

NOMINATION HEARING

HEARING

BEFORE THE

COMMITTEE ON
HOMELAND SECURITY AND
GOVERNMENTAL AFFAIRS
UNITED STATES SENATE
ONE HUNDRED FIFTEENTH CONGRESS

SECOND SESSION

NOMINATIONS OF RONALD D. VITIELLO, NOMINATED TO BE
ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS
ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY AND
RICHARD S. TISCHNER, JR., NOMINATED TO BE DIRECTOR, COURT
SERVICES AND OFFENDER SUPERVISION AGENCY, DISTRICT OF
COLUMBIA

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CONTENTS

Opening statements:	Page
Senator Johnson	1
Senator Peters	2
Senator Hassan	11
Senator Harris	16
Senator Jones	20
Senator Daines	23
Senator Carper	27
Prepared statements:	
Senator Johnson	31
Senator Peters	32

WITNESSES

THURSDAY, NOVEMBER 15, 2018

Ronald D. Vitiello, Nominated to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security	
Testimony	3
Prepared statement	34
Biographical and financial information	36
Letter from the Office of Government Ethics	52
Responses to pre-hearing questions	55
Responses to supplemental questions	117
Responses to post-hearing questions	125
Letters	130
Richard S. Tischner, Jr., Nominated to be Director, Court Services and Offender Supervision Agency, District of Columbia	
Testimony	5
Prepared statement	162
Biographical and financial information	164
Letter from the Office of Government Ethics	183
Responses to pre-hearing questions	186
Responses to post-hearing questions	200

APPENDIX

ICE Council Follow-up letter	153
ICE Local Presidents	156
Family Apprehensions chart submitted by Senator Johnson	201
UAC Apprehensions chart submitted by Senator Johnson	202
American Academy of Pediatrics Report	204

NOMINATION HEARING

THURSDAY, NOVEMBER 15, 2018

U.S. SENATE,
COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10 a.m., in room 342, Dirksen Senate Office Building, Hon. Ron Johnson presiding.

Present: Senators Johnson, Daines, Carper, Peters, Hassan, Harris and Jones.

OPENING STATEMENT OF CHAIRMAN JOHNSON¹

Chairman JOHNSON. Good morning. This hearing will come to order. I want to welcome our nominees. Thank you for your past service and your willingness to serve again in these important positions.

Today we will consider President Trump's nominees to serve as Director of U.S. Immigration and Customs Enforcement (ICE). The Director is responsible for leading an organization of approximately 19,000 employees with a budget of more than \$7.5 billion. ICE is the lead Federal agency responsible for enforcing Federal laws related to immigration, border control, customs, and trade.

In addition to enforcing our immigration laws, ICE has vast law enforcement responsibilities including investigating financial and cyber crimes as well as intellectual property and commercial fraud, human rights violations, weapons, narcotics, and human smuggling, transnational gang activity, and enforcing our export laws. These missions are critical for our Nation's economic and national security.

President Trump has nominated a qualified and capable candidate to lead the agency. Ronald Vitiello currently serves as Immigration and Customs Enforcement Deputy Director and senior official performing the duties of the Director. Prior to this role, Mr. Vitiello served as Chief of the U.S. Border Patrol and the Acting Deputy Commissioner of U.S. Customs and Border Protection (CBP). He has over 30 years of experience in the Federal Government, including serving at the locations on both the Southern and Northern Borders, and recently received the President's Distinguished Executive Rank Award for an exemplary career of Federal service.

I want to thank Mr. Vitiello for his previous service to this country and for his willingness to lead ICE. It is extremely unfortunate

¹ The prepared statement of Senator Johnson appears in the Appendix on page 31.

that in this political climate the dedicated employees of ICE face constant criticism, threats of violence, and calls from some Members of Congress to abolish such an important agency.

Today we will also consider a nominee to be the Director of D.C. Court Services and Offender Supervision Agency (CSOSA). The Director is in charge of 490 staff members and a budget of \$246 million. CSOSA is responsible for overseeing probationers and parolees as well as providing free trial services in D.C. CSOSA's mission is to enhance public safety, reduce recidivism, and promote accountability, inclusion, and success through the implementation of evidence-based practices in close collaboration with its criminal justice partners and the community. In fiscal year 2017 (FY), CSOSA's Community Supervision Program was responsible for working with 16,407 pretrial offenders, probationers, and parolees.

President Trump's nominee is dedicated to public service with a passion for public safety. Richard Tischner currently serves as Chief of the Superior Court Division in the United States Attorney's Office, a position he has held since 2011. Mr. Tischner has over 30 years of experience with the United States Attorney's Office, also serving as a Supervisory Assistant United States Attorney for approximately 20 years.

I want to thank both nominees for being here today. I look forward to hearing your testimony.

With that I will turn it over to our serving Ranking Member, Senator Peters.

OPENING STATEMENT OF SENATOR PETERS¹

Senator PETERS. Well, thank you, Mr. Chairman, and I want to start by thanking the nominees for their willingness to serve and for their lifetimes of public service as well. You have both spent over 30 years in service to your community and I want to thank you for that commitment.

Mr. Vitiello, today we convene to consider your nomination to lead a critical team, responsible for enforcing our laws and promoting the safety and security of our homeland. As the Director of the Immigration and Customs Enforcement you will lead thousands of public servants who put their lives on the line and dedicate their lives to protect us every day. If confirmed, you will not only lead ICE but you will have to make some very tough decisions every day that prioritize ICE resources. You will set and implement policies that determine who to arrest, who to detain, and which investigations to pursue. It will be up to you to make sure that the safety of Americans does not take a back seat to talking points.

As Congress and Members of this Committee, we have the important role of conducting oversight. We have a responsibility to ask hard questions and to ensure that each Federal agency is acting in accordance with the law and, most importantly, the best interest of the American people.

If confirmed I hope that you too will ask those hard questions about how ICE is using resources to ensure the safety of all Americans. Moreover, if confirmed, you will be in charge of advocating

¹The prepared statement of Senator Peters appears in the Appendix on page 32.

priorities for your department. You will be where the buck stops for ensuring that national security and public safety come first, and I look forward to your testimony here today.

Mr. Tischner, I look forward to hearing from you. The position that you have been nominated to is certainly a very important one, critical to protecting public safety and reducing recidivism here in the District of Columbia. If confirmed, you will be tasked, or taking on tremendously difficult tasks in addition to maintaining effective partnerships amid both Federal and local bureaucracy.

CSOSA must tackle barriers to successful re-entry, drug addiction, mental health, affordable housing and job training, just to name a few of the challenges. These are some of the most profound challenges facing communities across the country today and they are only one piece of fulfilling your mission. I look forward to hearing from you about your plans to improve the performance and increase accountability as well.

Thank you, gentlemen.

Chairman JOHNSON. Thank you, Senator Peters. I would ask consent that we enter in the record six letters of support¹ for Mr. Vitiello as well as a letter from the head of the unions and signed by a number of other union heads,² local union heads, with some questions about the nominee. And I will ask Mr. Vitiello to respond to that during the question period.

It is the tradition of this Committee to swear in witnesses, so if you will both stand and raise your right hand.

Do you swear the testimony that you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. VITIELLO. I do.

Mr. TISCHNER. I do.

Chairman JOHNSON. Please be seated.

I have introduced both nominees in my opening statement so we will just turn right to Mr. Vitiello for your testimony.

TESTIMONY OF RONALD VITIELLO,³ NOMINATED TO BE ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. VITIELLO. Thank you, Mr. Chairman, Ranking Member Peters, and distinguished Members of the Committee. Thank you for the opportunity to appear before you today. As a career law enforcement officer who has served the Nation for more than 30 years, I am honored and humbled to be nominated by the President to be the Director of U.S. Immigration and Customs Enforcement. I also want to thank Secretary Nielsen for her support and confidence in me. I am blessed also to have the support of my wife, Nuri, and our children, Alexis and Ron Jr., who have supported me and I am grateful for their appearance here today, as well as all the sacrifices that they have made over my long career.

As the largest investigative branch within the Department of Homeland Security (DHS), ICE has a critically important mission,

¹The letters of support referenced by Senator Johnson appears in the Appendix on page 130.

²The letters from the unions referenced by Senator Johnson appears in the Appendix on page 156.

³The prepared statement of Mr. Vitiello appears in the Appendix on page 34.

to protect public safety and national security by enforcing U.S. immigration and customs laws, whether it is combating the illegal drug trade, removing illegal aliens who are a threat to public safety, or protecting children from online predators.

This is a mission I understand well after more than three decades of experience in the Border Patrol. In 1985, I started as an agent patrolling the front lines of our border, and I worked in the interior and on both the Northern and Southern Borders. Later, I took on greater leadership and policy roles as Chief of the Border Patrol, and most recently as acting Deputy Commissioner at U.S. Customs and Border Protection. Because of these experiences, I have a deep understanding of the laws and policies governing our immigration system and I am well prepared to lead ICE.

My experience includes working to maintain professional standards and sustain morale while the Border Patrol experienced rapid growth. I helped lead efforts to improve training and strengthen accountability for the use of force, which resulted in a significant decrease in the use of force. Working with Congress, the Office of Personnel Management (OPM), and fellow senior leaders at CBP, we implemented a new pay and compensation statute that saved taxpayers more than \$110 million in the first year of implementation and added operational capacity to the agency.

Throughout my career in the Border Patrol, I worked closely with partners at ICE, which has a complex, but crucial role in our immigration system. My appreciation and understanding of the men and women who serve at ICE has only deepened since I became the Acting Director in June.

Despite adverse conditions that would cripple many other workplaces, ICE employees carry out their important mission with integrity, courage and excellence. Since my start at ICE, I have made it a top priority to meet with front line personnel in the field and ensure that their voices are heard and supported.

The work ICE does to uphold public safety, national security and the rule of law, both in the United States and around the world, is undeniable. During fiscal year 2018, for example, arrests of illegal aliens with criminal histories increased by 50 percent, and removals increased over 13 percent. ICE seized nearly 900,000 pounds of narcotics, including more than 2,300 pounds of fentanyl, which is fueling the deadly opioid crisis. We identified and rescued more than 850 children who were victims of child exploitation and over 300 victims of human trafficking. We made 11,000 arrests of known or suspected gang members, including more than 2,000 linked to MS-13, and removed nearly 6,000 gang members from the country.

These successes, and the dedicated men and women who achieved them, are all too often drowned out or wrongly maligned by misleading rhetoric and misinformation in the public sphere. This kind of rhetoric needlessly escalates the risk in our operational environment, making an already challenging job more difficult and dangerous. It also harms the morale of our workforce, which is composed of people just like you who go to work each day to make the country and the communities they serve in safer.

Like you, our employees are public servants. They should not be threatened with violence or targeted in their homes. They should

not face interruptions to their lawful operations. They should not have to bear the burden of attacks motivated largely by political and policy disagreements.

If confirmed, one of my highest priorities will be to better demonstrate to the public, Congress, and the media the importance and criticality of the mission to protect the homeland and improve public safety, and why our agency's existence should not be up for debate.

Part of that effort is simply remembering why ICE was created in the first place. Following the attacks on September 11, 2001, the 9/11 Commission identified critical gaps in our national security, including the need for stronger interior immigration enforcement and border security. To address those needs and to prevent future attacks on our homeland, our government stood up ICE and the Department of Homeland Security. Eliminating these threats and vulnerabilities through cooperative, effective enforcement is as important today as it was when the Commission's report was published.

I believe Congress shares the goal of a strong border and an immigration system that has integrity. I look forward to working closely with this Committee to address this and the many other challenges our agency faces as we seek to ensure the continued security of the American people. I also appreciate the Committee's important oversight role, and I am committed to ensuring the agency remains accountable to Congress and the taxpayers.

The men and women of ICE are among our Nation's finest and most hard-working public servants and it is a privilege to serve alongside them. I am grateful for them, their loved ones and the sacrifices they make in service to America. Should I be confirmed, it would be a tremendous honor to support them and advocate for them as they carry out this vital mission.

Thank you, and I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Vitiello. Mr. Tischner.

TESTIMONY OF RICHARD S. TISCHNER, JR.,¹ NOMINATED TO BE DIRECTOR, COURT SERVICES AND OFFENDER SUPERVISION AGENCY, DISTRICT OF COLUMBIA

Mr. TISCHNER. I thank you, Chairman Johnson, and Serving Ranking Member Peters and Members of the Committee. I am grateful for your holding this hearing today to consider my nomination. I am truly honored by the nomination and, if confirmed, I stand ready to work alongside other leaders in the District of Columbia criminal justice system to continue enhancing public safety in the Nation's capital. I wish to acknowledge, also, that a number of the CSOSA leadership are behind me today, and I thank them for being here.

CSOSA plays a critical role in providing public safety, as you said, Senator Peters, for those who live, work, and visit the District of Columbia. It strives to reduce recidivism by promoting successful adjustment to supervision by probationers and those returning to the community after a period of incarceration. In those instances where individuals do reoffend, timely coordination, which includes

¹ The prepared statement of Mr. Tischner appears in the Appendix on page 162.

communication, with criminal justice partners is key. If confirmed as Director, I look forward to working with the talented and dedicated professionals at CSOSA to achieve these goals.

I would also be honored to continue my more than 30 years not only in public service but in the pursuit of public safety. As a career prosecutor, I have always done my best to fairly and effectively address violations of the law, to hold offenders accountable, and to attain justice for victims and the citizens of the District of Columbia.

I am especially proud of my service as Chief of the DC Superior Court Division, where I am responsible for leading the U.S. Attorney's Office's largest division in the investigation and prosecution of most local crimes committed by adults in the District of Columbia. I am honored to work with hundreds of dedicated Assistant United States Attorneys, paralegals, and other staff members as we address a wide range of issues and offenses. These range from misdemeanor offenses that affect the quality of life in the District to complicated violent offenses, including sexual assaults and homicides.

The Division handles between 17,000 and 20,000 cases on an annual basis and employs a problem-solving approach, rather than simply processing cases through the system. Under my leadership, it works closely with its law enforcement partners and the community to identify public safety issues and to craft pragmatic solutions.

Having spent most of my career in the United States Attorney's Office working on strictly local criminal justice issues, I am keenly aware of the challenges faced by the entities obligated to provide public safety for this community. I have not only been a prosecutor in the traditional sense, but I have also worked as a community prosecutor where I was tasked with solving complicated, sometimes non-criminal problems and issues impacting residents and neighborhoods throughout the District of Columbia. Additionally, my service and participation in the DC Superior Court's drug court and mental health court has given me a broader perspective of the problems faced by those in the criminal justice system. Finally, my relationships with law enforcement, partner agencies, and the community will serve the citizens of the District of Columbia well if I am confirmed.

I thank you again for the opportunity to appear before you today and for your continued support of public safety efforts in the District of Columbia. I also want to express my gratitude to the staff of this Committee for their work in considering my nomination, and I look forward to your questions.

Chairman JOHNSON. Thank you, Mr. Tischner. I also want to welcome the family members here, and thank them for their support of the nominees. These are important positions, almost 24/7, 365 days a year. These are serious responsibilities and there is a sacrifice on the part of family members as well, offering their support, so I want to thank them.

There are three questions the Committee asks of every nominee for the record, so I will ask the questions and then just ask each of you to answer, give you my response. First, is there anything you are aware of in your background that might present a

conflict of interest with the duties of the office to which you have been nominated.

Mr. Vitiello.

Mr. VITIELLO. No.

Chairman JOHNSON. Mr. Tischner.

Mr. TISCHNER. No.

Chairman JOHNSON. Do you know of anything, personal or otherwise, that in any way would prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated?

Mr. Vitiello.

Mr. VITIELLO. No.

Chairman JOHNSON. Mr. Tischner.

Mr. TISCHNER. No.

Chairman JOHNSON. Do you agree, without reservation, to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Mr. Vitiello.

Mr. VITIELLO. I do, Senator.

Mr. TISCHNER. Yes.

Chairman JOHNSON. OK. Thank you.

Mr. Vitiello, let me first point out I really did appreciate, in your testimony, the fact that you highlighted that ICE identified and rescued more than 850 children, 300 victims of human trafficking, you have made 11,000 arrests of known and suspected gang members, including 2,000 linked to MS-13, removing nearly 16,000 gang members. That is an incredibly important part of your testimony that I wanted to highlight.

I think you are also aware, because the Committee let you know and I think you have a copy of the letter sent by a number of union officials for the National ICE Council. I just wanted to give you an opportunity to quickly respond to that letter.

Mr. VITIELLO. Well, I am aware of the letter, obviously. I have—as the Acting Director, and if confirmed as the Director, will have a contractual obligation to work with the ICE Council on all manners that affect employees. I have spent quite a bit of time, in the short time I have been at ICE, since June, meeting with employees. I have several town halls—San Antonio, Harlingen, Richmond, the Fairfax team at Washington field office. I am very interested in what is driving morale, how I can improve and articulate on their behalf, in this setting, in the media, in public, amongst themselves, and so it is very important for me to understand where the employees are coming from.

The union has—we share that mission in protecting the employees. And so I met with the president of the union, Chris Crane, in August, I think the second. We had a substantive discussion on the things that I think we can most do beneficially together, and I look forward to continuing that relationship and do productive things on behalf of the workforce.

Chairman JOHNSON. OK. And again, I appreciate that kind of general response. What about some of the specific charges about potential retaliation, not allowing union members to regain full-time employment within ICE? And can you just respond to some of those, the tweet?

Mr. VITIELLO. It is very technical, that most of what is outlined in that letter happened before I became the Acting Director. And so there are a number of things I want to look into. There are a number of conversations that I want to have around it. As it relates to union officials, their role is to represent the workforce. They are paid by the government, 100 percent of their time, to represent the union. They do that. Again, I have responsibilities to meet and adjudicate their issues. And so we will continue to keep the dialogue open and I look forward to working with them on specific things.

I think the pay issue, as you helped us with, in my previous career with Border Patrol, is the thing that is the most urgent as it relates to that workforce. And Chris Crane, the president, has specific suggestions on how to get to where we need to be on that, and I look forward to a productive conversation around that.

Chairman JOHNSON. Can you speak directly to the incident within—or the prolonged problem in the Portland ICE office?

Mr. VITIELLO. The Portland is an example—and again, that happened before I started. But Portland is an example where local authorities refusing to help or assist law enforcement officers in ICE. Protestors essentially took over the block around the Federal Building, tried to prevent people from leaving the building, and then prevented, over the days, our employees getting to work.

And we did not have the sufficient—if local do not act in a situation like that, when you call 911 and the local police do not show up, what do you do? So that thing got out of hand very quickly because of the lack of response locally, and it took us a number of days, a week or two, to get the correct Federal forces on the ground, the Federal Protective Service (FPS). They are great partners and they did a great job for us there. But we had to amass forces to get back into the building, and then several weeks on the protest continued.

And so our employees were subject to the protests and having to walk by that on their way to work every day. It was not something that we predicted. Since then, we have put steps in place to monitor social media and get better at, sort of protective intelligence as it relates to our spaces. There is a regular reporting regime. I get a report every day that talks about what threats are out there on the Internet, on social media, what we get from informants and other agencies.

And so we have gotten better about our response, but what was critical at the time when it was needed was the local response that did not come. So we were behind the curve. The whole community was behind the curve until we got the resources there.

Chairman JOHNSON. So the charge is that ICE leadership did not respond adequately, but again, just to get the timeline right, this began before you were installed as Acting?

Mr. VITIELLO. We did what we could with the contingency and a situation that we had not predicted before. We did not expect that the locals would not clear the streets and allow people to get in and out of the building, so it took us a while to do that.

The leadership at Enforcement and Removal Operations (ERO), Nathalie Asher, went and visited the workforce twice. I contacted individual employees who were threatened physically and had

damage done to their own home properties. I talked to them directly. The Secretary participated with me in a virtual teleconference on video with the entire Portland office.

Chairman JOHNSON. You came in in the middle of this, right, and then you responded?

Mr. VITIELLO. Correct.

Chairman JOHNSON. OK. That is all I have. Senator Peters.

Senator PETERS. Thank you, Mr. Chairman.

Mr. Vitiello, according to the Federal Bureau of Investigation (FBI), hate crimes in America have risen 17 percent just last year alone. I believe this is three consecutive years in a row we have seen hate crimes increase in this country. And I think that is why it is imperative that certainly our immigrant community but minority communities all across this country have confidence in the U.S. Government and in our leaders, particularly in key positions, like the one that you have been nominated for.

So my question is, are you familiar with a group, Federation for American Immigration Reform (FAIR)?

Mr. VITIELLO. Yes, I am aware of that group.

Senator PETERS. Are you also aware that the group is classified as a hate group by the Southern Poverty Law Center?

Mr. VITIELLO. I did not know that.

Senator PETERS. As somebody in your position, should you know groups that are classified as hate groups?

Mr. VITIELLO. Well, ICE does not have specific responsibility to prosecute those Federal crimes. Obviously, agents and officers swear an oath to the Constitution and uphold law, public safety, homeland security. Obviously, if we are referred cases for hate crime we would work with local authorities, the FBI, etc., to get those cases prosecuted.

Senator PETERS. Well, I asked that question because my understanding is that you attended a Federation for American Immigration reform group media event that was held. Is that correct, that you were at an event that they held?

Mr. VITIELLO. Correct. At a local hotel they sponsored an opportunity for local radio stations to come to D.C. and broadcast from this area, and I did a number of interviews with local stations about ICE's mission, about the employees, about our critical support to homeland security and local communities. I think I did three separate interviews in that setting.

Senator PETERS. So you were at their event. So you attended their event, but in that situation do you think you should do some background checking as to the organization and whether or not they are classified as a hate group before you show up?

Mr. VITIELLO. The opportunity that we were trying to avail ourselves of, in the press sense, was to talk to these local communities. There are a couple on the Northern Border. I think there was one in Ohio. It is people that are not familiar as it relates to what happens in Washington, what happens as it relates to border enforcement, border security and immigration enforcement. So it was an opportunity to reach into those communities in that setting.

Senator PETERS. Although it was supported by a group that is classified as a hate group. So would you, in the future, avoid those kinds of situations, if confirmed?

Mr. VITIELLO. Obviously having more information in a scenario like that would be better.

Senator PETERS. And you would commit to seeking that out prior to making public appearances?

Mr. VITIELLO. That we can add that to our protocols, yes, sir.

Senator PETERS. It is significant, I think.

Also, words have consequences, as you know. Just a few weeks ago an individual sent over a dozen pipe bombs to political figures across the country, and in this hyperpartisan-charged political environment I certainly am a strong believer that anyone holding positions of responsibility need to lead by example, and they need to behave with civility and understand we need to be bringing this country together, not dividing this country.

So my question for you is in response to a tweet from Mark Levin on September 12, 2012, you suggested that the Democratic Party should be renamed the Liberalcratic party or the Neoclanist party. What did you mean by that tweet?

Mr. VITIELLO. It was a mistake. I was trying to make a joke. I thought it was a direct message. I was not familiar with how the platform worked as it related to that. I did not mean to suggest that the party is somehow against American values, and I deeply regret that I did it. It was a momentary lapse of judgment and I apologize.

Senator PETERS. So you do not believe that that is appropriate language for a government official charged with significant responsibilities?

Mr. VITIELLO. It is important and I understand the gravity of it, but it was meant as a joke, it was not trolly. I was not trying to do anything other than make a joke, and again, I regret it.

Senator PETERS. So why is that funny to you, those terms, Neoclanist party?

Mr. VITIELLO. I do not remember. There was some context about the content on the show. I was trying to respond in that context. I do not remember exactly what the premise was. But again, I realize that it caused offense and I am sorry.

Senator PETERS. So you will commit to this Committee that you are not going to use that type of language going forward?

Mr. VITIELLO. I absolutely commit to that.

Senator PETERS. Acting Director Vitiello, you acknowledge being, I think, quote, "involved in discussions and operational protocols regarding the Administration's most controversial immigration policy that led to family separations."

My question for you is why did not you or anyone recognize that family separations that would occur could cause a massive outcry from the public?

Mr. VITIELLO. It was not perceived in the moment. What we were trying to do, at CBP and in the Department, was not separate families but apply consequences as the Department of Justice (DOJ) leaned forward and offered up additional prosecutorial resources, the so-called zero tolerance policy. We tried to take advantage of that capacity.

Since 2011, the Border Patrol has been tracking very closely—CBP has been tracking very closely the arrests that they make, the consequences, or the post-arrest activity that the government in-

volves in, after each and every arrest. And what we saw, over time, was that if you prosecuted people where those capacities were available, or if you sent people for removal hearings and they actually got removed, that you would see less activity at the border. The recidivism rate went down after we started tracking this in 2011. And so when the Justice Department stepped up and said that they would do more prosecutions, we put instructions in place to take advantage of that.

Senator PETERS. But it was clear that families would be separated at that point.

Mr. VITIELLO. That would have been a consequence. I just have to tell you that in most of the venues, when we refer people for the Federal crime of illegal entry, when they go to court locally a lot of them only go for the hearing long enough to be out of our custody at CBP, out of custody for less than a day, and then they are returned to us. And so the separation was contemplated but it was never meant to be permanent, and in most cases people got back together with their families on the same day.

Senator PETERS. But in many cases that did not happen, and it certainly appears that there was not any planning done on how to reunite families as we went through that. It was, as I looked into this and with locations in Michigan as well, there was a significant lack of planning. Why was that the case?

Mr. VITIELLO. Well, we never contemplated having the systems work backward, right. So the reunification piece is a function of the Department of Health and Human Services (HHS). They have the care and custody of the children once they are out of CBP custody. And so there was a significant recognition that they were going to need more capacity. But nobody in the discussion that I was involved in were contemplating that these people would be separated forever.

Senator PETERS. So if not separated forever, this is a question that I have been trying to get answered by DHS officials, is that we know that children were separated. How long is too long for a child to be separated from their family?

Mr. VITIELLO. Well, we would like to be in a place where no one got separated, right, but separations occur when, in most cases, before zero tolerance, when the guardian or the parent is not suitable to be a parent. They have a violent history or they have other crimes that need to be addressed in Federal prosecution, and so that requires a separation.

So, yes, we would like to be in a place where lots of people did not bring their kids to the border and try to cross illegally, but that is the situation we are faced with now.

Senator PETERS. I am out of time. Mr. Chairman.

Chairman JOHNSON. Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chairman, and Senator Peters, and thank you to both of our nominees this morning. We are very grateful for your public service. We are grateful to your families for sharing that service with you, and we are grateful for your presence here today.

Mr. Vitiello, I want to start by just thanking you for visiting with me in my office last month. We discussed many things, including New Hampshire's significant Indonesian community. As you know, many members of this community came to New Hampshire fleeing religious persecution against Christians in Indonesia. They have become members of the community. They have worked jobs and paid taxes. They have raised their families in the Seacoast area of New Hampshire.

Now, after many years of them living in the country, ICE has prioritized them for deportation, a decision that could put their lives at risk if they return to a country where violence against religious minorities remains a really serious issue. During our meeting you committed to looking into this matter. Could you please tell me what the product of that review was, and whether, as Director of ICE, you would reconsider ICE's efforts to deport these members of the community?

Mr. VITIELLO. Thank you for that question. So we are in a situation where, in the past, people were made to believe that the immigration laws, or people that were subject to removal in the United States would not be arrested. I have done this job for a really long time.

Senator HASSAN. So let me just interrupt you because I have limited time. Did you do a review of that situation?

Mr. VITIELLO. Yes. We looked into it, and the situation involves people who had either final orders of removal, and have had their due process rights. They are not subject to relief under the asylum laws, as refugees from Indonesia, and so they are, in fact, removable. The direction that we got from the President early on in his tenure was that no classes of aliens would be exempt from immigration enforcement.

Senator HASSAN. So your answer to me is that even though these people have built lives in the United States, even though they sought asylum and they are in legitimate fear of religious persecution and violence should they return to their countries of origin, even though they are tax-paying, even though they have built businesses, even though their families are here, and even though there are many more people who are actually engaged in criminal behavior who ICE could be prosecuting, you all are going to continue to prioritize Granite Staters who have built lives in this country and sought justice from us?

Mr. VITIELLO. We are not going to prioritize people just because of where they are from or what scenario that we are having. We prioritize like we always have—threats to public safety—

Senator HASSAN. But you have not always, because these people relied on behavior and Statements from the U.S. Government that gave them the belief that they would be able to stay here and build families here and build lives here and become parts of the community. And they relied on those representations by the U.S. Government, whether they were technically correct under the law or not.

The concept of justice does not lie just in technicalities. It lies in the way we treat people, and it lies in an observance of our core values. So I am trying to understand why, when there are people violating our core values in this country, without documentation or illegally, we are not prioritizing them and why we are prioritizing

law-abiding Indonesians who have been living in our country as Americans for a long time.

Mr. VITIELLO. We are prioritizing threats to homeland security, threats to public safety, and those engaging in criminal activity, and are also in the country illegally.

Senator HASSAN. So you are telling me that you have done all that work and there is nobody else to go after who are more of a threat than these law-abiding people in my State?

Mr. VITIELLO. No. I can tell you that, as a country, as an agency, and as an individual, I recognize that sometimes the law does not do what we want it to do. We are a compassionate nation that is welcoming to immigrants. These people have gone through their constitutional due process rights and they are not subject to relief under the Immigration and Nationality Act (INA). And so when encountered by the immigration officer they are subject to arrest and removal.

Senator HASSAN. I am not going to stay on this subject because I have another one I want to cover, but I do want to say that I do not think that that is an accurate representation of what has happened in their case. It is not that people just happened upon them. They had been given reliances by the U.S. Government that they were in compliance and they could stay here. And they showed up for their regular check-in and all of a sudden the behavior at the U.S. Government changed toward them.

So let us move on to another subject, because I want to follow up on something that Senator Peters was talking to you about, because also during our meeting we talked about indefinite detention of families and the policy of separating children from the families, and we specifically discussed the long-term mental health implications of both practices. At the end of that meeting I provided you with a copy of a report issued by the American Academy of Pediatrics (AAP) from March 2017, that stated that detention, and this is a quote, “can cause psychological trauma and induce long-term mental health risks for children.”

And, Mr. Chairman, I would ask that a copy of that report,¹ which I have with me, be entered into the record.

Chairman JOHNSON. Without objection.

Senator HASSAN. Thank you. So I asked, in our meeting, that you read the report, and you promised you would. So do you agree with the findings from our pediatricians that detention can cause long-term mental health problems for children?

Mr. VITIELLO. I thank you for providing the report. I did read it thoroughly and I understand the American Pediatrics Association’s comments and direction and the import of the report. I understand what it means.

I would like—like I said earlier—that we were not in a situation where large numbers of families with children are approaching the border. That is not the situation that we are in.

Senator HASSAN. You, then, are accepting the findings of the American Academy of Pediatrics, that detention results in long-term psychological harm to children. Is that correct?

¹ The report referenced by Senator Hassan appears in the Appendix on page 204.

Mr. VITIELLO. I think any time a parent breaks the law and their family suffers for it——

Senator HASSAN. That is not my question. Earlier, in response to Senator Peters, you referred to children as if they were tools to impose consequences on their parents. They are not. They are children.

Mr. VITIELLO. That is not the premise that I talked——

Senator HASSAN. Well then, you should——

Mr. VITIELLO [continuing]. I talked about consequences——

Senator HASSAN [continuing]. Clarify your remarks. What I am asking you now is will you accept the findings of pediatricians in the United States of America (USA) that detaining children provides long-term psychological harm to those children? Yes or no.

Mr. VITIELLO. I understand the report, yes.

Senator HASSAN. OK. So one of the most basic qualifications we ask of nominees is that they use their judgment to the best of their ability to protect our core American values. So could you please tell me how you are going to advocate so that children will not be detained and children will not be separated from their families?

Mr. VITIELLO. Well, luckily, the President stopped the zero-tolerance implementation as it related to families, so any family that comes into custody at ICE, referred from CBP or from other means, are either kept together or they are released on alternatives to detention.

Senator HASSAN. And what I would like to understand, as well, is what the alternatives to detention are. I would like a commitment that you all will stop pursuing permission to detain children and to change the Flores settlement, and that you will stand up for American values, which says we do not bully children.

Mr. VITIELLO. Again, I would like to be in a place where large numbers of people were not bringing their children to the border, or sending their children to the border——

Senator HASSAN. We are the United States of America. You did a very excellent job in your testimony of standing up for the men and women who work for ICE. And I have visited with them. I have visited with our Border Patrol officials who are wonderful public servants. And here is the thing. We have the capacity, in the United States of America, to control our borders without harming children. That is something that I am quite confident we can do.

So what I would like to do is move from a situation where you and some of your colleagues are trying to defend what happened, or trying to talk about the difficulty of families on the border as an excuse, and I would like you to start moving forward for solutions that protect children while securing our borders. Both are possible. Because we are the United States. We do hard things.

Mr. VITIELLO. I agree——

Senator HASSAN. So do you commit to working with us to do that?

Mr. VITIELLO. I will work with this Committee on changes in the law that allow us to enforce the border and have an immigration system that has integrity, and I appreciate your advocacy for the ICE workforce.

Senator HASSAN. Thank you.

Chairman JOHNSON. Thank you, Senator Hassan.

Senator HASSAN. Thank you for letting me go over, Mr. Chairman.

Chairman JOHNSON. Before we move on, if you would put up the blue chart.¹ I think we need a little history lesson here, because, again, what ICE does is they enforce the laws that we have allowed this reality to blossom. But back in 2012, 11,116 individuals came to this country illegally, as a family unit, and in 2013, 15,056. And then kind of following the pattern with unaccompanied children (UAC), which, again, I put up the other chart² and we are not going to do it, but followed after President Obama's Deferred Action for Childhood Arrivals (DACA) declaration, you had 68,684 in 2014.

Now the Obama Administration found that quite troubling and so they instituted a policy of detaining those family units, which led to a lawsuit, which led to the re-interpretation of the Flores settlement, which included the fact that—by the way, I agree with Secretary Jeh Johnson, that it was never contemplated that the Flores decision included children accompanied by their parents. But all of a sudden the re-interpretation said no, you cannot detain a child, even with a parent unit.

So in order to enforce our law, and not engage in total catch-and-release, which is what ended up happening, you were really forced into a family separation. It is what we are trying to fix with the Families Act, OK, trying to work in good faith.

I just wanted to continue to go on with what has happened since then. So detention with families intact, under the Obama Administration, actually had an effect. It went from 68,000 down to 40,000. After the Flores interpretation—in 2016, the number of people coming here as family units—because they realized now we can get here, they catch us, they release us, and we get to stay—77,857. In 2017, it is 75,802. Last year it was 107,202 individuals. I mean, are you seeing a pattern here? Last month, in October, 23,121 individuals came to this country illegally—they were apprehended—coming as a family unit.

Now I do not think anybody projects that the level is going to stay after 12 months, but if it were that would be 276,000 people.

So we have a problem on our hands, and ICE has a significant problem, but they are trying to enforce the laws as they are currently interpreted by the courts. That is what we have to fix.

So again, I am just trying to lay out that reality, and this is about a nomination hearing of somebody who has served both the CBP and now with ICE, trying to enforce the law. But we need to change the law. As General John Kelly, in his nomination hearing said, or maybe potentially as Secretary, is we have to have the courage and skill to actually change the law.

Senator HASSAN. And, Mr. Chair, I appreciate that very much. However, my suggestion is we have heard a lot of testimony about ways we could change our practices and law that would tighten up our border, would have people appear for their hearings. We need more lawyers, we need more alternative to detention, and we need more judges.

¹ The chart referenced by Senator Johnson appears in the Appendix on page 201.

² The chart referenced by Senator Johnson appears in the Appendix on page 202.

Chairman JOHNSON. And we are working on that.

Senator HASSAN. But we do not need to detain children or separate them from their families in order to be secure. And it concerns me greatly that the greatest country on Earth is not standing up for children wherever they are.

Chairman JOHNSON. Again, nobody wants to separate families. I think we have kind of established that as one of our goals. But, Senator Harris.

OPENING STATEMENT OF SENATOR HARRIS

Senator HARRIS. Thank you, Mr. Chairman, and I would like to emphasize, to your point, this is a hearing to determine who will be the next head of ICE, and so this is about reviewing the prospective, the qualifications, and the experience of the nominee.

So that being said, I think, Mr. Vitiello would you agree, as a member of law enforcement, that law enforcement, generally speaking, and certainly would be the case with ICE officers and agents, that a great deal of your power is discretionary. You have limited resources and you make decisions about what you are going to do, but you exercise a great deal of discretion, in terms of how you are going to use the limited resources and how you are going to prioritize them.

And then understanding that, I think you would also agree that one's perspective, and their bias, if they have bias, will influence their exercise of discretion, in terms of the power they have and how it will be used and implemented.

So I want to return to the question that Senator Peters asked you, about the statement you made describing the Democratic Party as Liberalcratic or Neoclanist, which was—I think the assumption there was that you were comparing it to the Ku Klux Klan (KKK).

So you said, in response to his question, you are sorry because the words caused offense. So would not be sorry if no one was offended by your words?

Mr. VITIELLO. No. It was wrong to do.

Senator HARRIS. Why was it wrong?

Mr. VITIELLO. Because those are offensive words.

Senator HARRIS. Why are they offensive?

Mr. VITIELLO. Because they have history in this country, and I honestly did not mean it that way.

Senator HARRIS. But please talk about the history. What is the history that would then make those words wrong?

Mr. VITIELLO. Well, the Klan was what we would call today a domestic terrorist group.

Senator HARRIS. Why? Why would we call them a domestic terrorist group?

Mr. VITIELLO. Because they tried to use fear and force to change the political environment.

Senator HARRIS. And what was the motivation for the use of fear and force?

Mr. VITIELLO. It was based on race and ethnicity.

Senator HARRIS. Right. Are you aware of the perception of many about how the power and the discretion at ICE is being used to enforce the laws, and do you see any parallels?

Mr. VITIELLO. I do not see any parallels between——

Senator HARRIS. I am talking about perceptions——

Mr. VITIELLO [continuing]. Officers and agents.

Senator HARRIS. I am talking about perception.

Mr. VITIELLO. I do not see a parallel between what is constitutionally mandated, as it relates to enforcing the law——

Senator HARRIS. Are you aware that there is a perception——

Mr. VITIELLO. I see no perception——

Senator HARRIS [continuing]. Are you aware that there is a perception——

Mr. VITIELLO [continuing]. That puts ICE in the same category as the KKK. Is that what you are asking me?

Senator HARRIS. No. I am very specific about what I am asking you. Are you aware of a perception that the way that the discretion——

Mr. VITIELLO. I see no parallel.

Senator HARRIS. I am not finished.

Mr. VITIELLO. I see none.

Senator HARRIS. I am not finished. Are you aware that there is a perception that ICE is administering its power in a way that is causing fear and intimidation, particularly among immigrants, and specifically among immigrants coming from Mexico and Central America? Are you aware of that perception?

Mr. VITIELLO. I do not see a parallel between the power and the authority that ICE has to do its job, and the agents and officers who do it professionally and excellently with lots of compassion.

Senator HARRIS. Sir, how can you be the head of an agency and be unaware of how your agency is perceived by certain communities?

Mr. VITIELLO. There are a lot of perceptions in the media and in the public that are incorrect, about the agency——

Senator HARRIS. But the perception——

Mr. VITIELLO [continuing]. And what it does.

Senator HARRIS [continuing]. Exists. Would you agree, whether or not it is correct, and would you not agree then that if that perception exists there might need to be some work done to correct the perception?

Mr. VITIELLO. I do want to advocate for the workforce, the vital public safety mission that they have to protect the homeland. And I think more people need to know how valuable they are to the society. So I agree with you on that.

Senator HARRIS. So I understand your point that you want to defend the honor of the good men and women who work in the agency, and I appreciate that point, and I know the vast majority of the men and women who work in the agency do a noble and good job. I am not talking about that. I am talking about the perception.

And it seems to me that you would understand that when you use words such as the words you used only three short years ago, that that would contribute to that perception, and it is harmful then. It is harmful, in terms of the mission of the agency and the work of the individuals there, and it is harmful in terms of leading those who are innocent people, arriving at our border, fleeing harm. It is harmful to them if they feel they will not be treated

by the U.S. Government with dignity and fairness. Do you see that?

Mr. VITIELLO. I agree that all of the people that we encounter deserve fairness, dignity, and respect in the encounters with our agents and our officers.

Senator HARRIS. OK. In August there was a complaint filed with DHS, and the complaint alleges verbal and physical threats, insults, denial of food, and withholding of feminine hygiene products from parents, and these are the parents that were separated from their children, and also were about to be. And these parents were also falsely told that their children would be permanently taken from them.

Following a hearing on September 18, before this Committee, I submitted questions for the record to your Associate Director, asking about these allegations. I have not received a response. So I am going to ask you, one, I am assuming you are aware of the allegations, and I want to know what action have you taken then to investigate the veracity of these allegations?

Mr. VITIELLO. I do not have the specifics on your request. I know that if you sent a letter to the office, on the deputy's testimony, that we are going to put that back for you on the record. I can commit to you that the oversight role that ICE has with our detention centers and what all happens when people are in custody is something that I watch very closely.

Senator HARRIS. My question is very specific. Are you aware of these allegations and, if so, what action have you taken, as the Acting Director, to investigate the veracity of these complaints?

Mr. VITIELLO. In this specific case I do not have chapter and verse for you. What I can tell you is that there—

Senator HARRIS. Do you have any information about what you have ordered to do in the agency to determine whether these allegations, which are serious on their face are, in fact, true?

Mr. VITIELLO. There is a specific protocol when allegations like this come to life through the DHS Office of Inspector General (OIG). We have Office of Professional Responsibility (OPR)—

Senator HARRIS. So what did you do? What did you do, to follow up on these allegations? My question is about you.

Mr. VITIELLO. I can make sure that this allegation is followed up through the protocols—

Senator HARRIS. So you have not done that yet.

Mr. VITIELLO. On this specific case I do not know the specifics of this case. I am happy to get more specifics with you and make sure that it is followed up in a way that is meaningful—

Senator HARRIS. Thank you.

Mr. VITIELLO [continuing]. Using the resources that ICE has.

Chairman JOHNSON. Senator Jones, Senator Hassan has asked to ask one last question. Would you yield to her?

Senator JONES. I would consider that.

Chairman JOHNSON. I do not believe we will have a second round. That is why—OK.

Senator HASSAN. Thank you very much for yielding, Senator Jones, and thank you, Mr. Chair, for that courtesy.

Mr. Vitiello, we also talked, in my office, about the role of the Homeland Security Investigations (HSI) division of ICE. HSI is not

part of ICE's detention and deportation force, and HSI actually has little to do with immigration. HSI is a Federal law enforcement branch that investigates and seeks to stop drug traffickers, arms traffickers, human smugglers, transnational gangs, and terrorist organizations. It is obviously a key counterterrorism and national security entity, and we have to ensure that HSI is well supported in order to keep all Americans safe.

Last June, 19 special agents in charge of HSI field offices sent a letter to Secretary Nielsen asking that HSI be split out from ICE. They reason that their missions have been made more difficult by the public backlash against ICE's deportation force and because DHS and ICE have consistently taken money from HSI's budget to pay for the detention and deportation force at ICE.

So I have two parts to this question. Have you, or will you take money from HSI and undermine their counterterrorism and national security capability in order to provide additional funding to ICE's deportation force?

Mr. VITIELLO. So I appreciate the question. We would never take money from one part of the organization to another if it meant an increased risk to national security.

Senator HASSAN. So is it acceptable or not acceptable to take money from HSI to the ICE deportation force?

Mr. VITIELLO. It is a big agency. It is a lot of taxpayer dollars. It is \$7 billion. And when you run a big agency—when I was at CBP, the Border Patrol budget was like \$3.4 billion. You have to fund what is necessary. You have to meet the obligations that we have. You do so in a risk-based way, and we would do the same at ICE going forward.

I would love to be in a place where the appropriation was adequate to cover all the needs and the mandatory authorities that we have to exercise. In every enterprise, you have to make choices and you have to weigh the risks—

Senator HASSAN. I do understand that. Please understand that there are those of us that think that the agency is not making appropriate risk-based judgments when we look at the HSI concerns expressed in any number of ways. So I would look forward to continuing that conversation.

The other part of this is going back to the letter that the 19 senior members of HSI wrote. Will you consider moving HSI out of ICE and making it its own operational component, separate from the immigration missions of ICE?

Mr. VITIELLO. I have read the letter. I considered the idea and I do not think that we should take any steps in that direction. I think what HSI brings to the table, in money laundering, complex narcotics investigations, their work against MS-13, relies on the agency's complete resources and their authorities under Title 8 to prosecute MS-13 gang members, to clean up communities like we did in Long Island, and having those two complementary missions side by side is better for America than it is not.

Senator HASSAN. I thank you for the answer. I think there is a way of integrating those missions while still making sure that people understand HSI can be trusted within the community so that they can do their law enforcement.

Mr. VITIELLO. I agree with you and the Special Agents in Charge (SACs) that jurisdictions should not be reluctant to work with the law enforcement agency that is constituted to protect the homeland.

Senator HASSAN. Thank you, and thank you, Mr. Chair, for your courtesy, and Senator Jones.

Chairman JOHNSON. Senator Jones.

OPENING STATEMENT OF SENATOR JONES

Senator JONES. Thank you, Mr. Chairman. Thanks to both of you.

Mr. Tischner, you are kind of lost in this shuffle today.

Mr. TISCHNER. I am here.

Senator JONES. Yes. I wanted to make sure you were still awake.

Chairman JOHNSON. Do not feel left out, though.

Senator JONES. I really do not have a question, candidly, but I just want to congratulate you on a very distinguished career.

Mr. TISCHNER. Thank you, Senator.

Senator JONES. Seriously, I am a former Assistant United States Attorney, a former U.S. Attorney. I have worked with a number of your former bosses, who I have great respect for, on both sides of the aisle, in various administrations. So I want to just congratulate you on that and thank you for your service and willingness to serve in this new capacity, and to make sure you were awake during this hearing.

Mr. TISCHNER. Thank you, Senator. I am quite awake.

Senator JONES. Thank you. I appreciate it very much.

Mr. Vitiello, I have a couple of questions. I have heard a lot recently. You have done a lot of work in this field on the border, through various administrations, and now moving over to ICE. And I have heard a lot lately, and I have just got a kind of initially a simple question.

I assume, in your various capacities, you have had discussions with Members of Congress over the years, on both sides of the aisle. Would that be fair?

Mr. VITIELLO. Yes, that is true.

Senator JONES. Have you ever heard anyone, on either side of the aisle, Republican or Democrat, who has said, "Well, sir, I want to let you know I am for open borders"? Has anyone ever said that to you?

Mr. VITIELLO. Not to me, no.

Senator JONES. Did you ever get the sense, when you talked to somebody, that they are, in fact, for open borders?

Mr. VITIELLO. Not in this setting?

Senator JONES. All right. So I guess one of the things I want to make sure we understand is that everyone is wanting secure borders. We may have different agreements, different views on how to get there. But there is no one, despite what we have heard in this political kind of world, that no one is for open borders. We want a secure border.

Now I do want to go back a little bit to what Senator Harris was talking about, and it kind of plays into this, and that is, I come from a State in which words had serious consequences. And I think this is where Senator Harris was certainly going.

Perceptions can become realities for so many people out there. When we hear certain words and we call certain people enemies, we create a culture of fear of people who are just seeking a better life, who are barefoot and poor and trying to get away from a very difficult situation.

And I want to make sure that, as a member of ICE, that you are going to commit to help tone down the rhetoric that we see in our immigration debate, because I do not think it is healthy. In fact, I think it is incredibly destructive. And as we have seen, it can be very dangerous. We have seen things recently where 11 people were killed in a Jewish synagogue, where explosive devices were sent to prominent members who opposed the administration, that words have consequences.

And I would just like to make sure, especially given comments that you acknowledge were inappropriate, and a mistake, I would like for you to just talk a little bit about that and a commitment from you that you will do what you can, if you are confirmed as the head of ICE, to help make sure that the rhetoric is toned down and that you, as an agency head, and your directives—all of those that work for you—understand that the perception can be reality sometimes. And I can attest to you there are four little girls that were murdered in Birmingham in a bomb blast, that were a direct result of a Governor and a police commissioner's words that empowered people to do bad things. So I really need that commitment from you.

Mr. VITIELLO. I am committed to working with this Committee, working with the larger legislative branch so that the people in the media understand how vital the workforce is, and I am absolutely committed to doing it in a professional and respectful way.

Senator JONES. All right. So that really did not answer my question, sir. I really am troubled by the answer, because you do not need to work with this Committee. You do not hear any of this rhetoric coming out of this Committee. You hear it coming out of the administration, and it does it in a political context. I want you to make sure that you stand up and do the right thing, and say, "Wait a minute. This is not who we are." That is the commitment I am asking from you, sir.

You do not need to work with this Committee. This Committee is all on board with trying to make sure we keep things in a certain level. I want you to work with the folks above you. I want you to work with the Secretary or the President or the Vice President, whoever it might be. Can I get that commitment that you will, even if it is behind closed doors and not necessarily public, can I get a commitment to stand up to just simply do the right thing and to tell people that they need to be careful with what they say?

Mr. VITIELLO. I strive always to do the right thing and I am committed to do that as well.

Senator JONES. All right. Thank you, sir. I think that is all I have.

Chairman JOHNSON. I appreciate that. I also appreciate that Senator Peters was willing to stand in as Ranking Member. I know he has a hard stop at 11, but do you have another question real quick before you need to go?

Senator PETERS. I do. Thank you, Mr. Chairman. Mr. Vitiello, just a couple more questions for you. First off, the New York Times reported, on October 22, 2018, that the administration is weighing some new policies to deter migrant families from journeying north, including a new form of family separation. News reports have indicated that under a proposal—it is called a binary choice policy, is what I believe—parents would be forced to choose between voluntarily relinquishing their children to foster care or to remain imprisoned together as a family. The latter option would require parents to waive their child's right to be released from detention within 20 days, related to court cases, as you know.

So my question to you, are you involved in any way with the policy planning that would allow parents to choose between family separation or remaining detained together as a family?

Mr. VITIELLO. In early October, as a result of the litigation, the idea came out of the judge's order to the agencies and the plaintiffs, and so that option or that discussion is underway. It is a way for us to meet the requirement of the Flores settlement agreement while giving people a complete opportunity of due process in immigration proceedings.

Senator PETERS. So do you support the proposal for a binary choice policy? What are your thoughts on it?

Mr. VITIELLO. It is a way for people to have a due process opportunity and remain in custody, and what I have seen over my long career is that if people are allowed relief under the law then we should do that. That is an opportunity that ICE is responsible to give people in that process in front of the judge. But if they are not, and they are removed quickly after the due process and the safeguard back to their home, we will get less traffic. I think that is what is illustrated in the Chairman's chart. If we can close the loop on proceedings with due process we will get less recidivism at the border. We will get less people bringing their children.

So it is an option. It right now would be in conflict with the President's direction to keep families together.

Senator PETERS. But the administration is discussing in.

Mr. VITIELLO. There have been discussions after the judge gave that information to both sides in the litigation.

Senator PETERS. Yes, and I think we all agree that we want to expedite any of the hearings that folks have. I think that is a universal agreement here, that people have the right for due process to expedite it. But I am not sure how the fact that you give folks a choice between being separated from their children or being detained, and then asking them to waive the 20-day period where they children cannot stay in detention, how that is going to accelerate that. There are other issues that we would need to deal with, as a Committee, and resources that we will talk about, that have judges and others to be able to expedite. I am not sure how this policy actually does that.

And I guess it leads to a question that I have been trying to get answered. In addition to how long folks could be separated, the other question is how long should a child be detained? You responded to Senator Harris's question that you had read the information related to how detrimental a child is, or the effect on a child when they are detained.

So my question to you is, how long does ICE believe a child should be detained? What is the view of ICE?

Mr. VITIELLO. It is a matter before the court. In other contexts, when people are seeking relief or they are going in front of immigration proceedings—for instance, an adult male from Guatemala, they are out of our custody in less than 2 months. And so they get their complete due process rights, and if they have relief under the law they are out of proceedings quickly. They are out of detention faster than that.

And so when we hold people and remove them after their due process opportunity, it will abate the traffic, like we saw in 2015.

Senator PETERS. The answer is pretty straightforward. You still have not answered it. It is just, is there an upper limit to how long a child should be detained, in your view?

Mr. VITIELLO. Well, the law gives us upper limits. In this discussion, what we are trying to seek is full opportunity in the due process, and that requirement, and then if they are not subject to relief then they are held only long enough to remove them.

Chairman JOHNSON. Let me chime in, because this is where Congress bears responsibility to determine what this is, and this is why we are trying to do, and what I would hope would be a non-partisan basis, look at the problem, address the problem, fix the problem, and we need to make those decisions, rather than having somebody who is looking to confirm a nomination on somebody who is going to have to follow the law that we write. And right now the law is broken. It is just broken because we have this kind of result.

So again, I am really hoping that this Committee can work on a very nonpartisan basis, fix the law so we have something to enforce as opposed to having the administration and courts decide all these things for us.

But with that, Senator Daines.

OPENING STATEMENT OF SENATOR DAINES

Senator DAINES. Thank you, Mr. Chairman, and I want to thank both the nominees for coming up here today.

Mr. Vitiello, it is great to see you as well, again. For over three decades you have served our country. You enforced the rule of law. Thank you for your service. Thank you for your continued desire to protect our country in this incredibly important role. I believe you have the leadership and experience necessary to be most effective in this position.

ICE is one of our country's most critical security measures and is essential in protecting its citizens. As you mentioned, ICE seized nearly 900,000 pounds of narcotics, rescued more than 850 children who were victims of sexual exploitation, and arrested 11,000 known or suspected gang members, and that was in fiscal year 18. The work that ICE does in protecting America's security and upholding the rule of law cannot be overstated. The fact that some Members of Congress have called for the abolishment of ICE is simply outrageous. It is long past due that we confirm you.

Mr. Vitiello, our country is facing an opioid crisis. Let me tell you something. In Montana, we are facing a meth epidemic. I just literally came from a meeting with some individuals in Montana who deal with our foster care system. The numbers in our foster care

system have tripled, according to this group, most recently, as a direct result of meth. The vast majority of this devastating drug comes from Mexico. The meth of old was home-grown, with meth labs. The meth today is coming via cartels, as you know, coming up through Mexico, and it is destroying—it is destroying our communities in Montana. It is destroying families. These effects are very personal. While ICE Homeland Security investigations seized 80 pounds of meth in fiscal year 18, families and communities are suffering. They are being destroyed.

My question is how will you ensure that rural States, like Montana, remain a top priority for ICE, and do you have the necessary resources to control the meth epidemic that we are seeing right now in Montana?

Mr. VITIELLO. Well, as an operator I will always tell you we need more resources, but I appreciate that. I appreciate your kind words as well. ICE seized about 60,000 pounds of methamphetamine last year with a value of about \$475 million. In your environment, on the Northern Border, our best resources, in the HSI context, is the Border Enforcement Security Teams (BEST). So we have a number of those along the Northern Border, working directly with partners and colleagues in Canada, and then our State and local and tribal partners as well. So providing task force funding, overtime for State and locals, working complex pathways, identification. How are these things coming into the country from Mexico? How are they reaching markets in the United States.

ICE has a wonderful capability, that I am very impressed with, on the dark web marketplace. A lot of these things now are being imported, either across the border or imported, but people start the search for these goods online in the dark web, and ICE and HSI has a great capability to combat the transactional nature of that, but then also to follow the money and the pathways of this illicit methamphetamine into the United States.

Senator DAINES. I would like to talk about sanctuary jurisdictions, places that violate the laws of our Nation, encourage illegal immigration, and compromise the security of law-abiding citizens. Recently news broke of an illegal immigrant who has been charged with triple murder after being released from a county jail in New Jersey. ICE had issued a detainer requesting notification prior to his release in order to place him in removal proceedings.

Tragically, the detainer was not honored. This illegal immigrant made his way to Missouri, where he took three innocent lives. Sanctuary jurisdictions that protect illegal immigrants while blatantly refusing to cooperate with Federal law enforcement are a direct affront to this country's rule of law and puts innocent lives at risk.

My question, Mr. Vitiello, is how can ICE improve cooperation with sanctuary jurisdictions so that the rule of law is enforced and more innocent lives are not lost?

Mr. VITIELLO. Yes, it is a very frustrating situation. I would like to be in a place where jurisdictions could understand the risk that they take when they cannot cooperate or cannot honor a detainer. What we can do is be responsive to the calls for detainers for those jurisdiction that do do that, and then working with State and locals in individual jurisdictions to get them to understand what risk they

are placing on the homeland, and certainly in their individual communities.

I think what you will hear from some jurisdictions, those that want to cooperate, some that do cooperate but they do not want people to know about it, is that there is some liability on their part that they would like to have addressed by legislation. And so we have specifics on that, we can get with you and your staff on. But I am old enough to remember—I mean, 100 years ago, when I was an agent on the line, you could hand a detainer to a deputy at a road stop and that jurisdiction would then honor that detainer when they were finished with the pendency of that judicial process for that individual.

That is where we need to be as a country. We need the Federal law to be enforced with the cooperation of State and local jurisdictions. It is a risk that the country should not have to take.

Senator DAINES. Mr. Vitiello, you talked about the Northern Border a bit. You have served over 30 years with Border Patrol, and part of that time was spent on the Northern Border. While the great majority of border security is focused on the Southern Border, and understandably, particularly if you look at the meth issue, Mexican meth coming into the United States. That is what is affecting Montana.

Our border with Canada is the longest land boundary between any two countries in the world, 545 miles of which is Montana. The threats posed on the Northern Border pale in comparison to those on our southern, yet transnational criminal organizations (TCOs), drug smuggling, terror threats are still present. In fact, earlier this year DHS released its Northern Border Strategy.

My question is, in light of these findings and your own personal experience, can you speak to how a Northern Border can best be secured and how ICE will assist in that mission?

Mr. VITIELLO. So it is our work with the State and locals, our partners in Canada, to understand the pathways. Criminal organizations, as powerful as they are, are vulnerable when they cross the border, when their financial instruments cross the border. So what we will continue to do, through HSI and the BEST teams, is integrate into those communities, understand what the discrete threats are in each of the communities, and continue to apply our resources to hold to account those that traffic across the border.

Senator DAINES. Thank you. Thank you, Mr. Chairman.

Chairman JOHNSON. Thank you, Senator Daines.

Senator Harris, after significant but effective arms-twisting, Senator Carper has graciously agreed to let you ask a question for his round.

Senator HARRIS. Senator Carper is indeed a gracious gentleman and I appreciate that.

Senator CARPER. OK. I will have to go to the physician's office after this to have my arm repaired, but I am happy to do it.

Senator HARRIS. I appreciate that. Thank you.

Mr. Vitiello, in December 2017, so last year, I issued a directive that reversed a policy that existed before, which presumed that pregnant women should not be detained. And my question, and I have asked this before of others of your colleagues, is since ICE issued—and I have not received a response—since ICE issued this

directive, how many pregnant women have been detained in ICE custody, and have been in ICE custody?

Mr. VITIELLO. It is important to know that all females of age are tested as they come into our custody, so sometimes we are not aware until they are already in ICE custody. So the number is very small. I do not have it in front of me, but within 12 hours of them coming into our custody they are tested, and then once we are aware of the pregnancy then they are referred for medical care immediately, and that care is the same standard care—

Senator HARRIS. Sir, my question is very specific. Since ICE issued the directive in December of last year, how many pregnant women, to your knowledge, have been detained in ICE custody?

Mr. VITIELLO. Let me take that back, and I can give you a precise answer. Very few.

Senator HARRIS. When will I get that answer, because I have asked it before.

Mr. VITIELLO. We can get you that by the end of the day.

Senator HARRIS. OK. I appreciate that. And so to follow up, I also would like to know how many pregnant women are currently detained.

Mr. VITIELLO. I will get that for you.

Senator HARRIS. And also I would like a breakdown, which I have also asked for before, by trimester, so how many of those who are pregnant are in their first, second, or third trimester. And since ICE issued this policy there has also been a question about what is exactly the policy regarding women in their third trimester. Can you tell me what the current policy is on that?

Mr. VITIELLO. The very rare circumstance where someone would be in custody in their third trimester, it would only be for—to effectuate a removal. It would not be for—

Senator HARRIS. Is that the policy? What is the policy?

Mr. VITIELLO. The policy recognizes that that is the highest risk to the individual—

Senator HARRIS. Yes

Mr. VITIELLO [continuing]. And so all safeguards are taken, all medical advice rules the day. But if someone is removable and we have the opportunity to remove them then they will be removed.

Senator HARRIS. I am still not clear. What exactly is the ICE policy on detaining women in their third trimester of pregnancy? Can you give me exactly what that is?

Mr. VITIELLO. The policy is that special care is taken in the third trimester, and it is presumed that we would not keep anyone in custody. But if they are in custody and we have the ability to remove them then we would do that.

Senator HARRIS. So the presumption is women in their third trimester should not be in custody?

Mr. VITIELLO. It is the highest level of risk.

Senator HARRIS. That I am clear about, in terms of the risk. But what is the policy?

Mr. VITIELLO. The policy is that you follow the doctor's orders and safeguard the lives that are at stake.

Chairman JOHNSON. Senator Carper.

Senator HARRIS. Sir, I am not finished. Thank you, but I am still on this line of questioning.

Chairman JOHNSON. I think we let you do one question. There has been a series of them, and——

Senator HARRIS. Mr. Chairman, other people have had more time than I have used right now to follow up on their questions and I would like to finish this line of questioning about pregnant women being detained in ICE custody.

Chairman JOHNSON. You can do that in written, but Senator Carper.

Senator HARRIS. Let the record please——

Senator CARPER. I will yield one more minute to the Senator.

Senator HARRIS. I appreciate that. Thank you.

And regarding Secretary Nielsen, when she was here before, she promised this Committee that there would be an assessment of medical treatment of pregnant women in detention. I have not received a response to that question so I am asking you today, has ICE conducted an assessment of the treatment of pregnant women in its detention facilities?

Mr. VITIELLO. A specific assessment I am not aware of. Obviously if the Secretary ordered that we will make sure you get that as well.

Senator HARRIS. OK. And so when you follow up, I asked for that in May of this year. And then what outside medical experts, if any, have ICE engaged in conducting this assessment? And I would like documentation provided that shows who has been consulted and what they have recommended, and I would direct your attention to a letter that you have received, or your agency received, in March of this year, from the Academic of Pediatrics and the American College of Obstetricians and Gynecologists, and the American Academy of Family Physicians, that said, very specifically, quote, "The conditions in DHS facilities are not appropriate for pregnant women." Thank you.

Chairman JOHNSON. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Welcome to both of our witnesses. Thank you for being here. Thank you for your service and your willingness to serve in these roles.

Mr. Tischner, I understand you have not been asked a lot of questions. That is a good thing, and I will just not ask you a lot of questions today, but welcome.

Mr. Vitiello, thank you so much for spending time with us yesterday and being here today. We may want to talk with you further after this hearing, if that is possible.

I think I mentioned to you I am a former Governor, and I still think like a Governor. The idea that ICE has a person of interest somewhere in Delaware or some other State, that person is detained by State and local officials, from my State or another State, ICE is notified and my understanding is ICE asks the—there is an expectation for ICE to come and take custody of the person of interest within a relatively short period of time.

We spend a lot of money in Delaware on corrections, and I know we do in other States as well. But give us some idea of the period of time after a jurisdiction lets you know at ICE, "We have a person that is of interest to you," what period of time elapses before

ICE picks that person up? Meanwhile, because the local jurisdiction has to pay for security. They have to pay for feeding this person, and that sort of thing, medical, meals and all. And so they generally want to get that person out of their custody, back to where they belong with ICE. How quickly does that happen?

Mr. VITIELLO. Yes, I definitely understand that. We talked a little bit earlier about detainers, and the detainers ask for us, in ICE, to get a 48-hour notice, presuming that the department or the jurisdiction is getting ready to release. And so within that timeframe we would mount a response. But in some places, given the adequate resources, distances, etc., we would do it as quickly as we could.

Senator CARPER. All right. What is "as quickly as we could?"

Mr. VITIELLO. As fast as we can get someone there. Again, it depends on the circumstances, how far things are apart, whether we have adequate detention space to take another individual into custody, etc.

Senator CARPER. Yes. Well, I am going to ask you to think about that, and when we talk again I will ask you to come back and revisit that. All right?

Mr. VITIELLO. Very good.

Senator CARPER. Thank you. We talked a bit yesterday about why, in Mexico, why are there more Mexicans going back into Mexico than there are Mexicans trying to get into the United States, undocumented or illegally? And I think we basically agreed that the reason why is because, in Mexico, there is more hope, more opportunity. There is crime but it is a more safe place, by far, than Honduras, Guatemala, El Salvador. And that has helped turn things around in terms of movement of Mexicans in and out of Mexico and our country.

I said yesterday, where I live we are raising our families from Honduras, Guatemala, and El Salvador. Given what they face in terms of danger and lack of opportunity and hope, we would be tempted to pull out and release their kids and their families to a safer place, and the United States is probably the closest, safest place.

Give us just 1 minute on what we ought to be doing to improve the quality of life, to reduce the need for folks who live in those countries to abandon everything they have to make this long journey to face an uncertain future. Talk us to about that. What is going on there and what we can do better.

Mr. VITIELLO. Well, what we are doing in ICE and in the HSI context, internationally we have these Transnational Criminal Investigative Units and that is an opportunity for us to work with local authorities in those countries to train and vet their law enforcement officers and then help them guide and direct and use their law enforcement resources to improve the rule of law in those locations. That is an important facet of what we are doing.

The Secretary, and Secretary Kelly before her, also is engaged in the security and prosperity plan, which allows for our government to understand the resources that we are putting downrange in the Northern Triangle to help improve investment opportunities and encourage foreign direct investment in those locations.

Senator CARPER. Is that part of the Alliance for Prosperity?

Mr. VITIELLO. Yes, sir.

Senator CARPER. OK. All right. How important do you think that Alliance for Prosperity is?

Mr. VITIELLO. I think you have to do it all. I think people have to have the expectations that their property and their safety is well cared for in those locations, and then you have to have economic opportunity and hope in those locations as well.

Senator CARPER. All right. Mr. Chairman, we have actually a lot of interest in that part of the world, and because of our leadership of this Committee at one time or the other. We are asked to spend a whole lot of money for a law on our border with Mexico and I think there are certainly places where a wall makes sense and a lot of places where it does not. But I think it really makes sense, if you look at what has happened in Colombia, 20 years, Colombia has actually turned the country around and got people not trying to get out of there to come up here, and I think the same thing could happen in the Northern Triangle if we are smart about it.

The last question I have is I am concerned that you may not appear to think through the consequences of President Trump's family separation policy when you had a role in implementing it. President Trump appears determined to continue to implement what I think are ill-considered, maybe legally questionable immigration policies that use scarce Federal resources without making us any safer.

If confirmed, how would you avoid repeating the errors in judgment in planning that allowed the family separation policy to occur, and if you would—we do not have a lot of time but just give us some specificity.

Mr. VITIELLO. So it was not a family separation policy. It was an increased level of prosecution, right? The Department of Justice said they would involve resources to give us a zero tolerance for people who crossed the border in between the ports illegally. And so the lesson learned there is we did spend a lot of time in this setting urging Congress to close these loopholes, to give us an opportunity to let people have their due process rights and then removed when they were not eligible for relief under the INA.

So we would like to have that opportunity, but in the case of what did happen, we should have leaned forward more on explaining the whole process and being ready for the public outcry that occurred.

Senator CARPER. All right. Mr. Chairman, one thing I would say, I do not know. You and I have had conversations about this, but the idea that folks focused on the Northern Triangle—Honduras, Guatemala, El Salvador—would like to get out of there and apply for asylum, there is legislation that has been introduced—I am cosponsor and you may be as well—that would basically allow folks who are seeking asylum to do it in their native country at our consulates, our embassy, and not have to get on a 1,000-mile journey with an uncertain future. So that is something, I think, that has a lot of merit.

All right. Thank you very much, and, Mr. Tischner, I thought you were excellent in your responses today. Thank you.

Chairman JOHNSON. Thank you, Senator Carper, and again, I think the goal we all share is to make that a legal process.

Mr. Tischner, like Senator Carper said, do not feel bad about being left out. Feel relieved.

Just real quick, I understand that your position is incredibly important. We have a project in Milwaukee called the Joseph Project where we have are working with an inner-city church. We have a pastor, Pastor Jerome Smith, a wonderful man, who identifies people formerly incarcerated, former drug and alcohol abusers, that have reached the stage in life where they want to turn it around. And so they are able to transform their life through work.

And all we do—it is a 4-day, 3-hour-a-day training program that just instills the necessity to commit themselves to turn their lives around, commit themselves to succeed, as well as have the right kind of attitude, on the job, in the application process, in the interview process, and every day on the job.

So I am just going to throw it out there to you. If you want to see that in action, I think it would be valuable for you, and you are always welcome to come take a look at one of our sessions at the Joseph Project and talk to people in terms of how it has worked. But give you an opportunity to kind of respond to that or say something in this hearing.

Mr. TISCHNER. Thank you, Chairman Johnson. I would appreciate the opportunity to do that. I know that locally there are faith-based organizations that are also very helpful in giving opportunities to individuals who have been incarcerated in the past—and who have had tough lives. Also, I do think that removing the impediment of unemployment is one of many that does make individuals succeed and come back to be productive and contributing members to the local community. Chairman Johnson I appreciate the offer.

Chairman JOHNSON. The dignity of work is kind of hard to replace, in terms of people transforming their lives.

So again, I want to thank the nominees for your past service, for your willingness to serve, your families for their support of you.

The nominees have made financial disclosures and provided responses to biographical and pre-hearing questions submitted by the Committee.¹ Without objection, this information will be made part of the hearing record,² with the exception of the financial data, which are on file and available for public inspection in the Committee office.

The hearing record will remain open until noon tomorrow, November 16, for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 11:27 a.m., the Committee was adjourned.]

¹ The information of Mr. Vitiello appears in the Appendix on page 36.

² The information of Mr. Tischner appears in the Appendix on page 164.

A P P E N D I X

**“The Nomination of Ronald D. Vitiello to be Assistant Secretary of Homeland Security,
U.S. Department of Homeland Security and Richard S. Tischner, Jr. to be Director, Court
Services and Offender Supervision Agency for the District of Columbia”**

**Opening Statement of Chairman Ron Johnson
November 15, 2018**

As prepared for delivery:

Today, the Committee will consider President Trump’s nominee to serve as the Director of U.S. Immigration and Customs Enforcement, or “ICE”. The Director is responsible for leading an organization of approximately 19,000 employees with a budget of more than \$7.5 billion. ICE is the lead federal agency responsible for enforcing federal laws related to immigration, border control, customs, and trade. In addition to enforcing our immigration laws, ICE’s vast law enforcement responsibilities include investigating financial and cybercrimes as well as intellectual property and commercial fraud; human rights violations; weapons, narcotics, and human smuggling; transnational gang activity; and enforcing our export laws. These missions are critical for our nation’s economic and national security.

President Trump has nominated a qualified and capable candidate to lead the agency. Ronald Vitiello currently serves as Immigration and Customs Enforcement’s Deputy Director and Senior Official Performing the Duties of the Director. Prior to this role, Mr. Vitiello served as Chief of the U.S. Border Patrol and the Acting Deputy Commissioner of U.S. Customs and Border Protection. He has over 30 years of experience in the federal government, including serving at locations on both the southern and northern borders, and recently received the President’s Distinguished Executive Rank Award for exemplary career federal service. I want to thank Mr. Vitiello for his previous service to this country and for his willingness to lead ICE. It is extremely unfortunate that in this political climate, the dedicated employees at ICE face constant criticism, threats of violence, and the calls from some members of Congress to abolish such an important agency.

Today we will also consider a nominee to be the Director of D.C. Court Services and Offender Supervision Agency, or “CSOSA”. The Director is in charge of 490 staff-members, and a budget of \$246 million. CSOSA is responsible for overseeing probationers and parolees, as well as providing pretrial services in D.C. CSOSA’s mission is to enhance public safety, reduce recidivism, and promote accountability, inclusion, and success through the implementation of evidence-based practices in close collaboration with its criminal justice partners and community. In FY 2017, CSOSA’s Community Supervision Program was responsible for working with 16,407 pretrial offenders, probationers, and parolees.

President Trump’s nominee is a dedicated public servant with a passion for public safety. Richard Tischner currently serves as Chief of the Superior Court Division in the United States Attorney’s Office, a position he has held since 2011. Mr. Tischner has over 30 years of experience with the United States Attorney’s Office, also serving as a Supervisory Assistant United States Attorney for approximately 20 years.

Thank you to both the nominees for being here today. I look forward to hearing your testimony.

Senator Gary C. Peters Prepared Remarks

“The Nomination of Ronald D. Vitiello to be Assistant Secretary of Homeland Security, U.S. Department of Homeland Security and Richard S. Tischner, Jr. to be Director, Court Services and Offender Supervision Agency for the District of Columbia”

November 15, 2018

Thank you Mr. Chairman, I appreciate you holding this hearing and I want to start by thanking the nominees for their willingness to serve and for their lifetimes of public service. You have both spent over thirty years in service to your country and I want to thank you for that commitment.

Mr. Vitiello, today we convene to consider your nomination to lead a critical team responsible for enforcing our laws and promoting the safety and security of our homeland. As the Director of Immigration and Customs Enforcement (ICE), you will lead thousands of public servants who put their lives on the line and dedicate their lives to protect us.

If confirmed, you will not only lead the men and women of ICE, but you will also have to make tough decisions every day that prioritize ICE’s resources. You will set and implement policies that determine who to arrest, who to detain, and which investigations to pursue. It will be up to you to make sure that the safety of Americans does not take a back seat to talking points.

As Congress and members of this Committee, we have the important role of conducting oversight. We have a responsibility to ask hard questions and ensure that each federal agency is acting in accordance with the law and in the best interests of the American people.

If confirmed, I hope that you too will ask hard questions about how ICE is using its resources to ensure the safety of all Americans.

Moreover, if confirmed you will be in charge of advocating priorities for your department. You will be where the buck stops for ensuring that national security and public safety come first at ICE. I look forward to your testimony.

Mr. Tischner, I also look forward to hearing from you. The position that you have been nominated to is an important one—critical to protecting public safety and reducing recidivism in the District of Columbia.

If confirmed, you will be taking on a tremendously difficult task. In addition to maintaining effective partnerships amid both federal and local bureaucracies, CSOSA must tackle barriers to successful reentry—drug addiction, mental health, affordable housing, and job training, just to name a few.

These are some of the most profound challenges facing communities across the country today, and they are only one piece of fulfilling CSOSA's mission. I look forward to hearing from you about your plans to improve performance and increase accountability at CSOSA.

Statement of Ronald D. Vitiello
Nominee to be Director of U.S. Immigration and Customs Enforcement
November 15, 2018

Mr. Chairman, Ranking Member McCaskill, and distinguished Members of the Committee, thank you for the opportunity to appear before you today. As a career law enforcement officer who has served our nation for more than 30 years, I am honored and humbled to be nominated by the President to be the Director of U.S. Immigration and Customs Enforcement. I also want to thank Secretary Nielsen for her support and confidence in me.

I am blessed to also have the support of my wife, Nuri, and my children, Alexis and Ron Jr., who are here with me today.

As the largest investigative branch within the Department of Homeland Security, ICE has a critically important mission to protect our public safety and national security by enforcing U.S. immigration and customs laws – whether it's combatting the illegal drug trade, removing illegal aliens who are a threat to public safety, or protecting children from online predators.

This is a mission I understand well after more than three decades of experience in the Border Patrol. In 1985, I started as an agent patrolling the front lines of our border, and I worked in the interior and on both the Northern and Southern Borders. Later, I took on greater leadership and policy roles as Chief of the Border Patrol, and most recently as acting Deputy Commissioner at U.S. Customs and Border Protection. Because of these experiences, I have a deep understanding of the laws and policies governing our immigration system and am well prepared to lead ICE.

My experience includes working to maintain professional standards and sustain morale while the Border Patrol experienced rapid growth. I helped lead efforts to improve training and strengthen accountability for use of force incidents, which resulted in a significant decrease in the use of force. Working with Congress, the Office of Personnel Management, and fellow senior leaders at CBP, we implemented a new pay and compensation statute that saved taxpayers more than \$110 million in the first year of implementation and added operational capacity to the agency.

Throughout my career in the Border Patrol, I worked closely with partners at ICE – which has a complex, but crucial role in our immigration system. My appreciation and understanding of the men and women who serve at ICE has only deepened since I became Acting Director in June.

Despite adverse conditions that would cripple many other workplaces, ICE employees carry out their important mission with integrity, courage and excellence. Since my start at ICE, I've made it a top priority to meet with front line personnel in the field and ensure that their voices are heard and supported.

The work ICE does to uphold public safety, national security and the rule of law both in the United States and around the world is undeniable. During Fiscal Year 2018, for example,

arrests of illegal aliens with criminal histories increased nearly 50 percent, and removals increased over 13 percent. ICE seized nearly 900,000 pounds of narcotics – including more than 2,300 pounds of fentanyl, which is fueling the deadly opioid crisis. We identified and rescued more than 850 children who were victims of sexual exploitation and over 300 victims of human trafficking. We made 11,000 arrests of known or suspected gang members – including more than 2,000 linked to MS-13 – and removed nearly 6,000 gang members from our country.

These successes – and the dedicated men and women who achieved them – are too often drowned out or wrongly maligned by misleading rhetoric and misinformation in the public sphere. This kind of rhetoric needlessly escalates the risk in our operational environment – making an already challenging job all the more difficult and dangerous. It also harms the morale of our workforce, which is composed of people just like you who go to work each day to make our communities and our country safer.

Like you, our employees are public servants. They should not be threatened with violence or targeted at their homes. They should not face interruptions to their lawful operations. They should not have to bear the burden of attacks motivated largely by political and policy disagreements.

If confirmed, one of my highest priorities will be to better demonstrate to the public, Congress, and the media the importance of our mission to homeland security and public safety – and why our agency's existence should not be up for debate.

Part of that effort is simply remembering why ICE was created in the first place. Following the September 11th terror attacks, the 9/11 Commission identified critical gaps in our national security – including the need for stronger interior immigration enforcement and border security. To address those needs and to prevent future attacks on our homeland, our government stood up ICE and the Department of Homeland Security. Eliminating these threats and vulnerabilities through cooperative, effective enforcement is as important today as it was when the Commission's report was published.

I believe Congress shares the goal of a strong border and an immigration system that has integrity, and if confirmed, I look forward to working closely with this Committee to address this and the many other challenges our agency faces as we seek to ensure the continued security of the American people. I also appreciate the Committee's important oversight role, and I am committed to ensuring our agency remains accountable to Congress and the taxpayers.

The men and women of ICE are among our nation's finest and most hard-working public servants and it is a privilege to serve alongside them. I am grateful for them, their loved ones and the sacrifices they make in service to America. Should I be confirmed, it would be a tremendous honor to continue supporting and advocating for them as they carry out their vital mission.

Thank you, and I look forward to your questions.

HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

1. Basic Biographical Information

REDACTED

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
Assistant Secretary, Immigration and Customs Enforcement	August 16, 2018

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Ronald	Donato	Vitiello	

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 500 12 th St., SW		
City: Fairfax	State: VA	Zip: 22030	City: Washington	State: DC	Zip: 20536

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Standard Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Ron					Name used all my life ☐ Est ☐	Name used all my life ☐ Est ☐
					Est ☐	Est ☐

<i>Birth Year and Place</i>	
Year of Birth (Do not include month and day.)	Place of Birth
1963	Chicago, IL

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
☐	☒	☐	☐	☐	☐

<i>Spouse's Name</i> (current spouse only)			
<u>Spouse's First Name</u>	<u>Spouse's Middle Name</u>	<u>Spouse's Last Name</u>	<u>Spouse's Suffix</u>
Nuri	Narda	Vitiello	

<i>Spouse's Other Names Used</i> (current spouse only)							
<u>First Name</u>	<u>Middle Name</u>	<u>Last Name</u>	<u>Suffix</u>	<u>Check if Aliased Name</u>	<u>Name Used From</u> (Month/Year) (Check box if estimate)	<u>Name Used To</u> (Month/Year) (Check box if estimate)	
Nuri	Narda	Cantu		X	12/1987 Est ☐	4/1988	Est ☐
Nuri	Narda	Rodriguez		X	11/1964 Est ☐	12/1987	Est ☐

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix
Alexis	Lucille	Vitiello	
Ronald	Donato	Vitiello	Jr.

2. Education

List all post-secondary schools attended.

<u>Name of School</u>	<u>Type of School</u> (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	<u>Date Began School</u> (month/year) (check box if estimate)	<u>Date Ended School</u> (month/year) (check box if estimate) (check "present" box if still in school)	<u>Degree</u>	<u>Date Awarded</u>
Grossmont	Community College	9/1982 Est X	4/1984 Est Present X ☐	N/A	N/A
Pima County	Community College	4/1999 Est X	5/1999 Est Present X ☐	N/A	N/A
Johnson State	College	6/2005 Est ☐	9/2005 Est Present X ☐	N/A	N/A

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

<u>Type of Employment</u> (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal employment, State Government (Non- Federal Employment), Self- employment, Unemployment, Federal Contractor, Non- Government Employment (excluding self-employment), Other	<u>Name of Your Employer/ Assigned Duty Station</u>	<u>Most Recent Position Title/Rank</u>	<u>Location (City and State only)</u>	<u>Date Employ- ment Began</u> (month/year) (check box if estimate)	<u>Date Employment Ended</u> (month/year) (check box if estimate) (check "present" box if still employed)
Other Federal Employment	U.S. Immigration and Customs Enforcement/U.S. Department of Homeland Security (DHS)	Deputy Director and Acting Director	Washington, DC	6/2018	Present
Other Federal Employment	U.S. Customs and Border Protection (CBP/ DHS)	Acting Deputy Commissioner	Washington, DC	Est 4/2017	6/2018
Other Federal Employment	CBP/DHS	Chief	Washington, DC	3/2017	6/2018
Other Federal Employment	CBP/DHS	Executive Assistant Commissioner	Washington, DC	7/2016	2/2017
Other Federal Employment	CBP/DHS	Deputy Chief	Washington, DC	7/2010	7/2016
Other Federal Employment	CBP/DHS	Chief Patrol Agent	McAllen, TX	7/2007	7/2010
Other Federal Employment	CBP/DHS	Chief Patrol Agent	Swanton, VT	1/2005	7/2007
Other Federal Employment	CBP/DHS	Assistant Chief	Washington, DC	11/2002	1/2005
Other Federal Employment	U.S. Department of Justice (DOJ)/ Immigration and Naturalization Service (INS)/U.S. Border Patrol	Assistant Patrol Agent in Charge	Nogales, AZ	6/1999	11/2003

Other Federal Employment	DOJ/INS/Border Patrol	Deputy Assistant Regional Director	Dallas, TX	7/1995	6/1999
Other Federal Employment	DOJ/INS/Border Patrol	Agent/Supervisor	Laredo, TX	6/1992	7/1995
Other Federal Employment	DOJ/INS/Border Patrol	Agent	Eules, TX	4/1988	6/1992
Other Federal Employment	DOJ/INS/Border Patrol	Agent	Laredo, TX	Est 2/1983	Est 4/1988
Non-Government Employment	United Air Lines	Ramp Serviceman	San Diego, CA	Est 7/1983	Est 2/1985
Non-Government Employment	Stevens Construction	Laborer	Santee, CA	Est 2/1982	Est 2/1985
Non-Government Employment	Ralph's	Bagger	La Mesa, CA	Est 4/1982	Est 5/1984
Non-Government Employment	Wienerschnitzel	Staffer	Santee, CA	Est 7/1981	Est 1/1984

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

None.

4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

In connection with the nomination process, I have consulted with the U.S. Office of Government Ethics and the U.S. Department of Homeland Security's Designated Agency Ethics Official (DAEO) to identify any potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of the ethics agreement that I signed and transmitted to the Department's DAEO, which has been provided to this Committee. I am not aware of any other potential conflicts of interest.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

None.

5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

CBP Commissioner's Award 2006 and 2010.

2017 Public Service Award from The Lido Civic Club. A plaque currently displayed in my office at ICE HQ.

6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate.)	<u>Position(s) Held</u>
Lido Civic Club	2/2015 to Present	Member
International Association of Chiefs of Police (IACP)	2007 to Present (est.)	Member

7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No.

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

None.

(C) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

None.

8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

N/A.

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Stopping the Daily Border Caravan: Time to Build a Policy Wall	House Committee on Homeland Security, Border and Maritime Subcommittee	May 22, 2018
Bang for the Border Security Buck: What do we get for \$33 billion	House Committee on Homeland Security, Border and Maritime Subcommittee	March 15, 2018
Building America's Trust Through Border Security: Progress on the Southern Border	Senate Judiciary, Subcommittee on Border Security and Immigration	May 23, 2017
Border Security Gadgets, Gizmos, and Information: Using Technology to Increase Situational Awareness and Operational Control	House Committee on Homeland Security, Border and Maritime Subcommittee	May 24, 2016

Declining Deportations and Increasing Criminal Alien Releases – The Lawless Immigration Policies of the Obama Administration	Senate Judiciary, Immigration and the National Interest	May 19, 2016
National Security: Threats at Our Borders	House Oversight and Government Reform, Subcommittee on National Security and Government Operations	March 23, 2016
Transparency, Trust and Verification: Measuring Effectiveness and Situational Awareness along the Border	House Committee on Homeland Security, Subcommittee on Border and Maritime Security	March 1, 2016
Unaccompanied Children Crisis: Does the Administration have a Plan to Stop the Border Surge and Adequately Monitor Children	Senate Judiciary Committee	February 23, 2016
Securing the Border: Fencing, Infrastructure and Technology – Force Multipliers	Senate Homeland Security and Government Affairs Committee	May 13, 2015
An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Minors	House Judiciary Committee	June 25, 2014
Dangerous Passage: The Growing Problem of Unaccompanied Children Crossing the Border	House Homeland Security Committee	June 24, 2014
Border Security: Examining the Implications of S. 1691 The Border Patrol Agent Pay Reform Act of 2013	Senate Homeland Security and Government Affairs Committee	June 9, 2014
Examining the Abuse of Administratively Uncontrollable Overtime (AUO) at the Department of Homeland Security	Senate Homeland Security and Government Affairs Committee, Subcommittee on Efficiency and Effectiveness of Federal Programs and Federal Workforce	January 28, 2014
Abuse of Overtime at DHS: Padding Paychecks and Pensions at the Taxpayer Expense	House Oversight and Government Reform Committee	November 20, 2013

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Stopping the Daily Border Caravan: Time to Build a Policy Wall	House Committee on Homeland Security, Border and Maritime Subcommittee	May 22, 2018
Bang for the Border Security Buck: What do we get for \$33 billion	House Committee on Homeland Security, Border and Maritime Subcommittee	March 15, 2018

Building America's Trust Through Border Security: Progress on the Southern Border	Senate Judiciary, Subcommittee on Border Security and Immigration	May 23, 2017
Border Security Gadgets, Gizmos, and Information: Using Technology to Increase Situational Awareness and Operational Control	House Committee on Homeland Security, Border and Maritime Subcommittee	May 24, 2016
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Securing the Border: Fencing, Infrastructure and Technology – Force Multipliers	Senate Homeland Security and Government Affairs Committee	May 13, 2015
An Administration Made Disaster: The South Texas Border Surge of Unaccompanied Minors	House Judiciary Committee	June 25, 2014
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Abuse of Overtime at DHS: Padding Paychecks and Pensions at the Taxpayer Expense	House Oversight and Government Reform Committee	November 20, 2013
Boots on the Ground or Eyes in the Sky: How Best to Utilize the National Guard to Achieve Operational Control	House Homeland Security Committee, Border and Maritime Subcommittee	April 17, 2012
Border Security and Enforcement – Department of Homeland Security's Cooperation with State and Local Law Enforcement Stakeholders	House Homeland Security Committee, Border and Maritime Subcommittee	May 3, 2011
The Border: Are Environmental Laws and Regulations Impeding Security and Harming the Environment?	House Committee on Oversight and Government Reform: Subcommittee on National Security, Homeland Defense and Foreign Operations and the Committee on	April 15, 2011

	Natural Resources, Subcommittee on National Parks, Forests and Public Lands	
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9. Criminal History

Since (and including) your 18th birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) No.
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? No.
- Have you been charged, convicted, or sentenced of a crime in any court? No.
- Have you been or are you currently on probation or parole? No.
- Are you currently on trial or awaiting a trial on criminal charges? No.
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? No.

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation, where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

N/A.

A) Date of offense:

a. Is this an estimate (Yes/No):

B) Description of the specific nature of the offense:

C) Did the offense involve any of the following?

- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common;
- 2) Firearms or explosives;
- 3) Alcohol or drugs;

D) Location where the offense occurred (city, county, state, zip code, country):

- E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: **Yes / No**
- 1) Name of the law enforcement agency that arrested/cited/summoned you:
 - 2) Location of the law enforcement agency (city, county, state, zip code, country):
- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: **Yes / No**
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country):
 - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty of or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense:
 - 3) If no, provide explanation:
- G) Were you sentenced as a result of this offense: **Yes / No**
- H) Provide a description of the sentence:
- I) Were you sentenced to imprisonment for a term exceeding one year: **Yes / No**
- J) Were you incarcerated as a result of that sentence for not less than one year: **Yes / No**
- K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated:
- L) If conviction resulted in probation or parole, provide the dates of probation or parole:
- M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense: **Yes / No**
- N) Provide explanation:

10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

No.

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

No.

(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

N/A

11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

No.

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No.

12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

REDACTED

13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No.

14. Outside Positions

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

15. Agreements or Arrangements

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for: (1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

16. Additional Financial Data

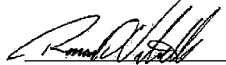
All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

REDACTED

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



This 28th day of Aug, 2018

REDACTED

UNITED STATES OFFICE OF
GOVERNMENT ETHICS

September 4, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Ronald D. Vitiello, who has been nominated by President Trump for the position of Assistant Secretary, United States Immigration and Customs Enforcement, Department of Homeland Security.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

DAVID APOL

David J. Apol
General Counsel

Digitally signed by DAVID
APOL
Date: 2018.09.04 18:25:39
-0400

Enclosures **REDACTED**

August 22, 2018

Joseph B. Maher
Designated Agency Ethics Official
Department of Homeland Security
Washington, D.C. 20528-0485

Dear Mr. Maher:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Assistant Secretary for U.S. Immigration and Customs Enforcement, Department of Homeland Security.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

My spouse is employed by American Airlines in a position for which she receives a fixed salary and an annual bonus tied to her performance. For as long as my spouse continues to work for American Airlines, I will not participate personally and substantially in any particular matter that to my knowledge has a direct and predictable effect on my spouse's compensation or employment with American Airlines. I also will not participate personally and substantially in any particular matter involving specific parties in which I know American Airlines is a party or represents a party, unless I am first authorized to participate, pursuant to 5 C.F.R. § 2635.502(d).

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), or obligations of the United States.

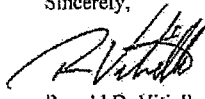
I will meet in person with you during the first week of my service in the position of Assistant Secretary for Immigration and Customs Enforcement in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305.

Ethics Agreement
Page 2

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

Finally, I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Vitiello", written over a horizontal line.

Ronald D. Vitiello

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Ronald D. Vitiello to be
Director, U.S. Immigration & Customs Enforcement,
Department of Homeland Security**

I. Nomination Process and Conflicts of Interest

1. Did the President give you specific reasons why he nominated you to be the next Director of Immigration & Customs Enforcement (ICE) in the Department of Homeland Security (DHS), and if so, what were they?

He referenced my experience at U.S. Customs and Border Protection (CBP) in general terms, and reiterated Secretary Nielsen's recommendation that I be nominated.

2. Were there any conditions, expressed or implied, attached to your nomination? If so, please explain.

No.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Director? If so, what are they, and to whom were the commitments made?

No, other than committing to the President and Secretary Nielsen that I would work hard and do my best if nominated.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

I have consulted with the DHS Designated Agency Ethics Official (DAEO) and the ICE Office of Ethics to identify any and all potential conflicts of interest. Any potential conflicts of interest will be resolved in accordance with the terms of an ethics agreement that I have submitted to the DHS DAEO, and the screening arrangement I implemented with the ICE Office of Ethics up becoming the Acting Director. Outside of the items provided in these documents, I am unaware of any additional conflicts of interest.

II. Background of the Nominee

5. What specific background, experience, and attributes affirmatively qualify you to be Director?

As a 33-year career federal law enforcement officer with the U.S. Border Patrol (USBP), I have served the United States with excellence and integrity both on the front

lines and in leadership positions. Throughout my career, I led operations in the interior and at the borders – gaining valuable first-hand experience in border security and immigration enforcement. Because of that experience, I have a deep understanding of the laws and policies governing our immigration system and the ICE mission. I have also had the opportunity to develop productive working relationships with interagency partners, external stakeholders, and Congress.

6. Please describe:

a. Your leadership and management style.

My style first prioritizes leading by example. Emphasizing integrity with hard work. I also place a high priority on understanding and empowering the frontline workforce. I seek to study and analyze my team, their strengths/weaknesses, and empower them to solve problems through effective delegation and communication.

b. Your experience managing personnel.

I became a first-line supervisor in 1995 and rose through the ranks to eventually become Chief of the USBP in 2017 – a position that oversaw 23,000 employees. In each of the new assignments I took on, my goal was to improve conditions in these offices for the work-force as well as the operational environment. I never sought a promotion for grade or pay but in order to make a contribution in the operational environment.

Over the course of two decades, I led Special Response Teams, interdicting drugs and smugglers near Laredo, Texas. In Nogales, Arizona I was second in command at the largest station in USBP, where we improved border deployments and created a successful tunnel task force that greatly reduced underground smuggling. During my time at CBP headquarters in Washington, I led multi-disciplined planning efforts to help grow USBP ranks by 6,000 new agents. These teams all required common elements of effective leadership and communication, as well as clear direction and priorities. It was also important to facilitate constructive feedback to the teams so that their contributions were recognized and adjusted as needed.

In 2017, I was named Acting Deputy Commissioner of CBP and oversaw 65,000 employees.

c. What is the largest number of people that have worked under you?

As Acting Deputy Commissioner, I led a workforce of 65,000 employees.

7. Please explain how your time as Acting Director has prepared you to be Director.

During the past few months as Acting Director, I have gained a better understanding of the agency's capabilities and complexities, priorities, and mission requirements. Through spending time with frontline personnel in the field, I have also learned about some of the challenges the workforce is facing. I believe I have developed a solid foundation of knowledge with which to advocate effectively for the workforce and communicate the importance of our mission if I am confirmed.

8. To your knowledge, has your conduct as a federal employee ever been subject to an investigation, audit, or review by an Inspector General, Office of Special Counsel, Equal Employment Opportunity Commission, Department of Justice, or any other federal investigative entity? If so, please describe the review and its outcome.

Yes; however, there has never been a finding by a federal investigative entity that I committed any form of misconduct. In January 2014, the Special Counsel referred to the Department for investigation allegations of Administrative Uncontrollable Overtime abuse at Border Patrol headquarters. The whistleblower alleged that Border Patrol leadership, including me in my capacity as Deputy Chief of the Border Patrol, failed to manage schedules and timelines which generated unnecessary overtime. This allegation was investigated by the DHS Office of the Inspector General (OIG) and following the CBP Deputy Commissioner's review of the matter, it was closed without action on January 23, 2015. I am aware of a second OIG investigation in 2014 in which I was interviewed, but I am unaware of the specific allegation or its disposition.

Additionally, no administrative body or federal court has found that I engaged in any discriminatory acts or prohibited personnel practices. During my career, EEO complaints were filed at various times by employees who claimed the Agency discriminated against them when personnel actions such as denials of promotions or termination from federal service, were taken. In 2016, the Office of Special Counsel reviewed an alleged Hatch Act violation based on a tweet posted from my personal account, for which I was later exonerated.

III. Role of the Director of ICE

9. Please describe your view of the agency's core mission and the Director's role in achieving that mission.

ICE's mission is to use our unique and powerful combination of law enforcement authorities and access to information to close vulnerabilities that can be exploited to harm our homeland. The Director's role is to establish the agency's long and short-term priorities and lead strategies that allow the workforce to meet the goals of protecting the homeland and protecting public safety.

10. If confirmed, what would be the highest priority items you would focus on? What do you hope to accomplish during your tenure?

Our highest priority must be to prevent terrorism and protect national security through the enforcement of our immigration and customs laws. If confirmed, in the short-term, I hope to focus on better educating the public, Congress, and our workforce on the importance of our mission, and I will solicit support for and work jointly with stakeholders to address the myriad challenges the agency faces. Looking to the future, I would also prioritize the effective, efficient use of resources to achieve mission goals in a sustainable way, while ensuring accountability to Congress and the American people.

11. In your view, what are the major internal and external challenges facing DHS and ICE? If confirmed, how will you address these challenges?

The most significant challenge currently facing ICE is the public perception of our agency, which is often a result of misleading rhetoric and misinformation. This has an adverse impact on employee morale and on our operational environment. It also poses a threat to the safety and security of nation when such rhetoric and misinformation prevents us from having a full and honest dialogue about border security and how to best address it. We need to improve how we communicate our mission internally and externally so that people recognize and understand the importance of our lawful mission and how we work to protect the men and women of the United States. If confirmed, I hope to partner with Congress in that effort.

IV. Policy Questions

Secure and Manage Our Borders

12. Please describe your understanding of ICE's capability to achieve the three goals identified in the 2014 Quadrennial Homeland Security Review (QHSR) for the mission to secure and manage our borders.

As the second largest investigative agency in the federal government, ICE works diligently to secure and manage our borders from unlawful trade and transnational criminal organizations (TCOs). Whether investigating TCOs smuggling dangerous drugs which are wreaking havoc on our communities; especially Fentanyl, intellectual property harmful to the United States economy, assessing international trade data to identify financial irregularities and international trade anomalies, or identifying the means and methods criminals use to move, launder, and store their illicit funds, ICE is at the forefront of protecting the border and securing the homeland. Additionally, ICE partners with local, state, federal, and international law enforcement agencies in targeting TCOs that perpetuate heinous crimes such as extortion, rape, and murder.

13. Please discuss the challenges that ICE faces in identifying and disrupting cross border illegal activity. How would you plan to address these challenges?

Advanced technological capabilities allow TCOs to launch wide-scale smuggling and distribution conspiracies from the comfort of their own homes and without needing to rely on additional manpower layers that are traditional to long-standing cartel hierarchies. The emergence of the Darknet has allowed criminal organizations to distribute illicit goods such as drugs, weapons, people, child pornography and other harmful and illegal materials without the risk of being easily uncovered and arrested. The increasing influx of illicit opioids, most notably Fentanyl, to the United States demands increased capability as it gravely impacts the health of our citizens and the safety of our communities. TCOs continue to exploit illicit pathways to facilitate the movement of victims worldwide and the clandestine travel of terrorists and other criminal elements that threaten the security of the homeland.

If confirmed, I will seek to expand ICE's capabilities to combat Internet-based crimes and will work to foster critical partnerships with our state, local and federal partners to maximize our impact on TCOs' operations within our communities. I am also committed to continuing ICE's victim-centered approach to combating crimes of human smuggling and exploitation.

As law enforcement partners at all levels explore effective strategies to fight the opioid epidemic, ICE HSI will leverage its effective fentanyl response capabilities, and work with international partners to prevent dangerous drugs and drug traffickers from even reaching our borders.

14. What is your view on the use of expedited removal as a consequence to illegal immigration? Do you support the expansion of the use of expedited removal?

I believe expedited removal is an important tool for deterring illegal border crossings. Regarding potential expansion, and consistent with the Secretary's authority, I would be open to consulting with stakeholders and reviewing options and recommendations if I am confirmed.

15. If confirmed, how would you work to decrease the amount of drugs coming across the United States borders and into local communities?

If confirmed, I look forward to building upon ICE HSI's successful counter-narcotics strategy.

Leveraging its international presence, ICE conducts and coordinates investigations with foreign counterparts to disrupt transnational criminal organizations and stop illicit products, people and proceeds before they reach the physical or virtual borders of our country. Here in the United States, we will continue to use the Border Enforcement Security Taskforces (BEST) as our primary platform to investigate drug smuggling. In response to the opioid crisis, ICE is increasing its partnerships within express

consignment carrier facilities to specifically target daily narcotics, opioid and fentanyl shipments. Public-private partnerships are vital to attacking these threats.

Finally, ICE will continue to attack financial networks and follow the money that fuels TCOs and the illicit trafficking of narcotics. In every investigation we pursue, we must continue to identify not only the illicit proceeds of crimes, but also the financial networks and third-party facilitators that conceal them.

16. ICE Homeland Security Investigations (HSI) plays a leading role in combating criminal activity involving vulnerable victims, yet the number of forensic interview specialists and victim assistance coordinators is much smaller than at some other federal agencies. Do you feel that the victim assistance program is adequately resourced?

ICE uses a victim-centered approach in our exploitation investigations, and therefore we have a pressing need for a robust Victim Assistance Program (VAP). Currently, I do not believe the HSI VAP is adequately resourced to support all domestic and international field offices. HSI has over 200 domestic offices and over 6,000 agents conducting thousands of human trafficking and child exploitation investigations annually. HSI only has 27 Victim Assistance Specialist positions and six forensic interviewers nationally to cover the workload. Due to the high demand, HSI must refer some forensic interviews to other agencies, such as local Child Advocacy Centers, and in some instances case interviews can be delayed for months, which can impact a victim's recollection of events and/or their willingness for continued participation with an HSI investigation. Our Victim Assistance Specialists (VAS) provide direct services and critical information to victims and assist with operational planning, and human trafficking and child exploitation cases. I believe our offices would significantly benefit from having at least two VAS per office due to the high volume of victim cases and the size of their areas of responsibility.

17. If confirmed, what principles will guide your decision-making regarding the use of risk-analysis and risk-based resource allocation to set priorities within HSI?

During Fiscal Year (FY) 2018, HSI used a strategic risk assessment model to align and prioritize each law enforcement mission area against actual resources expended. This model supported HSI's ability to make risk-informed resource allocation decisions. During FY 2019, HSI has a new initiative underway to develop a Law Enforcement Mission Readiness Risk Model (LEMRRM). The LEMRRM concept is based on the premise that a properly resourced law enforcement operation will be better positioned to successfully perform its core law enforcement missions. In analyzing resource allocation, the LEMRRM will consider priority enforcement areas identified by executive leadership, and provide leadership with a risk assessment that identifies and evaluates personnel and logistical resourcing factors. The identification of resource gaps using this new model will provide leadership with a more holistic real-time view of readiness needs within HSI. Initial results are anticipated in the Spring of 2019.

- a. How will you balance the investigative needs of HSI with the mission of ERO?

First, it must be made clear that the investigative needs of HSI and the enforcement mission of ERO are complementary, not competitors. ICE faces inherent resource management challenges due in large part to the unpredictability of border apprehension numbers and other activities that impact ICE operations. These challenges are compounded by an uncertain budget environment and by the fact that the agency has been consistently under-resourced for its congressionally-mandated mission. Ideally, ICE programs should, to the extent possible, set spending limits early in the FY and operate within appropriated levels set by Congress. If confirmed, I am committed to working with Congress to ensure that ICE is appropriately resourced in order to fulfill its congressionally-mandated mission.

Enforce and Administer Our Immigration Laws

18. Please describe what affects the Flores Settlement Agreement has had on the speediness of removal proceedings (including the 2015 and 2016 legal reinterpretation of the Flores Settlement Agreement).

The recent court rulings in 2015 and 2016 require the release of minors and their accompanying parents or legal guardians from ICE Family Residential Centers (FRCs) after approximately 20 days.

As noted in the preamble of the Notice of Proposed Rulemaking (NPRM), *The Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, “The result [of releasing family units after 20 days] is that many families are released in the interior of the United States. While statistics specific to family units have not been compiled, the reality is that a significant number of aliens who are not in detention either fail to appear at the required proceedings or never actually seek asylum relief, thus remaining illegally in the United States.”

According to the Department of Justice’s Executive Office for Immigration Review (EOIR), as of June 2018, 26 percent of case completions for individual case completions are *in absentia* removal orders, and 53 percent of case completions for unaccompanied minors are *in absentia* removal orders. And, for those cases in which the released family unit appears at their hearings, such cases are on the non-detained docket, on which cases completions generally take significantly longer.

19. How would you work to improve cooperation and coordination between DHS component entities responsible for administering immigration benefits and enforcing immigration laws?

ICE has long maintained an effective and cooperative relationship with other DHS entities that work alongside us in enforcing immigration laws and those that administer immigration benefits. ICE has committed to working with these agencies on information sharing and the questioning, apprehension, and/or arrest of Persons of

Interest, while also ensuring that information is appropriately safeguarded when addressing emergent matters of national security and public safety.

20. Please describe any actions you would recommend to improve information sharing and technology connection between ICE and other DHS components.

An essential component to protecting the homeland is the ability to share, analyze, and integrate information from various partner sources. ICE is working to enhance the effectiveness of the DHS mission by investing in a modern IT workforce that diligently pursues additional information sharing opportunities, IT integration, and IT analysis efforts with our DHS partners. If confirmed, this is an area I would review for further opportunities for improvement.

21. ICE is responsible for managing the Student and Exchange Visitor Program (SEVP). In 2016, as a part of a sting operation, ICE established a fake university to capture individuals involved in student visa fraud; however, there seems to be an overall lack of enforcement considering the large number of schools certified in the SEVP.

SEVP currently has approximately 1.2 million nonimmigrant students in the United States with nearly 8,500 SEVP-certified schools. SEVP continually vets these certified schools for any violation of law, regularly withdraws schools for noncompliance and vets new schools seeking SEVP certification. Through these efforts, SEVP is able to catch those schools with flaws in eligibility and qualification standards and deny approval. While these administrative processes may not be headline news, they are effective.

- a. How would you work to ensure that SEVP prevents schools from conducting fraudulent activity?

My goal would be for the SEVP program to continue its effective work while identifying additional improvements to SEVIS and other monitoring tools to curtail fraud or any type of violation. Embedding HSI agents in SEVP has made developing and acting on criminal leads more efficient and effective. SEVP will continue to utilize technologies to identify individuals or entities that have been associated with past violations to ensure proper vetting if they resurface at another institution. Finally, I want to continue our outreach to schools to ensure they understand their responsibilities and accountability as a certified institution.

- b. If confirmed, will you consider a thorough review of the program?

Yes, I am committed to reviewing the program to identify areas for improvement, including those outlined above, and assess appropriate resourcing. The program should also be reviewed for any vulnerabilities to ensure that we are providing opportunities that fulfill the benefits of the program without impinging on any domestic concerns.

22. What is your understanding of the challenges facing ICE and the State Department in visa security? How would you recommend addressing those challenges?

The ICE Visa Security Program (VSP) maximizes the visa screening and vetting process to identify, exploit, and disrupt transnational terrorist and criminal networks seeking to harm the United States. To do this, VSP collaborates with the U.S. Department of State and other partners at strategic visa-issuing posts around the globe to identify previously unknown threats. It is these unknowns that present the biggest vulnerability to the visa process. Although I believe VSP is an excellent program that helps make the country safer, it is only currently operational at a small percentage of visa-issuing posts. I believe expanding the VSP is the best way to enhance visa security and I look forward to working with HSI and our partners at the State Department to determine the most effective way to achieve that.

23. If confirmed, how will you approach balancing the need to protect the homeland with protecting individuals' privacy, civil rights, and civil liberties?

As law enforcement officers, protecting the rights of individuals we encounter is paramount. ICE has two dedicated offices that are integral to the agency's commitment to protect individuals' privacy rights, civil rights, and civil liberties. ICE's Office of Information Governance and Privacy and the Office of Diversity and Civil Rights are closely aligned with their counterparts at the Department level – the DHS Privacy Office and the DHS Office of Civil Rights and Civil Liberties.

If confirmed, I look forward to working with both programs to ensure ICE continues this commitment while simultaneously fulfilling our homeland security mission.

24. If confirmed, how would you plan to facilitate the continued increase in detentions? What additional operational and capital expenditures would be required to execute this plan, and how will those expenditures be funded?

The FY 2019 President's Budget requests a total of 52,000 detention beds to house the expected average detainee population until their cases are adjudicated. If confirmed, I will seek a balanced and cost conscious approach to address the Administration's priorities to ensure public safety and security.

Given the inherent variability of human migration flows and patterns, we will respond to mission demands using authorities provided by the Administration and Congress, including reprogramming within ICE accounts, as necessary and appropriate.

25. Since your appointment as Acting Director, have you advocated for or implemented any changes to ICE's alternatives to detention policy or the standards that ICE uses to determine whether detention space is adequate? If so, please describe those changes.

ICE is currently taking steps to ensure that the alternatives to detention (ATD) program is best able to leverage existing and emerging technology to provide increased levels of case management support and oversight flexibility within existing resource constraints. I have also requested a comprehensive review of the program to identify potential areas for improvement.

The ATD program is a flight-mitigation tool that uses technology and case management to increase compliance with release conditions, and serves to facilitate alien compliance with court hearings. ATD is not a substitute for detention, and it should not be funded in a way that comes at the expense of detention beds; ICE cannot release individuals who are subject to mandatory detention, nor does it support the release of individuals who pose a public safety risk or a flight risk that cannot be mitigated with ATD. Thus, while not a substitute for detention, it does however allow ICE to more closely monitor a very small segment of its non-detained population.

ATD has been moderately successful in securing the appearance of aliens at immigration court hearings, but has not proved to be an effective tool to ensure that aliens are removed from the country. For the program to potentially be successful, additional funding (which cannot come at the expense of detention resources) for ATD and the Fugitive Operations Program are needed.

26. If confirmed, will ICE prioritize enforcement actions against MS-13 gang members or affiliates above members or affiliates of other gangs? Please explain.

No. ICE focuses its enforcement resources on individuals who pose a threat to national security, public safety, and border security, including gang members. ICE HSI in particular uses its expansive criminal and civil enforcement authorities to target and dismantle transnational criminal organizations, including street gangs like MS-13.

HSI has employed a strategy to identify, exploit, and disrupt MS-13 financial networks – attacking MS-13’s global criminal enterprise by denying gang leaders access to the illicit funds used to fuel gang violence in Central America and the United States.

In FY 2017, through the efforts of both HSI and ERO, ICE arrested more than 10,000 known and suspected gang members.

27. How does HSI collaborate with other components within DHS on the Blue Campaign and what other initiatives to root out and dismantle human trafficking networks could HSI consider?

HSI collaborates with other DHS components on awareness and education through a Blue Campaign Steering Committee. HSI also partners with the Blue Campaign on targeted outreach activities to generate investigative leads.

To root out and dismantle human trafficking networks, HSI needs to continue to expand partnerships with federal, state, local and tribal law enforcement, as well as

victim service providers through human trafficking task force participation. HSI should continue to proactively foster relationships with non-governmental organizations to build rapport, which facilitates lead generation, victim protections, and awareness of HSI's victim-centered approach. Finally, HSI should continue to expand its efforts in combatting labor trafficking to better identify, investigate and prosecute exploitative individuals and organizations.

28. Do you agree that the cooperation of immigrants who are victims and witnesses of crimes is critical to ICE investigations?

Yes, and that principle guides ICE HSI's Victim Assistance Program, which assists victims of crime in furtherance of federal criminal investigations – particularly related to human trafficking. Victim Assistance Specialists help ensure that victims know their rights under federal law and connect victims with resources.

Also, in determining whether to take an enforcement action, ICE will take into consideration if an individual is the immediate victim of or witness to a crime. Particular attention is paid to victims of domestic violence, human trafficking or other serious crimes. ICE also works closely with its state and local law enforcement partners to help make eligible individuals aware of and pursue U visas for victims of crimes, including domestic violence, and T visas for victims of human trafficking. Generally, absent additional factors, ICE will favorably consider an alien's request for a stay of removal if a law enforcement officer certifies the alien's cooperation.

29. What is ICE's current policy for processing unlawful families apprehended at the border or in the interior of the United States? If confirmed, do you plan to make any changes to the current policy? If so, what changes?

On June 20, 2018, the President signed Executive Order (EO) 13841 entitled, *Affording Congress an Opportunity to Address Family Separation*. The EO reinforces the Administration's policy of rigorously enforcing the nation's immigration laws and states that, where appropriate, consistent with the law, and in consideration of available resources, alien families shall be detained together during criminal improper entry and administrative immigration proceedings in an effort to maintain family unity.

Currently, when a family unit is detained at or near the border by CBP, the family unit is transported to a CBP central processing center (CPC) where they are processed and briefly detained. While the family unit is detained at the CPC, CBP coordinates with ICE to determine whether there is available bed space for the family unit at an FRC. Where bed space is available, the family is processed for expedited removal and ICE is notified of the transfer. ICE then picks up and transports the family unit to an FRC, where the family unit is generally detained less than 20 days while undergoing the credible fear screening process. If determined to possess a credible fear, and referred for removal proceedings before EOIR, ICE generally works to expeditiously process the aliens for release subject to appropriate conditions (e.g., bond, electronic monitoring).

30. If confirmed, will you reach out to “sanctuary cities” to implement policies that could improve communication or collaboration with local and state authorities there?

Absolutely. Law enforcement agencies at all levels share a common goal of protecting public safety, and I am committed to discussing efforts to improve cooperation and collaboration to achieve that goal.

31. If confirmed, do you plan to make any changes to ICE’s policy for collateral arrests? Do HSI and Enforcement Removal Operations have different policies for collateral arrests and the prioritization of arrest? If so, what are the differences in these policies? If confirmed, will these policies change?

ICE will continue to focus its enforcement resources on individuals who pose a threat to national security, public safety and border security. ICE conducts targeted immigration enforcement in compliance with federal law and agency policy – the agency does not conduct indiscriminate sweeps or raids. Under the President’s EOs issued in early 2017, ICE does not exempt classes or categories of removable aliens from potential enforcement. All of those in violation of the immigration laws may be subject to immigration arrest, detention and, if found removable by final order, removal from the United States.

32. Do you support mandating the e-Verify program?

Yes, it is an important tool that I believe would help reduce the pull factor of illegal employment, which contributes to continued illegal immigration. Some improvements are needed to ensure that end users may determine valid identification and guard against potential identity theft.

Management, Accountability, and Oversight

33. What do you believe are the most important actions you could take to strengthen overall management of ICE?

If confirmed, I would work closely with agency leadership to strengthen communication and transparency, program sustainability, and accountability.

Improved transparency and communication amongst the management team is critical to ensuring that leadership of respective programs and components have a clear understanding of their role in fulfilling the ICE mission, receive constructive feedback, and have the resources they need to do their jobs.

We also need to develop strategies for sustaining the agency in the longer term. That means prioritizing program areas – particularly those that are mission-critical – that are most in need of improvement and evaluating their current statuses, assessing projected needs, and developing appropriate action plans. These steps are especially critical to addressing challenges related to ICE’s fleet and facilities, for example.

There are also areas where we can strengthen accountability, particularly in terms of ensuring that resource allocation and usage is in line with agency and departmental priorities.

34. What challenges does ICE face in funding enforcement activity not related to immigration enforcement?

As previously indicated, ICE faces inherent resource management challenges due in large part to the unpredictability of border apprehension numbers and other activities that impact ICE operations.

35. ICE HSI has overlapping jurisdictions with other federal law enforcement agencies. Are these areas of overlap necessary or is there potential for duplication of resources?

The HSI mission is to protect the homeland by investigating, disrupting, and dismantling national security threats, and their associated organizations and networks that attempt to exploit our immigration and customs laws for illicit purposes. While there is overlap with other federal law enforcement agencies in certain programmatic areas, HSI is unique in that the agency conducts these investigations relative to a cross border and international nexus, using a unique set of immigration and customs authorities that no other agency has. In areas where there is programmatic overlap, HSI coordinates and de-conflicts with the appropriate state, local, and federal partners and often creates and leads joint task forces or joins existing task forces that leverage the unique authorities of each agency to best combat the specific challenge.

- a. If confirmed, how would you propose addressing the areas of overlap or duplication resources, if any?

As stated above, HSI continues to prioritize investigations that are within its core mission area and require the unique authorities and expertise that the agency brings to bear. In areas where there are opportunities to work together with federal, state and local partners to leverage resources and capabilities, I believe HSI should continue to promote the use and creation of effective task forces and maintain an open dialogue with partners to ensure transparency, efficient use of resources, and collaboration

36. Protecting whistleblower confidentiality is of the utmost importance to this Committee:

- a. During your career, how have you addressed whistleblower complaints?

During my time at USBP, I worked to correct a serious pay issue that was prompted in part by a whistleblower complaint. Whistleblowers can play an important role in identifying waste, fraud and abuse, and their concerns deserve to be taken seriously.

With that in mind, direct communication with frontline personnel is a high priority for me – it is one of the things I enjoy most as a manager. This kind of communication provides a diversity of perspectives and awareness about issues that may not have visibility at headquarters.

- b. How do you plan to implement policies within ICE to encourage employees to bring constructive suggestions forward without the fear of reprisal?

As part of my commitment to hear from frontline personnel in the field, I have held several town hall meetings so that employees can share their questions, concerns, and suggestions directly with me. I have also initiated surveys that provide employees the opportunity to communicate anonymously and directly with me. If confirmed, I plan to continue and to expand these opportunities.

If confirmed, I also commit to ensuring that ICE employees are fully informed of their rights and legal options when it comes to whistleblower protections, including through required No FEAR Act training.

- c. Do you commit without reservation to work to ensure that any whistleblower within ICE does not face retaliation?

I do, without reservation.

- d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

I do, without reservation.

V. Relations with Congress

37. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes, if confirmed, I will comply without reservation.

38. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes, if confirmed, I will comply without reservation.

39. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes, if confirmed, I will comply without reservation.

VI. Assistance

40. Are these answers your own? Have you consulted with DHS or any other interested parties? If so, please indicate which entities.

I have consulted with various offices within DHS and ICE to gather relevant facts, requested statistics, and background information to help inform my responses. My answers are my own.

**Minority Supplemental Pre-hearing Questionnaire
For the Nomination of Ronald D. Vitiello to be
Assistant Secretary, U.S. Immigration & Customs Enforcement,
Department of Homeland Security**

I. Nomination Process and Conflicts of Interest

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.
2. Has the President or his staff asked you to make any pledge or promise if you are confirmed as ICE Director?

No.
3. During your tenure in this Administration, have you asked any federal employee or potential hire to pledge loyalty to the President, Administration or any other government official?

No.

II. Background of the Nominee

4. How has your view of the Agency changed since becoming Acting Director?

While I was familiar with ICE and its mission because of my career at USBP, I have gained a better understanding of the agency's capabilities and complexities, priorities, and mission requirements. Through spending time with frontline personnel in the field, I have also learned about some of the challenges the workforce is facing. I believe I have developed a solid foundation of knowledge with which to advocate effectively for the workforce and communicate the importance of our mission if I am confirmed.

5. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country.

As a career law enforcement officer for the past 33 years, I have not served in political leadership positions. My role has been to execute the laws and policies on the books, and to provide operational expertise to decision-makers.

6. If confirmed, what experiences and lessons learned will you bring to the position of ICE Director?

As a 33-year career federal law enforcement officer with the U.S. Border Patrol, I have served the United States with excellence and integrity both on the front lines and in leadership positions. Throughout my career, I led operations in the interior and at the borders – gaining valuable first-hand experience in border security and immigration enforcement. Because of that experience, I have a deep understanding of the laws and policies governing our immigration system and the ICE mission. I have also had the opportunity to develop productive working relationships with interagency partners, external stakeholders, and Congress.

7. What would you consider your greatest successes as a leader?

As Chief of USBP, I initiated a human capital study to strengthen employee engagement and morale – and ultimately strengthen the agency. The study involved site visits throughout the country and interviews with more than 800 USBP employees at all levels. The results of these evaluations were used to develop short-term strategies to boost morale that aligned with five long-term strategic priorities: 1) establishing a robust internal communications function, 2) strengthening and celebrating the proud culture of USBP, 3) refreshing the Performance Management System, 4) identifying rewards that motivate the workforce, and 5) enhancing career paths and promotion processes.

This initiative had a significant, measurable impact on the workforce, as demonstrated by USBP's nine percent increase in employee engagement in the FY 2017 Federal Employee Viewpoint Survey (FEVS). The increase in scores reflected improved employee satisfaction, commitment, and retention for USBP, and an engaged and motivated workforce.

8. What do you consider your greatest failure as a leader? What lessons did you take away from that experience?

In 2008, the National Border Patrol Council filed a federal lawsuit claiming agents were improperly assigned Administrative Uncontrollable Overtime (AUO) for hours of duty that were scheduled or planned. The suit also alleged that agents were underpaid. The union eventually prevailed in the lawsuit, prompting USBP management to develop a proposal to correct the issue. I spent a significant amount of time with human

resources experts, pay and compensation lawyers, and operations teams to develop a legislative proposal to fix USBP's AUO liability.

Unfortunately, the legislation failed to gain traction in Congress and with the union, and the stalemate persisted for four years. As a senior leader at USBP, I failed to take incremental steps to correct the problem in the interim. This inaction led others, including a whistleblower, to accuse the agency of waste and abuse, resulting in the agency being found at fault by the Office of Special Counsel for failing to apply proper controls of AUO.

The remediation resulted in disruptions and pay cuts to large segments of the agent workforce, distracting them from the mission, spurring high attrition rates, and damaging morale. Ultimately, I worked with Congress and union officials on a new statute which stabilized pay, improved accountability, and saved taxpayer dollars while increasing agent capacity. The lesson was a powerful one that taught me that incremental changes to existing systems are often necessary while pursuing a long-term policy or legislative solution.

9. During your tenure in the federal government, were you required to sign an ethics agreement(s)?

Yes.

- a. If so, did you sign any such ethics agreement(s)?

Yes.

- b. If so, please provide a copy of your signed ethics agreement or a description of the applicable provisions related to outside employment and restrictions on former officers, employees, and elected officials of the executive branch.

I signed the ethics agreement as part of the post-nomination process, on August 22, 2018. I have separately signed appropriate recusals or screening arrangements necessary to guard against conflicts during my career.

10. Have you ever received a formal performance review related to your management experience? If so, please list the position and describe the outcome of the review.

For the past three fiscal years – during which I have served as Deputy Chief of USBP, Executive Assistant Commissioner of CBP, Chief of USBP, and Acting Deputy Commissioner of CBP – I have received performance reviews assessing my performance as “Achieved Excellence.” My review for FY 2018 is still forthcoming.

11. During your career as a federal employee, have you ever used a personal email account or device to conduct official government business?

No.

- a. If so, please list in what government positions you have used a personal email account or device to conduct official government business, describe your general practice for doing so, and what specific steps you have taken to ensure that federal records created using personal devices and accounts were preserved.

N/A

- b. During your tenure as a federal employee have you used a smartphone app including, but not limited to, WhatsApp, Signal, Confide, and others that support encryption or the ability to automatically delete messages after they are read or sent, for work-related communications? If so, please indicate which application, when it was use, how often and with whom.

No.

12. Please list any social media accounts and their handles that you have had during the past three years.

Twitter:

- @CBPDeputyComm (official CBP account)
- @VitielloRon (personal account)

LinkedIn: <https://www.linkedin.com/in/ronald-donato-vitiello-15282839>

13. Please describe your affiliation with the Federation for American Immigration Reform (FAIR), list all FAIR events in which you have participated, and describe the nature of your participation in each event.

In September 2018, I participated in three interviews with local radio hosts from across the country who were broadcasting from FAIR's annual radio row focused on immigration policy. These interviews focused on my priorities as ICE's Acting Director, challenges facing the agency, my experience in USBP, and the current situation at the southwest border.

III. Role of the Assistant Secretary of ICE

14. What role do you believe the ICE Director should have in reviewing or having input on executive actions or other administration policies that impact ICE?

I believe the role of the Director is to provide operation expertise, recommendations and input as needed through the chain of command and consistent with the Secretary's direction.

15. What actions will you take to ensure better cohesion and cooperation among all of ICE's components?

If confirmed, I am eager to improve internal communication efforts, which are critical to sustaining an engaged, successful workforce. During my time as Acting Director, I have initiated a comprehensive review of current internal communications practices and platforms, as well as the development of an agency-wide survey to better understand employees' needs and preferences. Similar efforts that I undertook as Chief of USBP had a measurable, positive impact on employee morale and engagement, and if confirmed, I hope to create the conditions for similar positive changes at ICE.

16. How do you view the role of the Assistant Secretary as it relates to advising or collaborating with the office of the Secretary? How do you view the role of the Assistant Secretary as it relates to advising or collaborating with the White House?

As previously stated, I believe the role of the Director is to provide operation expertise, recommendations and input as needed through the chain of command and consistent with the Secretary's direction.

17. What role should employee unions have in advising or collaborating on policy making decisions?

If confirmed, I will continue to meet the agency's contractual obligations to advise and collaborate with employee unions. I believe it is in the best interest of the agency to maintain productive, transparent relationships with union leadership, members, and all employees.

18. In June 2018, a majority of special agents in charge at ICE Homeland Security Investigations' (HSI) Criminal Investigative Division wrote a letter to DHS Secretary Kirstjen Nielsen asking that HSI be organizationally split from ICE. Do you support separating HSI from ICE? Why or why not? If not, how will you address the concerns of the special agents raised in this letter?

One of the first things I did after arriving at ICE was to discuss these concerns directly with the Special Agents in Charge. I believe their concerns have merit and deserve discussion – particularly as they relate to operational challenges they are confronting as a result of the current political environment. There is no reason for a local jurisdiction

to refuse to help HSI serve a criminal search warrant against a suspected child predator just because HSI is a part of ICE. I believe we can work together to address these concerns without splitting the agency, and a critical part of that effort is to step up our outreach to state and local law enforcement agencies and find ways we can work together and overcome the rhetoric.

HSI and ERO perform distinct but complementary missions in the enforcement of our immigration and customs laws. Accordingly, I believe that splitting the agency would ultimately have an adverse impact on the ability of both components to carry out their vital missions. If confirmed, one of my top priorities will be ensuring that our entire workforce understands that connection and moves forward together, united in the mission.

IV. Policy Questions

Secure and Manage Our Borders

19. What do you believe are the primary causes of illegal migration from Central America, and how do you believe the United States can collaborate with those countries to address the ongoing illegal migration?

Systemic flaws in United States immigration policies are a major driver of illegal migration. The Administration has repeatedly sought assistance from Congress in addressing policies that prevent the expeditious return of unaccompanied minors and family units who are ineligible to remain in the United States, alleviating the asylum backlog, and providing additional resources to address the immigration court backlog – all of which are necessary to fully secure our borders, enforce immigration laws, and reduce the flow of illegal immigration.

Security and economic conditions in Central America also contribute to illegal migration flows, and continued engagement with our partners in the Northern Triangle countries is critical to the solution. During my time at CBP, I took part in many discussions with Secretary Nielsen, Commissioner McAleenan, and our Northern Triangle partners with the goal of enhancing security cooperation to combat criminal smuggling and trafficking organizations, improving information sharing between frontline operators, boosting support for law enforcement partners in Central America, and working with non-governmental partners and the private sector to enhance economic opportunities.

If I am confirmed, I commit to working with Congress, interagency partners, and international stakeholders to address these challenges.

20. To what extent do you believe that our domestic immigration policies are the major driver of migration from Central America as opposed to the conditions in that region?

While there are both “push” and “pull” factors, I believe systemic flaws in United States immigration laws are a major driver of illegal migration. The Administration has repeatedly sought assistance from Congress in addressing laws that prevent the expeditious return of unaccompanied minors and family units who are ineligible to remain in the United States, alleviating the asylum backlog, and providing additional resources to address the immigration court backlog – all of which are necessary to fully secure our borders, enforce immigration laws, and reduce the flow of illegal immigration. If I am confirmed, I am committed to continuing to work with Congress to address these urgent challenges.

21. If confirmed, how would you work to decrease the amount of currency and weapons leaving the United States borders and going to foreign countries?

ICE HSI is designated as the primary law enforcement agency charged with investigating export violations. Through its Counter-Proliferation Investigations program, HSI utilizes these authorities, to include a robust undercover program as well as border search authority, to combat illegal export and proliferation activities. I will continue to advocate for resourcing for and partnerships with our Border Enforcement Security Task Forces, which investigate a wide range of criminal activity to include arms trafficking, money laundering and bulk cash smuggling.

HSI will also continue to target outbound currency and financial crimes through resources like the DHS Bulk Cash Smuggling Center and HSI's Illicit Finance and Proceeds of Crime Unit.

22. What experience do you have in fostering international partnerships? How would you collaborate with foreign governments to strengthen the security of U.S. borders?

During my career at USBP, I worked extensively with Canadian and Mexican partners on public safety initiatives at the immediate physical border, and on developing joint international protocols for conducting rescues and preventing violence. During the past year at CBP headquarters, I have participated in security and prosperity discussions with Mexico, Canada, and the Northern Triangle countries.

If confirmed, I will continue to prioritize collaboration with foreign governments through our extensive attaché network and work to identify opportunities to strengthen our international footprint and disrupt transnational crime.

23. Outside of targeted investigations, are there instances where ICE shares or receives information from other federal or state law enforcement entities as a matter of course? If so, please list these arrangements, and describe the information that is sent or received.

The majority of ICE ERO's arrests occur through its Criminal Alien Program (CAP). Integral to CAP is Secure Communities interoperability, which is a law enforcement tool used to identify aliens. Secure Communities interoperability uses integrated information technology systems that automatically transmit biometric data submitted by federal, state and local law enforcement agencies (LEAs) and queries against FBI and DHS databases. The CAP utilizes this interoperability to identify and take enforcement actions (to include the lodging of detainers) against criminal and other removable aliens while they are in the custody of another LEA or correctional agency. Once identified through interoperability or through other identification methods, ICE officers must decide whether to lodge a detainer, issue a charging document to initiate removal proceedings, arrest, and/or transport these criminal aliens upon release to ICE custody.

ICE shares and receives information with other federal and state law enforcement entities via the following established Law Enforcement Information Sharing Service agreements:

- **Law Enforcement National Data Exchange (N-DEx)**: information sharing with the FBI and other participating law enforcement agencies about criminal incidents and investigations.
- **The International Justice and Public Safety Network (Nlets)**: information sharing between the DHS and Nlets, and the International Justice and Public Safety Network of subject records and law enforcement or other criminal justice investigations or activities.
- **The San Diego Association of Governments operates the Automated Regional Justice System (ARJIS)**: information sharing among justice agencies throughout San Diego and Imperial Counties, California. 71 local, state, and federal law enforcement agencies access the system for data on criminal cases, arrests, citations, field interviews, traffic accidents, fraudulent documents, photographs, gang information, and stolen property.
- **The Law Enforcement Information Exchange Northwest (LInX NW)**: information sharing between the DHS and the LInX NW Governance Board to access and use information for official law enforcement and national security purposes. The LInX System contains information on: Incidents – arrests, crimes, contacts, weapons, field interviews; mug shots and booking records obtained during booking process; Investigative case reports, follow-up reports with available narratives; traffic law enforcement records.

24. Under this administration, how many aliens has ICE arrested for removal? How many of these aliens:

- a. Have been convicted or charged with any criminal offense, or committed acts that constitute a criminal offense (excluding violations of immigration law)?

- b. Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency?
- c. Were brought or guided to this country illegally by a smuggler?
- d. Used false personal documentation to gain illegal entry in the United States?
- e. Were posing as a part of a family unit that was determined to be fraudulent?
- f. Have abused any program related to receipt of public benefits?
- g. Are subject to a final order or removal?
- h. Pose a risk to public safety or national security?
- i. Do not fall under any of the above criteria?
- j. Were enrolled in the Deferred Action for Childhood Arrivals (DACA) program?

The following tables reflect statistics responsive to the above requested categories to the fullest extent possible, consistent with ICE statistical tracking capability:

ERO Administrative Arrests by Criminality

01/20/2017 - 09/22/2018 by Fiscal Year

Criminality	FY2017	FY2018 YTD
	01/20/2017 - 09/30/2017	10/01/2017 - 09/22/2018
TOTAL	110,568	155,360
Convicted Criminal	78,686	103,106
Pending Charges	19,750	32,227
Other Immigration Violators	12,132	20,027

ERO Administrative Arrests by Sub-Category

01/20/2017 - 09/22/2018 by Fiscal Year

Sub-Category	FY2017 01/20/2017 - 09/30/2017	FY2018 YTD 10/01/2017 - 09/22/2018
Fraud or Misrepresentation	3,760	5,370
Public Benefits Abuse	99	124
Final Order Prior to Arrest	84,890	118,909
Public Safety Risks	83,885	110,346
<i>Suspected Gang Members</i>	3,880	5,807
<i>Known/Suspected Terrorists</i>	1,319	1,433
<i>Convicted Criminals</i>	78,686	103,106
All Others	5,988	10,106

**Sub-Categories are not mutually exclusive. Subjects of arrests may fall into multiple categories.*

ERO Administrative Arrests: All Others by Sub-Category

01/20/2017 - 09/22/2018 by Fiscal Year

Sub-Category	FY2017 01/20/2017 - 09/30/2017	FY2018 YTD 10/01/2017 - 09/22/2018
All Others	5,988	10,106
<i>Fugitives</i>	83	89
<i>Reinstatements</i>	420	513

**Fugitives and Reinstatements are subsets of "All Others." Subjects of arrests may fall into both or neither of the categories.*

25. While the number of individuals detained has increased since January 20, 2017, the number of removed persons has not increased by the same measure. To what do you attribute this discrepancy? What policies or procedures do you believe ICE should implement to increase the number of removals? If this discrepancy cannot be remedied, what actions will ICE need to take to handle the increasing number of detained individuals?

The decrease in ICE's overall removal numbers from FY 2016 to FY 2017 was primarily due to the decline in border apprehensions in 2017. The drop in border apprehensions contributed to a decrease in total ICE removal numbers, as aliens arriving at the border are generally processed under provisions of expedited removal; while aliens arrested in the interior are more likely to have protracted immigration proceedings and appeals, which delays the issuance of an executable final order of removal.

In FY 2018 year-to-date, as of September 15, 2018, there has been a 12% increase in ICE removals over the same time period in FY 2017.

26. Section 287(g) of the Immigration and Nationality Act gives ICE the authority to train and delegate immigration enforcement to state and local law enforcement officers in local jurisdictions. The 287(g) program is meant to supplement ICE's limited resources and improve the agency's ability to identify unauthorized criminal aliens. The program is currently restricted to a jail model after previous task force models were discontinued.

- a. Please identify each state, city or community with which ICE has executed a 287(g) agreement. For each agreement, please identify the date the agreement was executed and whether local law enforcement participates under the task force model or jail model. Please also identify any 287(g) agreement that has lapsed under this Administration.

Currently, ICE has 78 signed 287(g) Memoranda of Agreement (MOA) within 20 states. All MOAs are under the jail model; ICE no longer operates the task force model. Please see Appendix A detailing the 78 jurisdictions and the dates each MOA was signed.

Under this Administration, ICE has not terminated any MOAs. The following 287(g) partners allowed their MOAs to expire:

- Harris County Sheriff's Office, TX
- Carrollton Police Department, TX
- Hudson County Department of Corrections, NJ

Additionally, the Orange County Sheriff's Office (CA) ended their MOA with ICE as a result of California's Senate Bill 54.

- b. Please identify any state, city or community who has sought a 287(g) agreement with ICE under this Administration, but which ICE declined to do so, and the reason ICE declined the request.

Under this Administration, ICE has made no formal declinations of the 287(g) program; however, this does not denote that prospective partners are automatically accepted for partnership.

27. Under what circumstances, if any, do you support the use of the National Guard to perform the functions of immigration officers in relation to the investigation, apprehension and detention of aliens in the United States?

At CBP, I participated in planning and operations involving deployments of National Guard soldiers to the southern border. In each of these deployments, National Guard soldiers were assigned to non-enforcement roles. During Operation Jump Start, ICE received Guard support for intelligence analysis. These conditional deployments are a best practice in DHS-related National Guard deployments.

Enforce and Administer Our Immigration Laws

28. ICE HSI is responsible for enforcing a wide range of federal laws. What are your initial recommendations for prioritizing ICE HSI's investigative resources?

HSI is well-positioned to continue to secure the homeland from TCOs by leveraging its expansive authorities, experience, and partnerships to attack these problems at their origin – beyond our borders. If confirmed, my focus will be on increasing public safety investigations that disrupt and dismantle illicit operations in drugs, gangs, weapons trafficking, and other dangerous activities that impact public safety.

29. According to the 2014 QHSR, preventing terrorism is the primary homeland security mission. In furtherance of that mission, ICE HSI plays a key role on the Joint Terrorism Task Forces. If confirmed, how would you ensure that ICE HSI assigns the appropriate number of special agents to the Joint Terrorism Task Forces?

HSI is the largest federal JTTF partner outside of the FBI. The unique enforcement authorities HSI brings to the JTTF allow for significant terrorist threat disruptions each year. If confirmed, I look forward to evaluating the HSI JTTF program in more detail and working with HSI and the FBI to determine appropriate staffing levels.

30. How many employer enforcement cases were completed for each year from FY 2016 through FY 2018? Of the fines collected, what percentage of those fines were negotiated down from the original fine amount?

In FY 2016, HSI conducted 1,412 Worksite Enforcement (WSE) cases, which resulted in the levying of 344 fines for a total of \$17,470,551.

In FY 2017, HSI conducted 1,108 WSE cases, which resulted in the levying 251 fines for a total of \$9,887,142.

In FY 2018, HSI conducted 1,770 WSE cases, which resulted in the levying of 277 fines at a total of \$10,070,256.

HSI does not track when fines are negotiated down from their original amount in any type of electronic format that would permit it to be readily reported.

31. According to self-reported statistics, Border Patrol apprehended 303,916 illegal entrants along the Southwest border in FY 2017. That figure represents an 82% drop from FY 2000, when approximately 1.6 million illegal entrants were apprehended along that border. A September 2017 report by the Office of Immigration Statistics estimates successful illegal border entries fell from 1.8 million in 2000 to 170,000 in 2016 – a 91% decline. The report found that “the southwest land border is more difficult to illegally cross today than ever before.” Do you agree with the Office of Immigration Statistics’ assessment? Is the southwest border more difficult to illegally cross today than ever before?

While personnel, technology, and infrastructure advancements have made our borders more secure and harder to cross, they are still vulnerable to transnational criminal organizations that seek to smuggle drugs, money, criminals, and people. Instituting a legal consequence for illegal border crossing also drove reductions in illegal crossings. However, the public demand for a secure border is not yet met.

Currently, enforcement resources are burdened with large numbers of unaccompanied minors and families crossing with children, which strains capacities at both CBP and ICE. Additionally, the challenges inherent in the *Flores* Settlement Agreement and the Trafficking Victims Protection Reauthorization Act (TVPRA) provide little to no consequence for children and families who cross the border illegally.

Until these loopholes are addressed, the necessary investments in security cannot be fully realized.

32. What is ICE's current policy for the prioritization of resources? Does ICE prioritize the arrest or investigation of criminal aliens over individuals who have no criminal history or criminal charges? If an ICE agent encounters an individual with no criminal history or criminal charges during an investigation, is that person prioritized for removal because they have had contact with an agent?

Pursuant to EO 13768, *Enhancing Public Safety in the Interior of the United States*, no classes or categories of removable aliens are exempt from potential enforcement.

Additionally, as the EO states, ICE prioritizes the removal of aliens, who have been convicted of any criminal offense; have been charged with any criminal offense that has not been resolved; have committed acts that constitute a chargeable criminal offense; have engaged in fraud or willful misrepresentation in connection with any official matter or application before a governmental agency; have abused any program related to receipt of public benefits; are subject to a final order of removal, but have not departed; or who in the judgment of an immigration officer otherwise pose a risk to public safety or national security.

33. What is ICE's current policy when resources are needed for immigration enforcement but are not available within ICE's budget? How often since FY 2016 has ICE received reprogramming funds from other agencies within the federal government in order to carry out its functions? What were the amounts of these reprogramming funds? Which agencies did they come from and what purpose did the funds serve within ICE?

Operating under a long-term continuing resolution, as ICE has had to do repeatedly in recent years, severely inhibits predictability and hinders long-term planning for contracts and vital acquisition programs.

Congress has provided authorities and limited flexibilities within our appropriations to respond to emerging resource needs. We forecast and estimate our annual funding requirements in advance using all available tools and re-assess those needs and

priorities throughout the fiscal year. If required, we will submit a reprogramming notification through the Administration and Congress to realign resources to address operational requirements.

Southwest border migration surges as well as the significant population of criminal aliens in the United States directly impacts our detention bed requirements. Since FY 2016, ICE has used the reprogramming authority to meet mission requirements as outlined below:

FY18 Reprogramming Sources		
Agency	Reprogrammed Amount	Use
CBP	\$ 50,956,508	
DNDO	\$ 1,801,131	
FEMA	\$ 10,483,907	
FLETC	\$ 2,921,000	
NPPD	\$ 3,300,000	
OHA	\$ 975,000	
OSEM	\$ 39,687	
S&T	\$ 3,800,000	
TSA	\$ 32,146,911	
USCG	\$ 32,089,662	
USCIS	\$ 7,200,000	
USM	\$ 6,000,000	
USSS	\$ 2,469,657	
Total	\$ 154,183,463	\$107M: TRP; \$47M: Custody Ops

FY17 Reprogramming Sources		
Agency	Reprogrammed Amount	Use
ICE Internal Sources	\$ 20,500,000	Custody Ops
FEMA	\$ 80,700,000	
Total	\$ 101,200,000	

FY16 Reprogramming Sources		
Agency	Reprogrammed Amount	Use
ICE Internal Sources	\$ 98,800,000	Custody Ops
ICE Breach Bond Authority	\$ 28,000,000	
Total	\$ 126,800,000	

34. What is ICE's current policy for enforcement actions or removals at sensitive locations? Please list what ICE considers to be sensitive locations for the purposes of enforcement actions or removals.

Under current ICE Policy 10029.2, *Enforcement Actions at or Focused on Sensitive Locations*, enforcement actions should generally be avoided at or focused on sensitive locations, except in the event of exigent circumstances, if other law enforcement actions have led officers to a sensitive location, or with prior approval from an appropriate supervisory official.

Locations treated as sensitive locations under ICE policy include, but are not be limited to:

- **Schools, such as known and licensed daycares, pre-schools and other early learning programs; primary schools; secondary schools; post-secondary schools up to and including colleges and universities; as well as scholastic or education-related activities or events, and school bus stops that are marked and/or known to the officer, during periods when school children are present at the stop;**
- **Medical treatment and health care facilities, such as hospitals, doctors' offices, accredited health clinics, and emergent or urgent care facilities;**
- **Places of worship, such as churches, synagogues, mosques, and temples;**
- **Religious or civil ceremonies or observances, such as funerals and weddings; and**
- **During a public demonstration, such as a march, rally, or parade.**

35. Under this administration, how many ICE enforcement actions have been conducted:

- a. in schools;

One on a university campus.

- b. in medical treatment and health care facilities;

Three.

- c. in places of worship;

Zero.

- d. at religious or civil ceremonies or observances, such as funerals and weddings;

Two.

- e. on military bases;

ICE does not statistically track the number of enforcement actions taken on military bases. Please note that military bases are not considered a sensitive location pursuant to current policy.

- f. at public demonstrations; and

Zero.

- g. in courthouses?

ICE does not statistically track the number of enforcement actions taken in courthouses. Please note that courthouses are not considered a sensitive location pursuant to current policy.

36. Under this administration, how many immigrants has ICE detained at immigration court hearings at which a non-detained immigrant is issued a final order of removal?

This is not a variable that ICE tracks. Currently, ICE does not engage in this general practice for the reasons identified below.

37. Do you support increasing the number of ICE law enforcement officers assigned to immigration court hearings in order to ensure that immigrants issued a final order of removal are taken into custody?

When an Immigration Judge (IJ) issues a removal order, such a removal order is not final unless the alien waives appeal. Many aliens reserve their right to appeal and ultimately file an appeal to the Board of Immigration Appeals (Board) within the 30-day window for appeal. Such aliens are not subject to mandatory detention until and unless a final removal order is issued by the Board or they fail to file an appeal within the 30 days. Thus, while ICE could take the alien back into custody when an IJ issues a non-final removal order, the aliens would still be eligible for a bond from an IJ. While some IJs will decline to issue such aliens a bond during the pendency of their appeals, it has been ICE's experience that many IJs will nevertheless issue a bond to such aliens while their appeal is pending, making it a waste of resources for ICE to arrest such aliens when the IJ issues a non-final removal order in many cases. Further, family units that receive non-final removal orders could not be re-detained for a period longer than 20 days in light of *Flores*.

If ICE were to arrest aliens at the time an IJ issues a non-final removal order, it is estimated that ICE ERO would need personnel and equipment resources akin to its existing Fugitive Operations footprint – 129 teams, at a cost of approximately \$159M – to cover all locations. Currently, ICE does not have the funding to support such an expansion.

Additionally, for those cases on the non-detained docket, the vast majority receive multiple continuances and calendar resets, and many aliens ordered removed by an

immigration judge on the non-detained docket are ordered removed *in absentia* and thus are not physically present in court at the time removal is ordered. Accordingly, such a team of officers is likely to spend an entire day at the courthouse only to arrest no one. These same officers could have been working other enforcement programs, such as the Criminal Alien Program or Fugitive Operations; targeting aliens whose appeals have been dismissed by the Board and thus who are subject to final, executable removal orders; or paying greater attention to their existing dockets in order to execute removals timelier and at less cost to the government. Of course, Congress could amend the relevant statutes to make aliens with non-final removal orders subject to mandatory detention during the pendency of their appeals, which would better justify ICE's allocation of resources to effectuate such arrests.

38. How many detention beds:

a. Does ICE currently have?

ICE currently has access to approximately 46,000 beds.

b. Will ICE have given its current construction and acquisition planning?

The FY 2019 President's Budget request was 52,000. Bed levels for FY 2019 will be determined by the FY 2019 funding bill.

c. Are currently filled?

The number of beds fluctuates daily based on Southwest Border (SWB) arrests, interior apprehensions, etc.; however, ICE is currently using approximately 44,000 beds across the country.

d. Were filled under this administration at the time of maximum detainee population?

The highest population count during this Administration that ICE has detained at one time was 45,466.

e. In your opinion, does ICE need?

ICE needs to have access to sufficient detention beds to accommodate all SWB arrests, as well as to detain aliens subject to mandatory detention and who are a danger to the community, or such a flight risk that no amount of bond or release conditions would be sufficient to ensure their appearance for proceedings or removal. It is difficult to predict the migration patterns of individuals seeking entry into the United States; 52,000 beds would allow for a 10% cushion, but 47,000 beds represent the minimum number of beds needed at the current SWB apprehension rates.

39. On September 6, 2018, DHS and HHS announced the proposal of a new rule that would implement some aspects of the Flores Settlement Agreement and allow ICE to hold families with children in family residential centers for longer than the current 20 day practice.

- a. How will ICE identify and devote resources to implement this rule which would result in a change in the composition of beds needed and used?

At this time, ICE is unable to determine how the number of FRCs may change due to this proposed rule. There are many factors that would be considered in opening a new FRC, some of which are outside the scope of the proposed regulation.

- b. How many family beds will ICE need to fully implement this rule?

The proposed rule would codify the current requirements for complying with the FSA, the HSA, and the TVPRA by putting them in regulatory form. Current capacity of the three FRCs is 3,326 beds, but given the varying family sizes and compositions, and housing standards, not every available bed will be filled at any given time.

- c. If the number of family beds needed exceed the capacity of the South Texas Family Residential Center, the Karnes Family Residential Center, and the Berks Family Residential Center, where will ICE place family units in detention?

As stated in the *Apprehension, Processing, Care, and Custody of Alien Minors* NPRM, "At this time, ICE is unable to determine how the number of FRCs may change due to this proposed rule."

- d. If additional ICE officers are needed to be placed in family residential centers, where will ICE transfer those personnel from?

As stated in the *Apprehension, Processing, Care, and Custody of Alien Minors* NPRM, "At this time, ICE is unable to determine how the number of FRCs may change due to this proposed rule."

- e. What will ICE need to do in order to transition family residential centers to become settings for more long-term stays, as opposed to how the centers are arranged now which is for primarily short-term stays?

The operational standards of the FRCs are as outlined in the *Flores* Settlement Agreement and the proposed rule.

- f. How will ICE ensure that there are enough attorneys to prosecute immigration court cases in order to reduce the backlog of the detained docket?

In order to reduce the backlog of the detained docket, EOIR needs to hire new IJs. The ICE Office of the Principal Legal Advisor (OPLA) has calculated that it needs 2.39 attorneys per immigration judge. Based on the 100 additional IJs that EOIR was funded to add to its ranks in FY 2018 and the 100 IJs included in the House mark of EOIR's FY 2019 budget, OPLA faces a potential shortfall of 838 total positions (inclusive of attorneys, managers, and support professionals). This is a daunting resource challenge for ICE; while I believe adding additional IJs is vital for the immigration court backlog to be addressed, expanding EOIR's IJ ranks will not reduce the backlog if ICE is not sufficiently staffed with attorneys to appear at removal hearings.

40. The DHS Advisory Committee on Family Residential Centers reported on September 30, 2016, that "detention is never in the best interest of children." Do you agree? Absent the Flores Settlement Agreement, is there an upper limit on the length of time a child should be held in ICE custody? What is it?

As stated in the proposed rule, minors in DHS custody will continue to be treated with dignity, respect, and special concern for their particular vulnerability. The standards of the *Flores* Settlement Agreement include, but are not limited to, proper physical care, educational services, mental health services, group counseling, visitation and contact with family members, a reasonable right to privacy of the minor, and legal and family reunification services.

As to length of detention, the ultimate purpose for which ICE detains aliens is to ensure their appearance for removal proceedings and for the execution of a removal order if one is issued. The U.S. Supreme Court, in *Zadvydas v. Davis*, 533 U.S. 678 (2001), has held that indefinite detention is impermissible. Those we detain pending removal proceedings are detained for a limited period of time with a clear end point – the conclusion of proceedings. The length of proceedings will vary as it is dependent on the specific circumstances of each case, and thus we cannot assign a date certain detention will end for each alien; however, those proceedings have a clear end point that will lead to the release or removal of every alien.

While I do not believe ICE indefinitely detains any alien, I am committed to working with Congress, the Department of Justice, and within DHS to ensure that proceedings are completed as quickly as possible, consistent with due process, so that the length of detention for aliens are minimized to the greatest extent possible.

41. Will you request additional funding for ATD?

The FY 2019 President's Budget requests \$184.4 million for ATD supporting 82,000 average daily participants. This is an increase of 3,000 participants from FY 2018.

While ATD may be a helpful tool for ICE to monitor certain aliens that have been released from custody, the program is not a substitute for detention and should not come at the cost of detention resources.

42. Why did ICE terminate the Family Case Management Program in June 2017?

In furtherance of its responsibility to act as a good steward of taxpayer dollars, ICE decided to end the Family Case Management Program (FCMP) pilot. ICE instead invested the resources previously supporting the FCMP back into pre-existing and more cost-effective ICE ATD programs, thereby allowing more individuals to participate in these programs. While FCMP resulted in similar compliance rates, it was a much more expensive compliance tool (\$38.47 per day per family) than traditional ATD (\$4.40 per day per adult enrollee), and resulted in far fewer removals.

The FCMP cost \$6.1 million in FY 2015, \$4 million in FY 2016, and \$7.4 million in FY 2017 before its discontinuation. During its lifespan, the program cost a total of \$17.5 million, and it resulted in the removal of only 15 individuals from the country, as opposed to the more than 5,500 aliens removed who had been on ATD during the same period. Because ICE's mission involves the removal of those who are illegally present in the country and have received a final removal order, ICE does not consider FCMP to be a successful or cost-effective use of resources, and has no plans to reinstate the program at this time.

43. On what basis does ICE determine that an individual is a gang member? A gang affiliate or associate?

Like other law enforcement agencies, ICE uses a comprehensive set of criteria to identify gang membership, including but not limited to self-admission of gang affiliation, convictions for violations associated with Title 18 U.S.C. § 521, convictions for any other federal or state law punishing or imposing civil consequences for gang-related activity or association, or established criteria such as having gang-affiliated tattoos or being identified as a gang member by a reliable source.

It is important to note that as gang members adapt to law enforcement identification techniques, we must also adapt and continue to refine our identification criteria.

44. Has ICE prioritized enforcement actions against MS-13 gang members or affiliates above members or affiliates of other gangs? Why?

No. ICE focuses its enforcement resources on individuals who pose a threat to national security, public safety, and border security, including gang members. ICE HSI in particular uses its expansive criminal and civil enforcement authorities to target and dismantle transnational criminal organizations, including street gangs like MS-13.

HSI has employed a strategy to identify, exploit, and disrupt MS-13 financial networks – attacking MS-13's global criminal enterprise by denying gang leaders access to the illicit funds used to fuel gang violence in Central America and the United States.

45. How many MS-13 gang members has ICE deported under this administration?

ICE Removals of Suspected MS-13 Gang Members

10/01/2017 - 09/22/2018

Fiscal Year	Removals
FY2018 YTD	1,290
10/01/2017 - 09/22/2018	

Note: ICE is able to report on MS-13 arrests beginning in FY 2018. Membership in MS-13 is based on the gang name identified within ICE systems of record. ERO begin tracking MS-13 gang identifiers in FY 2018.

ICE Removals of All Suspected Gang Members

Fiscal Year	Removals
FY2017	5,396
FY2018 YTD	5,598
10/01/2017 - 09/15/2018	

46. Which transnational criminal organization (TCO) is the greatest threat to our national security? Please explain why.

While each TCO brings a unique and significant threat to the United States, from a national security perspective, Chinese TCOs currently represent one of the greatest threats to global security. They play a key role in fueling our current drug epidemic as the main suppliers and traffickers of opioid analogues that are being trafficked into the United States, Mexico and Central America. Chinese TCOs have also established far-reaching global networks and have a propensity to diversify their illicit enterprises to secure tremendous profits and power. Today, Chinese TCOs have the connections and capacity to traffic in drugs, arms, persons, and other illicit commodities, with the business acumen to circumvent international laws and regulations.

Mexican TCOs also pose a clear and present threat to our national security. Not only are these criminal organizations resilient, but they are highly mobile and control sophisticated cross-border smuggling networks. Mexican TCOs stretch across and beyond the Southwest Border, where they have strategically situated people in cities across the United States who have established networks and loose affiliations with smaller organizations for the purpose of smuggling. Mexican TCOs are highly networked organizations with built in redundancies that adapt on a daily basis based on their intelligence about United States border security and law enforcement.

47. In order to enroll in DACA, applicants provided sensitive personal information with the promise that it would not be used to enforce deportation actions against them. If confirmed, do you commit that ICE will not use this information to identify, arrest or remove DACA applicants?

If confirmed, I commit that ICE will continue to follow current practice, unless otherwise required by administration policy, legislation, and/or court decisions.

48. How many of the estimated 11 million unauthorized resident aliens should be removed – formally or voluntarily – from the United States?

Congress and the Administration enact the laws and set the policies that determine eligibility, circumstances, and priorities for the removal of aliens from the United States. ICE's responsibility is to enforce those laws and policies using congressionally appropriated resources. Under the President's EOs issued in early 2017, ICE no longer exempts any class or category of aliens from enforcement action. The agency continues to prioritize its resources on targeting public safety and national security threats, fugitives, and illegal reentrants.

49. Do you personally support a path to citizenship for DACA recipients?

As a sworn federal law enforcement officer, I am charged with enforcing the laws enacted by Congress. If Congress enacts such a law, and if I am confirmed, I will follow the law.

50. Do you believe that all undocumented immigrants should have access to legal counsel in immigration proceedings? Should unaccompanied minors in particular be guaranteed access to counsel, and, if so, should there be an age limit to which this guarantee would apply?

I believe the current process, which by statute provides an alien in removal proceedings with the privilege of representation at no expense to the government, permits for fair proceedings, even for those who do not have counsel.

Many aliens are able to retain counsel to represent them, and for those who cannot afford an attorney, they may be able to locate pro bono counsel to represent them. In fact, all aliens in removal proceedings are required to be provided a list of pro bono attorneys in their geographic area.

In addition, the Immigration and Nationality Act, as well as the implementing regulations, provide safeguards to ensure that every alien in removal proceedings has the opportunity to fully and fairly present their case. And, immigration judges are responsible for ensuring that the record of proceedings is fully developed and that every alien has a full and fair opportunity to present their case. In fact, the regulations expressly require that the immigration judge inform the alien of his or her apparent eligibility to apply for any relief or protection.

51. During your tenure as Acting Director of ICE, how many:

- a. Complaints have been made of sexual assault or harassment of detainees by ICE agents?

Since June 30, 2018, the ICE Office of Professional Responsibility (OPR) received three complaints of sexual assault or harassment of detainees by ICE agents, including:

- 1. Unknown employee (possibly non-ICE employee) allegation that a guard sexually assaulted and touched the genitals of a detainee. The complaint is currently pending with the Office of Inspector General (OIG).**
- 2. Allegation that an ICE employee inappropriately touched the breast of a detainee. The complaint is currently under investigation.**
- 3. Allegation that a male ICE employee made sexual comments towards a female detainee. The allegation was closed as unsubstantiated.**

- b. Complaints have been made of sexual assault or harassment of ICE agents by other ICE agents?

Since June 30, 2018, OPR received three complaints of sexual assault or harassment of ICE agents by other ICE agents, including:

- 1. Allegation that an ICE trainee made sexual comments to another ICE trainee. The complaint is pending with OIG.**
- 2. An ICE employee alleged another ICE employee's comments toward him were sexual in nature. The complaint is currently under investigation.**
- 3. Allegation that an ICE trainee made inappropriate sexual comments to other ICE employees. The case was closed, and the ICE trainee (probationary employee) was terminated.**

- c. ICE agents have been disciplined or terminated for sexual assault or harassment.

OPR identified a total of four disciplinary actions for the period under review, in which ICE agents were found to have engaged in sexual assault or harassment. The four disciplinary actions were two suspensions, one retirement and one termination of a probationary employee. Because it takes time from receipt of complaint to investigate, and ultimately implement discipline for, substantiated allegations, the first three disciplinary actions below were the result of misconduct that occurred prior to June 30, 2018.

The last incident, and resulting discipline, occurred after June 30, 2018:

- 1. ICE Unit Chief inappropriately touched ICE attorney, resulting in a three-day suspension.**
- 2. ICE Unit Chief showed inappropriate sexual images to subordinate employees, which resulted in a 25-day suspension.**
- 3. Inappropriate sexual conduct with a subordinate; retired.**

4. Allegation that ICE trainee made inappropriate sexual comments to other ICE employees. The ICE trainee (probationary employee) was terminated.

For each complaint, please provide a description of the allegation and its resolution.

52. What changes in ICE's interaction with immigrant communities have occurred across the country since President Trump took office?

Community engagement is necessary for law enforcement agencies to build trust and relationships in the communities they serve and operate within. ICE continues to be engaged in the community through the work of its Community Relations Officers, field leadership, and other outreach initiatives. The agency also works closely with DHS' Office of Public Engagement and Office of Civil Rights and Civil Liberties. I believe there are opportunities to strengthen ICE's efforts in this area, particularly at a time when misleading information, rumors, and harmful rhetoric about immigration enforcement are creating unnecessary fear in the immigrant community. If confirmed, I am committed to working to address these challenges.

53. Please explain your personal involvement, if any, in the creation, implementation, and execution of policies that resulted in the separation of thousands of immigrant children from their parents at the border between April and June of 2018. Please include any objections or concerns you raised regarding the separations, and to whom they were made. Please also include any instructions or guidance you issued or assisted in issuing regarding family separation.

While at CBP, I was involved in discussions regarding the agency's implementation of the Administration's Zero Tolerance Policy (ZTP) and the operational protocols required as a result. I was aware of the planning and the need to try and address the unmitigated flow of children being trafficked and smuggled to the border. For several months prior to the Attorney General's announcement of ZTP, the Administration and DHS officials repeatedly sought Congress' assistance in addressing laws that prevent the expeditious return of unaccompanied minors and family units who are ineligible to remain in the United States, alleviating the asylum backlog, and providing additional resources to address the immigration court backlog – all of which are necessary to fully secure our borders, enforce immigration laws, and reduce the flow of illegal immigration.

54. Does ICE track the instances where families have been separated? If so, how many families have been separated since you were appointed Acting Director?

In the time since I was appointed Acting Director, ICE records reflect 20 separated family units (or purported family units) for criminality, fraudulent familial relationship and other derogatory information which negatively impacts the safety and wellbeing of the child.

55. How many separated families has ICE helped facilitate reunification for since May 2018? What proportion of the total number of separated families does this number represent? How many adults that were separated from their family units as a result of the “Zero Tolerance” policy does ICE currently have in custody?

Pursuant to *Ms. L. v. I.C.E.*, 310 F. Supp. 3d 1133 (S.D. Cal. June 26, 2018), ICE ERO and the HHS Office of Refugee Resettlement (ORR) have worked collaboratively to reunify families that are eligible for reunification pursuant to the court’s order.

DHS is currently working to comply with all orders issued by the Court. All efforts at reunification, including those involving parents who are abroad, are currently being overseen by the U.S. District Court for the Southern District of California.

As of September 29, 2018, of the CBP identified ZTP population of separated parents, there are 262 aliens in ICE custody. Of those, 138 are detained at an ICE FRC.

56. In December 2017, ICE issued a directive regarding the detention of pregnant women, no longer regarding them as an exempt class for detention. Have you or any of your subordinates advocated or implemented changes to this policy? If so, what changes? How many pregnant women have been detained since you were appointed Acting Director? How many pregnant women are currently in ICE custody? Please provide a breakdown of how far along in their pregnancies the detainees are. What is ICE’s policy for women who give birth in ICE custody?

I have not nor am I aware of any subordinates advocating for or implementing changes to the policy.

ICE manually tracks pregnancy-related cases for detainees in custody to provide the individualized attention necessary for each case.

In an effort to respond to your request, ICE examined medical data related to pregnant detainees. These records indicate that, from July 2018 to August 2018, there were a total of 255 pregnant women booked into ICE custody.

As of October 4, 2018, there are a total of 45 pregnant detainees in custody:

- 9 detainees are in their 1st trimester
- 32 detainees are in their 2nd trimester
- 4 detainees are in their 3rd trimester

If a pregnant detainee goes into labor or experiences any other acute medical issue involving the pregnancy while in ICE custody, the facility medical staff refers the detainee to the local hospital’s emergency department for care and management.

57. What is ICE's current policy on access to abortion care for women and girls in ICE custody? Have you or any of your subordinates advocated or implemented changes to this policy? If so, what changes?

In the event continued detention is necessary and appropriate, and if the life of the mother would be endangered by carrying a pregnancy to term, or in the case of rape or incest, then consistent with federal law ICE will assume the costs associated with a female detainee's decision to terminate a pregnancy. Where a detainee opts to fund the termination of her pregnancy, ICE shall arrange for transportation at no cost to the detainee and, if requested by the detainee, for access to religious counseling, and nondirective (impartial) medical resources and social counseling, to include outside social services or women's community resources groups.

I have not nor am I aware of any subordinates advocating for or implementing changes to the policy.

58. What is ICE's current policy for detaining individuals with chronic and acute health conditions? How many individuals with chronic and acute health conditions have been detained since you were appointed Acting Director?

ICE provides appropriate care for everyone in its custody, consistent with current law and policy. ICE Health Service Corps (IHSC) provides direct medical care to detainees housed at 21 designated facilities throughout the nation to include medical, dental, pharmacy, mental health care and public health services and also oversees the medical care provided to detainees housed at non-IHSC staffed detention facilities across the country. Most ICE facilities are bound by the 2011 Performance Based National Detention Standards, which states that a detainee who requires chronic medical supervision will be treated in accordance with a treatment plan approved by a licensed physician, dentist, or mental health practitioner and will receive care and treatment, as needed, that includes monitoring of medications, diagnostic testing and chronic care clinics.

59. Has ICE renegotiated or implemented any health care contracts for the care of individuals with serious healthcare needs in ICE custody since you were appointed Acting Director? If so, please provide those contracts.

Since June 30, 2018, IHSC has not renegotiated or implemented any health care contracts for the care of individuals with serious healthcare needs in ICE custody.

IHSC has implemented Letters of Understanding (LOUs) with external care providers to negotiate healthcare services for those in ICE custody. These LOUs allow providers to agree to provide medical services in exchange for a Medicare reimbursement rate. IHSC has implemented three LOUs since June 30, 2018, which are enclosed in Appendix B.

60. What efforts, if any, have you made to reach out to “sanctuary cities” to implement policies that could improve communication or collaboration with local and state authorities there?

I believe that outreach to jurisdictions with non-cooperation policies is vitally important. As law enforcement agencies, we share a common goal of protecting public safety and combating crime, and we should be focused on finding ways to work together. Law enforcement should not be divided or discouraged from carrying out our mission because of political or ideological differences. In addition to regular outreach that occurs at the local level through our field leadership, during my time as Acting Director, I have met with members of the International Association of Chiefs of Police and the National Sheriffs Association to discuss these challenges. If I am confirmed, building upon that dialogue will be one of my top priorities.

61. What is ICE’s policy for collateral arrests? Where a family is implicated in a collateral arrest what is ICE’s policy for the detention of those individuals? Are families detained together?

ICE prioritizes enforcement efforts on those aliens who pose a threat to public safety or national security, without excluding from enforcement any immigration violators encountered during the course of daily operations. Targeted arrests may occur against specific individuals who have been identified and thoroughly investigated through a variety of resources but primarily through the criminal justice system. In accordance with existing law and policy, and at its discretion, ICE may take additional aliens into custody who are encountered during the course of targeted enforcement actions and who are not legally present in the United States.

The presence of any juveniles at a target location, or in the care of a targeted alien, is always a possibility and officers investigate the presence of juveniles prior to conducting any enforcement operation. During targeted enforcement operations, ICE personnel ensure that the agency’s immigration enforcement activities do not unnecessarily disrupt the parental rights of both alien parents or legal guardians of juveniles. If ICE takes a primary caregiver into custody, procedures vary depending on whether the juvenile is accompanied, unaccompanied, a citizen, or a non-citizen.

Further, if any juveniles are present during an enforcement action, officers work to ensure that a parent or guardian is present to ensure the safety of the juvenile. Often, officers will also coordinate with the arrested alien to identify another family member or neighbor that can ensure the safety of the juvenile or juveniles until another family member can arrive on scene. In the absence of an identified responsible adult, ICE coordinates with the local and/or state child protective service and/or HHS to ensure that the juvenile or juveniles are placed in a safe environment prior to leaving the scene of the arrest with a family member or other responsible adult.

62. Since January 20, 2017, how many collateral arrests has ICE made? Please provide a breakdown of how many of these individuals had criminal records, and if so, what crimes they were charged with, if they were charged.

“Collateral arrests” is not a variable in ICE’s systems of record. As such, ICE is unable to statistically report on this information.

63. On September 19, 2018, DHS OIG released a report which found that ICE did not properly plan for an increase in 287(g) participants and that this lack of planning may hinder the agency’s ability to effectively oversee participants.

- a. Currently, how many law enforcement agencies participate in the 287(g) program? Please list the agencies.

Currently, ICE has 78 signed 287(g) Memoranda of Agreement (MOA) within 20 states. Please refer to Appendix A.

- b. Since President Trump signed Executive Order 13767 in January 2017, the number of law enforcement agencies that were participating in the 287(g) program more than doubled. Was ICE involved in the drafting of the executive order? If so, why was ICE so ill prepared for an increase in participants?

Although ICE had expected a renewed interest in the program, it’s budget has been significantly reduce for several years, limiting its ability to prepare for the overwhelming response from the law enforcement community. This, coupled with the exemplary efforts of the existing field leadership in promoting the program, allowed the program to grow exponentially over a relatively short period.

- c. DHS OIG found that ICE has a staffing model for the 287(g) program but did not use it in order to hire additional support staff, relying instead on the agency’s “best guess” for staffing needs. Why would ICE not use the 287(g) staffing model in this case?

Staffing determinations for the 287(g) program were not made by employing, a “best guess,” but were a result of decisions based on operational realities. The referenced 2011 staffing model utilized geographically placed Field Program Managers (FPMs) and Supervisory Detention and Deportation Officers to provide program oversight and signatory authority for charging documents. In May of 2011 there were 37 operational jurisdictions; by the end of 2016, only 32 remained. This model proved effective for the limited number of active jurisdictions during that time.

In planning for the rapid expansion of the program, ICE focused its finite resources by placing staff based on a centralized proximity of proposed expansion sites; and in fact, hired 14 additional FPMs to support these new

partnerships. This was done, to the best extent possible, to ensure that ICE personnel would be able to maintain proper oversight of new partners, while continuing to support existing agreements.

ICE concurred with the OIG recommendation to develop a new staffing plan to account for current operational realities and replace the outdated 2011 staffing model. This new plan is under development by ICE.

- d. DHS OIG found that program managers and field management have raised concerns about the current staffing numbers and staffs' ability to effectively oversee so many new participants. Why were so many new participants approved without the necessary staff to oversee them?

The 2017 EOs on immigration enforcement authorized the expansion of the 287(g) program, but funds were not appropriated to support the expansion. In the interim, the program used existing resources to add 14 additional field personnel to support the new MOA locations.

Further, the program requested a \$51.199M increase in the FY 2019 budget request, which is pending congressional approval and appropriation. In the 20 months following the issuance of the EOs on immigration enforcement, the number of law enforcement agencies participating in the 287(g) program rose from 33 signed MOAs to 78.

ICE has assessed expanded training options, and has implemented a centralized training model that has reduced disruptions, increased consistency, and enabled scenario-based training and the sharing of best practices among participants. ICE is also developing a supplemental training plan to help ensure FPMs monitor required training.

Based on a realignment of existing resources, ICE now has adequate staff to effectively oversee all new participants.

- e. ICE did not concur with DHS OIG's recommendation to develop an IT installation and infrastructure plan to identify efficiencies. DHS OIG will consider this recommendation resolved when ICE submits a corrective action plan to implement this recommendation. Does ICE have any plans to submit a corrective action plan? Why or why not?

While a corrective action plan has not been developed, internal reviews of existing processes have revealed that efficiencies are being leveraged where possible and that ICE has adequate resources for the management and oversight of IT equipment deployment. While it will always be ICE's intention to establish IT deployment as quickly as possible, much of the IT process requires the support and collaboration with external entities and the unexpected must be allowed for as it is outside of ICE's control.

64. On September 27, 2018, DHS OIG released a report which found that DHS, and ICE, were not completely prepared to implement the Zero Tolerance Policy or manage the after-effects of the Policy. Specifically, DHS OIG identified issues regarding lack of integration between component IT systems, unreliable data reporting on family separations, and dissemination of inconsistent or inaccurate information to detainees.

a. DHS OIG found that ICE's systems did not display data from CBP's system, leaving ICE officials in the dark regarding the number of separated parents in their custody. At one point, ICE officials at the Port Isabel Detention Center were interviewing detainees in order to identify which detainees had been separated from their children.

i. Has ICE made any progress since the release of the OIG report to more effectively integrate systems with other DHS components?

Yes. On August 2, 2018, USBP updated its system to refine the process by which it tracks family units to include when family members are separated from each other. This new information is captured and stored in the Enforcement Integrated Database, a shared data repository used by CBP and ICE. At the same time, ICE updated its system, ENFORCE Alien Removal Module, to reflect the new information entered by CBP. Family units encountered after this date are now identified as such in ICE's system.

ii. Given the manual interview process at the Port Isabel Detention Center, do you feel confident that ICE identified all possible parents that were separated from their children as a result of the Zero Tolerance Policy? Why or why not?

In order to address court requirements to reunify the large number of affected parents with minors as quickly as possible, ICE worked with USBP to manually track individuals who had been separated by USBP and were then taken into ICE custody, as ICE did not conduct these separations itself under ZTP.

Due to the court's timeline, ICE determined that it was necessary to both examine data and to interview the detainees to make a thorough and accurate determination of who had been separated. This manual review process served as an extra layer of validation as it allowed ICE to identify potential fraud and safety concerns by identifying individuals with fraudulent familial relationships or other indicators that they might pose a risk to a child's health, safety, or well-being, and thus should not be reunified as a result.

It is because of ICE's exhaustive interviewing process in conjunction with the data ICE received from USBP, that ICE is confident that we

identified all possible parents in ICE custody that were separated by USBP as a result of ZTP.

- b. DHS OIG found that a separated parent in ICE custody was not reunited with their child until September 2018, even though DHS declared that it had reunified all eligible parents in ICE custody with their children as of July 26, 2018.

- i. Did DHS have full visibility into ICE's operations at the time that the agency incorrectly announced that all eligible parents had been reunited with their children?

ICE's first responsibility was, and continues to be, the safety and well-being of children involved in this process. As a result, reunification may have been delayed in cases where there was doubt regarding parentage or criminality. However, all eligible parents detained in ICE custody were reunified as ordered by the court, and additional reunifications are ongoing.

DHS had full visibility of ICE operations at multiple levels during this process. DHS was accurate in affirming that ICE reunified all eligible parents at that particular stage of the reunification process. This was also affirmed by Judge Sabraw at the July 27, 2018 status conference: "On the reunification of eligible parents, that process has been completed. And the government deserves great credit in that regard."

- ii. What improvements does ICE need to make to ensure that the component can get an accurate read of the detainees in custody at all times?

Prior to August 2, 2018, all parents separated from a minor would have been identified through a manual process (and the associated challenges described in the OIG report). Since the August 2 changes, ICE detention facilities are now able to run reports to identify members of family units currently in custody.

- c. DHS OIG spoke with 12 current or former ICE detainees who had been separated from their children. Only half of these individuals reported being able to speak with their children while in detention. Additionally, DHS OIG reported that, in one area of Port Isabel Detention Center, a flyer with the toll-free number to contact to obtain information about their separated children, was not posted until after the Executive Order rescinding the family separations policy was signed.

- i. Why was the information for separated parents disseminated so inconsistently by ICE?

On June 6, 2018, guidance was distributed to ICE field office leadership entitled "New Process for Ensuring Regular

Communication and Removal Coordination of Separated Parents and Children.”

This guidance reiterated ICE policies mandating the facilitation of regular communication between detained aliens and their minor children and instructed that English and Spanish-language flyers informing separated parents on how to locate their children in the custody of HHS ORR be posted in all detention facilities.

The flyer explained to parents and legal guardians that they could seek assistance locating minor children either through the Detention Reporting and Information Line (DRIL) or by reaching out to ORR directly.

- ii. What has ICE done since the release of the DHS OIG report to improve the flow of information to detainees?

ICE continued to expand the capacity of the DRIL and staffed a dedicated email inbox to handle the increased volume in calls and inquiries from separated parents, government partners and other stakeholders on family separation issues.

DRIL operators and headquarters-level staff assisted detainees in determining the location of their children and assisted ORR caseworkers who were trying to locate the parents of children in ORR custody.

ICE also designated on-site facility points of contact to work directly with ORR to set up regular communication between parents and their children.

Additionally, on September 27, 2018, guidance was distributed to ICE field office leadership regarding detained parents of minor children who have pending immigration cases. The guidance clarified that access should be granted to legal representatives of minor children, if the parent so desires.

- 65. According to information provided by ICE, as of September 2018, there were over nine times as many known or suspected terrorists (KST) on ICE’s non-detained docket as on the detained docket in FY 2018. Why were those individuals not prioritized for detention? Do you believe that ICE is adequately prioritizing resources to detain individuals who pose the greatest threat to national security?

ICE prioritizes KSTs for removal and such individuals are the highest priority for the agency due to their threat to national security and public safety.

However, ICE lacks the legal authority to detain aliens based solely on their placement on the U.S. Consolidated Terrorist Watchlist. While certain classes of aliens are subject to mandatory detention or to regulations that prevent immigration judges from reviewing ICE's custody decisions, many classes of aliens may be eligible to have an immigration judge review their custody status, which could result in their release. Thus, whether an alien on the watchlist remains detained by ICE will depend on the specific facts of the case.

Based on the OIG report, "ICE Faces Challenges to Screen Aliens Who May Be Known or Suspected Terrorists," ICE has provided the DHS OIG with a Mission Action Plan (MAP) to address its recommendations. Additionally, consistent with EO 13780, *Protecting the Nation from Foreign Terrorist Entry Into the United States* (March 6, 2017), ICE is working with DHS partners and members of the Intelligence Community on a concept plan to build the National Vetting Center (NVC). Completion of tasks outlined in the MAP, in conjunction with an active role in the NVC, will significantly increase ICE's capability to screen and vet aliens on our dockets. While ICE is currently on track to meet the timelines outlined in this plan, the agency does anticipate the need for additional funding and resources to address the OIG recommendations and close any gaps in current screening and vetting capabilities.

Management, Accountability, and Oversight

66. How many law enforcement officers does ICE ERO and ICE HSI employ? How many support personnel? How many attorneys? How many of each position is ICE authorized to employ?

As of September 15, 2018, ICE employed 12,642 law enforcement personnel, 1,135 attorneys, and 6,168 support personnel.

- ERO employed 6,117 law enforcement personnel and 1,692 support personnel.
- HSI employed 6,201 law enforcement personnel and 2,338 support personnel.
- OPR employed 206 law enforcement personnel and 334 support personnel.
- M&A employed 118 law enforcement personnel and 1,506 support personnel.
- OPLA employed 1,135 attorneys and 298 support personnel.

ICE is authorized to employ a total of 20,119 in the following occupations:

- 6,235 Deportation Officers
- 6,421 Criminal Investigators
- 1,215 Attorneys
- 6,248 Support

67. If confirmed do you intend to continue the implementation of a polygraph exam for new applicants? If so, when will it be implemented?

Yes. On June 29, 2018, former Acting Director Homan signed into policy Directive 17014, *Polygraph Screening Examination for Entry-Level Law Enforcement Applicants*.

In late August, after hiring five examiners, ICE began piloting the agency's polygraph program. As of the end of FY 2018, ICE had completed a total of 29 exams. All indications are that the program is off to a successful start, and we will continue to assess and improve as necessary.

68. Do you support annual pay increases for ICE Agents? Why?

Pay increases already occur as employees gain seniority in the GS/GL pay schedules. In instances where the cost of living rises beyond normal step increases, I would be supportive of Congress appropriating cost of living increases. I also believe that pay reform is needed for Deportation Officers (DOs), who are still compensated by Administratively Uncontrollable Overtime (AUO). The rules governing AUO are complex, and pay projections are difficult to predict and sustain. This in turn creates challenges to ensuring accountability and proper financial management. DOs deserve a pay system that is commensurate with current duties, allows for strict accountability, predictability and sustainability. If confirmed, I hope to partner with Congress to address this issue.

69. What difficulties will ICE have in hiring the additional ICE agents requested in the President's FY 2019 budget request?

The FY 2019 President's budget request provides for an increase of 300 Criminal Investigators (CI) and 1,700 Deportation Officers (DO).

Currently, ICE is under a Continuing Resolution through December 7, 2018. As a result, ICE will continue to hire backfills and to get ahead of attrition as much as possible.

The later the receipt of appropriations, the more difficult it will be for ICE to hire an additional 300 CIs and 1,700 DOs in FY 2019.

ICE has, however, established several hiring process efficiencies resulting in a time-to-hire reduction of 62% for DOs and a comparable reduction estimated for CIs. These efficiencies resulted from the use of direct hire authority, re-engineered battery testing business processes, and streamlined hiring processes.

Although ICE has been successful in maintaining steady state hiring, considering hiring for attrition averages 1,192 per year, additional HR support will be required to hire these additional CI and DO positions in FY 2019.

The FY 2019 President's budget requests funding for an additional 3,312 personnel (2,000 LEOs and 1,312 support/attorneys) over the FY 2018 President's budget. These enhancements support the operational levels outlined in the budget request.

70. Are you aware of any contracts that ICE or DHS has sought or entered to support the hiring of additional ICE Agents as called for by the Administration's executive orders? If so, please describe and explain why ICE's own human resources management cannot be responsible for the hiring of additional agents. If a contract has been entered, please provide the contract and contract file.

Although ICE solicited for a contract to provide hiring support in response to EO 13768, ICE adjusted its strategy to achieve EO hiring targets following the passage of the FY 2018 Omnibus Budget and cancelled the solicitation without awarding a contract on May 24, 2018.

ICE is instead partnering with the Office of Personnel Management (OPM) to assist with meeting the demands required to achieve the EO hiring goals and develop efficiencies to current ICE human capital processes.

ICE entered into an Interagency Agreement with OPM for assessment, staffing and onboarding services for EO 13768 positions on May 30, 2018.

ICE will need additional HR personnel to maintain the current hiring pace for attrition and to complete any EO hiring in FY 2019.

71. Since your appointment as Acting Director, have you implemented any policies related to the wearing of bullet proof vests? If so, what are they?

No.

72. Since your appointment as Acting Director, have you implemented any policies regarding the use of official vehicles for non-official travel? If so, what are they?

No.

73. Since your appointment as Acting Director, have you implemented any policies regarding the use of body-worn cameras? If so, what are they?

No.

74. What steps do you believe that ICE can take to ensure federal funds expended by the component are free from duplication and waste?

ICE has a robust internal control program to guard against duplication and waste, and the agency is continuously striving to improve our business operations. If confirmed, I look forward to working with the ICE Office of Management and Administration to review internal safeguards and identify potential areas for improvement.

75. If confirmed, do you commit to reviewing ICE programs that you believe could be ineffective, duplicative, wasteful, unnecessary, or have outlived their purpose, and report that information to Congress?

I do.

76. How would you assess ICE's internal controls over financial reporting and what would you do to make sure ICE addresses any weaknesses?

Per DHS guidance and OMB Circular A-123 (Management's Responsibility for Enterprise Risk Management and Internal Control), ICE assesses internal controls annually, culminating in the Director's signed Statement of Assurance (SOA). In the most recent ICE SOA dated September 30, 2018, I provided reasonable assurance that internal controls over financial reporting are designed and operating effectively, with the exception of a material weakness in information technology controls and financial system functionality. ICE lacks an integrated financial system and is currently working with DHS and Congress on modernizing our financial IT system.

ICE undergoes rigorous annual financial audits of our internal controls as a component of DHS's Financial Statement Audit. In my current capacity as Acting Director, I am a strong advocate of our internal control program, which is designed to monitor and test internal controls in accordance with OMB Circular A-123. I will report any material weaknesses and significant deficiencies through our annual Statement of Assurance (as required by the Federal Managers Financial Integrity Act of 1982) to the Secretary and ensure the workforce understands its role and responsibility for internal controls and preventing fraud, waste, and abuse.

As outlined by the DHS guidance, the scope of the ICE assessment of internal control over financial reporting included performing tests of operating design and effectiveness throughout FY 2018, and verification and validation of the effectiveness of corrective actions as of September 30, 2018.

77. What is your view of the role of the DHS Office of Inspector General (OIG)? Please describe your view on how ICE should interact with the OIG. If confirmed, what steps would you take as Assistant Secretary to establish a working relationship with the Inspector General?

I welcome and embrace cooperation with the DHS OIG, which is essential to promote efficiency and effectiveness, and prevent fraud, waste, abuse, and mismanagement. DHS has issued clear guidance on cooperation with the OIG, including expectations for prompt access for the OIG to any files, records, reports, or other information requested; assistance with arranging interviews; and the resolution of report recommendations.

If confirmed, it will be my responsibility to ensure ICE's compliance with legislation and DHS policy. As a public servant and law enforcement officer, I am committed to

If confirmed, I will set strict guidelines to ensure prompt and comprehensive responses to congressional requests for information.

86. Under what circumstances, if any, do you believe an official or employee of ICE may decline to testify before a congressional committee? Please explain.

DHS policy outlines limitations on witnesses for congressional testimony. Beyond applicable law, rule, or policy, I am committed, in coordination with DHS and the committee, to providing the most appropriate witness available for testimony given sufficient advance notice.

87. On what basis, if any, do you believe ICE may prohibit Congressional or staff delegation visits to ICE facilities to speak with ICE detainees? To photograph ICE facilities, consenting employees, or consenting detainees?

As stated in Question 83, I welcome the opportunity to support congressional oversight visits to our facilities.

Regarding photographs, ICE policy clearly outlines that detainees must consent in writing to photographs. In addition, there are security concerns related to photographing facilities inside the secure perimeter, and most ICE detention facilities and detention facility security staff are contracted, so the contractor's rules for photographing their facility and/or staff would also need to be considered. Visitors must obtain advance permission from the facility administrator and the local ICE Field Office Director before taking photographs in or of any facility or contract staff.

88. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

I do.

89. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress? If directed by the administration to systematically ignore oversight requests from minority members of Congress, will you comply?

If confirmed and in accordance with relevant legal opinions, I agree to reply to any reasonable requests for information from members of Congress.

90. If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

I do.

91. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

I do.

92. Will the President invoke executive privilege as to any specific issues you may be asked either at your confirmation hearing or, if confirmed, later hearings?

I am not aware of any reason at this time that the President would do so.

93. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

I will.

94. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

I will.

VI. Assistance

95. Are these answers your own? Have you consulted with DHS, ICE, or any other interested parties? If so, please indicate which entities.

I have consulted with various offices within DHS ICE to gather relevant facts, requested statistics, and background information to help inform my responses. My answers are my own.

I, RONALD D. VITIELLO, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.


(Signature)

This 9th day of October, 2018

APPENDIX A

287(g) Memorandums of Agreement (*in response to Minority Questionnaire, #26a & 63a*)

287(g) Memorandums of Agreement
As of October 9, 2018

AOR	Name of Law Enforcement Agency (LEA)	LEA State Abbr.	Date of Current MOA
NOL	Etowah County Sheriff's Office	AL	June 8, 2016
NOL	Benton County Sheriff's Office	AR	June 13, 2016
NOL	Washington County Sheriff's Office	AR	June 23, 2016
PHO	Arizona Department of Corrections	AZ	June 8, 2016
PHO	Mesa Police Department	AZ	June 23, 2016
PHO	Pinal County Sheriff's Office	AZ	June 13, 2016
PHO	Yavapai County Sheriff's Office	AZ	June 8, 2016
MIA	Clay County Sheriff's Office	FL	June 30, 2017
MIA	Collier County Sheriff's Office	FL	June 13, 2016
MIA	Hernando County Sheriff's Office	FL	February 27, 2018
MIA	Jacksonville Sheriff's Office	FL	June 30, 2016
MIA	Pasco County Sheriff's Office	FL	August 22, 2017
ATL	Bartow County Sheriff's Office	GA	February 21, 2018
ATL	Cobb County Sheriff's Office	GA	June 30, 2016
ATL	Floyd County Sheriff's Office	GA	February 2, 2018
ATL	Georgia Department of Corrections	GA	February 5, 2017
ATL	Gwinnett County Sheriff's Office	GA	June 30, 2016
ATL	Hall County Sheriff's Office	GA	June 23, 2016
ATL	Whitfield County Sheriff's Office	GA	June 8, 2016
NOL	East Baton Rouge Sheriff's Office	LA	May 3, 2017
BOS	Barnstable County Sheriff's Office	MA	January 25, 2018
BOS	Bristol County Sheriff's Office	MA	February 8, 2017
BOS	Massachusetts Department of Correction	MA	June 23, 2016
BOS	Plymouth County Sheriff's Department	MA	February 8, 2017
BAL	Anne Arundel County Detention Facilities	MD	June 19, 2017
BAL	Frederick County Sheriff's Office	MD	August 3, 2016
BAL	Harford County Sheriff's Office	MD	October 26, 2016
ATL	Cabarrus County Sheriff's Office	NC	June 28, 2016
ATL	Gaston County Sheriff's Office	NC	June 13, 2016
ATL	Henderson County Sheriff's Office	NC	February 28, 2017
ATL	Mecklenburg County Sheriff's Office	NC	June 28, 2016
ATL	Nash County Sheriff's Office	NC	February 2, 2018
ATL	Wake County Sheriff's Office	NC	June 8, 2016
SPM	Dakota County Sheriff's Office	NE	February 9, 2018
NEW	Cape May County Sheriff's Office	NJ	April 10, 2017
NEW	Monmouth County Sheriff's Office	NJ	June 8, 2016
NEW	Salem County Sheriff's Office	NJ	December 8, 2016
SLC	Las Vegas Metropolitan Police Department	NV	June 28, 2016
SLC	Lyon County Sheriff's Office	NV	May 4, 2018
SLC	Nye County Sheriff's Office	NV	April 20, 2017
BUF	Rensselaer County Sheriff's Office	NY	February 9, 2018
DET	Butler County Sheriff's Office	OH	September 30, 2016
DAL	Canadian County Sheriff's Office	OK	January 25, 2018
DAL	Okmulgee County Criminal Justice Authority	OK	January 25, 2018
DAL	Tulsa County Sheriff's Office	OK	June 23, 2016
ATL	Charleston County Sheriff's Office	SC	June 23, 2016

287(g) Memorandums of Agreement
As of October 9, 2018

ATL	Horry County Sheriff's Office	SC	June 30, 2017
ATL	Lexington County Sheriff's Department	SC	November 4, 2016
ATL	York County Sheriff's Office	SC	June 30, 2016
NOL	Knox County Sheriff's Office	TN	June 15, 2017
DAL	Lubbock County Sheriff's Office	TX	November 16, 2016
DAL	Potter County Sheriff's Office	TX	January 25, 2018
DAL	Rockwall County Sheriff's Office	TX	January 25, 2018
DAL	Smith County Sheriff's Office	TX	April 25, 2017
DAL	Tarrant County Sheriff's Office	TX	June 19, 2017
ELP	Terrell County Sheriff's Office	TX	January 25, 2018
HOU	Aransas County Sheriff's Office	TX	June 30, 2017
HOU	Calhoun County Sheriff's Office	TX	June 28, 2017
HOU	Chambers County Sheriff's Office	TX	July 17, 2017
HOU	DeWitt County Sheriff's Office	TX	June 30, 2017
HOU	Galveston County Sheriff's Office	TX	June 30, 2017
HOU	Goliad County Sheriff's Office	TX	June 26, 2017
HOU	Jackson County Sheriff's Office	TX	January 26, 2017
HOU	Lavaca County Sheriff's Office	TX	June 30, 2017
HOU	Matagorda County Sheriff's Office	TX	July 27, 2017
HOU	Montgomery County Sheriff's Office	TX	June 28, 2017
HOU	Nueces County Sheriff's Office	TX	February 9, 2018
HOU	Refugio County Sheriff's Office	TX	June 28, 2017
HOU	Victoria County Sheriff's Office	TX	July 12, 2017
HOU	Walker County Sheriff's Office	TX	July 20, 2017
HOU	Waller County Sheriff's Office	TX	May 22, 2017
HOU	Wharton County Sheriff's Office	TX	July 17, 2017
SNA	Burnet County Sheriff's Office	TX	February 2, 2018
SNA	Kendall County Sheriff's Office	TX	March 26, 2018
SNA	Williamson County Sheriff's Office	TX	February 8, 2018
WAS	Culpeper County Sheriff's Office	VA	April 24, 2018
WAS	Prince William-Manassas Regional Adult Detention Center	VA	June 23, 2016
CHI	Waukesha County Sheriff's Department	WI	February 22, 2018

APPENDIX B

**Letters of Understanding regarding healthcare services (*in response to Minority
Questionnaire, #59*)**

Office of Enforcement and Removal Operations
ICE Health Service Corps
U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

DATE: August 27, 2018

SUBJECT: Letter of Understanding

Dear Dr. Reza Mizani,

This Letter of Understanding (LOU) confirms the understanding and professional relationship between Total Vascular Care and U.S. Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC). Total Vascular Care is willing to provide Vascular Care treatment to dialysis patients referred from IHSC at in exchange for timely adjudication and payment of normal and customary charges at the prevailing Medicare rates applicable to Total Vascular Care at the time of service; with the understanding that two claims will be generated for services performed by Total Vascular Care at the ASC. One claim will be for the professional services performed by the physician. That payment will be reimbursed at the prevailing Medicare Physician Fee Schedule rate. The second claim will be for the facility services and will be reimbursed at the prevailing Medicare ASC Fee schedule rate. Timely payment for services rendered is defined as, remittance within thirty (30) calendar days of Total Vascular Care's claim for payment. This LOU is not intended nor shall it be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury; appropriated funds are obligated only if and when medical services are ordered by IHSC.

To ensure continuity of vascular care, Total Vascular Care agrees upon written notification to provide IHSC with timely documentation of services rendered to detainees referred for care. Additionally, Total Vascular Care will act to ensure that all services provided to referred IHSC detainees are performed by licensed independent practitioners acting within the scope of their current privileges. Both parties acknowledge and agree that no additional rights or obligations are intended, arise, or vest as a result of accepting this LOU or through Total Vascular Care's acceptance of payment from the U.S. Department of the Treasury, on behalf of IHSC.

Total Vascular Care agrees to submit claims to the Financial Services Center in Austin, Texas, within one year (365 calendar days) of the date of service. Claims must be sent to:

ICE Health Service Corps
VA Financial Services Center
P.O. Box 149345
Austin, TX 78714-9345

Total Vascular Care may contact the Financial Services Center at 800-479-0523 with any inquiries regarding claim status. IHSC will subsequently designate a primary contact to VA Financial Services Center.

This LOU may be terminated without cause by Total Vascular Care or IHSC, upon providing a thirty (30) days advance written notice to the other party.

If you concur with the above understanding, please countersign, date, and return the attached copy of this LOU to my attention.

Letter of Understanding:

Page 2 of 2

Sincerely,



Dr. Stewart Smith
Assistant Director
ICE Health Service Corps
300 12th St. SW Washington, DC
20536

7/5/2018

Date

Reviewed and accepted:



215 N San Saba, suite 201
San Antonio, Tx 78207

08/28/2018

Date



**U.S. Immigration
and Customs
Enforcement**

*Office of Enforcement and Removal
Operations*

ICE Health Service Corps

U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC
20536

DATE: August 27, 2018

SUBJECT: Letter of Understanding

Dear Neudorf Infectious Diseases Clinic,

This Letter of Understanding (LOU) confirms the understanding and professional relationship between Neudorf Infectious Diseases Clinic, 601 River Pointe Drive, Suite 100, Cease, Texas 77304 and U.S. Immigration and Customs Enforcement (ICE) Health Service Corps (IHSC). Neudorf Infectious Diseases Clinic is willing to provide medical services to detainees referred from IHSC at Montgomery Processing Center, 806 Hibbs Drive, Cease, Texas 77301; in exchange for timely adjudication and payment of normal and customary charges at the prevailing Medicare rates applicable to Neudorf Infectious Diseases Clinic at the time of service. Timely payment for services rendered is defined as, remittance within thirty (30) calendar days of Neudorf Infectious Diseases Clinic's claim for payment. This LOU is not intended nor shall it be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury; appropriated funds are obligated only if and when medical services are ordered by IHSC.

To ensure continuity of care for medical services, Neudorf Infectious Diseases Clinic agrees upon written notification to provide IHSC with timely documentation of medical services rendered to detainees referred for care. Additionally, Neudorf Infectious Diseases Clinic will act to ensure that all services provided to referred IHSC detainees are performed by licensed independent practitioners acting within the scope of their current privileges. Both parties acknowledge and agree that no additional rights or obligations are intended, arise, or vest as a result of accepting this LOU or through Neudorf Infectious Diseases Clinic's acceptance of payment from the U.S. Department of the Treasury, on behalf of IHSC.

Neudorf Infectious Diseases Clinic agrees to submit claims to the Financial Services Center in Austin, Texas, within one year (365 calendar days) of the date of service. Claims must be sent to:

ICE Health Service Corps
VA Financial Services Center
P.O. Box 149345
Austin, TX 78714-9345

Neudorf Infectious Diseases Clinic may contact the Financial Services Center at 800-479-0523 with any inquiries regarding claim status. IHSC will subsequently designate a primary contact to VA Financial Services Center.

This LOU may be terminated without cause by Neudorf Infectious Diseases Clinic or IHSC, upon providing a thirty (30) days advance written notice to the other party.

If you concur with the above understanding, please countersign, date, and return the attached copy of this LOU to my attention.

Letter of Understanding:

Page 2 of 2

Sincerely,



Dr. Howard Smith
Assistant Director
JCH Health Service Corps
900 12th St. SW Washington, DC
20536

8/30/2018
Date

Reviewed and accepted by:



Dr. Sarah Miller
Owner
Neurof Infections Diseases Clinic
601 River Pointe Drive, Suite 100
Conroe, Texas 77304

8/30/2018
Date

Office of Enforcement and Removal
Operations
ICE Health Service Corps
U.S. Department of Homeland Security
500 12th Street, SW
Washington, DC
20536
**U.S. Immigration
and Customs
Enforcement**



September 6, 2018

Mary Washington Hospital
1001 Sam Perry Boulevard
Fredericksburg, Virginia 22401
Attention: Sean Barden

Subject: Letter of Understanding

Dear Mr. Barden:

This Letter of Understanding (LOU) confirms the understanding and professional agreement between Mary Washington Hospital, Inc. (MWH) and U.S. Immigrations and Customs Enforcement (ICE) Health Service Corps (IHSC). MWH is willing to provide certain medical services, as requested or authorized by IHSC and as clinically appropriate and within the scope of services normally provided by MWH to those detainees (patients) referred from IHSC at MWH, subject to MWH's receipt of consent from such patients. IHSC agrees to timely adjudicate and pay MWH for normal and customary charges at the prevailing Medicare rates applicable to MWH at the time of service, which shall serve as the primary source of payment for services rendered. Timely payment for services rendered is defined as, remittance by IHSC to MWH within thirty (30) calendar days of MWH's submission of a claim for payment. This LOU is not intended, nor shall it be construed to require the obligation, appropriation, or expenditure of any money from the U.S. Treasury; appropriated funds are obligated only, if and, when services are ordered or authorized by IHSC. in writing or by electronic means to MWH

IHSC will submit written or electronic authorizations and requests for services to MWH in advance of any patient transport to MWH. IHSC will promptly respond in writing or by electronic means to MWH for requests from MWH for payment authorization for any additional or modified services that may be clinically appropriate for patients; provided that IHSC preauthorizes payment for of any emergency care services rendered to patients referred by IHSC to MWH. IHSC is solely responsible for the transportation of patients to and from MWH. MWH is only responsible for the security and safety of patients to the extent that it provides the same level of security and safety to its other patients.

IHSC will provide MWH with patient consents, any known patient history, known medical conditions, additional security and translation services, as may be necessary or reasonably requested by MWH. To ensure continuity of psychiatric care, MWH agrees upon written request to provide IHSC with timely documentation of services rendered to patients referred for services, to the extent permitted under federal law. Additionally, MWH will ensure that services provided to patients are performed by appropriately licensed practitioners acting within the scope of their current privileges at MWH. Both parties acknowledge and agree that no additional rights or obligations are intended, arise or vested as a result of accepting this LOU or through MWH's acceptance of payment from the US department of Treasury on behalf of IHSC.

MWH agrees to submit claims to the Financial Services Center in Austin, Texas, within one year (365 calendar days) of the date of service. Claims must be sent to:

ICE Health Service Corps
VA Financial Services Center
P.O. Box 149345
Austin, TX 78714-9345

MWH may contact the Financial Services Center at 800-479-0523 with any inquiries regarding claim status.

This LOU will commence on the date signed by MWH and will continue until terminated. This LOU may be terminated any time without cause or penalty by MWH or IHSC, upon providing a thirty (30) days advance written notice to the other party. IHSC's payment obligations for services rendered prior to termination shall survive termination.

Notices to IHSC shall be provided to the address below and notices to MWH should be sent to Mary Washington Healthcare Regulatory Affairs, 2300 Fall Hill Avenue, Suite 509, Fredericksburg, VA 22401. If you concur with the above understanding, please countersign, date, and return the attached copy of this LOU to my attention.

By: _____
Dr. Stewart Smith
Assistant Director
ICE Health Service Corps
500 12th St. SW
Washington, DC 20536

Date

Reviewed and accepted for MWH

By: 
Sean Barden
Executive Vice President & CFO
Mary Washington Healthcare
1001 Sam Perry Boulevard
Fredericksburg, Virginia 22401

9/7/2018
Date

**Chairman Ron Johnson
Supplemental Questionnaire
U.S. Senate Committee on Homeland Security and Governmental Affairs
For the Nomination of Ronald D. Vitiello to be
Director, U.S. Immigration & Customs Enforcement,
Department of Homeland Security**

On November 23, 2018, Chairman Ron Johnson received a letter from the President of the National Immigration and Customs Enforcement (ICE) Council of the American Federation of Government Employees. The letter included the following questions, which the Chairman requests the nominee answer:

1. "Why did you make the decision in July 2018 to forbid National ICE Council employees from performing their official agency duties? What basis or rationale did you use to make this decision? Please provide the rationale, if any, to the Committee, to include how it best serves the effectiveness and efficiency of the federal government."

The premise of this question is not accurate. At no point in time did any person at U.S. Immigration and Customs Enforcement (ICE) "forbid National ICE Council employees from performing their official agency duties." The question as phrased by the Union appears to be based on a misunderstanding of an Arbitrator's award in case AR-14-22. That case involved the meaning of Article 7.B of the existing master collective bargaining agreement (CBA) "Agreement 2000" as modified by a 2006 Memorandum of Understanding ("2006 MOU"). That article, as modified by the 2006 MOU, provides Council 118 with the ability to direct that up to four (4) of its members be assigned to 100% "Block" Official Time, also known as "100% Block Time." Being on "100% Block Time" means that the employee's basic work schedule is entirely "blocked off" for official time.

In the 2016 decision, AR-14-22, the Arbitrator rejected Council 118's argument that employees assigned to "100% Block Time" are able to engage in either work duties or union activities at their discretion. The Arbitrator instead held that the default under Article 7.B was employees on "100% Block Time" are to work full-time on representational-activities (with the exception of leave or position-mandatory training). However, he noted that the Parties could also negotiate arrangements to split or reduce the 100% blocks on a case-by-case basis, as had historically occurred. For example, the Parties could negotiate that a 100% Block be split into two 50% Blocks, where half of the hours in a week or pay-period would be pre-scheduled for operational duties, while the other half set aside for union functions. Such reduced blocks have not been uncommon at ICE, including with respect to Council 118 officials. Council 118 appealed the AR-14-22 decision, but the Federal Labor Relations Authority (FLRA) affirmed it in its decision numbered 70 FLRA 63, 70 FLRA No. 15 (Nov. 29, 2016). Then Member Pizzella observed that "the federal workplace is not an elective-come-and-go-when-ever-you-feel-like-it hangout." 70 FLRA at 71.

In July 2018, ICE offered Council 118 the opportunity to extend certain articles from the existing CBA, prior to the effective date of Executive Order 13839. Failure to reach an agreement would have eliminated block time and significantly curtailed official time at ICE. Negotiations ensued, and on July 8, 2018, the Parties agreed to a Memorandum of Agreement ("July 2018 MOA") that extended Article 7 (official time), Article 8 (facilities & services) and Article 9 (mid-term bargaining) for a three-year term, as well as into the successor bargaining agreement that is currently being negotiated by the Parties.

During the negotiations over the document that became the July 2018 MOA, the Union proposed language that would modify Article 7 and reverse the Arbitrator's decision in AR-14-22, enabling Union Officials on 100% Block Time to engage or not engage in operational duties at their discretion. ICE declined to accept that proposal because it would have been inconsistent with effective and efficient government operations. ICE needs to have somewhat predictable schedules for employees engaging in operational activities, otherwise the "sometimes-there, sometimes-not" employee can create more work for others than the employee actually performs.

At no point did ICE state that it was categorically unwilling to negotiate case-by-case reductions or splits of the four Blocks of 100% Official Time, as has occurred in the past. On the contrary, in recent years it has generally been ICE Council 118 that has been opposed to negotiating, on a case-by-case basis, reduced or split 100% Block Time. Reductions to 100% Official Time Blocks would also be similar to what occurs at CBP where Union Officials, who might otherwise be on 100% Block Time, are instead scheduled to perform and engage in work duties for, at minimum, at least one day each week; however, the particulars might vary due to the different legal contexts.

2. "On July 7, 2018, were you copied on emails sent to your staff, and in some cases sent direct emails from National ICE Council President Chris Crane, requesting that as Acting ICE Director you assist employees in stopping what Crane described as the unethical practice of forbidding members of the National ICE Council from going to their place of work and performing their duties as federal employees? Did you also have a phone call with Mr. Crane in the same approximate timeframe to discuss, in part, the same matter?"

It is true that I received emails sent by Council 118 President Mr. Chris Crane on July 7, 2018, during the negotiations over the *July 2018 MOA*. In these emails, Mr. Crane made certain assertions and representations. ICE reviewed the emails and advised that it disagreed with a significant portion of the characterizations and contents. Among these disputed matters were assertions regarding whether a Council 118 Official can perform work duties. As noted in response to the previous question, ICE and Council 118 have repeatedly agreed to reduce or split one or more of the four assignments of 100% Block Official Time provided by *Article 7.B of Agreement 2000*, as revised by the *2006 MOU*. Similarly, there was a phone call between Mr. Crane and myself during this timeframe. Having been with ICE for approximately one week at the time of the phone call and lacking the history and context regarding the items at issue, I referred the Council 118 President back to the designated ICE bargaining team.

3. "While serving with the U.S. Border Patrol and U.S. Customs and Border Protection (CBP), did you have experience working with the National Border Patrol Council (NBPC)? Are you aware that federal employees serving on the NBPC have been able and continue to be permitted to perform their duties as federal law enforcement officers in the field? During the hearing, you responded to Chairman Johnson that the union officials are paid to spend one hundred percent of their time to represent the union. Are you aware of union officials on the National Border Patrol Council who are permitted to perform their agency law enforcement duties, and work less than one hundred percent of their time on union matters? If you are, can you explain why you told the Chairman that union officials always work one hundred percent of their time on union matters if that was not in keeping with your personal experience and work knowledge of these matters? While you served as Deputy Chief, Acting Chief, and Chief of the Border Patrol, as well as during your time as the Acting Deputy Commissioner of CBP, why didn't you prohibit NBPC officials from performing their duties as federal law enforcement officers in the field, as you have done during your time at ICE?"

There are currently 11 members of the National Border Patrol Council that operate on a full-time, official time basis. There are also 15 local union officials that operate full-time at the sector level. Several others are at/or near full-time, but do not have a formal agreement as such. All but one or two of these union officials elected to receive Level 1 Border Patrol Agent Pay Reform Act (BPAPRA) Pay (25% BPAPRA supplement); therefore, they work the standard 80 hours per pay period on 100% official time, and then work 20 hours per pay period of assigned patrol duties for the BPAPRA portion. The law does not allow official time while on BPAPRA overtime. The union officials sometimes refer to this as 80 percenters, but they are still working 100% of the basic work week under official time.

The BPAPRA allows all General Schedule (GS)-1896 series employees (Agents) to earn pay and compensation, including overtime. The subsets of employees include union officials, academy instructors and all managerial agents. Union Officials who were previously 100% union time, have modified their duty and work at least one full ten-hour day per week. This is a legal interpretation of the Act and supported by Office of Personnel Management (OPM) rules and regulations for pay reform implementation. This allows them representational duties and the ability to earn agent pay. This would be a similar construct if Enforcement and Removal Operations (ERO) Officers were moved to Law Enforcement Availability Pay (LEAP). Career paths would be strengthened and union officials would not lose pay, which is the primary concern expressed by Mr. Crane.

4. "Were you disciplined by DHS or CBP in response to your social media posts regarding Presidential candidate Donald Trump and Dennis the Menace, or for suggesting that the Democratic Party be renamed as the "NeoKlanist" party? Do you agree that the social media post violate the DHS and CBP Standards of Conduct, as well as the ICE Employee Code of Conduct? Are rank and file ICE employees disciplined or removed for similar conduct? Do you believe that rank and file employees should be disciplined or removed for similar

conduct? Do you believe that public comments such as these can affect the credibility of a law enforcement officer testifying in a legal proceeding?"

I met with the Commissioner of the U.S. Customs and Border Patrol (CBP) about these social media posts. The posts were never discussed as misconduct. The Commissioner directed me to review my account and ensure that no similar activities take place in the future. I considered this discussion to be in the nature of a verbal counseling. The posts in question, which were sent from a private account during non-duty hours, were investigated by the Office of Special Council (OSC). The finding of the investigation was that my posts did not constitute a violation of either the Hatch Act or government standards of ethical conduct. I acknowledge that I exercised questionable judgment, and I was verbally counseled for such. I am not aware of any ICE employee being removed for substantially similar conduct. The only discipline of which I am aware relates to emails or social media posts that were racist in content and/or involved the use of government equipment. I believe that an employee engaging in substantially similar conduct to mine should be counseled against engaging in such conduct. If there were to be repeated instances of such conduct following counseling, I believe that this could warrant disciplinary action. I do not believe that the conduct specifically in question affects the ability of a law enforcement officer to act impartially.

5. "During your testimony, you stated that most of the matters cited by union officials in their letter to the Committee occurred prior to you taking a position at ICE. In the letter, the union local presidents raised three major issues with respect to you: 1) your decision to prohibit union officials from performing agency work; 2) management of the Portland, OR protests; and 3) an inappropriate social media post regarding Donald Trump. Were you in the position of the Deputy Director and Acting Director of ICE at the time the agency most recently determined certain union officials are prohibited from performing their agency duties? Were you the Deputy Director and Acting Director of ICE for the majority of the cited protests in Portland, approximately three weeks? Do you believe that because the social media posts occurred while you held a senior position in the Border Patrol, that ICE employees should not be concerned with acts by their potential new leader that demonstrate poor judgment that rises to a level that would cause most ICE employees to be removed for committing a similar act?"

As noted in response to Questions 1 and 2, the matter at issue concerned Union representatives who were regularly scheduled to work 100% on union representational activities. As already explained, ICE believes it is inconsistent with effective and efficient government operations to permit full-time Union officials to engage or not engage in operational duties at their discretion.

As to the protests in Portland, I entered into my current position at ICE on June 30, 2018. From June 18 until July 25, 2018, which overlapped with my time at ICE, multiple federal agencies conducted a five-week complex operation to end the protest, secure sensitive documents and equipment, and sustain activities associated with the ICE Building located in Portland, OR. The cohesive unit of leaders worked tirelessly to

lead a challenging, complex, high-risk, tactical operation that received national media attention.

As noted in response to Question 4, my conduct was investigated by the OSC and found not to violate either the Hatch Act or standards of ethical conduct. As also noted, I am not aware of any rank and file ICE employee being removed for engaging in substantially similar conduct.

6. "The protests affecting the Portland, OR ICE Field Office lasted from June 18, 2018 to July 24, 2018. After you were appointed as the Deputy Director and Acting Director on June 30, what decisions, if any, did you make with respect to ICE operations in Portland or ICE personnel in Portland?"
 - a. "According to your testimony, it took, *"a number of days... a week or two"* to get appropriate federal resources on the ground and take back the ICE Field Office. Why did it take ICE so long to accomplish this?"

On June 19, 2018, ICE management in Portland, OR reported that a protest that began on the evening of June 18, 2018, outside of the Portland ICE office, was continuing and the number of protestors was growing. In the late afternoon of June 19, 2018, protestors restricted ICE employees' ability to leave the facility through the primary single point of entry/exit. With the aggressive actions of the protestors and the crowd growing in excess of 75 individuals, ICE contacted the Federal Protective Service (FPS) and the Portland Police Bureau (PPB) for assistance. PPB advised ICE and FPS that they would not be responding to the location or assisting ICE by order of the Portland, OR Mayor. Late in the evening of June 19, 2018, FPS formed a convoy of marked police vehicles and used the convoy to escort all ICE employees from the building. To provide safety to ICE employees, FPS then transported several employees to their respective residences that night. ICE management then made the decision to have employees work from home or from alternative law enforcement facilities until the protest could be controlled and access to the ICE facility could be secured. The next day, ICE Portland leadership met with the U.S. Attorney for the District of Oregon, FPS leadership, the PPB, and staff from the Portland, OR Mayor's Office. The Mayor's Office was apprised of the extent of the protest, the fact that protestors, tents and barricades were blocking the roads and entrances to the facility, and that the protest was affecting the ability of ICE to conduct its mission, including the criminal investigations worked by ICE Homeland Security Investigations (HSI) in partnership with PPB. The Mayor's Chief of Staff stated that the Mayor was also the Police Commissioner for the PPB and had directed that PPB will not respond to the location of the protest other than in the event of a life/safety situation.

In the following days, the number of protestors continued to grow until numbering in the hundreds and ICE employees continued to work from alternate offsite locations. State and local authorities with the jurisdiction, authority, and training to engage and disperse a mass protest continued to refuse to engage and assist. Given this lack of response, ICE leadership continued to request assistance from FPS, which has jurisdiction over the security of federal facilities. The Federal Government leases the building in Portland where the ERO Seattle sub-office is located. Within the Department of Homeland Security (DHS), FPS, rather than ICE, has the statutory responsibility to protect federal buildings. 40 U.S.C. 1315(a), (b). FPS services are usually provided on a reimbursable basis. During the Portland protests, FPS provided increased protection services for approximately five weeks. Many of the FPS officers, and associated equipment, were brought to the protest site from out of town, which likely contributed to any delays. A team of FPS and ICE law enforcement officers covertly entered the facility to protect sensitive items. After consultation between DHS and ICE leadership, FPS initiated an operation to remove demonstrators, tents, and other structures, and debris from entrances and walkways surrounding the facility. As FPS led the operation, ICE had to wait for FPS to plan and execute the operation while it provided assistance to secure the building.

On June 28, 2018, once a sound plan was in place, FPS with assistance from HSI, ERO, ERO Special Response Teams (SRTs) and CBP Air and Marine Operations, cleared the area immediately surrounding the ICE facility of protestors and established a secure perimeter. FPS arrested eight protestors (citation arrests), who were all then released on site. FPS constructed fencing to surround the facility and began a 24/7 guard shift for the facility. In several other similar protests that took place around the country, state and local partners acted quickly and efficiently in coordination with FPS to limit protestors' ability to disrupt ICE operations and threaten ICE employees. Since the time of my appointment as Acting Director, the agency has continued to review policies and procedures in an effort to improve our ability to identify and mitigate threats against ICE employees, contractors and facilities and we will continue to partner with our state and local partners and FPS around the country to ensure there is a swift and appropriate response to any similar type of incident in the future.

- b. "Please provide the Committee with a copy of all after actions reviews/reports, if any, conducted by ICE in response to the incidents in Portland."

ICE defers to FPS as the lead federal agency in charge of the operations surrounding the incidents in Portland. However, ERO Los Angeles SRT did complete an after action review which has been included as an enclosure.

- c. “What new policies, plans or training have you put in place, if any, in order to respond to a future situation such as the one in Portland, and ensure that it does not occur again? Please provide a copy of these policies, plans or training materials, if any, to the Committee.”

ICE had measures in place to protect its employees and facilities at the time the Portland incident occurred and since the time of my appointment as Acting Director the agency has continued to review policies and procedures in an effort to improve our ability to identify and mitigate threats against ICE employees, contractors and facilities.

On June 5, 2018, then Acting ICE Director Thomas Homan issued ICE Directive 17012.1, *Reporting and Investigation of Threats and Assaults Against ICE Employees*, to all ICE employees. The Directive established policy for reporting and investigating threats and assaults as well as the protection and relocation of threatened employees or family members. The Directive also addressed threats and acts of destruction against ICE buildings, facilities, property, or equipment. On June 19, 2018, following the first incidents of ICE employees being the victims of “doxing,” Acting Director Homan issued a broadcast message to all ICE employees providing guidance for establishing increased physical and online safety and security. On June 22, 2018, in light of the incident in Portland and other threat activity directed against ICE personnel and facilities, then Acting ICE Deputy Director Peter T. Edge issued guidance to all ICE Supervisors establishing Protocols for Threat Management and Reporting. The protocols followed up on Acting Director Homan’s directive and established a process for reporting and monitoring all threats made against ICE employees, contractors and facilities. On July 6, 2018, I briefed Vice President Mike Pence in person with detailed information concerning threats against ICE employees and ICE facilities.

In recent months, ICE HSI and the ICE Office of Professional Responsibility have worked to establish additional procedures to ensure continual and proactive coordination between all ICE entities and external partners to discover, identify, and mitigate threats against ICE employees, contractors and facilities. In August 2018, HSI created the Threat Mitigation Unit (TMU) within Domestic Operations to coordinate the response to threats against ICE employees and facilities. A threat analysis and Report of Investigation will now be completed on all threats and the TMU will provide investigative support, including Dark Net and social media exploitation. Home security camera systems will be offered and installed for employees who have been threatened and TMU is coordinating with HSI Intelligence to provide a smart phone application to employees and contractors who have been threatened, harassed or doxed because of their employment. ICE takes all threats to employees and

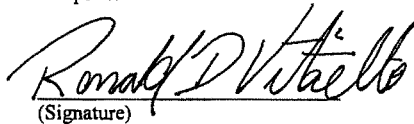
facilities seriously and in August 2018, HSI swiftly arrested a subject in New York after he threatened to kill an ICE agent on Twitter. The men and women of ICE work tirelessly to keep our communities and country safe. Threats made against them will not be tolerated and those who make them will be held accountable to the fullest extent of the law.

- d. "Are you aware that your officers and employees are extremely concerned with what they believe was gross mismanagement of the Portland crisis?"

On August 3, 2018, Nathalie Asher, then ERO Deputy Executive Associate Director (EAD) conducted a town hall with ERO employees in Portland, OR. Ms. Asher took questions and recognized all who were involved for their efforts to the response, including external partners such as FPS senior regional leadership and provided letters of appreciation to all responders and time-off awards for the ERO team of immediate responders. Most of the concerns expressed to Ms. Asher by ERO employees during the town hall pertained to the lack of local law enforcement response to the crisis in Portland.

Also, on August 8, 2018, DHS Secretary Nielsen and I held a video teleconference with ERO employees in the Portland area of responsibility to discuss the situation in Portland.

I, Ronald D. Vitiello, hereby state that I have read the foregoing Supplemental Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.



(Signature)

This 27 day of November, 2018

Questions for the Record

Senator Rand Paul

On the hearing titled “Nominations of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security, and Richard S. Tischner, Jr., to be Director of the Court Services and Offender Supervision Agency for the District of Columbia”

**Held by the Senate Committee on Homeland Security & Governmental Affairs
November 15, 2018**

For Mr. Ronald Vitiello, Deputy Director and Acting Director, U.S. Immigration and Customs Enforcement (ICE), U.S. Department of Homeland Security (DHS)

1. On January 5, 2018, U.S. Customs and Border Protection (CBP) released updated guidance¹ on their standard operating procedures for searching electronic devices under the so-called border search exception to the Fourth Amendment. However, CBP’s most recent interpretation of the border search exception still requires every American who wishes to travel abroad to surrender any and all expectation of privacy in their digital devices.

Question: Do you think that this updated device search policy is appropriate? Why or why not?

Border search is a critical law enforcement tool that has been exercised by customs officers since the founding of the Republic, and it is exercised today by ICE Homeland Security Investigations (HSI) Special Agents working alongside our partners at CBP. It is appropriate that policies are developed and implemented to ensure that this important authority is preserved and used appropriately while fully respecting civil liberties.

Question: Do you think this policy violates the Fourth Amendment?

The U.S. Supreme Court has long recognized that border searches are crucial to advancing the United States’ inherent authority and paramount interest in protecting its territorial integrity, and that a sovereign’s right to protect itself means such searches are reasonable under the U.S. Constitution by virtue of the fact that they occur at the border. Current DHS policies clearly do not violate the protections provided by the Fourth Amendment and appropriately direct and constrain customs officers’ exercise of this vital authority.

Question: As Acting Deputy Commissioner of CBP for the period of time during which this new guidance was issued, how involved were you in developing, finalizing and approving these new procedures?

¹ <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-updated-border-search-electronic-device-directive-and>

While I had general operational familiarity with the CBP policy, I was not directly involved in its development.

Question: Do you agree with the premise that a smartphone is a physical container indistinguishable from a suitcase?

The more appropriate analogy today may be between an electronic device and a shipping container, given the large and increasing amounts of electronic data that a small electronic device can carry. In the context of border searches, the capacity of a container does not alter the United States' interest in inspecting what enters or leaves the nation at its borders. A small device containing a large amount of data could conceal within it significant contraband, such as child pornography, material that violates intellectual property rights or trade secrets, or information or data that is subject to export controls such as sensitive weapons technology.

Question: Do you think most Americans would accept the premise that a device containing every photo, email, contact, calendar item, appointment, text message, and direct message they have, as well as every Google search, browser visit, navigation search, and note they ever made, along with a detailed history of everywhere they've been—is no different from the contents of their toiletry bag and suitcase?

Most international travelers are aware that the United States and every other nation can search their belongings at the border. While electronic devices now contain large amounts of information, the type of information is similar in nature to the information discernable from physical objects a traveler may carry, such as diaries, day-planners, prescription medication bottles, correspondence, paper business or financial records, and photograph albums. Such physical objects have always been subject to border search, and the U.S. Supreme Court has consistently upheld the authority of customs officers to search for such items at the border.

Question: Do you think that most Americans are aware that forensic searches of their cell phones could yield some 900 pages of information (as was the case in *United States v. Kolsuz*²)? And that to produce this report, their phone may be confiscated by government agents for an entire month, based on nothing more than reasonable suspicion (vs. probable cause)?

Most international travelers are aware that their belongings, which includes their cell phones, are subject to search at every country's international borders. ICE and CBP policies on border searches of electronic devices are

² <https://www.ca4.uscourts.gov/opinions/164687.P.pdf>

publicly available and set out the basis on which such devices can be searched, including temporary detention if necessary to complete a search.

2. Travelers rely on cell phones to navigate foreign cities, communicate in foreign languages, pay for goods and services, and to keep their families safe while abroad.

Federal courts have acknowledged as much—In *U.S. v. Cotterman*, the Ninth Circuit wrote³ that it is “impractical, if not impossible, for individuals to make meaningful decisions regarding what digital content to expose to the scrutiny that accompanies international travel”. In *U.S. v. Kolsuz*, the Fourth Circuit wrote⁴ that “it is neither realistic nor reasonable to expect the average traveler to leave his digital devices at home when traveling.”

Question: Given the impracticality of traveling without a cell phone, is abandoning Fourth Amendment protection a *de facto* requirement for international travel under existing DHS border device search policies?

The Fourth Amendment always applies to border searches, and ICE and CBP policies ensure that this vital authority is exercised reasonably, within the protections provided by the Fourth Amendment, and with appropriate respect for civil liberties.

³ <http://cdn.ca9.uscourts.gov/datastore/opinions/2013/03/08/09-10139.pdf>

⁴ <https://www.ca4.uscourts.gov/opinions/164687.P.pdf>

Office of the Director

U.S. Department of Homeland Security
500 12th Street SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

NOV 28 2018

The Honorable Rand Paul
Chairman
Subcommittee on Federal Spending Oversight and Emergency Management
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Paul:

Thank you for the opportunity to expand upon my responses to your Questions for the Record, following the Senate Committee on Homeland Security and Governmental Affairs' hearing on November 15, 2018.

First and foremost, I share your view that the Fourth Amendment's protections against unreasonable searches and seizures are every bit as important today as when they were first written. While long-standing precedent, including that of the Supreme Court, allows the government broad authority to conduct border searches, it was of paramount importance to me that Fourth Amendment protections were safeguarded during my time with U.S. Customs and Border Protection (CBP), and this remains a priority now that I am the acting head of U.S. Immigration and Customs Enforcement (ICE).

Having spent more than three decades in law enforcement, I believe that border search authority is an important tool for front-line officers and CBP. However, I am acutely aware that the operating procedures and policies that accompany this authority must be narrowly tailored to avoid abuse and ensure a respect for civil liberties. CBP exercises its border search authority very judiciously and has made its governing policy on the border search of information in electronic devices public since 2009. Further, CBP is required to review and update, at least every three years, its standard operating procedures relating to searches of electronic devices at ports of entry.

To be clear, I believe that all CBP officers and ICE Homeland Security Investigations Special Agents working alongside our partners at CBP are and should be held to the highest constitutional and statutory requirements. When Americans travel, their privacy rights and civil liberties guaranteed under the Constitution must be respected. If confirmed, I commit to you to safeguard those rights, and to keep an appropriate balance with the need for judicious border searches when drafting ICE policies and standard operating procedures.

www.ice.gov

The Honorable Rand Paul
Page 2

I appreciate your interest in this very important issue. I am hopeful that we can maintain an ongoing dialog, and I look forward to further engaging with you on this topic. To that end, I will have my staff reach out to your office to set up a time for us to further discuss this issue. If you have questions or need additional information, please don't hesitate to reach out to me. And thank you for your support of ICE.

Sincerely,

A handwritten signature in black ink, reading "Ronald D. Vitiello". The signature is fluid and cursive, with the first name "Ronald" and last name "Vitiello" being the most prominent parts.

Ronald D. Vitiello
Deputy Director and
Senior Official Performing the Duties of Director



NATIONAL SHERIFFS' ASSOCIATION

November 27, 2018

Chairman Ron Johnson
U.S. Senate
Homeland Security and Governmental Affairs Committee

Ranking Member Claire McCaskill
U.S. Senate
Homeland Security and Governmental Affairs Committee

Dear Chairman Johnson and Ranking Member McCaskill:

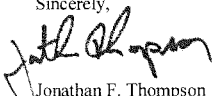
On behalf of the National Sheriffs' Association (NSA) and the more than 3,000 sheriffs nationwide, we write in strong support of the swift confirmation of Ronald D. Vitiello as Director of U.S. Immigration and Customs Enforcement (ICE).

Mr. Vitiello is a dedicated and highly experienced law enforcement leader. Before his most recent role as U.S. Customs and Border Protection (CBP) Acting Deputy Commissioner, Mr. Vitiello has served more than 30 years with CBP and the U.S. Border Patrol. His field knowledge and professional experience have made him an honest and trustworthy partner to law enforcement. He has continued to show strength and leadership with his cooperation and commitment in working with our sheriffs on the Southwest Border.

In his current position as Acting Director of ICE, Mr. Vitiello has run the agency with transparency and respect for state, local, and federal law enforcement officers, along with the communities they seek to protect. Mr. Vitiello supports and leads a workforce of more than 20,000 officers, special agents, attorneys, and mission support professionals. He is actively engaged not only in Washington, DC, but in the field.

Mr. Vitiello, represents the best of law enforcement and is committed to be an honest broker of debate. Where we disagree, he provides clarity and a commitment to honestly and truthfully uphold the law. He does so without favoritism or bias. Mr. Vitiello represents what our nation expects from its civil servants and law enforcement professionals, adhering to everyone regardless of their position or their place in our society. With this in mind, The National Sheriffs' Association strongly advocates for an immediate confirmation of Ronald D. Vitiello for the role of Director of ICE.

Sincerely,


Jonathan F. Thompson
Executive Director and CEO

August 13, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510



Chuck Wexler
Executive Director

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

I am writing to express my support for the nomination of Ron Vitiello to serve as Director of the U.S. Customs and Immigration Enforcement. Ron is a person of good character, strong intellect, a willingness to listen and learn, and an abiding commitment to the safety of the public and the men and women he leads.

I have come to know Ron over the past several years through PERF's work with U.S. Customs and Border Protection on issues related to use-of-force policies and training. As a CBP leader, Ron understood the challenges his agency faced in these areas and he was receptive to the changes that needed to be made. Ron was among two dozen law enforcement leaders that PERF took to Scotland in November 2015 to learn how Police Scotland addresses use-of-force issues. Again, Ron was eager to learn from his colleagues and to apply those lessons learned back home.

WE PROVIDE PROGRESS IN POLICING

Over the years, Ron has been actively engaged with PERF on a variety of other topics. He regularly participates in PERF's national meetings on critical issues in policing, most recently our April 2018 meeting on best practices in first-line supervision. Ron is a forward-thinking leader who supports the men and women who work for him. He regularly sends his agency's up-and-coming leaders to PERF's Senior Management Institute for Police, a three-week program taught by faculty from top universities and leaders in the policing profession.

Through his work with PERF, Ron has come to understand the challenges and needs of state and local police agencies, and the importance of their cooperation with federal law enforcement. He is a good listener who works to understand the ideas and concerns of others and to address those concerns in the spirit of cooperation and common interests.

■ 1120 Connecticut Ave., NW Suite 930 Washington, D.C. 20036
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Developing strong relationships of trust with state and local law enforcement is a major challenge facing ICE today. Ron Vitiello possesses the character, the values and the commitment to develop and nurture those important relationships moving forward. I am confident that he will be an outstanding Director of ICE.

Sincerely,

A handwritten signature in black ink that reads "Chuck Wexler". The signature is fluid and cursive, with a large initial "C" and a stylized "W".

Chuck Wexler
Executive Director
Police Executive Research Forum

cc: Chief Scott Thomson, Camden County, NJ Police Department (PERF President)

November 28, 2018

The Honorable Mitch McConnell
Majority Leader
United States Senate
Washington, DC 20510



Dear Leader McConnell:

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Chuck Wexler
Executive Director
Police Executive Research Forum

cc: Chief Scott Thomson, Camden County, NJ Police Department (PERF President)

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November 28, 2018

The Honorable Charles Schumer
 Minority Leader
 United States Senate
 Washington, DC 20510



Dear Senator Schumer:

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Chuck Wexler
 Executive Director
 Police Executive Research Forum

cc: Chief Scott Thomson, Camden County, NJ Police Department (PERF President)

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November 28, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510



Dear Chairman Johnson:

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Chuck Wexler
Executive Director
Police Executive Research Forum

cc: Chief Scott Thomson, Camden County, NJ Police Department (PERF President)
November 28, 2018

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November 28, 2018

The Honorable Claire McCaskill
 Ranking Member
 Committee on Homeland Security and Governmental Affairs
 United States Senate
 Washington, DC 20510



Dear Senator McCaskill:

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Chuck Wexler
 Executive Director
 Police Executive Research Forum

cc: Chief Scott Thomson, Camden County, NJ Police Department (PERF President)

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November 28, 2018

The Honorable Charles Grassley
Chairman
Committee on the Judiciary
United States Senate
Washington, DC 20510



Dear Chairman Grassley:

I am writing to express my support for the nomination of Ron Vitiello to serve as Director of the U.S. Customs and Immigration Enforcement. Ron is a person of good character, strong intellect, a willingness to listen and learn, and an abiding commitment to the safety of the public and the men and women he leads.

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Sincerely,

Chuck Wexler
Executive Director
Police Executive Research Forum

cc: Chief Scott Thomson, Camden County, NJ Police Department (PERF President)

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November 28, 2018

The Honorable Diane Feinstein
Ranking Member
Committee on the Judiciary
United States Senate
Washington, DC 20510



Dear Senator Feinstein:

I am writing to express my support for the nomination of Ron Vitiello to serve as Director of the U.S. Customs and Immigration Enforcement. Ron is a person of good character, strong intellect, a willingness to listen and learn, and an abiding commitment to the safety of the public and the men and women he leads.

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Police Executive Research Forum

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September 10, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

I am writing to express my strong support for Mr. Ronald D. Vitiello, who has been nominated by the President to serve as Director of U.S. Immigration and Customs Enforcement (ICE). With over 30 years of federal law enforcement experience in immigration and border security, Mr. Vitiello is exceptionally qualified to lead the agency's critical mission to protect public safety, enforce our laws and defend the homeland.

I had the pleasure to serve together with Ron when he was a Sector Chief in the Border Patrol in my role as Commissioner of U.S. Customs and Border Protection from 2006-2008. He was an exceptional leader in the Border Patrol then and rose through its ranks to become the national Deputy Chief and then Chief, positions in which he supervised the operations and personnel of a workforce of over 20,000 agents and hundreds of supporting employees. Ron also accepted cross-cutting assignments outside of the Border Patrol from serving in the new CBP Office of Anti-Terrorism after 9/11 to serving as the Executive Assistant Commissioner for Operations Support to serving recently as CBP's Acting Deputy Commissioner. He has already been part of the Department's senior leadership.

Since assuming the role of Deputy Director of ICE, Mr. Vitiello has helped ensure stability and continuity at a particularly challenging time for the agency, drawing upon his extensive knowledge of immigration enforcement and border security issues. He understands the important role that ICE plays in protecting the homeland, from removing public safety threats from our country and halting the flow of deadly narcotics across our borders, to protecting communities from dangerous transnational gangs, like MS-13.

My 35+ year career in federal law enforcement and my experience as past Commissioner of CBP, Director of the U.S. Secret Service, Director of the Federal Law Enforcement Training Center (FLETC) and the first Chief-of-Staff of the Transportation Security Administration (TSA) has allowed me to recognize leaders of quality and character. I believe Ron Vitiello rates among the finest professionals and leaders I have had the pleasure to serve with and his commitment to the mission of the Department and to men and women who serve under him has been exceptional.

Mr. Vitiello has the necessary professional experience and expertise to lead this agency forward and continue to advance its national security and public safety mission. I fully support swift consideration and confirmation of Mr. Vitiello's nomination to lead ICE.

Sincerely,

A handwritten signature in black ink, appearing to read "W. Ralph Basham", followed by a long horizontal flourish.

W. Ralph Basham



STATE OF ARKANSAS
ASA HUTCHINSON
GOVERNOR

August 24, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and
Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

I am writing to express my support for Mr. Ronald D. Vitiello, who has been nominated to serve as Director of U.S. Immigration and Customs Enforcement (ICE). With over 30 years of federal law enforcement experience, Mr. Vitiello is exceptionally qualified to lead the agency's critical mission to protect public safety and homeland security.

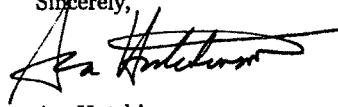
Since assuming the role of Deputy Director of ICE, Mr. Vitiello has helped ensure stability and continuity at a particularly challenging time for the agency, drawing upon his extensive knowledge of immigration enforcement and border security issues. He understands the important role that ICE plays in protecting the homeland, from removing public safety threats from our country and halting the flow of deadly narcotics across our borders, to protecting communities from dangerous transnational gangs, like MS-13.

During his over three decades of service in the Border Patrol, Mr. Vitiello provided dedicated leadership – including playing a key role in the merger of Customs and Border Protection (CBP) and the creation of the Department of Homeland Security. Those who served alongside him at CBP have praised his commitment to listening to the concerns of the workforce, engaging with interagency partners and stakeholders to build support for the mission, and boosting efficiency and transparency. As Undersecretary for Border and Transportation Security at the Department Homeland Security, I personally witnessed Mr. Vitiello serve with integrity and professionalism in his role.

Mr. Vitiello has the necessary experience and expertise to lead this agency forward and continue to advance its national security and public safety mission, and I fully support his nomination.

Thank you for your consideration.

Sincerely,

A handwritten signature in black ink, appearing to read "Asa Hutchinson", with a stylized, flowing script.

Asa Hutchinson

August 13, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

I am writing on behalf of Mr. Ron Vitiello who has been nominated as Director, Immigration and Customs Enforcement. As a career law enforcement professional and the only confirmed Commissioner of U.S. Customs and Border Protection (CBP) in the Obama administration I strongly support Mr. Vitiello's nomination. I worked with him during my three years at CBP and found him to be an extremely effective, honest, and dedicated public servant. I relied on him extensively during the heralded efforts to improve transparency and reduce the use of force levels in the Border Patrol where he served. The evidence is clear that because of the policy changes, type and length of training, and improved equipment that the Border Patrol, including the most recent data reduced its use of force by 70%. This would not have been possible without Mr. Vitiello's leadership.

Ron was also a liaison and trusted communicator with a variety of NGO's, both in Washington and along the border. His honesty and willingness to meet with these groups lowered the tension and confrontation that often existed. He was also a strong supporter after Secretary Jeh Johnson authorized the establishment of an Internal Affairs component for CBP, a component that had been lacking since the formation of CBP. It is for these and many other reasons that I would recommend confirmation for Mr. Vitiello. ICE has a cadre of professional law enforcement personnel with a wide range of duties to protect our country and the need for a career law enforcement professional who has exhibited the executive skills to lead that organization is evident. Mr. Vitiello will fulfill that responsibility.

Sincerely



R. Gil Kerlikowske

September 3, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

The Honorable Claire McCaskill
Ranking Member
Committee on Homeland Security and Governmental Affairs
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

I am writing to you today on behalf of Ronald Vitiello, nominee as Director Immigration and Customs Enforcement (ICE), US Department of Homeland Security. My comments and observations are based from my knowledge of his professional education, experience, accomplishments, challenges faced and leadership.

Mr. Vitiello's Federal education/training regimen includes Immigration Law, Citizenship Law, Criminal Law and numerous Executive Leadership training courses, seminars and experiences in the US Departments of Justice and Homeland Security. It also includes a working relationship with US Attorneys, FBI, US Marshals, US Customs, Federal/State Departments of Labor, Social Services, Detention Contractors and Volunteer Organizations. As he has progressed into and through numerous Leadership positions he has demonstrated the ability to absorb, understand and incorporate the strengths and abilities of many new partners and cultures. This training and frontline experiences were utilized while serving at US Border Patrol Headquarters and with his additional responsibilities at Customs and Border Protection. This is especially important for the leadership position at ICE an organization which was formed out of the strong cultures of US Customs Investigations and components of the former Immigration and Naturalization Service (INS).

Chief Vitiello's experience on the Northern and Southern Borders resulted in a multi national-multi cultural approach to his enforcement responsibilities. His areas of operations along Mexico's Northern Border and on the Canadian US Border included the French speaking Province of Quebec and various designated North American

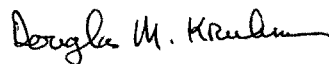
Native Reservations that geographically incorporated cross border boundaries. Activist groups resistant to Canadian and US authority were a constant operational issue and required close coordination with other Federal, State, Provincial, Canadian First Peoples and North American Native Governments. On both Borders his operational responsibility faced cross border organized criminal activity including alcohol/tobacco tax evasion, armed bank robbery, kidnapping, murder and a myriad of smuggling operations involving high customs duty commodities, prohibited drugs, human trafficking, mass migration and vigilance for the cross border movement of international terrorist. Although some of these crimes were not a primary responsibility, they and other criminal activity are a reality for any authority "working the border" Chief Vitiello met these operational realities with a commitment to ensuring all staff were sensitive to the cultural environment, Protective of the Integrity of the Law, responded to the requirement of sharing active intelligence and maintained discipline in operational planning.

At DHS Headquarters Mr. Vitiello has continued to entrust his staff, to delegate responsibility, to provide authority and to expect excellence in advice and work product. He is a teambuilder both within, and with external partners.

I am certain he will continue to represent the Department of Homeland Security and Immigration and Customs Enforcement with excellent leadership. He will do so with the highest honor and integrity. This is the Leadership that is expected. This is the Leadership Mr. Vitiello will provide.

If you have any questions or wish to discuss this nomination further, I am available to meet or contact through the following telephone numbers.

540 535 9362 - cell
540 955 0994 - home



Douglas M. Kruhm
Chief US-Border Patrol (Retired)
Chairman Emeritus Board of Trustees, Border Patrol Museum and
Memorial Library Foundation



The National Native American Law Enforcement Association
Ronald Reagan Building, 1300 Pennsylvania Ave, NW, Suite 700, Washington, DC 20004

November 28, 2018

Senator Ron Johnson
Chairman
Committee on the Homeland Security Committee
U.S. Senate
Washington, DC 20510

Dear Chairman Johnson:

On behalf of the National Native American Law Enforcement Association (NNALEA), I am writing you to express our endorsement and support of Ronald D. Vitiello for Director of Homeland Security for U.S. Immigration and Customs Enforcement (ICE).

In his career with the Department of Homeland Security, Mr. Vitiello has shown expertise in legal, technical, and enforcement policies and regulations that are necessary to sustain a fair and effective immigration and customs program for the United States government.

Ronald Vitiello is very supportive of Tribal citizens and their governments and Tribal law enforcement. He is aware of the issues and concerns of Tribes regarding border and immigration issues. NNALEA is confident that Mr. Vitiello, when confirmed as Director for ICE, will work faithfully on behalf of our government and its Tribal citizens and communities to preserve life, protect property and critical infrastructure, and will lead in the development of fair and equitable policies for Tribal citizens and our Nation.

Mr. Vitiello has the experience, integrity and knowledge necessary to lead ICE into a new era of immigration and customs enforcement in which federal, tribal, state and local law enforcement work together to protect our nation's security. Ronald D. Vitiello has the right leadership abilities, legislative and legal expertise to bring about the transformative improvements we all seek for Indian Country and our Nation. He is a dedicated public servant and an excellent choice for Director of Homeland Security for U.S. Immigration and Customs Enforcement.

Sincerely,

Gary L. Edwards
Chief Executive Officer
National Native American Law Enforcement Association

epic.org

Electronic Privacy Information Center
 1718 Connecticut Avenue NW, Suite 200
 Washington, DC 20009, USA

+1 202 483 1140
 +1 202 483 1248
 @EPICPrivacy
<https://epic.org>

November 28, 2018

The Honorable Ron Johnson
 Chairman
 Senate Homeland Security and Governmental
 Affairs Committee
 340 Dirksen Senate Office Building
 Washington, DC 20510

The Honorable Claire McCaskill
 Ranking Member
 Senate Homeland Security and Governmental
 Affairs Committee
 340 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

We write to you in advance of your hearing on the nomination of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement (ICE) at the Department of Homeland Security.¹ While the Electronic Privacy Information Center (EPIC) takes no stance on any particular nominee, effective oversight begins with scrutiny during the nomination process. We therefore urge you to consider these issues as you engage with Mr. Vitiello.

ICE Must Ensure the Accuracy and Safety of Commercial Databases It Uses

ICE contracts with private companies to build vast databases of personal information that make secret determinations about employment, travel, and criminal investigations. Palantir, a secretive data mining firm, provides “management and analysis software” for key ICE systems.² ICE’s FALCON and Investigative Case Management (ICM) systems pull together personal data from across the federal government to make determinations about individuals’ fitness for employment, travel, or whether those individuals should be investigated by law enforcement.³ EPIC has filed a FOIA lawsuit against ICE for information on the agency’s relationship with Palantir and details of the databases Palantir helped create.⁴

These systems, largely shielded from Congressional oversight, create considerable risk to civil liberties. These databases and private companies’ processing decisions are not subject to scrutiny. While ICE conducted a Privacy Impact Assessment, the Assessment specifically found that ICE does not verify the accuracy of the data relied upon by the FALCON database.⁵ Despite the

¹ *Business Meeting, Before the S. Homeland Sec. & Governmental Affairs Comm.* (Nov. 28, 2018), <https://www.hsgac.senate.gov/hearings/11/20/2018/business-meeting>.

² Mijente, *Who’s Behind ICE? The Tech and Data Companies Fueling Deportations* 10 (2018), https://mijente.net/wp-content/uploads/2018/10/WHO%E2%80%99S-BEHIND-ICE_-The-Tech-and-Data-Companies-Fueling-Deportations_v3-.pdf.

³ See Jacques Peretti, *Palantir: The ‘Special Ops’ Tech Giant that Wields as Much Real-World Power as Google*, *Guardian* (July 30, 2017), <https://www.theguardian.com/world/2017/jul/30/palantir-peter-thiel-cia-data-crime-police>; Ashlee Vance & Brad Stone, *Palantir, The War on Terror’s Secret Weapon*, *Bloomberg* (Nov. 22, 2011), <https://www.bloomberg.com/news/articles/2011-11-22/palantir-the-war-on-terror-secret-weapon>.

⁴ *EPIC v. ICE*, No. 17-2684 (D.D.C. Dec. 15, 2017), <https://epic.org/foia/ice/palantir/1-Complaint.pdf>.

⁵ DHS/ICE/PIA-032(b) FALCON-SA, Privacy Impact assessment Update for the FALCON Search & Analysis System 15 (Oct. 11, 2016), <https://www.dhs.gov/sites/default/files/publications/privacy-pia-ice-032-falcons-b-october2016.pdf>.

EPIC Statement
 Senate HSGAC

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ICE Nomination Hearing
 November 28, 2018

Privacy is a Fundamental Right.

clear dangers of the system, ICE does not provide users any notice that their data is being used or any opportunity to opt-out of the system.⁶ Users are therefore subject to risks of data misuse, theft, or breach. ICE further compounds the risk by exempting the databases from many Privacy Act and disclosure requirements, actions EPIC opposed in public comments to the agency.⁷

Before confirming any nominee to lead ICE, Congress should ensure that systems being used to track or make inferences about individuals are accurate, fair, transparent, and secure. Specifically, this committee should ask the nominee:

- What specific steps will ICE take to ensure that data in the FALCON and ICM systems is accurate?
- How does ICE ensure algorithms used to analyze the personal information in these databases do not result in impermissible or illegal bias or profiling?
- What specific security measures does ICE have in place to ensure the massive amounts of individual data is protected from breach, misuse, and theft?
- How does ICE ensure that databases it uses comply with Privacy Act protections?

II. ICE Must Follow Minimum Procedures When Conducting Searches of Mobile Devices at the Border

Searches of cell phones and other electronic devices by border agencies have skyrocketed in recent years. In 2017, U.S. Customs and Border Protection (CBP) searched 30,200 electronic devices of individuals entering and leaving the United States—almost a 60% increase from 2016.⁸ Searches of mobile devices are “basic” or “forensic.” The government may conduct a “basic” search—where an agent manually searches the device for information—with no suspicion of wrongdoing.

In 2013, the Ninth Circuit ruled that the government must have reasonable suspicion to conduct a “forensic” search, where an agent connects another device to conduct a search.⁹ Following that decision, CBP updated its policy to require the reasonable suspicion nationwide.¹⁰ Despite this, ICE has failed to follow suit, and has not issued new guidance on mobile device searches at the border. This is troubling since it is often ICE agents who conduct searches of mobile devices. EPIC has sued ICE to gain access to information on warrantless searches at the border.¹¹

ICE must adhere to minimum Fourth Amendment standards of suspicion when conducting searches. This committee should ask:

⁶ *Id.* at 20

⁷ Comments of the Electronic Privacy Information Center to the Department of Homeland Security, *Privacy Act of 1974: Implementation of Exemptions; Department of Homeland Security/U.S. Immigration and Customs Enforcement-016 FALCON Search and Analysis System of Records* (June 5, 2017), <https://epic.org/apa/comments/EPIC-DHS-FALCON-Database-Comments.pdf>.

⁸ Press Release, U.S. Customs and Border Protection, CBP Releases Updated Border Search of Electronic Device Directive and FY17 Statistics (Jan. 5, 2018), <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-updated-border-search-electronic-device-directive-and>.

⁹ *United States v. Cotterman*, 673 F.3d 1206 (9th Cir. 2012) (en banc).

¹⁰ Press Release, U.S. Customs and Border Protection, CBP Releases Updated Border Search of Electronic Device Directive and FY17 Statistics (Jan. 5, 2018), <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-updated-border-search-electronic-device-directive-and>.

¹¹ EPIC, *EPIC Sues ICE Over Technology Used to Conduct Warrantless Searches of Mobile Devices* (Apr. 9, 2018), <https://epic.org/2018/04/epic-sues-ice-over-technology-.html>.

- What guidance is in place for agents conducting searches of mobile devices at the U.S. border? Will ICE make that guidance public?
- Will ICE publish updated guidance that reflects the reasonable suspicion standard from *Cotterman*? If not, why not?

III. Use of Social Media Profiling

ICE has repeatedly expressed interest in monitoring social media profiles to collect information on immigrants.¹² The agency hired an outside contractor to “monitor public social communications on the Internet,” including the public comments sections of the *New York Times*, *Los Angeles Times*, *Huffington Post*, *Drudge*, *Wired*’s tech blogs, and *ABC News*.¹³ ICE further sought to establish “extreme vetting” programs that would use secret algorithms to determine visa eligibility.¹⁴ EPIC warned that “the use of information technology to identify individuals that may pose a specific threat to the United States” implicates a “complex problem [that] necessarily involves subjective judgments.”¹⁵ Though that program was abandoned,¹⁶ ICE left the door open to develop and implement similar or more intrusive programs, and has continued to contract with surveillance firms to mine social media information.¹⁷ This is especially troubling given the agency’s insistence that social media profiles should be exempted from Privacy Act protections.¹⁸

This committee must ensure that surveillance programs do not encroach the civil liberties and constitutional rights of Americans. Specifically, the committee should ask:

- How does ICE intend to use social media data acquired in this way?
- Who will the social media information be shared with and under what specific circumstances?
- How will ICE prevent at-risk communities from being scrutinized more harshly for exercising their First Amendment rights?
- Will ICE use the social media information to obtain additional data from social media companies?

¹² Comments of the Electronic Privacy Information Center to the Department of Homeland Security, *Privacy Act of 1974: System of Records*, EPIC (Oct. 18, 2017), <https://epic.org/apa/comments/EPIC-DHS-Social-Media-Info-Collection.pdf>.

¹³ DHS Social Media Monitoring Documents at 127, 135, 148, 193, <https://epic.org/foia/epic-v-dhs-media-monitoring/EPICFOIA-DHS-Media-Monitoring-12-2012.pdf>; see also Charlie Savage, *Federal Contractor Monitored Social Network Sites*, N.Y. Times (Jan. 13, 2012), <http://www.nytimes.com/2012/01/14/us/federal-security-program-monitored-public-opinion.html>.

¹⁴ EPIC, *EPIC, Coalition Oppose Government’s ‘Extreme Vetting’ Proposal* (Nov. 16, 2017), <https://epic.org/2017/11/epic-coalition-oppose-governme.html>.

¹⁵ *Security and Liberty: Protecting Privacy, Preventing Terrorism Before the National Commission on Terrorist Attacks Upon the United States* (Dec. 8, 2003) (statement of Marc Rotenberg, President, Electronic Privacy Information Center), <https://epic.org/privacy/terrorism/911commtest.pdf>.

¹⁶ EPIC, *ICE Abandons ‘Extreme Vetting’ Software to Screen Visa Applicants* (May 18, 2018), <https://epic.org/2018/05/ice-abandons-extreme-vetting-s.html>.

¹⁷ See Chantal Da Silva, *ICE Just Launched a \$2.4M Contract with a Secretive Data Surveillance Company that Tracks You in Real Time*, Newsweek (June 7, 2018), <https://www.newsweek.com/ice-just-signed-24m-contract-secretive-data-surveillance-company-can-track-you-962493>.

¹⁸ EPIC, *CBP Plans to Exempt Social Media Data from Legal Protections* (Sept. 22, 2017), <https://epic.org/2017/09/cbp-plans-to-exempt-social-med.html>.

IV. Ensure Privacy Protections for Individuals in the DACA Program

Since a DHS memo rescinded DACA, EPIC has followed closely the privacy risks associated with the scheduled end of the program.¹⁹ DACA was established in 2012.²⁰ The 2012 DHS Privacy Impact Assessment (PIA) for DACA assured that information provided by individuals in DACA requests is “protected from disclosure to ICE and CBP for the purpose of immigration enforcement proceedings” except in special circumstances.²¹ This protection was extended to family members and guardians of applicants. Between 2012 and 2017, over 800,000 DACA applicants submitted their personally identifiable biographic and biometric information to DHS.²² This information includes birth certificates, employment records, bank records, housing records, transcripts, medical records, religious information, military records, information related to interactions with law enforcement, insurance documents, signatures, descriptive information such as height, weight, and ethnicity, biometric photos, and full fingerprints.²³

DACA applicants submitted their information to DHS for the exclusive purpose of being considered for deferred action. This disclosure was made with the explicit understanding that their personal information would be subject to privacy protections. The memo rescinding DACA fails to address the privacy risks associated with using data collected from DACA application. There is no new or updated PIA stating what will happen with the personal data collected to determine eligibility for deferred action. In addition, DHS has failed to make concrete assurances it will maintain the protections promised in the 2012 PIA and set out usage described in the I-821D form and instructions. Former Acting Secretary of Homeland Security Elaine Duke explicitly stated that DHS would not promise to use DACA applicants’ information exclusively for the purposes it was collected.²⁴

This committee should ensure that DACA applicants receive the privacy protections to which they are entitled. Specifically, the committee should ask:

¹⁹ See EPIC, *Deferred Action for Childhood Arrivals (DACA)*, <https://www.epic.org/privacy/daca/>; EPIC, *End of DACA Program Poses Privacy Risks to Dreamers* (Sept. 20, 2017), <https://epic.org/2017/09/end-of-daca-program-poses-priv.html>.

²⁰ Memorandum from Janet Napolitano, Secretary, DHS to David Aguilar, Acting Comm’r, CBP, et al., “Exercising Prosecutorial Discretion with Respect to Individuals Who Came to the United States as Children,” <https://www.dhs.gov/xlibrary/assets/s1-exercising-prosecutorial-discretionindividuals-who-came-to-us-as-children.pdf>.

²¹ See DHS/USCIS/PIA-045, Privacy Impact Assessment for the Deferred Action for Childhood Arrivals (DACA) at 3.3 (Aug. 15, 2012), https://www.dhs.gov/sites/default/files/publications/privacy_pia_uscis_daca_0.pdf [hereinafter 2012 DACA PIA].

²² U.S. Citizenship and Immigration Servs., Number of Form I-821D, Consideration of Deferred Action for Childhood Arrivals, by Fiscal Year, Quarter, Intake, Biometrics and Case Status Fiscal Year 2012-2017 (June 30), https://www.uscis.gov/sites/default/files/USCIS/Resources/Reports%20and%20Studies/Immigration%20Forms%20Data/All%20Form%20Types/DACA/daca_performancedata_fy2017_qtr3.pdf.

²³ See 2012 DACA PIA, *supra* note 21; DHS/USCIS/PIA-045(a), Deferred Action for Childhood Arrivals (DACA) (Apr. 17, 2014), https://www.dhs.gov/sites/default/files/publications/privacy-pia-uscis-dacaupdate-april2014_0.pdf.

²⁴ Sam Sacks, *DHS Chief Can’t Promise She Won’t Hand Over Dreamer Data to ICE*, Truthout, (Sept. 28, 2017), <http://www.truth-out.org/news/item/42092-dhs-chief-can-t-promise-she-won-thand-over-dreamer-data-to-ice>.

- Will the personal information provided by DACA applicants be used exclusively for its intended purpose of determining deferred action eligibility, as stated in the original Privacy Impact Assessment for the program?
- Will ICE issue a new or updated PIA describing the privacy implications of its decision to rescind DACA and outlining its strategy for insuring that information provided by DACA recipients will be safe from misuse?

As surveillance technology becomes increasingly powerful and pervasive, it is critical that the Homeland Security and Governmental Affairs Committee ensure that individuals' rights are protected.

We appreciate the Committee's attention to this issue and ask that this statement be entered into the hearing record. EPIC looks forward to continuing to work with the Committee on issues of vital importance to the American public.

Sincerely,

/s/ Marc Rotenberg
Marc Rotenberg
EPIC President

/s/ Caitriona Fitzgerald
Caitriona Fitzgerald
EPIC Policy Director

/s/ Jeramie D. Scott
Jeramie D. Scott
EPIC National Security Counsel

/s/ Jeff Gary
Jeff Gary
EPIC Legislative Fellow

Office of the Director

U.S. Department of Homeland Security
500 12th Street SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

NOV 27 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Chairman Johnson:

Thank you for the opportunity to address the additional questions you received from the National Immigration and Customs Enforcement Council of the American Federation of Government Employees. Enclosed, please find responses and augmenting documentation to Mr. Crane's November 23, 2018 letter. Please note the responses may contain law enforcement sensitive information, further dissemination of which may hamper law enforcement efforts. Accordingly, U.S. Immigration and Customs Enforcement respectfully requests your staff safeguard the enclosed information.

If you have questions or need additional information, please don't hesitate to reach out to me. Thank you again for your continued support of U.S. Immigration and Customs Enforcement.

Sincerely,

A handwritten signature in black ink, appearing to read "R. Vitiello".

Ronald Vitiello
Deputy Director and
Senior Official Performing the Duties of Director

Enclosures



**National Immigration and Customs
Enforcement Council
of the
American Federation of Government Employees**
Affiliated with the AFL-CIO



November 23, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security and Governmental Affairs
U.S. Senate
340 Dirksen Senate Office Building
Washington, DC 20510

Dear Chairman Johnson:

On behalf of the law enforcement officers and personnel of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO), I am writing to thank you for your efforts to seek answers on our behalf from the nominee selected to lead our agency, Mr. Ronald Vitiello. We are truly grateful for the time and attention you took to address our employees' concerns during the November 15 hearing, and for your pursuit of the truth.

It was very disappointing, however, that Mr. Vitiello did not fully respond to your questions, as well as those of your colleagues, misled, and potentially lied to you and the Committee in his answers. The employees I represent find this lack of candor and transparency to be unacceptable for any employee of ICE, most especially from our potential future leader.

After Mr. Vitiello failed to fully and openly respond to your questions regarding the concerns that ICE Council Local Presidents raised in their November 14 letter to you, many unanswered questions remain. On behalf of the dedicated professionals whom I represent, we respectfully submit for your consideration the following questions that we request Mr. Vitiello answer in writing **prior to any vote on his nomination by the Committee**:

1. Why did you make the decision in July 2018 to forbid National ICE Council employees from performing their official agency duties? What basis or rationale did you use to make this decision? Please provide the rationale, if any, to the Committee, to include how it best serves the effectiveness and efficiency of the federal government.
2. On July 7, 2018, were you copied on emails sent to your staff, and in some cases sent direct emails from National ICE Council President Chris Crane, requesting that as Acting ICE Director you assist employees in stopping what Crane described as the unethical practice of forbidding members of the National ICE Council from going to their place of

work and performing their duties as federal employees? Did you also have a phone call with Mr. Crane in the same approximate timeframe to discuss, in part, the same matter?

3. While serving with the U.S. Border Patrol and U.S. Customs and Border Protection (CBP), did you have experience working with the National Border Patrol Council (NBPC)? Are you aware that federal employees serving on the NBPC have been able and continue to be permitted to perform their duties as federal law enforcement officers in the field? During the hearing, you responded to Chairman Johnson that union officials are paid to spend one hundred percent of their time to represent the union. Are you aware of union officials on the National Border Patrol Council who are permitted to perform their agency law enforcement duties, and work less than one hundred percent of their time on union matters? If you are, can you explain why you told the Chairman that union officials always work one hundred percent of their time on union matters if that was not in keeping with your personal experience and work knowledge of these matters? While you served as Deputy Chief, Acting Chief, and Chief of the Border Patrol, as well as during your time as the Acting Deputy Commissioner of CBP, why didn't you prohibit NBPC officials from performing their duties as federal law enforcement officers in the field, as you have done during your time at ICE?
4. Were you disciplined by DHS or CBP in response to your social media posts regarding Presidential candidate Donald Trump and Dennis the Menace, or for suggesting that the Democratic Party be renamed as the "NeoKlanist" party? Do you agree that the social media posts violate the DHS and CBP Standards of Conduct, as well as the ICE Employee Code of Conduct? Are rank and file ICE employees disciplined or removed for similar conduct? Do you believe that rank and file employees should be disciplined or removed for similar conduct? Do you believe that public comments such as these can affect the credibility of a law enforcement officer testifying in a legal proceeding?
5. During your testimony, you stated that most of the matters cited by union officials in their letter to the Committee occurred prior to you taking a position at ICE. In the letter, the union local presidents raised three major issues with respect to you: 1) your decision to prohibit union officials from performing agency work; 2) management of the Portland, OR protests; and 3) an inappropriate social media post regarding Donald Trump. Were you in the position of Deputy Director and Acting Director of ICE at the time the agency most recently determined certain union officials are prohibited from performing their agency duties? Were you the Deputy Director and Acting Director of ICE for the majority of the cited protests in Portland, approximately three weeks? Do you believe that because the social media posts occurred while you held a senior position in the Border Patrol, that ICE employees should not be concerned with acts by their potential new leader that demonstrate poor judgement that rises to a level that would cause most ICE employees to be removed for committing a similar act?
6. The protests affecting the Portland, OR ICE Field Office lasted from June 18, 2018 to July 24, 2018. After you were appointed as the Deputy Director and Acting Director on June 30, what decisions, if any, did you make with respect to ICE operations in Portland or ICE personnel in Portland?

- a. According to your testimony, it took, "*a number of days...a week or two*" to get appropriate federal resources on the ground and take back the ICE Field Office. Why did it take ICE so long to accomplish this?
- b. Please provide the Committee with a copy of all after action reviews/reports, if any, conducted by ICE in response to the incidents in Portland.
- c. What new policies, plans or training have you put in place, if any, in order to respond to a future situation such as the one in Portland, and ensure that it does not occur again? Please provide a copy of these policies, plans or training materials, if any, to the Committee.
- d. Are you aware that your officers and employees are extremely concerned with what they believe was gross mismanagement of the Portland crisis?

Thank you again for your efforts to date and for your assistance in seeking answers to these important questions on behalf of ICE ERO personnel. We're grateful for your steadfast support and commitment to the men and women of law enforcement and we stand at the ready to assist you in any way that we can.

Sincerely,



Chris Crane
President

cc: The Honorable Gary C. Peters

November 14, 2018

The Honorable Ron Johnson
 Chairman
 Committee on Homeland Security and
 Governmental Affairs
 U.S. Senate
 340 Dirksen Senate Office Building
 Washington, DC 20510

The Honorable Claire McCaskill
 Ranking Member
 Committee on Homeland Security and
 Governmental Affairs
 U.S. Senate
 340 Dirksen Senate Office Building
 Washington, DC 20510

Dear Chairman Johnson and Ranking Member McCaskill:

On behalf of the law enforcement professionals of Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) whom we are proud to represent, we write to express deep concern regarding the direction of our agency and the people who currently run it. ICE needs a change agent in the position of agency Director. The status quo can no longer be tolerated and we hope that you will work with us, the law enforcement professionals who make up ICE, to turn our agency around. The first step in that process is ensuring that ICE has the highest caliber of leadership at the position of agency Director.

As you are aware, our National ICE Council leadership has previously testified before the Committee resulting in commitments to conduct investigations into mismanagement and misconduct within our agency. To our knowledge, no investigations have been conducted to date. We have been deeply disappointed in the work by internal investigative groups like the ICE Office of Professional Responsibility (OPR), and the Department of Homeland Security (DHS) Office of Inspector General (OIG), who generally serve only to cover for management misconduct and incompetence, leaving no appropriate oversight of agency managers, no fair and just system for reporting misconduct and waste, and no effective means by which to investigate our agency. All manner of retaliation by ICE managers, to include whistleblower retaliation, are rampant within the agency. The lack of oversight within ICE and agencies like it, and the ability of agency managers to retaliate against those American citizens who report their mismanagement, stands in stark contradiction to the principals held by the American people and how the civil service was intended to function.

While the agency's long-standing and corrupt 'good old boy' network promotes the least suitable candidates into key leadership positions within ICE, our rank and file employees are among the finest in the nation. No one does more with less than the men and women of law enforcement serving within ICE. Calls to abolish ICE are motivated by those who don't support the enforcement of U.S. immigration law and have no nexus to the conduct of our rank and file employees. We are writing to you today to inform you that ICE is in desperate need of change and oversight with respect to internal mismanagement, incompetence, and misconduct by our managers. While the meaning of this letter will likely be manipulated for political purposes by members of the media and radical special interest groups, the changes we're demanding are not the same as those who wish to abolish ICE, nor do our concerns support their reasoning for doing so. With simple changes such as the appropriate oversight of agency management, and a trusted

system for reporting and investigating management misconduct, it is our opinion that ICE could quickly establish itself as one of our nation's premier law enforcement agencies. We hope to work with you to accomplish this type of real and meaningful change within our agency

We strongly encourage Members of the Committee to read the accounts of ICE employees who have shared their stories and experiences on the internet because they had nowhere else to effectively report the misconduct they witnessed and experienced. These accounts include some of the most reprehensible alleged misconduct by current and previous members of ICE leadership. The disturbing conduct alleged includes an incident where one senior agency official left his government-issued firearm in a strip club, and in a separate incident this same senior agency official exposed his genitals to other employees in the workplace. Additionally, in separate incidents, another manager allegedly lost his badge and credentials to a prostitute, and another allegedly sent nude pictures of himself to subordinate female employees using government equipment.

We also encourage Members of the Committee to review the November 15, 2016 internal ICE report in which ICE employees **and supervisors** describe their leadership as retaliatory, dishonest, untrustworthy, vindictive and petty.¹ Employees reported that female ICE employees feel pressure to engage in romantic and sexual relationships with senior male managers in order to get promoted, and managers discriminate against racial minorities, as well as military veterans.² Additionally, Members of this Committee should review a DHS OIG account of ICE's failure to properly manage its deportation operations and properly train its officers.³ These allegations and reports only begin to scratch the surface and shed a little bit of light on to the conduct of ICE management and the dysfunction within the agency. While each individual allegation or report is only specific to certain employees, locations or work functions, it is our opinion that each instance serves as a snapshot of misconduct and mismanagement that is pervasive throughout the agency.

As we stated earlier in this letter, ICE needs a change agent in the position of agency Director. We implore the Committee to take all necessary time and exercise all necessary due diligence prior to confirming any future ICE Director. We further implore the Committee to make every effort to ensure that our new Director is a person of honor and integrity, who leads by example, holds their managers to the highest standards, and is determined to end mismanagement, incompetence, and misconduct within our agency. The role of the Committee and its Members in determining the suitability and fitness of the leader of our agency is crucial to ultimately ensuring the safety of our law enforcement personnel in the field and the American public.

The nominee to be considered by the Committee, Mr. Ronald D. Vitiello, has only been with ICE for a short period of time, and while this letter neither supports nor opposes his nomination to be our Director, we are aware of several matters that give us serious concern about him and his

¹Scott F. Lanum, Assistant Director, Office of Diversity and Civil Rights, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, (November 15, 2016), *Final Organizational Climate Assessment Report for Enforcement and Removal Operations – Field Office Director Newark*.

² *Id.*

³ Office of Inspector General, U.S. Department of Homeland Security, (April 13, 2017), *ICE Deportation Operations: OIG-17-51*, available at <https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-51-Apr17.pdf>.

ability to lead our agency. We ask that the Committee look in to these concerns and provide a finding on each prior to any vote on Mr. Vitiello's nomination.

Comparing the POTUS to Dennis the Menace on Social Media

It has been publicly reported in the media that on March 4, 2016, Mr. Vitiello shared images via Twitter that compared then Presidential-candidate Donald Trump to cartoon character Dennis the Menace.⁴ This news report shows the tweet coming from a Twitter account displaying a photograph of Mr. Vitiello in a U.S. Border Patrol dress uniform with the official U.S. Border Patrol flag positioned behind him.⁵ At the time of this post, it is our understanding that Mr. Vitiello held the positions of both Deputy Chief, as well as Acting Chief of the U.S. Border Patrol.

If this incident is true, we are deeply concerned with the prospect of a Director who at best has demonstrated extremely poor judgment by sending a Tweet of this nature. Furthermore, we are concerned with what appears to be a political statement against the now President and the possibility that this Tweet represents Mr. Vitiello's true feelings about the President and his plans for the agency. As ICE is one of our nation's largest and most politically charged federal law enforcement agencies, with a multi-billion-dollar budget, it is imperative for our Director to not only have impeccable decision making but also to behave in a fashion that is beyond reproach. In this instance, it appears that Mr. Vitiello violated the DHS and CBP Standards of Conduct, as well as the ICE Employee Code of Conduct, to which employees of each respective agency are held accountable.⁶

Working in any position in a federal law enforcement agency, with public safety and national security missions like ICE, requires that each and every employee hold themselves to the highest possible standards of conduct. This is perhaps most imperative for senior level agency leaders. If the incident described above is true, it appears that Mr. Vitiello failed to hold himself to this standard and failed to lead by example. Aside from this failure of leadership, the fact that this matter was reported publicly in the media, and the negative nature of the reporting itself, both indicate that the Tweet, if sent by Mr. Vitiello, brought public embarrassment to the U.S. Border Patrol and DHS, as well as to his agents and employees in the field. Had any rank and file employee in the field at ICE committed a similar act, that employee would be subject to discipline or removal under the ICE Employee Code of Conduct which, summarized in part, requires the following of all employees:

⁴ Matt Novak, Gizmodo, (February 4, 2017), *Trump's New Head of Border Patrol Might Want to Delete This Tweet*, available at <https://gizmodo.com/trumps-new-head-of-border-patrol-might-want-to-delete-t-1791995136>.

⁵ *Id.*

⁶ U.S. Department of Homeland Security, (March 1, 2003), *Management Directive Number: 0480.1: Ethics/Standards of Conduct*, available at https://www.dhs.gov/sites/default/files/publications/mgmt_directive_0480_1_ethics_standards_of_conduct.pdf; David V. Aguilar, Acting Commissioner, U.S. Customs and Border Protection, U.S. Department of Homeland Security, (March 13, 2012), *CBP Directive No. 51735-013A: U.S. Customs and Border Protection: Standards of Conduct*, available at https://www.cbp.gov/sites/default/files/documents/std_of_conduct_3.pdf; John Morton, Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, (August 7, 2012), *Directive 1033.1: Employee Code of Conduct*, available at https://www.ice.gov/doclib/foia/dro_policy_memos/employee-code-of-conduct.pdf.

- Whether on- or off-duty, all ICE employees must conduct themselves in a manner that does **not cause embarrassment to the agency**; or cause the public or ICE to **question their judgement**.⁷
- All ICE employees must clearly understand that **they are not only representing themselves, but also their co-workers, ICE, and the Federal Government**, and that the highest standards of conduct and ethical behavior are required.⁸

Alleged Mismanagement of Portland Protests

On or about June 18, 2018, an angry mob, to include violent militant groups, took control of an ICE facility located in Portland, Oregon. All entry and exit points to the building were blocked, and ICE employees, to include unarmed, non-law enforcement personnel, were threatened with physical violence. While the unconstitutional acts of Portland Mayor Ted Wheeler – who directed the Portland Police Bureau not to provide assistance to ICE employees – are certainly responsible for creating the life and death situation for ICE employees in the facility in the first place, Portland ICE employees have reported in mass that ICE leadership failed them and the agency throughout the month-long ordeal. Portland ICE employees have unequivocally stated that once local and national level ICE leadership became tasked with dealing with the matter, these agency leaders froze, were unable to make decisions, and failed to adequately safeguard the facility and ICE employees.

On June 30, 2018, Mr. Vitiello was named the new Deputy Director and Acting Director of ICE. While Mr. Vitiello may not have been briefed on or engaged in ICE matters prior to June 30, the dangerous and unprecedented situation in Portland remained active through July 24, 2018 when protestors in Portland were forced to disperse by the Portland Police Bureau. Therefore, Mr. Vitiello oversaw agency operations for at least 24 days while the protests were ongoing.

On July 27, 2018, the National ICE Council conducted after action interviews with Portland employees. Nearly every employee who went through this experience was reportedly frustrated, angry and concerned with ICE's handling of the situation. At the time of the after-action interviews by the ICE Council, it was reported that ICE management had conducted no after-action reports or debriefs with employees involved. While we will not provide specific details in this letter due to security concerns, employees reported generally to the National ICE Council about the Portland incident that:

- *"Management was incapable of making decisions."*
- *"Our management is awful and incompetent."*
- *"Common law enforcement planning totally escapes our managers."*
- *"We have politicians in charge, not law enforcement."*
- *"We have no confidence in our management."*

⁷ John Morton, Director, U.S. Immigration and Customs Enforcement, U.S. Department of Homeland Security, (August 7, 2012), *Directive 1033.1: Employee Code of Conduct*, available at https://www.ice.gov/doclib/foia/dro_policy_memos/employee-code-of-conduct.pdf.

⁸ *Id.*

Many of the perceived failures voiced by ICE law enforcement personnel in the field occurred during Mr. Vitiello's time as Deputy Director and Acting Director. We believe that an in-depth review of this incident and Mr. Vitiello's actions as the senior-most agency official in charge must be conducted prior to any Committee vote on his nomination. Concerns such as those voiced by our employees in the field are deeply troubling and must be explored further.

Prohibiting some Federal Employees from Performing Duties without Cause

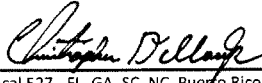
Lastly, we wish to inform the Committee about Mr. Vitiello's order, as Deputy Director and Acting Director, to prohibit select ICE employees from going into their offices and performing their duties as law enforcement officers or law enforcement support staff. Any order by any agency official, such as this, which prohibits federal employees from performing their federal job duties, without due cause, is a matter we believe to be a serious red flag and request a thorough examination of the order by the Committee. We believe that Mr. Vitiello should be required, during this confirmation process, to give not just the U.S. Senate, but American taxpayers, a clear and detailed explanation as to why he is directly ordering these federal employees to never perform agency work.

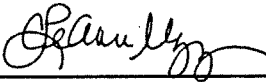
While we do not know why Mr. Vitiello has issued this order, Mr. Vitiello's actions appear to have no basis in the effective functioning of the agency, and the only outwardly obvious effect of Mr. Vitiello's order seems to be the loss of personnel hours in the field due to the restriction on performing work. Additionally, we can tell you that the select employees, who have been ordered not to perform their job duties, serve in positions on the National ICE Council. These individuals on the National ICE Council are not only law enforcement professionals and military veterans but have been frequent whistleblowers, reporting waste, fraud, abuse, and mismanagement throughout the agency over a period of many years. We point this out in light of the Committee's duty to and longstanding history of protecting whistleblowers, and urge the Committee to investigate this matter further to determine whether whistleblower retaliation might be a motivation for this order by Mr. Vitiello. Retaliation of any sort against those who are willing to speak up and tell the truth has no place in our agency and must be rooted out no matter where it exists.

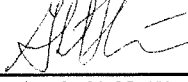
In conclusion, our agency is in serious need of reform from the inside out. Our organization stands at the ready to work with all Members of the Committee and Congress, to clean up ICE and allow our law enforcement professionals to go out and do our jobs with the best possible organization behind us. This starts at the top. We need a change agent in the position of agency Director and it is unclear whether Mr. Vitiello can be that force for change. We again ask that the Committee look into our concerns as presented in this letter and provide a finding on each prior to any vote on Mr. Vitiello's nomination. Please do not hesitate to contact us if you have any questions or would like to discuss any of these matters in further detail. We greatly appreciate your time, attention, and consideration of our requests.

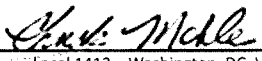
Very respectfully,

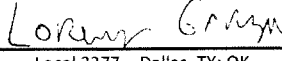

Local 2805 – San Diego, CA

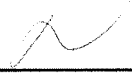

Local 527 - FL, GA, SC, NC, Puerto Rico


Local 2038 – LA, AR, TN, MS, AL

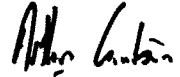

Local 2012 – PA, DE, WV


Local 1412 – Washington, DC; VA


Local 3377 – Dallas, TX; OK


Local 46 - MI

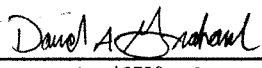

Local 1210 – El Paso, TX; NM

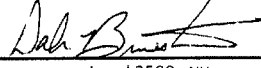

Local 2660 – IN, KY, OH


Local 2149 - NJ


Local 2859 - AZ, NV


Local 3928 - ND, SD, NE, KS, IA, MO


Local 2756 - MD


Local 2580 - NY

cc: Chris Crane, President, National ICE Council

**Statement of Richard S. Tischner
Nominee to be Director of the
Court Services and Offender Supervision Agency for the District of Columbia
Before the
Homeland Security and Governmental Affairs Committee
United States Senate**

November 15, 2018

Thank you, Chairman Johnson, Ranking Member McCaskill, and members of the committee. I am grateful for your holding this hearing today to consider my nomination. I am truly honored by the nomination and, if confirmed, stand ready to work alongside other leaders in the District of Columbia criminal justice system to continue enhancing public safety in the Nation's Capital.

CSOSA plays a critical role in providing public safety for those who live, work, and visit the District of Columbia. It strives to reduce recidivism by promoting successful adjustment to supervision by probationers and those returning to the community after a period of incarceration. In those instances where individuals reoffend, timely coordination with criminal justice partners is key. If confirmed as Director, I look forward to working with the talented and dedicated professionals at CSOSA to achieve these goals.

I would also be honored to continue my more than thirty years not only in public service, but in the pursuit of public safety. As a career prosecutor, I have always done my best to fairly and effectively address violations of the law, hold offenders accountable, and attain justice for victims and the citizens of the District of Columbia.

I am especially proud of my service as Chief of the Superior Court Division, where I am responsible for leading the U.S. Attorney's Office's largest division in the investigation and prosecution of most local crimes committed by adults in the District of Columbia. I am honored to work with hundreds of dedicated Assistant United States Attorneys, paralegals, and other staff members as we address a wide range of offenses. These range from misdemeanor offenses that affect the quality of life in the District to complicated violent offenses, including sexual assaults and homicides. The Division handles between 17,000 and 20,000 cases on an annual basis and employs a problem-solving approach, rather than simply processing cases through the system. Under my leadership, it works closely with its law enforcement partners and the community to identify public safety issues and to craft pragmatic solutions.

Having spent most of my career in the United States Attorney's Office working on strictly local criminal justice issues, I am keenly aware of the challenges faced by the entities obligated to provide public safety for this community. I have not only been a prosecutor in the traditional

sense, but I have also worked as a community prosecutor where I was tasked with solving complicated problems and issues impacting residents and neighborhoods throughout the District of Columbia. Additionally, my service in the DC Superior Court's drug court and mental health court has given me a broader perspective of the problems faced by those in the criminal justice system. Finally, my relationships with law enforcement, partner agencies, and the community will serve the citizens of the District of Columbia well if I am confirmed.

Thank you again for the opportunity to appear before you today and for your continued support of public safety efforts in the District of Columbia. I also want to express my gratitude to the staff of this Committee for their work in considering my nomination. I look forward to your questions.

HSGAC BIOGRAPHICAL QUESTIONS FOR EXECUTIVE NOMINEES

REDACTED

1. Basic Biographical Information

Please provide the following information.

<i>Position to Which You Have Been Nominated</i>	
Name of Position	Date of Nomination
Director of the Court Services and Offender Supervision Agency for the District of Columbia.	July, 18, 2018

<i>Current Legal Name</i>			
First Name	Middle Name	Last Name	Suffix
Richard	Samuel	Tischner	Jr.

<i>Addresses</i>					
Residential Address (do not include street address)			Office Address (include street address)		
			Street: 555 4 th Street, N.W.		
City: Ashburn	State: Virginia	Zip: 20147	City: Washington	State: DC	Zip: 20001

<i>Other Names Used</i>						
First Name	Middle Name	Last Name	Suffix	Check if Middle Name	Name Used From (Month/Year) (Check box if estimate)	Name Used To (Month/Year) (Check box if estimate)
Not applicable					Est ☐	Est ☐
					Est ☐	Est ☐

<i>Birth Year and Place</i>	
<i>Year of Birth</i> (Do not include month and day)	<i>Place of Birth</i>
1958	Mineola, New York

<i>Marital Status</i>					
Check All That Describe Your Current Situation:					
Never Married	Married	Separated	Annulled	Divorced	Widowed
☐	☐	☒	☐	☐	☐

<i>Spouse's Name</i> (current spouse only)			
<i>Spouse's First Name</i>	<i>Spouse's Middle Name</i>	<i>Spouse's Last Name</i>	<i>Spouse's Suffix</i>
Not Applicable			

<i>Spouse's Other Names Used</i> (current spouse only)						
<i>First Name</i>	<i>Middle Name</i>	<i>Last Name</i>	<i>Suffix</i>	<i>Check All That Apply</i>	<i>Name Used From</i> (Month/Year) (Check box if estimate)	<i>Name Used To</i> (Month/Year) (Check box if estimate)
Not Applicable					Est ☐	Est ☐
					Est ☐	Est ☐

<i>Children's Names (if over 18)</i>			
First Name	Middle Name	Last Name	Suffix
Richard	Samuel	Tischner	III

2. Education

List all post-secondary schools attended.

Name of School	Type of School (vocational/technical/trade school, college/university/military college, correspondence/distance/extension/online school)	Date Began School (month/year) (check box if estimate)	Date Ended School (month/year) (check box if estimate) (check "present" box if still in school)	Degree	Date Awarded
SUNY Stony Brook	University	8/76 Est ☐	5/80 Est Present ☐	BA	5/80
Pace University School of Law	Law School	8/80 Est ☐	5/83 Est Present ☐	J.D.	5/83
		Est ☐	Est Present ☐		
		Est ☐	Est Present ☐		

3. Employment

(A) List all of your employment activities, including unemployment and self-employment. If the employment activity was military duty, list separate employment activity periods to show each change of military duty station. Do not list employment before your 18th birthday unless to provide a minimum of two years of employment history.

Type of Employment (Active Military Duty Station, National Guard/Reserve, USPHS Commissioned Corps, Other Federal Employment, State Government (Not Federal Employment), Self- employment, Unemployment, Federal Contractor, Non- Government Employment (excluding self-employment), Other)	Name of Your Employer/ Assigned Duty Station	Most Recent Position Title/Rank	Location (City and State only)	Date Employment Began (month/year) (check box if estimate)	Date Employment Ended (month/year) (check box if still employed)
Law Firm	Pine, Finkelstein, Olin and Anderman	Attorney	New York, New York	July, 1984	May, 1985
Federal Government	U.S. Office of Special Counsel, MSPB	Attorney	Washington, D.C.	May, 1985	Jan., 1988
Federal Government	U.S. Federal Trade Commission	Attorney	Washington, D.C.	Jan., 1988	Oct., 1988
Federal Government	United States Attorney's Office-DC	AUSA	Washington, D.C.	May, 1988	Present
Federal Government	EOUSA	AUSA- Detailer	Washington, D.C.	May, 2002	Aug., 2003

(B) List any advisory, consultative, honorary or other part-time service or positions with federal, state, or local governments, not listed elsewhere.

Name of Government Entity	Name of Position	Date Service Began (month/year) (check box if estimate)	Date Service Ended (month/year) (check box if estimate) (check "present" box if still serving)
Not Applicable		Est ☐	Est Present ☐ ☐
		Est ☐	Est Present ☐ ☐
		Est ☐	Est Present ☐ ☐

4. Potential Conflict of Interest

(A) Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

None.

(B) Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration or execution of law or public policy, other than while in a federal government capacity.

None.

5. Honors and Awards

List all scholarships, fellowships, honorary degrees, civilian service citations, military medals, academic or professional honors, honorary society memberships and any other special recognition for outstanding service or achievement.

I have received multiple special achievement awards from my current employer and two meritorious service awards from local law enforcement.

6. Memberships

List all memberships that you have held in professional, social, business, fraternal, scholarly, civic, or charitable organizations in the last 10 years.

Unless relevant to your nomination, you do NOT need to include memberships in charitable organizations available to the public as a result of a tax deductible donation of \$1,000 or less, Parent-Teacher Associations or other organizations connected to schools attended by your children, athletic clubs or teams, automobile support organizations (such as AAA), discounts clubs (such as Groupon or Sam's Club), or affinity memberships/consumer clubs (such as frequent flyer memberships).

<u>Name of Organization</u>	<u>Dates of Your Membership</u> (You may approximate)	<u>Position(s) Held</u>
Not applicable		

7. Political Activity

(A) Have you ever been a candidate for or been elected or appointed to a political office?

No.

<u>Name of Office</u>	<u>Elected/Appointed/ Candidate Only</u>	<u>Year(s) Election Held or Appointment Made</u>	<u>Term of Service</u> (if applicable)
Not applicable			

(B) List any offices held in or services rendered to a political party or election committee during the last ten years that you have not listed elsewhere.

<u>Name of Party/Election Committee</u>	<u>Office/Services Rendered</u>	<u>Responsibilities</u>	<u>Dates of Service</u>
Not Applicable			

(B) Itemize all individual political contributions of \$200 or more that you have made in the past five years to any individual, campaign organization, political party, political action committee, or similar entity. Please list each individual contribution and not the total amount contributed to the person or entity during the year.

None.

<u>Name of Recipient</u>	<u>Amount</u>	<u>Year of Contribution</u>
Not Applicable		

8. Publications and Speeches

(A) List the titles, publishers and dates of books, articles, reports or other published materials that you have written, including articles published on the Internet. Please provide the Committee with copies of all listed publications. In lieu of hard copies, electronic copies can be provided via e-mail or other digital format.

None.

<u>Title</u>	<u>Publisher</u>	<u>Date(s) of Publication</u>
Not Applicable		

(B) List any formal speeches you have delivered during the last five years and provide the Committee with copies of those speeches relevant to the position for which you have been nominated. Include any testimony to Congress or any other legislative or administrative body. These items can be provided electronically via e-mail or other digital format.

None:

<u>Title/Topic</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Not Applicable		

(C) List all speeches and testimony you have delivered in the past ten years, except for those the text of which you are providing to the Committee.

None.

<u>Title</u>	<u>Place/Audience</u>	<u>Date(s) of Speech</u>
Not Applicable		

9. Criminal History

Since (and including) your 18th birthday, has any of the following happened?

- Have you been issued a summons, citation, or ticket to appear in court in a criminal proceeding against you? (Exclude citations involving traffic infractions where the fine was less than \$300 and did not include alcohol or drugs.) Yes.
- Have you been arrested by any police officer, sheriff, marshal or any other type of law enforcement official? Yes.
- Have you been charged, convicted, or sentenced of a crime in any court? Yes.
- Have you been or are you currently on probation or parole? Yes.
- Are you currently on trial or awaiting a trial on criminal charges? No.
- To your knowledge, have you ever been the subject or target of a federal, state or local criminal investigation? No.

If the answer to any of the questions above is yes, please answer the questions below for each criminal event (citation, arrest, investigation, etc.). If the event was an investigation,

where the question below asks for information about the offense, please offer information about the offense under investigation (if known).

- A) Date of offense: December 1999.
- a. Is this an estimate (Yes/No): Yes.
- B) Description of the specific nature of the offense: DUI
- C) Did the offense involve any of the following?
- 1) Domestic violence or a crime of violence (such as battery or assault) against your child, dependent, cohabitant, spouse, former spouse, or someone with whom you share a child in common: No
 - 2) Firearms or explosives: No
 - 3) Alcohol or drugs: Yes
- D) Location where the offense occurred (city, county, state, zip code, country): Alexandria, Virginia
- E) Were you arrested, summoned, cited or did you receive a ticket to appear as a result of this offense by any police officer, sheriff, marshal or any other type of law enforcement official: Yes
- 1) Name of the law enforcement agency that arrested/cited/summoned you: Alexandria Police Department
 - 2) Location of the law enforcement agency (city, county, state, zip code, country): Alexandria, Va., 22304, USA
- F) As a result of this offense were you charged, convicted, currently awaiting trial, and/or ordered to appear in court in a criminal proceeding against you: Yes
- 1) If yes, provide the name of the court and the location of the court (city, county, state, zip code, country): Alexandria General District Court, Alexandria, Va., 22304, USA
 - 2) If yes, provide all the charges brought against you for this offense, and the outcome of each charged offense (such as found guilty, found not-guilty, charge dropped or "nolle pros," etc). If you were found guilty or pleaded guilty to a lesser offense, list separately both the original charge and the lesser offense: DUI, Pleaded Guilty
 - 3) If no, provide explanation:
- G) Were you sentenced as a result of this offense: Yes
- H) Provide a description of the sentence: Probation
- I) Were you sentenced to imprisonment for a term exceeding one year: No
- J) Were you incarcerated as a result of that sentence for not less than one year: No

K) If the conviction resulted in imprisonment, provide the dates that you actually were incarcerated; Not Applicable

L) If conviction resulted in probation or parole, provide the dates of probation or parole: Six months probation from 2/2000 to 8/2000

M) Are you currently on trial, awaiting a trial, or awaiting sentencing on criminal charges for this offense; No

N) Provide explanation: I was arrested for DUI in December 1999, pleaded guilty and was placed on probation.

10. Civil Litigation and Administrative or Legislative Proceedings

(A) Since (and including) your 18th birthday, have you been a party to any public record civil court action or administrative or legislative proceeding of any kind that resulted in (1) a finding of wrongdoing against you, or (2) a settlement agreement for you, or some other person or entity, to make a payment to settle allegations against you, or for you to take, or refrain from taking, some action. Do NOT include small claims proceedings.

<u>Date Claim/Suit Was Filed or Legislative Proceedings Began</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
Not applicable				

(B) In addition to those listed above, have you or any business of which you were an officer, director or owner ever been involved as a party of interest in any administrative agency proceeding or civil litigation? Please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity.

<u>Date Claim/Suit Was Filed</u>	<u>Court Name</u>	<u>Name(s) of Principal Parties Involved in Action/Proceeding</u>	<u>Nature of Action/Proceeding</u>	<u>Results of Action/Proceeding</u>
Not Applicable				

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(C) For responses to the previous question, please identify and provide details for any proceedings or civil litigation that involve actions taken or omitted by you, or alleged to have been taken or omitted by you, while serving in your official capacity,

11. Breach of Professional Ethics

(A) Have you ever been disciplined or cited for a breach of ethics or unprofessional conduct by, or been the subject of a complaint to, any court, administrative agency, professional association, disciplinary committee, or other professional group? Exclude cases and proceedings already listed.

No.

Name of Agency/Association/Committee/Group	Date Citation/Disciplinary Action/Complaint Issued/Initiated	Describe Citation/Disciplinary Action/Complaint	Results of Disciplinary Action/Complaint
Not Applicable			

(B) Have you ever been fired from a job, quit a job after being told you would be fired, left a job by mutual agreement following charges or allegations of misconduct, left a job by mutual agreement following notice of unsatisfactory performance, or received a written warning, been officially reprimanded, suspended, or disciplined for misconduct in the workplace, such as violation of a security policy?

No.

12. Tax Compliance

(This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

13. Lobbying

In the past ten years, have you registered as a lobbyist? If so, please indicate the state, federal, or local bodies with which you have registered (e.g., House, Senate, California Secretary of State).

No. .

14. Outside Positions

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

For the preceding ten calendar years and the current calendar year, report any positions held, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

Name of Organization	Address of Organization	Type of Organization (corporation, firm, partnership, other business enterprise, other non-profit organization, educational institution)	Position Held	Position Held From (month/year)	Position Held To (month/year)

15. Agreements or Arrangements

X See OGE Form 278. (If, for your nomination, you have completed an OGE Form 278 Executive Branch Personnel Public Financial Disclosure Report, you may check the box here to complete this section and then proceed to the next section.)

As of the date of filing your OGE Form 278, report your agreements or arrangements for:
(1) continuing participation in an employee benefit plan (e.g. pension, 401k, deferred

compensation); (2) continuation of payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment.

Provide information regarding any agreements or arrangements you have concerning (1) future employment; (2) a leave of absence during your period of Government service; (3) continuation of payments by a former employer other than the United States Government; and (4) continuing participation in an employee welfare or benefit plan maintained by a former employer other than United States Government retirement benefits.

<u>Status and Terms of Any Agreement or Arrangement</u>	<u>Parties</u>	<u>Date (month/year)</u>

16. Additional Financial Data

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

REDACTED

REDACTED

SIGNATURE AND DATE

I hereby state that I have read the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

W. S. T.

This 10th day of Aug., 2018

UNITED STATES OFFICE OF
GOVERNMENT ETHICS**REDACTED**

July 20, 2018

The Honorable Ron Johnson
Chairman
Committee on Homeland Security
and Governmental Affairs
United States Senate
Washington, DC 20510

Dear Mr. Chairman:

In accordance with the Ethics in Government Act of 1978, I enclose a copy of the financial disclosure report filed by Richard Tischner, who has been nominated by President Trump for the position of Director, Court Services and Offender Supervision Agency for the District of Columbia.

We have reviewed the report and have obtained advice from the agency concerning any possible conflict in light of its functions and the nominee's proposed duties. Also enclosed is an ethics agreement outlining the actions that the nominee will undertake to avoid conflicts of interest. Unless a date for compliance is indicated in the ethics agreement, the nominee must fully comply within three months of confirmation with any action specified in the ethics agreement.

Based thereon, we believe that this nominee is in compliance with applicable laws and regulations governing conflicts of interest.

Sincerely,

SETH JAFFE

Digitally signed by SETH JAFFE
Date: 2018.07.20 15:20:02
+04'00'

Seth Jaffe

Chief, Ethics Law and Policy Branch

Enclosures **REDACTED**

July 19, 2018

Sheila Stokes, General Counsel
Court Services and Offender Supervision Agency
for the District of Columbia
601 Indiana Avenue, NW Room 509
Washington D.C. 20004

Dear Ms. Stokes:

The purpose of this letter is to describe the steps that I will take to avoid any actual or apparent conflict of interest in the event that I am confirmed for the position of Director of the Court Services and Offender Supervision Agency for the District of Columbia.

As required by 18 U.S.C. § 208(a), I will not participate personally and substantially in any particular matter in which I know that I have a financial interest directly and predictably affected by the matter, or in which I know that a person whose interests are imputed to me has a financial interest directly and predictably affected by the matter, unless I first obtain a written waiver, pursuant to 18 U.S.C. § 208(b)(1), or qualify for a regulatory exemption, pursuant to 18 U.S.C. § 208(b)(2). I understand that the interests of the following persons are imputed to me: any spouse or minor child of mine; any general partner of a partnership in which I am a limited or general partner; any organization in which I serve as officer, director, trustee, general partner or employee; and any person or organization with which I am negotiating or have an arrangement concerning prospective employment.

If I have a managed account or otherwise use the services of an investment professional during my appointment, I will ensure that the account manager or investment professional obtains my prior approval on a case-by-case basis for the purchase of any assets other than cash, cash equivalents, investment funds that qualify for the exemption at 5 C.F.R. § 2640.201(a), obligations of the United States, or municipal bonds.

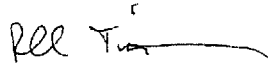
I will meet in person with you during the first week of my service in the position of Director in order to complete the initial ethics briefing required under 5 C.F.R. § 2638.305. Within 90 days of my confirmation, I will document my compliance with this ethics agreement by notifying you in writing when I have completed the steps described in this ethics agreement.

I understand that as an appointee I will be required to sign the Ethics Pledge (Exec. Order No. 13770) and that I will be bound by the requirements and restrictions therein in addition to the commitments I have made in this ethics agreement.

I have been advised that this ethics agreement will be posted publicly, consistent with 5 U.S.C. § 552, on the website of the U.S. Office of Government Ethics with ethics agreements of other Presidential nominees who file public financial disclosure reports.

185

Sincerely,

A handwritten signature in cursive script, appearing to read 'R. Tischner', with a long horizontal flourish extending to the right.

Richard Tischner

**U.S. Senate Committee on Homeland Security and Governmental Affairs
Pre-hearing Questionnaire
For the Nomination of Richard S. Tischner to be
Director – Court Services and Offender Supervision Agency
District of Columbia**

I. Nomination Process and Conflicts of Interest

1. Did the President give you specific reasons why he nominated you to be the next Director – Court Services and Offender Supervision Agency (CSOSA) for the District of Columbia (D.C.)?

I am unaware of the specific reasons for my nomination by the President. I believe that my many years of working with all facets of District of Columbia legal and criminal justice system, as well as my professional relationships with a number of key officials in the criminal justice system, played a significant role in my nomination.

2. Were any conditions, expressed or implied, attached to your nomination? If so, please explain.

I am unaware of any conditions attached to my nomination. My years in the United States Attorney's Office illustrate that I am an independent official who is loyal to the letter of the law.

3. Have you made any commitments with respect to the policies and principles you will attempt to implement as Director? If so, what are they, and to whom were the commitments made?

I have not made any commitments with respect to policies and principles I would attempt to implement if confirmed as Director. If confirmed, I would go into this position with an open mind and attempt to ensure that the agency operates in an efficient and effective manner.

4. Are you aware of any business relationship, dealing, or financial transaction that could result in a possible conflict of interest for you or the appearance of a conflict of interest? If so, please explain what procedures you will use to recuse yourself or otherwise address the conflict. And if you will recuse yourself, explain how you will ensure your responsibilities are not affected by your recusal.

I have no business or private financial activities that would cause any conflicts.

II. Background of the Nominee

5. What specific background, experience, and attributes qualify you to be CSOSA Director?

CSOSA exists to increase public safety, prevent crime, reduce recidivism, and support the fair administration of justice. The agency achieves these goals through strict accountability to prevent its supervisees from further criminal activity, intervention based upon assessed needs of the individuals it supervises, and by providing information to the decision-makers in the criminal justice system. I have been an Assistant United States Attorney in the District of Columbia for over thirty years. I have been a Supervisory AUSA for approximately twenty years and the Chief of the largest Division in the United States Attorney's Office (the Superior Court Division) since 2011. My professional experience has given me exposure to most of the leadership of partner agencies, including CSOSA, and the workings of the local criminal justice system. I am aware of the challenges faced by CSOSA and the rest of the criminal justice system.

6. Please describe:

- a. Your leadership and management style.

I am a believer in setting high expectations in order to create and encourage an effective team who are committed to improving performance. I also firmly believe in collegiality and civility. Although I am always interested in improving results by questioning the premises of some processes, I have been willing to delegate a degree of both authority and responsibility while regularly reviewing actions and expecting performance. I am currently responsible for the supervision of approximately 250 AUSAs and support staff.

- b. Your experience managing personnel.

I enjoy interacting with colleagues. This allows me to create a collaborative management approach. A reflection on how it is received is that many who have worked for me in the past have followed me to my next assignments.

- c. What is the largest number of people that have worked under you?

At any given time, approximately 250 individuals, including 159 AUSAs and 91 support staff.

7. If confirmed, how will you use your over 30 years of experience with the United States Attorney Office to be a successful Director of CSOSA?

If confirmed, CSOSA will benefit from the many different positions I have held in the past, including my perspectives as a non-supervisory prosecutor and my perspectives as the Chief of the Division of the United States Attorney's Office that handles the vast majority of local crimes from minor crimes to sexual assaults and

homicides. I have been personally involved in the planning and implementation of major reorganizations and handled personnel matters within the Superior Court Division, dealt with information technology, budget and continuity of operations issues, and interacted extensively with law enforcement agencies, the court, the community and other partner agencies, including the District of Columbia government. Despite the fact that the criminal justice system may present difficult challenges at times, I have been able to build strong professional relationships with all groups in that environment through pragmatic means, consensus building and sometimes humor.

III. Role of the Director - CSOSA

8. Please describe your view of the agency's core mission and the Director's role in achieving that mission.

CSOSA plays a vital role as a law enforcement partner to the agencies within the criminal justice system, the court and the community to assure public safety, including making great efforts to keep those individuals who are under its supervision from committing further crimes. The Director of CSOSA should assure an appropriate balance by holding supervisees accountable for their action when appropriate and assisting supervisees with means to give them a good probability of success while under supervision.

9. In your opinion, is CSOSA currently fulfilling its mission of public safety, crime prevention, and recidivism reduction responsibilities? If not, what would you do differently as Director?

With over 10,000 supervisees on any given day, CSOSA has a monumental task in fulfilling its missions of public safety, crime prevention and recidivism reduction. The challenges CSOSA faces regarding individual supervisees, including drug addiction, mental health issues, unemployment, lack of housing and education may sometimes impede success and, in some very unfortunate instances, result in further violent crime. Although I have not worked at CSOSA, I know it is working toward limiting recidivism by assuring that supervisees are held accountable for violations of the conditions of their supervision in a timely manner, by watching more closely supervisees with violent criminal histories, and by making greater efforts to assist local law enforcement by providing critical information. Local law enforcement has a strong criminal intelligence branch, as do the federal law enforcement agencies operating in the District of Columbia. In many instances, those agencies have information as to who may be committing crime in various areas in the city. CSOSA will continue to increase its ability to fulfill its core mission through collaboration with those law enforcement entities.

10. In your opinion, is CSOSA currently fulfilling its three strategic goals of public safety, reintegration, and fair administration of justice? If not, what would you do differently as Director?

As this question relates to public safety, I would reiterate the above response. Since I have not been working at CSOSA, it would be premature for me to state an opinion regarding the effectiveness of its reintegration efforts and its efforts toward the fair administration of justice. There are many instances in which today's victims were yesterday's criminal offenders and vice versa. CSOSA's work in preventing this circumstance is of critical importance to law enforcement in reducing crime and assuring that these individuals lead law-abiding lives.

IV. Policy Questions

11. What do you believe are the most pressing internal and external challenges currently facing CSOSA? Which challenges will you prioritize and what do you plan to do to address each of those challenges?

Although CSOSA continues to improve its ability to fulfill its core mission, public safety, there is still a perception that supervisees are given too many opportunities to fail before being held accountable. CSOSA's website indicates that there are a large number of individuals who are rearrested while under its supervision. If confirmed, my immediate priorities would be to reduce recidivism through investing the resources to assure that supervisees, particularly those who have committed violent offenses, are timely and appropriately held accountable for the violations of their conditions of supervision. This necessarily also requires that CSOSA provide the services to those reintegrating from a period incarceration in order to present those individuals with a good probability of success. In addition to the challenges CSOSA faces in achieving the successful completion of its core mission, I also understand that CSOSA is currently dealing with lease issues, and other logistical matters.

12. What measurements would you use to determine whether your office is successful?

The recidivism rate for those individuals under supervision, the local crime rate, particularly the violent crime rate, and the anecdotal evidence of successful crime prevention through intervention are key indicators of success for CSOSA. I would also look to the local government leaders, the federal government and the community for performance feedback.

13. According to the D.C. Metropolitan Police Department, from 2016 to 2017, the all-crime total dropped 11 percent, and in 2018 it is currently projected to drop another 5 percent. To what do you attribute this drop in crime, and what do you think CSOSA can do to continue this trend?

The Metropolitan Police Department has been, in my opinion, a very effective law enforcement organization. Its criminal intelligence unit often has an accurate picture of when and where crime is most likely to happen and who may be committing crime. It employs effective methods such as the "Summer Crime Initiative" in which it partners with other agencies, including CSOSA, to execute strategies that lower crime rates. The Metropolitan Police Department's mass deployment of its law enforcement members throughout the summer months and other periods known for greater criminal activity, has played a significant role in crime reduction.

14. While the all-crime total has decreased, the homicide rate for 2018 has increased 40 percent from this time last year. What can be done to decrease the number of homicides in DC?

When we have seen spikes in violent crimes or homicides, law enforcement and partner agencies, including CSOSA, often increase their collaborative efforts and attempt to focus on those individuals or groups of individuals who are committing violent or multiple offenses. The exchange of information, such as the fact that a supervisee with a violent criminal history has lost contact with CSOSA, may be critical in preventing the next homicide. Law enforcement mass deployments, although very expensive, are effective, as are the emphasis to arrest those with illegal weapons. CSOSA should continue to strive to increase its support of law enforcement's efforts.

15. What are the contributing factors to recidivism in D.C.?

Drug addiction, mental health issues, lack of employment, housing and education all contribute to recidivism in D.C. In addition, a perception that individuals may not be held accountable for his or her actions certainly plays a role.

- a. While sentencing does not fall under CSOSA, the patchwork system of federal and D.C. agencies at times seems to let the most dangerous people fall through the cracks and continue to be on the streets as multiple time offenders. Where are the cracks in the system?

There are many dangerous individuals who are detained pretrial and many who are incarcerated upon conviction. Some dangerous individuals are not detained or incarcerated due to evidentiary and other issues, such as reluctant witnesses. Multiple time offenders or chronic offenders, particularly violent individuals, should be the priority of every component of the criminal justice system.

- b. What steps can CSOSA take to decrease the D.C. recidivism rate?

Recidivism is a shared responsibility of the Bureau of Prisons before the criminal is released and the environment that CSOSA must monitor. CSOSA should be prepared to do an honest introspective look at how and what they do, including how it holds those under its supervision accountable for violations.

16. In 2014, D.C. enacted the Fair Criminal Record Screening Amendment Act of 2014, which is more commonly known as "Ban the Box." What effect do you think this legislation has had on CSOSA's efforts?

CSOSA correctly views the unemployment of many of its supervisees as an impediment to success. Without having worked at CSOSA, however, I do not have the information as to whether the "Ban the Box" law has succeeded by resulting in greater employment for the individuals supervised by the agency.

17. Protecting whistleblower confidentiality is of the utmost importance to this Committee.

- a. During your career with the U.S. Attorney Office, how did you address whistleblower complaints?

Whistleblower complaints should be welcomed by any organization and handled with discretion and care. The information provided by employees, contractors or others regarding potential malfeasance should be appropriately investigated and acted upon in accordance with the law.

- b. How do you plan to implement policies within CSOSA to encourage employees to bring constructive suggestions forward without the fear of reprisal?

As a manager, I have always had an open door policy in order give any individual in the organization access and to maintain good lines of communication. In addition, hotlines and email inboxes specifically set up for complaints from those who wish to remain anonymous are extremely useful tools.

- c. Do you commit without reservation to work to ensure that any whistleblower within CSOSA does not face retaliation?

Yes.

- d. Do you commit without reservation to take all appropriate action if notified about potential whistleblower retaliation?

Yes.

V. Relations with Congress

18. Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted committee of Congress if you are confirmed?

Yes.

19. Do you agree without reservation to make any subordinate official or employee available to appear and testify before, or provide information to, any duly constituted committee of Congress if you are confirmed?

Yes.

20. Do you agree without reservation to comply fully, completely, and promptly to any request for documents, communications, or any other agency material or information from any duly constituted committee of the Congress if you are confirmed?

Yes.

VI. Assistance

21. Are these answers your own? Have you consulted with CSOSA or any other interested parties? If so, please indicate which entities.

The answers I have provided are my own.

**Minority
Supplemental Pre-hearing Questionnaire
For the Nomination of Richard S. Tischner to be
Director – Court Services and Offender Supervision Agency
District of Columbia**

I. Nomination Process and Conflicts of Interest

1. Has the President or his staff asked you to sign a confidentiality or non-disclosure agreement?

No.
2. Has the President or his staff asked you to pledge loyalty to the President or the Administration?

No.
3. During your tenure have you asked any federal employee or potential hire to pledge loyalty to the President, Administration, or any other government official?

No.

II. Background of Nominee

4. Why do you want to serve as Director of the Court Services and Offender Supervision Agency (CSOSA)?

My professional life has been involved in many aspects of law enforcement and I believe now, in my career, I could make important contributions to CSOSA and the citizens of and visitors to the District of Columbia. I firmly believe my management and leadership skills will add value to CSOSA and that it will compliment this administration's desire to make government accountable and performance oriented.
5. Do you seek out dissenting views and how do you encourage constructive critical dialogue with subordinates?

Throughout my career, particularly as a manager, I have constantly asked for input from others. Rather than avoiding those who may give me a contrary view, I actively seek them out so that decision making is well informed and collaborative.
6. Please give examples of times in your career when you disagreed with your superiors and aggressively advocated your position. Were you ever successful?

As a prosecutor, I have had a few disagreements with my superiors over appropriate charges, legal theory or trial strategy in a case. In addition, I have had occasional

discussions with my superiors over structure of the organization I was supervising. I am sure my input was always appreciated. My "success" was always that the decision maker had all the facts. Once the decision was made, I followed the direction provided.

7. Please list and describe examples of when you made politically difficult choices that you thought were in the best interest of the country.

My professional life as a career Assistant United States Attorney has never been driven by politics. Its foundation is the law and I have ensured that my superiors were given appropriate legal positions and strategic views by me. In addition, if confirmed, I would view my role as providing public safety for the citizens of and visitors to the District of Columbia.

8. What would you consider your greatest successes as a leader?

Throughout my career as a prosecutor, I believe I have had an impact in decreasing crime and helped increase public safety for the citizens and visitors to the District of Columbia. I have also provided a needed voice to a large number of victims of crime. As a manager, I have been fortunate to have the opportunity to develop less experienced prosecutors and managers. In doing so, I have had success in assuring that the USAO was and efficient, effective and fair in its prosecutions of local criminal cases.

9. You have served as an Assistant United States Attorney (AUSA) in the United States Attorney's Office for the District of Columbia (D.C.) for over 30 years and you are currently the Chief of the Superior Court Division. Please list any other divisions or components within the U.S. Attorney's Office in which you have worked during your tenure, including approximate dates of service.

Chief, Superior Court Division, June 2011 to Present.

Chief, Felony Major Crimes Section, October 2007 to June 2011.

Chief, Grand Jury Section, October 2004 to October 2007.

Deputy Chief, Grand Jury Section, August 2001 to May 2002 and August 2003 to September 2004.

General Counsel's Office, Executive Office for United States Attorneys (EOUSA Detail), May 2002 to August 2003.

Deputy Chief, Violent Crimes Section, November 1998 to September 1999.

Assistant United States Attorney (Non-Supervisory) May 1988 to November 1998.

10. Please describe the extent and nature of your interactions with CSOSA in your capacity as an AUSA.

Although I do not interact with CSOSA on a daily basis, the AUSAs within the Division I supervise are in constant contact with CSOSA regarding compliance, revocation and other issues. In addition, I am periodically in contact with CSOSA as it relates to individual supervisees who have committed further criminal activity. Finally, I frequently participate in interagency meetings in which CSOSA is a partner agency.

11. Please give examples of times during your tenure as an AUSA when CSOSA and the U.S. Attorney's Office worked together effectively.

Our agencies work together daily regarding the status of individual supervisees who have committed further criminal activity. In addition, our respective agencies share information as it relates to compliance issues, including GPS matters.

12. Please give examples of times when the U.S. Attorney's Office encountered challenges or disagreements when working with CSOSA. How were those challenges addressed?

There have been instances in which supervisees have been in violation of the conditions of their supervised release or probation, which have gone unreported in a timely manner to the court, the United States Attorney's office or law enforcement. In some of those instances, the supervisees have committed additional violent criminal acts. CSOSA has welcomed our communication and appreciated our assistance in preventing future occurrences. Similarly, we have had a few issues regarding legal disagreements that have generally been resolved by the agency heads and managers.

III. Role of the Director – CSOSA

13. In your opinion, does CSOSA have sufficient authority (statutory or otherwise) to effectively carry out its mission? Please describe any changes to CSOSA's authority you would seek or consider seeking if confirmed.

In my opinion, and based upon the fact that I have not worked at the agency, CSOSA appears to have sufficient authority to carry out its mission.

14. In your opinion, has CSOSA been sufficiently accountable to the agency's stakeholders? If not, please explain what you view to be the gaps in accountability and how you would address them if confirmed.

CSOSA appears to make great efforts to assist its partner agencies and its stakeholders. As a prosecutor, I believe that that CSOSA should continue to increase its supervisee accountability and information sharing functions in order to facilitate greater public safety.

15. Please describe your understanding of the relationship between CSOSA and the Pretrial Services Agency for the District of Columbia (PSA). If confirmed, what do you anticipate your role will be with respect to PSA?

PSA is an independent entity within CSOSA. My understanding is that it shares certain functions, including information technology infrastructure. If confirmed, I would assess those shared capabilities to determine their value and impact.

IV. Policy Questions

16. The National Capital Revitalization and Self-Government Improvement Act of 1997 established CSOSA as a federal agency with the responsibility to supervise offenders on probation, parole, and supervised release pursuant to the District of Columbia Code.

- a. What challenges does CSOSA face as a federal agency with a local mission and what steps would you take, if confirmed, to address these challenges?

CSOSA's local mission means that it must interact with the citizens and government entities of the District of Columbia, and provide a transparent and informational view of its functions and policies.

- b. Please describe how CSOSA coordinates with other locally controlled District of Columbia agencies to meet community needs

CSOSA is often at community meeting and at interagency functions, including law enforcement meetings. This interaction is helpful to CSOSA and the local partners in sharing information and concerns about particular issues. In addition, CSOSA must work with community organizations and vendors to provide necessary services.

- c. What challenges, if any, are there to such coordination? Please describe the steps you would take, if confirmed, to address these challenges.

Although I have not worked at CSOSA, the demands of many agencies and citizens groups are often at odds with each other. When possible, I would make every effort to build consensus among the partners.

17. If confirmed, what changes would you make, if any, to CSOSA's Global Positioning System (GPS) electronic monitoring program?

There appear to be instances in which supervisees are able to avoid detection when violating the GPS monitoring conditions imposed upon them. As a result, the value of GPS monitoring for these individuals is lessened as an assurance that the supervisee is in compliance.

18. Please describe any previous experience—in the public or private sector—with handling whistleblower complaints, and what steps you took to ensure those individuals did not face retaliation and that their claims were thoroughly investigated?

I worked as an attorney in the Office of the Special Counsel at the Merit Systems Protection Board early in my federal career. In that position, I worked on investigations of protected activity reprisal matters often, including matters involving whistleblowers. I also worked on retaliation matters while on detail at EOUSA. When anonymity is possible, whether through a hotline, digital mailbox or in person, it must be maintained. When anonymity has been lost or is not feasible, managers should be educated and sometimes admonished regarding the adherence to the law regarding whistleblowers.

19. If confirmed, how will you ensure that whistleblower complaints are properly investigated?

If confirmed, I would continue to educate staff and managers regarding whistleblower laws and the treatment of whistleblowers. In addition, I would attempt to encourage a culture in which it is understood that every agency, including CSOSA, can and should be improved. Whistleblowers often provide great insight regarding the areas that require the most improvement.

V. Relations with Congress and the Public

20. If confirmed, how will you make certain that you will respond in a timely manner to Member requests for information?

Requests for information by Members of Congress deserve and will receive priority attention and a timely response.

21. If confirmed, do you agree without reservation to reply to any reasonable request for information from the Ranking Member of any duly constituted committee of the Congress?

Yes.

22. If confirmed, do you agree without reservation to reply to any reasonable request for information from members of Congress?

Yes.

23. If confirmed, do you commit to take all reasonable steps to ensure that you and your agency comply with deadlines established for requested information?

Yes.

24. If confirmed, do you commit to protect subordinate officials or employees from reprisal or retaliation for any testimony, briefings or communications with members of Congress?

Yes.

25. If confirmed, will you ensure that your staff will fully and promptly provide information and access to appropriate documents and officials in response to requests made by the Government Accountability Office (GAO) and the Congressional Research Service?

I understand the GAO and Congressional Research Service to be outstanding analytical and research arms of Congress and I would want them to have the most current and complete facts so that you can make appropriate policy decisions. I view these two agencies as professional and impartial and, if confirmed, I would ensure that CSOSA would be prompt and complete when responding to their inquiries.

26. If confirmed, will you agree to work with representatives from this Committee and the GAO to promptly implement recommendations for improving CSOSA's operations and effectiveness?

Yes.

27. If confirmed, will you direct your staff to fully and promptly respond to Freedom of Information Act requests submitted by the American people?

Yes.

28. If confirmed, will you ensure that political appointees are not inappropriately involved in the review and release of Freedom of Information Act requests?

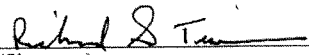
Yes.

VI. Assistance

29. Are these answers your own? Have you consulted with CSOSA or any other interested parties? If so, please indicate which entities.

The answers provided are my own.

I, **Richard S. Tischner**, hereby state that I have read the foregoing Pre-Hearing Questionnaire and Supplemental Questionnaire and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.


(Signature)

This 19th day of October, 2018

Senator Claire McCaskill
Post-Hearing Questions for the Record
Submitted to Richard S. Tischner

Hearing to Consider the Nominations of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security, and Richard S. Tischner, Jr., to be Director of the Court Services and Offender Supervision Agency for the District of Columbia

Thursday, November 15, 2018

You have a long and distinguished career as a prosecutor. As a former prosecutor myself, I understand the vital role that prosecutors play in our justice system. But if you are confirmed to this new position, you will be playing a different role.

1. How do you expect to manage the transition from your previous job as a prosecutor to this new role in the rehabilitation of people leaving prison?

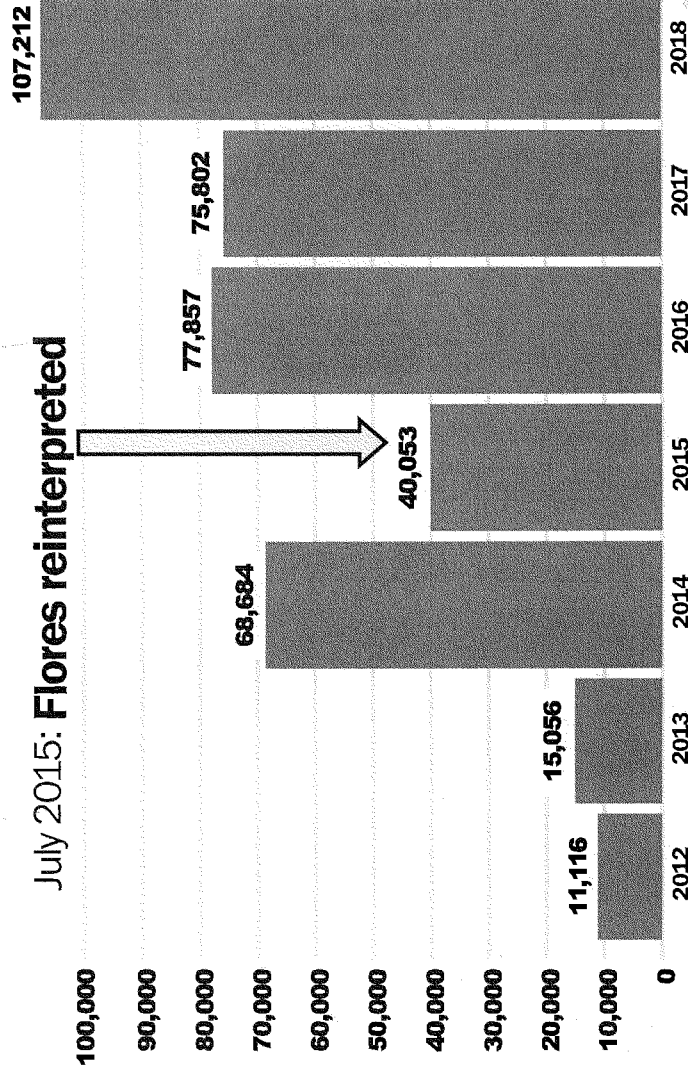
I recognize that while there are differences between my current role as a prosecutor and the role of the Director of the Court Services and Offender Supervision Agency, I have professional knowledge and experience that would be particularly useful as the Director. If confirmed, my deep understanding of the local criminal justice system, my relationships with many of the leaders within the criminal justice system, and my desire and capability to work with law enforcement, federal and local government entities, and the community toward effective and efficient results would serve the community well. I also fully recognize that there is a close relationship between rehabilitation and accountability and that the primary focus of both is public safety and fairness. I have shared the same focus for my entire professional career.

2. What experience do you have in the rehabilitation of ex-offenders?

As a prosecutor, I have worked with those accused of criminal activity and those who have been victims of criminal activity. In many instances, the individuals I have encountered were victims at one time and defendants at another. As a result, my work experience as a prosecutor has given me the opportunity to understand the many challenges faced by these individuals, including drug addiction and mental health issues, and to assist the court, their counsel, and victim advocates in addressing them. I have also worked directly and as a manager on issues regarding the local drug court and mental health court. In addition, my work as a community prosecutor has given me experience in solving issues that are directly related to the same issues as those faced by ex-offenders. Finally, I would, if confirmed, fully utilize the breadth of knowledge and expertise of the CSOSA leadership and staff to determine the appropriate mix of intervention services and supports needed to successfully rehabilitate ex-offenders.

FAMILY APPREHENSIONS

PERSONS APPREHENDED AS PART OF FAMILY UNITS BETWEEN PORTS OF ENTRY

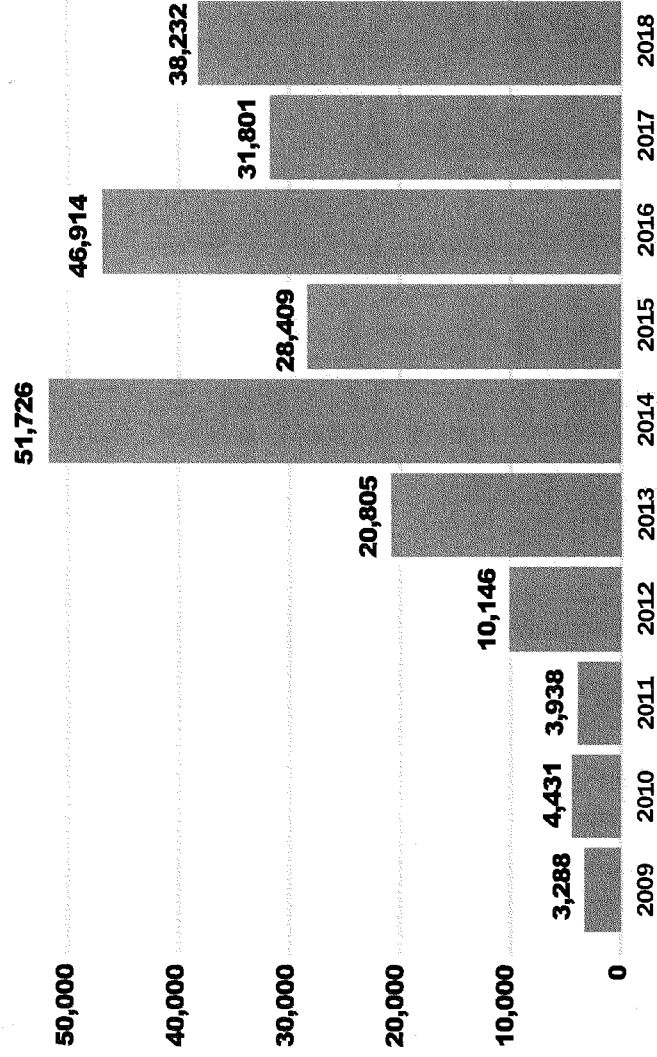


U.S. Border Patrol. Federal fiscal years. Includes only apprehensions by Border Patrol at southwest border.

RON
JOHNSON
U.S. SENATE

UAC APPREHENSIONS

UNACCOMPANIED CHILDREN: HONDURAS, GUATEMALA, EL SALVADOR



U.S. Border Patrol, U.S. Customs and Border Protection. Federal fiscal years. Includes only apprehensions by Border Patrol.



Family reunification: Unofficial figures

Unofficial figures as of Nov. 8, 2018

Originally identified as separated:		2,667
Reunited with separated parent.	2,115	
Reunited with family member, family friend, aged out, or other situation.	<u>343</u>	
Reunited, total:		2,458
Still in HHS care because parent is red- flagged, parent was deported and wants child to remain, or other situation.		146
Not actually separated		38
Still waiting to be reunified	<u>25</u>	
Total		2,667



Detention of Immigrant Children

Julie M. Linton, MD, FAAP,* Marsha Griffin, MD, FAAP,[†] Alan J. Shapiro, MD, FAAP,[‡] COUNCIL ON COMMUNITY PEDIATRICS

Immigrant children seeking safe haven in the United States, whether arriving unaccompanied or in family units, face a complicated evaluation and legal process from the point of arrival through permanent resettlement in communities. The conditions in which children are detained and the support services that are available to them are of great concern to pediatricians and other advocates for children. In accordance with internationally accepted rights of the child, immigrant and refugee children should be treated with dignity and respect and should not be exposed to conditions that may harm or traumatize them. The Department of Homeland Security facilities do not meet the basic standards for the care of children in residential settings. The recommendations in this statement call for limited exposure of any child to current Department of Homeland Security facilities (ie, Customs and Border Protection and Immigration and Customs Enforcement facilities) and for longitudinal evaluation of the health consequences of detention of immigrant children in the United States. From the moment children are in the custody or the United States, they deserve health care that meets guideline-based standards, treatment that mitigates harm or traumatization, and services that support their health and well-being. This policy statement also provides specific recommendations regarding postrelease services once a child is released into communities across the country, including a coordinated system that facilitates access to a medical home and consistent access to education, child care, interpretation services, and legal services.

abstract



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Drs Linton, Griffin, and Shapiro collectively drafted, critically revised, and reviewed this policy.

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INTRODUCTION

Communities nationwide have become homes to immigrant and refugee children who have fled countries across the globe.¹ However, in the dramatic increase in arrivals that began in 2014 and continues at the time of writing this policy statement, more than 95% of undocumented children have emigrated from Guatemala, Honduras, and El Salvador (the Northern Triangle countries of Central America), with much smaller numbers from Mexico and other countries. Most of these undocumented children cross into the United States through the southern border.² Unprecedented violence, abject poverty, and lack of state protection

of children and families in Central America are driving an escalation of migration to the United States from Guatemala, Honduras, and El Salvador.^{3,4} Children, unaccompanied and in family units, seeking safe haven* in the United States often experience traumatic events in their countries of origin, during the journeys to the United States, and throughout the difficult process of resettlement.^{5,6} In fiscal year (FY) 2014, Customs and Border Protection (CBP) detained 68 631 unaccompanied children and another 68 684 children in family units⁷ (a child with parent[s] or legal guardian[s]). In response to these numbers, the US government implemented a media campaign in Central America and increased immigration enforcement at the southern border of Mexico in an effort to deter immigration.⁸ Yet despite decreasing numbers of unaccompanied children and children in family units attempting to emigrate to the United States in FY 2015, another significant increase of both groups began in FY 2016, with 59 692 unaccompanied children and 77 674 family units detained in FY 2016.² Interviews with children in detention from Mexico and the Northern Triangle Countries revealed that 58% had fear sufficient to merit protection under international law,⁴ and in another survey, 77% reported violence as the main reason for fleeing their country.⁹ Children first detained at the time of entry to the United States, whether they are unaccompanied or in family units, are held by the Department of Homeland Security (DHS) in CBP processing centers.^{10,11} If an accompanying adult cannot verify that he or she is the biological parent or legal guardian, this adult is separated from the child, and the

child is considered unaccompanied.¹⁰ After processing, unaccompanied immigrant children are placed in shelters or other facilities operated by the US Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), and the majority are subsequently released to the care of community sponsors (parents, other adult family members, or nonfamily individuals) throughout the country for the duration of their immigration cases.¹¹ Children detained with a parent or legal guardian are either repatriated back to their home countries under expedited removal procedures, placed in Immigration and Customs Enforcement (ICE) family residential centers, or released into the community to await their immigration hearings.¹²

Pediatricians who care for previously detained immigrant children in communities throughout the United States should be aware of the traumatic events these children have invariably experienced to better understand and address their complex medical, mental health, and legal needs. Pediatricians also have an opportunity to advocate for the health and well-being of vulnerable immigrant children. This policy statement applies principles established by numerous previous statements, including care of immigrant children,¹³ toxic stress,¹⁴ and social determinants of health,¹⁵ to the specific topic of detention of immigrant children.

HISTORY

In the 1980s, the United States experienced a dramatic increase in numbers of migrant children fleeing Central America as a result of civil wars in those countries.¹⁶ At that time, the Immigration and Naturalization Service (INS), under the Department of Justice, was responsible for enforcing the immigration law and seeking the

deportation of unaccompanied children and for their care and custody while they were in the United States. In 1997, after more than a decade of litigation responding to unjust treatment of unaccompanied children in the care of the INS, the government entered into a settlement agreement, still in force today, for the care of children.¹⁷ The Flores Settlement Agreement set strict national standards for the detention, treatment, and release of all minors detained in the legal custody of the INS. It requires that children be held in the least restrictive setting appropriate for a child's needs and that they be released without unnecessary delay to a parent, designate of the parent, or responsible adult as deemed appropriate.^{17,18}

After September 11, 2001, the Homeland Security Act of 2002 attempted to resolve the conflict of interest between the dual role of the INS as both a prosecutor and caretaker of unaccompanied children.¹⁹ That law divided the functions of the former INS between the DHS and HHS (Fig 1). Under the DHS, CBP and ICE are charged with border control and homeland security.^{20,21} The care and custody of unaccompanied immigrant children were transferred to the HHS Administration for Children and Families, specifically the ORR. The responsibility of the ORR is to promote the well-being of children and families, including refugees and migrants.²²

CURRENT PRACTICE AND TERMINOLOGY

Noncitizen children younger than 18 years are processed through the immigration system in several ways depending on where they are first detained, whether they are accompanied or unaccompanied by a parent, and whether they come from a contiguous or noncontiguous

*The term safe haven encompasses the diverse immigration statuses that may be pursued and acknowledges the humanitarian needs of those seeking relief.

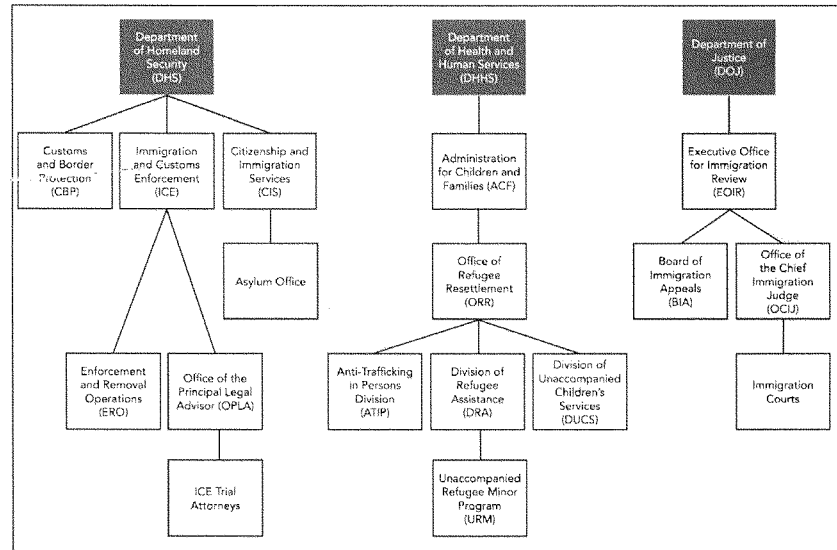


FIGURE 1
Restructuring of INS after September 11, 2001.¹⁹ (The Anti-Trafficking in Persons Organization is now called the Office on Trafficking in Persons, and the Division of Unaccompanied Children's Services is now called the Division of Children's Services.) Reproduced with permission: Byrne O, Miller E. *The Flow of Unaccompanied Children Through the Immigration System*. New York, NY: Vera Institute of Justice; 2012:7.

country. An unaccompanied alien child, referred to as an unaccompanied immigrant child in this policy statement, is defined by the Homeland Security Act as a child who "has no lawful immigration status in the United States; has not attained 18 years of age; and with respect to whom—(i) there is no parent or legal guardian in the United States; or (ii) no parent or legal guardian in the United States is available to provide care and physical custody."^{11,23,24} A parent or legal guardian is considered "not available" if not present at the time of the child's apprehension.

Accompanied children are those who are detained with their parent or legal guardian, most often the mother. DHS refers to accompanied

children as part of a family unit.¹¹ Most children who come into immigration custody are first detained at the border; a smaller number are apprehended within the country (ie, more than 100 miles away from a border), known as internal apprehensions.¹¹

Lastly, the immigration process is different for children who come from contiguous countries (most from Mexico and smaller numbers from Canada). When the Trafficking Victims Protection Reauthorization Act (TVPRA) was passed in 2008, Congress mandated that CBP screen children from Mexico and Canada for trafficking (child labor or sex) and other harms before allowing them to return to their countries and before they are placed in US immigration proceedings.

Specifically, CBP must screen a child from Mexico or Canada to ensure that the child is not a potential victim of trafficking, has no possible claim to asylum, and can and does voluntarily accept return. If a child from Canada or Mexico does not have authorization to enter the United States and can be returned safely, the child can be repatriated without ever being placed in immigration proceedings. If any of the answers to the aforementioned inquiries into protection concerns are positive, or if no determination of all 3 criteria can be made within 48 hours, the TVPRA mandates that the child shall "immediately" be transferred to custody of ORR. Once transferred to ORR, Mexican and Canadian children are treated like all other unaccompanied children in detention.^{11,19}

Immigration Pathway

CBP Processing Centers

When first detained at or near the border, both unaccompanied children and those in family units are sent to CBP processing centers. Each year, hundreds of thousands of detained people are held in these processing centers along the US southern border.¹⁰ By law, under the Homeland Security Act of 2002 and TVPRA of 2008, unaccompanied immigrant children must be moved to ORR custody within 72 hours.^{24,25} Processing centers are secure facilities of various sizes with locked enclosures to detain children and families; the largest, in McAllen, Texas, currently has a capacity of 1000.[†] Reports by advocacy organizations, including interviews with detainees and the DHS Office of Inspector General,²⁶ have cataloged egregious conditions in many of the centers, including lack of bedding (eg, sleeping on cement floors), open toilets, no bathing facilities, constant light exposure, confiscation of belongings, insufficient food and water, and lack of access to legal counsel.^{10,24,†} and a history of extremely cold temperatures. At times children and families are kept longer than 72 hours, denied access to medical care and medications, separated from one another, or physically and emotionally maltreated.^{10,24,25} In processing centers, children and families lack a comprehensive orientation process that outlines procedures and possible time of detainment in each facility. To respond to increasing numbers of children and families who are first detained in the Rio Grande Valley, a central processing center in McAllen, Texas has made changes to increase capacity, expedite processing, and address some of these concerns.[§]

[†]Personal observations and notes from authors of this policy from an AAP delegation site visit.

[‡]Personal observations and notes from authors of this policy from an AAP delegation site visit.

[§]Personal observations and notes from authors of this policy from an AAP delegation site visit.

At the time of apprehension by CBP, children pass through 1 or more CBP processing facilities, some of which provide limited medical screening (eg, scabies, lice, varicella); complete medical histories and physical examinations (including vital signs) are not conducted. Screening is performed by a variety of nonmedical and medical personnel, such as border patrol officers, emergency medical technicians, nurse practitioners, or physician assistants.[†] Children with medical problems beyond the scope of aforementioned personnel are taken to a local hospital emergency department.^{**}

At the time of release from CBP processing centers, the immigration pathway diverges for unaccompanied immigrant children and children accompanied by a parent or legal guardian.

ORR Children Shelters: Unaccompanied Immigrant Children

ORR contracts with a network of child welfare agencies, both nonprofit and government organizations, to care for unaccompanied immigrant children in a variety of facility types that range in size and level of security. A small number of these contracts are with local foster care agencies.²³ With more than 9200 beds located across the country, these shelters have procedures ensuring compliance with federal law regarding the care and custody of immigrant children.²⁷ Children are provided with dormitory-style rooms, shared bathrooms, showers, clothes, hot meals, year-round educational services, recreational activities, and limited legal services. In FY 2015, the average length of stay in the program was 34 days,²⁸ although some children remain in ORR custody for significantly longer

[†]Personal observations and notes from authors of this policy from an AAP delegation site visit.

^{**}Personal observations and notes from authors of this policy from an AAP delegation site visit.

periods of time, for a number of different reasons.

At the time of entry into an ORR facility, children receive an initial medical and mental health evaluation.²⁹ The ORR is responsible for providing the children with ongoing medical and mental health care, which may be provided on or off site, while in custody. Pediatricians caring for previously detained children released into communities can access the American Academy of Pediatrics (AAP) Immigrant Health Toolkit (<https://www.aap.org/en-us/about-the-aap/Committees-Councils-Sections/Council-on-Community-Pediatrics/Pages/Immigrant-Child-Health-Toolkit.aspx>) for more comprehensive guidelines (eg, universal hearing and sexual health screenings)³⁰ and can ask the child or sponsor for the medical records, provided to each child at the time of release from the shelter, or request records (including vaccinations and tuberculosis testing) from the ORR Web site (<https://www.acf.hhs.gov/orr/resource/unaccompanied-childrens-services>).³¹

Family Residential Centers: Accompanied Children

Some family units are released from CBP processing centers directly into the community to await immigration proceedings, some undergo expedited return to their country of origin, and others are sent to ICE-contracted family residential centers. Three family detention centers exist nationally, including 2 in Texas, operated by for-profit prison corporations (ie, GEO Group and CCA) and 1 in Pennsylvania operated by local government (ie, Berks County); 2 other centers were closed because of “dangerously inadequate” conditions.^{32,33} The present total operating capacity of the detention facilities is 3326 beds.³⁴ Each residential center has staff comprising representatives from their contracting organizations and

ICE employees.³⁴ In general, multiple families stay in dormitory-style rooms. Nearly all the family detention beds are for mothers with children younger than 18 years, and 1 facility (Berks County) accepts fathers.³⁵ An August 2015 ruling by a California US District Court in a case brought against DHS, *Flores v Johnson*, found that family detention centers are in violation of the Flores Settlement Agreement.³⁶ The court did not exclude children in family units from the requirement that children be held in the least restrictive environments. Despite this order, children continue to be detained, and even with shorter lengths of stay, some were still found to suffer traumatic effects.^{32,37}

Care of children held in detention centers is subject to the standards outlined on the ICE Web site.^{38,39} Limited medical, dental, and mental health services are provided by the prison corporations in the Texas facilities and through public health services in Pennsylvania.^{38,39} Detention centers also rely on nearby emergency departments and tertiary care centers for the treatment of medical and mental health conditions beyond their scope. Visits to family detention centers in 2015 and 2016 by pediatric and mental health advocates revealed discrepancies between the standards outlined by ICE and the actual services provided, including inadequate or inappropriate immunizations, delayed medical care, inadequate education services, and limited mental health services.⁴⁰⁻⁴⁵

Alternatives to detention offer opportunities to respond to families' needs in the community as their immigration cases proceed. For most families, release into the community allows families to live their lives as normally as possible.³⁴ In the setting of community-based alternatives to detention, many families are able to comply with immigration proceedings when they are provided information about

rights and responsibilities, referrals to legal services, and psychosocial supports.³⁴ Some families may benefit from case management,³⁴ which is cost-effective⁴¹ and can increase the likelihood of compliance with government requirements.³³ Alternatives to detention may better allow families to identify legal services and seek proper medical and mental health care that can importantly contribute to winning asylum cases.⁴⁶

Release of Children Into the Community: Unaccompanied Immigrant Children

Before release, the ORR seeks to reunite an unaccompanied immigrant child with a sponsor, preferably a parent or other family member. Sponsors must be considered suitable for caring for a child and go through background checks, occasionally including home visits.^{11,23,24} Most children are released to parents or other family members; in some cases, the sponsor may be someone the child does not know well or at all. The ORR must approve the child's release, but in almost all cases, the sponsor is financially responsible for transportation and other expenses incurred.⁴⁷ Some children receive limited postrelease services from nongovernment organizations funded by ORR. These services are typically provided only to children whose release followed a home study, required for certain children under TVPRA, including those who have histories of abuse or trafficking or those with disabilities.^{48,49} Most children released from the ORR do not qualify for Medicaid, the Children's Health Insurance Program, or other state and federal public benefit programs. Other important stressors may also arise once the child has been placed with a sponsor, including relationship conflicts between child and sponsor or other household members, school enrollment and other educational challenges, food insecurity, housing insecurity, other financial strain

(eg, clothes, school supplies), and acculturation difficulties.

Release of Children Into the Community: Family Units

Family units arriving together at the US border are currently placed into "expedited removal proceedings," which means that the adult must pass a "credible fear interview" or, in some cases, a "reasonable fear interview" (for families with previous orders of removal from the United States) before a US Customs and Immigration Service officer to establish a basis for the presence of persecution or torture. If the interview is passed, families may be released from the detention center on bond or released under other conditions, such as being required to wear an electronic monitor, but only for the duration of their immigration case. If they do not pass the credible fear or reasonable fear interview or a judge concurs with a negative "fear" decision, they will be removed from the United States.³⁹ Currently, more than 75% of families held in family residential centers pass their "credible fear" or "reasonable fear" interviews or are successful in appealing adverse decisions after retaining an attorney, meaning that most have a right to seek protection in the United States.^{34,50} Families who are granted release into communities pending immigration proceedings may be taken to nearby bus terminals or local churches but must independently navigate reunification with family members across the country. Families must also find attorneys to represent them in their immigration cases, which will continue until they appear for an asylum hearing before an immigration judge or pursue some other immigration benefit (such as a visa for trafficking victims). These families must rely on family members living in the United States for assistance or incur their own travel and legal expenses. Many adult members of family units have been

released into the community with electronic monitors to ensure that their whereabouts can be tracked.³³

Impact of Detention on Child and Family Health

Detention of children is a global issue condemned by respected human rights and professional organizations both within and beyond US borders.^{11,32,33,51} Moreover, the United Nations Convention on the Rights of the Child, an internationally recognized legal framework for the protection of children's basic rights (ratified by every country in the world except for the United States), emphasizes freedom from arbitrary arrest and detention (Article 37), the provision of special protection to children seeking asylum (Article 22), humane and appropriate treatment of children in detention (Article 37), and guidelines regarding maintaining family unity (Article 9).⁵² The AAP has endorsed this human rights treaty as an important legal instrument.⁵³ US state court proceedings and the United Nations Convention on the Rights of the Child underscore the "best interests of the child," including safety and well-being, the child's expressed interests, health, family integrity, liberty, development (including education), and identity.⁵⁴

Studies of detained immigrants, primarily from abroad, have found negative physical and emotional symptoms among detained children,^{55–57} and posttraumatic symptoms do not always disappear at the time of release.⁵⁶ Young detainees may experience developmental delay⁵⁸ and poor psychological adjustment, potentially affecting functioning in school.⁵⁹ Qualitative reports about detained unaccompanied immigrant children in the United States found high rates of posttraumatic stress disorder, anxiety, depression, suicidal ideation, and other behavioral problems.⁶⁰ Additionally, expert consensus has

concluded that even brief detention can cause psychological trauma and induce long-term mental health risks for children.⁵¹

Studies of adults in detention have demonstrated negative physical and mental health effects that can reasonably be applied to adult members of detained family units. For instance, detained adult asylum seekers suffered from musculoskeletal, gastrointestinal, respiratory, and neurologic symptoms.⁶¹ They also commonly experienced anxiety, depression, posttraumatic stress disorder, difficulty with relationships, and self-harming behavior.^{62–66} Detention itself undermines parental authority and capacity to respond to their children's needs; this difficulty is complicated by parental mental health problems.^{56,67} Although data are limited regarding the effects of a short detention time on the health of children, there is no evidence indicating that any time in detention is safe for children.

In the United States, reports from human rights groups and other child advocates, including pediatricians, corroborate the deleterious effects of detention found in the aforementioned studies.^{33,35,41–44} These reports describe prisonlike conditions; inconsistent access to quality medical, dental, or mental health care; and lack of appropriate developmental or educational opportunities.^{11,33,35,62} Parents interviewed for these reports described regressive behavioral changes in their children, including decreased eating, sleep disturbances, clinginess, withdrawal, self-injurious behavior, and aggression.^{33,44} Parents exhibited depression, anxiety, loss of locus of control, and a sense of powerlessness and hopelessness.^{44,68} Parents often faced difficulty parenting their children and subsequently experienced strained parent-child relationships.⁴⁴ Detained families' sense of isolation

and desperation were intensified by detention center practices that created communication barriers with the outside world (eg, expensive telephone service and lack of Internet services). Additionally, detainees reported being anxious about the lack of access to legal advocates.^{33,68}

After almost a year of investigation, the DHS Advisory Committee on Family Residential Centers ultimately made this recommendation³⁴:

DHS's immigration enforcement practices should operationalize the presumption that detention is generally neither appropriate nor necessary for families—and that detention or the separation of families for purposes of immigration enforcement or management are never in the best interest of children.

THE ROLE OF PEDIATRICIANS IN THE COMMUNITY

Awareness of the immigration pathway, conditions in detention facilities, and medical care during detention can help community pediatricians provide sensitive and targeted care based on AAP recommendations (<https://www.aap.org/en-us/about-the-aap/Committees-Councils-Sections/Council-on-Community-Pediatrics/Pages/Immigrant-Child-Health-Toolkit.aspx>) for newly arrived immigrant children³⁰ and Centers for Disease Control and Prevention refugee health guidelines.⁶⁹ Many of these children have never had access to a medical home or regular primary care surveillance. A trauma-informed approach acknowledges the impact of trauma and potential paths for recovery, recognizes signs and symptoms of trauma, responds by integrating knowledge into the system of care, and resists retraumatization.^{70–72} Trauma-informed care is essential for medical, mental health, and community-based services. Unfortunately, access to postrelease services is limited, because lack of legal status leaves immigrant children ineligible for

most public benefits. Most states do not provide health care benefits to children of undocumented immigration status.^{73,11} However, by law children have the right to a free, public education without regard to immigration status.⁷⁴ Pediatricians can make families aware that newly arrived children are entitled to a free education and direct them to local public school districts for enrollment.

By facilitating access to legal representation through screening and referral, pediatricians may ultimately increase access to health care once the immigrant child has lawful status. Furthermore, pediatricians may provide key evidence used by attorneys to assist in children's immigration cases. By some estimates, nearly 45% of unaccompanied children in deportation proceedings do not have attorneys in immigration court.⁷⁵ Not surprisingly, children without counsel are far more likely to be deported, regardless of the merits of their case or the dangers to which they would return.⁷⁶ The complexity of immigration law makes it all the more imperative for practitioners who care for immigrant children and youth to have a referral network of legal experts (preferably nonprofit or pro bono) with whom they work closely.

A basic understanding of the different forms of legal relief can help pediatricians collect key medical and psychosocial histories and clinical evidence that may be used to support legal claims by children seeking safe haven. The most common legal statuses pursued by previously detained children include special immigrant juvenile status, asylum, and what are often referred to as *visas for victims of trafficking* (T visa) or *serious crimes* (U visa).¹¹ Histories

of abuse, neglect, abandonment, persecution, trafficking, or violence may be disclosed to clinicians but not lawyers because of fear or shame. Furthermore, victims of labor or child sex trafficking and commercial sexual exploitation of children rarely self-identify. When assessing the trauma history of previously detained children, pediatricians may identify concerns for trafficking⁷⁷ and subsequently facilitate needed medical and mental health care and initiate referrals to law enforcement, child protective services, and legal services.⁷⁸ Children who are identified as victims of trafficking may be eligible for a T visa, and children who are victims of crimes in this country, including exposure to domestic violence, may be eligible for a U visa if they are willing to cooperate with law enforcement. Trauma-focused treatment can facilitate disclosure of painful histories to children's lawyers and judges, thereby improving chances for winning legal relief. By referring children for legal services and providing affidavits or court testimonies, pediatricians can directly advocate on behalf of children facing immigration proceedings.

RECOMMENDATIONS

Pediatricians have the opportunity to advocate for systems that mitigate trauma and protect the health and well-being of vulnerable immigrant children. Children, especially those who have been exposed to trauma and violence, should not be placed in settings that do not meet basic standards for children's physical and mental health and that expose children to additional risk, fear, and trauma. Until the unprecedented 2014 increase in Central American migration, children detained with a parent or legal guardian were released into the community. The government's decision in 2014 to

place them in family detention was intended, in part, to send a message of deterrence abroad.⁸ It is the position of the AAP that children in the custody of their parents should never be detained, nor should they be separated from a parent, unless a competent family court makes that determination. In every decision about children, government decision-makers should prioritize the best interests of the child.⁵⁴

The following recommendations pertain to handling of immigrant children, including their health care, while they are in custody:

- Treat all immigrant children and families seeking safe haven who are taken into US immigration custody with dignity and respect to protect their health and well-being.
- Eliminate exposure to conditions or settings that may retraumatize children, such as those that currently exist in detention, or detention itself.
- Separation of a parent or primary caregiver from his or her children should never occur, unless there are concerns for safety of the child at the hand of parent. Efforts should always be made to ensure that children separated from other relatives are able to maintain contact with them during detention.
- While in custody, unaccompanied children and family units should be provided with child-friendly orientation and regular updates regarding their current status, expectations, and rights.
- Because conditions at CBP processing centers are inconsistent with AAP recommendations for appropriate care and treatment of children, children should not be subjected to these facilities.
- Processing of children and family units should occur in a child-friendly manner, taking place outside current CBP processing

¹¹At the time of writing this policy statement, only 5 states (New York, Massachusetts, Washington, Illinois, and California) and the District of Columbia provided health care benefits to all children regardless of immigration status.

centers or conducted by child welfare professionals, to provide conditions that emphasize the health and well-being of children and families at this critical stage of immigration proceedings.

- DHS should discontinue the general use of family detention and instead use community-based alternatives to detention for children held in family units.
- Community-based case management should be implemented for children and families, thus ending both detention and the placement of electronic tracking devices on parents. Government funding should be provided to support case management programs.
- Children, whether unaccompanied or accompanied, should receive timely, comprehensive medical care that is culturally and linguistically sensitive by medical providers trained to care for children. This care should be consistent throughout all stages of the immigration processing pathway.
- Trauma-informed mental health screening and care are critical for immigrant children seeking safe haven. Screening should be conducted once a child is in the custody of US officials via a validated mental health screening tool, with periodic rescreening, additional evaluation, and trauma-informed care available for children and their parents.
- When children are in the custody of the federal government, extra precautions must be in place to identify and protect children who have been victims of trafficking and to prevent recruitment of new children into the trafficking trade.
- Children should be provided with language-appropriate, year-round educational services, including special education if needed,

throughout the immigration pathway.

- Recreational and social enrichment activities, such as opportunities for physical activity and creative expression, may alleviate stress and foster resiliency and should be part of any program for detained children. At a minimum, outdoor and major muscle activity should meet the minimum standards set by the Flores Settlement Agreement.
 - Children and families should have access to legal counsel throughout the immigration pathway. Unaccompanied minors should have free or pro bono legal counsel with them for all appearances before an immigration judge.
 - The AAP encourages longitudinal evaluation of the health consequences of detention of immigrant children in the United States.
- Given the complex medical, mental health, and legal needs of these children, the following recommendations pertain to postrelease care of previously detained immigrant children in the community. Children and families need a coordinated system that facilitates access to a medical home that can address the children's physical and mental health needs and facilitates access to education, child care, and legal and interpretation services.
- The AAP advocates for expanded funding for postrelease services to promote the safety and well-being of all previously detained immigrant children and to facilitate connection and access to comprehensive services, including medical homes, in the community. Community-based case management should be implemented for children and families.
 - All immigrant children seeking safe haven should have comprehensive

health care and insurance coverage, which includes the right to access qualified medical interpretation covered by medical benefits, pending immigration proceedings.

- Children not connected to medical homes may first present to nonprimary care settings. Pediatric providers and staff in these facilities, particularly urgent care and emergency departments, can support referral to the medical home and access to comprehensive services.
- Pediatric providers can refer to the AAP Immigrant Health Toolkit (<https://www.aap.org/en-us/about-the-aap/Committees-Councils-Sections/Council-on-Community-Pediatrics/Pages/Immigrant-Child-Health-Toolkit.aspx>) as a resource for care of immigrant children.
- Pediatric providers should familiarize themselves with trauma-informed care and promote access to comprehensive mental health evaluation in the community. The AAP Trauma Toolbox for Primary Care (<https://www.aap.org/en-us/advocacy-and-policy/aap-health-initiatives/healthy-foster-care-america/Pages/Trauma-Guide.aspx>) offers an accessible resource for pediatricians to build these skills. Integrated behavioral health in the primary care setting is an optimal model for care of immigrant and other vulnerable children, minimizing the difficulty in navigating the health care system.
- Pediatric providers serving previously detained immigrant children should elicit specific history of abuse, neglect, abandonment, persecution, trafficking, or violence to screen children for legal needs and subsequently refer these children for legal services. Integrated care strategies, such as

medical-legal partnerships, may increase connectivity. Likewise, immigration lawyers should have opportunities to refer children to medical homes if children reach the legal system before seeking medical care.

- Pediatric practices should facilitate children's enrollment in public educational services, essential to children's development and future well-being.
- School facilities should be safe settings for immigrant children to access education. School records and facilities should not be used in any immigration enforcement action.
- No child, whether accompanied or unaccompanied, should ever represent himself or herself in court. After release into the community, all previously detained immigrant children should have access to legal services at no cost to the child or his or her sponsor.
- Child trafficking victims and other unaccompanied children should be appointed independent child advocates, pursuant to TVPRA, to advocate for their best interests on all issues, including conditions of custody, release to family or sponsors, and relief from removal.
- Pediatricians everywhere should advocate for comprehensive, high-quality health care in a medical home for all children in the United States, including all immigrant children and those detained or otherwise in the care of the state.

CONCLUSIONS

The AAP supports comprehensive health care in a medical home for all children in the United States, including all immigrant children and those detained or otherwise in the care of the state. Children deserve protection from additional traumatization in the United States and the identification and treatment of trauma that may have occurred in children's country of origin, during migration, or during immigration processing or detention in the United States. The AAP endorses the humane treatment of all immigrant children seeking safe haven in the United States, whether unaccompanied or in family units, throughout the immigration pathway.

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ABBREVIATIONS

AAP: American Academy of
Pediatrics
CBP: Customs and Border
Protection
DHS: Department of Homeland
Security
FY: fiscal year
HHS: US Department of Health
and Human Services
ICE: Immigration and Customs
Enforcement
INS: US Immigration and
Naturalization Service
ORR: Office of Refugee
Resettlement
TVPRA: Trafficking Victims
Protection
Reauthorization Act

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