

**Committee on Energy and Commerce  
Subcommittee on Oversight and Investigations**

**Hearing on  
“Protecting Unaccompanied Children: The Ongoing Impacts of the Trump  
Administration’s Cruel Policies”**

**September 19, 2019**

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**The Honorable Brett Guthrie (R-KY):**

1. Under the TVPRA, except in exceptional circumstances, unaccompanied children must be transferred to ORR within 72 hours of determining a child is an unaccompanied child. CBP and ORR appear to have a difference of opinion regarding when the clock starts on the 72-hour limit. What is CBP's view is on when that 72-hour clock starts?

Does Congress need to more clearly define how much time each agency has for their respective role in the process? If so, what is CBP's suggestion on what those allotted times should be for each agency?

**RESPONSE:** In accordance with the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), the 72 hour clock begins when the minor is determined to be an unaccompanied alien child as defined in the Homeland Security Act of 2002. The TVPRA reads, “Except in the case of exceptional circumstances, any department or agency of the Federal Government that has an unaccompanied alien child in custody shall transfer the custody of such child to the Secretary of Health and Human Services not later than 72 hours after determining that such child is an unaccompanied alien child.” As an example, if a minor is determined to be an unaccompanied alien child (UAC) at the time of apprehension, then the 72-hour clock would begin at that time.

As a matter of policy, CBP processes all juveniles expeditiously and gives priority to the processing of juveniles over all other aliens in custody except those requiring immediate or special attention. By processing all juveniles expeditiously, CBP attempts to accelerate the transfer of custody of juveniles to ORR. However, CBP is completely reliant on ORR operational capabilities to transfer custody to ORR.

2. Is there a need to examine, and possibly amend, the TVPRA with respect to the definition of a UAC so that in addition to parents and legal guardians, children are not separated by DHS from other family members, such as a grandparent or adult sibling?

Does DHS have any concerns or possible unintended consequences of amending that definition?

Is there a need to further specify when a child can or cannot be separated for cause? For example, specifying what past criminal convictions pose a danger to the child and/or what communicable diseases would warrant a temporary separation?

**RESPONSE:** CBP currently adheres to the preliminary injunction in the *Ms. L v ICE* case which provides the circumstances under which a parent/legal guardian can be separated from a child. When making the decision as to whether separation may be appropriate at the time of encounter, USBP considers the severity of the parent's criminal history. As outlined in CBP's June 27, 2018 *Interim Guidance on Preliminary Injunction in Ms. L v. ICE* (CBP's *Interim Guidance*), separation may occur when the parent/legal guardian has a domestic conviction for a felony or violent misdemeanor (such as assault, battery, or hit and run).

When CBP encounters an alien family unit (consisting of either one or two parents/legal guardians and minor children), CBP will not separate the child from either parent/legal guardian unless the specific criteria provided in CBP's *Interim Guidance* are met. With the appropriate approvals, CBP officers can separate where a parent/legal guardian is being referred for a felony prosecution, the parent/legal guardian presents a danger to the child, the parent/legal guardian has a criminal conviction(s) for felonies or violent misdemeanors, or the parent/legal guardian has a communicable disease. Situations where CBP encounters fraudulent claims of parental/legal guardianship are processed under current policies consistent with TVPRA and should be well-documented to support such claims. Additionally, CBP will not separate two-parent families unless both adults meet the criteria to require separation from the child(ren).

The decision of whether separation is warranted is based on the information available to CBP at the time of encounter. To ascertain whether an alien has a criminal history in the United States, CBP conducts a biographic search of the National Crime Information Center (NCIC) Interstate Identification Index (III) through the TECS system. Additionally, CBP conducts a biometric search of the FBI Next Generation Identification (NGI) system. Based on what has been reported to both NCIC/III and IAFIS, CBP will determine whether the criminal history rises to a level which would warrant a separation of a parent from a child under CBP's *Interim Guidance*.

CBP guidance issued for compliance with the *Ms. L v. ICE* injunction issued on June 27, 2018, states in part, "Any questions on what constitutes a violent misdemeanor or felony should be directed to the local Office of Chief Counsel."