

Testimony of Ronald D. Vitiello to the Subcommittee on Civil Rights and Civil Liberties
Hearing on “Kids in Cages: Inhumane Treatment at the Border”

Chairman Raskin, Ranking member Roy and members of the committee, thank you for the opportunity to provide testimony regarding the humanitarian and security crisis occurring on the nations southwest border. I started my career in the United States Border Patrol in 1985. My first duty station was Laredo, Texas. I have worked for this country in the border environments of Texas, Arizona, and Vermont. Early in my career I also worked interior enforcement in Dallas, Texas. My last field assignment was in the Rio Grande Valley in Texas where I was the Chief Patrol Agent. I've implemented and or operationalized every change in the Immigration and Nationality Act since 1986. I was an Assistant Chief at headquarters in 2002, just after 9-11, and helped shape the newly created DHS and CBP headquarters under the Direction of Secretary Ridge. During that time at the direction of the leadership of Chief Aguilar, Commissioner Bonner among others we restructured the command of Border Patrol and set us on a path to grow and become the most professional and highly capable component of CBP that exists today. In my experience it was evident that prior to 9-11 most Americans were unaware of the issues regarding border security. Although border communities and law enforcement were challenged by drug and alien smugglers, deaths of migrants were and are common. I've rescued and attempted to revive those who suffered at the hands of unscrupulous smugglers. I've watched my colleagues risk there own well being to save the lives of those who smugglers have abandoned. Post 9-11 we attempted to fully respond to the threats exposed by porous borders and lax immigration enforcement. We began to plan and think differently about the borders and noticed that the public was demanding more effectiveness at the border. From 2001 through 2005, during the

George W. Bush administration, Border Patrol was finally beginning to receive the resources to better secure the southwest border. In 2006 congress passed the bipartisan "Secure Fence Act" legislation that provided the first comprehensive infrastructure investment. Beginning in 2012 a new trend began at the southwest border. We began to see the illegal flow from the northern triangle increase and the phenomenon of children coming alone and with their parents started to increase. Border Patrol made adjustments to facilities and did the best it could to make conditions for these populations in custody adequate. As a baseline context, in 1999 the former INS rewrote the standards for detention and transport. Border Patrol facilities were deemed holding and hold rooms vs. detention. Hold rooms were equipped to safely hold illegals for less than 12 hours. They were in holding just long enough to perform the book-in procedure. So called "processing". In 2014, during my service within the Obama administration, the number of unaccompanied alien minors (UAC) doubled from the previous year. The number of families increased 200%. The system, facilities and placement for UAC and families was overwhelmed. The reasons for the increase, although unclear at the time, seems to have been multi-faceted. Most of the illegals claimed to be coming to the USA for "a better life". There was also purposeful confusion provided by smugglers that tied the announcement for DACA to "permisos" at the border. DHS did not have facilities to detain families so after encounter and processing the families were released. This cycle was repeated day after day after day, through the year.

Catch and release has and will continue to exacerbate this problem. It encourages more families to take a dangerous journey. I know that catch and release is a factor, because in 2005 during the initial days of Secretary Chertoff's tenure we were being overwhelmed at the southwest border with large numbers of groups from Brazil. Other non-Mexican **adult** migrants were also trending upward. When Secretary Chertoff asked CBP and ICE how to

reduce the flow, the agencies requested and were given the following: CBP expanded the use of expedited removal, allowing for quick repatriation of those not claiming asylum. ICE expanded and economized their detention facilities, allowing aliens to be in custody until their cases were heard. We also secured a diplomatic agreement with Mexico. Mexico removed Brazil from its visa free travel list. Each of these inputs reduced the flow. The take-away was consequences matter. If we could hold aliens for their hearing, fewer would make the journey. In 2014 during the Obama administration, Secretary Johnson faced the problem of many families and UACs coming to the border overwhelming stations, and HHS shelters. Secretary Johnson did a number of things. The most effective action was to establish Family Residential Centers (FRC). The centers are well appointed facilities that can house and detain migrant families while they claim asylum and pursue immigration hearings. ICE establishment of the centers supported by the Immigration Courts led to a sharp decline of nearly 100% of families and children coming to the border FY-14 through 15. In 2015 the so called "Flores" settlement was reinterpreted by a judge. It effectively applied the settlement to families instead of just UACs. This interpretation effectively requires the catch and release of families at the border. The crises declared in 2014 was as a result of 120,000 families and UAC at the border, today that number is nearly 400,000.

This flow places an enormous burden on the people, facilities and our border communities. In a recent testimony Chief Provost told this congress that 40% of the work-force has been assigned to process and care for aliens versus patrolling the border. This places all in danger. The criminal cartels that effectively control Mexico's northern border and the flows are being enriched by the lawlessness and unprecedented traffic we're seeing at the border.

Making it Stop:

In my years of service many people have asked and or suggested ways to control the border better and how to fix the different problems occurring at the border. What I have learned is that no one thing can fix what is occurring now. I urge congress to give DHS and its components the authority and capability to end this crisis.

First: Pass legislation that fixes Flores. The surest way to reduce the flow is to change the incentives. Allow DHS to hold families in custody during the immigration proceedings. If families are held in custody for their due process and swiftly removed after a deportation order, others will stay at home.

Second: Fully fund all the required resources to fully implement the historic Migrant Protection Protocol. Port Courts, and facilities for migrants waiting in Mexico to quickly have a hearing and swiftly adjudicate their cases.

Third: Pass legislation that allows for UACs to be treated under the law the same way we treat Mexican and Canadian UACs.

Mexican and Canadian UACs who are not trafficking victims are repatriated if they are not asylees or qualify for other relief from deportation.

Fourth: Reduce the rhetoric that blames US officials for faithfully enforcing the laws that are on the books. The Agents and Offices of the DHS took an oath to follow the law when they encounter illegal aliens. UACs must be processed and turned over to HHS so they can be placed in shelter care. Families must be placed in proceedings before releases.

Fifth: Fully fund the Border Security Improvement Plan (BSIP). The BSIP is designed to provide the necessary Personnel, Technology and Infrastructure to substantially meet the expectation of the American people for a secure border.

Sixth: Pass legislation that sanctions state and local jurisdictions for failing to cooperate with Immigration Enforcement.

Seventh: Fully staff and fund the Immigration and Customs Enforcement (ICE) agency. If we believe in immigration is a benefit for our country, enforcement and integrity in the immigration system must be funded.

Each of these items are required to fully address the problem of an uncontrolled border and restore integrity to our immigration system. I appreciate the opportunity to inform this congress and stand ready to assist with expertise as needed.

Thank You,

Ronald D. Vitiello

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