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STOPPING THE DAILY BORDER CARAVAN: TIME TO BUILD A POLICY WALL

HEARING

BEFORE THE

SUBCOMMITTEE ON BORDER AND MARITIME SECURITY

OF THE

COMMITTEE ON HOMELAND SECURITY HOUSE OF REPRESENTATIVES

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STOPPING THE DAILY BORDER CARAVAN: TIME TO BUILD A POLICY WALL

Tuesday, May 22, 2018

U.S. HOUSE OF REPRESENTATIVES,
COMMITTEE ON HOMELAND SECURITY,
SUBCOMMITTEE ON BORDER AND MARITIME SECURITY,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:04 p.m., in room HVC–210, Capitol Visitor Center, Hon. Martha McSally (Chairwoman of the subcommittee) presiding.

Present: Representatives McSally, Rogers, Hurd, Bacon, Lesko, Vela, Correa, Demings, and Barragán.

Also present: Representatives McCaul and Jackson Lee.

Ms. MCSALLY. The Committee on Homeland Security, Subcommittee on Border and Maritime Security will come to order.

The subcommittee is meeting today to examine policies that impact the Department's ability to secure the border. I now recognize myself for an opening statement.

Last month, a caravan of nearly 1,500 migrants was organized by Pueblo Sin Fronteras, also known as People Without Borders, an extremist advocacy group with the stated purpose of "abolishing borders". Under the guise of humanitarian action, this group facilitated the movement of a migrant caravan traveling more than 2,000 miles through Mexico toward the Southwest Border of the United States. The caravan began in Tapachula on the Mexico-Guatemala border with the express purpose of traveling to the United States and entering our country by illegal entry, or utilizing loopholes in immigration laws.

The reality is that this type of activity is happening every day in smaller numbers, and without the media fanfare. Our asylum process is broken, rife with fraudulent claims. Individuals who arrive at our border have no need to dodge our border security efforts, because our policies make it all too easy for them. Aliens can simply come to a port of entry, or look for a Border Patrol agent, and simply say that they have, "a credible fear". Saying these simple two words permits them to be released into the country about 90 percent of the time, regardless of the merits of the claim. Once released, they are given a notice to appear for a court date, sometimes years in the future, and a work permit after 180 days.

In 2008, DHS asylum officers referred 5,100 cases needing this credible fear threshold to immigration courts. In 2016 it was almost 92,000 cases. The reason for the increase is simple: Individuals have learned how to exploit the system. It should surprise no one that many of those who claim asylum do not ever show up for

their court date, most likely because their claim is unfounded in the first place.

In order to ensure we maximize our ability to accommodate those seeking to flee persecution, we must combat this fraud in order to help those who actually have a legitimate asylum claim, who are getting lost in a sea of fraudulent ones.

Another loophole stems from the Trafficking Victims Protection Reauthorization Act, which is a well-meaning law, and as the name suggests, was designed to prevent human trafficking. However, the disparate treatment of children from Mexico and children from noncontiguous countries like Honduras, Guatemala, and El Salvador, creates a perverse incentive to put young children at risk. We must end that loophole that puts children in the hands of smugglers who abuse them along the way to our border. Once these young people arrive, they are vulnerable to gang recruitment, especially the notorious MS–13, given the weakness of the vetting done on those who sponsor those children.

Dangerous gangs such as MS–13 are not the only ones benefiting from these loopholes. Drug cartels control the illicit movement of people and narcotics that cross our borders. Every single migrant, whether an unaccompanied child, family unit or single adult that illegally crosses the Southwest Border enriches the cartels, and assist their growth and their lethality.

The number of illegal border crossings during the month of March and April show an urgent need to address these glaring loopholes. We witnessed a 300 percent increase from April 2017, compared to April 2018, and a 37 percent increase from last month to this month, the largest increase month-to-month since 2011. Traffickers, smugglers, and extremist advocacy groups are exploiting these weaknesses, and putting individuals making the journey at risk, as well as Americans who are falling victim to crimes perpetrated by bad actors who are making their way in.

In addition, if we do not address this situation, we will be confronted by another generation of DACA-like people in the near future.

When I was in the Air Force, I traveled all over the world, and I saw desperation and poverty that most Americans cannot fathom. Countries around the world are dealing with extreme violence, war, and gangs, and as human beings, we would be moved to help them, often through the work of charitable organizations or ministries.

But the truth of the matter is that we cannot bring everyone who is suffering here. The very definition of a country is one who controls who and who does not enter. We are a Nation of immigrants, and we welcome with open arms approximately 1 million legal immigrants in our country every year. However, we are also a Nation of laws, and we cannot sit idly by as our borders are overrun by lawlessness.

The time has come to build a policy wall, alongside the physical wall, to force those seeking to immigrate to the United States to do it the right way, the legal way. Congress must act to change our immigration policy, and to close these loopholes.

Last September, the speaker appointed me and 7 other Members, including our Chairman, to a working group tasked with addressing this issue. We spent countless hours diving into our broken im-

migration and border policies. For the last 9 months, we have been working and refining the bill that became the Goodlatte, McCaul, McSally, and Labrador Bill. This bill is strong on border security, closes these legal loopholes, and ends the insanity on the border. I have received assurances from leadership that our bill will be brought before the House for a vote in June. I look forward to its consideration on the floor.

[The statement of Chairwoman McSally follows:]

STATEMENT OF CHAIRWOMAN MARTHA MCSALLY

MAY 22, 2018

Last month a caravan of nearly 1,500 migrants was organized by Pueblo Sin Fronteras, also known as People Without Borders, an extremist advocacy group with the stated purpose of "abolishing borders."

Under the guise of humanitarian action, this group facilitated the movement of a migrant caravan traveling more than 2,000 miles through Mexico toward the Southwest Border of the United States.

The caravan began in Tapachula on the Mexico-Guatemala border, with the express purpose of traveling to the United States and entering our country—be it by illegal entry or utilizing loopholes in our immigration laws.

Our asylum process is broken, rife with fraudulent claims. Individuals who arrive at our border have no need to dodge our border security efforts because our policies make it all too easy. Aliens can simply come to a port of entry or look for a Border Patrol agent and simply say they have a "credible fear." Saying these simple words permits aliens to be released into the country around 90 percent of the time regardless of the merit of such claims.

Once released, aliens are given a notice to appear for a court date years into the future and a work permit after 180 days.

In 2008, DHS asylum officers referred 5,100 cases meeting this credible fear threshold to immigration courts but in 2016 almost 92,000 cases.

The reason for the increase is simple, individuals have learned how to exploit the system.

It should surprise no one that many of those who claim asylum do not even show up to their court date—most likely because their claim was unfounded in the first place.

In order to ensure we maximize our ability to accommodate those seeking to flee persecution we must combat this fraud in order to help those who actually have a legitimate asylum claim who are getting lost in the sea of fraudulent ones.

Another loophole stems from the Trafficking Victims Protection Reauthorization Act was a well-meaning law, and as the name suggests, was designed to prevent human trafficking.

However, the disparate treatment of children from Mexico and the children from non-contiguous countries like Honduras, Guatemala, and El Salvador creates a perverse incentive to put young children at risk.

We must end that loophole that puts children in the hands of smugglers who abuse them along the way to the border.

Once these young people arrive, they are vulnerable to gang recruitment, especially the notorious MS–13 given the weakness of the vetting done on those who sponsor these children.

Dangerous gangs such as MS–13 are not the only ones benefiting from these loopholes. Drug cartels control the illicit movement of people and narcotics that cross our borders.

Every single migrant, whether an Unaccompanied Alien Child, Family Unit, or single adult, that illegally crosses the Southwest Border enriches the cartel and assists their growth and lethality.

The number of illegal border crossings during the month of March and April shows an urgent need to address these glaring loopholes in an urgent manner. We witnessed a 300 percent increase from April 2017 compared to April 2018 and a 37 percent increase from last month to this month—the largest increase from month to month since 2011.

The traffickers, smugglers, and extremist advocacy groups are exploiting these weaknesses and putting individuals making the journey at risks as well as Americans who are falling victim to crimes perpetrated by bad actors who are making their way in.

In addition, if we do not address this situation we will be confronted by another generation of DACA-like people in the near future.

When I was in the Air Force, I traveled all over the world, and I saw the desperation and poverty that most Americans cannot even fathom. Countries around the world are dealing with extreme violence, war, and gangs.

As human beings, we may be moved to help them through the work of charitable organization and ministry efforts.

But the truth of the matter is that we cannot bring everyone who is suffering here. The very definition of a country is one that controls who and who does not enter.

We are a Nation of immigrants and we welcome, with open arms, approximately 1 million legal immigrants into our country each year. However, we are a Nation of laws, and we cannot sit idly by as our borders are overrun by lawlessness.

The time has come to build a policy wall alongside a physical wall to force those seeking to immigrate in the United States to do it the right way, the legal way.

Congress must act to change our immigration policy to end these loopholes.

Last September, the Speaker appointed me and 7 other Members a working group tasked with addressing this issue. We spent countless hours diving into our broken immigration policies. For the last 9 months we have been working and refining the bill that became the Goodlatte, McCaul, McSally, and Labrador Bill.

This bill is strong on border security, closes these legal loopholes and ends the insanity on the border. I have received assurance from leadership that this bill will be brought before the House for a vote in June. I look forward to its consideration on the floor.

Ms. MCSALLY. The Chair now recognizes the Ranking Member of the subcommittee, the gentleman from Texas, Mr. Vela, for any statement he may have.

Mr. VELA. Thank you, Chairwoman McSally.

I would first like to address the title for today's hearing. My position on the border wall is well-known by now, and I would like to express my deep concern about the so-called policy wall proposed by the administration, and that we are going to talk about today.

As with the physical border wall, the need for a policy wall is unclear to me. The number of asylum-seekers requesting protection in Mexico or the United States indicates a human—humanitarian problem, not necessarily a security threat. A growing number of asylum-seekers are coming from Guatemala, El Salvador, and Honduras.

Most of us here today are aware that El Salvador and Honduras rank among the top 5 most violent countries in the world, including nations at war. Even former Secretary John Kelly acknowledged the dangerous and complex conditions on the ground in the northern triangle before he joined this administration, and during his confirmation hearing.

The characterization that the levels of people seeking asylum are unacceptable is confusing. Blaming and punishing the people who are seeking protection is inhumane. The conditions leading to a humanitarian crisis are unacceptable, not the people seeking protection. We should be redoubling our efforts to work with international partners to fix the source problem.

Earlier this year, I joined the other Democrats on this committee in sending a letter to Secretary Nielsen opposing the practice of separating migrant parents from their children in cases that do not warrant it when they apprehended at the border or in immigration detention. I am opposed to tearing kids away from their parents, and I am concerned about what criminalizing adult asylum-seekers will mean for legal claims to protection.

The effect of family separation is also traumatizing. According to more than 200 child welfare, juvenile justice and child development organizations who wrote to Secretary Nielsen opposing family separation, there is ample evidence that separating children from their mothers or fathers leads to serious negative consequences to children's health and development. As DHS separates families at the borders, DHS will likely have to detain people over age 18 in adult immigration detention facilities, and designate any children as unaccompanied.

I worry that there are no reliable mechanisms in place to ensure that families can be reunified later. If an adult goes through current criminal proceedings or is subjected to expedited removal, how will his or her child, who is in a shelter somewhere in the United States, know how to get in touch with them? I fear that these policies will be harmful in the long run.

Last, I would like to hear from CBP about how you are managing your resources to address potentially more asylum-seekers at our ports of entry. Given this new zero-tolerance policy for people crossing between our ports of entry along the Southern Border, DHS is encouraging people to claim asylum at ports of entry instead.

The CBP officer staffing shortage is a persistent problem, and I would like to learn how capacity issues at ports are likely to be affected by these policy changes. I thank you for joining us today and I yield back the balance of my time.

[The statement of Ranking Member Vela follows:]

STATEMENT OF RANKING MEMBER FILEMON VELA

MAY 22, 2018

Thank you, Chairwoman McSally.

I would first like to address the title for today's hearing.

My position on the border wall is well-known by now, and I would like to express my deep concern about the so-called "policy wall" proposed by the administration and that we are going to talk about today.

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Even former Secretary John Kelly acknowledged the dangerous and complex conditions on the ground in the Northern Triangle before he joined this administration and during his confirmation hearing.

The characterization that the levels of people seeking asylum are "unacceptable" is confusing.

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The conditions leading to a humanitarian crisis are unacceptable, not the people seeking protection.

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If an adult goes through criminal proceedings or is subjected to expedited removal, how will his or her child who is in a shelter somewhere in the United States know how to get in touch with them?

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The CBP officer staffing shortage is a persistent problem, and I would like to learn how capacity issues at ports are likely to be affected by these policy changes.

I thank you for joining us today, and I yield back the balance of my time.

Ms. MCSALLY. The Chair now recognizes the Chairman of the full committee, the gentleman from Texas, Mr. McCaul, for any statement he may have.

Mr. MCCAUL. I thank you Madam Chairwoman for holding this important hearing. Almost 2 months ago, a caravan of more than 1,000 Central Americans began a 2,000-mile journey from Guatemala and Mexico border, headed toward the United States.

The journey was not easy and the migrants were met with great difficulties, hunger, sickness, even exploitation by criminal gangs. So what motivated them to make this journey? A lawless immigrant advocacy group called Pueblo Sin Fronteras, whose specific goal is the circumvention of U.S. immigration law.

They organized what they thought would be their largest blitz on the United States border, and the goal was simple—overwhelm U.S. law enforcement and tax an already overburdened immigration system with baseless asylum claims.

This was not the first caravan and it did not change our immigration policies and laws, and this will not be the last. While this particular caravan drew lots of media attention, CBP agents and officers have seen a troubling trend.

Family units and unaccompanied alien children flood across the border, many of them claiming credible fear. Almost every single person who claims credible fear meets the existing threshold in the law. Loopholes in our immigration system are well-known to the organized illegal immigration groups and the brutal drug cartels who facilitate the movement of aliens across the border.

In fact, cartels use these weaknesses as a shrewd marketing tool that further enriches the cartel. This harms the stability and the rule of law in Mexico. Building a physical wall along key parts of the Southwest Border is absolutely necessary.

In tandem, we must also construct a wall of sensible policy to close these legal loopholes that put families and children at risk. Last month, we saw the number of illegal border crossings triple over the same period as last year.

We have to take dramatic action to reverse this disturbing development. I was pleased to see that the—that the Department recently enacted a zero tolerance policy for those who come here ille-

gally. Prosecuting those who enter the country illegally is the right policy.

This will send a powerful message of deterrence to those who are trying to take advantage of our immigration laws. We have used prosecution successfully in the past, and I know that myself as a former Federal prosecutor—and our operations streamline, nearly every alien apprehended was prosecuted.

When that policy was enacted, in every instance, we saw a dramatic decline in crossings. I along with Chairman Goodlatte and Chairwoman McSally have proposed a robust border security and immigration enforcement bill to close these legal loopholes that Secretary Nielsen and the honorable Homan—it's good to see you sir—have pointed out so many times in the past, so many times.

Without changes to the way we treat unaccompanied alien children and family units, and without tightening our asylum standards, there will always be powerful incentives for aliens to come to this country illegally.

This must stop. The time for change has come, and I am committed to working with this administration and other like-minded Members to make that a reality. With that, I yield back.

[The statement of Chairman McCaul follows:]

STATEMENT OF CHAIRMAN MICHAEL T. MCCAUL

MAY 22, 2018

First, I would like to thank Chairwoman McSally for her leadership on this important issue and for holding this hearing.

Almost 2 months ago, a caravan of more than 1,000 Central American migrants began a 2,000-mile-long journey from the Guatemalan-Mexico border and headed toward the United States.

The journey was not easy and the migrants were met with great difficulties: Hunger, sickness, and even exploitation by criminal gangs. What motivated them to make this dangerous journey?

A lawless immigrant advocacy group called "Pueblo Sin Fronteras", whose specific goal is the circumvention of U.S. immigration law.

They organized, what they thought, would be their largest blitz on the U.S. border. The goal was simple, overwhelm U.S. law enforcement, and tax an already overburdened immigration system with baseless asylum claims.

This was not the first caravan, and if we do not change our immigration policies, and laws, this will not be the last.

While this particular caravan drew lots of media attention, CBP agents and officers have seen a troubling trend. Family units and unaccompanied alien children flood across the border—many of them claiming "credible fear."

Almost every single person who claims "credible fear" meets the existing threshold in the law.

Loopholes in our immigration system are well-known to organized illegal immigration groups and the brutal drug cartels who facilitate the movement of aliens across the border.

In fact, cartels use these weaknesses as a shrewd marketing tool that further enriches the cartel.

This harms stability and the rule of law in Mexico.

Building a physical wall along key parts of the Southwest Border is absolutely necessary. In tandem, we must also construct a wall of sensible policy to close loopholes that put families and children at risk.

Last month, we saw the number of illegal border crossings triple over the same period as last year. We have to take dramatic action to reverse this disturbing development.

I was pleased to see that the Department recently enacted a zero-tolerance policy for those that come here illegally.

Prosecuting those who enter the country illegally is the right policy. This will send a powerful message to those who are trying to take advantage of our immigration laws.

We have used prosecution successfully in the past.

Under Operation Streamline, nearly every alien apprehended was prosecuted. And when that policy was enacted, in every instance, we saw a dramatic decline in crossings.

I, along with Chairman Goodlatte, Representative Labrador, and Chairwoman McSally have proposed a robust border security and immigration enforcement bill to close the loopholes that Secretary Nielsen and the witnesses on the panel have raised in the past.

Without changes to the way we treat unaccompanied alien children and family units, and without tightening our asylum standards, there will always be powerful incentives for aliens to come to this country illegally. This must stop.

The time for change has come. I'm committed to working with this administration and other like-minded Members to make that a reality.

Ms. MCSALLY. Gentleman yields back. Other Members of the committee are reminded that opening statements may be submitted for the record.

[The statement of Ranking Member Thompson follows:]

STATEMENT OF RANKING MEMBER BENNIE G. THOMPSON

MAY 22, 2018

I am deeply disturbed by actions President Trump, the Secretary, and Department officials are taking ostensibly to deter illegal migration.

What the Trump administration, DHS officials, and many of my Republican colleagues call "legal loopholes" are actually laws Congress put in place to protect some of the most vulnerable migrants, particularly children, seeking humanitarian protection.

Separating small children from their parents as a punitive measure runs counter to basic humanitarian principles and should be beneath even this administration.

Earlier this year, I was proud to lead all 12 of Democrats on this committee in sending a letter to Secretary Nielsen opposing the practice of separating migrant parents from their children at the border or in immigration detention.

I continue to believe the practice is cruel and will only exacerbate the trauma experienced by children fleeing violence and unrest in their home countries.

DHS is also pursuing policies that may interfere with people's ability to seek asylum in the United States as provided for under the law.

We have laws in place so that people fleeing dangerous situations can request protection and humanitarian relief.

I am confident that our witnesses here today are aware that El Salvador, Guatemala, and Honduras are facing exceptional levels of violent crime—a sad reality that has persisted for the past several years.

The increased number of Central Americans petitioning for asylum in the United States is not because more people are "exploiting" the system via "loopholes," but because many have credible claims.

Seeking asylum in the United States is not an easy process either.

In addition, anyone undergoing a "credible fear" review has their name and fingerprints vetted via a National security database, which scans records from Federal, State, local, and foreign sources.

We also know from immigration court records that 77 percent of asylum seekers who are not in ICE custody do show up for their hearings.

When people, and particularly children, have access to counsel, they are even more likely to appear for their court date.

Though asylum requests in both Mexico and the United States have increased, I take issue with the administration's characterization that we have a crisis at the border.

DHS's own data shows that overall migration levels at the U.S-Mexico border are at record lows, with apprehensions at their lowest since the early 1970's.

In 2000, Border Patrol apprehended 1.6 million people crossing between ports of entry.

In contrast, in 2017, the agency apprehended less than 310,000 people—a nearly 82 percent decrease.

Those of us who have worked on this issue for a long time have a responsibility to share facts that offer perspective on the situation at the border rather than foment fear for political gain.

Democrats have long supported smart, effective border security measures and we will continue to do so.

What we will not do is sit idly by while President Trump tries to undermine our values as a Nation of immigrants or prove his border security bona fides on the backs of children.

We are better than that as a Congress and as a country.

Ms. MCSALLY. I ask unanimous consent that the gentlelady from Arizona, Ms. Lesko, a Member of the full committee, be permitted to participate in today's hearing. Without objection, so ordered.

We are pleased to have three distinguished witnesses before us today. Mr. Ron Vitiello is the acting deputy commissioner of the U.S. Customs and Border Protection. Previously he served as the chief of the U.S. Border Patrol.

As its chief operating officer, he was responsible for the daily operations of the U.S. Border Patrol, assisting in planning and directing Nation-wide enforcement and administrative operations. Mr. Thomas Homan became the deputy director and senior official performing the duties of the director in January 2017.

Mr. Homan is a 33-year veteran of law enforcement and has nearly 30 years of immigration enforcement experience. He has served as a police officer in New York, a Border Patrol agent, a special agent with the former U.S. Immigration and Naturalization Service, as well as a supervisory special agent and deputy assistant director for investigations at ICE.

Mr. Francis Cissna was sworn in as director of USCIS on October 8, 2017. Recently, he served as the director of immigration policy within the DHS Office of Policy, during which time he was selected for a detail to the U.S. Senate Judiciary Committee where he worked on immigration-related legislation.

Prior to that, Mr. Cissna served as acting director and deputy director of immigration and border security policy in the DHS Office of Policy. The Chair now recognizes Deputy Commissioner Vitiello for 5 minutes to testify.

STATEMENT OF RONALD D. VITIELLO, ACTING DEPUTY COMMISSIONER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. VITIELLO. Thank you. Chairwoman McSally, Ranking Member Vela, distinguished Members of the subcommittee, thank you for the opportunity to appear before you today to discuss the efforts of U.S. Customs and Border Protection to achieve our strategic and operational border security objectives.

My fellow witnesses have decades of practical experience and I am grateful to work with such dedicated professionals to secure the homeland. Tactical infrastructure including physical barriers and complimentary capabilities have long been a critical component of CBP's multi-layered and risk-based approach to securing our Southern Border.

The recently-passed Consolidated Appropriations Act of 2018 supports CBP's mission, including $1.4 billion for the largest investment in border wall in more than a decade. We are eager to put this funding to work to improve our Nation's security, and encourage Congress to continue to support investments in the high-priority border wall system.

In addition to our border security mission, CBP plays a key role in our Nation's immigration continuum. We look forward to work-

ing with Congress on the legislation needed to enhance the security of our Nation, ensure effective immigration enforcement, and protect American workers and taxpayers.

These legislative needs have a direct impact on CBP's ability to perform our mission. In accordance with the Department of Justice zero tolerance policy, Department of Homeland Security Secretary Nielsen has directed CBP to refer all illegal border crossers for criminal prosecution.

CBP will enforce immigration laws set forth by Congress; no classes or categories of aliens are exempt from enforcement.

The number of individuals apprehended while trying to enter the country illegally in between the established POEs and those presenting themselves without entry documentation along our Southern Border increased by 40 percent from February to March 2018.

When compared to March 2017, the increases are an extraordinary 203 percent. The effort in ours used to detain, process, care for, hold UACs and family units distracts our law enforcement officer deployments, shrinks our capability to control the border and make the arrest of smugglers and drug traffickers and criminals much more difficult.

To enhance CBP's capability in Southwest Border sectors, the Department of Defense, in conjunction with Board of State Governors, has begun deploying the National Guard to assist in stopping the flow of deadly drugs, other contraband, gang members, criminals, and illegal aliens into the country. Initial forces are already on the ground, assisting CBP. We are working with DHS headquarters and DOD to ensure a seamless coordination of effort.

With the support of Congress and in close coordination with our partners, CBP will continue to secure our Nation's borders through a risk-based deployment of infrastructure, personnel, and technology.

We offer every assistance, working with Congress, on the legislative changes that will help fulfill our missions. I want to thank—I want to take a moment to thank and recognize the men and women of CBP. They vigilantly carry out their border protection responsibilities professionally and with an integrity deserving of the public's trust.

I will work to ensure my representation of them matches their dedication and commitment and the sacrifices that they and their families make in service to this country.

Last Wednesday during National Police Week, we added three more names to the CBP Valor Memorial, and did our best to demonstrate to their surviving families and our returning families that we will never forget their loved one. We will always preserve their memories and honor the heroic work they did while protecting us all.

Chairwoman McSally, Ranking Member Vela, and Members of the subcommittee, I look forward to your questions.

[The prepared statement of Mr. Vitiello follows:]

PREPARED STATEMENT OF RONALD D. VITIELLO

MAY 22, 2018

INTRODUCTION

Chairwoman McSally, Ranking Member Vela, and distinguished Members of the subcommittee, thank you for the opportunity to appear before you today to discuss the efforts of U.S. Customs and Border Protection (CBP) to achieve our strategic and operational border security objectives and to enhance our deterrence, detection, and interdiction of illegal cross-border activity.

CBP is responsible for securing approximately 7,000 miles of land border, 95,000 miles of shoreline, 328 ports of entry (POE), and the associated air and maritime space from the illegal entry of people and contraband into the United States. The border environment in which CBP works is dynamic and requires continual adaptation to respond to emerging threats and changing conditions.

LEGISLATIVE PRIORITIES

When President Trump took office last year, he issued a series of Executive Orders to enhance border security, promote public safety, minimize the threat of terrorist attacks by foreign nationals, and protect American workers from unfair foreign competition. In January 2017, the President signed the Executive Order entitled *Border Security and Immigration Enforcement Improvements* (EO 13767), which directs executive departments and agencies to deploy all lawful means to secure the Nation's Southern Border, prevent further illegal immigration to the United States, and repatriate aliens with final orders of removal swiftly, consistently, and humanely. E.O. 13767 sets a new standard of operational control of the Southern Border and establishes the foundation for securing the Southern Border by directing the provision of necessary tools, resources, and policy goals for the U.S. Department of Homeland Security's (DHS) dedicated men and women to fulfill their critical mission.

But CBP is part of a system that neither begins nor ends at our borders, and innovative technologies and enhanced interdiction capabilities alone cannot prevent illegal crossings. The administration seeks support from Congress to amend current law to facilitate the expeditious return of Unaccompanied Alien Children (UAC) and family units who are ineligible for relief. The administration supports correcting the systemic deficiencies that created the asylum backlog, and supports providing additional resources to reduce the immigration court backlog and ensure the swift return of illegal border crossers. CBP looks forward to working with Congress on the legislation needed to enhance the security of our Nation, ensure effective immigration and enforcement, and protect American workers and taxpayers. These legislative needs have a direct impact on CBP's ability to perform its mission.

CBP remains committed to working with Congress to address these issues in support of the priorities of this administration and CBP's mission set.

PARTNERSHIPS FOR BORDER SECURITY

To fulfill our complex missions, CBP is working with DHS components, our Federal, State, local, Tribal, and territorial partners, and with our international counterparts to ensure that information is shared quickly, resources are spent where they are most needed, and that the American people and economy are kept safe.

Processing Claims of Asylum

Individuals who do not have proper travel documents and attempt to enter the United States, either at a POE or between the POEs, may be subject to expedited removal. If individuals placed into expedited removal inform CBP officers that they are afraid to go back to their home countries, they wish to apply for asylum, or that they fear persecution or torture, they are detained and referred to a U.S. Citizenship and Immigration Services (USCIS) asylum officer for a credible fear interview. Usually these individuals are detained by U.S. Immigration and Customs Enforcement (ICE) pending this credible fear interview, and the interviews are often conducted at detention facilities. Individuals who are found to have credible fear are referred to Immigration Court, where they may apply for relief from removal, including asylum. Individuals who are found to not have a credible fear are given an opportunity to ask an Immigration Judge for a review of the negative determination before ICE removes them from the United States.

To ensure that all claims for asylum are considered, DHS, in partnership with the Department of Justice (DOJ), is taking a number of steps to ensure that all cases

and claims are adjudicated promptly, including sending to the border, as necessary, additional USCIS asylum officers, ICE attorneys, and DOJ Immigration Judges.

Collaboration with the Department of Defense National Guard

The number of individuals apprehended while trying to enter the country illegally in between established POEs, and of those presenting themselves for entry without proper documentation at POEs along our Southwest Border, increased by 37 percent from February to March 2018. When compared to March 2017, the increase is an extraordinary 203 percent. CBP is committed to working with our domestic and international partners to secure our border.

To enhance CBP's capability in Southwest Border sectors, the Department of Defense (DOD), in conjunction with border State Governors, has begun deploying the National Guard to assist in stopping the flow of deadly drugs and other contraband, gang members and other criminals, and illegal aliens into this country. Initial forces are already on the ground assisting CBP by executing missions such as logistical and administrative support, operating detection systems, providing mobile communications, and augmenting border-related intelligence analysis efforts. National Guard members will provide added surveillance, engineering, administrative, and mechanical support to our agents on the front line to allow CBP's agents to focus on their primary responsibility of securing our border. National Guard personnel will not conduct law enforcement activities, will not be assigned responsibilities that require direct contact with migrants, and will not be assigned missions that require them to be armed.

Federal, State, Local, and Tribal Partnerships

CBP hosts monthly briefings/teleconferences with Federal, State, and local partners regarding the current state of the border—both Northern and Southern—to monitor emerging trends and threats and provide a cross-component, multi-agency venue for discussion. The monthly briefings focus on drugs, weapons, currency interdictions, and alien apprehensions both at and between the POEs. These briefings/teleconferences currently include participants from: The government of Canada, the government of Mexico, the government of Australia, ICE, U.S. Coast Guard (USCG), the Drug Enforcement Administration (DEA), the Federal Bureau of Investigation (FBI), DOD's U.S. Northern Command, U.S. Central Command, U.S. European Command, and U.S. Southern Command, Joint Interagency Task Force—South (JIATF–S), the Bureau of Alcohol, Tobacco, Firearms, and Explosives (ATF), U.S. Attorneys' Offices (USAOs), Naval Investigative Command, State and Major Urban Area Fusion Centers, and other international, Federal, State, and local law enforcement as appropriate.

The Office of Intelligence (OI) hosts a bi-weekly fusion forum to facilitate an open discussion with CBP's Federal, State, local, and international partners on emerging trends and patterns, specific problem sets confronted by each organization, and each organization's attempts to address them. Additionally, OI personnel take part in a variety of weekly or monthly conference calls related to a variety of issues affecting CBP's mission including narcotics, terrorism, trade, and migration.

CBP is enhancing our collaboration with other DHS components to leverage the unique resources, authorities, and capabilities of each agency to more effectively and efficiently execute our border security missions against drug trafficking organizations, Transnational Criminal Organizations (TCOs), terrorists, and other threats and challenges. Under the Department's Unity of Effort initiative, the Joint Task Forces' operations also increase information sharing with Federal, State, and local law enforcement agencies, improve border-wide criminal intelligence-led interdiction operations, and address transnational threats.

International Partnerships

Throughout Central America, CBP leverages its attaché and advisor network to engage local immigration, border management, and police authorities, as well as our Federal partners such as the Department of State's U.S. Agency for International Development (USAID), and ICE to enhance security, improve governance and promote prosperity in the region. CBP efforts in the region include: Training, mentoring, and sharing best practices with local law enforcement; providing assistance in making Customs processes more efficient and transparent to enhance trade facilitation; and building the capacity of law enforcement in each country to counter drug smuggling activities, monitor, track, and deter the illicit migration of third-country nationals, and facilitate cross-border coordination.

INVESTING IN BORDER SECURITY

CBP's proposed investments in border security leverage the Capability Gap Analysis Process (CGAP), an annual, full spectrum requirements analysis process. The CGAP creates a consistent and repeatable, field-driven approach to conducting mission analysis and planning aimed at identifying capabilities gaps across the complex environments United States Border Patrol (USBP) and Air and Marine Operations (AMO) agents work in every day. Capability gaps are captured directly from the field using this process. These gaps are evaluated through qualitative and quantitative analysis and other evidence to provide information to decision makers about the border security mission space across the Northern, Southern, and Coastal borders of the United States. This methodology leads to informed investments that achieve the greatest possible operational impact. As the threats along the borders change, USBP and AMO will update this analysis as needed to maximize the impact of future investments.

The CGAP is used by USBP to identify needs related to 12 master capabilities: Communications; doctrine and policy; domain awareness; human capital management; impedance and denial (I&D); information management; intelligence and counter intelligence; mission readiness; planning and analysis; security and partnerships; access and mobility; and command and control. While CGAP identifies needs across all 12 master capabilities, four capabilities—I&D, domain awareness, access and mobility, and mission readiness—are consistently prioritized by field commanders as the most important. AMO uses CGAP to provide qualitative and quantitative gaps associated with their seven mission sets: Air Security; Land Security; Maritime Security; Extended Border and Foreign Operations; Air and Maritime Investigations; Contingency and National Tasking Operations; and Other Law Enforcement Operations. These identified needs are then subject to appropriate review and validation through the DHS requirements processes.

Impedance & Denial (I&D) is among the four capabilities that USBP field commanders consistently prioritize during the CGAP process. I&D is the ability to slow and/or stop the use of terrain for illicit cross-border activity. This is achieved primarily through the use of man-made infrastructure such as a physical wall, and the complementary deployment of personnel, roads, and technology. Border barriers have enhanced—and will continue to enhance—CBP's operational capabilities by creating an enduring capability that impedes illegal cross-border activity and facilitates the deterrence and prevention of illegal entries. I&D investments are critical to protecting border areas with short vanishing times where illicit crossers can quickly evade law enforcement by "vanishing" into border communities. Investments in I&D, and particularly in a border wall system, will help CBP obtain operational control of the border and prevent illegal border crossings.

INFRASTRUCTURE

Tactical infrastructure, including physical barriers and complementary capabilities, has long been a critical component of CBP's multi-layered and risk-based approach to securing our Southern Border. Tactical infrastructure also supports Executive Order 13767 *Border Security and Immigration Enforcement Improvements* and CBP's operational requirements, including the high-priority border wall system.

Between the Ports of Entry

The land along the border between the United States and Mexico is extremely diverse, consisting of desert landscape, mountainous terrain, and urban areas. Today, we have several types of barriers, including steel bollard and levee wall, along nearly one-third, or 654 miles, of the Southern Border. The recently-passed Consolidated Appropriations Act, 2018 supports CBP's mission through investments in border infrastructure and technology, port security, and recruitment and retention efforts, to include $1.4 billion for the largest investment in border wall in more than a decade. We are eager to put this funding to work to improve our Nation's security, and encourage Congress to continue to support investments in the high-priority border wall system.

CBP is seeking to build on the successes of, and lessons learned from, the construction and operation of existing barriers to deploy a system that addresses dynamic cross-border threats. CBP is working with industry and partnering with the U.S. Army Corps of Engineers to incorporate additional alternative barrier design features and other innovative solutions into our border barrier systems. Border barrier systems are comprehensive solutions that include a concentrated combination of various types of infrastructure such as walls, all-weather roads, lighting, sensors, enforcement cameras, and other related technology. Deployments of additional infrastructure will be made using a multi-phased approach that meets USBP's oper-

ational requirements, and which safeguards National security and public safety. These deployments will be the results of a thorough analysis of threats and mission effectiveness and will follow disciplined acquisition processes overseen by DHS.

Throughout the planning, design, and construction process, CBP will complete project, budget, real estate, and environmental planning to ensure appropriate resource stewardship. CBP will leverage expertise in Federal acquisition to maximize transparency and accountability and to ensure the most effective and efficient solutions are deployed to meet requirements, in accordance with the established DHS acquisition lifecycle framework and acquisition review board oversight.

CBP is committed to ensuring that all stakeholder communities, including Federal partners, State, local, and Tribal officials, and impacted communities are kept informed and engaged throughout this process.

At the Ports of Entry

CBP supports a vast and diverse real property portfolio, consisting of more than 4,300 owned and leased buildings, over 28 million square feet of facility space, and approximately 4,600 acres of land throughout the United States. Constructing and improving CBP's physical infrastructure is essential to keeping facilities operationally viable for front-line and mission support functions. CBP, in coordination with General Services Administration (GSA), continues to construct and modernize land POEs along the Northern and Southern Borders, and to complete additional enhancement and expansion projects within the Office of Field Operations (OFO) portfolio. Thanks to the funding provided in the fiscal year 2018 Omnibus, CBP is working with the GSA to ensure that our priority requirements in locations including Otay Mesa, CA, and Alexandria Bay, NY receive much-needed updates. We look forward to working with GSA and Congress to ensure that our physical infrastructure meets CBP's needs now and in the future.

TECHNOLOGY

Technology enhances CBP's operational capabilities by increasing the ability of the men and women of CBP to detect and identify individuals illegally crossing the border; detect dangerous goods and materials concealed in cargo and vehicles; and detect and interdict illegal activity in the air and maritime domains. For CBP, the use of technology in the border environment is an invaluable force multiplier that increases situational awareness. Technology enhances the ability of CBP to detect illegal activity quickly, with less risk to the safety of our front-line personnel.

At the Ports of Entry

Smugglers use a wide variety of tactics and techniques to traffic concealed drugs and other contraband through POEs. CBP incorporates advanced detection equipment and technology, including the use of Non-Intrusive Inspection (NII) equipment and radiation detection technologies, to maintain robust cargo, commercial conveyance, and vehicle inspection regimes at our POEs.

NII technology is a critical element in CBP's ability to detect contraband, and materials that could pose nuclear and radiological threats. CBP currently has 304 large-scale NII systems and over 4,500 small-scale systems deployed to, and between, POEs. These systems enable CBP officers to examine cargo conveyances such as sea containers, commercial trucks, and rail cars, as well as privately-owned vehicles, for the presence of contraband without physically opening or unloading them. This allows CBP to work smarter and faster in detecting contraband and other dangerous materials. CBP officers also utilize NII, as well as spectroscopic and chemical testing equipment and narcotics detection canines, to detect and presumptively identify illicit drugs, including illicit opioids, at international mail and express consignment carrier facilities. Between October 1, 2010 and March 31, 2018, CBP conducted more than 84 million NII examinations, resulting in more than 19,000 narcotics seizures and more than $79 million in currency seizures.

Scanning all arriving conveyances and containers with radiation detection equipment prior to release from the POE is an integral part of CBP's comprehensive strategy to combat nuclear and radiological terrorism. In partnership with Countering Weapons of Mass Destruction Office (CWMD), CBP has deployed nuclear and radiological detection equipment, including 1,280 Radiation Portal Monitors (RPM), 3,319 Radiation Isotope Identification Devices (RIID), and 35,294 Personal Radiation Detectors (PRD) to all 328 POEs Nation-wide. Utilizing RPMs, CBP is able to scan 100 percent of all mail and express consignment mail and parcels; 100 percent of all truck cargo; 100 percent of personally-owned vehicles arriving from Canada and Mexico; and nearly 100 percent of all arriving sea-borne containerized cargo for the presence of radiological or nuclear materials. Since the RPM program began

in 2002, CBP has scanned more than 1.41 billion conveyances for radiological contraband.

In conjunction with CBP's many other initiatives, advancements in cargo and conveyance screening technology provide CBP with a significant capacity to detect dangerous materials and other contraband, and continue to be a cornerstone of CBP's multi-layered security strategy.

Technology Investments Between the Ports

Thanks to the support of Congress, CBP continues to deploy proven, effective technology to strengthen border security operations between the POEs, in the land, air, and maritime environments. These investments increase CBP's ability to detect illegal activity along the border, increase our operational capabilities, and improve the safety of front-line law enforcement personnel.

Surveillance Capabilities

Integrated Fixed Tower (IFT) systems are one of the technologies deployed along the Southwest Border in Arizona. IFTs provide long-range, persistent surveillance. An IFT system automatically detects items of interest with radar, identifies and classifies them with day and night cameras, and tracks them at the Command and Control Center through the integration of data, video, and geospatial location input.

Remote Video Surveillance Systems (RVSS) are another technology used by USBP in select areas along the Northern and Southern Borders. These systems provide short-, medium-, and long-range, persistent surveillance from towers or other elevated structures. Existing RVSS are being upgraded with newer cameras, communication backhaul, command-and-control programs, and additional towers.

In some areas along both the Northern and Southern Borders, USBP uses Unattended Ground Sensors (UGS) to provide focused, short-range, persistent surveillance. UGS are remotely monitored surveillance systems that detect, identify, and track activity and subjects in areas not easy to access or monitor with other technology. These sensors are hand-installed, fixed but relocatable, easy to conceal, and adaptable to numerous operational environments. Detection capabilities include seismic, magnetic, acoustic, infrared, radar, microwave, photoelectric, contact closure, and various others. Imaging UGS (I–UGS) provide photo or video verification of detections and allow advanced image analytics.

Fixed systems provide persistent surveillance coverage to efficiently detect unauthorized border crossings. Once detection is confirmed, USBP can quickly deploy the appropriate personnel and resources to interdict. Without fixed-system technology such as IFT, RVSS, and UGS, USBP's ability to detect, identify, classify, and track illicit activity would be significantly limited.

Mobile and Relocatable Surveillance Capabilities

Working in conjunction with fixed surveillance assets, USBP also uses mobile and relocatable systems to address areas where rugged terrain and dense ground cover may limit the effectiveness and coverage of fixed systems. Mobile and relocatable technology assets provide USBP with the flexibility to adapt to changing border conditions and threats.

Mobile Surveillance Capability (MSC) systems provide long-range, mobile surveillance. They include radar and camera sensors mounted on USBP vehicles. Mobile Vehicle Surveillance Systems (MVSS) are short-, and medium-range, mobile surveillance equipment. They consist of camera sensors on telescoping masts mounted on USBP vehicles. USBP agents deploy with these systems, which detect, track, identify, and classify items of interest using the video feed.

Another relocatable system is the Agent Portable Surveillance System (APSS). Mounted on a tripod, it provides medium-range, mobile surveillance and can be transported by two or three USBP agents. Two agents remain on-site to operate the system, which automatically detects and tracks items of interest and provides the agent/operator with data and video of selected items of interest.

CBP's Tactical Aerostats and Re-locatable Towers program, originally part of the DOD re-use program, uses a mix of aerostats, towers, cameras, and radar to provide CBP with increased situational awareness over a wide area. This capability has proven to be a vital asset in increasing CBP's ability to detect, identify, classify, and track activity along the borders.

The Cross Border Tunnel Threat (CBTT) program strengthens border security effectiveness between POEs by diminishing the ability of TCOs to gain access into the United States through cross-border tunnels and the illicit use of underground municipal infrastructure. This system helps CBP predict potential tunnel locations; detect the presence of suspected tunnels and tunneling activities as well as project the trajectory of a discovered tunnel; confirm a tunnel's existence and location through

mapping and measurements; and facilitate secure information sharing across all stakeholders.

Technology in the Air and Maritime Domains

AMO increases CBP's situational awareness, enhances detection and interdiction capabilities, and extends our border security zones, offering greater capacity to stop threats before they reach our shores. AMO's assets provide multi-domain awareness for our partners across DHS, as well as critical aerial and maritime surveillance, interdiction, and operational assistance to our ground personnel. AMO performs its offshore functions in coordination with the USCG and DHS's interagency partners.

To address maritime threats, and the capabilities needed to meet those threats, AMO has recently acquired 41-foot, high-speed Coastal Interceptor Vessels (CIV) to enhance Marine Interdiction Agents' (MIA) ability to detect, intercept, and interdict suspect vessels entering the coastal approaches of the United States, Puerto Rico, and the U.S. Virgin Islands. The CIV will provide MIAs with upgraded electronics, and improved situational awareness through modernized navigation and sensor technology. As with AMO's aircraft, the marine vessels also support the Department's Joint Task Forces, as well as the Border Patrol Sectors, AMO investigations and missions, ICE, and other Federal, State, and local organizations.

Additionally, AMO's Small Vessel Standoff Detection radiation detection capability increases the probability of detecting radiological and nuclear materials that might be used in an attack. This transportable equipment is effective against small private or commercial vessels, and can detect a potential threat in advance of a boarding.

Multirole Enforcement Aircraft (MEA) are sensor-equipped aircraft for surveillance operations in regions where terrain, weather, and distance pose significant obstacles to border security operations. The MEA serves as a force multiplier for law enforcement personnel, facilitating the rapid-response deployment of equipment, canines, and people.

P–3 Long-Range Trackers and Airborne Early Warning Aircraft provide critical detection and interdiction capability in both the air and marine environments. CBP P–3s are an integral part of the successful counter-narcotic missions operated in coordination with the JIATF–S. The P–3s patrol a 42-million-square-mile area that includes more than 41 nations, the Pacific Ocean, Gulf of Mexico, Caribbean Sea, and seaboard approaches to the United States. Over the last 10 years, CBP's P–3 operational efforts assisted in the seizure or disruption of the delivery of more than 1.6 million pounds of cocaine, with an estimated wholesale value of $63 billion. In fiscal year 2018 to date, CBP P–3 aircraft have flown 4,628 hours, and contributed to the seizure and disruption of over 83,000 lbs. of cocaine, averaging 23.5 pounds of cocaine for each hour a CBP P–3 flies.

Multiple AMO aircraft are equipped with electro-optical infrared sensor systems that provide improved detection and identification capabilities, greater standoff ranges for more covert operation and safety, and have laser range finders, laser target illumination, and Shortwave Infrared functionality. These systems enable AMO aircraft to detect persons, vehicles, vessels, and aircraft during day, night, and in adverse visibility conditions, thus enabling classification of threats and enhancing mission value for ground agents.

Other critical components of AMO's aircraft fleet include the UH–60 Black Hawk helicopters, which are able to carry 8 agents with full gear. The Light Enforcement Helicopter (LEH) is a multi-mission helicopter used for aerial surveillance, tactical support, patrol of high-risk areas, and to transport agents responding to illegal border incursions, as well as serve search and arrest warrants. Another important asset is the DHC–8 Maritime Patrol Aircraft (MPA), which bridges the gap between strategic assets, such as the P–3 and Unmanned Aircraft System (UAS).

AMO's aircraft have received a number of technological upgrades to increase their utility. For example, avionics upgrades to the AS–350 helicopter allow operators to focus more of their attention on the mission, making them more effective. AMO has also added electro-optical infrared detection technology to its fixed-wing, light observation aircraft, thereby greatly increasing its tactical capabilities.

UAS platforms are an increasingly important part of CBP's layered and integrated approach to border security. CBP's UAS consist of an unmanned aircraft, sensors, communication packages, pilots, and ground control operators. UAS platforms are used for surveillance, detection, and other mission requirements along the Southwest Border, Northern Border, and in the drug source and transit zones. The UAS program has logged over 49,200 flight hours since it began in fiscal year 2006, contributed to the interdiction and disruption of the movement of cocaine and marijuana with an estimated wholesale value of $1.18 billion. CBP can equip four UAS aircraft with Vehicle and Dismount Exploitation Radar (VADER) sensor systems,

which can detect human movement along the ground. Since 2012, VADER detected over 64,500 people moving across the Southwest Border.

Important advancements have come in the area of data integration and exploitation. New downlink technology allows AMO to provide a video feed and situational awareness to law enforcement personnel in real-time. In addition, the Minotaur mission management system will enable the integration and geo-synchronization of multiple aircraft sensors, mission databases, and intelligence-gathering devices and allow multiple aircraft to share information from multiple sources, providing a never-before-seen level of air, land, and maritime domain awareness.

AMO's Tethered Aerostat Radar System (TARS) monitors the low-altitude approaches to the United States. With 8 aerostat sites, the TARS elevated sensor mitigates the effect of the curvature of the earth and terrain-masking limitations associated with ground-based radars, enabling maximum long-range radar detection capabilities. From fiscal year 2014 through fiscal year 2016, TARS was responsible for detecting 86 percent of all suspected air smuggling flights approaching the Southwest Border from Mexico.

A vital component of DHS's domain awareness capabilities, AMO's Air and Marine Operations Center (AMOC) integrates surveillance capabilities and coordinates National security threat response with other CBP operational components, including USBP. It works with other Federal and international partners.[1] AMOC helps AMO and its partners predict, detect, identify, classify, respond to, and resolve suspect aviation and maritime activity in the approaches to U.S. borders, at the borders, and within the interior of the United States. AMOC utilizes extensive law enforcement and intelligence databases, communication networks and the Air and Marine Operations Surveillance System (AMOSS). The AMOSS provides a single display capable of processing up to 700 individual sensor feeds and tracking over 50,000 individual targets simultaneously. The eight TARS sites represent approximately 2 percent of the total integrated radars in AMOSS, yet accounted for 53 percent of all suspect target detections.

As we continue to deploy border surveillance technology, particularly along the Southwest Border, these investments in fixed and mobile technology, as well as enhancements of domain awareness capabilities provided by the AMOC, allow CBP the flexibility to shift more agents from detection duties to interdiction of illegal activities.

Access & Mobility

USBP has consistently identified Access and Mobility as a key capability for gaining and maintaining operational control of the Southern Border. Access and Mobility is the ability to access areas of responsibility and, under all conditions, effect mobility for responding to illicit cross-border activity. CBP's portfolio currently includes over 900 miles of access roads. Roads are necessary to increase access points and expand patrol roads in high-priority areas. Patrol roads decrease travel time, improve incident response time, and increase the effective patrol range of USBP agents. Roads are a force multiplier and key in establishing operational control of the border.

HIRING AND PERSONNEL

Front-line and non-front-line personnel are one of the most critical resources for improving border security. Mission readiness—the ability to properly train and equip personnel—is critical to CBP's ability to secure the border and protect the American people.

EO 13767 mandated the hiring of 5,000 additional USBP agents. To implement this directive, and as operational demands continue to evolve, CBP continues to explore all avenues to meet current and future human capital needs. CBP subjects our recruitment and hiring practices to an on-going cycle of analysis and refinement, working constantly to strengthen our hiring capabilities and secure adequate staffing for critical front-line operations and the network of personnel who support these operations. CBP's strategy includes initiatives designed to attract more applicants who are suited to the unique demands of CBP's mission, expedite the pre-employment time line, refine the hiring process to address potential bottlenecks, and reduce the attrition rate of the existing workforce.

In pursuit of our hiring goals, CBP recruiters will continue to participate in thousands of recruiting events, seeking to reach a diverse spectrum of applicants. CBP has participated in close to 5,000 recruitment and outreach events since the begin-

[1] AMOC partners include the Federal Aviation Administration (FAA), the Department of Defense (including the North American Aerospace Defense Command (NORAD)), and the governments of Mexico, Canada, and the Bahamas.

ning of fiscal year 2017. CBP's use of advanced data analytics to direct recruitment efforts, deemed a best practice by the U.S. Office of Personnel Management (OPM), has enabled CBP to identify demographics with low-brand awareness of the CBP, and to refocus recruitment efforts toward these gaps. This has resulted in an overall increase in applicants and lowered the number of applicants it takes for one officer or agent to on-board. Recruitment at events for veterans and transitioning military personnel continues to be a top priority. CBP will continue to enhance our data analytics capabilities, refining CBP's ability to identify groups of people who are most likely to pursue or be interested in a law enforcement career and providing us with targeted areas and specific audiences for recruitment. In addition, CBP will focus on digital advertising, and enhance branding through relationships with community partners.

In the last 2 years, more than 40 individual improvements to CBP's hiring process have resulted in significant recruitment and hiring gains, despite record low unemployment around the United States and intense competition for highly-qualified, mission-inspired people. With support from Congress, CBP is making investments in our capability and capacity to hire across all front-line positions. CBP is focusing on efforts to attract qualified candidates and expedite their progress through the CBP hiring process.

CBP's streamlined front-line hiring process has led to significant reductions in the average time-to-hire. In the last 12 months, close to 70 percent of new USBP agents and 60 percent of new CBP officers on-boarded in 313 days or fewer, with 17 percent of USBP agents and 19 percent of CBP officers on-boarding within 192 days. This is a significant improvement from the 469-day overall baseline established in January 2016. This streamlined process is reducing the number of otherwise qualified candidates who drop out due to process fatigue or accepting more timely job offers elsewhere, helping CBP grow its workforce. CBP's background investigation time is approximately 90 days for a Tier 5 level investigation, which is required for all of CBP's law enforcement officer applicants and 90 percent of CBP applicants overall. This is considerably less than the Government average for the same level investigation. CBP is also recognized as having a best practice quality assurance program, which other agencies regularly visit CBP to learn about.

As a result of these improvements, CBP's fiscal year 2017 hiring totals surpassed fiscal year 2016 totals by 21 percent for CBP officers, 4 percent for USBP agents, and 91 percent for AMO air interdiction agents. In fiscal year 2017 CBP reached the highest number of USBP agent hires since fiscal year 2013 and the highest number of air interdiction agents and MIA hires since fiscal year 2014. The total number of front-line applicants increased by 73 percent between fiscal year 2015 and fiscal year 2017, including a 41 percent increase from fiscal year 2016 to fiscal year 2017.

A significant challenge for CBP is that much of our work must be carried out in remote locations. It can be difficult to attract applicants who are willing to work in these locations, and it is a significant factor in our attrition. A stable relocation program will help meet USBP operational requirements and alleviate the workforce's concerns about lack of mobility, which is significantly contributing to increased attrition. CBP is working to develop programs that address attrition through relocation and retention incentives that meet employee aspirations, and at the same time enable CBP to staff these locations. Recruitment incentives are also helpful in attracting new personnel to join CBP, especially for positions in geographic locations that are difficult to fill. CBP is thankful for the continued dedication of Congress to working collaboratively with us to develop solutions to this complicated challenge.

Consistent with the Explanatory Statement accompanying the fiscal year 2017 Consolidated Appropriations Act concerning the alternative polygraph exam format, CBP conducted a 6-month pilot program that allowed the agency to compare data points from applicants tested with the new, alternative format against applicants tested with the previous format. CBP developed this pilot in collaboration with the National Center for Credibility Assessment, which governs all Federal polygraph programs. After an assessment of the pilot, which carefully evaluated these metrics and measures to ensure the format maintained CBP's high standard of integrity for applicants, CBP has implemented this test format and has engaged with committee staff on our path forward. While its format may change, the exam retains all of the critical test topics of the previous exam and maintains CBP's commitment to high integrity standards for its personnel.

Additionally, DHS supports the Anti-Border Corruption Reauthorization Act of 2017, which was ordered as H.R. 2213 in the House of Representatives and S. 595 in the Senate. The House passed H.R. 2213 on June 7, 2017, thanks to the strong support of this subcommittee and the co-sponsorship of Chairwoman McSally, and the bill is currently pending vote by the Senate. This pending legislation grants the

Commissioner authority to waive the polygraph requirement for three groups of applicants who have a demonstrated, long-standing history of public trust and meet specific criteria: Current, full-time State and local law enforcement officers; current, full-time Federal law enforcement officers; and veterans, active-duty service members, and reservists. We thank the Members of Congress for your continued support as we seek to hire the men and women who will fulfill CBP's complex and crucial mission in the months and years to come.

CONCLUSION

The border environment is dynamic and requires constant adaptation to respond to emerging threats and changing conditions. CBP continues to work in close coordination with our partners to respond to these threats and ensure the safety and prosperity of the American people. With the support of Congress, CBP will continue to secure our Nation's borders through the risk-based deployment of infrastructure, personnel, and technology.

Chairwoman McSally, Ranking Member Vela, and distinguished Members of the subcommittee, thank you for the opportunity to appear today. I look forward to your questions.

Ms. MCSALLY. Thank you.

The Chair now recognizes Director Homan for 5 minutes.

STATEMENT OF THOMAS D. HOMAN, ACTING DIRECTOR, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HOMAN. Chairwoman McSally, Ranking Member Vela, and distinguished Members of the subcommittee, thank you for the opportunity to appear here today and speak to the importance of ICE's mission to protect America from cross-border crime and illegal immigration, both of which threaten National security and public safety.

Since President Trump's Executive Orders were issued early last year, ICE and its partner agencies have made significant progress in restoring—restoring the rule of law to our immigration system.

Over the last fiscal year, ISIS increased arrests by over 40 percent, increased interior removals by 30 percent. We have nearly doubled the number of MS–13 arrests over this year.

Reflecting our continued focus on enforcement against public safety and National security threats, illegal reentrants, and fugitives, 92 percent of all of our arrests last year reflected one of these priorities.

These results reflect what the dedicated men and women of ICE can achieve when they are empowered to fulfill their lawful mission. But the reality is that we will not stop illegal immigration unless we eliminate the pull factors. We need Congress' help to do that.

Last fall, the Trump administration sent a series of——

Ms. MCSALLY. The gentleman suspend for a minute. The Chair wishes to remind our guests today that demonstrations from the audience, including the use of signs, placards, and t-shirts, as well as verbal outbursts, are a violation of the rules of the House.

The Chair wishes to thank our guests for their cooperation in maintaining order and proper decorum.

Mr. HOMAN. Last fall, the Trump administration sent a series of policy priorities to Congress that would address the misguided policies and loopholes that only serve as pull factors for illegal immigration.

These priorities reflect the input of law enforcement professionals and us three at the table who know best what we——

Ms. MCSALLY. The gentleman please suspend.

Pursuant to my previous statement, would our guests please lower their signs in accordance with House rules?

The Chair instructs the Capitol Police to remove the protestors from the committee room. The committee will recess until order is restored, pending the call of the Chair.

[Recess.]

Ms. MCSALLY. The committee will come to order.

Director Homan, please continue.

Mr. HOMAN. Do you want me to start or do you want me to start where I ended, ma'am?

Ms. MCSALLY. You can start where you left off.

Mr. HOMAN. OK. OK. Last fall the Trump administration sent a series of policy priorities to Congress that would address misguided policies and loopholes that only serve as pull factors for illegal immigration. These priorities reflect input of law enforcement professionals who know best what we need in order to close the loopholes and eliminate magnets for illegal immigration. Us three at the table actually authored much of what was sent up to the Hill.

This administration rightfully listened to us. I know that many of you agree it is time that Congress do the same. Entering this country illegally is a crime. If there are no consequences for sneaking past the border, overstaying a visa, skipping immigration court or even committing crimes while in the country illegally, then there is going to be no integrity in the entire system.

One major pull factor we need to address is the policies governing the processing of unaccompanied alien children we call UACs and family units and the legal constraints that impede their removal from the country. These policies ultimately encourage more parents to subject themselves and their children to dangerous criminal smuggling organizations and we unfortunately have seen that reflected in the recent uptick in border apprehension of UACs and family units.

Since the Flores decision, ICE has been severely constrained in the way we can process and detain minors, as a result family units so we are often forced to release them which all but guarantees they will skip the court date or not abide by the court's decisions and not be sent home. This is highlighted by the fact that 3.4 percent, only 3.4 percent of all UACs from countries other than Mexico encountered at the Southwest Border have been removed.

While ICE and our interagency partners have made progress this past year on reducing the number of countries that refuse to take their citizens back, we also need a solution that will allow us to detain dangerous criminals whose home countries won't take them back.

As a result of a 2001 Supreme Court decision, *Zadvydas* vs. *Davis,* even illegal immigrants who are violent criminals can be released from our custody and back into the community if their home country won't take them back. That loophole can have tragic consequences and we need Congress to help us.

We also need to address the dangerous pulls by sanctuary jurisdictions that needlessly risk innocent lives to protect criminals who

are illegally present in the United States. Sanctuary policies are shielding criminal aliens and immigration violators from enforcement by refusing to honor ICE detainers or allow ICE access to their jails.

For those who claim they want ICE to focus solely on arresting, detaining, and removing criminals, it defies common sense to prevent us from taking custody of them in local jails and prisons, but that is exactly what is happening in sanctuary cities.

To be clear, ICE is not asking law enforcement to do our job. What we want is access to a jail to talk to somebody that we know is here illegally in violation of Federal law that committed yet another crime. It is incredibly frustrating.

As a result of these policies, my officers are forced to make more arrests out in the community, at homes and workplaces. Those arrests are riskier for both the public and for law enforcement and they increase the likelihood that ICE will encounter other illegal aliens who previously weren't on our radar. In other words, policies aimed at restricting or minimizing ICE's direct engagement in the community is actually having the opposite effect by forcing ICE to increase its presence in those very same communities.

These policies also undermine cooperation and partnership between Federal, State, and local law enforcement. We should be working together to uphold our shared priority of protecting the public safety.

I am encouraged many of our law enforcement partners throughout the United States have expressed their opposition to these types of policies and continue to find ways to work with us. I want to make sure everyone here today understands that sanctuary cities do not protect the immigrant community. They do not make the community safer. They do the exact opposite.

Finally, it is my hope that Congress will support the administration's request for more ICE personnel resources so that we can continue the progress we have made over the past year with our existing resources.

These issues aren't just about enforcing law, they are also humanitarian issues because we know the journey to the United States can often be dangerous and deadly. Until and unless Congress works with us to address these concerns, we are going to see more caravans, more people making that dangerous journey north, more people that die entering this country.

I have said it many times, there is a right way to come in this country and a wrong way. It is ICE's job to make sure that those who choose to come into United States illegally are found, arrested and, if ordered by the immigration judge, removed. That is the oath I have taken along with the other 20,000 law enforcement officers in ICE who are constantly attacked simply for doing their Congressionally-mandated jobs.

In closing, as you know, I will be retiring from Federal service next month after 34 years as a Federal law enforcement officer. It has been the honor of my life to lead this agency and the 20,000 men that work in this agency. They are American patriots by the very fact they leave their homes every day and put their safety at risk to protect their communities.

I will continue to be a strong advocate for the work force and for the ICE mission and I urge Congress to work with ICE and the administration on the issues I have highlighted here today. I want to thank you again for giving me this opportunity to testify and look forward to answering any questions. Thank you.

[The prepared statement of Mr. Homan follows:]

PREPARED STATEMENT OF THOMAS D. HOMAN

MAY 22, 2018

INTRODUCTION

Chairwoman McSally, Ranking Member Vela, and distinguished Members of the subcommittee: Thank you for the opportunity to appear before you today to discuss the role of U.S. Immigration and Customs Enforcement (ICE), in promoting homeland security and public safety through the broad enforcement of approximately 400 Federal laws governing immigration, border control, customs, and trade.

ICE enforces the immigration laws of the United States against all removable aliens, consistent with Federal law. Immigration enforcement operations have always been a regular part of ICE's duties and are necessary to identify, arrest, detain, and remove those who present a danger to our National security, are a threat to public safety, or otherwise undermine the integrity of our immigration system. All those in violation of U.S. immigration laws may be subject to immigration arrest, detention, and removal from the United States.

The "caravan" is the latest example of the need for an integrated approach to border security, which combines physical barriers and monitoring tools with the administrative tools necessary to regulate the orderly flow of goods and people into the United States. Moreover, the situation highlights the need for Congress to act to address the loopholes that exist in current immigration laws, as many individuals seeking to cross the border hold expectations that long-term entry to the United States can be garnered by laying false claims to credible fear, or otherwise thwarting our lawful immigration processes.

The current statistics are sobering. Overall, the number of illegal aliens encountered at the border increased more than 200 percent when compared to this same time last year. Perhaps more troubling, the number of unaccompanied alien children encountered has increased over 800 percent. And the number of families encountered increased over 680 percent. While DHS has been apprehending and processing these crossers with historic efficiency, our ability to actually remove those who come here illegally cannot keep pace with the influx unless we make a number of key changes to close existing loopholes in the system.

These legal loopholes are strong pull factors that entice those looking to circumvent our laws, including groups who profit from smuggling people. As Secretary Nielsen has made clear, interdiction without the ability to promptly remove those without legitimate cause undermines border security. And border security is National security. For border security to work, illegal activity must have consequences, and these loopholes must be closed. They are unacceptable, and more than that, they are dangerous. We must do more to secure our borders against these threats that are making our country vulnerable.

While this administration has taken initiative and made strident efforts to address the pull factors that lead to illegal immigration, the most essential reforms require legislation. Congress needs to address sanctuary jurisdictions and affirm ICE's detainer authority. Congress needs to end catch-and-release by ensuring adequate funding for detention beds, mandatory detention for convicted criminals, and a legislative fix for the *Zadvydas* v. *Davis* court decision.

CREDIBLE FEAR CLAIMS AND THE IMMIGRATION COURT BACKLOG

While those with legitimate claims of asylum must be protected, many of those seeking to enter this country illegally know that there is no significant downside to making a claim of "credible fear" and only a few key words are all it takes to keep an alien in the country longer. A fact that is exploited by the smuggling organizations who profit from them. DHS experience has shown that individuals seeking to enter the country illegally know they can delay their removal by making false claims of credible fear. Indeed, the standard for credible fear screenings at the border has been set so low that aliens may easily meet this threshold by including certain phrases and claims during their credible fear interview. The smuggling organi-

zations know this, and they coach to aliens to make certain claims and to recite "magic words" during their interview.

To compound this issue, family units who arrive at our border are nearly always released from ICE custody into the interior of the United States, as recent rulings in the Flores consent decree litigation places a constraint on ICE's authority to detain an entire Family Unit. This litigation requires that children be released from DHS custody within a few days of arrival if they are not removed. In fiscal year 2017, approximately 71,500 members of family units were apprehended, and ICE believes this number is on track to increase significantly in fiscal year 2018.

With many of those arriving at the border claiming credible fear and an immigration court backlog of more than 700,000 cases, it is clear that we must elevate the threshold standard of proof in credible fear interviews, as aliens who falsely claim credible fear in expectation of parole or release are placing a strain on Department resources, and preventing or delaying legitimate asylum cases from being adjudicated. DHS and the Department of Justice (DOJ) are working together to explore options for addressing this increasing threat to the security of our border.

PROMPT REMOVAL FOR THOSE WHO CROSS ILLEGALLY

A critical component of border security is being able to quickly remove illegal aliens when they are apprehended by immigration enforcement officers. However, the combination of legal loopholes, lack of detention funding, and court backlogs often results in illegal aliens being released shortly after their apprehension. Many of these illegal aliens never appear for their immigration court hearings and then, go undetected unless they get arrested for another criminal violation, which happens repeatedly, with often tragic results. These are preventable crimes, and more importantly, result in preventable victims of criminal activity, that needlessly occurs as a result of Congressional inaction.

Aliens arrested in the interior may be more likely to have protracted immigration proceedings and appeals, which delays the issuance of an executable final order of removal. Specifically, many such aliens are not amenable to expedited removal—an accelerated removal process in which aliens cannot apply for relief from removal and when only very limited avenues for judicial review are available. Only if aliens subjected to expedited removal are found to have a credible fear of returning to the proposed country of removal are such aliens referred to full section 240 removal proceedings, in which they can apply for all forms of relief or protection from removal for which they are eligible. Such cases also frequently require a more complex and lengthy process to obtain travel documents, which further delays the removal process. As a result, ICE is working with DHS and its other components to evaluate options for returning aliens to their home countries in a safe, humane, and lawful fashion.

END CATCH-AND-RELEASE POLICIES

"Catch-and-release" policies are a significant pull-factor for illegal immigration. Recent increases of illegal immigrants, of which the migrant caravan is but a small part, require immediate Congressional action to close loopholes that frustrate ICE's ability to enforce the laws.

Court rulings which force "catch-and-release" for alien families have long posed significant challenges for ICE in maintaining effective control of the border, particularly when alien families decide to break our immigration laws en masse, as is currently happening. These court rulings have stripped ICE of the ability to detain these families, meaning they must be released into communities across the United States. In many cases, families do not appear for immigration court hearings, and even when they do, many more fail to comply with the lawfully-issued removal orders from the immigration courts.

Additionally, DHS and ICE support making detention mandatory for all convicted criminals, to ensure our communities stay safe. Some judicial decisions, such as *Zadvydas* v. *Davis,* restrict ICE's authority to keep criminal aliens, who are pending removal, in custody. This decision significantly restricts the ability of DHS to detain aliens with final orders of removal, including serious felony offenders, if their home countries will not accept their return. As a result, foreign nationals who have been convicted of murder and rape—among other crimes—are released back onto the streets of America instead of being detained until they can be returned to their home country. In 2017, more than 2,300 aliens were released because of that court decision, including more than 1,700 convicted criminal aliens. Going forward, we would like to work with Congress to address this serious public safety issue.

SANCTUARY CITY LEGISLATION

Though clear legal authority exists for State and local law enforcement to cooperate with ICE in its immigration enforcement efforts,[1] not all State and local jurisdictions cooperate with ICE. Some jurisdictions refuse to honor ICE detainers, or even to share information relating to potentially removable aliens. Some even prevent ICE access to their jail population for purposes of conducting interviews. This is a significant impediment because ICE often requires interviews to determine alienage, gang affiliation, and removability.

The cooperation ICE receives from State and local law enforcement agencies is critical to its ability to identify and arrest aliens who are subject to removal from the United States pursuant to Federal law, and who may be a threat to the public because they have been arrested or convicted for criminal activity, much of it violent. ICE places detainers on individuals whom it has probable cause to believe are removable aliens in Federal, State, and local law enforcement agency custody on criminal charges.

Unfortunately, some of the aliens who have been released after local jurisdictions refuse to honor an ICE detainer have gone on to commit additional crimes, including violent felonies. While these crimes could have been prevented if ICE had been able to take them into custody upon release from State or local criminal custody, and remove them from the country, State or local laws and policies prevented ICE from intervening, and these aliens were released back into the community to reoffend. Such laws and policies that limit or prohibit cooperation with lawful immigration enforcement needlessly jeopardize public safety, waste Government resources, and send the wrong message to those who seek to enter this country illegally, including criminals.

Furthermore, when jurisdictions fail to honor ICE detainers, ICE must conduct at-large operations to locate these criminal aliens. Such releases increase the risks to everyone involved; from members of the public who may later become victims of crime, to the law enforcement officers and aliens involved in subsequent arrests. Logistically speaking, the failure to honor ICE detainers also increases the need for ICE's presence in communities, and requires additional resources to locate and arrest potentially dangerous aliens.

As always, ICE seeks to build cooperative, respectful relationships with law enforcement partners, and continues to collaborate with them to help ensure that aliens who pose a threat to our communities are not released onto the streets to reoffend.

ICE is committed to using its unique enforcement authorities to promote National security, uphold public safety, and preserve the integrity of our immigration system. The use of detainers is a lawful, efficient, effective, and safe means to carry out ICE's mission, and ICE, DHS, and the Department of Justice continue to work together to ensure that ICE is able to carry out this aspect of its public safety mission.

ENSURE ADEQUATE BED FUNDING AND MANDATORY DETENTION FOR CRIMINALS

Detention is a necessary tool utilized in its primary mission to effectuate the removal of aliens ordered removed from the United States. ICE's increased interior enforcement initiatives, as well as the efforts of other agencies, resulting from EO 13767, *Border Security and Immigration Enforcement Improvements*, and EO 13768, *Enhancing Public Safety in the Interior of the United States* necessitates additional detention capacity. The lawful detention of illegal and criminal aliens ensures that they appear at their removal proceedings, increases the likelihood that orders of removal are executed, enhances public safety, and restores integrity to the immigration laws of the United States. In addition, mandatory detention for all convicted criminals will help ensure our communities are safe—for citizen and lawful immigrant alike.

Currently, ICE's fiscal year 2018 budget provides funding for 40,520 average daily population (ADP) (2,500 family beds and 38,020 adult beds); this is approximately 675 adult ADP lower than current ADP levels (fiscal year 2018 ADP 40,830). The current funding levels do not allow for any increase in detention due to seasonal increases in border apprehensions, or additional interior apprehensions, even though ICE has identified additional detention capacity near the Southern Border to accommodate the surge in apprehensions stemming from seasonality or the deployment of the National Guard.

[1] The U.S. Supreme Court has repeatedly recognized the broad discretion of the Federal Government in the area of immigration enforcement, as the authority of ICE officers to issue detainers is firmly rooted in Federal law and practice. (Adapted from 93037).

The fiscal year 2019 budget includes nearly $2.8 billion to expand detention capacity to support an average daily adult population of 49,500 and an average daily family population of 2,500, for a total of 52,000 beds. ICE believes these numbers would provide appropriate detention space for enforcement activities and ensure the end of "catch-and-release" at the border for those aliens ICE is lawfully able to detain. Additionally, the budget also includes funding for the Alternatives to Detention (ATD) program to sustain 82,000 average daily participants.

CONCLUSION

Thank you again for the opportunity to appear before you today and for your continued support of ICE and its law enforcement mission. We appreciate the chance to discuss the importance of immigration enforcement and border security, and how we can work together to keep our communities safe by closing legal loopholes that exist within current enforcement authorities. I look forward to answering any questions you may have at this time.

Ms. MCSALLY. Thanks, Director Homan.

The Chair now recognizes Director Cissna for 5 minutes.

STATEMENT OF LEE FRANCIS CISSNA, DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. CISSNA. Chairwoman McSally, Ranking Member Vela, and distinguished Members of the subcommittee I am pleased to be here today along with my colleagues from ICE and CBP to offer thoughts on real border security.

In most people's minds, border security means physical controls and surveillance. We have all seen the wall prototypes, the documentaries that have followed Border Patrol agents as they do their dangerous and exhausting work and other evidence of the physical aspects of border control. I suggest that true border security is much more than that.

While border security certainly does incorporate physical control of the border, it must also incorporate the administrative processes that govern the entry and exit of individuals into the United States. Behind the border wall, as both the Chairman and the Chairwoman have said, there must be a wall of law.

As evidence that many in Congress understand this problem, I point to H.R. 4760, the Scoring America's Future Act, as a blueprint for meaningful immigration reform. I note that the Chairwoman along with Congressmen Smith, Barletta, Rutherford, and Bacon on this subcommittee and indeed Chairman McCaul himself, are all co-sponsors of that bill.

This piece of legislation provides many of the tools that could help us regain control of our borders while at the same time improving our ability to administer an immigration system that is responsive to our Nation's needs and obligations.

Now, I would like to mention the backlog in the USCIS asylum caseload. The number of new asylum filings has tripled between fiscal year 2014 and fiscal year 2017. The number received in fiscal year 2017 was the highest annual number of asylum claims received in over 20 years. USCIS currently faces an asylum backlog of around 318,000 cases, a backlog of critical proportions that cripples our ability to properly screen and vet applicants while they wait for a decision. A consequence of this 1,750 percent increase in pending asylum applications is that true asylum seekers are lost in a haystack of applications, many of them non-meritorious.

In my written testimony, I discuss how USCIS has taken steps to address this backlog. I also mentioned several loopholes that work to undermine our Nation's asylum system. Now, I would like to share with you some background on this.

When Congress established the expedited removal process in 1996, Congress understood that a mechanism to screen for claims for asylum was necessary. The compromise Congress came up with was the so-called credible fear process. I would submit to you that the present process at the border is neither expeditious nor credible.

The statutory standard for credible fear screenings at the border has been set so low that nearly everyone meets it. But, over the years since the passage of the Refugee Act of 1980, certain courts have taken this generous approach and stretched it almost beyond recognition ruling that people like former gang members or victims of general gang violence may qualify for asylum as a member of some sort of particular social group.

Someone only has to show that there is a "reasonable possibility" of suffering persecution on account of a protective ground in order to qualify for asylum. The credible fear screening standard used at the border only requires that someone establish that there is a significant possibility of establishing eligibility for asylum in order to pass the screening process.

What does this all mean? It means that an alien saying the magic word "asylum" at the border only has to establish a significant possibility that there is a reasonable possibility that he or she will be persecuted on account of a protective ground if returned home in order to be screened in. In other words, they need to only show a possibility of a possibility.

Many of those seeking to enter this country illegally and smuggling organizations who profit from them know that a few key words are all it takes to get an alien through this screening process. It should be no surprise, therefore, that we have seen a 1,750 percent increase in the number of fear claims being made in the expedited removal process between fiscal year 2008 and fiscal year 2016.

The loophole of this overly generous screening standard when paired with insufficient funding for detention space, court decisions that prevent us from detaining fear claimants throughout the process of adjudicating their protection claims and an overburdened immigration court system tasked with hearing those claims is a recipe for the challenges that we are dealing with at the border.

The evidence that the present system is being gamed is obvious. According to data from the Department of Justice, the Executive Office for Immigration Review through mid-January of this year, 56 percent of pending cases they have that originated from credible fear reviews that were conducted by USCIS still had not filed asylum application.

The number of removal orders issued after the alien failed to appear at the hearing on cases that originated from credible fear has increased by over 1,350 percent. Finally, as announced by EYR last week, the approval rate for defensive asylum cases was only 20 percent and was only 22 percent for the first two quarters of fiscal year 2018.

Secretary Nielsen has called on Congress to work with her to quickly pass legislation to close these legal loopholes and the asylum loophole, the loopholes and abuse of the asylum process I just described are some of them. These are being exploited to the detriment of the integrity of our immigration system.

Like Secretary Nielsen, I stand ready to work with any Member of Congress who seeks to support DHS's mission to secure our country and correct these problems. Thank you.

[The prepared statement of Mr. Cissna follows:]

PREPARED STATEMENT OF LEE FRANCIS CISSNA

MAY 22, 2018

INTRODUCTION

Chairwoman McSally, Ranking Member Vela, and distinguished Members of the subcommittee, I am pleased to be here today, along with my colleagues from U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP), to speak with you about an integrated border security plan. My name is Francis Cissna, and I am the director of U.S. Citizenship and Immigration Services (USCIS). My testimony will lay out problems that exist within our Nation's asylum system that compromise border security and the integrity of our Nation's lawful immigration system, as well as steps that USCIS and other Department of Homeland Security (DHS) components are taking to address them. I will also suggest statutory changes in areas where only legislative action can provide the authorities needed to help secure our borders and keep our country safe. I am hopeful that the necessary changes will be realized, and I point to H.R. 4760, the Securing America's Future Act, as a blueprint for meaningful immigration reform. I further note that the Chairwoman, along with Congressmen Smith, Barletta, Rutherford, and Bacon on this subcommittee are cosponsors of the Securing America's Future Act.

USCIS administers the Nation's lawful immigration system, including the adjudication of affirmative asylum claims and applications for refugee status. USCIS officers work shoulder-to-shoulder with their ICE and CBP colleagues—from conducting protection screening interviews at detention centers to running real-time immigration record checks at the National Targeting Center. The closer we work together—and not just with our DHS partners but also with the Department of Defense and the States that are stepping up and temporarily deploying the National Guard—the better we secure our country. Stronger security requires multiple layers, from physical controls and surveillance along the border, to targeted interior enforcement, to a more aggressive crackdown on the immigration fraud and abuse that diminishes the integrity of our immigration system and harms American workers. It also includes working with our foreign partners to ensure that their immigration and enforcement policies and efforts reduce illegal flows from and through their territories to other nations, including the United States.

There is only so much we can do as a Department to enforce the rule of law when serious loopholes exist within current law. Congress must step in and give our officers the tools we need to better protect asylum seekers and the American people. Allow me to lay out the challenges we face, the actions USCIS has taken, and what more can be done, especially with your help.

First, the backlog in the USCIS asylum process has swelled over the last 5 years. The number of new asylum filings has more than tripled between fiscal year 2014 and fiscal 2017; the number received in fiscal year 2017 (141,695 asylum applications) was the highest annual number of asylum claims received in over 20 years. USCIS currently faces an asylum backlog of over 318,000 cases—a backlog of critical proportions that cripples our ability to properly screen and vet applicants while they wait for a decision. A consequence of this 1,700 percent increase in the backlog of pending asylum cases over the last 5 years is that true asylum seekers are lost in a haystack of applications, many of them non-meritorious.

To stem the increase of frivolous filings and help those who truly fear persecution, USCIS began to schedule asylum interviews for recent applications ahead of older filings, beginning in February of this year. Delays in the timely processing of asylum applications are detrimental to legitimate asylum seekers. Furthermore, lingering backlogs can be exploited and used to undermine National security and the integrity of the asylum system. The result is that true victims wait years to be proc-

essed. Those who file frivolous claims not only circumvent the legal immigration system, but they could pose a threat to public safety and National security.

Returning to a "last in, first out" interview schedule allows USCIS to focus quickly on those applications that should be approved while also identifying frivolous, fraudulent, or otherwise non-meritorious asylum claims earlier and quickly place those individuals into removal proceedings. This priority approach is not new. It was first established by the asylum reforms of 1995 and was used for 20 years until 2014. The aim then, as now, was to deter those who might try to use a backlog as a means to obtain employment authorization and build equities in the United States. During the first 3 months that this revised scheduling approach has been in place, the number of new affirmative asylum applications received has fallen by approximately 30 percent from the number of filings received from November 2017 through January 2018. While it is still too early to call this a permanent trend, USCIS expects that this scheduling change will deter the filing of non-meritorious claims.

Congress can help in closing loopholes for frivolous and baseless asylum filings. The extended asylum processing times caused by the growing backlog have led to the issuance of more Employment Authorization Documents (EADs) and created an incentive (or pull factor) for individuals to apply for asylum solely to obtain work authorization. The current wait time for an asylum decision in the backlog varies between USCIS Asylum offices, but is roughly 2 years or longer overall. While the number of *mala fide* claims is difficult to estimate, experience from the 1990's indicates that a significant amount of the growth in receipts since fiscal year 2014 may be linked to individuals pursuing work authorization and not necessarily asylum status. While just less than 55,000 EADs were issued to individuals with pending asylum applications in fiscal year 2012, over 277,000 such EADs were issued during just the first three quarters of fiscal year 2017.[1]

Moreover, approximately 20 percent of the Asylum Division's affirmative asylum backlog comprises cases in which, at the time of filing, 10 or more years had elapsed after the applicant's last arrival in the United States. These applicants appear to be using the asylum process to gain access to removal proceedings so that they can then apply for cancellation of removal, a form of relief from removal that can presently only be sought while in removal proceedings. With the present backlog, these individuals can get authorization to work in the United States while they wait for their asylum case to be reviewed, have an asylum interview scheduled, and receive a decision to refer their application to removal proceedings before an immigration judge.

In order to fully address these loopholes, new legislation is needed. In order to deter frivolous filings, individuals who make them should face penalties beyond simply having their application denied. Under the statute, individuals who are found to have filed frivolous asylum applications are permanently barred from receiving any future immigration benefits, yet this finding is rarely made because the definition of "frivolous" is too narrow and the notice requirements too unwieldy. Expanding the definition of "frivolous" to capture the types of abusive claims we are currently seeing and amending notice requirements, for instance, would send a strong and clear message that individuals are no longer welcome to abuse our asylum processes. USCIS stands ready to provide technical assistance, as needed, to the Congress as you consider remedies.

Attention also needs to be given to expedited removal and the credible fear screening process—especially as they relate to the Southern Border. The simple reality is that those who wish to gain access to or remain in the United States know they can likely effect that access and then delay their removal by simply saying the "magic words" of "fear" or "asylum." The standard for credible fear screenings at the border has been set so low that nearly everyone meets it.

Those with legitimate claims of asylum must be protected; however, many of those seeking to enter this country illegally, and the smuggling organizations who profit from them, know that a few key words are all it takes to keep an alien in the country longer. Unfortunately, there is no significant downside to making a false claim of "credible fear". Additionally, family units who arrive at our border are nearly always released from ICE custody into the interior of the United States as recent rulings in the Flores consent decree litigation constrain ICE's authority to detain an entire family unit. These rulings require that children be released from DHS cus-

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[1] USCIS News Alert (Oct. 12, 2017), "USCIS Makes Additional Data on Employment-Based Visa Programs Available in Support of 'Hire American' Executive Order"; EADs by Classification and Statutory Eligibility, Oct. 1, 2012–June 29, 2017 *(https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/BAHA/eads-by-statutory-eligibility.pdf)*.

tody within a few days of arrival if they are not removed. In fiscal year 2017, approximately 71,500 members of family units were apprehended at the Southern Border.

With continued claims of credible fear, and an immigration court backlog of more than 650,000 cases, it is clear that we must elevate the threshold of proof in credible fear screenings. Aliens who falsely claim credible fear in expectation of parole are placing a strain on Department resources, and preventing or delaying legitimate asylum cases from being adjudicated. DHS and the Department of Justice (DOJ) are working together to explore options for addressing this increasing threat to the security of our border.

Current law also prevents the Government from promptly removing some unaccompanied alien children (UACs) who arrive in the country illegally. Rather than being expeditiously removed to their home countries, these minors are instead placed in full removal proceedings before immigration judges and, pursuant to Federal law, are referred to the U.S. Department of Health and Human Services (HHS) at taxpayer expense, and subsequently released to the custody of a sponsor—sometimes even a family member or friend who often lacks lawful immigration status in the United States. As has been reported, violent street gangs such as MS–13 have targeted UACs and other Central American immigrant youth for recruitment. Dozens of suspected gang members arrested in recent successful anti-gang operations, such as ICE Homeland Security Investigations' "Operation Raging Bull," were found to have originally entered this country as UACs. We must come to terms with the effects of UACs on our orderly immigration processes. Without reform, border security will remain elusive.

The significant increase over the last few months in the number of family units and UACs coming across the border illegally highlights the urgent need for Congress to immediately pass legislation that:

- Ensures the expeditious return of UACs and family units who are not granted protection;
- Tightens the credible fear standard; and
- Closes loopholes that encourage and enable illegal immigration and create a corresponding backlog in the courts.

The integrity of our entire immigration system is at risk because frivolous asylum applications impede our ability to help people who really need it. In order to address this, we need legislation that:

- Imposes and enforces penalties for the filing of frivolous asylum applications;
- Closes any loopholes that allow serious criminals, gang members, or terrorists to receive asylum in our country;
- Guarantees the prompt removal of individuals whose claims for protection are denied; and
- Makes it easier to terminate asylum for anyone who takes advantage of our generosity by claiming asylum but then returns to their home country absent a material change in circumstances or country conditions, especially when they are engaged in activities that threaten the security of our country, the very Nation that gave them refuge.

Asylum is about protecting people who are at risk of persecution in their home country—that is, singled out for persecution on one of five specific statutory bases; it is not about providing a way around the regular immigration rules to pick and choose the country where you would most like to live.

We are, and will continue to be, a Nation that provides protection to those truly in need. We honor our international legal obligations just as we expect other countries to honor theirs. To have border security, however, we must have an asylum system with integrity that puts the safety and security of the American people first.

We must work toward a comprehensive border security solution that deters illegal immigrants from abusing our laws while ensuring that we live up to our National promise of providing safe harbor to those who need it. By fixing the asylum system, we can protect true asylum seekers while also strengthening our immigration system for generations to come.

CONCLUSION

This President has made it clear that we will protect our borders and our sovereignty. Secretary Nielsen has called on Congress to work with her to quickly pass legislation to close the legal loopholes that are being exploited by the smugglers, traffickers, criminals, and those who want to ignore or bypass established immigration processes. Deficiencies in the law prevent us from securing our borders and protecting Americans. Like Secretary Nielsen, I stand ready to work with any Member

who seeks to support DHS's mission and secure our country. I believe that Congress has a very good start on that work, as evidenced in H.R. 4760.

Border security is more than just the much-needed wall and "boots on the ground." A system that allows individuals to make dubious claims of asylum primarily so that they can live and work in the United States undermines all of the time, effort, and resources that go into physical security. We at USCIS look forward to continuing to assist Congress, working closely with staff from both the Senate and the House to provide technical assistance to the language of any legislation that will address asylum loopholes and other vulnerabilities.

Once again, I appreciate the opportunity to be here today. I am happy to answer any questions you may have. Thank you.

Ms. MCSALLY. Thank you, Director Cissna. I now recognize myself for 5 minutes for questions.

OK. So I just want to summarize the big picture here. We have heard a lot of numbers. We have heard a lot of information, a lot of data. So we have seen a 1,750 percent increase, Director Cissna, between fiscal year 2008 and fiscal year 2016 you said in asylum claims, correct? 1,750 percent, that is a big number.

Mr. CISSNA. Yes.

Ms. MCSALLY. There is a lot of violence around the world. There is a lot of poverty around the world. There is a lot of tribulation and troubles from individuals around the world. But this increase has gone up 1,750 percent. So the cartels and the individuals have figured out, they simply have to say, I have a credible fear, or I want to seek asylum and the bar is so low it is a possibility of a possibility, 90 percent are released into the interior of the United States?

Mr. CISSNA. So the numbers are pretty bad. I mean, right now credible fear screening rate, people who get positive credible fear screenings last year was 76 percent.

Ms. MCSALLY. OK, 76 percent.

Mr. CISSNA. But the immigration courts might flip a few more digits beyond that, so say it is like around 80 percent.

Ms. MCSALLY. OK.

Mr. CISSNA. Of that number that get through, the ones that when their asylum claims are heard about right now between 22 percent, 25 percent something like that are actually granted asylum.

Ms. MCSALLY. OK. So, again, paint the picture. Most of them say the right words, right? And then how many years later do they get a court date on average?

Mr. CISSNA. It could be several years.

Ms. MCSALLY. OK. What percent actually show up?

Mr. CISSNA. Well, the numbers that we have show that, well, something like 50 percent I think never even file an asylum claim.

Ms. MCSALLY. OK.

Mr. CISSNA. And in absentia orders, I don't have that readily available.

Ms. MCSALLY. More than half, right, Director Homan?

Mr. CISSNA. Yes. A high percentage don't show up.

Ms. MCSALLY. Yes.

Mr. HOMAN. Yes, I looked at those numbers this morning, the family units of UACs——

Ms. MCSALLY. Yes.

Mr. HOMAN [continuing]. Approximately 80 percent are in absentia orders issued by immigration court which means 80 percent don't show up in court.

Ms. MCSALLY. So I am just trying to paint the picture here. Significant numbers are coming in. They are saying the right words because the bar is so low. They are then released into the interior of the United States for the court date years in the future. The vast majority don't show up for that court date. For those who do, only 20 percent, a little over 20 percent are actually granted asylum?

Mr. CISSNA. Yes.

Ms. MCSALLY. So, I mean, our system is being used for people to be able to just drive a Mack truck through the loopholes.

Mr. CISSNA. I think the problem goes back, as I said in my oral statement, to the very beginning of this process. The whole idea of the credible fear system was to give some protection to people who had legitimate fear of persecution in their home countries when they were at the border so that they wouldn't be expeditiously removed with everybody else.

But the reality is that the number of people coming to the border seeking this type of protection and making these types of claims is greatly overwhelming our ability to hold them throughout the process. If you can't hold them, you have to let them go. If you let them go, you end up with the problem.

Ms. MCSALLY. Right. Just for everybody's understanding, I mean, the asylum law is very specific that you personally are going to be persecuted because of your race, religion, nationality, membership in a particular social group or political opinion. You personally, when you go back to that country, not that your country is in poverty, not that your country has violence in general, just I just want you to elaborate on that.

Mr. CISSNA. That is correct. You have to demonstrate that you have fear of persecution, that there is a credible fear stage that there is a significant possibility that you will be persecuted on those grounds. As I said in my oral remarks, the courts have stretched those grounds a lot in the decades since and the basis for asylum into our country is very generous. The credible fear standard is even more so.

Ms. MCSALLY. So, Director Cissna, if you are fleeing from a country because of this persecution in one of these five categories and your life is in danger, as soon as you step foot into another country, say, Mexico, wouldn't that be a safe place for you to settle?

Mr. CISSNA. Well, what I and Secretary Nielsen and others have been saying for a while now is that people who are fleeing persecution in their countries should seek refuge in the first safe country they come to.

Ms. MCSALLY. Exactly.

Mr. CISSNA. That is the basic point, yes.

Ms. MCSALLY. Thank you. Exactly. That is the whole point. If you really are legitimately fleeing because you are personally being persecuted, then as soon as you are in a safe country, you should be processed there. Can you share like what Mexico is or is not doing related to this and increasing partnership on this topic?

Mr. CISSNA. Well, for the past several years, well, Mexico does have an asylum system. It does have a working asylum system and

we at USCIS have, for several years now, sent people to Mexico to help them build their capacity to expand and improve their asylum processes and we continue to do that. We continue to have discussions with them about that. People do ask for asylum and receive asylum in Mexico. As I say, we at USCIS are helping them to the degree they want and need help from us to accomplish that better.

Ms. MCSALLY. OK. Great. I am out of time. I am going to come back in another round.

The Chair now recognizes the Ranking Member Mr. Vela.

Mr. VELA. Thank you, Chairwoman McSally.

Commissioner Vitiello, family separation is very concerning to me. With this new Zero Tolerance Program announced by the attorney general, can you please explain the criteria CBP personnel are supposed to use to verify family relationships?

Mr. VITIELLO. Essentially, the agents and officers use whatever information is available to establish familial relationships. Sometimes these people have documents, sometimes they don't. When it is in question, when we don't believe that there is a familial relationship when a minor is involved, we will refer that minor to HHS as an unaccompanied minor.

As it relates to day-to-day operations, there are typically their statements along with documentation and our officer and agents work to verify that. When we can't, then we let HHS sort the individual as an unaccompanied minor.

Mr. VELA. Now, I don't know if you can answer this question because this actually would be a question best-suited for CBPOs, but is the process different for families who present themselves at the ports of entry versus those that are apprehended by Border Patrol between the ports of entry?

Mr. VITIELLO. Between the ports we are now referring anybody that crosses the border illegally. So Border Patrol is referring 100 percent of the people that cross the border illegally to the Justice Department for criminal prosecution, at the ports that is not an illegal act if they come under the same conditions. But the verification of family relationships is essentially the same in both instances.

Mr. VELA. So with this new policy in place, at the point that you are in a situation where you decide to separate the families, where do the minors go?

Mr. VITIELLO. The decision is to prosecute 100 percent. If that happens to be a family member, then the HHS would then take care of the minor as an unaccompanied child.

Mr. VELA. But can you tell us because over the past couple of weeks we have seen reports of families that have been separated but nobody can tell us where those children are going. Do you know where they are going?

Mr. VITIELLO. They are referred to Health and Human Services to be placed in a shelter.

Mr. VELA. So you are telling me that I am better off asking HHS?

Mr. VITIELLO. Well, yes, they control the system as it relates to where the shelters are and which ones they send them to, et cetera. It is their work that will reunite families or place them with a guardian.

Mr. VELA. This is probably a question for you, Director Cissna. Yesterday, the Department of Justice announced that it was asking the Department of Defense to send 21 prosecutors to assist in the prosecution of people detained pursuant to the new Zero Tolerance Policy. Within a few short weeks, Federal courts along the Southern Border are now experiencing tremendous backlogs because of this. Border Patrol agents and Customs officials do not appear to have the personnel and/or resources necessary to process the new detainees including minors. There also appears to be an issue with the lack of space necessary to house all of these defendants sentenced to serve time. What is the administration doing to address these concerns?

Mr. CISSNA. I think that is probably better for ICE on the detention issue.

Mr. HOMAN. As far as the detention capacity, we are well aware of that. We are working with the U.S. marshals and DOJ on identifying available detention space. I got my staff working on that along with the Department and DOJ, so I think it will be addressed. We want to make sure we don't get back to catch-and-release, so we are identifying available beds throughout the country that we can use.

As far as the question on HHS, under the Security Act 2002, we are required, both the Border Patrol and ICE, to release unaccompanied children to HHS within 72 hours. So we simply once they identify within 72 hours a bed some place in the country, our job is to get that child to that bed and HHS, it is their responsibility to reunite that child some time with the parent and make sure that child gets released to a sponsor that has beeen vetted.

Mr. VELA. Three years ago, most of us that are here lived through the issue with unaccompanied minors coming into this country and to me I just find it ironic that with the new Zero Tolerance Policy what we are essentially doing is creating a new class of unaccompanied minors. I will save the rest of my questions when we come back.

Although we may not see eye-to-eye on a lot of these things, Director Homan, I would like to congratulate you on your retirement and thank you for your service as well.

Mr. HOMAN. Thank you. As far as your question or your comment, if they show up at a port of entry to make their asylum claims, they won't be prosecuted and they won't be separated. The Department has no policy just to separate families for a deterrence issue. I mean, they are separating families for two reasons, No. 1, they can't prove the relationship. We have had many cases where children have been trafficked by people that weren't their parents and we are concerned about the child. The other issues are when they are prosecuted, then they are separated.

Mr. VELA. So I just thank you for clarifying that, sir. Are you saying that with the new Zero Tolerance Policy that at the ports of entry that children are not being separated from parents seeking asylum?

Mr. HOMAN. Not 100 percent. What I am saying is we separate children from parents on two situations. No. 1, they don't have evidence that they are actually a parent or legal guardian. As I said, we have had cases where children were trafficked by people claim-

ing to be parent but weren't, so we have to protect those children. The second issue if a parent is prosecuted, then we have to separate them until the parent goes to U.S. marshals and we have to, the children go to HHS. So it is not a policy based on deterrence. It is a policy based on these two issues, prosecution and can't establish relationship.

Mr. CISSNA. I will just add, if they choose to use the port of entry, that is not against the law so prosecution won't be contemplated in those cases.

Mr. VELA. OK. Well, I am out of time. I yield back.

Ms. MCSALLY. Thank you.

The Chair recognizes the Chairman of the full committee, Mr. McCaul, from Texas.

Mr. MCCAUL. Thank you, Madam Chair.

Director Homan, let me thank you for your many years of stellar service to our Nation. We all congratulate you on your retirement and I look forward to working with you in the future.

When you talked about sanctuary cities, it just reminded me when I was a young counterterrorism Federal prosecutor after 9/11 working with the joint terrorism task forces. A lot of time we couldn't prove material support to a terrorist, so what we would do in many cases was we were able to get them on immigration violation and deport them from this country.

What I worry about what is happening in California, and I wrote an article that California is building the wrong wall, is that they are building a wall between Federal law enforcement and local law enforcement. The idea that we would defy an ICE detainer because this is a criminal alien and yet the State has decided we are going to defy Federal law enforcement. To me, I think the supremacy clause applies and eventually we are going to win this is in the courts. But what can you tell me about the danger, not only to your agents that have to chase these people in the streets, but the danger from a counterterrorism standpoint?

Mr. HOMAN. Well, there's two issues here and we always get wrapped around the immigration issue, right, that a local State agency has chosen to arrest somebody, take their freedom, and lock them in a jail cell. If we know they are here illegally based on some fingerprint submissions, we should have access that person so we can enforce our law. They have already chosen to arrest them, so apparently they think they are a flight risk or public safety threat because they are locking them in a jail cell. We should have access to that jail like every other Federal agency does. DEA, FBI, they all get access, ICE should be no different, so I agree 100 percent on that.

The other issue that is not talked about so much is how the sanctuary cities affect criminal investigations, terrorism investigations. We have had law enforcement agencies that have left the JTTFs because we have HSI agents who work for ICE on their task force.

As part of the California sanctuary law, we have lost our access to the CalGangs databases. It is a California State database that has all this information on gang members, including MS–13 and numerous gangs. We can no longer access that database because of these laws. So it affects greatly National security and public safety and the criminal investigative aspect of that. You have had cities

out there that pass policies in their city to not allow to assist ICE in any way whatsoever.

Mr. MCCAUL. I think that is a point we need to be making as well as the Kate Steinle incident; murder. But we should also be talking about the National security. I have got a map I want to point out. It has to do with special interest alien pathways into the United States. This was given to me I think from your agency, Director Homan.

[The information follows:]

Mr. MCCAUL. DHS was created as a counterterrorism department. This is what keeps me up at night, is when you look at special interest aliens coming from Pakistan, from Turkey, from Syria, from Iraq, from Moscow to Africa into the Western Hemisphere with flights on air, sea, and land, and then the pathway up into the United States, we know that thousands, it is in the thousands of these special interest aliens try to make it per year.

This is why I think closing the legal loopholes is so important, because it does no good if they get in and you can't deport them. It does no good if you can't prevent them from coming in in the first place.

There is also a program I want you to talk about because I would like this committee to authorize this program for you, sir, is the bitmap program which deals with biometrics and deals with how can we track these individuals that make this journey from very dangerous countries of origin into this hemisphere, and particularly into the United States.

Mr. HOMAN. Well, I agree with you on this chart. That is the issue, right? If we learned anything from the 9/11 Commission, law enforcement needs to be talking together, coordinating, sharing information. These sanctuary city laws prevent that from happening. So 100 percent agree with you. I am glad you brought it up. It is not just an immigration issue, it is a public safety National security issue.

As far as these illicit pathways, that is the reason, as you know after 9/11 you are exactly right, immigration authorities got most

of the people that are involved with terrorist activities arrested because the FBI are still working on the cases for that.

As far as bitmap, we are working with our attaché offices overseas in Central America and South America on identifying those routes to United States, many known terrorists that these other countries will enroll them in the bitmap, take some prints, feeds into our system along with the DOD and gives us a shot of who is coming, who is on their way.

So Panama has been very successful. Panama has a great program down there. People that were known terrorists had been turned around in Panama, sent back before reaching our shores. I like to use then Secretary John Kelly said we would rather play the away game, than play the home game. So we want to expand bitmap. It is very important that we expand that to other parts of the country. It has already proven successful. It has already proven people that want to do harm to this country had been stopped on the way rather than at the border or inside United States. So a significant, significant investment needs to be made there.

Mr. MCCAUL. Yes, and I couldn't agree more.

Madam Chair, I look forward to working with you on authorizing this report and the program. I yield back.

Ms. MCSALLY. Thank you, Mr. Chairman.

The full committee Chairman yields back. The Chair now recognizes Mr. Correa from California for 5 minutes.

Mr. CORREA. Thank you, Madam Chair.

I want to thank our guests today for the good work they are doing for this country. Thank you very much. I wanted to focus also a bit on the big picture. We talked about 300 percent increase referring to what? The Chairperson referred 300 percent increase in what kind of crossings?

Mr. CISSNA. In the family units and——

Mr. CORREA. Yes.

Mr. CISSNA [continuing]. Unaccompanied children.

Mr. CORREA. What were the actual numbers?

Mr. CISSNA. I can get that to you. I probably have it here, but about 240,000 apprehensions so far this year. About a third of those would be people not from Mexico who are unaccompanied children or part of a family unit.

Mr. CORREA. We talked about a 1,750 percent increase. Was that fiscal year 2008 to 2016? Did I get that correct?

Mr. CISSNA. There are two increases that are about 1,750 percent. One was in the number of pending asylum cases over the past 5 years.

Mr. CORREA. Over the 5 years. Not 1 year, 5 years.

Mr. CISSNA. Five years, yes. Then the other one was the number of——

Mr. CORREA. What were the actual numbers on that?

Mr. CISSNA. So I have that. Let me see.

Mr. CORREA. If you get that——

Mr. CISSNA. Yes.

Mr. CORREA. While you are getting that for me, I got another question.

Mr. CISSNA. Yes.

Mr. CORREA. We talked about cartels, we talked about these folks coming over looking for asylum. Are there cartels sending them over with drugs? When they get to the border, do these folks looking for refugee status? Are they coming in with drugs? So they check in to say I want asylum, by the way, they have a backpack full of drugs. Is that what happens?

Mr. CISSNA. I am not sure we see that very often. I think that is more of a rare occurrence. But I can tell you that most if not all——

Mr. CORREA. Does that happen 100 percent of the time, a couple of times, 30 percent of the time?

Mr. CISSNA. I would just say that most everyone in this situation is being smuggled. The way that the——

Mr. CORREA. So you don't have actual numbers. You don't have actual numbers. I would like to get some of those from you. I am sorry I got just a couple of minutes left here. The other question is you talked about a caravan, 1,000, 1,500 that left for the United States. How many of those actually made it to the border, to the U.S. border? It sounds like you don't have that number either, but I hear it is about 300. What I love to do and I will ask, I will request, I will put in a question for you that I want to see what Mexico is doing because my understanding is there is a major effort at this Southern Border of Mexico to address this issue and that they are doing quite a bit in cooperating with the United States. It is just it is something that I don't have at my fingertips and appears that you don't either so I would love to get an answer to that.

Finally, Mr. Homan, if I can, I won't put any words in your mouth, but you said illegal immigrants are dangerous?

Mr. HOMAN. I don't believe I used those words, no.

Mr. CORREA. I am sorry?

Mr. HOMAN. I did not say that. I don't think I did.

Mr. CORREA. OK. Again, because the issue I am having in the State of California is I got my farmers asking for more workers and they have actually called me from Republican areas saying, "Lou, we need more workers on our fields." And I told them call the administration. I can't do anything. But, as you know, ag is one of our top industry not only in California but in southern States and it appears that we need those farm hands so that is why I am saying we are not thinking of these folks as terrorists, are we, or dangerous.

Mr. HOMAN. No. The statement I made is entering this country illegally is a crime. It is a violation of Federal law.

Mr. CORREA. But yet they are needed at these farms as farm workers, correct?

Mr. HOMAN. Then I think it is up to the Congress to make some changes in the guest worker program whatever you think you need, but violating the laws of this country isn't the answer.

Mr. CORREA. But yet they are needed and the pool is economic. If I can, let me talk to you about another kind of political refugee asylum seeker which those are the folks that have a lot of money and they are transferring their money into the United States. What is it? Five hundred thousand dollars gets you what kind of a visa?

Mr. CISSNA. It is the EB–5 program.

Mr. CORREA. Those people are also fearing for their economic lives in some of these countries, correct?

Mr. CISSNA. Perhaps.

Mr. CORREA. Possibly from China and some of the others. So do we look at those as welcome or not welcome and what is the distinction?

Mr. CISSNA. Well, the EB–5 program is a program established by Congress.

Mr. CORREA. They are following the law just like these asylum seekers?

Mr. CISSNA. Correct.

Mr. CORREA. Under existing laws.

Mr. CISSNA. Yes, under existing laws there is an asylum program and there's a need——

Mr. CORREA. Are these asylum seekers just from Central America or they come from all over the world?

Mr. CISSNA. Asylum seekers come from anywhere.

Mr. CORREA. Any other specific areas, Syria, Iraq?

Mr. CISSNA. Syria, China, Venezuela.

Mr. CORREA. China? There is no war in China. What is the issue there?

Mr. CISSNA. Well, there could be political persecution. Used to be you could be a member of the Falun Gong. Previously, it was the one-child policy that drove a lot of refugees from China.

Mr. CORREA. Again, gentlemen, I thank you for the great job you have done. I will follow up with some questions later on with you.

Madam Chair, I yield.

Ms. MCSALLY. Gentlemen yields back. The Chair now recognizes Mr. Bacon from Nebraska for 5 minutes.

Mr. BACON. Thank you, Madam Chair.

Thank you, gentlemen, for being here today and sharing your expertise. I think you have made a compelling case that our policies and loopholes undermine our security, undermine our law and we need to get that fixed. We can have the best physical security in place, but if we are doing catch-and-release or if we have an asylum policy that is being used as a loophole we undermine all those efforts. So I, for one, support more physical security, but I know we got to fix these laws so that they support each other and that they defend our border and give us the rule of law. We want legal immigration, not illegal immigration.

Now, I want to piggyback on what the Chairman of our committee have brought up and it is a special interest and only pathways to the United States. I think this is an area that does not get the visibility that it should get. We know the folks are coming here through pathways through South and Central America but originating from the Middle East, some perhaps are looking for asylum but some are coming here for nefarious reasons, suspected semi-terrorists.

We had Homeland Security Secretary here this past month. I asked her about it, so what at the unclassified level can you tell us about this and she made the statement at the unclassified level that we are tracking roughly 15 suspected terrorists a day somewhere in transit coming here. I think the American people need to know this. We are not doing a good enough job about that. So is

there anything you can add at the unclassified level about suspected terrorists using these pathways and trying to abuse these policies to come to our country?

Mr. HOMAN. Well, the Secretary is right. Like I said, the bitmap program has already identified those who want to harm this country on their travel here. This is the whole issue by the Southern Border and the President wanting the wall and having a true border security.

Question from the gentleman from California was criminal cartels move product. They don't care if it is just illegal alien looking for farm work, whether it is drugs, whether it is weapons or whether it is a terrorist. They are in the business of moving product into United States illegally and that is how they make their money.

So when you talk about sanctuary cities that dangle the carrot out that you will get to the city and you can even commit a crime you would be protected—very criminal organizations that have murdered Border Patrol agents, murdered my agents, smuggled guns, smuggled weapons, smuggled terrorists. This is same illicit pathways. That is why when we talk about border security and border wall and closing these loopholes that is why it is so important. As I said earlier, this is not an immigration issue. It is National security issue because the people that want to harm this country use the same pathways, right? They are being bankrolled by the lack of strong policy.

Mr. BACON. The Homeland Security Secretary, so let me just ask point blank. Have we caught suspected terrorists trying to enter our country through these pathways?

Mr. HOMAN. Well, the detail she gives you is a recognition that when someone applies for entry or is encountered by one of our officers, they are hitting on the database that the Government keeps of known and suspected terrorists so that is happening regularly.

Mr. BACON. So the answer is yes? We have caught known or suspected or interdicted known or suspected terrorists coming here. I think we do too often put this as an immigration issue which clouds the more fundamental issue of border security and terrorism.

I think and I guess I will close with just this thought. Why aren't we doing a better job as homeland security or in your areas of communicating this because I feel like it seems to be lost. I think if the American people knew of the magnitude of terrorists from the Middle East trying to come through our Southern Border using these alien pathways to the United States in this handout, it would change the discussion. It would raise the support levels for what we are trying to do to improve our physical security and policies. I think the debate becomes easy where we can show that there is actual physical terrorist threat trying to come here. I just don't know that we are making that case. Can we do better or what is your—am I off-base on this?

Mr. HOMAN. I can tell you, we are trying. But you know what, there is a vast amount in the media that don't want to report it.

Mr. BACON. Right.

Mr. HOMAN. They want to make this a case against administration. They want to make this about immigrant families trying to better—I can't blame anybody for wanting to be part of the greatest

country on earth, which is the right way to do it, but we are telling a story, promise that that story doesn't get past. The wall has been put up by NGO's and these groups that don't want American people to hear the truth. That is why I am out a lot trying to talk. I know Ron is out talking a lot. We are trying to get that story out that this is more than just immigration. We are talking about our country's sovereignty. We are talking about National security of this country.

Mr. BACON. I think some folks perceive this as a hypothetical issue versus a real issue. I think the more real we make it with tangible names, tangible pictures of faces of folks who come here who had terrorist designs on our country, I think this debate gets easier.

Thank you. I yield back.

Ms. MCSALLY. Gentleman yields back. The Chair now recognizes Ms. Barragán from California for 5 minutes.

Ms. BARRAGÁN. Thank you, Madam Chairman. I am going to go ahead and my colleague just said he wanted to make this more real. I want to introduce into the record a statement by Olivia Cáseres, a mother who participated in the caravan during the fall of 2017 into the record. She is from—may it go into the record?

Ms. MCSALLY. Without objection.

[The information follows:]

ENGLISH TRANSLATION OF LETTER BY OLIVIA CÁSERES

I am Olivia, I am 29 years old, I am Salvadoran. I am a young entrepreneur who was on my way to starting my own small business together with my life partner José, of 30 years of age, a graduate with a degree in Journalism and Communication. Due to lack of opportunities we were forced to try to succeed on our own. But our life changed due to the insecurity that reigns in our country and we were forced to leave everything behind. We joined the caravan in October of 2017. We found in it protection and support since Mexico is also very insecure, full of dangers for migrants, and coming supported with other migrants like us gave us to a certain extent a bit of safety. The path isn't easy, especially not for parents like us who were coming with our children. It is very dangerous but we know and we are aware that we do it to save their lives. All we are looking for is a safe place for them to grow and be good people.

In my experience, turning ourselves into immigration, presenting ourselves at the port of entry to request asylum, is very hard. The officers tend to intimidate you and I think that our only crime is to present ourselves and ask for protection. PROTECTION that in our countries isn't there, SECURITY that doesn't exist. And in the detention center the treatment is as if we were criminals. The food is horrible, we are arranged on the floor, one nearly on top of the other.

Now I am here at my aunt & uncle's. They give me room and board and basic necessities that my children have. With the separation of children, in my experience, being separated for 85 days from my 15-month-old baby, who was torn from the arms of his father on November 16, 2017. It has not been the least bit easy to get over that and less so to face the consequences that the separation from his father has caused 4-year-old Andree. Facing a child who is angry and misbehaved, who I constantly ask why he behaves and acts this way, and his answer is BECAUSE I MISS DAD. He says he will go back to being the boy he was before when his dad is back with us. 16-month-old Mateo because a completely different child. He is afraid of people and only wants to be with mommy. At night his crying is full of fear. This makes it clear that separation affects children psychologically, regardless of their age the changes are drastic and many times irreversible. And indefinite detention in the [detention] centers I feel is even more cruel because our only crime is looking for security and to save our lives and give our children a safe life. Stop

this inhumane and cruel treatment we are being subjected to for the simple act of saving our lives.

Olivia Cáceres /signed/.

I, Alexander Mensing, do swear and confirm that I am fluent in the Spanish and English languages and that the foregoing is a true and accurate English translation of the Spanish-language original to the best of my knowledge.

Alexander Mensing, May 20, 2018.

Ms. BARRAGÁN. So Olivia is from El Salvador, one of the deadliest countries that is not in a war zone and she talks about how difficult it is to turn yourself in. She talks about what it is like to be intimidated by agents and being separated from her child. For 85 days, her 15-month-old baby had been separated and that her child was never the same and has come back. Those are real stories. That is what is happening. Now, we love to talk about this issue about the MS–13 gangs.

We love to paint immigrants as criminals. That is not the complete facts. That is very offensive for me to see continuing to happen. It is continuing to message this. This anti-immigrant agenda. There are many, lots of good immigrants.

Then I hear this rhetoric, more DACA-like people. Guess what? DACA-like people are the people we need in this country. They have served this country. They have gone to college. They produce and they contribute to the economy.

So to put them into the same category is completely offensive. Now, I happen to know about some of these people who come over and seek asylum. Why? Because I represented a family, an unaccompanied minor when I was an attorney on a pro bono level and I had to go find his mom who was also in detention.

Now, it is extremely hard to get asylum. It is very hard to get asylum. The standard is very hard and it is very high. Now, I had unlimited resources at a big law firm. I could hire experts. Even then I couldn't get asylum. Was it a fraud? No. Did she and they get protections? Yes, under a different category. It took years. But there are people who come to this country because they are fleeing the violence.

In my particular case, they already killed one of her sons. Guess what? When one of your children is killed and you have one left, you are going to run. You are going to try to seek safe haven.

So it makes me sick to my stomach to keep hearing over and over again, painting the broad stroke and the picture as though these are folks who are coming here to do harm. So, it is just unbelievable to me how this rhetoric continues and to see it continue in a campaign season just gets even worse and worse. Just because you don't get asylum doesn't mean that it is a fraud. I think that is just so important for me to state.

Now, I want to move on to the issue of family separation. According to the *New York Times* more than 700 children had to be taken from adults claiming to be their parents since October, including more than 100 children under the age of 4.

Secretary Nielsen disputed this figure at a May 15 Senate Homeland hearing. She said that the 700 children figure was an HHS number and not a DHS figure. Does anybody on this panel know what the DHS figure is?

Mr. VITIELLO. We can for the record get back to you with the actual number of people who were in CBP custody. It was either un-

able to determine whether there was a familial relationship that we could prove and were comfortable with or somebody was prosecuted having crossed the border illegally and then that caused the family separation. We can get back to you and give you the exact number of that.

Ms. BARRAGÁN. OK. Let me tell you, it is hard for some of these families, when they are fleeing violence, and they are leaving their country, they are not exactly saying, "Let me go and look for documentation so that I can prove this is my child."

I had a hard time in my own case having to find people there on the ground to get the documents that we needed to make a case, right? People are leaving because they are in distress, because they are facing violence and they are fearful, right?

It is not generally something that they are thinking about before they take off. How do I prove this is my child? I will tell you right now if I had to go find something to prove my relationship with my mother, it would probably take me a little while.

So, I understand how difficult this is. Can you tell me how we are counting and tracking children that are separated from children?

Mr. VITIELLO. So everybody that is taken into custody goes through like sort-of a booking procedure, right? We get the biographical information. So all of that is in the documentation systems at CBP.

So that is how we try to establish whether they are related or not using those documents. But that all becomes part of their record. Because as they come that part of that processing is referring them for a removal hearing.

Ms. BARRAGÁN. Right. Thank you. I yield back.

Mr. HOMAN. Can I respond to the speech that was made?

Ms. MCSALLY. Absolutely.

Mr. HOMAN. First of all, no one on this panel is anti-immigrant. We are law enforcement officers who are enforcing law that you all enacted. So to sit there and say that we are anti-immigrants is wrong.

We are enforcing laws. If you think it is OK to enter this country illegally and shouldn't be arrested that is just wrong. The laws clearly say when you enter the country illegally, it is a crime.

No one is up here saying all illegal aliens are criminals, a certain percentage of them are criminals. They commit yet another offense after they are here. I have said many times I certainly understand the plight of these people. I feel bad for some of these people. But I have a job to do. I have to enforce law and uphold the oath that I took to enact the laws enacted by you, Congress.

Ms. MCSALLY. Thank you, Director Homan.

The gentlelady's time has expired. The Chair now recognizes, Mr. Rogers from Alabama for 5 minutes.

Mr. ROGERS. Thank you, Madam Chair, and thank you, all, for being here and thank you for your service to our country. I understand that and you all may have talked about this in your opening statements. I was a little late, I apologize for that, that in March a nearly 1,500-person caravans, mostly Hondurans, started on a mission to make a 2,000-mile trek to our border that was organized by some sort of radical advocacy group.

Was that accurate? The characterization of that caravan? They came through Mexico to get to our Southwest Border and under the pretense that they were in danger. Was there evidence that they were in danger once they were in Mexico that you all are aware of? Do you know how many of that group made it to the port of San Isidro?

Mr. VITIELLO. Yes, my staff gave me the number. Congressman Correa had the same question. Our records indicate that we arrested crossing illegally between the ports of entry 122 people who claimed to be part of the caravan and then 333 of them presented themselves at the port of entry and claimed asylum.

Mr. ROGERS. Do you know if any of those individuals in that caravan petitioned Mexico for asylum?

Mr. VITIELLO. In discussions with Mexico, they did resettle some of the original group.

Mr. ROGERS. Do you know if any of that roughly 500 that you just described tried to stop and stay in Mexico?

Mr. VITIELLO. I don't know.

Mr. ROGERS. Director Cissna, do you know how many of these immigrants have received an initial determination of credible fear in the United States?

Mr. CISSNA. Yes. USCIS received, referred to us from ICE so far, a total of 327 cases of people that we think were part of this so-called caravan, at least they self-identified or we had evidence that they were.

Of those 327, we have completed 216 of these credible fear screenings. Of that, 205 got positive screenings.

Mr. ROGERS. Amazing. Do you have any estimate, Mr. Vitiello, of how many immigrants in that caravan may have slipped through and are now in the country that we just don't have a handle on?

Mr. VITIELLO. I don't know that number.

Mr. ROGERS. OK. I know—I am sorry? Back in 2010, President Obama ordered the National Guard down to the border in a support capacity, wasn't whole lot said about it but recently when President Trump did the same thing, there was a big fuss made about it.

What exactly is the role of the National Guard when they are working at the border in concert with CBP?

Mr. VITIELLO. Much like the previous deployments that we got great assistance from the National Guard, we are specifically asking for a number of things. The aviation support is some of the biggest percentage of what they will give us will be in that.

There are also a number of roles in sector headquarters and at stations helping us watch the screens that the camera feeds come into the comp centers, helping us dispatch. We are looking at other roles for them to play.

But it is essentially that kind of support that allows us to then redeploy the agents that may have to do that work. So it gives us a bit more capacity in the locations where they are doing that work instead of Border Patrol agents.

Mr. ROGERS. Mr. Vitiello, do you believe a physical border wall is effective in stemming the flow of illegal immigrants into our country?

Mr. VITIELLO. It has been very effective and we expect it to continue to be.

Mr. ROGERS. Do you believe that in addition to a physical wall, security systems that support that wall are effective in deterring illegal immigration into our country?

Mr. VITIELLO. When the President directed us to make those plans, all of the estimates and all of the action planning that we have done is in fact that, it is a system that brings a number of capabilities, impedance and denial by the wall itself, access and mobility so roadways and avenues toward the border get there conveniently.

A number of agents are part of the request that we put forward. You have to have all three of those things—personnel, technology, and infrastructure to make it successful.

Mr. ROGERS. At present, does CBP have the resources physically and financially to secure our Southwest Border?

Mr. VITIELLO. Across the board, no. But we are using all of the money that the 2018 appropriation gave us to improve conditions as it relates to those three—personnel, technology, and infrastructure.

Mr. ROGERS. It seems to me that this caravan that got so much publicity was a manufactured event to try to exploit our Southwest Border. Would that be a fair characterization given that those people for weeks were traveling and once they were out of Honduras seemed to be out of harm's way?

Mr. VITIELLO. It does highlight the discussion about loopholes. These folks, a number of them knew that when they made that claim for asylum that they were going to be released into the country.

Mr. ROGERS. Yes. So unfortunate.

Thank you, Madam Chair. I yield back.

Ms. MCSALLY. The gentleman yields back. The Chair now recognizes, Mrs. Demings from Florida for 5 minutes.

Mrs. DEMINGS. Thank you so much, Madam Chairwoman, and thank you to our witnesses for being here. It is good to see you again.

Commissioner, I would like to address how unaccompanied minors, how they have reasonable—how reasonable fear interviews are conducted. As a former social worker, a former law enforcement officer, and a former crimes against children detective, I have seen children who experience confusion, fear, sometimes they are even silent after experiencing trauma.

I am sure that we all here understand these challenges and want to make sure that CBP agents have training and the resources necessary to screen unaccompanied minors with the care and consideration that every child certainly deserves.

What is the status of CBP's efforts to address and implement GAO's 2015 recommendations for Border Patrol agents and OFO officers to screen unaccompanied minors?

Mr. VITIELLO. We have made a number of improvements since 2014 and have responded to GAO's requests and agreed with a lot of their findings. There is a number of training curricula out there for agents to use in the interview setting when they are with family units and unaccompanied minors.

So there is an on-line course that agents have to take that is mandatory. There is some specific training and then the skills that agents use. So, we try to make sure that the people who are doing that interview and those processes are trained and have the heart to do it.

Most of our work force, all of our work force speaks Spanish, more than half of them are native speakers if you will, they are Latino or Hispanic people. Then a lot of them are families. So, we understand from that human perspective the situation that these children are in and do everything we can to make them feel comfortable.

We have made a number of improvements in the enforcement systems to record when people are fed, when their interviews are taking place, whether they got a chance to. How long they have been in our custody.

So, we have improved the systems and the accountability within the systems and then invested into some facilities that are specifically designed for this population.

Mrs. DEMINGS. Since 2014, how would you critique the success of the training that you do have in place? How do you feel it is working? What adjustments, if any, have you made since then?

Mr. VITIELLO. We have gotten better. The system adjustments and the things that we have done to make sure that those facilities, I mean, they are Border Patrol stations. It is where people are getting arrested and interviewed before they move on through the system.

So, we try to understand that this population is a bit different than the larger population. I think we have done a good job in making those adjustments.

Mrs. DEMINGS. OK. Thank you.

Director Homan, under what circumstances does ICE detain or otherwise assume custody of individuals apprehended at or near the Southwest Border? If you talked about that earlier I am sorry, I was late, so you could just——

Mr. HOMAN. ICE has appropriated for the detention of those in the country illegally. So everybody that Border Patrol apprehends, if they do not immediately remove them then we will get custody of them and we will detain them until they have the hearing.

Mrs. DEMINGS. OK. And——

Mr. HOMAN. That is on a case-by-case basis. We don't detain everybody. It is quite a risk and danger to the community if Border Patrol process and per expedited removal processing, they are mandatory detained, so we will detain them.

Mrs. DEMINGS. OK. Under what circumstances does ICE refer individuals who are apprehended at or near the border to DOJ for prosecution?

Mr. CISSNA. We do that.

Mr. HOMAN. Our Border Patrol does that as part of the zero tolerance. We will present people for prosecutions if we criminally arrest them. When they are charged with a crime we will present them, but as far as zero tolerance, the Border Patrol is doing that work.

Mrs. DEMINGS. OK. Did you want to add to that?

Mr. VITIELLO. So based on the attempt to end catch-and-release, Justice Department put out word through their system, and then the Secretary followed that up with direction to CBP to refer all border crossers in between the ports of entry. Anybody that enters the country illegally will be referred for prosecution.

Mrs. DEMINGS. OK. Thank you.

Chairwoman, I yield back.

Ms. MCSALLY. The gentlelady yields back.

Now we are going to start the second round here.

Director Cissna, I want to go over the numbers again of the people in the caravan. You said 370, sorry, 327 were referred for asylum processing, I think you said, 216 were screened and 205 received a positive screening?

Mr. CISSNA. That is correct. So far there——

Ms. MCSALLY. So far?

Mr. CISSNA. Yes. So there may be more cases coming.

Ms. MCSALLY. OK.

Mr. CISSNA. But that is what we have so far.

Ms. MCSALLY. So of the 216 screened, 94.9 percent because of this very low bar of proving a possibility of a possibility have made it through. Where are they right now? Have they been released into the interior of the United States?

Mr. CISSNA. I can't account for all of them. I would have to ask my colleague at ICE, but what I can say is that the issue here is once they are screened, once they have the credible fear screening and it is positive—of course it is negative and there were a handful that were negative, they will get removed if the IJ upholds the decision.

But if it is positive the idea is that they would be sent to an immigration judge who would then determine with finality whether they are going to get asylum or not. If these are family units, as you may know, because of the Flores settlement agreement, we may have to release them within 20 days. There may not be enough time to get to the immigration judge before we have to let them go.

Ms. MCSALLY. So that brings this to the next point, in your testimony you talked about—which I totally support last-in-first-out, because if you put them to the end of the line 2 years from now, you are just creating a whole other problem which is inhumane in of itself as people are then settling down.

So if you are doing the last-in-first-out, what is the time frame right now?

Mr. CISSNA. Well the last-in-first-out refers to regular asylum applications. This is the 318,000 cases that we have here.

Ms. MCSALLY. OK.

Mr. CISSNA. But it is connected to the credible fear thing. Because of the surge in credible fear work, we have had to divert people from regular asylum work to do all this stuff at the border.

One of the results of that is that the backlog for regular asylum went up and up and up and up. So the only way that we can—one of the best ways we can think to address that enormous multi-hundred-thousand-person backlog is to do last-in-first-out by concentrating on the most recent cases, weeding out quickly and deport-

ing the people who don't merit the benefit and then moving on to the other cases.

Ms. MCSALLY. All right. Well, please keep us posted on how these cases progress. I just want to make it clear again, you are doing everything you can with the administration in order to close these loopholes, but there are legal things that we have to do Congressionally in order to help you.

But just to be clear, 100 percent prosecution between the ports of entry, you are going to be prosecuted is the new policy. However, if you present yourself at a port of entry and say I have a credible fear, you will have no prosecution and these loopholes will apply.

So why isn't everybody doing that? This is not a commercial message to them to start doing that. It seems like the cartels are smart and the people are smart. They figure out how to take advantage of our loopholes.

So why don't they just all line up at the ports of entry? I am very concerned with the backlog then with the legitimate traffic. We have talked about the manning there being bogged down.

What the heck is preventing us from, I know they are on U.S. soil then from sort-of backing up and just working with Mexico and saying "Turn around, you are in Mexico. If you have a credible fear, work with them."?

Mr. VITIELLO. We are in discussions for that exactly. Mexico has done some as it relates to the caravan. They do quite a bit for us on the Southern Border, but obviously there is a lot more to do. There is a lot more work to do on both sides. So, yes, we would prefer that people don't make the journey at all, but Safe Third is a way for this to get solved. We think that the, 100 percent——

Ms. MCSALLY. To clarify you mean Safe Third Country where they get—they do their claims in Mexico.

Mr. VITIELLO. Correct.

Ms. MCSALLY. Yes.

Mr. VITIELLO. Correct. The 100 percent prosecution that may drive more traffic to the port of entry, but it is a safer condition. They don't have to go into the hands of a smuggler to be in that situation. We think that is better for everyone.

Ms. MCSALLY. Is there anything we can do though to put some staff sort-of right at the actual international boundary and to work with Mexico right there, so that we are not like having to process all of them without us passing an act of Congress?

Mr. VITIELLO. So what we are trying to do now is regulate how many people come to the port and where they come. So, we are in discussions with them. That is by national agreement. We have several agreements with Mexico on how to repatriate people when people will refuse at the port and those kinds of things. So we are having those discussions with them now. Again, bottom line is we really don't want people to make this journey.

Ms. MCSALLY. Exactly.

Director Cissna, two more questions. For those who are claiming a false asylum claim, you talk in your written testimony about how there is no teeth to that. So can you talk a little bit about that?

Also in your written testimony you talk about you are concerned about people filing now, realizing this loophole and they have been in the interior of the United States now for maybe up to 10 years,

but they are realizing if they say they have a credible fear it gives them a work permit, and this is now a workaround for them to go from being illegal to being legal using this loophole?

Mr. CISSNA. Yes, there are many such loopholes. The one you just referred to is, this is for regular asylum cases. It is well-known that if you file for asylum and 6 months go by and we haven't heard your case, you get a work permit.

So, a lot of people we believe do this on purpose because they know that the backlog is so huge that we will never get to their case.

Ms. MCSALLY. Right.

Mr. CISSNA. They get a work permit and they can wander around, working freely in the economy for as long as it takes to get their case. Now, many of those people have legitimate claims and many don't. The people who don't clog up the system for the people who do, making the granting of their correct benefit delayed.

Ms. MCSALLY. So for those who don't have a legitimate claim, they have been in the country illegally for a long time. They have now have identified a loophole. They can just apply, say they have a credible fear, apply, and within 6 months they now have a legal work permit.

Mr. CISSNA. Yes, and some people in fact, apply for asylum on purpose knowing they don't have a good case because not because so much they want the EAD, the Employment Authorization Document.

They intentionally want to get thrown into immigration court. They want that because there are certain avenues of relief they can get in immigration court that they think that they can get, one is called cancelation of removal.

So, they file these bogus claims on purpose, intentionally to get into court. That also clogs up our system. So, we are wrestling with that as well. Trying to get through those cases as quickly as we can.

Ms. MCSALLY. OK. Unless you want over, so I am going to go over a little bit more. But just on the no teeth to the false asylum claims, can you just speak to that?

Mr. CISSNA. Well, if you file a false claim, usually the penalties, you receive a notice to appear in the immigration court you will get deported. What we would like at DHS that we proposed is that there will be more teeth. There will be more penalties put on to put on to fraudulent claims.

We also want the definition of what constitutes a fraudulent or frivolous claim. Doesn't necessarily have to be fraudulent, frivolous claim as well. If that were better defined, we could weed out with greater efficacy these bad cases that clog up the system for legitimate asylum seekers.

Ms. MCSALLY. Thanks. I just want to mention that tightening that up is in our bill, the Securing America's Future Act.

Mr. CISSNA. That is right.

Ms. MCSALLY. Thank you.

Mr. HOMAN. If I can add to that, ma'am. One thing ICE is in the process of doing, we are going to step up our enforcement against family units that have final orders for removal. They have had

their due process and have been ordered to remove by the immigration judge.

Of course I expect a lot of letters saying, why are we targeting families and not criminals? But if they are given their due process and the Federal judge makes the decision, if we don't execute those decisions, there is no integrity in the system. So you are going to see a lot more enforcement here in the very near future on that.

Ms. MCSALLY. Thanks.

The Chair now recognizes Mr. Vela for 5 minutes.

Mr. VELA. Thank you, Madam Chairwoman.

I ask for unanimous consent to enter statements from the Church World Service, Amnesty International, the National Immigration Forum, the American Immigration Council, and the National Domestic Workers Alliance into the record.

Ms. MCSALLY. Without objection.

[The information follows:]

STATEMENT OF CHURCH WORLD SERVICE (CWS)

MAY 22, 2018

As a 72-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions and 22 refugee resettlement offices across the country, Church World Service (CWS) urges the committee to affirm the right of all people to seek asylum and protections at the U.S. border. Children, families, women, and men are fleeing violence, gang conscription, human trafficking, and sexual exploitation in the Northern Triangle. Since 2005, in Honduras alone, murders of women and girls have increased by 346 percent, and murders of men and boys have grown by 292 percent.[1] The U.S. Government has failed to recognize these trends as a refugee and humanitarian issue. Ahead of the committee's hearing regarding the Pueblo Sin Fronteras caravan of 1,100 people fleeing violence in Central America, CWS urges Congress and the administration to recognize and uphold our moral and legal[2] obligations to welcome people seeking protection from persecution and violence.

The United States already has robust border security measures in place, spending more than $18 billion on immigration enforcement per year, more than all other Federal law enforcement agencies combined.[3] This includes drones, mobile surveillance systems, video surveillance towers, 11,000 underground sensors, 700 miles of fencing, Blackhawk helicopters, and 18,127 Border Patrol agents at the Southern Border alone. The United States also has a rigid system for applying for asylum. International[4] and domestic[5] immigration laws have established numerous procedures to ensure the integrity of the U.S. asylum system, as well as important safeguards to prevent individuals from being returned into harm's way. Arriving asylum seekers are subject to mandatory biographic and biometric checks reviewed against various Federal databases by well-trained fraud detection officers.

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[1] Observatory of Citizen Security, La Violencia Contra Las Mujeres. 2012. *http://www.observatoriodeseguridadciudadanadelasmujeres.org/materiales/INFORME_VCM_C.A.-.pdf;* Washington Office of Latin America, Three Myths about Central American Migration to the United States. 2014. *http://www.wola.org/commentary/3_myths_about_central_american_migration_to_the_us.*

[2] Article 14, The Universal Declaration of Human Rights. *www.un.org/en/documents/udhr/index.shtml*; U.S. Code Title 8: Aliens and Nationality, Chapter 12: Immigration and Nationality, Section 1158: Asylum. *http://uscode.house.gov*.

[3] *Immigration Enforcement in the United States: The Rise of a Formidable Machinery*. The Migration Policy Institute. *http://www.migrationpolicy.org/pubs/enforcementpillars.pdf*.

[4] The Convention on the Rights of the Child, Articles 2, 3, 6 and 22. *www.ohchr.org/en/professionalinterest/pages/crc.aspx;* The Universal Declaration of Human Rights, Article 14. *www.un.org/en/documents/udhr/index.shtml;* United Nations General Assembly, Declaration on Territorial Asylum, 14 December 1967, A/RES/2312(XXII). *www.refworld.org/docid/3b00f05a2c.html;* United Nations High Commissioner for Refugees, A Framework for the Protection of Children *www.unhcr.org/50f6cf0b9.html;* United Nations High Commissioner for Refugees, Convention and Protocol Relating to the Status of Refugees. *www.unhcr.org/3b66c2aa10.html.*

[5] Immigration and Nationality Act § 208, 8 U.S.C. § 1157.

Upon arriving at the U.S. border, asylum seekers are placed in immigration detention pending a determination by an asylum officer regarding whether they have a credible fear of persecution as a result of their race, religion, nationality, political opinion, or membership in a particular social group. Those determined to lack a credible fear of persecution are subject to removal without further review. Individuals found to have a credible fear of persecution may be subject to detention while they await further consideration of their asylum claim by an immigration judge, or they may be released on a case-by-case basis by an Immigration and Customs Enforcement (ICE) determination that they do not pose a security or flight risk. Current law strictly prohibits granting asylum to any person who has engaged in terrorist activity or otherwise poses a threat to the security of the United States.

Due to the high standards and burden of proof, as well as the rigid process of the U.S. asylum system, the Department of Homeland Security (DHS) denies protection to many asylum seekers who are fleeing persecution. The DHS Office of Inspector General released a report in May 2015 that found that in some areas, Border Patrol refers individuals for criminal prosecution despite the fact that they have expressed fear of persecution.[6] Border Patrol officials themselves indicated that the process for referral to prosecution did not take into account expressions of fear of persecution; individuals go through the U.S. court system and only after serving their prison sentences can they re-express a fear of persecution and then meet with an asylum officer to have their case heard. These practices violate existing U.S. law and treaty obligations and prevents legitimate and viable claims from moving forward.

In addition to preventing vulnerable populations from being considered for protection in the United States, DHS has also failed to address its existing asylum backlog, with about 223,433 cases still awaiting adjudication at the end of 2016. There are approximately 72,000 asylum-seekers in detention, including families and children, in jail-like conditions with pending cases. A recent report by Human Rights First documents cases of asylum-seekers being turned away at ports of entry and details complaints that CBP officers are coercing individuals, including asylum seekers, to withdraw their applications for admission. Life-saving programs such as the Central American Minors (CAM) program have been terminated, and there are approximately 6,000 children who have had their applications deleted, not even receiving an interview.

CWS encourages Congress to prioritize the protection of vulnerable individuals. Real solutions must address root causes, rather than escalating enforcement and preventing individuals from seeking safety. CWS is committed to working with Congress and the administration to develop sustainable solutions to enhance the stability of the region and the protection of vulnerable populations.

LETTER FROM AMNESTY INTERNATIONAL

May 21, 2018.

Rep. MARTHA MCSALLY,
Chair, Homeland Security Committee, Border Security Subcommittee, Washington, DC.

Rep. FILEMON VELA,
Ranking Member, Homeland Security Committee, Border Security Subcommittee, Washington, DC.

Re: May 22 hearing on "Stopping the Daily Border Carvan: Time to Build a Policy Wall"

DEAR CHAIRWOMAN MCSALLY, RANKING MEMBER VELA, AND MEMBERS OF THE SUBCOMMITTEE: On behalf of Amnesty International ("AI")[1] and our more than two million members and supporters in the United States (U.S.), we hereby submit this statement for the record. AI is an international human rights organization with major offices around the world, including in the U.S. and Mexico. One of AI's top global priorities is refugee protection. Within the Americas, AI's top refugee focus is on the Northern Triangle region of Central America (Honduras, El Salvador, Guatemala), where we have researched the underlying causes that have led to large numbers of people fleeing the Northern Triangle region in search of protection. AI

[6] DHS Office of Inspector General, *Streamline: Measuring Its Effect on Illegal Border Crossing*, OIG–15–95, 15 May 2015. *https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf.*

[1] Amnesty International was awarded the Nobel Peace Prize in 1977.

has also researched the experiences of refugees in Mexico and the experiences of people requesting protection at the U.S. border.

In April and May 2018 AI researchers conducted a multi-week research mission along the entire U.S.-Mexico border, from the Pacific Ocean to the Gulf of Mexico. Our team documented not only the situations of asylum seekers who sought to present themselves at U.S. ports of entry, but also the conduct of U.S. border and immigration authorities in facilitating and processing their asylum claims under U.S. law.

AI researchers met with dozens of asylum seekers along the U.S.-Mexico border, including in all four U.S. border states. AI interviewed many of those asylum seekers in detention at Immigration and Customs Enforcement ("ICE") facilities.

Despite numerous requests by AI, Customs and Border Protection ("CBP") officials declined to meet with AI researchers at ports of entry ("POEs") or CBP field offices in California, Arizona, and Texas. Although AI researchers requested to meet with CBP leadership in San Diego in advance of the caravan, at both their San Diego Field Office and at the POE itself, officials declined those requests. They also declined to respond to emails requesting more information about CBP's capacity to receive asylum seekers, and its preparation for the reception of the caravan.

THE PRELIMINARY FINDINGS OF AMNESTY INTERNATIONAL'S RESEARCH MISSION INDICATE VIOLATIONS OF BOTH U.S. AND INTERNATIONAL LAW BY DEPARTMENT OF HOMELAND SECURITY ("DHS") AGENCIES, IN THEIR TREATMENT OF ASYLUM SEEKERS (AT BORDERS AND IN DETENTION) AND IN THE RECEPTION OF THEIR ASYLUM CLAIMS

CBP is turning away large groups of asylum seekers at POEs along the Southern Border, thereby forcing asylum seekers to wait in perilous situations on the Mexico side of the border, where some have been subjected to further human rights violations.

On April 29 and 30 CBP closed its doors entirely to approximately 200 asylum seekers as they arrived in a "caravan" in Tijuana, to present themselves at the San Ysidro POE. That mass turn-away occurred mere minutes after a press conference announcing their intention to seek asylum at the POE. Most of those asylum seekers were families from the Northern Triangle of Central America; half of them were children, and approximately 15 percent of them were transgender individuals.

The announcement by CBP on April 29 that it would not admit any of those asylum seekers came days after DHS Secretary Nielsen announced that DHS was deploying additional asylum officers and other personnel to swiftly adjudicate the claims of those very same people from the caravan who were seeking asylum. Based on Secretary Nielsen's own statement, and that the administration had been tracking the progress of the caravan through Mexico for a month, DHS clearly had the capacity to admit those asylum seekers in need of international protection at the U.S. border.

AI researchers documented, in real time, the negative effects caused by CBP's failure to process the applications of asylum seekers who presented themselves at the San Ysidro POE. AI researchers spoke with the coordinator of a group of 32 Central American trans asylum seekers from the caravan, at an LGBT shelter in Tijuana where they were staying after having been repeatedly turned away by CBP personnel at the San Ysidro POE between April 29 and May 1. On the evening after first being turned away by CBP on April 29, two of the trans women asylum seekers from the group were detained by municipal law enforcement authorities in Tijuana. One of those women informed AI on May 2 that the other had been beaten by municipal police when detained and then could not be located after she was released.

Asylum seekers are particularly vulnerable in Mexican border areas, including to abuse by law enforcement authorities or criminals due to their often-irregular status or otherwise precarious situations. The longer they wait to present their asylum claims to CBP, the greater they are at risk of violence, deportation back to their countries of origin, or other harm. On May 6, a group of men with guns attacked and robbed the shelter where 11 LGBT asylum seekers were staying (including minors, and trans women from the caravan), setting the door on fire. According to the shelter's legal representative and the coordinator of the group of trans asylum seekers, the men returned a few hours later shouting homophobic slurs at the asylum seekers, and threatened to kill them if they did not leave the neighborhood. Following those death threats, the trans asylum seekers returned with an immigration lawyer to the San Ysidro POE to request asylum and were once again turned away by CBP.

CBP's repeated turn-backs of asylum seekers in the caravan subjected these people to additional human rights violations while they waited in Mexico—in short, pushing vulnerable asylum seekers further into harm's way.

The unlawful rejection of asylum claims by CBP is not a new phenomenon. AI has documented similar turn-aways of asylum-seeking families and unaccompanied minors for months prior to the recent caravan. A shelter coordinator in Tijuana informed AI that CBP had turned away approximately 20 of the unaccompanied minors whom his shelter hosted in 2017, without allowing them to claim asylum at the U.S. border, and at least 5 already in 2018. The shelter coordinator said that most of those unaccompanied minors were Mexican nationals who had fled from Guerrero and Michoán, two of Mexico's most violent states. AI spoke with one of those Mexican children at the shelter in January 2018 after she was turned away; the shelter coordinator informed AI on April 30 that the minor was only later received by CBP when accompanied by a lawyer to the POE. Prior to the caravan's arrival in April 2018, another shelter in Tijuana informed AI researchers that CBP turned away half of a group of 50 Mexican women seeking asylum at the San Ysidro POE. The shelter reported that CBP personnel at the San Ysidro POE had on several Sundays in 2018 declined to admit any asylum seekers at all.

MEXICO IS NOT A UNIFORMLY SAFE COUNTRY FOR ALL ASYLUM SEEKERS

The Trump administration is reportedly seeking to negotiate a "safe third country agreement" ("STCA") with Mexico, like the existing STCA with Canada, to make it a first country of refuge for asylum seekers. In two recent statements, DHS insisted that any asylum seekers in the caravan should seek refuge in Mexico, rather than in the United States: "Individuals of the 'caravan' seeking asylum or other similar claims should seek protections in the first safe country they enter, including Mexico."

However, AI has concluded, based on our research, that Mexico cannot be considered a uniformly safe country for all asylum seekers. AI has identified an alarming pattern of Mexican immigration officials forcibly returning Central American asylum seekers to their home countries, where their lives are potentially at risk. While Mexico no doubt also has a responsibility to protect refugees, the U.S. cannot shirk its legal obligation to protect refugees. U.S. authorities must provide individualized and fair assessments of asylum claims presented by people seeking protection at its borders and in its territory.

In a January 2018 report, AI found that Mexican migration authorities ("INM") routinely turn away thousands of people from Honduras, El Salvador, and Guatemala to their home countries without considering the risks to their lives and security upon return, in many cases violating international and domestic Mexican law by doing so. In a survey of 297 people who were detained by INM, AI found that 75 percent of those people detained by INM were not informed of their right to seek asylum in Mexico, despite the fact that Mexican law expressly requires this and public officials assured AI that the requirement is complied with. Even more alarming, AI found that INM forcibly deported 40 percent of those people to their home countries, despite the fact that they explicitly sought asylum in Mexico or expressed fear for their lives in their country of origin.

As Mexico does not always protect asylum seekers' rights, Mexico cannot be considered or treated as uniformly safe country for all asylum seekers. As such, anyone seeking asylum in the United States must have her or his claim received and assessed fairly and impartially on the merits. Without an individualized assessment of each asylum seeker's claim, there is a heightened risk of refoulement to ill-treatment, persecution, or other irreparable harm, in violation of national and international law.[2]

U.S. AUTHORITIES MUST PROTECT ASYLUM-SEEKING FAMILIES AND CHILDREN FROM PERSECUTION—NOT TURN THEM BACK TO POTENTIAL HARM

Based on the aforementioned preliminary findings of AI's recent research mission along the southern U.S. border, DHS must stop turning back asylum seekers, and the U.S. Government should not consider Mexico to be a uniformly safe country to receive all asylum requests for international protection.

The global system established to protect women, men, and children from harm is not a "legal loophole." All countries are able to impose necessary and proportionate legal restrictions on entry into their countries, in order to achieve legitimate aims. However, governments are also prohibited under international law from forcibly returning people in need of international protection to any country where they would be at risk of persecution or other serious human rights violations. International law likewise prohibits governments from deporting such individuals at risk to a third

[2] See the Amnesty International report, No Safe Refuge (2016); available at: *https://www.amnesty.org/en/documents/eur44/3825/2016/en/* (at pp. 6–7).

country that may subsequently deport them to the country where they are at risk of serious harm.

While apprehensions and "inadmissibles" at the southern U.S. border have been at near-record lows over the last year, global refugee numbers are at their highest levels since World War Two. This is a moment when the United States should be shielding people seeking asylum from persecution and violence, not pushing them back into harm's way.

THE CRISIS DOES NOT LIE WITH THE CARAVAN, BUT WITH THE U.S. IMMIGRATION COURTS WHICH HAVE LONG BEEN UNDER-FUNDED AND UNDER-RESOURCED

Many of the asylum seekers arriving at the southern U.S. border are children and families from the Northern Triangle of Central America. According to the U.N. Refugee Agency, many of the children fleeing the Northern Triangle region have strong protection claims. Those arriving to the United States are requesting relief through the long-established legal procedures to review asylum claims, in line with U.S. obligations under international refugee law and human rights law. Many asylum seekers are presenting themselves to border agents in order to affirmatively request asylum, and are not seeking to evade authorities.

All arriving asylum seekers are subject to a well-established legal regime and institutional process established by DHS and the Justice Department to assess individual asylum claims. DHS asylum officers are well-versed in interviewing individuals who have suffered trauma, and have specific knowledge of country conditions and training on evaluating witness credibility. A secondary level of review involves an immigration judge who examines witness testimony, documentary evidence, and State Department country conditions in evaluating the individual asylum claim.

The asylum process is extensive and rigorous, and is designed to ensure that those with strong refugee claims are not deported to conditions of persecution or torture, in accordance with U.S. legal obligations under the Refugee Convention and Convention Against Torture. However, due to a long-standing shortage of immigration judges, the asylum process in some cases takes years to conclude.

DHS has stated that the objective of indefinitely detaining asylum seekers is to deter them from entering the United States in search of safety. The President's recent deployment of the National Guard to the Southern Border is also part of the administration's plan to deter, detain, and punish people seeking protection, in violation of U.S. obligations under international law and standards.

In sum, there is indeed a crisis, but it is not a border security crisis embodied by caravans of children and families traveling through Mexico. The crisis lies with the U.S. immigration courts, which have been under-resourced for years and are thus unable to adjudicate asylum claims in a timely manner. That funding crisis, fortunately, can be readily addressed by Congress which controls the power of the purse.

AMNESTY INTERNATIONAL'S POLICY RECOMMENDATIONS

To Congress:

- Exercise oversight of DHS, CBP, and ICE to ensure that turn-backs of asylum seekers are halted and all people who present themselves at POEs are given the opportunity to seek asylum.
- Press the administration to halt negotiations with Mexico as a potential Safe Third Country for asylum.
- Dramatically increase funding for immigration judge teams and DHS asylum officers, to reduce the multi-year backlogs.
- Decline to fund the President's expansion of Border Patrol, and continuation of CBP operations—absent rigorous external oversight of CBP and Border Patrol.
- Decline to fund DHS's expansion of immigration detention, which sweeps in children and asylum seekers.

To the Trump administration:

- Halt CBP turn-backs of asylum seekers. As required by international law, CBP must provide a fair and accessible asylum process for all people seeking international protection in the United States.
- Halt negotiations with Mexico to designate it as a Safe Third Country for all asylum seekers, as Mexico is not always safe for asylum seekers passing through the country.
- Discontinue plans outlined in the Border Security Executive Order to return arriving asylum seekers to Mexico to await their asylum proceedings, in violation of international law.
- End detention of all children, whether unaccompanied or in family units. Locking up children is never in their best interest.

- Implement policies to limit the detention of people seeking asylum, to only when it is determined to be necessary and proportionate to a legitimate purpose, based on an assessment of the individual's particular circumstances.

For more information, please contact Joanne Lin.

Sincerely,

JOANNE LIN,
National Director, Advocacy and Government Affairs, Amnesty International USA.

BRIAN GRIFFEY,
Regional Researcher/Advisor, Amnesty International.

STATEMENT OF THE NATIONAL IMMIGRATION FORUM

MAY 22, 2018

The National Immigration Forum (the Forum) advocates for the value of immigrants and immigration to the Nation. Founded in 1982, the Forum plays a leading role in the National debate about immigration, knitting together innovative alliances across diverse faith, law enforcement, veterans, and business constituencies in communities across the country. Coming together under the Forum's leadership, these alliances develop and advocate for legislative and administrative policy positions. Through our policy expertise and work with diverse constituencies, the Forum works to uphold America's long-standing tradition as a Nation of immigrants and build public support for comprehensive immigration reform, sound border security policies, balanced enforcement of immigration laws, and ensuring that new Americans have the opportunities, skills, and status to reach their full potential.

INTRODUCTION

The National Immigration Forum thanks the subcommittee for the opportunity to provide its views on the matter of border security policies along the Southwest Border. The Forum fully supports policies that promote safety and security along the border, as well as that facilitate trade, tourism, and the economic health of the United States. We also thank the dedicated men and women of U.S. Customs and Border Protection (CBP) who work every day to keep our Nation's borders secure and facilitate commerce and travel into the United States. We acknowledge and appreciate the complexity and importance of their mission, which is charged every day with overseeing customs, travel, immigration, and border security responsibilities.

We know that creating a secure border takes more than just investing resources on one or a few components of CBP's approach to border management. We also have concerns about altering U.S. laws to make it more difficult for migrants, mostly women and children, to receive asylum. We urge the Members of the subcommittee to address the on-going need to invest in a comprehensive approach to ensure our Nation's security at the border and in policies that are humane, transparent, and encourage commerce. We also urge the subcommittee to consider the impact these policies have on tens of millions of individuals, including Americans living along the Southwest Border.

Congress should also fix our broken and out-of-date immigration system. Leading National security officials agree that having a 21st-Century immigration system that promotes safety and security, benefits American workers and our economy, and provides earned legalization for otherwise law-abiding undocumented immigrants living in the United States would have the most significant impact in promoting security at our borders.[1] We must choose policies that keep us safe, while staying true to our principles as a Nation of immigrants. Congress can find a common-sense, humane solution that boosts security while protecting economic innovation.

THE SOUTHWEST BORDER HAS MORE RESOURCES THAN EVER

America's Southwest Border has never been more secure. The United States has built nearly 700 miles of physical barriers along the Southwest Border, with the

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[1] Tom Ridge, former Secretary of the Department of Homeland Security (DHS), stated, "I think [a comprehensive immigration approach] will add more to border security than any number of fences we can put across the border." Chertoff, Michael, Janet Napolitano, and Tom Ridge, "8th Anniversary of the Department of Homeland Security (DHS) Roundtable," interview by Andrea Mitchell, Georgetown University (March 2, 2011): *https://www.dhs.gov/news/2011/03/02/8th-anniversary-roundtable-transcript.*

rugged terrain and the Rio Grande acting as natural barriers in other areas.[2] To complement these physical barriers, the Border Patrol stationed 16,605 agents in the Southwest Border in fiscal year 2017—nearly double the number compared to fiscal year 2000.[3] Between fiscal year 2000 and fiscal year 2017, Congress increased the Border Patrol's budget approximately 380 percent from about $1 billion to nearly $3.8 billion.[4] At the same time, the average annual number of apprehensions made by each Border Patrol agent dropped from 191 in fiscal year 2000 to 18 in fiscal year 2017—under 2 apprehensions per month.[5] The most recent data available shows each Border Patrol agent along the Southwest Border apprehended on average about 2.3 migrants in April 2018, a small increase above fiscal year 2017, but far below fiscal year 2000 levels.[6]

Moving forward, Congress should carefully determine which uses of American taxpayer funds are most appropriate. We support building physical barriers along the Southwest Border where the Department of Homeland Security (DHS), with the input of border security experts, local communities, and border residents determines it is appropriate. We also encourage Congress to invest on expanding the use of technology along the border, which CBP already relies on and often serves as a better force multiplier than a fence.

The Forum believes that investing in additional Border Patrol agents is not the most appropriate use of American taxpayer funds. Given the decline in the average number of apprehensions per Border Patrol agent over the last 15 years, as well as the agency's struggle to hire an additional 1,933 agent positions with funds already obligated by Congress in fiscal year 2017, the Forum believes that border security funding is best applied elsewhere.[7]

Congress should invest in the CBP Office of Field Operations (OFO), which oversees the flow of commerce and immigrants at all 328 ports of entry. CBP found in 2014 that adding a single CBP OFO officer to a port of entry would result in annual benefits of a $2 million increase in our country's Gross Domestic Product (GDP), $640,000 saved in opportunity costs, and 33 jobs added to the economy, because it would help speed the flow of commerce.[8] Investments in CBP OFO also help curtail major drug traffickers, with CBP statistics showing that 81 percent of hard drugs caught along the border between fiscal year 2012 and fiscal year 2016 were caught at ports of entry.[9] Yet, OFO currently has a staffing shortage of at least 3,811 CBP

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[2] "U.S. Border Patrol Mileage of Pedestrian and Vehicle Fencing by State," U.S. Customs and Border Protection (September 22, 2017): *https://www.cbp.gov/document/stats/us-border-patrol-mileage-pedestrian-and-vehicle-fencing-state.*

[3] "U.S. Border Patrol Fiscal Year Staffing Statistics (Fiscal Year 1992–Fiscal Year 2017)," U.S. Customs and Border Protection (December 12, 2017): *https://www.cbp.gov/document/stats/us-border-patrol-fiscal-year-staffing-statistics-fy-1992-fy-2017.*

[4] "Enacted Border Patrol Program Budget by Fiscal Year," U.S. Border Patrol (December 2017): *https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Budget%20History%201990-2017.pdf.*

[5] During fiscal years 2000 and 2017, the Border Patrol apprehended an estimated 1.6 million migrants and 304,000 migrants crossing the Southwest Border between ports of entry, respectively. The Border Patrol stationed 8,580 Border Patrol agents along the Southwest Border in fiscal year 2000 and 16,605 agents in fiscal year 2017. We divide the number of apprehensions by the number of Border Patrol agents, which yields an average of 191 apprehensions per Border Patrol agent in fiscal year 2000 and 18 apprehensions per Border Patrol agent in fiscal year 2017. "Southwest Border Sectors Total Illegal Alien Apprehensions by Fiscal Year," U.S. Border Patrol (December 2017): *https://www.cbp.gov/sites/default/files/assets/documents/2017-Dec/BP%20Southwest%20Border%20Sector%20Apps%20FY1960%20%20FY2017.pdf;* "U.S. Border Patrol Fiscal Year Staffing Statistics (Fiscal Year 1992–Fiscal Year 2017)," supra note 3.

[6] During the month of April 2018, the Border Patrol apprehended 38,234 migrants crossing the Southwest Border between ports of entry. Divided by the 16,605 Border Patrol agents stationed in the Southwest Border in fiscal year 2017, this yields an average of 2.3 apprehensions per Border Patrol agent in April 2018. "Southwest Border Migration FY 2018," U.S. Customs and Border Protection (Last Updated May 3, 2018): *https://www.cbp.gov/newsroom/stats/sw-border-migration.*

[7] The Border Patrol is mandated by Congress to maintain an active-duty presence of 21,370 agents, but did not meet that staffing goal in fiscal year 2017 due to recruiting and hiring difficulties. "U.S. Border Patrol Fiscal Year Staffing Statistics (Fiscal Year 1992–Fiscal Year 2017)," supra note 3.

[8] "Resource Optimization at Ports of Entry: Fiscal Year 2014 Report to Congress," U.S. Customs and Border Protection (March 10, 2014), 13: *https://www.cbp.gov/sites/default/files/documents/Resource%20Optimization%20Model%20FY%202014%20Public%2004-24-14.pdf.*

[9] Prendergast, Curt, "Most Hard Drugs Smuggled Through Legal Border Crossings," *Tucson.com—Arizona Daily Star (May 6, 2017): http://tucson.com/news/local/border/most-hard-drugs-smuggled-through-legal-border-crossings/article_46653d40-7f63-5102-bb38-38da58c06-a76.html.*

OFO officers, representing a vulnerability in our country's border security.[10] Investments to increase personnel levels at ports of entry would help better manage the flow of commerce and increase public safety, particularly amidst the opioid epidemic.

Another investment to ensure safety at our borders is to fund a Federal program to eradicate the invasive and nonnative carrizo cane and salt cedar plants along the Rio Grande Valley in Texas. This effort would provide the Border Patrol with greater visibility and access to the Rio Grande.[11] Finally, we encourage Congress to invest in funds to implement the use of body-worn camera technology at CBP. The evidence indicates that body-worn cameras lead, in one study, to 88 percent fewer complaints against officers and fewer assaults, creating a win-win solution for the public and law enforcement.[12] It is indisputable that the Southwest Border has never had as many resources as it does today. The data suggest that it has never been more secure. We support continued investment in thoughtful and effective border security policies that increase safety and facilitate trade, while improving border management.

BORDER CROSSINGS ARE AT NEAR-RECORD LOW LEVELS

The number of apprehensions along the Southwest Border between ports of entry has dropped from an all-time high of 1.6 million apprehensions in fiscal year 2000 to fewer than 304,000 in fiscal year 2017.[13] This reduction represents an 81 percent decrease and is the lowest number of apprehensions since fiscal year 1971, more than 40 years ago.[14] Between fiscal year 2016 and fiscal year 2017, border apprehensions fell about 25 percent, from nearly 409,000 apprehensions to less than 304,000.[15] The Trump administration lauded this reduction by stating it "undeniably prove[s] the effectiveness of President Trump's commitment to securing our borders."[16]

More recently, the Trump administration has cited the number of border apprehensions in April 2018 to justify the administration's border security policies, including policies that will lead to separating parents from their children.[17] CBP notes that border apprehensions between and at ports of entry in April 2018 increased 223 percent compared to April 2017.[18] Yet, this figure obscures that the number of border apprehensions so far in fiscal year 2018 remains on par with the number of apprehensions in the same period of fiscal year 2017 and 6 percent below the same period of fiscal year 2016.[19] In addition, the number of apprehensions in April 2018 is not unusually high, only 5 percent above April 2016 and 14 percent below April 2014.[20] Overall, the number of people attempting to enter the United States continues to trend downwards compared to the all-time high levels in the early 2000's.

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[10] "U.S. Customs and Border Protection's Workload Staffing Model," Office of Inspector General, Department of Homeland Security (July 2014): 4 and 6, *https://www.oig.dhs.gov/assets/Mgmt/2014/OIG_14-117_Jul14.pdf.*

[11] Nixon, Dennis E., "Common Sense Border Security: Thoughts from Dennis E. Nixon," (January 2017): *https://www.ibc.com/en-us/Newsroom/Documents/Common%20Sense%20Border%20Security%20Solutions.pdf.*

[12] Lopez, James, Jacinta S. Ma and Josh Breisblatt, "Body Cameras and CBP: Promoting Security, Transparency and Accountability at Our Nation's Borders," *National Immigration Forum* (November 6, 2015): 11 and 12. *http://immigrationforum.org/wp-content/uploads/2015/11/Body-Cameras-and-CBP-Report-11062015.pdf.*

[13] "Southwest Border Sectors Total Illegal Alien Apprehensions by Fiscal Year," supra note 5.

[14] Ibid.

[15] Ibid.

[16] Kopan, Tal, "Trump Admin Grapples with Rise in Border Crossing Numbers it Once Touted," *CNN* (January 10, 2018): *https://www.cnn.com/2018/01/10/politics/border-crossings-up-trump-effect/index.html.*

[17] Kopan, Tal, "DHS Secretary Defends Separating Families at the Border," *CNN* (May 15, 2018): *https://www.cnn.com/2018/05/15/politics/dhs-separating-families-secretary-nielsen-hearing/index.html;* "Authorities and Resources Needed to Protect and Secure the United States," U.S. Senate Committee on Homeland Security and Governmental Affairs (May 15, 2018): *https://www.hsgac.senate.gov/hearings/authorities-and-resources-needed-to-protect-and-secure-the-united-states.*

[18] Calculations made by the National Immigration Forum. "Southwest Border Migration Fiscal Year 2018," supra note 6.

[19] Ibid.

[20] Ibid.

SOUTHWEST BORDER APPREHENSIONS[21]

Fiscal Year-to-Date Apprehensions		April Apprehensions	
Fiscal Year 2018	288,066	April 2018	50,924
Fiscal Year 2017	286,853	April 2017	15,766
Fiscal Year 2016	306,578	April 2016	48,502
Fiscal Year 2015	243,339	April 2015	38,296
Fiscal Year 2014	311,312	April 2014	59,119
Fiscal Year 2013	278,947	April 2013	54,761

[21] Ibid.

Moreover, as the number of people crossing the border declines, the amount spent by the Border Patrol per apprehension at the border increases. The Border Patrol spent on average $630 per apprehension in fiscal year 2000, compared to $12,500 per apprehension in fiscal year 2017—an increase of almost 2,000 percent.[22] As the overall trend of illicit crossings along the Southwest Border goes down, we must invest in border security policies where the American taxpayer gets the best return, including border technology and CBP OFO officers.

SEPARATING PARENTS FROM CHILDREN IS DEEPLY TROUBLING

The Trump administration's decision to implement a new "zero-tolerance" policy to criminally prosecute all migrants crossing the Southwest Border between ports of entry without authorization, including parents accompanied by their children, is deeply troubling and will lead to the separation of thousands of families. As a country, we should not separate parents and children—in some cases parents and infants—in an attempt to deter people who are fleeing violence from legally seeking asylum or working for a better life in the United States. Such a policy is short-sighted, cruel to families, harmful to children, and wholly contrary to American values.

Criticism about the Department of Justice's policy comes from many corners, including those who promote the Christian value of family unity. The U.S. Conference of Catholic Bishops noted that separating parents and children "would be extremely detrimental to basic child welfare principles" and "ineffective to the goals of deterrence and safety."[23] Sam Rodriguez, president of the National Hispanic Christian Leadership Conference, stated that the practice could "inadvertently [incentivize] a family to break apart."[24] Others, like Erick Erickson, conservative radio host and blogger, expressed concern about the "potential abuse of children separated from their parents" and urged the Trump administration to reconsider.[25] Conservative columnists Jennifer Rubin and Michael Gerson characterized the policy as "undo[ing] America's reputation as a decent country" and a "betrayal of American values," respectively.[26]

Experts from more than 200 National and State organizations involved in the fields of child welfare, juvenile justice, and child health, development, and safety pointed out that separating parents and children will compound the trauma many migrant children face and "the time it would take them to recover and return to

[22] Calculations made by the National Immigration Forum. "Enacted Border Patrol Program Budget by Fiscal Year," supra note 4; "Southwest Border Sectors Total Illegal Alien Apprehensions by Fiscal Year," supra note 5.

[23] "Separating Families at the Border: A Costly Practice," United States Conference of Catholic Bishops: *https://justiceforimmigrants.org/what-we-are-working-on/immigrant-detention/separating-families-at-the-border-a-costly practice/*.

[24] Shellnutt, Kate, "Families Who Cross the Border Together Won't Stay Together," Christianity Today (May 11, 2018): *https://www.christianitytoday.com/news/2018/may/families-cross-border-separate-immigration-central-america.html.*

[25] @EWErickson, "In theory I'm not opposed to strong deterrents to discourage illegal immigration. In practice, I am gravely concerned about the potential abuse of children separated from their parents and think the gov't needs to rethink this," *Twitter* (May 13, 2018): *https://twitter.com/ewerickson/status/995706812769939457?s=11.*

[26] @JRubinBlogger, "This admin plans to undo America's reputation as a decent country. "When adults are prosecuted and jailed, their children will be separated from them, . . . The DHS says 700 children have been separated from their parents." *Twitter* (May 8, 2018): https://twitter.com/JRubinBlogger/status/993829981192118273; Michael Gerson, "America's President is the Bully of Children," *Washington Post* (May 14, 2018): *https://www.washingtonpost.com/opinions/americas-president-is-the-bully-of-children/2018/05/14/178c941c-579c-11e8-8836-a4a123c359ab_story.html?utm_term=.69e9a923b6f2.*

a trajectory of good health and normal development."[27] In one recent case, DHS separated a woman from her 7-year-old daughter for a period of 4 months before they were reunited.[28]

Once separated from their parents, the children will be treated as unaccompanied alien children (UACs), the same as if they had arrived in the United States without an adult. They will be placed in the custody of the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) and, after a time, placed with a sponsor while their cases are considered by immigration courts. HHS recently disclosed that ORR has lost track of nearly 1,500 children placed with sponsors in the United States, increasing our concern that implementing a policy to separate parents and children will have dire consequences for the children.[29] ORR data also showed that more than 700 children have already been separated from adults claiming to be their parents since October 2017, including more than 100 children under the age of 4.[30]

Finally, the threat of separating parents and children will not deter a parent whose children's lives are at risk living every day in countries where gangs, drug cartels, and transnational criminal organizations prey upon families. The three neighboring Northern Triangle countries of Honduras, Guatemala, and El Salvador consistently rank among the most violent countries in the world.[31] El Salvador, Guatemala, Honduras still have the world's highest murder rates and significantly higher homicide rates than neighboring Costa Rica, Nicaragua, and Panama.[32] Separating parents and children is unlikely to deter them from making the journey to the United States.

A policy that seeks to break up families is troubling and problematic both for the parents and children who will suffer great harm and the U.S. communities whose burden it will be to care for these displaced and broken children. Rather than pull families apart, we should aim to protect them. We should allow families to participate in existing alternatives to detention programs that are effective and less expensive that detaining them.

ASYLUM SEEKERS ARE NOT IN VIOLATION OF U.S. LAW

Migrants who reach the Southwest Border and petition for asylum at a port of entry or between ports of entry are engaging in a process that is in accordance with U.S. laws and international treaties, primarily the Refugee Act of 1980 and the United Nations 1967 Protocol.[33] The United States has a legal obligation to provide protection to those who are unable or unwilling to return to their home country due to past persecution or a well-founded fear of being persecuted in the future "on account of race, religion, nationality, and/or membership in a particular social group or political opinion."[34] The way we treat asylum seekers as a Nation is proof that we can be a country of laws and grace. On the contrary, changing laws to make it more difficult for people to receive asylum would defy American values and extinguish a flame of hope for thousands of persecuted people, including women and children. We must allow asylum seekers fleeing violence and persecution to make their case under current law.

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[27] "Urgent Appeal from Experts in Child Welfare, Juvenile Justice and Child Development to Halt Any Plans to Separate Children from Parents at the Border," Electronic Mail to U.S. Department of Homeland Security (DHS) Secretary Kristjen M. Nielsen (January 23, 2018): *https://www.aclu.org/sites/default/files/field_document/2018_01_23_child_welfare_-juvenile_justice_opposition_to_parent_child_sep.pdf.*

[28] Rosenberg, Mica, "Asylum Seeker in Detention Sues U.S. Administration Over Family Separation," *Reuters* (February 26, 2018): *https://www.reuters.com/article/us-usa-immigration-children/asylum-seeker-in-detention-sues-u-s-administration-over-family-separation-idUSKCN1GA-279.*

[29] Burke, Garance, "Federal Officials Lose Track of Nearly 1,500 Migrant Children," *PBS News Hours* (April 26, 2018): *https://www.pbs.org/newshour/nation/Federal-officials-lose-track-of-nearly-1500-migrant-children.*

[30] Dickerson, Caitlin, "Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border," *The New York Times* (April 20, 2018): *https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html.*

[31] Gagne, David, "InSight Crime's 2016 Homicide Round-up," *Insight Crime* (January 16, 2017): *https://www.insightcrime.org/news/analysis/insight-crime-2016-homicide-round-up/.*

[32] Cara Labrador, Rocio and Danielle Renwick, "Central America's Violent Northern Triangle," *Council on Foreign Relations* (January 18, 2018): *https://www.cfr.org/backgrounder/central-americas-violent-northern-triangle.*

[33] "Asylum in the United States," *American Immigration Council* (May 14, 2018): *https://www.americanimmigrationcouncil.org/research/asylum-united-states.*

[34] "Refugees & Asylum," U.S. Citizenship and Immigration Services (Last Updated November 12, 2015): *https://www.uscis.gov/humanitarian/refugees-asylum.*

Grants of asylum in the United States are not easy to obtain. Asylum seekers who tell a CBP officer or agent along the Southwest Border that they fear returning to their home country are referred for a credible fear interview and have the burden of proving that they have a "significant possibility" of establishing eligibility for asylum. If the asylum officer determines that the asylum seeker has a credible case, the asylum seeker is referred to an immigration court to prove their case before an immigration judge, who makes the final decision.[35] In fiscal year 2016, an estimated 8,700 people were granted "defensive asylum" in the United States, which governs the asylum process for migrants who arrived in the United States without authorization, including those who arrived as part of a caravan.[36] That same year, 101,000 people made defensive asylum claims in the United States—in effect, less than 1 in 10 were granted asylum.[37] Under current law, America's asylum process is a long-standing, legal, and humanitarian effort that is difficult and includes numerous safeguards against fraud. It provides an opportunity for asylum seekers with valid claims to find safe haven in the United States.

We must also recognize that Central American migrants traveling to the United States to request asylum are for the mostly women and children fleeing persecution and violence at home. The overwhelming majority of these migrants pose no danger to the American people. Although the journey north is very dangerous, the migrants see it as a better and safer option than staying countries where they face threats from local gangs and other groups. As a Nation, we must respond to these humanitarian situations with compassion and common sense, not by closing the policy door on people with valid asylum claims.

CONCLUSION

The National Immigration Forum looks forward to working with the subcommittee for the opportunity to provide its views on the matter of current immigration and border security policies along the Southwest Border. We thank the subcommittee for holding this hearing and considering policies to secure our borders while facilitating trade, tourism, and the economic health of the United States. We encourage the subcommittee to recognize that the overall trend of border apprehensions along the Southwest Border is going down, especially when compared to the all-time high number of apprehensions in fiscal year 2000. We also note that separating parents and children is a troubling policy that will not serve as a deterrent and is contrary to American values, including the values of family unity and child protection. We also recognize that migrants traveling to the United States to request asylum are engaging in a process that is in accordance with U.S. laws.

Moving forward, we encourage Congress to focus on border security investments in areas where the American taxpayer gets the best return—such as increasing CBP OFO officers at ports of entry, not Border Patrol agents in areas where the average number of apprehensions has already fallen precipitously.

We urge Congress to override policies that encourage the separation of parents and children, such as the administration's recently announced "zero-tolerance" policy that will charge parents criminally.

Finally, we discourage Congress from making it more difficult for migrants to request asylum in accordance with existing U.S. law. Migrants with valid asylum claims should be able to make their case for protections that they are afforded under existing laws.

STATEMENT OF THE AMERICAN IMMIGRATION COUNCIL

MAY 22, 2018

The American Immigration Council ("Council") is a non-profit organization which for over 30 years has been dedicated to increasing public understanding of immigration law and policy and the role of immigration in American society. We write to share our analysis and research regarding the Nation's asylum system and the United States' obligations, as well as our deep concern around the administration's

[35] "Asylum in the United States," supra note 34.

[36] "Table 16. Individuals Granted Asylum Affirmatively or Defensively: Fiscal Years 1990 to 2016," 2016 Yearbook of Immigration Statistics, U.S. Department of Homeland Security (Last Updated January 8, 2018): *https://www.dhs.gov/immigration-statistics/yearbook/2016/table16.*

[37] "Fiscal Year 2016 ICE Enforcement and Removal Operations Report," U.S. Immigration and Customs Enforcement, 10: *https://www.ice.gov/sites/default/files/documents/Report/2016/removal-stats-2016.pdf.*

family separation policies and increased prosecution of migrants for entry-related offenses.

This month, the Department of Justice (DOJ) and Department of Homeland Security (DHS) have implemented a "zero tolerance" policy for those who cross the Southern Border without authorization.[1] This policy means DHS is referring all migrants who cross the border without authorization for criminal prosecution and DOJ has been directed to accept as many of these referrals as practicable.[2] If these migrants arrive with children, the families will be separated when the parent(s) is referred for prosecution. The result will be a de-facto policy of family separation.

Further, with high levels of violence in parts of Central America, migration patterns have shifted in recent years, with more migrants seeking protection in the United States. Despite domestic and international legal obligations to protect migrants fleeing persecution and torture, the U.S. Government nonetheless subjects individuals fleeing such harm to criminal proceedings, which violates international law.[3]

Below are resources from the Council that seek to further explain these disturbing new policies and the United States' responsibilities.

FAMILY SEPARATION

In December 2017, the Council, in collaboration with other organizations, filed a complaint with the DHS Office for Civil Rights and Civil Liberties (CRCL) and Office of the Inspector General (OIG) on behalf of numerous asylum-seeking families who were separated at the U.S.-Mexico border. The complaint lifted up the cases of 15 individuals—including toddlers—who were separated from their family members shortly after their arrival at the U.S. border, and which served to illustrate an increasing trend of family separation at our Southern Border.[4]

Forcibly separating families at the U.S.-Mexico border is an illegal and amoral practice. The United States should honor its legacy of providing safe haven to those fleeing violence and its commitment to the fundamental value of family unity and reunification.

IMMIGRATION PROSECUTIONS

Over the last two decades, the Federal Government increasingly has utilized the criminal courts to punish people for immigration violations. Particularly on the Southwest Border, Federal officials are vigorously prosecuting migrants either for entering the United States without permission or for reentering the country without permission after a prior deportation or removal order. Tens of thousands of migrants are subjected to criminal prosecution for these crimes every year.[5]

The Government's approach to charging these entry-related offenses imposes heavy costs on migrants and the Federal Government alike. With high conviction rates for these Federal offenses, many migrants are subjected to mandatory incarceration in Federal prison for months or longer. For the Federal Government, such prosecutions are an extremely costly use of finite law-enforcement resources and have no demonstrated deterrent effect on future migration.[6]

The Council's factsheet, *Prosecuting Migrants for Coming to the United States,* provides basic information about entry-related offenses, including the significant costs incurred by the Government for conducting these prosecutions, the individuals who are subjected to them, and how the Government's rationale for carrying them out is not supported by the data.

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[1] Office of Public Affairs, "Attorney General Announces Zero-Tolerance Policy for Criminal Illegal Entry," Department of Justice, April 6, 2018, *https://www.justice.gov/opa/pr/attorney-general-announces-zero-tolerance-policy-criminal-illegal-entry;* "Secretary Nielsen Statement on Arrival of Central American 'Caravan,'" Department of Homeland Security, April 25, 2018, *https://www.dhs.gov/news2018/04/25/secretary-nielsen-statement-arrival-central-american-caravan.*

[2] Ibid.

[3] "Prosecuting Migrants for Coming to the United States," *American Immigration Council*, May 1, 2018, *https://www.americanimmigrationcouncil.org/research/immigration-prosecutions.*

[4] American Immigration Council, et al., "Complaint Documents 15 Cases of Family Separation at the Border," American Immigration Council, December 11, 2017, *https://www.americanimmigrationcouncil.org/advocacy/family-separation-at-the-border.*

[5] Transactional Records Access Clearinghouse, "Immigration Prosecutions for February 2018," March 26, 2018, *http://trac.syr.edu/tracreports/bulletins/immigration/monthlyfeb18/fil/.*

[6] Rebecca Gambler, *Border Patrol: Actions Needed to Improve Oversight of Post-Apprehension Consequences,* U.S. Government Accountability Office, January 2017, 36, *https://www.gao.gov/assets/690/682074.pdf;* U.S. Department of Homeland Security, Office of Inspector General, *Streamline: Measuring Its Effect on Illegal Border Crossing,* OIG–15–95, May 15, 2015, *https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf.*

FAST-TRACK REMOVALS AND ASYLUM LAW

Migrants who reach the U.S. border without a valid visa will be placed in expedited removal, a fast-track removal process described in the Council's Primer on Expedited Removal.[7] Because expedited removal does not apply to asylum seekers, DHS has pressed Congress to make drastic changes to our asylum laws to strip away these important protections.

The ability to seek asylum, which is discussed in the Council's factsheet, *Asylum in the United States,* is a right enshrined in both international and domestic laws.[8] The majority of the migrants currently presenting themselves to Border Patrol between the ports of entry and to Customs and Border Protection (CBP) at the ports along the Southern Border are seeking humanitarian relief after fleeing persecution, grave violence, and even death. Under U.S. law, immigration officials are required to process any individual who presents at a port of entry and states a fear of return to their country or a desire to apply for asylum.[9] With threats of prosecution and family separation for those who fail to enter at a port of entry, more asylum seekers can be expected to arrive at the ports. CBP, however, has been stalling and holding off those arrivals, unlawfully refusing entry to asylum seekers.

Separating families, criminally prosecuting migrants, and obstructing their ability to apply for asylum are cruel and un-American. These policies are punitive, costly, and run counter to our ideals. The United States can and must do better.

STATEMENT OF THE NATIONAL DOMESTIC WORKERS ALLIANCE

MAY 22, 2018

The National Domestic Workers Alliance is the Nation's leading voice for dignity and fairness for the millions of domestic workers in the United States, most of whom are women of color and immigrant women.

Today, we join millions of Americans across the country in urging Congress to protect the best interests of children, women, and migrant families who come to our country seeking asylum, and reject the dehumanizing rhetoric the Trump administration is deploying against immigrants to justify the militarization of the border and the separation of immigrant families.

The Trump administration's treatment of a caravan of migrants traveling through Central America and Mexico seeking safety at our Southern Border is emblematic of how our Government treats asylum seekers generally. Contrary to what the administration portrayed in the media, a vast majority of the members of the caravan were women, children, youth, parents, and transgender women who fled their homes to escape political repression and violence, extreme poverty, and abuse.

We write to express our concern that migrants seeking asylum, such as those traveling in the caravan, are being turned away at the border, are being criminally prosecuted, and that the administration is separating children from their families. We urge Congress to reject the policy proposals the Trump administration continues to offer as solutions as they will do nothing to address border security, but will instead endanger vulnerable people and call into question our Nation's moral standing.

The right to seek asylum is enshrined in United States and international law. Asylum is not a "loophole," as the Trump administration would like the public to believe, and individuals seeking asylum must be allowed to make their claims in a fair and efficient manner. The administration's practice of refusing to process asylum seekers and forcing vulnerable people, including families with small children and transgender women, to remain outside the gates of the ports of entry is unconscionable. With regard to the caravan, it was widely reported that these asylum seekers set up tents and slept outside for days, "huddled under donated blankets"[1] waiting to be processed. This wait also compromised the safety of caravan members as a group of transgender women were robbed by armed men, attacked repeatedly,

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[7] "A Primer on Expedited Removal," American Immigration Council, February 3, 2017, *https://americanimmigrationcouncil.org/research/primer-expedited-removal.*

[8] "Asylum in the United States," American Immigration Council, May 14, 2018 *https://www.americanimmigrationcouncil.org/research/asylum-united-states.*

[9] 8 U.S.C. § 1225(a)(3).

[1] See Kirk Semple, *US Lets A Few Members of Migrant Caravan Apply For Asylum, New York Times* (April 30, 2018) at *https://www.nytimes.com/2018/04/30/world/americas/mexico-migrants-caravan-asylum-seekers.html.*

and had their shelter set on fire.[2] Customs and Border Protection's (CBP) assertion that they do not have sufficient capacity to process asylum seekers[3] is a poor excuse, as the agency is one of the most over-resourced law enforcement agencies in the entire Federal Government.[4] As part of its oversight function, Congress must ensure that Department of Homeland Security (DHS) officials, including CBP officers, do their jobs and allow asylum seekers to make their claims in a timely manner.

The Trump administration's plan to prosecute every person who crosses the border in between ports of entry[5] in an effort to deter migration will have a profound effect on asylum seekers and families with children. This announcement is not only irresponsible and a violation of National and international laws, it is immoral. Individuals seeking asylum must be given the opportunity to make their claims. If these individuals are prosecuted, they will be criminalized and barred from accessing protection. DHS Secretary Nielsen's statements directing these individuals to ports of entry as an alternative[6] is disingenuous at best, as CBP has stated no plans to increase its processing capacity. Future petitioners for asylum will inevitably face the same fate as those in the caravan and be forced to wait for days and perhaps even weeks to access protection, jeopardizing their health and safety.

In addition, this "zero-tolerance" policy will, in effect, separate children from their families. If adults who arrive with children are to be prosecuted, they will be taken to Federal jails and their children rendered unaccompanied, placing them in the custody of Health and Human Services Office of Refugee Resettlement. Reports have indicated that the administration has been separating children from their parents for months—in fact, since October, more than 700 children have been separated from their families, "including more than 100 children under the age of 4."[7] Ripping children apart from their parents in order to deter migration is callous, cruel, and betrays our deeply-held American values. The American Academy of Pediatrics has condemned this policy, saying that "highly stressful experiences, like family separation, can cause irreparable harm, disrupting a child's brain architecture and affecting his or her short- and long-term health. This type of prolonged exposure to serious stress—known as toxic stress—can carry life-long consequences for children."[8] Congress must demand that an end this cruel practice immediately.

Despite the efforts of thousands of Americans who have stood up to welcome refugees, there are still hundreds of asylum seekers in detention and children waiting for an opportunity to be reunited with their families. How we treat refugees seeking safety is not a test of our National security, but a test of our National character.

Today, the National Domestic Workers Alliance urges Members of the House Committee on Homeland Security, and all Members of Congress, to consider the real implications of turning our backs on those seeking protection at our Southwest Border, including children and families.

This is not who we are as a country. Our legacy—and the future we hope to leave to our children—call on us to be a Nation that welcomes and defends the rights of the most vulnerable among us.

Mr. VELA. Commissioner Vitiello, kind-of as a follow-up to the question about the distinction in how people are treated at the ports of entry versus between the ports of entry. With the new Zero

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[2] See Jorge Rivas, *The Nightmare Isn't Over For Trans Women On The Refugee Caravan, Splinter News* (May 8, 2018) at *https://splinternews.com/the-nightmare-isnt-over-for-trans-women-on-the-refugee-1825866317.*

[3] See Sandra Dibble, *Uncertainty greets Central American asylum seekers as officials say San Ysidro Port of Entry already at capacity, San Diego Tribune* (April 29, 2018) at *http://www.sandiegouniontribune.com/news/immigration/sd-me-asylum-caravan-20180428-story.html.*

[4] See Doris Meissner, Donald M. Kerwin, Muzaffar Chishti, and Claire Bergeron, *Immigration Enforcement in the United States: The Rise of a Formidable Machinery,* Migration Policy Institute (January 2013) at *https://www.migrationpolicy.org/news/us-spends-more-immigration-enforcement-fbi-dea-secret-service-all-other-Federal-criminal-law.*

[5] See Department of Justice Office of Public Affairs, *Memorandum for Federal Prosecutors Along The Southwest Border,* (April 6, 2018) at *https://www.justice.gov/opa/press-release/file/1049751/download.*

[6] Michael D. Shear, *Trump Tirade Is Culmination of Immigration Frustration, New York Times* (May 11, 2018) at *https://www.nytimes.com/2018/05/11/us/politics/trump-nielsen-immigration.html?login=email&auth=login-email.*

[7] See Caitlin Dickerson, *Hundreds of Immigrant Children Have Been Taken From Parents at U.S. Border, New York Times* (April 20, 2018) at *https://www.nytimes.com/2018/04/20/us/immigrant-children-separation-ice.html.*

[8] Colleen Kraft, *AAP Statement Opposing Separation of Children and Parents at the Border* (May 8, 2018 at *https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/StatementOpposingSeparationofChildrenandParents.aspx.*

Tolerance Policy in place, if someone is apprehended between the ports of entry and claims credible fear, what happens to them?

Mr. VITIELLO. Well, in the situation where zero tolerance, they will be referred to the Justice Department for criminal prosecution for illegal entry. If they claim credible fear, that is a separate matter.

So while they are in custody, they could have an interview by one of Francis' people or once they are concluded with the U.S. Attorney and the Justice Department, that will be a separate matter for them.

Mr. VELA. Did you want to follow up?

Mr. CISSNA. Yes. Just because you are being prosecuted under 8 U.S.C. 1325(a) doesn't mean that you can't also make an asylum claim. If that happens, I think what we expect will happen, I don't think we have seen many cases where this has happened yet under the new Zero Tolerance Policy.

That person would go through the prosecution process and then be sent back into ICE detention. At that point, then we at USCIS would interview them in the normal course for their credible fear screening. So, they are not incompatible, the two processes.

Mr. VELA. Well, what I am wondering about is, and you may be familiar with this Article 31 of the Refugee Convention, right? Which says the contracting States and United States is one of those, shall not impose penalties on account of their illegal entry or presence on refugees who are coming directly from a territory where their life or freedom was threatened in the sense of article 1 enter or are present in their territory without authorization.

So what is your take on the United States agreement back in 1968 as that would apply to these people that are crossing between ports of entry?

Mr. CISSNA. My understanding of the principal commitment that we made under the protocols of the convention, actually, are that we are not going to return people to a country where they may suffer persecution.

We are not doing that. If they make a legitimate claim to asylum, we will hear it. We will do the credible fear screening and they may in the end get asylum. But that doesn't mean that they didn't violate the law.

That doesn't mean that they didn't violate the 8 U.S.C. 1325(a). The law is the law. They should be prosecuted and punished for that. But that doesn't mean they can't get also get asylum. We are not going to throw them back to a country where they can be persecuted if they have a legitimate asylum claim. We would not be therefore be violating the protocol of the convention.

Mr. VELA. But to be clear and we may agree or disagree as to whether this is the right thing to do or not, what is happening with these people who claim credible fear between ports of entry. They are being taken right into our criminal justice system, correct?

Mr. CISSNA. I believe so, yes, right.

Mr. VELA. Commissioner Vitiello, on the issue of, we had some discussion about terrorists on the Southern Border. The last time we checked we had encountered more terrorists on the Northern Border than on the Southern Border. Is that still true or has that changed?

Mr. VITIELLO. I would have to look at the data. I think it's probably still true.

Mr. VELA. You made some reference to the fact that some of the—or a good portion of personnel in Border Patrol are Spanish-speaking, right?

Mr. VITIELLO. Correct. It is a requirement of the—it is a pass/fail requirement at the academy.

Mr. VELA. So you can understand the serious concern that some of us might have with the incident in Montana here over the weekend, right? Where two American citizens were questioned about their citizenship just because they were speaking Spanish.

Mr. VITIELLO. So I am aware of that video. I did watch it on YouTube. I have looked at the full reporting from Havre sector. It happened in Havre, Montana. Just let me start out by saying that there is a policy in the Federal Government in law enforcement against racial profiling.

The Secretary has a statement out on it. CBP has its own policy statement that prohibits the racial profiling as a tactic used in law enforcement investigations or encounters. We expect our people, whether they are arresting someone, whether they are interacting with the public, bad guy or good guy, they treat those people with professionalism, respect, and dignity, so. We hold them to account for when they don't do that.

In the case of Montana, we have asked our Office of Professional Responsibility to review the matter. So I don't want to prejudge it. I want them to do all the fact-finding. Then I am happy to come back and give you the full circumstance about what happened.

But the bottom line, we expect our people to act with professionalism and when they don't, we are going to hold them to account for that.

Mr. VELA. Thank you.

I yield back.

Ms. MCSALLY. The gentleman yields back.

The Chair now recognizes Mr. Correa from California for 5 minutes.

Mr. CORREA. Thank you, Madam Chair. Just following up on those comments on racial profiling. State of California Democrats and Republicans got together to pass laws against racial profiling. I can tell you in my life taking the train from San Diego to Orange County, I have been profiled. It was me, nice Marine sitting right next to me, guess who gets the question, are you an American citizen or not? lt is just something we live with. Yes, we got to live with it. Let me take a few moments to talk about big picture. Anybody here think MS–13 is good actors, bad actors? We all agree they are bad actors, for the record.

Is there some of these folks coming from El Salvador, Guatemala, do you think they have legitimate fear for their lives given that MS–13 is alive and well in those countries? The answer is probably yes.

So my question is, this is a public policy hearing today trying to iron out public policy. Is it the law or is it loopholes when it comes to refugees? If you get somebody who comes from El Salvador, do we want to change the law to say there should not be a loophole for those folks that have a reasonable credible fear for their lives?

I am asking you, folks. Do you want to close that loophole?

Mr. VITIELLO. We want to be in a situation in where people who cross the border illegally if they have a legitimate refugee or asylum claim that they are put into that system and allowed to do that. What is happening here now or what is happening on the border now is that people are making that claim and they are not being held by ICE until their hearing, so their due process gets lost to their own effort because they don't show or——

Mr. CORREA. My process here. We talked a little while ago about our other partners, if I may call them partners, Mexico, in many ways, and I think, I don't want to put any words into your folks' mouths here, but you said there was some cooperation with Mexico.

I have talked to folks in your agency and they tell me that there is a lot of cooperation with Mexico. That the numbers of those folks coming across in those caravans were drastically reduced by the Mexicans, but they have their own laws they have got to follow when it comes to humanitarian issues.

So my question to you is would you advocate a stronger cooperation with the Mexicans when it comes to our National security? Including this issue of asylum seekers?

Mr. VITIELLO. Yes. Yes. To be precise, we do have some very good working relationships.

Mr. CORREA. Do you have suggestions? You are the experts. You are the policy makers. Do you have any suggestions how we can work with the Mexicans to make sure that we make this hemisphere a little bit safer for everybody involved? I am asking you as a policy maker. You are the expert. Give us some opinions.

Mr. VITIELLO. Yes. We are continuing the discussion on all elements of security as it relates to the hemisphere with Mexico. They are a strong partner and in fact they have helped us co-host bi-nationally a conference on the northern triangle to help them understand what the Government's challenges are. Where the investments need to be made in that part of the world.

So Mexico is a great partner in that. But Safe Third is one of those things. A Safe Third country, Mexico does have asylum system. So if it can be strengthened——

Mr. CORREA. So the majority of these folks in the caravan did get turned back at the Mexican territory as opposed to reaching our border?

Mr. VITIELLO. A number of them did get settled.

Mr. CORREA. A majority. Because of the 1,000 to 1,500 started, and some of us quoted that, and you said about 300 arrived at the border that we know of. It is more than half didn't get to the U.S. border.

Mr. VITIELLO. We encountered almost 500 of them. I am aware of the media reports and in direct discussion with the Mexico they settled a number of them.

Mr. HOMAN. But, sir, if we can add, we do need——

Mr. CORREA. Yes, sir.

Mr. HOMAN. We need to close the loopholes. We need Congressional action on making——

Mr. CORREA. Is that a loophole, sir, or is that changing the law to tighten up on who is a refugee or not?

Mr. HOMAN. Well, either or. You got to——

Mr. CORREA. Well, sir, you——

Mr. HOMAN. But I understand that people——

Mr. CORREA. You are the policy maker advising us. Is it——

Mr. HOMAN. What——

Mr. CORREA. Do you think the laws are too lax when it comes to whether you fear for your life or not? Or it is something else that you want to change in these loopholes?

Mr. HOMAN. Laws are too lax. There are loopholes we need to have addressed. When——

Mr. CORREA. What would you tighten? You say it's too lax, what would you tighten?

Mr. HOMAN. When USCIS approved 85 percent and the immigration court only approves 20 percent there is something being lost here. If only 20 percent are winning their claim in front of the immigration court, that shows there is a problem.

There is going to be a system. Now, I certainly can say that do I think some of these people have a solid claim and they are escaping fear? Of course. Well, I also think many of them are taking advantage of a loophole in a small threshold. What the problem with that, they are clogging up the system. So if there is people in this world that——

Mr. CORREA. Then is it an issue of enough money being sent to the Judicial branch so they can speedily advocate on these claims?

Mr. CISSNA. I think it is both substance and process. If you change nothing but change the process, that would be a big help. If you kept the system as it was, but at least we could detain people until a full process of their asylum claim was heard, so——

Mr. CORREA. So that is the process not the loophole?

Mr. CISSNA. Well, that is one issue, it is the process and resources to be able to hold people and address the Flores settlement situation and address all his resources to hold people as long as it takes to hear their full asylum claim.

The other issue is substance, what should be the credible fear standard? I know the Goodlatte Bill has a provision in there that talks about divorcing the credibility assessment from the substantive assessment. That would be helpful if that happened.

There are other people who would say that the asylum—the basis of asylum itself may need to be reexamined. That is a separate issue as well.

Mr. CORREA. Madam Chair, I yield.

Ms. MCSALLY. The gentleman yields.

The Chair now recognizes, Ms. Barragán from California for 5 minutes.

Ms. BARRAGÁN. You know, I heard the comment that the fact that only 20 percent qualify for asylum means that there is an abuse happening. One of the reasons it could be so low is because these people are not entitled to counsel.

As I mentioned, it is very hard to meet the legal requirements. You almost cannot increase the standard. It is already so high. I actually believe if we gave people counsel, you would see that 20 percent number increase. By quite a bit.

So I am not sure, I don't think the logic follows it, because only 20 percent are granted asylum. Therefore there are all these abuses. Having been in the system, having litigated asylum cases,

I know first-hand how challenging it is, and I know the difference it makes when you do have counsel.

Most people who don't have an extremely difficult time because it is so high. I want to go back to the issue of, I think Mr. Cissna that you had mentioned. How does USCIS determine a person's asylum claim is fraudulent? Like how is that assessment made?

Mr. CISSNA. Well, before, I mean, the person could just be ineligible, flat-out ineligible. That is different from being fraudulent. Both things are happening and——

Ms. BARRAGÁN. Yes, I want to know about the fraudulent. How do you guys determine it when asylum claim is fraudulent?

Mr. CISSNA. I think if the person says something that manifestly does not conform with the facts on the ground, we would determine that the person was lying and therefore made a fraudulent claim.

Ms. BARRAGÁN. Do we have any numbers about how many were actually fraudulent under that definition you just explained?

Mr. CISSNA. No, we don't have any numbers on how many people are making fraudulent claims either in credible fear or in regular asylum yet, but we are working on that.

Ms. BARRAGÁN. Do you have any numbers on how many asylum claims were denied by USCIS in recent years that have led to perjury charges?

Mr. CISSNA. No, I don't have that available.

Ms. BARRAGÁN. Could you get those to me in writing?

Mr. CISSNA. Sure.

Ms. BARRAGÁN. If you could, that would be great. I want to also touch upon the incident that occurred, the Montana incident. The CBP has about a 100-mile radius of jurisdiction where you can engage with somebody, pull somebody over for reasonable suspicion of an immigration violation or crime. Is that correct? Roughly?

Mr. VITIELLO. Roughly, yes The court through case law has given us jurisdiction to do a number of things near the immediate border.

Ms. BARRAGÁN. OK.

Mr. VITIELLO. Loosely defined at 100 miles.

Ms. BARRAGÁN. If you take a look at the map, like most of Los Angeles alone is in that because of the west, being on the coast, correct?

Mr. VITIELLO. I think that is true for a number of coastal States.

Ms. BARRAGÁN. How often would you say a CBP officer is going to engage with somebody and start questioning them about their status just because they are speaking Spanish? How often do you think that is happening?

Mr. VITIELLO. I don't think it happens very often at all. I think they are trained to do a number of things and look at a number of factors before they make an account or they make a stop for someone. In this case, it was roughly 40 miles or so from the border.

Ms. BARRAGÁN. OK. So should I advise my constituents that are within 40 miles of the border they shouldn't be speaking Spanish anymore?

Mr. VITIELLO. No. I wouldn't do that.

Ms. BARRAGÁN. What advice could you give? Because, look, I speak Spanish. It was my first language. It is actually an asset in this country to be able to speak two languages, especially Spanish.

Because there is a shortage of, actually, workers who employers seek to speak two languages. Spanish is often one of them. I get questions now of, well, does this mean I shouldn't speak Spanish anymore? As somebody who is at CBP, what advice do you think I should I give them?

Mr. VITIELLO. I am not sure. I have a number of social engagements, I have worked on the border for many years. I speak Spanish myself. It is not something that people should be concerned about if they are here legally.

Ms. BARRAGÁN. In this case, the people actually showed ID even though they don't have to. They were still detained for another 35 to 40 minutes. In that case, what is somebody supposed to do? You have shown your ID. You are still being detained.

Mr. VITIELLO. I would like for our Office of Professional Responsibility to do a complete review of the incident, and then I am happy to come back or put in the record if it is done by then, the total circumstance of that case.

Ms. BARRAGÁN. OK. If that happens to somebody, are they allowed to pull out their cell phone and just start documenting that they are being held for 35 to 40 minutes or whatever it is?

Mr. VITIELLO. Our agents are regularly filmed in the performance of their duties. CBP has made an investment in changing policy and allowing for us to use incident-driven video recordings. So we are going to be investing in and deploying a number of cameras in the work space. Some of those will be actually be worn by agents.

Ms. BARRAGÁN. The agents are not going to delete the videos, right?

Mr. VITIELLO. There is a whole policy that surrounds how we use the video and how it is stored and collected and et cetera.

Ms. BARRAGÁN. Great. Thank you. I yield back.

Ms. MCSALLY. The gentlelady yields back.

In summary, as we wrap up, I want to thank the gentlemen for their testimony today and their service. We talked today about trying to build the policy wall in order to secure our country, secure our border and stop having people take advantage of loopholes in the law.

To summarize, some of those loopholes that we have been working together with you to close, the first is to raise the standard of the initial asylum interview that happens at the border which is so low that nearly everybody can make it through.

The second is to hold individuals as long as it takes for them to have due process in order to process their claim. The third is to make it inadmissible in our country if you are a serious criminal or gang or gang member or terrorist which I cannot believe isn't part of the law, but we actually have to change that law.

The fourth is to have a swift removal of you if you are denied in your claim. The fifth is to terminate your asylum if you were to get it, if you return back to your country without any material change in the conditions there. Clearly, if you are afraid for your life, but go back to visit then something is not right there. So your asylum should be considered for termination.

The sixth is that there could be an expeditious return of unaccompanied minors to non-contiguous countries, so that we can swiftly return them just like we can to Mexico.

The last is to increase the penalties for false asylum claims in order to deter and hold people accountable if they file for those. Is that a good summary of many of the loopholes we are talking about today?

Mr. VITIELLO. Agree.

Ms. MCSALLY. Thank you.

These all are in our bill, the Securing America's Future Act. These are common-sense reforms that will keep our country safe and keep our communities safe. I just want to encourage, don't have any Members left here, all Members, on both sides of the aisle, look at our bill. Read our bill. Study our bill.

If you have suggested improvements to our bill, then please bring them to us. We will work with you in order to get the bill to a place that we can get 218 people to vote for it and get it out of the people's House, the House of Representatives.

The time is urgent as someone who represents a border community who is dealing with these public safety threats and National security threats on a daily basis in the communities that I represent.

As you are all and your agents are out there every single day dealing with these threats. The time is urgent. This is not time to play politics with these issues. This is time for people to solve this issue and to close these loopholes to keep us safe.

I want to thank the gentlemen for their testimony and the Members for their questions. I want to particularly thank Director Homan for your 34 years of service to our country in many law enforcement positions. God bless you in your transition out. Thanks for your service and all you have done for us.

Mr. HOMAN. Thank you.

Ms. MCSALLY. Members of the committee may have some additional questions for the witnesses. We will ask you to respond to these in writing. Pursuant to committee Rule VII(D), the hearing record will be held open for 10 days.

Without objection, the committee stands adjourned.

[Whereupon, at 3:46 p.m., the subcommittee was adjourned.]

APPENDIX

QUESTIONS FROM RANKING MEMBER FILEMON VELA FOR RONALD D. VITIELLO

Question 1a. Can you please explain the criteria and process CBP personnel are required to use for verifying family relationships?

Answer. A family unit is defined as a parent or legal guardian along with accompanying minors. CBP determines familial relationships on a case-by-case basis. U.S. Border Patrol (USBP) agents and Customs and Border Protection (CBP) officers review all available information, including any available documentation, in order to determine the validity of a claimed familial relationship. Additionally, agents and officers conduct thorough interviews to detect potentially fraudulent claims of familial relationship.

Question 1b. Is this process different for families who present themselves at ports of entry than for those apprehended by Border Patrol?

Answer. The process to determine a familial relationship is the same regardless of how the family enters the United States.

In all instances, CBP strives to ensure the safety and welfare of any child an agent or officer may encounter.

Question 2a. Can you please explain what CBP does to ensure family units are kept together, per its 2015 National Standards on Transport, Escort, Detention, and Search (TEDS)?

Answer. CBP's National Standards on Transportation, Escort, Detention, and Search (TEDS) policy States in part that "CBP will maintain family unity to the greatest extent operationally feasible, absent a legal requirement or an articulable safety or security concern that requires separation." In accordance with these standards, family units may be separated in certain situations, including:

- the parent/legal guardian is subject to criminal prosecution;
- evidence of abuse that would indicate that the child's safety is at risk; and
- the familial relationship cannot be verified.

This list is not exhaustive and the operational decision to separate a family unit is made after taking the safety and well-being of the child or children into account.

Question 2b. How does the administration's zero-tolerance directive for adult border crossers hinder your ability to keep families together?

Answer. DHS strives to keep the family unit together as long as operationally feasible. "Zero tolerance" does not introduce a new procedure for CBP and ICE agents. Existing protocols already address how to process families and the procedures to follow in the event that a family is separated for any reason.

On June 20, 2018, the President issued Executive Order (E.O.) 13841, in which he indicated the administration's policy of maintaining family unity. Additionally, on June 26, 2018, the U.S. District Court for the Southern District of California issued an order that, among other things, preliminarily enjoins DHS from detaining parents in DHS custody apart from their minor children in most cases, and requires ICE to reunite separated alien children with their parents in most cases. ICE and CBP are working with partner agencies to ensure compliance with that order.

Question 2c. Do your 2015 TEDS still apply to Border Patrol's operations?

Answer. CBP's U.S. Border Patrol (USBP) complies with the TEDS policy.

Question 3. In July 2015, GAO recommended that CBP revise the methods and questions used by Border Patrol agents and OFO officers to screen unaccompanied alien children. What is the status of CBP's efforts to address these recommendations?

Answer. CBP currently use the CBP-Form 93 Unaccompanied Alien Child Screening Addendum to screen all UACs. In response to the GAO's July 2015 recommendations, the CBP-Form 93 is being revised and expected to be finalized as early as December 2018.

Question 4a. In July 2015, GAO found that CBP personnel were not properly screening all Mexican unaccompanied children who had credible fear of returning

to Mexico and who were victims of a severe form of trafficking in persons. The related recommendations remain open. Why has CBP not issued updated guidance per these recommendations?

Answer. CBP complies with the Flores Settlement Agreement, Homeland Security Act of 2002, the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), and all CBP policies and guidance for the processing and treatment of minors, including unaccompanied children. While no new guidance is necessary, the implementation of the updated CBP–93 will enhance the UAC screening process.

Question 4b. What is the status of CBP's efforts to address these recommendations?

Answer. USBP has been following all existing policies and legal injunctions to adhere to all legal concerns. All items in GAO's recommendations are being addressed through careful and thorough guidance to follow all regulations/policies/court orders to facilitate the safe and least restrictive screening and custody while in USBP facilities. In conjunction with the Office of Training and Development, USBP is working toward updating existing TVPRA training which will be available in the CBP distance learning module. The revised CBP–93 is in its final stages of review and is expected to be available in 2018. In April 2018, the Memorandum of Agreement between CBP, ICE, and HHS was signed and went into effect. This MOA outlined the requirement to formulate a Joint Concept of Operations between DHS and HHS and went into effect in July 2018.

Question 4c. In the absence of such guidance, how is CBP ensuring that agents and officers are complying with trafficking preventions requirements and addressing the weaknesses that GAO identified in 2015?

Answer. CBP complies with relevant laws and settlement agreements. CBP screens all unaccompanied children for trafficking concerns, and all CBP personnel receive training on the requirements of the TVPRA and the Flores Settlement Agreement.

Question 5a. The Secretary and other leaders, such as yourself, have been telling people who are seeking asylum to go to our ports of entry. Otherwise, DHS intends to refer these asylum seekers to the Department of Justice for criminal prosecution if they attempt to approach a Border Patrol agent. However, we have heard reports from groups and asylum seekers themselves that CBP in the past improperly turned away or dissuaded people trying to file asylum claims at certain ports of entry. Is CBP preventing people from filing their asylum claims?

Answer. CBP Office of Field Operations (OFO) processes all persons who apply for admission to the United States at ports of entry (POEs) and does not turn away anyone who is seeking asylum. Those applicants for admission who do not have the proper documentation significantly adds to the processing times at POEs. OFO does not deny any applicant for protection who expresses an intent to seek asylum or has a fear of return to their country of origin regardless of the ultimate disposition of the case. CBP processes applicants for admission to the United States, denies inadmissible travelers entry and, refers travelers who seek protection to appropriate officials for claims to be heard. OFO is committed to our multi-faceted National security mission set which includes the safe, secure, and orderly processing of all travelers as expeditiously as possible without compromising safety or security of the homeland. The number of inadmissible travelers CBP is operationally capable to process varies depending on overall port volume and enforcement actions. Upon completion of CBP inspection, inadmissible applicants for admission who express a fear of return are referred to ICE/ERO for long-term custody. CBP only maintains custody of inadmissible applicants for the minimum time necessary to complete the inspection and for ICE/ERO to accept custody.

Question 5b. What kind of guidance have you issued to your field directors to make sure this doesn't happen?

Answer. CBP recognizes the importance of thoroughly training our front-line officers. Customs and Border Protection Officers (CBPOs) receive training on the proper processing, treatment, and referral of aliens who express a fear of return. This training begins with CBP Field Operations Academy, and is reinforced through Post Academy training and the periodic issuance of memoranda and policy reminders/musters.

CBP leadership, through memos, messaging, and conference calls, continually reiterates to its field managers that any traveler who request asylum or expresses a fear of return to their home country or country of last residence is referred to United States Citizenship and Immigration Services (USCIS) asylum officers or the immigration courts who make a final decision on asylum applications. CBP OFO does not decide the merits of any asylum claim or application.

Question 6. In April, CBP noted that capacity issues at San Ysidro Port of Entry slowed down the processing time for asylum seekers. I presume that the persistent

CBP officer staffing shortage is one of the factors affecting these capacity issues. How has CBP prepared, if at all, for additional asylum seekers at ports of entry?

Answer. At U.S. ports of entry, CBP Officers perform a variety of border security and facilitation activities to include counter-terrorism activities, narcotics interdiction, trade enforcement, the facilitation of lawful trade and travel, and the processing of individuals who arrive at the ports of entry. Finite personnel and budgetary resources must be prioritized across these mission sets to ensure that the homeland is protected, that the United States meets its domestic and international legal obligations regarding processing of asylum seekers, and that economic security is provided.

- CBP OFO is committed to our multi-faceted National security mission set which includes the safe, secure, and orderly processing of all travelers as expeditiously as possible without compromising safety or security of the homeland.
- The number of inadmissible travelers CBP is operationally capable to process varies depending on overall port volume and enforcement actions.
- Upon completion of CBP inspection, inadmissible applicants for admission who express a fear of return are referred to ICE/ERO for long-term custody. However, the family remains with CBP at the POE until ICE/ERO takes custody of the subjects.
- CBP only maintains custody of inadmissible applicants for the minimum time necessary to complete the inspection and for ICE/ERO to accept custody.

Ports of entry also face capacity and facility constraints. Ports of entry were neither intended nor designed for the long-term detention of individuals; they are intended as short-term processing facilities used until individuals can be turned over to another appropriate agency.

When resources and capacity constraints are reached at a port of entry, it may be necessary to temporarily limit the processing of additional individuals who may require temporary holding at the port until resources and space become available. These conditions were common during the last migrant surge in 2016, and are occurring again in 2018. When port resources and capacity are reached, some aliens arriving at a port of entry who do not express a fear of return to Mexico may need to wait in Mexico until they are able to enter the port of entry for processing. In many cases, aliens waiting in Mexico have access to shelters and support from non-governmental organizations (NGO's).

Question 7. In 2015, the DHS Inspector General reported that:

"Border Patrol does not have guidance on whether to refer to Streamline prosecution aliens who express fear of persecution or fear of return to their home countries. As a result, Border Patrol agents sometimes use Streamline to refer aliens expressing such fear to DOJ for prosecution. Using Streamline to refer aliens expressing fear of persecution, prior to determining their refugee status, may violate U.S. obligations under the 1967 United Nations Protocol Relating to the Status of Refugees, which the United States ratified in 1968."

What has the Border Patrol done since 2015 to offer guidance to its agents regarding compliance with this protocol?

Answer. In response to the DHS Inspector General report on Criminal Consequence Initiative, formerly known as Streamline, the Chief of the USBP, issued a guidance memorandum on September 30, 2015 and muster module to the field regarding the process of Credible Fear referrals. This has been put into practice and is standard operating procedure.

Question 8. How do CBP intake and screening processes differ, if at all, for people who arrive at a port of entry and claim fear compared to those who claim fear after being apprehended by Border Patrol agents between ports of entry?

Answer. CBP carries out its mission of border security while adhering to U.S. domestic and international legal obligations related to the protection of refugees and other vulnerable persons. The laws of the United States, as well as international treaties to which we are a party, allow people to seek protection on the grounds that they have a well-founded fear being persecuted in another country because of their race, religion, nationality, membership in a particular social group, or political opinion, or that there are substantial grounds for believing the person would be in danger of being subjected to torture if sent to another country. CBP understands the importance of complying with U.S. legal obligations and takes them seriously. Accordingly, CBP has designed policies and procedures based on these legal standards, in order to protect vulnerable persons.

All persons in custody are screened for Credible Fear. If Credible Fear is expressed, it is notated on Form M–444 electronically sent to USCIS and printed for the A-file. Sometimes it is necessary to record additional information on the I–867 a and b (sworn statement) to capture facts in support of the refugee's claim. The

File is annotated on the front as CREDIBLE FEAR for all parties to see. An appointment is scheduled with USCIS Asylum Officer after transfer from USBP to ICE/ERO.

From the USBP side, if the alien has not already told the agent upon apprehension that he or she is claiming fear or seeking asylum, the agent will screen for fear during the processing of the alien. For an unaccompanied child this is documented on the CBP–93, for adults it will be on the I–215 or I–867A/B or I–877. The alien is also given the M–444 or M–488 concerning their fear interview. The alien is turned over to ERO or ORR, depending on age, family unit, etc. The case is referred to an asylum officer with USCIS, who determines if the fear is founded or not. At that point, USBP has no further dealings with the illegal aliens, unless they are re-apprehended crossing illegally again into the United States.

Question 9a. The Attorney General's April 6, 2018, memorandum directs each United States Attorney's Office, in consultation with DHS, to adopt a zero-tolerance policy for all first-time illegal entrants along the Southwest Border. How, if at all, are foreign nationals who are apprehended between ports of entry prioritized for referral to DOJ?

Answer. On May 5, 2018, the Secretary of Homeland Security promulgated the following zero tolerance policy prosecution priorities, which are listed in priority order:

1. All adult aliens (with criminal history)
2. All adult aliens (with smuggling activity)
3. Single adult aliens and adult aliens accompanying children (non-contiguous country/OTM)
4. Single adult aliens (contiguous country/Mexico and Canada)
5. Adult aliens accompanying children (contiguous country/Mexico and Canada).

Following Zero Tolerance implementation and after the President signed E.O. 13841 on June 20, 2018, the U.S. Border Patrol (USBP) Headquarters issued guidance to the field to refer all amenable single adults who violate 8 USC § 1325 for prosecution. Adults who are part of a family unit will be referred for prosecution if:

- There is a concern that detention of an alien child, with the child's alien parent/legal guardian would pose a risk to the child's welfare; or
- The parent/legal guardian has an outstanding criminal background or warrant (beyond a simple Section 1325 violation).

Sector Chiefs were instructed to consider all circumstances of the apprehension and exercise discretion when referring an adult in a family unit for prosecution.

Question 9b. How does CBP ensure that individuals referred to DOJ and who have articulated fear claims receive access to a credible fear interview by USCIS?

Answer. During processing, all apprehended aliens are asked specific questions regarding any fear they may have of returning to their country of origin to ensure that each is afforded the ability to indicate an intention to apply for asylum, a fear of return, or a fear of persecution or torture. All claims of fear made in USBP custody are documented and referred to USCIS or to an immigration judge, as appropriate. An appointment is scheduled with USCIS Asylum Officer after transfer from USBP to ICE/ERO or to USMS for their criminal hearing.

Question 9c. Under what circumstances is CBP referring foreign nationals to DOJ for prosecution before the individual received a credible fear interview with USCIS?

Answer. CBP reviews each case before referring the case for prosecution. Criminal prosecution does not preclude, deny or otherwise inhibit an alien from applying for asylum, and all claims of fear made in USBP custody are referred to USCIS or to an immigration judge, as appropriate. In many cases, aliens are referred for criminal prosecution and receive their credible fear interview once they return to ICE custody after serving their sentence, if any.

Question 10. What type of information does Border Patrol track regarding individuals that the agency refers to DOJ for immigration-only offense prosecutions, as well as individuals that Border Patrol refers to USCIS for credible fear interviews?

Answer. USBP utilizes the "e3 system" as the official system of record for all processing. The e3 system collects and transmits biographic, encounter, and biometric data for identification and verification of individuals encountered at the border for CBP's law enforcement and immigration mission. USBP captures all information related to the alien's apprehension, to include name, date of birth, country of birth, biometrics and processing disposition prior to the individual's transfer to ERO.

Question 11a. Is it now the policy of the Trump administration to question the citizenship of anyone who is conversing in a language other than English?

Answer. No.

Question 11b. What kind of training measures is the Border Patrol providing to its agents so that we do not have a repeat of the Montana incident recorded in mid-

May 2018 in which a Border Patrol agent questioned two U.S. citizens after he overheard them speaking in Spanish?

Answer. Agents receive training in CBP's authority to engage with the public pursuant to the U.S. Constitution and applicable statutes. On-going training and updates are provided to address changes in the law.

QUESTIONS FROM HONORABLE J. LOUIS CORREA FOR RONALD D. VITIELLO

Question 1a. For the past 10 fiscal years, how many asylum seekers that originally intended to come to the United States are provided asylum and assisted by the Mexican government?

Answer. CBP does not track how many asylum seekers were either assisted by or granted asylum by the Government of Mexico.

Question 1b. How many asylum seekers actually reach the U.S.-Mexico border?

Answer. CBP tracks the number of cases where applicants for admission request asylum or express a fear of return. This reflects the number of aliens that present themselves with a credible fear indicator at a port of entry for the past 10 years.

- *Fiscal Year 2008.*—824
- *Fiscal Year 2009.*—718
- *Fiscal Year 2010.*—1,898
- *Fiscal Year 2011.*—2,636
- *Fiscal Year 2012.*—2,815
- *Fiscal Year 2013.*—7,951
- *Fiscal Year 2014.*—12,985
- *Fiscal Year 2015.*—17,286
- *Fiscal Year 2016.*—33,856
- *Fiscal Year 2017.*—26,841
- *Fiscal Year 2018 (May).*—33,568
- *Sum.*—141,378

Question 1c. Of those asylum seekers that reach the U.S.-Mexico border, what is the number and percentage that are granted asylum in the United States?

Answer. DHS defers to DOJ's Executive Office for Immigration Review (EOIR) to to answer this question. EOIR adjudicates asylum applications filed by individuals who are in removal proceedings before EOIR, including those who established a credible fear.

Question 1d. Can you please describe how Mexico has helped CBP by assisting migrants along its Southern Border?

Answer. Mexico's National Migration Institute (INM) has helped CBP through things such as Operation Leonidas that aims to secure Mexico's Southern Border. INM's actions have strengthened the base for our collaborative engagement on traveler facilitation initiatives.

INM now rescues (including apprehends) more Central Americans, in Mexico, than CBP does along the Southwest Border. These numbers reflect our commitment to and progress in working with the Government of Mexico to make a substantial impact on the flow of irregular migration.

Question 1e. How has CBP helped the Mexican government in efforts to build up its border management?

Answer. Since the inception of the Mérida Initiative, approximately $2.7 billion in funds have been allocated toward building capacity among Mexican law enforcement and judicial institutions to combat the production and trafficking of illicit drugs, strengthen border security, and investigate and prosecute transnational organized crime. In addition, the 21st Century Border Management Initiative and the Security Coordination Group (SCG) continue to be mechanisms through which the United States and Mexico develop and implement joint security priorities.

The day-to-day work under this Joint Declaration is guided by the binational Executive Steering Committee (ESC)—which last met in Mexico City in November 2017—and is carried out by its three working groups:

- The Infrastructure subcommittee, chaired by the Department of State, is charged with developing and monitoring the implementation of a national plan for land border priorities. The subgroup coordinates plans for new ports of entry (POEs), the modernization of existing POEs, and upgrades to the infrastructure feeding into them at and between POEs along the U.S.-Mexico border.
- The Secure Flows subcommittee, chaired by CBP, is mandated to facilitate secure and efficient flow of people and goods across the U.S.-Mexico border by managing risk, promoting and improving trusted trader and traveler programs, developing new technology at POEs, segregating lanes, exchanging information, harmonizing manifest data, and engaging in capacity building measures with GOM.

- The Law Enforcement and Security subcommittee, co-chared by DHS Office of Policy and Department of Justice, aggregates policy priorities and concerns to develop a coherent U.S. Government approach to border coordination and to address smuggling corridors used to move contraband via air, land, and sea.

The SCB is a high-level bilateral policy dialog between all the U.S. and Mexican agencies who handle security-related topics. The SCG was originally convened by the National Security Council (NSC); however, it is now co-hosted by DHS and the Department of State (DoS). The last meeting of the SCG took place in Mexico City, Mexico in mid-October, 2017.

The U.S. Government supports the Government of Mexico (GOM) in its continued migration control activity in the Guatemala-Mexico border region. Most recently, DHS deployed two multidisciplinary teams to Mexico's Southern Border in order to support INM's current enforcement operation to stem the northward flow of Central American migrants entering Mexico.

The U.S Government encourages GOM officials to visit CBP facilities along the U.S. Southwest Border to further strengthen the between CBP and INM personnel in order to continue sharing best practices and increase cooperation regarding migration management.

QUESTIONS FROM HONORABLE NANETTE BARRAGÁN FOR RONALD D. VITIELLO

Question 1. According to the *New York Times* more than 700 children had to be taken from adults claiming to be their parents since October 2017, including more than 100 children under the age of 4. Secretary Nielsen disputed this figure at a May 15 Senate Homeland hearing. She said that the 700 children figure was an HHS number and not a DHS figure. What is the DHS figure for the number of children separated from their family member since October 2017, disaggregated by month?

Answer. For fiscal year 2018 through April, U.S. Border Patrol (USBP) is unable to provide a breakdown of ages. The data was manually provided from the field as it was not captured in a system until late April. Changes were made on April 19, 2018 to the records system to capture this data electronically. During Zero Tolerance, the USBP separated 2,706 family units from May 5, 2018 to June 20, 2018.

Question 2a. Can you please explain what process CBP personnel are supposed to follow when they unable to verify familial relationships?

Answer. A family unit is defined as a parent or legal guardian along with accompanying minors. [0]CBP determines familial relationships on a case-by-case basis. U.S. Border Patrol (USBP) Agents and Customs and Border Protection (CBP[0]) Officers review all available information, including any available documentation such as but not limited to birth certificates and passports, in order to determine the validity of a claimed familial relationship. Additionally, agents and officers conduct thorough interviews to detect potentially fraudulent claims of familial relationship. [0] In the event of a separation, electronic records for all family members are linked in the in e3 Detention Module (e3DM) to facilitate contact or reunification at a later date.

Question 2b. Of the 700 children who were separated from adults claiming familial relationships since October 2017, how many of these instances led to be human trafficking charges?

Answer. Specific data for the cases named by HHS are unavailable. DHS/CBP cannot obtain exact details on the underlying 700 cases to determine if/how many trafficking cases are associated with these cases.

Question 3a. In January 2017, CBP's Office of Professional Responsibility publicly released a report on its activities for fiscal year 2015. Has any subsequent reporting occurred?

Answer. No subsequent reporting has been released.

Question 3b. When will reports for fiscal years 2016 and 2017 be released publicly?

Answer. The CBP Office of Professional Responsibility combined Annual Report for fiscal years 2016 and 2017 is currently in the works but does not have a release date at this time.

QUESTIONS FROM RANKING MEMBER FILEMON VELA FOR THOMAS D. HOMAN

Question 1a. This last December, the Inspector General issued a report that found extremely serious problems with the treatment of detainees and conditions at various ICE detention facilities across the country. What are you doing to correct the many violations that facilities are committing?

Question 1b. What, if anything, has been done in the past 6 months to address the very serious issues raised by the DHS Inspector General?

Answer. U.S. Immigration and Customs Enforcement (ICE) concurred with the Inspector General's single recommendation to address the findings in its report on detention facilities. The Office of Inspector General (OIG) found that ICE's proposed corrective action met the recommendation's intent, and ICE engaged in a detailed assessment of the facilities identified in the OIG report. ICE corrected the identified concerns; however, two areas remain under continued monitoring. When ICE is confident that all concerns have been fully addressed, ICE will provide this information to the OIG, likely in the next few months.

ICE notes that all facilities holding detainees are held to a high standard of care, and must meet or exceed Federal detention-related requirements, including those of the Occupational Safety and Health Administration, Environmental Protection Agency, Food and Drug Administration, National Fire Protection Association, the Life Safety Code, National Center for Disease Control and Prevention, and similar regulatory agencies. ICE will continue to aggressively monitor conditions at these facilities with a special emphasis on the areas identified by the OIG.

Consistent with the one OIG recommendation, ICE has increased its monitoring and visits of the three facilities outlined in the report, with a special focus on the issues listed in the report such as language access, segregation, medical care, environmental health, and food safety. ICE is also hiring Federal staff to accompany contract inspectors during the annual audits in an effort to further improve oversight.

Question 2a. How many families does ICE currently have in its custody?

Question 2b. How many of these families have been referred to ICE custody since the beginning of the zero-tolerance policy that took effect in early May 2018?

Answer. The zero-tolerance policy went into effect on April 6, 2018. As such, ICE ERO has provided the following information regarding Family Residential Centers (FRCs),[1] where families are held together as a unit.

- *ICE Initial Book Ins into FRCs between 4/6/2018—6/2/2018.*—Total: 6,996.
- *ICE Currently Detained Aliens in FRCs as of 6/2/2018.*—Total: 2,555.

Question 3a. When CBP transfers an adult who has been separated from his or her children into ICE custody, what does ICE do to ensure that both the adult and child know of each other's location?

Question 3b. What does ICE do to ensure families can eventually be unified?

Answer. On May 5, 2018, the U.S. Border Patrol began to increase referrals for prosecution as a result of the administration's zero tolerance policy. All adult aliens who were amenable to prosecution for violating 8 U.S.C. § 1325(a), Illegal Entry, which carries a potential penalty of up to 2 years in prison, were referred to the U.S. Attorney's Offices. Subsequently, on June 20, 2018, President Trump issued E.O. 13841, *Affording Congress an Opportunity to Address Family Separation,* which directs the administration to continue to protect the border, while simultaneously avoiding the separation of families. As expressed in the E.O., it is the policy of this administration to maintain family unity, including by detaining alien families together where appropriate and consistent with the law and available resources. The U.S. Department of Homeland Security (DHS) is continuing to examine these issues in light of on-going litigation and recent court decisions.

In the mean time, DHS and the U.S. Department of Health and Human Services (HHS) have established a process to help ensure that family members know the location of their children and have regular communication after separation. The U.S. Government knows the location of all children in its custody and DHS and HHS are working together to ensure both that those adults who are subject to removal are reunited with their children for the purposes of removal, and that those adults who are entitled to reunification pursuant to court order are similarly reunited.

Releases are occurring in close coordination with HHS to facilitate reunification with minor children to ensure compliance with the *Ms. L.* v. *ICE* ruling, which ordered the reunification of all parents separated from their children at the border within 30 days. U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) Juvenile and Family Residential Management Unit staff are in regular communication with the HHS Office of Refugee Resettlement to verify parent or legal guardian status and facilitate reunification of family units who have been separated. Specifically, ICE ERO has reunified all eligible parents with their children aged 0–4 years in HHS custody, and is now in the process of reunifying eligible parents with their children aged 5–17 years.

ICE also works with detained parents to provide regular communication with their children through video teleconferencing, phone, and tablets. ICE is currently augmenting mental health care staffing, including trained clinical staff, to provide

[1] ICE FRCs includes Berks County Family Shelter, Karnes County Residential Center, and South Texas Family Residential Center.

mental health services to detained parents who have been separated from their children.

QUESTIONS FROM RANKING MEMBER FILEMON VELA FOR LEE FRANCIS CISSNA

Question 1a. Operation Streamline has been in effect for some time now. Though I understand that the current zero-tolerance policy is different, what has been the effect of criminal prosecution through Streamline on a person's ability to claim asylum?

Answer. CBP recognizes that undocumented aliens need to have the appropriate avenue to make claims of fear. On November 26, 2014, the Chief of the USBP sent a guidance memorandum and muster modules to the field to emphasize and further address credible fear determinations in expedited removal cases. CBP may refer an alien for criminal prosecution while the alien makes a claim of fear through the administrative process. The fact that an alien is being prosecuted does not influence the outcome of the asylum officer's credible fear determination. Conversely, an alien's claim of fear cannot be used as a criterion to exclude an undocumented alien from a possible prosecution for a criminal act.

Question 1b. Have asylum claims been denied because of a criminal illegal entry or re-entry charge?

Question 1c. How will claims filed by asylum seekers who are charged with illegal entry or re-entry be affected by these charges?

Answer. Pursuant to Immigration and Nationality Act (INA) section 235(b)(1)(A)(ii) and 8 C.F.R. § 235.3(b)(4) and implementing regulations, any individual who indicates an intention to apply for asylum, a fear of return, or a fear of persecution or torture during the course of the expedited removal process must be referred to a USCIS asylum officer for an interview to determine if the individual has a credible fear of persecution or torture.

An individual may express a fear at any point during the expedited removal process. If an individual expresses a fear, he or she must be screened by a USCIS asylum officer. USCIS conducts the screening interview when the individual is in ICE custody. USCIS currently does not have a process for screening individuals while they are in Department of Justice (DOJ) custody. If an individual is referred to DOJ for prosecution, he or she is processed on illegal entry or re-entry charges, receives a sentence, and serves the sentence in DOJ custody. Generally, after the individual has served his or her sentence and is transferred to ICE custody, but before removal, he or she is referred to USCIS for the credible fear interview.

Under current law, a criminal illegal entry or re-entry charge does not impact the outcome of the credible fear determination. However, an individual who illegally reenters the United States after having been removed is subject to reinStatement of his or her prior order of removal under section 241(a)(5) of the INA, which renders the individual ineligible to apply for asylum. An alien subject to a reinstated removal order may still qualify for withholding of removal pursuant to INA § 241(b)(3) or protection pursuant to the Convention Against Torture.

USCIS defers to DOJ's Executive Office for Immigration Review (EOIR) on whether defensive asylum claims presented to immigration judges by individuals found to have a credible fear during the course of expedited removal proceedings are denied or otherwise affected because of a criminal illegal entry or re-entry charge.

Question 2. How, if at all, does USCIS ensure that illegal entrants apprehended by CBP or ICE are receiving credible fear interviews, as required?

Question 3. When do foreign nationals who are apprehended by Border Patrol and referred to DOJ for prosecution receive access to a credible fear interview if they have made a fear claim?

Question 4a. Where and how are individuals detained while awaiting credible fear interviews?

Question 4b. If USCIS determines that an individual has a credible fear of persecution, what are the next steps for that individual?

Answer. Pursuant to INA 235(b)(1)(A)(ii) and 8 CFR 235.3(b)(4), ICE or CBP must refer any individual, including single adults and adults with children, who indicates an intention to apply for asylum, a fear of return, or a fear of persecution or torture during the course of the expedited removal process (under Section 235 of the INA) to a USCIS asylum officer for an interview to determine if the individual has a credible fear of persecution or torture.[2] Once an individual is referred to USCIS, the

[2] Note that unaccompanied alien children (UAC) are not subject to streamlined removal proceedings (including expedited removal and reinstatement of prior orders of removal). Section 235(a)(5)(D) of the TVPRA (8 U.S.C. § 1232(a)(5)(D)) states: "Any unaccompanied alien child sought to be removed by the Department of Homeland Security, except for an unaccompanied

agency uses a case management system to track all credible fear screening referrals and ensure that it completes screening for each referred individual.

Individuals may express a fear at any point during the expedited removal process. If they express a fear, they must be screened by USCIS. USCIS conducts the screening interviews when the individuals are in ICE custody.

Individuals awaiting credible fear interviews while in DHS custody are held in ICE detention facilities pending the outcome of their interview by a USCIS asylum officer.

If an adult is referred to DOJ for prosecution, he or she is processed on illegal entry or re-entry charges, receives a sentence, and serves the sentence in DOJ custody. Generally, after he or she has served the sentence and is transferred to ICE custody, but before removal, he or she is referred to USCIS for the credible fear interview.

If the asylum officer finds that an individual has established a credible fear of persecution or torture, the individual is placed into removal proceedings (under section 240 of the INA) where he or she is afforded the opportunity to apply for asylum and other relief or protection before an immigration judge. If the asylum officer finds that the individual has not established a credible fear of persecution or torture, the individual may ask an immigration judge to review the asylum officer's determination. If the individual declines a review of the determination, or if the immigration judge concurs with the asylum officer's negative credible fear determination,[3] then the individual is removed from the United States under the expedited removal order.

Question 5a. The Central American Minors Refugee program was canceled abruptly in 2017. There were 4,000 applicants who have legally present adult family members in the United States whose applications were canceled when the program was shut down. Can you please tell us why the program was shuttered?

Question 5b. Is it the Trump administration's position that it is in the best interest of these children to stay in violent countries or risk a dangerous journey through Mexico?

Question 5c. If not, what was the purpose of closing down a legal pathway to refugee status?

Answer. The decision to terminate the Central American Minors programs was made as part of the overall U.S. Government review of the U.S. Refugee Admissions Program for fiscal year 2018. The Departments of Homeland Security and State focus on targeted refugee processing in Central America, such as the Protection Transfer Arrangement (PTA), which is between the Government of Costa Rica, UNHCR, and the International Organization for Migration (IOM). Through UNHCR and IOM, vulnerable Salvadoran, Honduran, and Guatemalan applicants are transferred Costa Rica, where they are interviewed by DHS/USCIS and considered for resettlement to the United States. In some situations, the U.S. Refugee Admissions Program may decide to process UNHCR-identified cases in one of the three countries.

As of July 6, 2018, 215 cases (478 individuals) have been accepted for processing via the PTA since July 2016. Of those, 59 cases (129 individuals) have been approved and traveled. Eight cases (20 individuals) have been denied, and 18 cases (37 individuals) have been interviewed and are pending a final decision. Approximately 130 cases (292 individuals) are pending a USCIS interview.

QUESTIONS FROM HONORABLE NANETTE BARRAGÁN FOR LEE FRANCIS CISSNA

Question 1a. How does USCIS define "fraud" for asylum claims?

Question 1b. How does USCIS determine a person's asylum claim is fraudulent?

Question 1c. How many of the asylum claims denied by USCIS in the past 5 fiscal years have led to perjury charges?

Answer. Consistent with Section 212(a)(6)(C)(i) of the INA (8 United States Code [U.S.C.] 1182), USCIS defines fraud in relation to the inadmissibility ground regarding "[a]ny alien who, by fraud or willfully misrepresenting a material fact, seeks to procure (or has sought to procure or has procured) a visa, other documentation, or admission into the United States or other benefit provided under this Act."

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alien child from a contiguous country subject to exceptions under subsection (a)(2), shall be placed in removal proceedings under section 240 of the Immigration and Nationality Act . . . " Hence, as of the effective date of March 23, 2009, all UACs from non-contiguous countries whom DHS seeks to remove must be placed directly into section 240 proceedings.

[3] If an individual neither requests nor declines review of the determination, the individual is still referred to the immigration judge for review of the credible fear determination.

A finding of inadmissibility for willful misrepresentation of a material fact under section 212(a)(6)(C)(i) of the INA requires that:

- The applicant/beneficiary misrepresented or concealed some fact;
- The misrepresentation or concealment was willful;
- The fact was material to the immigration benefit being sought; and
- The individual made the misrepresentation by some means to an authorized official of the U.S. Government.

A finding of inadmissibility for fraud under section 212(a)(6)(C)(i) of the INA requires the elements listed above plus the following:

- The misrepresentation was made with the intent to deceive a U.S. Government official authorized to act upon the request (generally an immigration or consular officer); and
- The U.S. Government official believed and acted upon the false representation by granting the benefit.

Since a specific set of elements must exist before USCIS can apply a finding of fraud to requests for certain benefits, including applications for asylum, USCIS quantifies fraud by the number of affirmative asylum applications granted by USCIS that are subsequently terminated for fraud. USCIS revoked previously approved asylum status in 158 cases during fiscal year 2017. We do not have data on how many people have been criminally charged or found guilty of perjury based on filing of fraudulent asylum claims.