



**Correcting the Record about the Trump Administration's Efforts to
Address the Security and Humanitarian Crisis at the Southern
Border**

**Minority Staff Report
Committee on Oversight and Reform
U.S. House of Representatives**



July 18, 2019

EXECUTIVE SUMMARY

For months, Democrats in Congress ridiculed the notion of a security and humanitarian crisis at the southern border. They called it a “fake” and “false” emergency, a crisis meant to “stoke fear and divert attention” away from “turmoil” in the Trump Administration.¹ Now, many of these same Democrats accuse the Trump Administration of ignoring this very crisis—even saying that the President himself is responsible for it.² This hyper-partisan rhetoric ignores the reality and the gravity of the situation at the southern border.

On February 26, 2019, Chairman Elijah Cummings issued three subpoenas to Attorney General William Barr, then-Secretary of Homeland Security Kirstjen Nielsen, and Secretary of Health and Human Services Alex Azar II for documents relating to the Administration’s efforts to reunite children separated at the southern border.³ Chairman Cummings first requested this information in his capacity as chairman on February 5, 2019.⁴

Since Chairman Cummings’s subpoenas, the Department of Homeland Security (DHS), the Department of Health and Human Services (HHS), and the Department of Justice (DOJ) have each made a good-faith effort to comply. Contrary to the Chairman’s assertion of a “cover-up” that “extends from the White House to multiple Federal agencies,”⁵ the Trump Administration has produced at least 7,459 pages of documents and made detailed information readily available to the Committee through an HHS data portal.

As the evidence obtained to date demonstrates, the Trump Administration is responding to an unprecedented surge of migrant children and family units—a surge that initially began in 2014 during the Obama Administration. In congressional testimony and elsewhere, the Administration has repeatedly articulated the need for Congress to act, both by providing resources and by making statutory changes to address the crisis at the border. Data produced by the Administration show that the Trump Administration has reunited most of the children detained at the border. Rather than continue to blame the Trump Administration for this crisis, the Committee should consider reforms to fix the root causes of the border crisis—amend the *Flores* settlement agreement, close asylum loopholes, and change laws that incentivize migrants to make the dangerous journey to the southern border.

¹ See, e.g., Katie Galioto, *Pelosi, Schumer Speak out against #FakeTrumpEmergency*, POLITICO (Feb. 15, 2019), www.politico.com/story/2019/02/15/pelosi-schumer-national-emergency-fake-1172188; Emily Tillett, *Rep. Elijah Cummings Blasts Trump Administration for Creating ‘False Crisis’ at the Border*, CBS NEWS (June 24, 2018), www.cbsnews.com/news/rep-elijah-cummings-on-face-the-nation-blasts-trump-administration-for-creating-false-crisis-at-the-border/; Alexander Bolton, *Democrats Make U-Turn on Calling Border a “Manufactured Crisis,”* THE HILL, (June 19, 2019), thehill.com/homenews/senate/449214-dems-make-u-turn-on-calling-border-a-manufactured-crisis.

² See, e.g., Elizabeth Warren, Twitter, June 25, 2019, twitter.com/SenWarren/status/1143564909621497857.

³ Subpoena to the Hon. Kirstjen M. Nielsen (Feb. 26, 2019); Subpoena to the Hon. Alex M. Azar II (Feb. 26, 2019); Subpoena to the Hon. William P. Barr (Feb. 26, 2019).

⁴ Letter from Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform & Jamie Raskin, Ranking Member, Subcommittee on Civil Rights & Civil Liberties, H. Comm. on Oversight & Reform to Christine Ciccone et al, Asst. Sec’y, Office of Legislative Affairs, Dep’t. of Homeland Security (Feb. 5, 2019).

⁵ 165 Cong. Rec. H4414 (June 11, 2019) (statement of Rep. Elijah E. Cummings).

THE TRUMP ADMINISTRATION'S BORDER SECURITY EFFORTS

The Committee's oversight to date contradicts the Democrat narrative that the Trump Administration is neglecting separated children at the border.⁶ In fact, the data produced to date show that the Administration has reunited an overwhelming majority of children separated at the border. In addition, the evidence shows that the Trump Administration has been imploring Congress to take action to fix the root causes leading to child separation.

1. Data show that the Administration has reunited an overwhelming majority of separated children.

- The Administration has currently identified to the Committee a total of 2,648 children who were potentially separated at the southern border.⁷ To date, HHS has provided data to the Committee for 1,619 of these 2,648 children.
- According to a staff analysis of this HHS data, out of the 1,619 children, 1,603—or 99 percent—of the children have been discharged from HHS custody.
 - Of the 1,603 discharged children, 1,546 children—or 95 percent—were either reunited with an individual sponsor or released to a parent.⁸ Specifically, 1,061 children were released to a parent and 485 children were reunited with an individual sponsor.
 - Of the remaining 73 children who had not been reunited with an individual sponsor or released to a parent, HHS provided the following data:
 - 16 children remain in the care of HHS's Office of Refugee Resettlement (ORR), of which four children were determined to not have been separated from their parent;⁹
 - 21 children sought a voluntary departure, meaning that the child went back to his or her home country;
 - 20 children aged out, meaning that these children turned 18 and by law ORR cannot keep them in their custody;

⁶ Staff of H. Comm. on Oversight & Reform, 116th Cong., *Child Separations by the Trump Administration* (2019) [hereinafter "Democrat staff report"].

⁷ This figure comes from the Justice Department's representation to a federal court in related litigation. *See Ms. L. v. ICE*, No. 18-0428 (S.D. Cal. Dec. 12, 2018). In a court filing in December 2018, the Justice Department identified a total of 2,667 potential class members—i.e., individuals who may have been separated from their parents at the border. However, 19 of these individuals were later determined to be an adult at the time of separation or were separated from an adult who was not their parent. The 2,648 figure (2,667 minus 19) is the initial number representing the universe of children subject to the Committee's oversight. Because the class size has since increased, the 2,648 figure may also change as the oversight continues.

⁸ This count is based on staff analysis of the HHS data produced to the Committee to date.

⁹ For context, according to ORR, as of June 26, 2018, it had 11,800 total children in its care. *At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border: Hearing Before the S. Comm. on Judiciary*, 116th Cong. 4 (2019) (testimony of Jonathan Hayes, Director, U.S. Dep't of Health and Human Services) <https://www.judiciary.senate.gov/imo/media/doc/Hayes%20Testimony.pdf>

- 8 children were sent to another migrant program;
 - 6 children went to a DHS family shelter;
 - 1 child was granted immigration relief; and
 - 1 child was a runaway from an ORR facility.
- A recent federal court filing also shows that ORR has discharged 99 percent of children from its care since June 26, 2018.¹⁰
- According to HHS, children typically remain in ORR care for 60 days, although the average length of care has expanded to 78 days in fiscal year 2019.¹¹ The HHS data show that ORR released 53 percent of the separated children in 60 days or less.¹²
- To date, DHS has produced information on 1,000 children and their parents. The DHS data show that it referred most of the detained children to ORR within three days.
 - This data shows that of the 1,000 children, CBP referred 833 children to ORR within 72 hours.¹³
 - The Democrats’ analysis relied on a smaller data set of only 862 children.¹⁴ Even that subset shows that DHS referred 621 children to ORR within 72 hours.¹⁵
- According to DOJ data, only 325 parents or adult companions applied for asylum. Of those 325 individuals, 30 individuals had their asylum applications denied, 5 were granted, 4 were withdrawn, and 10 had other dispositions—as of May 17, 2019.¹⁶
- Although Democrats allege that 30 children remain separated from their families, these children remain separated largely because either the parents pose a danger to their child or the parents have expressed an intent not to reunify with their child.¹⁷

¹⁰ Joint Status Report at 1-4, *Ms. L. v. ICE*, 330 F.R.D. 284 (S.D. Cal. 2019 July 11, 2019). This filing relies on an updated class membership of 2,814 children who were potentially separated at the southern border. Of this figure, the Justice Department represented that 2,778 children had been reunified with a parent or released to a sponsor.

¹¹ *At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border: Hearing Before the S. Comm. on Judiciary*, 116th Cong. 3 (2019) (testimony of Jonathan Hayes, Director, U.S. Dep’t of Health and Human Services) <https://www.judiciary.senate.gov/imo/media/doc/Hayes%20Testimony.pdf>.

¹² This count is based on staff analysis of the HHS data produced to the Committee to date.

¹³ The time in CBP custody was measured from the date of the child’s apprehension by CBP to the date of the child’s book-out date by CBP.

¹⁴ Democrat staff report, *supra* note 6.

¹⁵ This count is based on the date of the child’s apprehension by CBP to the date of the child’s admittance to HHS ORR. Because it sometimes takes time to transit a child to ORR custody, the actual date of child transferring out of CBP custody may have been earlier—meaning that more children were referred to ORR within 72 hours.

¹⁶ Letter from Stephen E. Boyd, Asst. Attorney Gen., Dep’t of Justice, to Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (May 17, 2019).

¹⁷ Joint Status Report 3, *Ms. L. v. ICE*, 330 F.R.D. 284 (S.D. Cal. 2019 July 11, 2019).

- Although Democrats assert that children continue to be detained in family detention centers after reunification, the backlog in immigration courts prevents a speedier disposition. As of April 23, 2019, the backlog in immigration courts had grown to 876,552 pending cases.¹⁸

2. *The Trump Administration has cooperated substantially with Chairman Cummings's investigation.*

- Contrary to the assertions from Chairman Cummings, the Trump Administration has made a good-faith effort to comply with the Chairman's demands. DHS, HHS, and DOJ are continuing to comply with the Chairman's subpoenas—producing information responsive to the Chairman's requests on an ongoing basis, providing frequent briefings, and offering *in camera* reviews.
 - To date, DHS, HHS, and DOJ have collectively produced at least 7,459 pages of documents to the Committee.
 - The Departments have provided a detailed report that aggregates individualized data and information for 2,648 alien minors responsive to the Chairman's subpoenas.¹⁹
 - HHS has produced individualized information from HHS's ORR data portal on 1,619 children, including dates of birth; countries of birth; dates of admittance to HHS facilities; and dates of discharge to a parent, sibling, or other sponsor. HHS plans to produce additional responsive information as soon as possible.
 - CBP has produced information on 1,000 children and their parents. DHS has indicated that it plans to produce additional monthly CBP productions responsive to the Chairman's subpoena as quickly as possible.
 - DHS has represented to the Committee that U.S. Citizenship and Immigration Services (USCIS) and U.S. Immigration and Customs Enforcement (ICE) have produced all information that they possess responsive to the Chairman's subpoena.
- In early April 2019, at the Administration's invitation, Ranking Member Jim Jordan, Representative Chip Roy, and Representative Jody Hice visited HHS to view its data portal about the care and custody of migrant children.²⁰ The Members learned about

¹⁸ DEPARTMENT OF JUSTICE, EXECUTIVE OFFICE FOR IMMIGRATION REVIEW: ADJUDICATION STATISTICS (2019).

¹⁹ Letter from Matthew D. Bassett, Asst. Sec. for Legislation, Dep't. of Health and Human Servs., to Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Mar. 12, 2019); Letter from Christine M. Ciccone, Asst. Sec. for Legislative Affairs, Dep't. of Homeland Security, to Rep. Jim Jordan, Ranking Member, H. Comm. on Oversight & Reform (Mar. 12, 2019); Letter from Stephen E. Boyd, Asst. Attorney Gen., Dep't of Justice, to Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Mar. 12, 2019).

²⁰ Briefing by Matthew Basset, Asst. Sec. for Legislation, Dep't of Health & Human Servs., to Jim Jordan, Ranking Member, H. Comm. on Oversight & Reform, Chip Roy, Ranking Member, Subcommittee on Civil Rights & Civil Liberties, H. Comm. on Oversight & Reform (Apr. 4, 2019); Briefing by Matthew Basset, Asst. Sec. for Legislation,

the step-by-step process by which an alien minor is taken into ORR's care and about the level of documentation and tracking associated with that process.²¹ The Members also reviewed the documentation for the intake process, the documentation for medical care, and the documentation that is required to place a child with a sponsor.²²

- The Trump Administration has demonstrated substantial compliance with the Chairman's subpoenas, despite significant time and resources associated with data extraction of thousands of files.²³ Although the response has been complicated because responsive information comes from several components within DHS and HHS,²⁴ the Departments are continuing their diligent production of documents and information to the Committee.

3. *Expert testimony has confirmed the existence of a security and humanitarian crisis at the southern border.*

- The Committee's fact-finding in a number of hearings has demonstrated the seriousness of the emergency at the southern border. During a hearing on March 7, 2019, James Carroll, the Director of ONDCP, and Mike McDaniel, the Director of the Houston HIDTA, both described drug trafficking, human trafficking, and violent gang cartel activity at our southern border. They testified:

MR. JORDAN: In your judgment and your like 20-something years of experience, is there an illegal drug crisis, illegal drug emergency on our southern border?

MR. McDANIEL: Yes sir.

MR. JORDAN: Is there a gang and cartel crisis and emergency on our southern border?

MR. McDANIEL: Yes sir.

MR. JORDAN: And is there also a human trafficking crisis emergency situation on our southern border?

MR. McDANIEL: Yes, there is.

MR. JORDAN: So there is, all three?

Dep't of Health & Human Serv., to Jody Hice, Ranking Member, H. Comm. on Oversight & Reform, Subcommittee for National Security (Apr. 8, 2019).

²¹ *Id.*

²² *Id.*

²³ Letter from Christine M. Ciccone, Asst. Sec. for Legislative Affairs, Dep't. of Homeland Security, and Matthew D. Bassett, Asst. Sec. for Legislation, Dep't. of Health and Human Servs., to Rep. Elijah E. Cummings, Chairman, H. Comm. on Oversight & Reform (Apr. 2, 2019).

²⁴ *Id.*

MR. McDANIEL: Yes.²⁵

* * *

MR. JORDAN: [I]s there a drug crisis emergency on our southern border?

DIR. CARROLL: Yes sir. There is a drug crisis in our country and all of the drugs that are here are coming into our country, the fatal drugs, are coming from overseas, Mexico, China.

DIR. JORDAN: Is there also a gang and drug cartel problem on our southern border?

DIR. CARROLL: Absolutely. And there is no question.

MR. JORDAN: And associated with this cartel activity is a human trafficking problem on our southern border. Would you call that an emergency or crisis as well?

DIR. CARROLL: And they are absolutely related, because these traffickers who are just completely morally depraved will trade anything. They will trade in drugs. They will trade in weapons. They will trade in children. They will trade in human lives.²⁶

- During a related hearing on May 9, 2019, Brevard County, Florida, Sheriff Wayne Ivey described how his community also experiences the effects of poor border security. He testified:

MR. JORDAN: Would you describe the situation on our southern border as a crisis?

SHERIFF IVEY: There is absolutely no question. We need to secure our southern border. In doing so, we will eliminate and eradicate a lot of problems that law enforcement faces each and every day.²⁷

- At this same hearing, Director Carroll again testified about the importance of securing our southern border to help resolve the opioid epidemic and stem the tide of illicit drugs coming across into the country. He explained:

²⁵ *The Trump Administration's Response to the Drug Crisis: Hearing Before the H. Comm. On Oversight and Reform*, 116th Cong. (2019).

²⁶ *Id.*

²⁷ *The Trump Administration's Response to the Drug Crisis, Part II: Hearing Before the H. Comm. On Oversight and Reform*, 116th Cong. (2019).

MR. ROY: Would the opioid epidemic be further enhanced in our country, improved, if we were to target cartels and stop the flow across the border and secure our southern border?

DIR. CARROLL: We absolutely – that has to be one of our many, but has to be one of the priorities.²⁸

* * *

MR. HICE: So besides your conversation with Mr. Roy a while ago talking about the importance of addressing the cartel issue between the ports of entry primarily, would you also agree that securing the border, the entire southern border, would stem the flow of illegal narcotics?

DIR. CARROLL: We have to secure the country, and that starts with securing the southwest border.²⁹

- Likewise, David Pekoske, the Acting Deputy DHS Secretary, explained to the Committee just how critical the situation at the southern border has become. During a hearing on June 25, 2019, he testified:

MR. JORDAN: There is a crisis on the border, is that right?

MR. PEKOSKE: Without a doubt.

MR. JORDAN: Without a doubt. Enough fentanyl, a few months ago seized in one drug seizure – in one drug seizure – to kill 57 million Americans. How many apprehensions last month alone?

MR. PEKOSKE: Apprehensions last month alone are about 144,000.

MR. JORDAN: What was the number you gave for the year?

MR. PEKOSKE: For the year so far, this is this year so far, 676,315.

MR. JORDAN: That is way above any previous year. Is it not?

MR. PEKOSKE: Yes, sir.

MR. JORDAN: So this is certainly a crisis, and when there is a crisis, is it not sort of all hands on deck?

²⁸ *Id.*

²⁹ *Id.*

MR. PEKOSKE: All hands on deck just like in a hurricane response.

MR. JORDAN: Just like anything else.³⁰

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MR. JORDAN: To deal with this crisis, would changing the Flores law help?

MR. PEKOSKE: It would.

MR. JORDAN: Would fixing our asylum law help?

MR. PEKOSKE: Immeasurably.

MR. JORDAN: Would a wall help?

MR. PEKOSKE: A wall is helping and will continue to help.

MR. JORDAN: And certainly the [bipartisan emergency humanitarian] supplemental would help.

MR. PEKOSKE: The supplemental is critical to us.

MR. JORDAN: How about putting troops on the border? Would that help as well?

MR. PEKOSKE: We do have significant support from the Department of Defense already in a support or logistics role, and that has been a big, big help.³¹

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MR. ROY: Given that TSA volunteers are being sent to the border is it fair to say there is a crisis on our border?

MR. PEKOSKE: Yes, sir.

MR. ROY: Is CBP overwhelmed?

MR. PEKOSKE: It is.

MR. ROY: Completely overwhelmed.

³⁰ *Identifying, Resolving, and Preventing Vulnerabilities in TSA's Security Operations: Hearing Before the H. Comm. On Oversight and Reform, 116th Cong. (2019).*

³¹ *Id.*

MR. PEKOSKE: Totally.

MR. ROY: When CBP is accused of people dying in their custody, are you aware that in many of these cases, it is children that are being given lifesaving treatment either at the facilities or at hospitals because they are injured or sick?

MR. PEKOSKE: Yes, sir. And they are all medically screened before they come in, too.³²

- Acting Deputy Secretary Pecoske also elaborated about how DHS’s border security mission was hurt by public officials who denied the existence of a crisis at the border, saying that such rhetoric is “not helpful, [and] it is not correct.”³³ He also confirmed the importance for congressional action to ultimately fix the problem:

MR. ROY: And is it safe to say that [bipartisan emergency humanitarian supplemental] has an impact when you are having to deal with TSA and deal with the questions of whether you are sending 300 or 400 or 500 volunteers to be able to support this because we have not done our job in Congress to actually provide the resources necessary to do the job?

MR. PEKOSKE: Yes.³⁴

- Mr. Tom Homan, the former ICE Director, highlighted Congressional inaction as a root cause of the border crisis, explaining: “This situation at the border is the failure of Congress to act.”³⁵ Mr. Homan elaborated, “The biggest problem involves the unwillingness of Congress to address the loopholes that are causing this crisis. This should not be a partisan issue, I don’t care if you are Republican or Democrat, you should want to secure our borders.”³⁶
- Other available information reinforces this expert testimony about the crisis at the southern border, highlighting the steady flow of people and drugs to the border.
 - During a June 2019 hearing before the Senate Judiciary Committee, Acting Secretary McAleenan explained that although the vast majority of immigrants had

³² *Id.*

³³ *Id.*

³⁴ *Id.*

³⁵ *The Trump Administration’s Child Separation Policy: Substantiated Allegations of Mistreatment: Hearing Before the H. Comm. on Oversight & Reform, 116th Cong. (2019) (testimony of Tom Homan, Former Director, Dep’t. of Homeland Sec.).*

³⁶ *Id.*

historically been single adult males, 72 percent of all border apprehensions in the preceding month had been UACs and family units.³⁷

- HHS similarly reported an increase in UACs. According to HHS, “[p]reliminary information shows over 9,000 [UAC] referrals in May [2019]—one of the highest monthly totals in the history of the program. If these numbers continue, this fiscal year HHS will care for the largest number of UAC in the program’s history.”³⁸
- According to Acting Secretary McAleenan, in 2019, DHS identified about 4,800 illegal aliens as fraudulent family units and uncovered “child recycling rings,” in which innocent children were used multiple times to help different immigrant adults to gain illegal entry and release.³⁹
- On June 20, 2019, the Chief of U.S. Border Patrol testified to the skyrocketing rise of illegal alien apprehensions.
 - In Fiscal Year 2019, the Border Patrol apprehended more than 688,000 illegal aliens—including nearly 133,000 illegal aliens in May 2019 alone—between ports of entry along the southwest border, an increase of approximately 80,000 since October 2018.⁴⁰
 - Of the 593,000 apprehensions, UAC and family units accounted for 66 percent of all inadmissible individuals and apprehensions.⁴¹
 - Over 11,000 UACs were apprehended in May 2019 alone, up from about 5,000 UACs apprehended in October 2018.⁴²

CONCLUSION

Following months of House Democrats’ refusal to address the unprecedented border security and humanitarian crisis, Congress finally passed a bipartisan emergency border funding bill to provide crucial resources needed at the border. However, this step does not fix the root causes of the border crisis. Former Chief of U.S. Border Patrol and former Director of ICE, Ron

³⁷ *The Secure and Protect Act: A Legislative Fix to the Crisis at the Southwest Border: Hearing Before the S. Comm. on Judiciary*, 116th Cong. (2019) (testimony of Kevin McAleenan, Assist. Secretary, Dep’t. of Homeland Sec.).

³⁸ U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES, UNACCOMPANIED ALIEN CHILDREN SHELTERED AT HOMESTEAD JOB CORPS SITE, HOMESTEAD, FLORIDA (2019), <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Sheltered-at-Homestead.pdf>.

³⁹ *The Secure and Protect Act: A Legislative Fix to the Crisis at the Southwest Border: Hearing Before the S. Comm. on Judiciary*, 116th Cong. (2019) (testimony of Kevin McAleenan, Assist. Secretary, Dep’t. of Homeland Sec.).

⁴⁰ *Examining the Department of Defense’s Deployment to the U.S.-Mexico Border: Hearing Before the H. Comm. on Homeland Security*, 116th Cong. (2019) (testimony of Carla L. Provost, Chief, U.S. Border Patrol), <https://docs.house.gov/meetings/HM/HM11/20190620/109664/HHRG-116-HM11-Wstate-ProvostC-20190620.pdf>; U.S. CUSTOMS AND BORDER PROTECTION: SOUTHWEST BORDER MIGRATION FY 2019 (July 10, 2019), <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

⁴¹ *Examining the Department of Defense’s Deployment to the U.S.-Mexico Border: Hearing Before the H. Comm. on Homeland Security*, 116th Cong. (2019) (testimony of Carla L. Provost, Chief, U.S. Border Patrol), <https://homeland.house.gov/sites/democrats.homeland.house.gov/files/documents/Testimony-Provost.pdf>;

⁴² U.S. CUSTOMS AND BORDER PROTECTION: SOUTHWEST BORDER MIGRATION FY 2019 (July. 10, 2019), <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

Vitello, testified that “[n]ext Spring we’re going to be in exactly the same place we are now if the law does not change.”⁴³ If Democrats are serious about solving the border crisis, they should address the *Flores* settlement agreement, asylum loopholes, and the other statutory and judicial constructs that incentivize aliens to illegally cross the southern border. In light of these circumstances, the Committee must work to address the root causes of the crisis at the southern border—not seek to mischaracterize facts to advance a partisan political agenda.

⁴³ *Kids in Cages: Inhumane Treatment at the Border: Hearing Before the Subcomm. on Civil Rights and Civil Liberties*, 116th Cong. (2019) (testimony of Ronald Vitiello).