

# **EXHIBIT 3**



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ON

“At the Breaking Point: the Humanitarian and Security Crisis at our Southern Border”

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Chairman Cornyn, Ranking Member Durbin, and Members of the Subcommittee, thank you for the opportunity to appear before you today to discuss the state of the border.

Our nation is experiencing an unprecedented border security and humanitarian crisis along our southwest border. We have surging levels of individuals entering between ports of entry, or at ports of entry, without proper documentation. We are facing significant throughput challenges associated with processing record numbers of family units and unaccompanied alien children (UAC). We are also experiencing significant challenges, primarily with staffing and transportation, transferring these migrants to other entities for detention or other appropriate disposition. These factors have created both humanitarian and safety concerns; the demographic shift towards more vulnerable populations, combined with overwhelming numbers, has diminished our capacity to prevent deadly narcotics and dangerous people from entering our country. It is because of this crisis that the Department of Homeland Security (DHS) is asking Congress to provide additional funding in 2019, including \$565 million for U.S. Customs and Border Protection (CBP) operations and investments.

### **Situation at the Southwest Border**

As of March 31, 2019, 361,087 migrants have been apprehended between the ports of entry (POEs) in Fiscal Year (FY) 2019, representing a 108 percent increase over the same time in FY 2018. In March alone, the Border Patrol averaged over 3,000 apprehensions each day. Historically, apprehension numbers climb as we reach the summer months, meaning Border Patrol anticipates the number of apprehensions will only increase in the coming months.

There are three trends that make this migration flow a significant challenge for CBP and our nation's immigration system. The first trend is that the majority of migrants arriving at the southwest border are members of family units. In FY 2019 to date, the Border Patrol has seen more than a 374 percent increase in the number of family units apprehended, compared to the same period in FY 2018. Family units and UAC combined make up more than 62 percent of all southwest border apprehensions. These populations are more vulnerable than single adults, and require a more resource-intensive level of care. This does not diminish the significance of single adult apprehensions. While the number of family units and UAC are increasing significantly, the flow of single adults has not stopped—in fact, it has increased as well. By the end of March FY 2019, the Border Patrol apprehended more than 135,000 single adults—the highest number in a fiscal year to date since FY 2014.

The second trend is the demographic makeup of this migration flow. Eighty-three percent of all Border Patrol apprehensions along the southwest border are from the Northern Triangle countries of Guatemala, Honduras, and El Salvador. Unlike UAC from Mexico, federal law prevents the swift repatriation of UAC from Central America.

The third major trend is the increase in claims of a fear of return to a migrant's country of origin. Between 2000 and 2013, less than one percent of those apprehended or encountered at our border claimed a fear of return. In FY 2018, along the southwest border, just shy of 93,000 people claimed a fear of return while in CBP custody—a record number of claims. In FY 2019, we have almost reached that total in the first six months of the fiscal year alone. The high number of

claims, combined with the low initial threshold for credible fear, immigration court backlogs, and the amount of time it takes to process cases creates lengthy stays in the United States while the claim is adjudicated. This facilitates abuse of the asylum system while delaying legitimate claimants in need of protection.

Exacerbating these challenges, the Border Patrol is now apprehending larger and larger groups between ports of entry. In the first six months of FY 2019, CBP encountered 111 large groups composed of 100 or more individuals, totaling 18,664 apprehensions. For comparison, the Border Patrol encountered 13 large groups in FY 2018 and only two large groups in FY 2017.

Human smugglers strategically choose the timing and location for these large group crossings in order to disrupt U.S. border security efforts, create a diversion for the smuggling of narcotics, and allow single adults seeking to evade capture an opportunity to enter the United States. Even worse, many of these smugglers commit horrible acts of violence, sexual assault, and extortion.

Since October 2018, CBP has seen an increase in migrants' use of caravans to make the journey north towards the United States. DHS defines a migrant caravan as an autonomous group of 300 or more individuals organized in advance by non-state actors that travels in a coordinated manner, migrating from one country to another often times, though not exclusively, in violation of a given country's national immigration laws and policies.

Traveling with a caravan is appealing to some migrants because they perceive it provides a safer journey and avoids the thousands of dollars in costs associated with traveling with a human smuggler. The phenomenon of large organized groups transiting Mexico has successfully accelerated migrants' timelines to reach the border by utilizing transportation services provided by state and local governments assisting in moving migrants throughout Mexico. Apprehending a group of 100 to 400 people at one time creates significant operational challenges for CBP officers and agents who have to care for and process these individuals first before continuing their law enforcement mission.

While the men and women of CBP pride themselves in providing appropriate care for those in its custody, the volume of family units combined with unique care and custody requirements has caused CBP to consider the use and expansion of urgent and sustained interagency support to safely and appropriately process migrants. CBP continues to work with its interagency partners to identify options to meet the needs of the increasing numbers of migrants.

The border security and humanitarian crisis at the southwest border continues to present significant operational challenges to CBP, and current trends indicate that it will worsen as we enter the warmer spring and early summer months.

Our short-term holding facilities were neither designed for the large volume of family units nor for long-term custody. We consider 4,000 detainees to be a high number of migrants in custody, and in the past had considered 6,000 detainees a crisis. In this fiscal year, CBP has already experienced more than 14,000 detainees in custody on a single day.

Despite the challenge before us, CBP is committed to effectively using our resources to support border security operations and the ongoing humanitarian efforts.

## **Conditions at the Ports of Entry**

The operational capacity at a POE varies depending on overall port volume, facility capacity, resource constraints, and daily tactical and enforcement activities. Operational tempo at POEs cannot always be planned; for example, we do not know in advance when human, narcotics, or weapons smuggling attempts may be discovered, or which individuals may present a threat to our officers. It takes significant resources to manage this highly uncertain environment.

Similar to what we see between POEs, we are seeing increased numbers of migrants, including family units and other aliens who arrive without proper documents, many of whom claim a fear of return. When large groups of inadmissible aliens, sometimes in the hundreds, arrive at POEs, officers are diverted from their priority missions and our processes are strained in an effort to process all individuals in a humane and efficient manner.

CBP officers are committed to our multifaceted national security and legitimate trade and travel mission sets. The processing of inadmissible aliens is only one aspect of our many missions. CBP's Office of Field Operations (OFO) processes all persons who apply for admission at POEs. At times, due to operational capacity or as necessary to facilitate orderly processing and maintain the security and safety of the traveling public, individuals who arrive without appropriate travel documents may need to wait in Mexico before being permitted to enter the POE.

## **Narcotics**

Illegal drugs continue to flow into the United States at POEs through air, land, and sea environments. CBP has a unique responsibility and a critical role in preventing illicit narcotics, including opioids, from entering our country. CBP, with the support of Congress, has made significant investments in, and improvements to, drug detection and interdiction technology and targeting capabilities at and in-between our POEs. For example, CBP was the first agency in the nation to successfully train and utilize canines in the detection of fentanyl, and is a trendsetter in the use and development of non-intrusive inspection (NII) capabilities.

Marijuana continues to account for the bulk of contraband drugs CBP seized by weight. However, that amount has been on a downward trajectory in the past few years. As we have observed a decline in the amounts of marijuana seized at POEs, interdictions of other drugs are holding steady or increasing. At the end of FY 2018, we saw increases in the amounts of methamphetamine and heroin seized, and compared to this time last year, cocaine seizures between the POEs are up 35 percent.

To counter this, CBP has deployed additional chemical field screening equipment with the ability to presumptively identify more than 14,000 substances, and all OFO concealed human and narcotic detection canine teams across the operational environment have completed training to detect fentanyl and fentanyl analogues.

We use advanced detection equipment and technology, including NII equipment and radiation detection technologies, to maintain robust cargo, commercial conveyance, and vehicle inspection capability at our POEs. NII technologies deployed to our land, sea, and air POEs include large-scale X-ray and gamma-ray imaging systems, as well as a variety of portable and handheld

technologies. NII systems enable CBP officers to examine cargo conveyances such as shipping containers, commercial trucks, and rail cars, as well as privately owned vehicles, for the presence of contraband without physically opening or unloading them.

For FY 2019, CBP has received \$564 million for NII at land POEs. This is a historic investment that will allow CBP to transform its efforts to stop illicit drugs from entering the country through legal crossing points. Combined with \$76.9 million for personnel, lab equipment, canine units, and POE technologies to support countermeasures against opioid trafficking, CBP will be able to increase the number of vehicles crossing our borders that are scanned with cutting edge technology and develop the forensic capabilities necessary to ensure prosecution and criminal sanctions. CBP appreciates the support of Congress for these critically-needed capabilities.

### **Drivers of the Crisis**

The rise in migration is, in part, a consequence of the gaps created by current laws, judicial rulings, and policies related to the treatment of minors. However well-intentioned, they hinder CBP's ability to fulfill its mission.

#### *Flores Settlement Agreement*

The 1997 *Flores* Settlement Agreement provides certain standards governing the treatment of all alien minors in U.S. Government custody. The Agreement requires the government to release alien minors from detention without unnecessary delay, or, if detention is required, to transfer them to non-secure, licensed programs "as expeditiously as possible." *Flores* also sets certain standards for the holding and detention of minors, and requires that minors be treated with dignity, respect, and special concern for their particular vulnerability. CBP complies with the *Flores* Settlement Agreement and treats all minors in its custody in accordance with its terms.

In 2014, in response to the surge of alien families crossing the border, DHS increased the number of family residential centers. Soon after, the U.S. District Court for the Central District of California held that *Flores* applies not only to minors who arrive in the United States unaccompanied, but also to those children who arrive with their parents or legal guardians. The court also ruled that ICE's family residential centers are not licensed nor are they secure facilities. These rulings limited DHS's ability to detain family units for the duration of their immigration proceedings. Pursuant to this and other court decisions interpreting the *Flores* Settlement Agreement, DHS rarely detains accompanied children and their parents or legal guardians for longer than approximately 20 days.

As a consequence of the limitations on time-in-custody mandated by *Flores* and subsequent court decisions, custody arrangements for adults who arrive in this country alone are different from those for adult parents or legal guardians who arrive with their child or children.

#### *UAC Provision of Trafficking Victims Protection Reauthorization Act of 2008*

There are similar treatment differences associated with the provision enacted in *the Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA), Public Law 110-457, providing certain protections to UAC. Specifically, the TVPRA requires that, once a child from a

noncontiguous country is determined to be a UAC, the child must be transferred to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) within 72 hours, absent exceptional circumstances. If the UAC is a national or habitual resident of a contiguous country and is determined to be eligible to withdraw his or her application for admission (i.e., not a trafficking victim or likely trafficking victim, does not have a fear of return, and is able to make an independent decision), he or she can be repatriated to that contiguous country. UAC from countries other than Canada and Mexico are not able to be repatriated in this manner pursuant to the TVPRA, which further encumbers the already overburdened immigration system. Currently, more than 80 percent of UAC encountered by Border Patrol are from the non-contiguous countries of Guatemala, Honduras, and El Salvador; therefore, they are not eligible to be repatriated in an expeditious fashion.

The gaps created by layers of outdated laws and judicial rulings related to the treatment of minors are a significant pull factor for family units and UAC. Would-be border crossers know that, under our current system, adults with children will not generally be detained during their immigration proceedings. As word of mouth and social media spread news of their release into the United States, more migrants are emboldened to make the journey. Without Congressional action, this crisis will continue.

### **CBP's Response to the Crisis**

The situation demands whole-of-government solutions, and CBP is addressing this border security and humanitarian crisis with all available resources.

#### *Interagency Border Emergency Cell*

In March, DHS and CBP took the necessary steps to combat the growing security and humanitarian crisis at the southern border. We are undertaking emergency surge operations and immediately increasing temporary reassignment of personnel and resources from across the agency to address the influx of migrants.

A Department-wide call was issued for DHS employees to volunteer to provide support to CBP and U.S. Immigration and Customs Enforcement (ICE) operations on the southwest border. DHS established the Interagency Border Emergency Cell (IBEC) to coordinate DHS and interagency support to the border crisis response effort, improving information sharing and coordinating interagency support to CBP and ICE efforts to bring the situation to a manageable level.

The IBEC provided similar to the coordination efforts in place for responding to major disasters, in an effort to apply the whole-of-government approach to this border security and humanitarian crisis. This week, IBEC transitioned its mission to the Joint Incident Advisory Group.

#### *Personnel*

To confront the unprecedented humanitarian and border security crisis on the southwest border, CBP is temporarily re-assigning CBP officers from POEs nationwide to Border Patrol sectors. This reassignment will impact CBP's ability to process trade and travel at affected locations.

CBP officers will support Border Patrol Sectors with care and custody responsibilities, including hospital watch and transportation. We are working closely with the trade community, local authorities, and other partners to mitigate the impact of reduced staffing at the impacted ports. CBP is also increasing the number of temporary details of Border Patrol agents from northern and coastal border sectors to sectors along the southern border.

CBP is also temporarily assigning non-law enforcement mission support employees who volunteered to augment staffing and operations at critical over-capacity stations and sectors. This employee volunteer force will be temporarily assigned to Border Patrol stations based on operational need relative to the employees' assessed training and skill sets.

#### *Centralized Processing Center*

CBP is also currently taking steps to establish a Centralized Processing Center (CPC) in the El Paso Sector. This will help us protect the health and safety of those in custody while streamlining operations and reducing time in custody. The El Paso CPC, modeled in part on the CPC established in 2014 in the Rio Grande Valley Sector, will provide a centralized location for the processing of migrants, and will facilitate consistent medical assessments in a centralized location before DHS transfers UAC to shelters funded by HHS ORR, and single adults and family units to ICE Enforcement and Removal Operations (ERO).

#### *Infrastructure*

A key component of our strategy is to impede and deny illegal entry, and we are putting the initial investments in the border wall system to good use. Ninety-eight percent of FY 2017-funded border wall replacement projects—approximately 39 miles—were completed by April 12, 2019. The first of these projects began just nine months after funds were received. Typical government construction projects take two years or more to begin. In contrast, construction on border wall projects began within months, in response to the urgent operational need. These projects are nearly complete and are expected to be delivered on time and within budget.

The installation of a modern barrier in key border areas has made a significant positive impact. A two-mile stretch of border immediately west of the Calexico West Port of Entry in Border Patrol's El Centro Sector in California, has been a consistent hot spot for illegal activity. The presence of local pedestrian and vehicle traffic from a shopping center just steps away from the border allowed illegal border crossers to quickly vanish into the community. Since construction of a border wall system—to include complementary technologies—was completed, agents have been better able to prevent individuals from crossing illegally into the United States in this location. Additionally, the steel bollard design has increased agents' safety by allowing agents to maintain a line of sight through the barrier.

Approximately \$800 million in FY 2018-funded construction contracts have already been awarded. In FY 2019, we received \$1.375 billion in funding for additional primary pedestrian barrier; we plan to put that funding to work in the Rio Grande Valley Sector, our highest priority location for wall investment. We also received \$100 million for border surveillance technology, including fixed towers, remote video surveillance systems, mobile surveillance capability



systems, and innovative towers. These investments assist Border Patrol agents in the field, as they increase CBP's ability to detect illegal activity along the border, increase our operational capabilities, and improve the safety of frontline law enforcement personnel. We will aggressively implement the security enhancements supported by these investments, and deploy capabilities consistent with the requirements of our agents on the ground. As our personnel at the border are increasingly redirected to address the humanitarian crisis, we need these tools more than ever to perform our law enforcement mission.

#### *Interagency, Nongovernmental, and International Support*

CBP requested and received medical field support from the U.S. Coast Guard and the U.S. Public Health Service Commissioned Corps. Teams were deployed to the Yuma, Tucson, and El Paso Sectors to increase capacity to perform pediatric medical checks. We have subsequently expanded the use of contracted medical personnel to perform medical screening in areas of the southwest border where we are experiencing the highest volume of UAC and family unit apprehensions.

We are also coordinating with the Centers for Disease Control and Prevention to gather data on infectious diseases among migrants in custody and develop recommendations for further CBP action. We are seeking advice from external medical experts, including the American Pediatric Association and others.

We have worked with ICE regarding any available surge options for transportation to family residential centers and/or supervised release. We are also reviewing options to relieve recent overcrowding in Border Patrol stations, including engaging with non-governmental organizations and local partners. Across the southwest border, we have been forced to begin directly releasing migrants into American communities to address our capacity limitations. This action is not taken lightly and is only used as a last resort due to the system being overwhelmed. This has required increased daily coordination with ICE and nongovernmental organizations. Without the ability to detain family units in our current system, we have no choice but to release family units while they await court dates that are often years away.

We will also continue to proceed with Department of Defense and interagency requests for assistance to support all of the humanitarian and border security crisis needs that have been identified, and continue to collaborate with the Federal Emergency Management Agency to support CBP's efforts.

Additionally, we will continue our ongoing efforts with the Governments of Mexico and the Northern Triangle Countries to leverage greater collective involvement to address migrant flows.

#### **Conclusion**

We have dedicated every available resource to stop the flow of illegal migrants and dangerous drugs into the United States, including personnel, technology, and innovating outreach and engagement with international and non-governmental industry partners. However, despite our efforts, we are overwhelmed.

Ultimately, we must confront and address the vulnerabilities in our legal framework in order to achieve lasting change at the border. Each action taken by lawmakers, the judiciary, policymakers, and operators—while made in good faith by people grappling with complex issues—can have unintended effects on our immigration system and our national security. We need Congress to acknowledge the crisis and to take the legislative action necessary to support CBP and our partners.

Thank you for the opportunity to testify. We look forward to your questions.