



# Progress on Implementing GAO Recommendations on Unaccompanied Alien Children

March 23, 2018

Fiscal Year 2017 Report to Congress



Homeland  
Security

*U.S. Customs and Border Protection*

# Message from the Acting Deputy Commissioner of CBP

March 23, 2018

I am pleased to submit the following report, “Progress on Implementing GAO Recommendations on Unaccompanied Alien Children,” which has been prepared by U.S. Customs and Border Protection (CBP).



This report was compiled pursuant to the language set forth in House Report 114-668 accompanying the Fiscal Year 2017 Department of Homeland Security Appropriations Act (P.L. 115-31). The report provides an update on CBP’s progress in implementing the recommendations of U.S. Government Accountability Office (GAO) reports GAO-15-521 and GAO-16-514.

Pursuant to congressional requirements, this report is being provided to the following Members of Congress:

The Honorable John R. Carter  
Chairman, House Appropriations Subcommittee on Homeland Security

The Honorable Lucille Roybal-Allard  
Ranking Member, House Appropriations Subcommittee on Homeland Security

The Honorable John Boozman  
Chairman, Senate Appropriations Subcommittee on Homeland Security

The Honorable Jon Tester  
Ranking Member, Senate Appropriations Subcommittee on Homeland Security

I would be pleased to respond to any questions you may have. Please do not hesitate to contact my office at (202) 344-2001 or the Department’s Acting Chief Financial Officer, Stacy Marcott, at (202) 447-5751.

Sincerely,

A handwritten signature in black ink, which appears to read "Ronald Vitiello".

Ronald D. Vitiello  
Acting Deputy Commissioner  
U.S. Customs and Border Protection

# Executive Summary

GAO report GAO-15-521 made several recommendations for improving CBP's compliance with the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) (P.L. 110-457) requirements related to unaccompanied alien children (UAC), including improvements in training and guidance for officers and agents; revisions to indicators or questions used to conduct TVPRA assessments; and documentation of the basis for decisions when assessing screening criteria. GAO also recommended that CBP better document the treatment of UACs and the time that such children spend in CBP custody.

GAO report GAO-16-514 recommended that CBP improve the collection of data on time in custody, and develop mechanisms for registering and tracking complaints and analyzing complaint trends. This report outlines the actions that CBP has undergone to implement the nine recommendations assigned to CBP in GAO-15-521 and all of the recommendations outlined in GAO-16-514.

CBP notes that a number of the GAO's conclusions and recommendations have been superseded by the U.S. Court of Appeals for the Ninth Circuit's July 2016 opinion in *Flores v. Lynch* and subsequent *Flores* developments.



# Progress on Implementing GAO Recommendations on Unaccompanied Alien Children

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# I. Legislative Language

This document was compiled pursuant to the legislative language set forth in House Report 114-668 accompanying the Fiscal Year 2017 Department of Homeland Security (DHS) Appropriations Act (P.L. 115-31).

House Report 114-668 states:

A GAO report released in July 2015 (GAO-15-521) made several recommendations for improving CBP compliance with William Wilberforce Trafficking Victims Protection Reauthorization Act (TVPRA), Public Law 110-457 requirements related to unaccompanied children, including improvements in training and guidance for officers and agents; revisions to indicators or questions used to conduct TVPRA assessments; and documenting the basis for decisions when assessing screening criteria. GAO also recommended that CBP better document the care provided to unaccompanied children and the time such children spend in CBP custody. A more recent GAO report (GAO-16-514) recommended that CBP improve the collection of data on time in custody, and develop mechanisms for registering and tracking complaints and analyzing complaint trends. The Committee directs CBP to report, within 90 days of enactment of this Act, on its progress in implementing the recommendations of GAO-15-521 and GAO-16-514.

## II. Background

U.S. Government Accountability Office (GAO) report GAO-15-521 made several recommendations for improving U.S. Customs and Border Protection's (CBP) compliance with the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (P.L. 110-457) requirements related to unaccompanied alien children (UAC), including improvements in training and guidance for officers and agents; revisions to indicators or questions used to conduct TVPRA assessments; and documentation of the basis for decisions when assessing screening criteria. GAO also recommended that CBP better document the treatment of UACs and the time that such children spend in CBP custody.

GAO report GAO-16-514 recommended that CBP improve the collection of data on time in custody, and develop mechanisms for registering and tracking complaints and analyzing complaint trends. This report outlines the actions that CBP has undergone to implement the nine recommendations assigned to CBP in GAO-15-521 and all of the recommendations outlined in GAO-16-514.

CBP notes that a number of the GAO's conclusions and recommendations have been superseded by a 2016 opinion by the U.S. Court of Appeals for the Ninth Circuit (Ninth Circuit), holding that the *Flores* settlement agreement applied to both accompanied children and UACs.

### III. U.S. Government Accountability Office Recommendations<sup>1</sup>

#### A. GAO-15-521 Unaccompanied Alien Children: Actions Needed to Ensure that Children Receive Required Care in DHS Custody

Recommendation	Lead Office	Status Updates (as of March 1, 2018)	Current Status
<p><b>Recommendation 1:</b> To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommend that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to develop and implement TVPRA training for OFO officers at airports who have substantive contact with UAC.</p>	<p>CBP</p>	<p>OFO no longer is pursuing a separate train-the-trainer course for CBP officers at air ports of entry. The new course in development is a collaborative effort between CBP’s Office of Field Operations (OFO) and U.S. Border Patrol (USBP), in consultation with CBP’s Office of Chief Counsel, and in partnership with CBP’s Office of Training and Development (OTD) to develop, deconflict, and revise training consistent with requirements under TVPRA, specifically outlining rules to identify and screen UACs. This training will emphasize the importance of: (1) properly identifying a juvenile as a UAC, (2) processing for appropriate removal proceedings for a UAC, and (3) if the UAC is from a contiguous country, when that UAC may be permitted to withdraw his or her application for admission or to return voluntarily. TVPRA training will address further the notification timeline, transfer process to the U.S. Department of Health and Human Services (HHS), and proper recording of previously stated factors and the overall care given to the UAC.</p>	<p><b>Current status:</b> In Progress  <b>Estimated Completion Date (ECD):</b> 6/30/2018</p>
<p><b>Recommendation 2:</b> To better ensure that DHS complies with TVPRA requirements for</p>	<p>CBP</p>	<p>A CBP working group was organized and has completed the draft documents related to a revised UAC screening process. The drafts of both the revised</p>	<p><b>Current status:</b> In Progress  <b>ECD:</b> 6/30/2018</p>

<sup>1</sup> In 2016, the Ninth Circuit held that the *Flores* settlement agreement applied to both accompanied children and UACs. Therefore, a number of the GAO’s conclusions and recommendations have been superseded by this order.

Recommendation	Lead Office	Status Updates (as of March 1, 2018)	Current Status
<p>training, screening, and transferring UAC to HHS, we recommend that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to revise the Form 93 to include indicators or questions that agents and officers should ask UAC to better assess (1) a child’s ability to make an independent decision to withdraw his or her application for admission to the United States and (2) credible evidence of the child’s risk of being trafficked if returned to his or her country of nationality or last habitual residence.</p>		<p>screening form and reference guide were cleared with the exception of one outstanding issue. That issue is being addressed by the CBP operational offices and was discussed at a recent working group meeting.</p>	
<p><b>Recommendation 3:</b> To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommend that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to provide guidance to Border Patrol agents and OFO officers that clarifies how they are to implement the TVPRA requirement to transfer to HHS all Mexican UAC who</p>	<p>CBP</p>	<p>OFO and USBP, in consultation with CBP’s Office of Chief Counsel, are collaborating with OTD to develop, deconflict, and revise training consistent with requirements under TVPRA, specifically outlining rules to identify and screen UACs. This training will emphasize the importance of: (1) properly identifying a juvenile as a UAC, (2) processing for appropriate removal proceedings for a UAC, and (3) if the UAC is from a contiguous country, when that UAC may be permitted to withdraw his or her application for admission or to return voluntarily. TVPRA training also will address the notification timeline, transfer process to HHS, and proper recording of previously stated factors and the overall care given to the UAC.</p>	<p><b>Current status:</b> In Progress <b>ECD:</b> 6/30/2018</p>

Recommendation	Lead Office	Status Updates (as of March 1, 2018)	Current Status
<p>have fear of returning to Mexico owing to a credible fear of persecution.</p>			
<p><b>Recommendation 4:</b> To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommend that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to develop and implement guidance on how Border Patrol agents and OFO officers are to implement the TVPRA requirement to transfer to HHS all Canadian and Mexican UAC who are victims of a severe form of trafficking in persons.</p>	<p>CBP</p>	<p>OFO and USBP, in consultation with CBP’s Office of Chief Counsel, are collaborating with OTD to develop, deconflict, and revise training consistent with requirements under TVPRA, specifically outlining rules to identify and screen UACs. This training will emphasize the importance of: (1) properly identifying a juvenile as a UAC, (2) processing for appropriate removal proceedings for a UAC, and (3) if the UAC is from a contiguous country, when that UAC may be permitted to withdraw his or her application for admission or to return voluntarily. TVPRA training also will address the notification timeline, transfer process to HHS, and proper recording of previously stated factors and the overall care given to the UAC.</p>	<p><b>Current status:</b> In Progress <b>ECD:</b> 6/30/2018</p>
<p><b>Recommendation 5:</b> To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommend that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to ensure that Border Patrol agents document the basis for their decisions when assessing</p>	<p>CBP</p>	<p>CBP will continue to work to determine which changes are necessary to the CBP Form 93, including involving USBP and the Offices of Chief Counsel, Field Operations, and Policy to make additional recommendations on how best to update the form. This process is ongoing.</p>	<p><b>Current status:</b> In Progress <b>ECD:</b> 6/30/2018</p>

Recommendation	Lead Office	Status Updates (as of March 1, 2018)	Current Status
screening criteria related to (1) an unaccompanied alien child's ability to make an independent decision to withdraw his or her application for admission to the United States and (2) whether UAC are victims of a severe form of trafficking in persons.			
<b>Recommendation 6:</b> To better ensure that DHS complies with TVPRA requirements for training, screening, and transferring UAC to HHS, we recommend that the Secretary of Homeland Security direct the Commissioner of U.S. Customs and Border Protection to determine which agents and officers who have substantive contact with UAC, complete the annual UAC training, and ensure that they do so, as required.	CBP	OFO and USBP have completed the training requirements and will work with GAO for closure of this recommendation.	<b>Current status:</b> In Progress <b>ECD:</b> 2/28/2018*
<b>Recommendation 7:</b> To help ensure that CBP has complete and reliable data needed to ensure compliance with care requirements under the <i>Flores</i> Agreement and CBP policies, we recommend that the Commissioner of U.S. Customs and Border Protection require that OFO officers record care	CBP	In October 2015, OFO issued a muster and memorandum requiring officers to record information in its automated system, such as when UACs received food and medical care. In addition, OFO provided an instructional briefing to OFO officers on entering data in its automated system related to care provided to UACs. Further, OFO enhanced its automated system to record care provided to UACs by capturing and tracking data at transactional and aggregate levels, and adding a control in the system to make certain custody fields mandatory.	<b>Current status:</b> Closed - Implemented <b>Completed:</b> 8/14/2017

Recommendation	Lead Office	Status Updates (as of March 1, 2018)	Current Status
provided to UAC in an automated manner.		As a result, OFO has required its officers to record care provided to UACs in its automated system and has implemented system controls to help to ensure that this information is recorded.	
<p><b>Recommendation 8:</b> To help ensure that CBP has complete and reliable data needed to ensure compliance with care requirements under the <i>Flores</i> Agreement and CBP policies, we recommend that the Commissioner of U.S. Customs and Border Protection ensure that Border Patrol agents record care provided to UAC in Border Patrol’s automated system, as required.</p>	CBP	<p>The e3 Detention Module has been updated to enable Border Patrol agents to record the care provided to UACs in the system of record. USBP has taken steps to modify its automated system to eliminate errors such as those noted in our report (GAO 15-521). In particular, USBP created a function in its automated system to provide agents with the capability to see any outstanding care actions that their station needs to perform, including welfare checks and meals. This function also will alert agents when UACs are in USBP custody for greater than 72 hours. Further, USBP worked with CBP’s Management Inspections Division (MID) to incorporate new internal controls to ensure that agents are recording care actions, as required, including conducting internal reviews of the data in the automated system. In 2017, CBP’s MID performed these reviews. USBP has required its agents to record care provided to UACs in its automated system and has implemented controls to help to ensure that this information is recorded.</p>	<p><b>Current status:</b> Closed-Implemented  <b>Completed:</b> 8/14/2017</p>
<p><b>Recommendation 9:</b> To help ensure that DHS has complete and reliable data needed to ensure compliance with the UAC time-in-custody requirement under TVPRA and for required reports on UAC time in custody under the Flores Agreement, we</p>	CBP	<p>In December 2015, OFO updated the “time out” feature in its system, so that the “time out” automatically is populated with a time stamp when an action takes place, such as when UACs are released or transported from OFO custody. In addition, any subsequent edits to the “time out” recorded by the time stamp must be approved by a supervisor at the port of entry. Requiring officers to record time in and time out</p>	<p><b>Current status:</b> Closed - Implemented  <b>Completed:</b> 4/20/2016</p>

Recommendation	Lead Office	Status Updates (as of March 1, 2018)	Current Status
recommend that the Secretary of Homeland Security require OFO officers to record data in their automated system when UAC leave OFO custody in order to track the length of time UAC are in OFO custody.		accurately should help to ensure that OFO has the data necessary to determine UACs' time in custody.	

\* Official closure of Recommendation 6 is pending. CBP has requested closure, and GAO has provided an unofficial concurrence.  
Note: GAO Report GAO 15-521 lists the affected agency for Recommendation 12 as HHS.

**B. GAO-16-514 Immigration Detention: Additional Actions Needed to Strengthen DHS Management of Short-Term Holding Facilities**

<b>Recommendation</b>	<b>Lead Office</b>	<b>Status Updates</b>	<b>Current Status</b>
<p><b>Recommendation 1:</b> To enhance the monitoring of holding facilities, the Secretary of Homeland Security should direct Border Patrol and ICE to develop and implement a process to assess their time in custody data for all individuals in holding facilities, including: identifying and addressing potential data quality issues; and identifying cases where time in custody exceeded guidelines and assessing the factors affecting time in custody.</p>	<p>ICE</p>	<p>USBP implemented a Status Checks tab in e3 DM that monitors UACs when they are approaching 72 hours in custody, providing the agent with the ability to record the reason that a juvenile is still in custody. USBP runs a report twice daily to identify any alien who has had no custodial action taken for more than 8 hours. The report helps to identify subjects who are erroneously still in custody so that a mail message can be sent to the appropriate sector or station in order to correct the issue. USBP is using another data quality assurance report, on an as-requested basis, to identify subjects who may not have been permanently “booked-out” of custody. The report is reviewed with the systems developers to locate potential system failures and to fix minor errors, as appropriate. CBP has submitted documentation to GAO on the actions taken.</p>	<p><b>Current status:</b> In Progress  <b>ECD:</b> 3/30/2018</p>

Recommendation	Lead Office	Status Updates	Current Status
<p><b>Recommendation 2:</b> To strengthen the transparency of the complaints process, the Secretary of Homeland Security should direct CBP and ICE to develop and issue guidance on how and which complaint mechanisms should be communicated to individuals in custody at holding facilities.</p>	ICE	<p>CBP has finalized a charter to formally establish a Complaints and Discipline Steering Committee. This steering committee will oversee efforts regarding complaints processing throughout the agency and will coordinate with the office involved in complaints management to provide an integrated approach, including defining the mechanisms for communicating with individuals in holding facilities. CBP is consolidating complaint signage across all CBP components that uniformly will provide detainees with instructions on how to submit a complaint. The CBP Office of Public Affairs is finalizing an English and Spanish poster along with a card holder that will hold information sheets in other languages, such as French, Japanese, and Chinese. CBP officials at each local port can choose which translations to display on the basis of specific language needs in that area. CBP has submitted documentation to GAO on the actions taken.</p>	<p><b>Current status:</b> In Progress  <b>ECD:</b> 3/30/2018</p>

Recommendation	Lead Office	Status Updates	Current Status
<p><b>Recommendation 3:</b> To facilitate the tracking of holding facility complaints, we recommend that the Secretary of Homeland Security include a classification code in all complaint tracking systems related to DHS holding facilities.</p>	ICE	<p>The CBP Information Center has created categories in the Compliments and Complaints Management System for detainees to file complaints. The categories serve to track these types of complaints and adjudicate them accordingly, and CBP is able to adjust these categories as necessary. CBP has submitted documentation to GAO on the actions taken.</p>	<p><b>Current status:</b> In Progress <b>ECD:</b> 3/30/2018</p>
<p><b>Recommendation 4:</b> To provide useful information for compliance monitoring, the Secretary of Homeland Security should direct CBP and ICE to develop and implement a process for analyzing trends related to holding facility complaints across their respective component.</p>	ICE	<p>CBP's Compliment and Complaint Management System is now able to develop reports to analyze trends and patterns specific to those locations. Additionally, the CBP Complaints and Discipline Steering Committee will be responsible for guidance on how to develop and implement an integrated process to analyze and address holding facility complaints across the agency. CBP has submitted documentation to GAO on the actions taken.</p>	<p><b>Current status:</b> In Progress <b>ECD:</b> 3/30/2018</p>

## IV. Appendix - List of Acronyms

<b>Acronym</b>	<b>Definition</b>
<b>CBP</b>	U.S. Customs and Border Protection
<b>DHS</b>	Department of Homeland Security
<b>ECD</b>	Estimated Completion Date
<b>GAO</b>	U.S. Government Accountability Office
<b>HHS</b>	U.S. Department of Health and Human Services
<b>ICE</b>	U.S. Immigration and Customs Enforcement
<b>OFO</b>	Office of Field Operations
<b>TVPRA</b>	William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008
<b>UAC</b>	Unaccompanied Alien Children
<b>USBP</b>	U.S. Border Patrol