting to conceal themselves with a conveyance passing through a checkpoint, or attempting to evade arrest and eventual apprehension in the border region:
 - Agents rely upon immigration and citizenship law training received at the academy
 - After determination that the subject has no right to remain in the United States, they are transported to a short term hold facility, a station or processing center
 - After processing (search, property accounting, initial biographic data) the subject into the station, the Border Patrols enforcement system of record, e3, is utilized to complete the record of apprehension and accompanying documents for an alien registration # file
 - Detained individuals are processed for Expedited Removal, Warrant of Arrest/Notice to Appear, Reinstatement, Voluntary Return in accordance with consequence delivery
 - Upon completion of processing, ERO and/or HHS ORR is notified to take custody of the individuals for further care and/or removal
- USBP stations are defined as “short-term detention” under 6 USC 211. Short term detention is not expected to exceed 72 hours unless exigent circumstances exist precluding transfer or repatriation

How are individuals screened for credible fear?

Credible Fear Claims are documented on Government Form I-826. Individuals processed for expedited removal utilize form I-867B to screen for credible fear. I-867B has the following four questions:

1. Why did you leave your home country or country of last residence?
2. Do you have any fear or concern about being returned to your home country or being removed from the United States?
3. Would you be harmed if you are returned to your home country or country of last residence?
4. Do you have any questions or is there anything else you would like to add?

Additionally, once individuals claim credible fear USBP documents the subjects claim via service form M-444 Information about Credible Fear Interview.

What rights do aliens have in custody to contact a Consular Officer or Attorney?

- According to the Vienna Convention on Consular Relations Foreign Nationals have the right to have their consular officials notified of their arrest “without delay” as soon as feasible.
- At the time USBP contemplates criminal prosecution of a subject in custody I-214 is executed which advises the individual the right to speak with an attorney.

Please explain the Border Patrol’s part in Zero Tolerance.

- Zero tolerance was a policy adopted by DOJ to end the practice of “catch and release” between the ports of entry through prosecution of all adults in violation of 8 USC 1325, a federal crime for illegal entry.
- DOJ instituted zero tolerance on April 6, 2018 with the stated goal of prosecuting all adults amenable to 8 USC 1325 to the greatest extent possible
- On May 5, 2018, DHS authorized prosecution of all amenable adults who violate 8 USC 1325 to include adults with accompanied children with the exception of children 5 years of age and below.
- As of June 20, 2018, CBP ended referring adults with accompanied children to abide by the Presidential Order and began efforts to maintain family unity unless a concern for the child’s welfare is raised. All single amenable adults will continue to be referred for prosecution.

Who does CBP prosecute since June 20?

- CBP continues to exercise Zero Tolerance on single adults amenable to prosecution for 8 USC 1325, Entry without Inspection.
- In accordance with EO 13841, Affording Congress an Opportunity to Address Family Separations, when an alien enters or attempts to enter the country anywhere else, that alien has committed at least the crime of improper entry and is subject to fine or imprisonment under section 1325(a) of title 8, United States Code.

- It is also the policy of this administration to maintain family unity, including detaining alien families together where appropriate and consistent with law and available resources.

What is the minimum age of a child to be separated from the parent, when the parent is going to be prosecuted? We're hearing reports of infants, some so young they are still breastfeeding, being separated from their mothers. What is the age of the youngest child that the Border Patrol has processed this year?

- There is no hard and fast rule on the age of a child with respect to family separation. USBP reviews each family separation on a case-by-case basis.
- We consider the well-being of children in our custody to be our highest priority, and we take every precaution to ensure their safety.

Did the "zero tolerance" policy unfairly target migrant families?

- This policy was designed to deliver consistent consequences to all amenable adults who illegally enter into the United States.
- Necessarily, children cannot accompany adults through criminal proceedings and any sentencing received.
- This is no different than cases we see in cities throughout the country where a parent has broken the law and must be taken into custody by local or state law enforcement and the appropriate actions taken to ensure the safe placement of the child.

When is the family amenable to separation?

- In accordance with the Executive Order, parents/legal guardians may be separated from their child only for:
 - Referral of a parent/guardian for prosecution of a felony
 - Parent/legal guardian presents a danger to the child
 - Parent/legal guardian has a criminal conviction for a violent misdemeanor or felony, with Office of Chief Counsel review
 - Parent/legal guardian has a communicable disease, with Office of Chief Counsel review

How is a fraudulent claim of parental or legal guardianship processed?

- Processed in accordance with Transport, Escort, Detention and Search (TEDS) policy, consistent with the Trafficking Victims Protection Reauthorization Act (TVPRA)
- Agents utilize fingerprint search results, review of documents, interview family members, confirmation of documents through a Consular Officer of the country to verify authenticity of claims to familial status

How are children screened in accordance with the TVPRA?

- USBP utilizes the CBP Form 93, Unaccompanied Alien Child Screening Addendum, to screen children for possible victimization. This includes questions to ascertain if the child would have a credible fear if returned to his/her country of citizenship. The CBP Form 93 also screens for trafficking and provides questions for the processing agent to determine if the child appears to be a victim of trafficking.
- If an Unaccompanied Alien Child from Mexico or Canada does not appear to be a victim or potential victim of a severe form of trafficking, has not expressed a fear of returning to his/her country of nationality or last habitual residence, and is determined to be capable of making an independent decision, the UAC can be granted a voluntary return. Unaccompanied Alien Children who do not meet that criteria or are citizens and nationals of any other country must be placed into 240 proceedings (WA/NTA) and transferred to the custody of HHS.

We've heard reports of some mothers being told 'we're going to give your child a bath' or 'we're going to feed your child' and then the child was snatched away. Is this occurring at CBP facilities?

- We always seek to be clear with those in our custody what is occurring.
- We have needed separate parents from their children prior to the implementation of this initiative for a number of reasons, to include criminality of the parent, prosecution for illegal entry, or the welfare of the child.
- Given our agents' experience in this area, there would be no reason to begin using misleading tactics to carry out these types of separations.

There have been allegations of terrible treatment of immigrant families in CBP custody in places like El Centro, California, to include forcing immigrants to drink dirty water, eat frozen food, denying them clean clothes, and forcing them to sleep shivering on the floor. Is this true? Aren't these conditions inhumane?

- Due to pending litigation, I can't speak specifically about El Centro; however, CBP adheres to all standards, including the Flores Settlement Agreement.
- It is important to note that our facilities are designed for short-term holding while processing takes place.
- As such, they are set up meet basic needs such as food, water, and shelter, none of which many of these people had access to during their journey.
- In addition, we are subject to extensive internal and external oversight from CBP's Management Inspection Division, the DHS Office of the Inspector General, the DHS Office of Civil Rights and Civil Liberties, the Government Accountability Office, the courts, and the U.S. Congress.
- **(b)(5)**

How can you defend ripping away a child from his or her parents? Medical professionals have stated this process is known to create psychosocial harm to these children. I believe this practice is cruel and unnecessary, and does not act as a deterrent. Do you feel this is an effective deterrent?

- Our responsibility as law enforcement officers is to deliver consequences to individuals who have broken the law.
- While I agree that this is a tough part of the job, law enforcement officials at local and state levels are also faced with similar challenges when a parent needs to be taken into custody and children turned over to social services rather than taken to jail with the parent.

How do you train your agents so they don't mistreat children when separating them from their parents?

- CBP's agents and officers receive extensive training on processing procedures, to include the care and custody of minors.

- This includes instruction at the academy, in post-academy training, and through periodic supplementary training.
- Our agents and officers provide aliens in custody with information about next steps while they are in our custody.

Was the Border Patrol given sufficient time to stand up implementation of the “zero tolerance” policy?

- USBP was prepared to carry out this initiative as prosecutions are not new to the agency.
- The additional volume of prosecutions required close coordination with our partners regarding capacity, which I believe we carried out effectively.
- We continue to work hand-in-hand with ICE and HHS to support their reunification efforts.

It appears that a comprehensive plan to identify, track, and reunite families still has not been developed by the Administration. What information does CBP provide to other agencies to assist with reunification?

- In order to facilitate family reunification, USBP relays all pertinent information to both ICE and HHS. This information includes, but is not limited to the alien’s name, alien file number (A#), date of birth, and location of apprehension.
- In addition, USBP documents familial relationship in the file of each member of a family unit. We continue to work hand-in-hand with our partners to ensure alignment of our records as individuals move through the process.

If the “zero tolerance” policy could be reinstated, would you implement it again?

- Enforcement of our immigration laws continues to be the foundation of our border security.
- Prosecution for entering the country illegally delivers consequence to those who seek to bypass our immigration system.
- I’ll remind you that prosecution is not new to the Border Patrol and USBP has seen that the delivery of consequences is effective.

- I would continue to encourage those seeking claims of asylum in the United States to present themselves at a port of entry.

Aren't people being turned away at our Ports of Entry?

- CBP processes asylum claims based on the capacity of each POE, and the volume of people claiming asylum.
- At the same time, we must facilitate legitimate trade and travel.
- When a POE is at capacity, those seeking entry are advised to return once those undergoing processing have been transferred out of the facility.

The Administration has told us that we can effectively address these issues by closing "loopholes" in the system. What's your view on this?

- There are opportunities to address flaws in the system that have been exploited.
- For example, the limitation on time-in-custody as a result of the Flores settlement means that an adult who arrives alone is treated differently than an adult who arrives with a child.
- If this were to change, it would enable to deliver consequences more consistently and effectively, and no longer tacitly encourage parents to undertake this dangerous journey.

How does CBP maintain family unity? Why not a bracelet?

- All detainees are manifested via I-216 at which time identities are confirmed with information (fingerprints, biographical, photos, interviews) confirmed in the electronic system of record.
- USBP assigns a unique Family Unit (FMUA #) number to each family member in the e3 processing system. This unique number ensures the family unit stays together while in BP custody unless separated in compliance with current CBP guidelines.
- Bracelets are subject to tampering while detainees are located within holding areas

How does USBP notify HHS ORR or ERO for placement?

- USBP utilizes an electronic notification for placement to ORR
- ORR reviews the data on the Unaccompanied Alien Child (UAC) and notifies the USBP of placement
- ERO receives case data and the paper file from the e3 electronic record created for the apprehensions
- Family units apprehended together are processed in the same event number, unique to the group that was apprehended

Did CBP reunify any families?

- CBP unified approximately 500 children with their parents who had been referred for prosecution on the day of the announcement.
- Families outside of CBP short term detention went through the reunification process with HHS and ICE

Are you planning to use Rapid DNA to prevent unnecessary separations?

- I understand DHS and ICE are working on potential applications of Rapid DNA, so I would defer to them on status.
- If Asked about CBP's use: As I think about CBP's role in initial processing and the set up of our facilities, I would expect DNA collection to pose a significant challenge to our day-to-day operations. This is not something we are planning to incorporate into our stage of the process at this time.
- Background:
 - The current process is time-consuming, inefficient, puts a strain on personnel resources and does not align with the modernization of biometric collections.
 - USBP does not have any means of collecting DNA as a timely identifier of a subject in custody.
 - It is important to know that USBP has been advised that collection of DNA from unaccompanied or accompanied minors will not be allowed.
 - CBP is currently exempt from collecting DNA. Former Attorney General Eric Holder exempted CBP due to the extreme hardship of collecting from the large mass of subjects encountered.

Do you think it is appropriate for a three year old to have to defend him or herself in immigration court? Don't you think these kids need an advocate to look out for their interests?

- Immigration proceedings are outside our purview in USBP, however, as the first agency with whom these children interact immediately after they've crossed the border, their immediate needs are food, water and shelter which we provide.
- (If pressed...) I wish these children had advocates before they placed in the hands of smugglers and subjected to the arduous journey from their home countries.

How are the see-through barriers, now referred to by the media as "kennels" actually in compliance with FLORES?

- For the safety and wellbeing of all detainees, the transparent partitions are used to separate minors by age group and gender. The transparency of the partitions allow agents to visually and audibly observe the minors' activities and quickly address any disturbances. The architecture of the RGV CPC comports with the FSA and TEDS requirement of detaining minors in the least restrictive, yet operationally feasible, setting possible.

What 1997 Flores Stipulated Settlement Agreement (FSA)

The FSA requires that:

- UAC shall be treated with dignity, respect and special concern for their particular vulnerability.
- UAC will be placed in the least restrictive setting appropriate.
- UAC will be expeditiously processed and be provided with a Form I-770
- Custody transfer to the Department of Health and Human Services^[1] will occur within 72 hours from the time of apprehension. Can be extended to 5 days under exigent circumstances.
- UAC will be held in facilities that are safe and sanitary and have access to toilets, sinks, drinking water, food, and medical assistance.
- UAC will be separated from unrelated adults
- Applies to all minors in DHS custody (accompanied and unaccompanied minors)

Hold Room Conditions (Amenity Reports) and Custodial Action Reporting

- Required utilization of the e3 Detention Module (e3DM) to record the inspection of hold room and operability of amenities (Water; Non-Potable Water; Potable-Water; Sink; Toilet; Water Fountain, Cleanliness; Pest Free; Temperature (66 - 80) degrees; Ventilation)
- Generation of amenity reports (twice a day) that indicate the date, time, and disposition of all amenities in all hold rooms along the Southwest Border.
- Daily review of amenity reports by USBP HQ personnel for compliance and deficiency mitigation.
- Custodial actions (feeding times, showers, contact with a legal guardian/parent/relative, etc..) are recorded for each minor in e3DM

External Entity Compliance Mechanisms:

- CBP Chief Accountability Officer, (b)(6)(b)(7)(C) was designated CBP's Juvenile Coordinator in June 2017. In this capacity, (b)(6)(b)(7)(C) deploys CBP's Management Inspection Division (MID) to conduct announced and unannounced inspections of CBP temporary hold rooms to ensure compliance with the FSA.
- The MID ensures that all sites are in compliance with the FSA by verifying that minors have access to bedding, food, potable water, and functioning toilets. Additionally, USBP hold rooms must be well ventilated, safe, sanitary, and free from pests. Although the FSA does not require it, MID verifies that temperatures within hold rooms where minors are held must be within 66-80 degrees Fahrenheit.
- The MID also reviews USBP's internal records systems (e3 Detention Module) to ensure that record keeping practices are being adhered to by USBP personnel.
- To date, (b)(6)(b)(7)(C) has submitted three reports to Judge Dolly Gee and the most recent report was filed on June 2, 2018. (b)(6)(b)(7)(C)'s reports are a matter of public record and illustrate USBP's continued compliance with the FSA.

^[1] The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) provides that the Department of Health and Human Services is responsible for the care and placement of UAC.

TVPRA Requirements

The Homeland Security Act of 2002

With the implementation of the Homeland Security Act (HSA) on March 1, 2003, responsibility for apprehending and providing initial care and detention for UAC was split between CBP and Immigration and Customs Enforcement (ICE). The implementation of the HSA also transferred responsibility for the care and housing of UAC to the Office of Refugee Resettlement (ORR), a Health and Human Services (HHS) agency.

TVPRA Overview

The Trafficking Victims Protection Reauthorization Act of 2008 requires CBP to:

- Process all UAC from non-contiguous countries under 240 proceedings (W/NTA)
- The TVPRA states that any UAC determined to be a national or habitual resident of a country that is contiguous with the United States (MX and Canada) shall undergo a screening process before the UAC may be returned.
 - The screening is done via the CBP-93 and is used to determine if the UAC is able to make an independent decision, and if the UAC expresses or exhibits fear of return to their native country and/or trafficking victimization,
- Transfer the UAC to HHS within 72 hours from the time of apprehension

TVPRA Compliance

Processing

- Although it is not a requirement of the TVPRA, USBP screens all UAC via the CBP-93. This form is generated and recorded in e3.
- As a requirement of the TVPRA, USBP prioritizes processing of UAC and placement requests with HHS are made within 24 hours of the time of apprehension. Placement requests are made via e3.

Time in Custody Reporting

- Daily generation of UAC time in custody report detailing the average time in custody, listing all UAC subjects in custody and highlighting any UAC over 72hrs.
- Daily review of time in custody reports by USBP HQ personnel to track and monitor UAC detention times.
- Daily reporting to USBP HQ senior management on the number of UAC and FMUA over 72hrs and the reason.
- Note: The issue of UAC exceeding 72 hour in USBP holding is a direct result of HHS being unable to place minors in an expedited manner. Since May 2017, HHS has had a very difficult time discharging UAC from their shelters. The referred placements (input) has outpaced discharges (output) consistently since that time. To compound the issue, HHS has been unable to meet the demand for additional bed space in a timely manner.