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Chairman Scott, Ranking Member Ms. Foxx, and distinguished Members:

Thank you for this opportunity to testify today. It is an honor. As a youth, I served in this, the finest deliberative body the world has ever known. I briefed bills and attended hearings for my boss and your colleague, Harold Rogers of Kentucky. I am a grateful son of this great Nation and this sacred Chamber.

Introduction

America's immigration policies are without doubt the most welcoming and inclusive in the world. America accepts more people to lawful permanent residence and citizenship each year than the rest of the world combined. In 2017, 1,127,167 persons received lawful permanent residence.¹ In 2018, more than 756,000 people became U.S. citizens.² Since 2009, more than 7.2 million naturalized citizens entered the fabric of our nation. Immigration is among our proudest dynamics.³

Policies that affect border security are just as critical to families and children as policies that affect them after they enter the U.S. In Kentucky and nationally, no distinction is made between children in our schools who do not have legal status.⁴ Migrant status does not disqualify foreign-born children who are not here legally from participation in school lunch programs.⁵ Most of our public schools sponsor an office for migrant families, so that children and their parents have access to

¹ *Annual Flow Report*, Lawful Permanent Residents, August 2018, page 2. www.dhs.gov/sites/default/files/publications/Lawful_Permanent_Residents_2017.pdf

² *Naturalization Fact Sheet 2018*: During the last decade, U.S. Citizenship and Immigration Services (USCIS) welcomed more than 7.2 million naturalized citizens into the fabric of our nation. In fiscal year 2018, over 756,000 people were naturalized. www.uscis.gov/news/fact-sheets/naturalization-fact-sheet

³ *Id.*

⁴ *Plyler v. Doe*, 457 U.S. 202 (1982). Here the U.S. Supreme Court struck down a state statute denying funding for education to undocumented immigrant children in the United States and a municipal school district's attempt to charge an annual \$1,000 tuition fee for each student to compensate for lost state funding. The Court found that any state restriction imposed on the rights afforded to children based on their immigration status must be examined under an intermediate scrutiny standard to determine whether it furthers a "substantial" government interest.

⁵ *How to Participate in Summer Meals*, fns-prod.azureedge.net/sites/default/files/resource-files/SFSP-Fact-Sheet.pdf

responsible government agencies. My wife, Julie, a school executive, feeds 4,500 children a day, some of them as many as 3 meals. Hunger is the sole criterion for service, not immigration status. During the summer, children—migrant children included—continue to eat through the USDA summer meals program.⁶

Our state courts operate in the same manner. No false or invidious distinctions are drawn between the native-born and foreign-born. All are treated on a case-by-case basis according to the facts and the law.

At our borders, the same is true. Policies put in place there are calculated to assure national and domestic security and affirmatively address the pleas of those seeking asylum. Adopting policies that accomplish both is well within our reach, noting that the profile of asylees will change over time and, as they do, so will the strategies and tactics of smugglers, traffickers, and cartels to achieve their criminal ends.

Children Detained Pending Placement

Allegations that Trump administration policies intentionally traumatized children through detention policies that separated them from their parents or, alternatively, did the same to unaccompanied children is false. Obama administration policies intended to discourage both accompanied and unaccompanied arrivals of children at the Southwest Border gave rise to detention policies that held children until safe placement of them could be made. Both DHS (Department of Homeland Security) and HHS (Health and Human Services) voiced concerns that some children were trafficked and were not related to those claiming to be their parents.⁷ Placement of children into the safe havens of UAC (Unaccompanied Children Program) by the Trump administration in fiscal year 2019 exceeded any year's placement by the Obama administration.⁸ (See statistics in column below.)

HHS lists by fiscal year the number of children it has unified with approved sponsors for both the Trump and Obama administrations. Statistics reveal concerted efforts by both Administrations to place children in homes and institutions in which they can thrive pending their immigration court hearings and potential removal dates.⁹ As unification statistics demonstrably show, when flow rates increased in 2019, HHS Trump officials placed more minors in the UAC program.

⁶*How to Participate in Summer Meals*, fns-prod.azureedge.net/sites/default/files/resource-files/SFSP-Fact-Sheet.pdf

⁷*Unaccompanied Alien Children Released to Sponsors by State*, September 27, 2019. www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state

⁸*U.N. Expert Clarifies Statistic on U.S. Detention of Migrant Children*, www.npr.org/2019/11/20/781279252/u-n-expert-clarifies-statistic-on-u-s-detention-of-migrant-children

⁹*Unaccompanied Alien Children Released to Sponsors by State*, September 27, 2019. www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state

FY 2013-14 – 53,515

FY 2014-15 – 27,840

FY 2015-16 – 52,147

FY 2016-17 – 42,497

FY 2017-18 – 34,815

FY 2018-19 – 72,593¹⁰

Lower unification numbers in prior years reflect lower flow rates at our Southwest Border—not a resistance by the Obama administration to place children.¹¹ Likewise, children held by the Obama administration in what were termed cages was not planned, but was instead a symptom of resources unable to meet the demand of then-higher flow rates at the border.¹² Under the highest flow rates since the early 2000's, Trump officials responded to the humanitarian challenges they faced by requesting \$4.6 billion to address housing, food, medical care, and hygiene.¹³ Congress wisely approved this measure.

Indeed, both the Trump and Obama administrations' policies endorsed caring for unaccompanied children with essentially the same objectives. DHS policy guidelines clearly outline their methods:

Unaccompanied alien children apprehended by the Department of Homeland Security (DHS) immigration officials are transferred to the care and custody of ORR (Office of Refugee Resettlement). ORR promptly places an unaccompanied child in the least restrictive setting that is in the best interests of the child, taking into consideration danger to self, danger to the community, and risk of flight. ORR takes into consideration the unique nature of each child's situation and incorporates child welfare principles when making placement, clinical, case management, and release decisions that are in the best interest of the child.¹⁴

¹⁰*Unaccompanied Children Release Data*, September 27, 2019. www.acf.hhs.gov/orr/resource/unaccompanied-alien-children-released-to-sponsors-by-state

¹¹ Southwest Border Migration FY 2015-2020. www.cbp.gov/newsroom/stats/sw-border-migration

¹² AP FACT CHECK: Obama is a silent partner in Trump's boasts, Hope Yen and Calvin Woodward, June 24, 2019. States the article: Whether they are called prison cells or something else, Obama held children in temporary, ill-equipped facilities and built a large center in McAllen, Texas, that is used now. Democrats routinely and inaccurately blame Trump for creating "cages" for children. They are actually referring to chain-link fencing inside the McAllen center—Obama's creation. <https://apnews.com/fdfbafef2784a759bc7c3a8e8ddbcab>. *See also*

Department of Homeland Security, Inspector General Report, July 2, 2019, OIG 19-51, Management Alert – DHS Needs to Address Dangerous Overcrowding and Prolonged Detention of Children and Adults in the Rio Grande Valley. <https://apnews.com/fdfbafef2784a759bc7c3a8e8ddbcab>

¹³ Senate Approves \$4.6 Billion Bill for Border With Fewer Restrictions, Emily Cochrane and Julie Hirschfeld Davis, New York Times, June 26, 2019. www.nytimes.com/2019/06/26/us/politics/child-migrants-senate.html

¹⁴ Unaccompanied Alien Children. www.acf.hhs.gov/orr/programs/ucs

These policies have been successful in removing children from harm's way, while also realizing a rule of law approach to border and interior enforcement.

Disincentivizing Illegal Immigration

Any attempts to disincentivize illegal immigration begins with border security, continues with effective courts, and ends with enforcement of court orders, regardless of the rulings. Protecting children from being used as pawns to gain entry into the U.S. is a primary goal of these efforts. These efforts are rewarded only when children admitted to the U.S. actually make it to court and when those who attempt to use them are brought to justice.

Among the most vexing problems facing American immigration courts is failures to appear (FTAs) in court. Over the last 23 fiscal years 38 percent of all aliens free pending trial at some point dropped out of their court proceedings and were ordered removed from the U.S. What are called *in absentia* orders—removal orders entered when an alien fails to attend an immigration court hearing—makeup nearly two-fifths of all immigration court orders handed down in non-detained courts (from 1996 through 2018, 1,040,073 in absentia orders out of 2,734,430 total orders were issued by judges in non-detained courts).¹⁵

In fact, removal orders for failure to appear compose 76 percent of all removal orders issued by the courts to those free before trial. Put differently, some 1,373,832 removal orders were issued to aliens the U.S. permitted to remain at-large before their trials. More than three-quarters of these litigants—1,040,073—abandoned their applications for relief from deportation and were ordered removed.

Recent experience along the Southwest Board is instructive. Like the Mexicans of a generation ago, present-day migrants from Central America are not fleeing persecution as our laws define it—hostility or ill-treatment because of one's race, religion, political opinion, nationality or membership in a particular social group. Instead, most are economic refugees whose treks from El Salvador, Honduras, and Guatemala follow the well-worn paths of those wanting better. Some 3.4 million Central Americans now live in the U.S., 85 percent of them from these three nations

¹⁵ See *Courting Disaster*, Center for Immigration Studies. <https://cis.org/sites/cis.org/files/metcalfe-absent-enforcement.pdf> States the monograph at page 1: Of the 2,498,375 foreign nationals released on their own recognizance pending their court proceedings, 1,219,959 were ordered removed, 75 percent of them or 918,098 for failing to appear in court. See the EOIR statistical year books for: 2000, pp. L1-L2, Figures 15-17 and p. T1, Figure 23; 2005, pp. H1-H4, Figures 10-12 and p. O1, Figure 23; 2010, pp. H1-H4, Figures 10-12 and pp. O1, Figure 23; and 2015, pp. P1-P4 and Figures 23-26. Over the same period (1996 through 2015), 25 percent or 301,861 of those free pending trial actually litigated their claims. Dividing 918,098 by 20 ($918,098 \div 20 = 45,904.9$) reveals nearly 46,000 people on average failed to appear for their hearings in immigration courts each year and were ordered removed. See also *Skipping Court*, page 1. <https://cis.org/sites/default/files/2019-01/metcalfe-skipping-court.pdf>. See also *Myths vs. Facts About Immigration Proceedings*, <https://www.justice.gov/eoir/page/file/1161001/download>. MYTH: Few aliens fail to attend their immigration court proceedings. FACT: Forty-four percent (44%) of all non-detained removal cases end with an in absentia order of removal due to an alien's failure to attend a scheduled immigration court hearing. (Author's Note: Revised figures for FY 2018 failures to appear in court or in absentia orders (as taken from the FY 2018 EOIR Statistics Year Book) will be provided to Committee Staff.

alone.¹⁶ Since October 2018, 1.3 percent of the Guatemalan, Honduran and El Salvadoran populations were arrested at our borders.¹⁷ Many that made it through disappeared once inside the U.S. Numbers tell the story.

From September 2018 through April 2019, immigration trial courts specifically convened to hear these asylum claimants issued 7,724 removal orders, 87.5 percent—or 6,764—of them for dodging court. Those who pled only weeks before that they entered as family units desperate to escape persecution absconded when given court dates.¹⁸ A 2006 Homeland Security report observed the same flight among those released from detention to pursue asylum claims. Few, it said, would ever be seen again.

In growing numbers over the last 6 fiscal years young children have become the all-purpose means to enter and remain in the U.S. So good, in fact, they are now “recycled” as essential parts in schemes calculated to obtain the sympathy of border officials and the benefit of asylum policies that favor at-risk children.¹⁹ Leaving the adults who gained entry by claiming them as their own, these children recross the border, join another group, and repeat the fraud. Cross-referencing their bio-metric databases, Customs and Border Patrol (CBP) agents found some 600 kids had been trafficked multiple times to claim kinship with unrelated people. In 30 percent of cases at several entry points, DNA testing showed no matches among individuals seeking asylum as family members.²⁰ Sixty-two percent of all arrests on the Southwest Border today are composed of

¹⁶ Central America migration: Facts, FAQs, and how to help. World Vision. www.worldvision.org/refugees-news-stories/central-america-migration-facts.

¹⁷ Alex Nowrasteh, 1.3 Percent of All Central Americans in the Northern Triangle Were Apprehended by Border Patrol This Fiscal Year – So Far. www.cato.org/blog/13-percent-all-central-americans-northern-triangle-were-apprehended-border-patrol-fiscal-year

¹⁸ Natalie R. Asher, Immigration and Customs Enforcement, May 8, 2019. www.ice.gov/sites/default/files/documents/Testimony/2019/190508asher.pdf. Due to limitations on DHS’s ability to detain family units during removal proceedings, the U.S. Department of Justice’s Executive Office for Immigration Review (EOIR) created an Expedited Docket in 10 cities across the country. From the end of September through late April, EOIR has issued 7,724 orders of removal to aliens on that docket, including many who failed to appear for their court hearings. Specifically, 6,764 of these orders—87.5 percent—were issued in absentia after the aliens failed to appear. So far, approximately one out of every six new cases filed on these dockets has resulted in an in absentia order of removal because the alien failed to appear.

¹⁹ Steve Dinan, *Washington Times*, November 13, 2019. www.washingtontimes.com/news/2019/nov/13/more-600-children-recycled-migrant-smugglers-borde/. Stated the article: More than 600 children were “recycled” through the border over the last year, including some who were carried across eight times, by a different person each time, looking to exploit lax policies to gain a foothold in the U.S., a top ICE official told Congress on Wednesday. And those are only cases that were detected, officials said. The recycled children are one of the more disturbing aspects of illegal border flow over the last 12 months, which set records for the number of children and families who snuck into the U.S. The families were drawn by a lax policy, imposed by a federal court that gives adults a quick release into communities as long as they brought a son or daughter with them. The result was massive levels of fraud, with adults renting or outright buying unrelated children in order to present themselves as a family, authorities said. In some cases it was a one-off, but in other instances children were “recycled” across the border multiple times, said Derek N. Benner, acting deputy director at U.S. Immigration and Customs Enforcement.

²⁰ Anna Giartelli, *Washington Examiner*, May 18, 2019. <https://www.washingtonexaminer.com/policy/defense-national-security/dna-tests-reveal-30-of-suspected-fraudulent-migrant-families-were-unrelated>. Stated the article: In a pilot program, approximately 30% of rapid DNA tests of immigrant adults who were suspected of arriving at the southern border with children who weren't theirs revealed the adults were not related to the children, an official involved in the system's temporary rollout who asked to be anonymous in order to speak freely told the *Washington Examiner*. “There’s been some concern about, ‘Are they stepfathers or adopted fathers?’” the official said. “Those were

families, a 374 percent increase over 2018. Distinguishing the authentic from the fraudulent is made more difficult when young lives are at stake—and smugglers know it.

Reform is needed. Immigration—one of America’s most powerful dynamics—is unmatched by courts and enforcement of equal strength. Among the most commonsense solutions to protect children and are borders hardened by barriers, increased use of safe camps outside the U.S. pending asylum decisions, standard use of bio-metric testing for familial relationships, robust interior enforcement, pretrial detention for suspect border crossers, and broader prosecution of immigration crimes, specifically those involving children. Moreover, a fully empowered immigration court system is long overdue. Feeble courts issue deportation orders by the thousands each year without authority to enforce them. Nowhere in America’s 20-year old Interior Enforcement Strategy is any mention of improved immigration courts and enforcement of removal orders. Dysfunction is not only systemic, it is organic.

Dignifying all that has gone before to elevate the foreign-born into our national life, more is needed now that assures rule of law solutions continue this process. Both confidence and caution are warranted. One in seven of our neighbors was born elsewhere. Yet, a quarter of them are here illegally. Immigration policy done right—by attracting the talented, redeeming the persecuted, and removing the offender—serves the greatest prizes of all: American citizenship and the positive continuance of our American Experiment.

Thank you, Mr. Scott and Ms. Foxx for this opportunity to appear before you today.

not the case. In these cases, they are misrepresented as family members." In some incidents where Immigration and Customs Enforcement told the adults they would have to take a cheek swab to verify a relationship with a minor, several admitted the child was not related and did not take the DNA test..."