

TESTIMONY OF

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BEFORE

U.S. HOUSE
Committee on Oversight and Reform

ON

The Trump Administration's Child Separation Policy: Substantiated Allegations of Mistreatment

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Chairman Cummings, Ranking Member Jordan and Members of the Committee, it is a privilege to appear before you today and I thank you for the invitation.

I agreed to appear before you when I was asked because I truly believe our national security and sovereignty as a nation is at great risk. I have spent 34 years enforcing immigration laws. I have worked within each of the components that deal with border security and immigration enforcement. I have worked within the entire life cycle of illegal immigration. I started my career in 1984 as a Border Patrol Agent at the Campo Station within the San Diego Border Patrol Sector. After serving several years as a front line border patrol agent I became a Special Agent with US Immigration and Naturalization Service (INS). As a Special Agent with INS I was tasked with the criminal investigation into alien smuggling, human trafficking, immigration fraud and worksite enforcement. I climbed the ranks within the INS to the Assistant District Director of Investigations (ADDI) in both San Antonio and Dallas Texas. In 2003, upon the creation of DHS, I became an Assistant Special Agent in Charge (ASAC). In this position I oversaw several ICE Offices and numerous investigations into immigration crime, narcotics trafficking, gun trafficking, human trafficking, child predator crimes and various other Customs related offenses. As an ASAC with ICE Homeland Security Investigations (HSI), I oversaw the enforcement of over 400 criminal statutes. In 2009, I was promoted to the Assistant Director of Enforcement (ADE) at ICE Headquarters where I oversaw all interior immigration enforcement operations within the United States. I was later promoted to the Deputy Executive Associate Director (Deputy EAD) and then the Executive Associate Director (EAD) of ICE Enforcement and Removal Operations. As the EAD I oversaw all interior enforcement operations to include arrests, detention and removal of those illegally in the US and ordered removed by an immigration Judge. In my three and one-half years as the EAD of this division I oversaw the removal of approximately one million illegal aliens. I retired on January 27, 2017 and was asked on that same day to postpone my retirement and serve as the Acting Director of ICE which I considered a great honor. I served in that position for a year and a half until my second retirement on June 30, 2018.

As a 34 year veteran of immigration enforcement I am extremely concerned about the growing risks to our nation's public safety, national security, and rule of law, due to illegal and uncontrolled immigration. The current crisis extends well beyond our southern border, it affects almost every major city in the United States. This just isn't a border crisis, it's a national crisis. What is happening on our southern border is unprecedented in my 34 years of service in several ways. The composition of those entering illegally is unprecedented because 70% of those entering are either family units or unaccompanied children. It is also unprecedented that a majority of those crossing are abusing the asylum laws and making fraudulent claims to asylum and exploit the loopholes that Congress has refused to close. Also unprecedented is the attack and vilification of the American Patriots that serve this Nation as Border Patrol Agents and ICE Officers and Agents, but I will get back to that in a minute.

Based on the historical data, current data and numerous Intelligence reports it is clear we have a both a humanitarian and national security crisis on our border and anyone that disagrees with that are simply ignoring the data and facts on the ground. The number of those entering the US illegally and the composition of those entering which shows 70% of those entering are either family units or unaccompanied children is causing the current manpower, response resources and

our facilities to be overwhelmed. We are experiencing a crisis that is unprecedented in my 34 year career and many years before that.

The biggest problem involves the unwillingness of Congress to address the loopholes that are causing this crisis. I have spent the last two years saying what needs to be done to not only protect our borders, enforce the law in a meaningful way but also to save lives. I spent the past year and a half as the ICE Director talking about it and I have been talked about it for the past year of my retirement. However, the calls for action has fallen on deaf ears because there is more interest in getting to an open borders agenda and resisting our President, than in securing our border. This should not be a partisan issue. Whether you are a Republican or Democrat, you should want to secure our border. There is no downside on having a secure border where we know who is coming in to this country and if they have intentions that are dangerous to our country. There is no downside on less illegal immigration. There is no downside on less illegal drugs coming in to the country, There is no downside in stopping the bankrolling of the criminal cartels in Mexico that smuggle both people and drugs. I believe as a 34 year public servant and taxpayer that members in Congress should want to secure our country and enforce our laws. After all, Border Patrol and ICE are merely enforcing the laws enacted by Congress. They are doing their jobs and I think Congress needs to do theirs. If we want to solve this crisis then we must agree that there is an acute need for legislative action.

The increases and demographic changes in illegal crossings are in direct response to loopholes in our laws that are being exploited. The loopholes in our asylum laws; the Flores Settlement Agreement and the Trafficking Victims Protection Act (TVPRA) are three things that can be easily fixed and would result in regaining control of our southern border. It would also save countless lives of those that are enticed to put themselves in the hands of criminal cartels and take such a dangerous journey. I said months ago that if these loopholes are not fixed, more caravans will come, more women will be raped, and more children will die, and I was right on all accounts. And unless we work to close these loopholes now, these senseless tragedies will continue, and the deaths will pile up. These three loopholes along with nonsensical judicial precedents, lack of detention space, a backlog in immigration court has created the chaos that is here today. However, Congress could easily address them all but has been unwilling to.

We must change the TVPRA to ensure all minor children who are not victims of trafficking or persecution are returned home and reunited with their families.. Children of Central America need to be treated the same as children of Mexico. Currently the TVPRA treats children differently depending on whether they are a resident of a contiguous or non-contiguous country. That is wrong and needs to be fixed. The original intent of TVPRA was a good thing but is now being exploited. That isn't a guess or opinion. That is merely a fact that cannot be denied.

The Flores Settlement Agreement only allows ICE to detain family groups in a family residential setting, not a jail, for 20 days which is not enough time for the process to work and for these families to see a judge. In FY14 and FY15 when families first started coming in mass numbers, we built family detention facilities and held them for around 40 days, time enough to see a judge. Nine out of ten did not get judicial relief because they did not qualify for Asylum and were ordered removed. We put them on a plane and sent them home. There was an almost immediate

decline of illegal family crossings as a result. When Judge Dolly Gee within the 9th Circuit decided that we could only detain them for 20 days, the cartels exploited that and started moving families again because they knew they would be released before seeing a judge and being ordered to return home. That single federal 9th Circuit Decision did more harm to this country than any federal ruling that I am aware of in my three decade career. If these families are in fact escaping fear and persecution from their government, there should be no reason not to detain them to plead their case to a judge. That's the only way we can guarantee they actually see a judge. Being in a family residential center, safe from their countries of alleged oppression should be acceptable. We need to fix this decision.

And finally, the Asylum laws need to be changed by Congress. The burden of proof to pass the first interview by an officer is ridiculously low. Nearly 90% pass the first interview after many were instructed by the cartels on what to say. Then they get released. Almost half of them will never file a case with immigration court and the ones that do will not abide by the judge's orders. The fact is almost 90% of all Central Americans that claim asylum at the border, never get relief from the judge. Now think about that. 90% percent pass their first interview and 90% will not get relief. That delta is way too big and needs to be fixed. When you have a legal program that contains 90% fraud, it needs to get fixed. The catch and release system that is created because of the asylum loopholes are driving these unprecedented numbers we are seeing now. These family groups continue to come because they are incentivized and rewarded to come and illegally enter our border because they know DHS must release them within 20 days by law and they will be allowed to remain in the U.S. indefinitely while awaiting immigration court proceedings, if they choose to show up at all.

The constant talk about open borders, a pathway to citizenship for those already here illegally, free health care, zero detention, sanctuary cities and abolish ICE are all acting to entice those most vulnerable to put themselves in the hands of criminal cartels and risk the journey. Doctors without Border has studied this issue and has said that 31% of women are sexually assaulted during the journey. We have already seen children die each and every month but that doesn't seem to be enough for Congress to act. It's much easier to blame the administration and attack the men and women that are trying to deal with the crisis. Let me be clear, this crisis rests at the feet of Congress. Your failure to address the loopholes, your constant messaging that you don't want people detained, free health care and a pathway to citizenship is like throwing fuel on an already out of control fire. If you truly care about these vulnerable people as you claim, then fix it. You know what needs to be done. Let's stop the political wars, the resistance of our President, and fix this. It's just not about enforcing the law; it's about saving lives.

The past few weeks the attacks on the Border Patrol has swelled. The media and some in Congress want to say that those in Border Patrol custody are mistreated. The holding facilities are overcrowded and there are not enough showers. The DHS Inspector General also said the facilities are overcrowded which in turn effects the quality of care within the facility. However, this is no secret. Border Patrol leadership and the Acting DFHS Secretary have been warning Congress for months that the system is overwhelmed and that more funds are needed so these people could be moved quickly to a more appropriate facility that is built and prepared for these

vulnerable groups but once again, the same people that vilify the Border Patrol for detention conditions are the same people that refuse to answer their call for help. Again, a failure of Congress. The most recent supplemental funding has been a great help, so I thank you for that. Children are now being moved out the Border Patrol facilities within 72 hours as directed by statute. Much needed supplies and beds have been made available. However, after that funding was approved, you still had members on in Congress complaining that the much needed help that you provided was wrong and shouldn't have helped. These same members continue to complain about the conditions of detention while voting against the funding to fix it. Again, I will agree that the immigration system is broken, but so isn't the way Congress is conducting business.

I find it disheartening that no one will talk about the over 4000 lives that the Border Patrol saved last year. Over 4000 people that were found by the Border Patrol in dire straits and may have perished if it wasn't for the heroic efforts of these Agents. No one talks about how these men and women bring toys from their own homes and from their own children to these facilities so the migrant children would have something to play with. No one talks about the sicknesses of these migrants and how these Agents take that sickness home to their own families because of that exposure. No one wants to talk about how Agents have to go through TB screening because of their exposure to that serious illness. No one will talk about how these men and women care for these children that crossed illegally into this country at the hands of a criminal organization because they were abandoned by their families and put in the hands of criminal cartels. No one wants to talk about how these Border Patrol Agent mom and dads console these children. Why is no one talking about that?

It's time to stop the political games and address the crisis and how we can best secure our border. While the Border Patrol is diverting 40 to 60 percent of their personnel away from their national security mission and redirecting resources to provide care, transportation, and related humanitarian functions, the criminal organizations are operating with impunity and making millions of dollars every week. These are the same criminal organizations that smuggle drugs and guns into this country and have murdered border patrol agents. It is a fact that more drugs and criminal aliens are illegally crossing into the U.S. because the Border Patrol is not on the line. There is no question that this humanitarian crisis has caused a national security crisis. The border is less protected and those that wants to come to this country and do us harm will exploit this weakened border.

Congress needs to pass legislation to fix outdated laws and gaps in existing laws. I named the top three. Congress should start there. I also believe we should work with all three triangle countries to help them prosper and build their economy so those fleeing poverty can have a better life at home. I applaud the Mexican government for everything they are doing to help with this crisis. I am thankful that we have a President that not only talks the talk about securing our border, but he walks the walk. I have worked for six Presidents and I truly respect each and every one of them because they were our President elected by the people. However, no President has done more to try to secure our border, especially in a time of crisis, then President Trump. He has taken a series of executive actions, he has sent unprecedented resources to our border from within DHS and DOD, he has declared a national emergency, he introduced immigration reform

legislation that Congress doesn't even seem to acknowledge, and he has obtained an historic agreement with Mexico that has eluded other Presidents. His threat of tariffs are working despite many calling against it, even some in his own party. It is a sad day when the country of Mexico is doing more to address this humanitarian crisis at the border than some of our members of Congress. Mexico needs to sustain their efforts and continue to dismantle the criminal cartels who are exploiting the most vulnerable. Time will tell if they continue their efforts, but I hope they do.

Now, back to the subject I promised to address later in my statement. The unprecedented attack and vilification of the men and women of ICE and the Border Patrol. These men and women who chose a life of Service to this Nation deserve better not only from the media but from those elected officials in Congress. These men and women are working in an extremely difficult environment and dealing with an extraordinary influx of vulnerable people. They are doing the best they can under the circumstances. As a 34 year veteran of law enforcement it is shocking to see the constant attacks against those that leave the safety and security of their homes and their families every day, that put on a Kevlar vest and a weapon on their hip and risk their own safety to defend this nation. Those that attack the professionalism and integrity of those that serve and blatantly throw out unsubstantiated allegation against these men and women with zero evidence of guilt are wrong and should be ashamed. Most of these allegations will be found untrue after extensive investigations but it's too late when that happens. The damage has been done. The Agency is tarnished and the spirit of the men and women that serve are many times broken and their morale is at all times low. They have to wake up every day and see the news reports and comments from representatives in Congress that they are Nazis, white supremacist, that they operate concentration camps, that they abuse women and children. Those that make those outrageous statements believe that once you decide to carry that ICE Badge or the Border Patrol Badge that you lose your sense of humanity and love for another person. They think they no longer have a heart or care about doing the right thing and there is nothing further from the truth. ICE Agents and Border Patrol Agents are moms and dads too. What they see every day with this unprecedented surge of children and families affects them deeply and emotionally. It is something they have to deal with every day and will remain with them the rest of their lives. Over one half of Border Patrol Agents are of Latin descent and to say that they abuse those from Central America with no evidence of abuse is just plain wrong and insulting to them that endure this crisis each and every day. It is easy to judge when you sit in the ivory tower of Capital Hill surrounded and protected by Capital Police. I ask this, has any of those that so easily attack the men and women of the Border Patrol or ICE ever talked to one of them about their job, their difficulties, their opinions on what is happening? Have they ever walked up to one and just say thank you for putting themselves in harm's way for their nation. Have they ever attended an honored burial of a Border Patrol Agent or ICE Agent that died doing their job? Died for this country. Have they ever had to console a small child or spouse of a fallen officer? Have they ever walked the walls of the National Law Enforcement Memorial just down the street and see the more than 21,000 names of the men and women that made the ultimate sacrifice which includes hundreds of names of those that served as officers in the Border Patrol and ICE and their legacy agencies? These brave men and women deserve better. Don't punish and attack all these heroes for alleged mistakes made by a few.

Now is the time to stop the political rhetoric and work with this President to secure our borders, keep America safe, protect our sovereignty and address this immigration crisis that is real and not manufactured. The country is counting on their representatives to keep them safe and control immigration. If more foreign labor is needed then fix the system, and come up with a legal method and stop asking border patrol or ICE to ignore the law. If you don't like what these Agencies do, then change the law. They are the Executive Branch and you are the Legislative branch. Enact laws you want enforced, anything else is just a waste of time and effort. We must acknowledge what is happening and address it quickly. In my career, I have seen too many terrible things. I have found dead bodies on the trail that were abandoned by the smuggler because they were too weak to continue. There was no call for help because it would cut into their profits. That's not a way for anyone to die, alone and in the middle of nowhere. During Operation No Mercy in Victoria Texas I stood in the back of a tractor trailer surrounded by 19 dead people including five year old little boy being embraced by his deceased dad. They were locked in the back of that metal trailer in the middle of summer with no lights, no air and scorching heat. What a truly terrible and suffering way to die. Witnesses that survived told stories of those screaming for help, begging for the driver to stoop. I can never forget that sight and the smell of death in that trailer. I cannot forget what that child must have went through the last thirty minutes of his life. It haunts me to this day. I cannot forget the numerous smuggled migrants that we found dead that were tortured, beaten and killed because they couldn't afford their smuggling fees during Operation ICE Storm in Phoenix, Arizona. I will never forget the numerous angel moms and dads that I have met that have lost their children forever at the hands of a person that wasn't supposed to be here. Each and every story was tragic and sad beyond belief. These children were supposed to be safe. They are in America where they are to thrive and live out their dreams, but those dreams were stolen from them and their parents will suffer in quiet until they join them in the next life.

People ask why I care so much and why I get so emotional and sometimes angry over this debate. If they saw what I saw during my 34 year career and experienced what I experienced, they would know. I will end with this. It's not just about enforcing our countries laws; it's not just about securing our border and protecting America. Its about saving lives and we should all be on the same side of that.