

# THE WAY FORWARD ON BORDER SECURITY

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HEARING  
BEFORE THE  
COMMITTEE ON HOMELAND SECURITY  
HOUSE OF REPRESENTATIVES  
ONE HUNDRED SIXTEENTH CONGRESS  
FIRST SESSION  
MARCH 6, 2019  
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Tuesday, March 6, 2019

U.S. HOUSE OF REPRESENTATIVES,  
COMMITTEE ON HOMELAND SECURITY,  
*Washington, DC.*

The committee met, pursuant to notice, at 10:04 a.m., in room 310, Cannon House Office Building, Hon. Bennie G. Thompson (Chairman of the committee) presiding.

Present: Representatives Thompson, Jackson Lee, Langevin, Richmond, Payne, Rice, Correa, Torres Small, Rose, Underwood, Slotkin, Cleaver, Green of Texas, Clarke, Titus, Watson Coleman, Barragán, Demings, Rogers, King, McCaul, Katko, Walker, Higgings, Lesko, Green of Tennessee, Taylor, Joyce, Crenshaw, and Guest.

Chairman THOMPSON. The Committee on Homeland Security will come to order.

What I would like to do is, for the members of the press, we all ask that you part where you are right there and get to the side, take your pictures as you like. But before we begin, we would like to accommodate the public behind you.

OK, those press folk who are where you are, we are going to ask that you get to the side.

The committee is meeting today to receive testimony on the way forward on border security.

Now, before I begin, I want to express my condolences to those who lost loved ones in the devastating storms in the Southeast on Sunday. At least 23 people lost their lives, and still more were injured in Lee County, Alabama, the Ranking Member's district. I would like to speak for the Members of the committee and say that our thoughts and prayers are with you and all your constituents at this difficult time.

Mr. ROGERS. Thank you.

Chairman THOMPSON. In addition, I would like to express our sympathies to Congressman Katko in the loss of his father last week. A lot of us have been there. It is a difficult time. But know that we are all in support of you.

Turning to today's hearing, I note it has been nearly a year since the Secretary of Homeland Security testified before this committee, as well as a number of the Members of the committee are meeting you for the first time.

A great deal has happened in that time. The Department of Homeland Security separated thousands of children from their parents at the border. Two small children died in the Department's custody. The President shut down the Federal Government over de-

mands for more taxpayer money for a border wall. Most recently, the President declared a non-existent emergency at the border because Congress would not capitulate to his funding demands.

Clearly, oversight of the Trump administration's border policy is long overdue.

Under my Chairmanship, the days of lax oversight of the Department by this committee are over. With the hope of informing our hearing discussion on January 4, 2019, I wrote to Secretary Nielsen asking for documents related to the border wall, the Department's interference with asylum seekers at ports of entry, separation of families at the border, and treatment of children in their custody.

More than 2 months later, the committee has only received a handful of the requested documents. This is unacceptable. The committee needs this information for its oversight, and the Department's failure to provide it raises further questions about this administration's credibility. Let me be clear. I am prepared to use the tools at the committee's disposal to obtain the information if the Secretary fails to comply.

Today, we will look at what the administration has said and done about border security and line it up against the facts. When it comes to border security, what the American people have heard from the Trump administration is misleading at best. The Secretary has said the administration had no policy to separate children from their parents. But internal memorandum makes clear she was aware the administration's policy would require families to be separated.

No amount of verbal gymnastics will change that she knew the Trump administration was implementing a policy to separate families at the border. To make matters worse, the administration bungled implementation of a cruel plan, losing track of children and even deporting parents to Central America without their children.

The Department also began limiting lawful asylum seekers presenting themselves at ports of entry, driving desperate families into more remote parts of the border and overwhelming border personnel and resources in those areas.

Tragically, two young children died when they became ill in custody. Shortly thereafter, the President shut down the Government and declared a border emergency, an emergency that does not exist, to get more funding for a wall.

The President himself admitted there is no emergency, even as he was announcing his declaration, saying, "I didn't need to do this. I just want to do it faster." The President wants to build a wall so there is something to point to or have his picture taken in front of to convince the American people he has border security figured out.

Real border security cannot be achieved by building a wall on the Southern Border, blocking asylum seekers, or separating children from their parents. These things are simplistic solutions that may have political appeal for some but offer little security value, if any.

Indeed, focusing on the Southern Border, to the exclusion of threats elsewhere, undermines homeland security. Today, the Secretary can choose whether to be complicit in this administration's misinformation campaign or she can correct the record and start a

serious discussion about the way forward on border security. For the sake of our country, I urge her to choose the latter.

[The statement of Chairman Thompson follows:]

STATEMENT OF CHAIRMAN BENNIE G. THOMPSON

MARCH 6, 2019

I would note it has been nearly a year since the Secretary of Homeland Security testified before this committee. A great deal has happened in that time. The Department of Homeland Security separated thousands of children from their parents at the border. Two small children died in the Department's custody. The President shut down the Federal Government over demands for more taxpayer money for a border wall. And most recently, the President declared a nonexistent "emergency" at the border because Congress would not capitulate to his funding demands.

Clearly, oversight of the Trump administration's border policy is long overdue. Under my Chairmanship, the days of lax oversight of the Department by this committee are over.

With the hope of informing our hearing discussion, on January 4, 2019, I wrote to Secretary Nielsen asking for documents related to the border wall, the Department's interference with asylum seekers at ports of entry, separation of families at the border, and treatment of children in their custody. More than 2 months later, the committee has only received a handful of the requested documents. This is unacceptable.

The committee needs this information for its oversight, and the Department's failure to provide it raises further questions about this administration's credibility. Let me be clear—I am prepared to use the tools at the committee's disposal to obtain the information if the Secretary fails to comply.

Today, we will look at what the administration has said and done about border security and line it up against the facts. When it comes to border security, what the American people have heard from the Trump administration is misleading at best.

The Secretary has said the administration had no policy to separate children from their parents, but internal memoranda make clear she was aware the administration's policy would require families to be separated. No amount of verbal gymnastics will change that she knew the Trump administration was implementing policy to separate families at the border. To make matters worse, the administration bungled implementation of its cruel plan, losing track of children and even deporting parents to Central America without their children. The Department also began limiting lawful asylum seekers presenting themselves at ports of entry, driving desperate families into more remote parts of the border and overwhelming border personnel and resources in those areas. Tragically, two young children died when they became ill in custody.

Shortly thereafter, the President shut down the Government and declared a border "emergency"—an emergency that does not exist—to get more funding for a wall. The President himself admitted there is no emergency, even as he was announcing his declaration, saying "I didn't need to do this. I just want to do it faster." The President wants to build a wall so there is something to point to, or have his picture taken in front of, to convince the American people he has border security figured out.

Real border security cannot be achieved by building a wall on the Southern Border, blocking asylum seekers, or separating children from their parents. These things are simplistic solutions that may have political appeal for some but offer little security value, if any. Indeed, focusing on the Southern Border to the exclusion of threats elsewhere undermines homeland security.

Today, the Secretary can choose whether to be complicit in this administration's misinformation campaign, or she can correct the record and start a serious discussion about the way forward on border security. For the sake of our country, I urge her to choose the latter.

Chairman THOMPSON. The Chair now recognizes the Ranking Member of the full committee, the gentleman from Alabama, Mr. Rogers, for an opening statement.

Mr. ROGERS. Thank you, Mr. Chairman. I appreciate you calling this hearing today.

Thank you, Secretary Nielsen, for being here and for your service to our country.

I do appreciate the Chairman and his acknowledgment of what happened in my district on Sunday. It really is breathtaking when you go down and see the devastation of a tornado that was nearly a mile wide and stayed on the ground for 70 miles.

As the Chairman said, we have 23 dead, 90 injured, and more than 100 homes just completely destroyed. This committee should take a lot of pride in the fact that we have made a difference in this country over the last 15 years. The first responders were just wonderful.

Our local first responders, many of whom got training through Federal money, were flawless, worked their hearts out. FEMA did a great job. They were ready to go yesterday, nearby, kept us informed. I know they are doing a great job in the rebuilding.

But we make a difference what we have done in preparing first responders around this country. I know the Governor has been in touch working with EMA and the FEMA officials and they are doing a great job. But I appreciate your prayers as we try to start the rebuilding now that we have finished the search and recovery.

With that, thank you, Secretary Nielsen for everything your Department is doing to assist the citizens of Alabama's Third Congressional District.

This hearing comes at an important moment. There is a growing crisis at our Southwest Border. First, changing demographics have created extraordinary challenges for our Border Patrol. In the past, most illegal border crossers were young Mexican men and our laws allowed to us swiftly return them to Mexico.

Today, we see massive rise in the number of families and unaccompanied children from Central America and beyond. Human smugglers are exploiting the loopholes in our laws and take advantage of our broken immigration system. Smugglers are telling vulnerable families that your child is your, "visa", to stay in the United States if they turn themselves in at the border.

The smugglers' propaganda is working. Already, family apprehensions in fiscal year 2019 are more than 800 percent higher than 2013. We are also seeing migrants arriving at the border in groups of record sizes. These massive groups overwhelm everything from the remote Border Patrol stations to busy ports of entry.

Seventy groups of more than 100 migrants each have been apprehended by the Border Patrol since October of last year. Just 5 months, 70 groups. Some of these are not just a hundred, they are thousands. If you are curious, 2 years ago, we only had due 2 groups of more than 100 people. That has happened in a short amount of time.

Migrants arriving at our border had a long and arduous journey. The smugglers and traffickers that advertise a ticket in the United States don't care about their victim's well-being, they only care about making money. They lead these migrants into dangerous conditions without a second thought. As a result, Border Patrol projects 158 percent increase in migrants needing medical treatment for when they cross the border from last year.

These change in migrant flows place men and women of CBP and Border Patrol in perilous situations. Our officers are in our search-



and-rescue teams, paramedics are having to service rescue teams, paramedics, and family counselors to groups of over 100 strangers at a single time. Gangs and drug cartels are taking advantage of our porous border to bring hundreds of thousands of pounds of drugs into our country.

In fiscal year 2018, CBP seized 895,000 pounds of drugs at the border. That includes approximately 2,100 pounds of fentanyl. To put that in perspective, just 2 milligrams of fentanyl are a fatal dose to a person according to the DEA; 2,135 pounds of fentanyl represents a lethal dose for 484 million people, more than the entire population of our country. That equals—if that isn't of an emergency, I don't know what is.

Contrary to what some say, CBP actually seizes more pounds of drugs between ports of entry than at ports of entry. Since fiscal year 2012, CBP has seized more than 11 million pounds of drugs between ports of entry compared to only 4 million pounds at ports of entry.

Mr. Chairman, we have to stop the flow of illegal immigrants and community-destroying drugs across our Southwest Border. We must put an end to transnational gangs that profit off these illegal enterprises and bring crime to American streets. The only way to do that is to secure the border.

We need an all-of-the-above approach to border security that includes manpower, 21st Century technology, and barriers. With this approach, we will deter human trafficking, human smugglers, and others from crossing hundreds of miles of open desert with innocent children and putting children in grave danger. Fewer drugs will make it into the United States, saving lives and making our communities safer.

We know an all-of-the-above approach works. In areas where we built a wall system, illegal traffic has plummeted. In San Diego, illegal traffic dropped 92 percent after the barrier was erected. In El Paso, illegal traffic dropped 95 percent. In Tucson, illegal traffic dropped 90 percent.

Let us build on this success. Border security and keeping Americans safe used to be priorities for both our parties. I have been on this committee since, just like the Chairman, since its inception. We never argued about whether barriers worked until Donald Trump wanted them. This is not rocket science.

Now that today many of my Democrat colleagues are going to be calling for the abolition of ICE, and I don't understand that. Rather than use this hearing to score political points, I encourage my colleagues to take this opportunity to hear from the Secretary herself about the challenges at our border and what the committee can do to address the changing dynamics as I have just described. I welcome the Secretary's testimony and the excellent work she has been doing for our committee and I thank the Chairman for the time and yield back.

[The statement of Ranking Member Rogers follows:]

STATEMENT OF RANKING MEMBER MIKE ROGERS

I would like to take a moment to acknowledge my constituents in Lee County, Alabama whose communities were ravaged by tornado strikes this weekend. Our hearts are with them as they begin to rebuild their families and homes. I'd like to thank the State and local first responders who were on the scene to aid their neigh-

bors. I know Governor Ivey and others are in touch with FEMA officials and I'm sure they'll do everything they can to help get folks back on their feet. Thank you, Secretary Nielsen, for everything your Department is doing to assist the citizens of Alabama's 3rd district.

This hearing comes at an important moment. There is a growing crisis at our Southwest Border.

First, changing demographics have created extraordinary challenges for our Border Patrol. In the past, most illegal border-crossers were young, Mexican men. And, our laws allowed us to swiftly return them back to Mexico.

Today, we're seeing a massive rise in the number of families and unaccompanied children from Central America and beyond. Human smugglers are exploiting the loopholes in our laws and are taking advantage of our broken immigration system. Smugglers are telling vulnerable families that a child is their "visa" to stay in the United States if they turn themselves in at the border. The smugglers' propaganda is working.

Already, family apprehensions in fiscal year 2019 are more than 800 percent higher than fiscal year 2013. We're also seeing migrants arriving at the border in groups of record size.

These massive groups overwhelm everything from remote Border Patrol stations to busy ports of entry. Seventy groups of more than 100 migrants each, have been apprehended by Border Patrol or presented to CBP since Oct. 1, 2018.

If you're curious, there were just TWO migrant groups over 100 people that reached our Southwest Border in fiscal year 2017. In the last 5 months, there have been 70.

Migrants arriving at our border have had a long, and arduous journey. The smugglers and traffickers that advertise a ticket into the United States don't care about their victims' well-being, they only care about making money. They lead them into dangerous conditions without a second thought.

As a result, Border Patrol projects a 158 percent increase in migrants needing medical treatment after crossing the border over last year. These changing migrant flows place the men and women of CBP and Border Patrol in a perilous situation. Our officers are now search-and-rescue teams, paramedics, and family counselors to groups of over 100 strangers at a time.

Gangs and drug cartels are taking advantage of our porous border to bring hundreds of thousands of pounds of drugs into our country. In fiscal year 2018, CBP seized 895,011 pounds of drugs at the border. That includes approximately 2,135 pounds of fentanyl. To put that in perspective, just 2 milligrams of fentanyl are a fatal dose to most people according to the DEA. Two thousand, one hundred thirty-five pounds of fentanyl represents a lethal dose for about 484 MILLION people. That equals a lethal dose for more than the entire population of the United States. If that isn't an emergency, I don't know what is.

And, contrary to what some say, CBP actually seizes more pounds of drugs BETWEEN ports of entry than AT ports of entry. Since fiscal year 2012, CBP has seized more than 11 million pounds of drugs between ports of entry, compared with only 4 million pounds at ports of entry.

Mr. Chairman, we have to stop the flow of illegal immigrants and community-destroying drugs across our Southwest Border. We must put an end to the transnational gangs that profit off these illegal enterprises and bring crime to American streets.

The only way to do that is to secure our border. We need an "all-of-the-above" approach to border security that includes manpower, 21st-Century technology, and barriers.

With this approach, we will deter human smugglers and others from crossing hundreds of miles of open desert with innocent children. And putting those children in grave danger. Fewer drugs will make it into the United States, saving lives and making our communities safer.

We know an all-of-the-above approach works. In areas where we have built a wall system, illegal traffic has plummeted.

In San Diego, illegal traffic has dropped 92 percent. In El Paso, illegal traffic has dropped 95 percent. And in Tucson, illegal traffic has dropped 90 percent.

Let's build on this success. Border security and keeping America safe used to be priorities for both Democrats and Republicans.

We used to hear Democrats calling for consensus. Now many of my Democratic colleagues are going as far as calling to abolish ICE.

Rather than use this hearing to score political points, I encourage my colleagues to take this opportunity to hear from the Secretary herself about the challenges at our border and what the committee can do to address the changing dynamics I have

just described. I welcome the Secretary's testimony about the excellent work she's doing to secure our borders.

Chairman THOMPSON. Thank you very much.

Other Members of the committee are reminded that under the committee rules, opening statements may be submitted for the record.

[The statement of Honorable Jackson Lee follows:]

STATEMENT OF HONORABLE SHEILA JACKSON LEE

MARCH 6, 2019

Thank you Chairman Thompson, and Ranking Member Rogers, for convening this opportunity for the Homeland Security Committee to hear from Secretary Nielsen on "The Way Forward on Border Security."

Thank you Secretary Nielsen for joining us for a discussion on how to hold the Department of Homeland Security (DHS or Department) accountable for its border security policy, programs, and activities.

Over the past 17 years we have learned a great deal about the capacity and strengthen of the men and women who work at the Department of Homeland Security.

I hold them in the highest regard for their dedication and service to our country.

I joined my Democratic colleagues on the House floor in opposition to the President's Federal Government shutdown in an ill-conceived plan to force Congress to pay for his border wall.

My concern has and will continue to be for the well-being of DHS employees who have been impacted by the shutdown on personnel, in particular I want to know:

- Have all employees received all back pay, including overtime where earned?
- What steps are being taken to address negative credit damage caused by missed bill payments during the 35-day period? and
- How is the morale of DHS personnel since the shutdown?

This Nation depends on the men and women of the Department of Homeland Security to protect citizens from those who wish to do them harm.

Because of the dedication of DHS professional we are better prepared to face these challenges as one Nation united against a common foe.

My primary domestic security concerns are:

- Making sure that our immigration policies in word and deed reflect that best of our Nation's values and institutions;
- Separating fact from fiction in the debate over U.S. immigration and border policy;
- Controlling access to firearms for those who are deemed to be too dangerous to fly;
- Countering international and home-grown violent extremism;
- preserving Constitutional rights and due process for all persons;
- protecting critical infrastructure from physical and cyber attack, including technology used in public elections;
- creating equity and fairness in our Nation's immigration policies by addressing TPS and DACA recipients; and
- strengthening the capacity of the Department of Homeland Security and the Department of Justice to meet the challenges posed by natural disasters.

As a former Chair and Ranking Member of the Homeland Security's Subcommittee on Transportation Security my commitment to air travel security and protecting the homeland from terrorist attacks remains unwavering.

BORDER SECURITY

Real border security cannot be achieved by building a wall on the Southern Border, blocking asylum seekers, or separating children from their parents.

These things are in fact making border security more difficult, creating unnecessary tensions with our neighbors in Mexico, Central and South America while here at home these policies appeal to anti-American nativist views.

Our Nation must and should look at all threats, from those who seek to cross our borders by air, who may try to exploit our maritime borders, or who cross either of our land borders with intent to smuggle or do harm, and develop a strategy to implement thoughtful, proven, and fair solutions to keep America secure.

To further strengthen security along our border the practice of impeding or metering persons outside of our borders in Mexico undermines the enforcement of immi-

gration law, treaties, and proper application of Federal regulations intended to assure safety and security.

The practice is called “metering” and is creating unnecessary hardship for people seeking entry and fermenting a toxic environment where men, women, and children are being held under conditions that can easily lead to deteriorating health and safety conditions.

We should not be wasting resources on fabricated threats such as a fake National Emergency, but seek out ways to identify domestic threats and prevent the type of attacks that are becoming all too common.

By any metric, the spate of mass shootings in the last many years has killed more Americans than ISIS or any other group.

Often, the shooters are born within our country’s borders and have ready access to high-powered, high-capacity weapons.

It is no coincidence that the rate of these shootings has dramatically increased since the lapse of legislation banning assault weapons.

#### TEMPORARY PROTECTED STATUS AND DREAMERS

I strongly advocate for a crucial legislative fix for debate and vote that will provide permanent legal residence and a path to citizenship to the more than 800,000 Dreamers, including the 124,000 who live in Texas, whose lives have been turned upside down because of this administration’s cruel, unwise, and reckless termination of DACA, the Deferred Action for Childhood Arrivals program.

And in connection with legislation to protect Dreamers, I will insist that the administration rescind the revocation of Temporary Protected Status (TPS) for Haiti, El Salvador, and Honduras, or failing that, TPS for those countries be extended by Congressional legislation.

There are 44,800 residents of Texas who are TPS holders from El Salvador (36,300), Honduras (8,400), and Haiti, who combined are parents of 53,800 U.S.-born children in Texas and 14,000 of whom have home mortgages.

These TPS holders are integral members of the Texas’s social fabric, having lived in Texas an average of 20 years, and contribute an aggregate \$2.2 billion to the Texas economy.

I, along with other Members who have served on this committee since its inception, made a commitment that a terrorist attack of the magnitude that occurred on September 11, 2001 would never happen again.

We needed that collaboration and cooperation with the public to succeed in identifying and ultimately stopping the attackers; for this reason, I believe that more can and must be done to get and maintain public trust and support.

For this reason, it is imperative that the 28-minute video left by the bomber be part of a comprehensive briefing on the Austin attacks.

Community involvement and support for the investigation and prevention of violent acts should be uppermost in the minds of law enforcement and policy makers.

A delay in having a similar briefing on the Austin bombing only causes further complications because it will contribute to a public perception that the lives lost did not matter.

The nature of the attacks and the skill of the bomb maker make this briefing on the Austin bombings of vital importance to the work of this committee.

This, coupled with the issuance of a Black Identity Extremism report by the Federal Bureau of Investigations’ Domestic Terrorism Analysis Unit, leaves the African-American community once again questioning the motivations of the Nation’s premier Federal law enforcement agency.

#### DOMESTIC TERRORIST THREATS AND ATTACKS

The FBI recently arrested Christopher Paul Hasson, a U.S. Coast Guard lieutenant and self-identified white nationalist, after Federal investigators uncovered a cache of weapons and ammunition in his Maryland home that authorities say he stockpiled to launch a wide-spread domestic terrorist attack targeting politicians and journalists.

Mr. Hasson, according to court records called for “focused violence” to “establish a white homeland” and said, he dreamed of a way to kill almost every last person on the earth, according to court records filed in U.S. District Court in Maryland.

Unlike Dylann Storm Roof, the white supremacist who murdered 9 parishioners in a church because they were African American, Mr. Hansson’s plans for mass murder were stopped by investigators before they could be carried out.

Unfortunately, these incidents do not seem to be isolated—as you know during the last 9 days of last year’s general election, Cesar Sayoc sent bombs in the mail perceived enemies of President Trump.

Also, last year a series of bombing attacks in Austin, Texas that killed 2 and injured 5 others has raised concerns about domestic terrorists and their efforts to impose by violence their view of American society.

Three of the deadliest mass shootings in American history have occurred within the 2 years, including one in a church in Sutherland Springs, in my home State of Texas.

The shooting in Las Vegas, where over 50 were killed and over 400 injured, to the shootings at high schools around the Nation and there seems to be no end or solution in sight.

Marjory Stoneman Douglas High School in Parkland, Florida, is the eighteenth such mass shooting event in the first month-and-a-half of 2018.

We must do more to protect the American public from real threats and spend less time on non-emergencies—and we do need to know that the leadership at the Department of Homeland Security understand the difference.

I look forward to the Secretary's testimony before the committee.

Thank you. I yield back the balance of my time.

Chairman THOMPSON. The Chair also wishes to remind Members of the committee and members of the audience that Rule 10(A) prohibits breaches of committee decorum and allows the Chair to respond accordingly.

With that, let me introduce our witness today. Secretary Kirstjen Nielsen has been the Secretary of Homeland Security since December 2017 and was last before the committee in April 2018. I want to thank her for joining us today and look forward to her testimony.

I now ask the Secretary to rise and be sworn in. Please raise your right hand. Do you swear or affirm under penalty of perjury that the testimony you are about to give is true and correct to the best of your knowledge, information, and belief, so help you God?

[Witness sworn.]

Chairman THOMPSON. I want to thank the Secretary without objection. The witness' full statement will be incremented in the record. I now recognize the Secretary to summarize her statement for 5 minutes.

**STATEMENT OF HON. KIRSTJEN NIELSEN, SECRETARY,  
DEPARTMENT OF HOMELAND SECURITY**

Secretary NIELSEN. Thank you. Chairman Thompson, Ranking Member Rogers, and distinguished Members of the committee it is my honor to appear before you today.

Before I begin, I want to note that our Department has many missions. Our people work tirelessly every day around the clock to strengthen the safety and security of the American people against terrorists, transnational criminal organizations, hackers, rogue nation-states, natural disasters, and more. I want to applaud them always for their extraordinary vigilance in protecting us all from persistent and emerge threats.

But today I want to focus on one core mission in particular—our duty to secure our borders. This is one of the highest priorities of our President, this administration, and my Department. Indeed, it is among the most fundamental responsibilities of any sovereign nation.

I want to start by stressing that our country remains a beacon of hope, freedom, and opportunity to the world. We welcome more immigrants, temporary workers, and foreign travelers every year than any other nation on Earth. Each year, more than 1 million

people become lawful permanent residents of the United States. Legal immigration has been a bedrock of this country.

We want to strengthen legal immigration and welcome more individuals through a merit-based system that enhances our economic vitality and the vibrancy of our diverse Nation.

We also continue to uphold our humanitarian ideals, but illegal immigration is simply spiraling out of control and threatening public safety and National security. We face a crisis, a real serious and sustained crisis at our borders. We have tens of thousands of illegal aliens arriving at our doorstep every month.

We have drugs, criminals, and violence spilling into our country every week, and we have smugglers and traffickers profiting from human misery every single day by exploiting people who are seeking a better life, deceiving them about our laws, and fielding everything from sexual slavery to child exploitation to the smuggling of illicit goods.

Make no mistake—this chain of human misery is getting worse. Yesterday we announced that the numbers of apprehension at our Southern Border have spiked again substantially. Since last year, we had been seeing 50,000 to 60,000 migrants arrive at our Southern Border each month. But in February, we saw a 30 percent jump over the previous month with agents apprehending or encountering nearly 75,000 aliens.

This is an 80 percent increase over the same time last year, and I report today that CBP is forecasting the problem will get even worse this spring as the weather warms up.

The projections are dire. The agency is now on track to apprehend more migrants crossing illegally in the first 6 months of this fiscal year than the entirety of fiscal year 2017. At the current pace we are on track to encounter close to 1 million illegal aliens at our Southern Border this year.

Our capacity is already severely restrained, but these increases will overwhelm the system entirely. This is not a manufactured crisis. This is truly an emergency.

What is different about the current migrant flows—and this is important—is not just how many people are coming but who is arriving.

Historically illegal aliens crossing into the United States are predominantly single adult males from Mexico with no legal rights to stay and who we could quickly detain and removed within 48 hours, but in recent years we have seen the numbers of vulnerable populations, children, and families skyrocket. Over 60 percent of the current flows are family units and unaccompanied alien children and 60 percent are non-Mexican.

Because of outdated laws, misguided court decisions, and a massive backlog of cases, we are often forced to release these groups into the United States and we have virtually no hope of removing them in the future. Importantly, our ability to help those truly in need is severely limited.

The vast majority of these individuals are from Central America. While many of them initially claim asylum and are let into the United States, only 1 in 10 are ultimately granted asylum by an immigration judge. Unfortunately, when it comes time to remove

the other 90 percent, they have often disappeared into the interior of our country.

Smugglers and traffickers have caught on, realizing that the outdated laws, lack of resources, and bad court decisions effectively give them a free ticket into America. Information about the weaknesses in our system has spread quickly in Central America. In fact, they are advertised. Our booming economy under President Trump has made the dangerous journey even more attractive to migrants.

As a result, the flow of families and children has become a flood. In the past 5 years, we have seen a 620 percent increase in families or those posing as families apprehended at the border. This last fiscal year was the highest on record, and of great concern to me is that the children are being used as pawns to get into our country.

We have encountered recycling rings where innocent young people are used multiple times to help aliens gain illegal entry. As a Nation, we simply cannot stand for this. We must fix the system.

Today's migrant flows have created a humanitarian catastrophe. In one study, more than 30 percent of women reported sexual assault along the way and 70 percent of all migrants reported experiencing violence.

Smugglers and traffickers are forcing migrants into inhumane conditions, demanding extraordinary sums of money, and putting their lives in danger. Vulnerable populations, especially children, are coming into DHS sicker than ever before.

This is also a public safety and National security crisis. TCOs are using the situation to line their pockets, fueling a rise in other illegal activity and the spread of violent crime into our country. Gang members are smuggling new recruits into the United States, with CBP recording a 50 percent spike over the last fiscal year in the number of gang members apprehended at the Southern Border alone. DHS personnel are grappling daily with the movement of drugs, illicit goods, and unknown threat actors coming across the borders.

So what are we doing about this? At the President's direction we are confronting it head-on in many ways. Let me try to quickly summarize.

We have championed a border wall system which includes infrastructure technology and additional personnel. We have implemented virtually every measure within our authority to end catch-and-release to keep aliens with no legal right to stay from being released into our country. We worked with the Pentagon to deploy troops to the Southern Border, which has helped us achieve tens of thousands of apprehensions and turn-backs of illegal aliens. We have dramatically increased referrals for prosecutions of single adults illegally crossing the border from 12 percent at the start of the administration to nearly 50 percent today.

We have worked tirelessly with the Northern Triangle countries. I myself can attest to the many trips that I have made and the conversations and negotiations I have had, to deal with the root causes of migration and to address the challenges at the source.

I talk to my counterparts in Central America almost weekly. I travel down there regularly. This month I am happy to report that

we expect to sign a historic regional compact, the first ever with those countries, to counter irregular migration, human smuggling, trafficking, and the formation of caravans. This is something I have been pursuing for years and will have a real effect on this crisis.

We have stepped up efforts to protect women and children from being abused, kidnapped, sexually assaulted, and exploited upon the dangerous journey and are doing more to dismantle TCOs, including through concerted interagency action and deeper foreign partnerships.

We have intensified operations to seize illicit drugs, especially opioids, as they are smuggled into the United States, including the deployment of new technology. We are putting in place important measures to reduce asylum fraud, so we can better help those who are truly fleeing persecution. This includes having certain individuals wait in Mexico until their claims are processed and where they are afforded humanitarian protection to ensure that the flow is safe and orderly.

But it is simply still not enough. We need Congress to act so that we can take operational control of the border, as Congress directed us in law to do, to protect vulnerable populations, to reduce the life-ending flow of drugs into America, and to confront the scourge of human trafficking.

Without Congressional action, America's borders will never be secure. Until we deal with the outdated laws that contribute to this problem, the situation will only get worse. Simply put, the laws are not keeping up with the migrant flows. The gaps in the system are obvious.

Just as laws must be revised to address technological advances and emerging threats, so, too, must the laws be changed to address vastly different circumstances at the border.

If migrants arrive with children, we can only detain them for days and then we have to release them. Even when they have no legal right to stay, we cannot keep them together as a family.

Chairman THOMPSON. Please summarize your statement.

Secretary NIELSEN. Please.

So what do we need? We need Congress to change the law to promote family unity, to ensure the safe and prompt return of UACs back to their home countries, and to close loopholes that allow dangerous criminals to get released into our communities.

Happy to, in response to questions, talk more about our activities with the Northern Triangle. But I would just like to conclude my remarks by asking for Congress to work with me. I am happy to meet with anyone that has a suggested solution.

No rational person would design an immigration system like we have today. It is dangerous for Americans, it is dangerous for migrants, it undermines our Nation's values, and it fails to uphold our fundamental obligations to the American people.

Although we may disagree on solutions, I hope there can be a consensus that the current system isn't working and that this is an emergency we must address together.

I look forward to your questions. Thank you, Chairman.

[The prepared statement of Secretary Nielsen follows:]



## PREPARED STATEMENT OF HONORABLE KIRSTJEN NIELSEN

MARCH 6, 2019

Chairman Thompson, Ranking Member Rogers, and distinguished Members of the committee: It is an honor to appear before you today.

I want to start by thanking the men and women of the Department of Homeland Security (DHS) for their exceptional service to our Nation. Last week, we celebrated the Department's 16th anniversary, and we marked the extraordinary progress that has been made to protect our Nation against a vast array of threats and hazards. In the past year alone, DHS has made notable strides and reached new milestones. For example, we:

- Responded decisively to record-breaking natural disasters and helped Americans rebuild when they needed our help the most;
- Prevented the hacking of U.S. elections and guarded against foreign interference in our democracy;
- Hardened our digital defenses, organized ourselves for the interconnected era with the Cybersecurity and Infrastructure Security Agency, and pushed for tougher consequences against cyber adversaries;
- Created a new hub—the National Risk Management Center—to identify and mitigate the most serious risks to our Nation's critical infrastructure;
- Thwarted terrorist plotting and helped bring dangerous individuals to justice;
- Launched new, sophisticated efforts to block terrorists and criminals from reaching the United States, including through our new National Vetting Center;
- Ramped up security measures to protect Americans against emerging threats—from weaponized drones to chemical and biological weapons;
- Reorganized our intelligence and science & technology organizations to better meet the needs of front-line defenders;
- Strengthened our campaigns against human trafficking and smuggling, child exploitation, drugs, and transnational criminal organizations;
- Raised the baseline of aviation security across the board—and around the world;
- Took decisive action to enhance school safety and security Nation-wide in order to stop attacks before they happen;
- . . . and much, much more.

We have also undertaken historic efforts to secure our borders and enforce our Nation's immigration laws. This is the subject of today's hearing, and this morning I want to outline for you the very real humanitarian and security crisis we face, how we are responding, and what's urgently needed from Congress to fix the situation.

The men and women of my Department will tell you that it is no easy task to secure the more than 7,000 miles of America's shared border with Mexico and Canada while facilitating legal trade and travel. Each day, dedicated DHS officers and agents inspect hundreds of tons of cargo for illegal substances or explosives, process thousands of individuals for admission, and patrol many miles of remote border. They do this in order to answer a crucial question: Who and what is coming into the country? This mission—safeguarding our territory—is one of the most critical charges of our Department and one of the most fundamental responsibilities of any government.

## THE HUMANITARIAN AND SECURITY CRISIS AT OUR SOUTHERN BORDER

Let me start by saying, the United States leads the world in welcoming individuals fleeing persecution. In the 2017 calendar year, the United States granted asylum and refugee status to more individuals than any other country in the world. We welcome those who come to us legally, especially those who are truly fleeing persecution and who seek refuge in our country.

Illegal and uncontrolled migration, however, poses a serious and growing risk to U.S. public safety, National security, and the rule of law. This cannot be a partisan issue. Every Secretary of this Department has sounded the alarm about our unsecured border and highlighted the associated threats and consequences to our National security. Today we are seeing the results of a failure to act and a broken system.

Our Nation is facing a dire humanitarian and security crisis at our Southern Border. In the first 4 months of the fiscal year, we saw approximately 60,000 migrants each month cross illegally or present at ports of entry without documents. Moreover, the numbers are rising. In February, agents apprehended or encountered more than 76,000 aliens, a 31 percent increase over January, and CBP is forecasting the problem will get even worse this spring. The agency is now on track to apprehend more

migrants crossing illegally in the first 6 months of this fiscal year than the entirety of fiscal year 2017. Our capacity is already severely strained, but these increases will overwhelm it completely.

What's different about the current migration flow is not just how many people are coming but who is arriving. For most of recent history, the majority of individuals arriving illegally or without documentation were single adults, who we could quickly detain and remove. This is how the immigration system is supposed to work. However, in recent years we have seen the proportion of vulnerable populations—children and families—skyrocket. Because of outdated laws and misguided court decisions, we are often forced to release these groups into the interior of the United States and we have virtually no hope of removing them.

The details here are critically important. Historically, illegal aliens crossing into the United States were predominantly single adult males from Mexico, and they were generally removed within 48 hours if they had no legal right to stay. Now over 60 percent are family units and unaccompanied alien children, and 60 percent are non-Mexican. Many of these families are from the Northern Triangle countries (Guatemala, Honduras, El Salvador) and claim asylum, so they are released into the United States—as required by the *Flores* court decision—while they await a court date that can be years away. Only 1 in 10 individuals from the Northern Triangle are ultimately granted asylum by an immigration judge. Unfortunately, when it comes time to remove the other 90 percent—who have been determined by an immigration judge to have no legal right to stay in the United States—they have absconded from their last known location. And we do not have sufficient resources to find and remove them.

Make no mistake: The problem is getting worse. The smugglers and traffickers have caught on, realizing this is a “free ticket” into America. As a result, the flow of families and children has become a flood. In the past 5 years, we have seen a 620 percent increase in families—or those posing as families—apprehended at the border. This last fiscal year was the highest on record. Children are being used as pawns to get into our country. We have even uncovered “recycling rings” where innocent young people are used multiple times to help aliens fraudulently gain entry. As a Nation, we cannot stand for this.

The phenomenon of large groups (which is defined as a group of 100 or more aliens apprehended together in a single event) of migrants organized into caravans arriving along our Southern Border provides a window into the wide-spread challenges faced everyday by DHS personnel. For example, in fiscal year 2017, CBP encountered only two large groups. By fiscal year 2018, this grew to 13 groups. And this fiscal year through February 28, CBP has experienced 68 groups in the U.S. Border Patrol's El Paso, Rio Grande Valley, Tucson, and Yuma Sectors. This is not a manufactured crisis. It is real, it is serious, and it is overwhelming our front-line personnel.

Apprehending large groups places a tremendous strain on CBP's limited resources, pulling front-line personnel to conduct humanitarian efforts and drawing resources away from front-line enforcement, effectively placing border security at risk. Associated with the increase in large groups and caravans, we saw a 21 percent increase in the number of unaccompanied alien minors from the year prior, and a 40 percent increase in number of family units in fiscal year 2018 compared to fiscal year 2017. To make matters worse, we know that transnational criminal organizations (TCOs) are taking advantage of these large groups as a distraction in order to conduct criminal activity elsewhere on the border, as they know CBP resources will be tied up.

Today's migration flows have created a humanitarian catastrophe. Criminals are targeting vulnerable populations along the dangerous journey to our borders. In one study, more than 30 percent of women reported sexual assault along the way, and 70 percent of all migrants reported experiencing violence. Smugglers and traffickers are exploiting these migrants. They are forcing them into inhumane conditions, demanding large sums of money, and putting their lives in danger every day. Vulnerable populations—especially children—are coming into DHS custody sicker than ever before, arriving with illnesses and injuries. In recent weeks, an average of 56 aliens a day have required emergency medical care at the Southern Border.

The care of those in DHS custody is paramount, and the United States Border Patrol is doing everything in its power to handle this crisis, but our facilities along the Southern Border were not designed to support such large vulnerable populations. These facilities are short-term processing facilities, designed to hold individuals for 72 hours or less. I am grateful for the \$415 million in humanitarian assistance Congress provided in the most recent DHS appropriations bill. The bottom line is that Border Patrol stations built decades ago are not designed to handle this cri-

sis and are not the best facilities to house children with their parents for extended periods.

This is also a public safety and National security crisis. TCOs are using this situation to line their pockets, fueling a rise in other illegal activity and the spread of violent crime into our country. The results are disturbing. Across the Nation, Immigration and Customs Enforcement (ICE) officers made approximately 266,000 arrests of aliens with various criminal charges or convictions in 2017 and 2018—which included roughly 100,000 charges or convictions for assault, 30,000 for sex crimes, and 4,000 for homicides. Many of these were individuals who came across illegally at our Southern Border.

DHS personnel have also witnessed an increase in the trafficking of illegal drugs into our communities. Alarming, CBP has reported that fentanyl smuggling between ports of entry at the Southern Border has more than doubled over our last fiscal year, from fiscal year 2017 to fiscal year 2018. Although these seizures represent just a quarter of fentanyl seizures along the border, the rate at which they have increased is concerning. Fentanyl was responsible for more than 28,400 overdose deaths of Americans in 2017. Just a few weeks ago, CBP made its largest fentanyl bust in U.S. history, seizing 254 pounds of fentanyl—enough for 115 million fatal doses—in a truck trailer compartment. These drugs are smuggled at and between ports of entry, but our officers and agents are not able to devote the full resources and attention they could to interdicting them because of the migration crisis that is taxing our resources.

A tough border security posture is essential to keep other potential threat actors out of the United States. There are thousands of individuals on the terrorist watch list that traveled through our Hemisphere last year alone, and we work very hard to keep these individuals from traveling on illicit pathways to our country. While most terror suspects attempting to reach the United States do so by air, terrorist groups are clearly interested in exploiting deficiencies along our borders to enter the United States. We must vigilantly guard against any such efforts.

Moreover, last year alone, DHS encountered 3,000+ “special interest aliens” (SIAs)—individuals with suspicious travel patterns who could pose a National security risk—at our Southern Border. Foreign partners throughout the Western Hemisphere continue to share their concerns with me about the growing volume of SIAs. Often these partners lack the ability to determine the identities and intentions of such individuals before they cross international borders and make their way toward our own.

#### RESPONDING TO THE CRISIS

DHS is grateful that Congress was finally able to pass a budget for the Department, but the crisis is getting worse and our current funding neither provides adequate resources nor the additional authorities that our DHS personnel need to gain full operational control of our border. Congress has repeatedly failed to give DHS the resources needed to confront this situation and to handle the influx of aliens, drugs, and other illicit traffic into our country. That is why I strongly support the President’s decision to unlock additional funding for physical barriers, including resources from the Department of Treasury and the Department of Defense.

Moreover, I applaud the President’s decision to declare a National emergency. This is a crisis—pure and simple—and we need to respond accordingly. We cannot stand idly by as our border security is further compromised and our immigration laws are exploited. Now is the time to act and to uphold our fundamental responsibility to our citizens and our Nation to safeguard U.S. territory. Although we may disagree on solutions, I hope there can be a consensus that the current system requires immediate attention.

Despite these challenges, DHS personnel have worked hard to keep our communities safe and have done their best to uphold our Nation’s laws. Our agents, officers, and enlisted personnel—those from CBP, ICE, USCIS, USCG, and beyond—have done an extraordinary job of prioritizing the highest threats and risks in their operating areas and going after them. Whether they are apprehending illegal aliens, interdicting smugglers, conducting life-saving rescues of migrants, or arresting dangerous individuals sneaking between our ports of entry—the work by our DHS personnel on the border is imperative to our continued security and prosperity as a Nation. DHS is taking an end-to-end approach to the humanitarian and security crisis at our Southern Border. Below are examples of the actions we have been taking:

*Constructing Border Barriers and Leveraging Technology.*—The United States has long built barriers along its Southern Border, first in 1909 and regularly since then according to need. DHS is now constructing the first new border wall in nearly a decade, which will improve our ability to impede and deny illegal entry. Since the

first barriers were constructed in San Diego in 1991, U.S. Border Patrol field commanders have continued to advocate for border wall and the enduring capability it creates to prevent illegal entry while allowing additional time for agents to respond. At the same time, we are aggressively pursuing the deployment of new technology at our borders to increase the situational awareness of our agents and officers and to detect illicit activity.

*Deploying the U.S. Military.*—DHS is grateful for the robust involvement of Department of Defense (DOD) and National Guard personnel who have been deployed to support our border security mission. Every administration since President Ronald Reagan has sent troops to the border, and other Presidents before him, including President Woodrow Wilson who deployed 150,000 guardsmen to secure our Southern Border in 1916. Our Nation's troops and enabling personnel are assisting with surveillance, force protection, logistics, medical response, and much more. Already these deployments have enabled thousands of drug interdictions and apprehensions of illegal aliens. We are continuing to work closely with DOD on expanding barrier protections, as well as exploring additional ways to collaborate to ensure CBP personnel are freed up to perform their border security mission effectively and supported in crisis conditions.

*Amplifying Regional Cooperation.*—As Secretary, I engage almost weekly with my counterparts in Mexico and the Northern Triangle governments of Central America to work toward addressing the migration crisis at the source. Last month, I met with security ministers from the Northern Triangle in El Salvador to discuss an action plan to deal with the crisis. I am pleased to report we reached a breakthrough and agreed to negotiate a Memorandum of Cooperation (MOC) to address the smuggling, trafficking, irregular migration, and formation of caravans. These efforts will include a whole-of-Government approach to addressing the security-related drivers of migration and improving border security in the region. Our joint statement, which outlined a clear path toward increased collaboration between the United States and Northern Triangle, emphasized four areas of increased collaboration: Combatting Human Trafficking and Migrant Smuggling, Countering Organized Crime and Gangs, Expanding Information and Intelligence Sharing, and Strengthening Border Security. I look forward to reporting back to Congress on the signing of the final regional MOC.

*Instituting the Migrant Protection Protocols.*—Late last year, we announced a major milestone—the Migrant Protection Protocols (MPP)—to address the urgent humanitarian and security crisis at the Southern Border. We have begun to implement MPP, which relies on long-standing statutory authority to allow us to return migrants to Mexico to await the conclusion of their U.S. immigration proceedings while ensuring they receive all appropriate humanitarian protections. Ultimately, MPP will allow us to focus more attention on individuals legitimately fleeing persecution, dissuade those who intend to file false claims, and bring order to a chaotic flow.

*Protecting Vulnerable Populations.*—At my direction, DHS personnel have put in place new policies, procedures, and resources to protect children and families. This includes surging medical assistance to the Southern Border to deal with the arrival of large groups and sick individuals, as well as protocols to ensure that unaccompanied alien children are not held with individuals who could pose a danger to them while in DHS custody. We have also doubled-down on our efforts to crack down on human smuggling and trafficking, including the abuse of children. And every day the extraordinary men and women of CBP go above and beyond the call of duty to save lives of migrants in trouble, including women, children, and infants found abandoned in the desert by smugglers. These rescue missions, which take place between ports of entry in remote locations on our Southern Border, are extremely difficult but also demonstrate our commitment to upholding America's values and rescuing those who need our protection.

*Combating Transnational Criminals.*—DHS is stepping up its efforts to dismantle TCOs. We have reached agreements with governments in the region to increase action against TCOs, including through greater intelligence sharing, integrated units of U.S. personnel and partner agencies, joint investigations, and more. Here at home, we have also worked with other departments and agencies to take a more holistic approach to combating TCOs, including improving interagency coordination structures to take down nefarious groups with greater precision and coordination.

*Countering Illegal Drug Smuggling.*—DHS continues to seize thousands of pounds of illegal and dangerous drugs, including fentanyl, as they are smuggled into the United States. We are deploying additional technology and resources at the Southern Border both at and between ports of entry to help detect and disrupt drug-smuggling activity. This also includes deeper cooperation throughout the U.S. Govern-

ment and with regional partners to find and bring drug smugglers to justice and dismantle cartels.

*Confronting Asylum Fraud.*—DHS is putting in place important measures to reduce asylum fraud and frivolous filings. For example, we have implemented a “Last In, First Out” approach, which means we prioritize the most recently filed applications when scheduling affirmative asylum interviews. The aim is to deter individuals from using our Nation’s large asylum backlogs solely to obtain employment. By cutting down on asylum fraud, we will be able to devote more attention to applicants who are legitimately fleeing persecution and require U.S. protection under our laws.

*Increased Local Cooperation.*—DHS recognizes the inordinate impact that the surge of illegal migration has had on our border communities, and we have stepped up cooperation to enlist State and local officials in our border security efforts. For instance, DHS has doubled the number of 287(g) agreements with local law enforcement to enlist their voluntary cooperation on immigration enforcement. At the same time, we have increased available funds for Southwest Border localities to provide assistance on border protection through grant programs. DHS is also working with partner agencies in States, and especially with county, local, and Tribal agencies to share information, provide resources, and build communication capacity.

#### A COMPREHENSIVE SOLUTION

Despite all of our efforts, DHS cannot fix this crisis on its own. That is why I respectfully request, and will continue to ask, that Congress pass legislation to fix outdated laws and gaps in our authorities. These legal impediments hamper enforcement of the law, weaken border security, and endanger both the American public and the illegal aliens making the dangerous journey to the Southwest Border. They are also “pull” factors that drive illegal migration and undermine the territorial integrity of the United States. Only Congress has the Constitutional authority to enact immigration law. We are, therefore, completely dependent on Congress to change the outdated statutes that impede our ability to enforce the law and that handicap our ability to keep America safe.

There are several key legislative reforms that we need to address this crisis. Among other actions, we ask Congress to do the following:

*Promote Family Unity.*—One of the main challenges is the inability of DHS to keep families together during the immigration proceedings. In 1997, the Immigration and Naturalization Service (INS) entered into the *Flores* settlement agreement relating to detention of minors and their release. Since that time, litigation on this agreement has continued, and multiple court decisions interpreting the agreement have impeded the United States Government’s ability to maintain custody of minors and, now, based on the most recent interpretation, families. The provisions of the settlement agreement should be superseded by legislation. Legislation on this issue should be focused on allowing us to keep families together during their immigration proceedings and promoting a uniform standard of care and accommodation for minors in custody, while ensuring our laws are enforced.

*Ensure the Safe and Prompt Return of Unaccompanied Alien Children (UAC).*—We must also update our laws to ensure that all UACs who are not victims of trafficking or persecution (regardless of their country of origin) can be returned home and reunited with their families. Current law has created a financial incentive for TCOs, smugglers, and traffickers to transport UACs to and across our border. The result is that children are exploited by criminals for their own gain, and are put in danger. We must stop this exploitation and ensure the safe and prompt removal of UACs. Government officials in Central America continue to express to me their urgent desire to have their children returned home, not harbored in the United States. This requires a legislative fix.

*Crack Down on Asylum Fraud and Protect Those Who Need It.*—We have requested that Congress reform asylum standards to deter fraud and otherwise ensure that those truly eligible for protection have prompt access to the judicial system to adjudicate their claim. Specifically, Congress should legislate a standard that requires that it is more probable than not that the statements made by the alien in support of the alien’s claims are true. Reforming this standard helps promote the adjudication of meritorious asylum claims by ensuring those who are statutorily ineligible for asylum are not found to have a credible fear of removal.

*Safeguard Americans from Dangerous, Criminal Aliens.*—We also need Congressional assistance to update laws that allow criminal aliens to circumvent the removal process. Right now, the system is broken, and because of a series of misguided court decisions, DHS is forced to release dangerous criminal aliens from custody and is unable to remove others from the United States even when they have

been convicted of serious criminal offenses. Specifically, we must clarify the definition of “conviction” in the Immigration and Nationality Act to address aliens who receive post-conviction relief or sentence modifications for the purpose of flouting immigration consequences. In addition, we must remedy U.S. Courts of Appeals and U.S. Supreme Court decisions, including *Mathis v. United States*, 136 S. Ct. 2243 (2016), that have made it increasingly difficult for ICE to remove convicted aliens on criminal grounds of removal.

We must also urgently close loopholes created by the U.S. Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). This decision generally requires that DHS release a criminal alien ordered removed who has been detained for 180 days after the period for removal began unless DHS can show that there is a significant likelihood that removal can be effectuated in the reasonably foreseeable future. The result is that we have been forced to release dangerous individuals—including those responsible for terrible crimes—back into the population. We must close loopholes created by the *Zadvydas* decision to give DHS authority to keep dangerous criminal aliens who are subject to final orders of removal off our streets and keep our communities safe. Finally, for the safety and security of the American people, Congress should ensure that DHS has full authority to detain and remove alien criminal gang members, alien gang associates, and aliens who participate in gang-related activities. We must be able to safeguard Americans from aliens associated with criminal gangs, including detaining and removing violent gang members such as MS-13.

#### CONCLUSION

Make no mistake: Despite the challenges DHS faces, we welcome those who come to us legally—including those who are truly fleeing persecution. America is a beacon of hope and freedom to the entire world, and we welcome more immigrants every year than any other nation on earth. Nevertheless, we must be able to uphold our values and the rule of law while also maintaining our security.

That is why I call for common-sense solutions—including physical barriers, fixes to outdated laws, and the resources needed to bring order to the chaos. Today, I implore Congress to listen to the solutions offered by those who see this security crisis up close. The humanitarian crisis can no longer be ignored. The security crisis cannot be wished away. We must change the status quo now. It will require bold action to address gaps in our border security that are being taken advantage of every day.

I thank this committee again for its leadership on this issue, and I look forward to your questions.

Chairman THOMPSON. Thank you very much.

We allowed you to go over because some people need to hear you for the first time.

Secretary NIELSEN. I greatly appreciate that, sir.

Chairman THOMPSON. Thank you. As I said in my opening statements, Madam Secretary, we have sent requests for a number of information to you and we have not gotten the information back. Can you commit to this committee to get that information back?

Secretary NIELSEN. Yes, sir.

Chairman THOMPSON. It is in detail. It is not where it needs to be, so I want to encourage you there.

Asylum seekers. A lot of us have had an opportunity to talk to a number of people involved. Can you tell the committee why asylum seekers are being turned around, contrary to law?

Secretary NIELSEN. Sir, all asylum seekers have the opportunity to present their case. We are not turning anybody around.

What we are doing is exercising statutory authority that enables us, in conjunction with Mexico, to return to Mexico migrants who have arrived from that country to await their processing. This is to assure a safe and orderly flow and to ensure that their humanitarian rights are protected.

Chairman THOMPSON. So your testimony is that, to your knowledge, no one presents themselves for asylum and is not presented their rights as to what they have to do?

Secretary NIELSEN. Our policy and processes when we encounter, as you know, an alien, is we do provide them with information on their legal rights, their ability to access counsel.

I am not sure if you are referring to credible fear. If you do not pass that initial credible fear screening, obviously then you do not—you can appeal that. But generally speaking, you do not go on to meet before an immigration judge for your asylum claim.

Chairman THOMPSON. So is that something you do in writing? Or you do it orally?

Secretary NIELSEN. Both. Both. They are presented with information in writing, and then we also, of course, advise them orally.

Chairman THOMPSON. Can you present this committee with the written direction that asylum seekers receive from your Department when they present themselves?

Secretary NIELSEN. Yes.

Chairman THOMPSON. The other situation is, the President made a comment that he really didn't need to do the emergency declaration, he just wanted to do it faster. Do you have any information for the committee as to what he was talking about?

Secretary NIELSEN. My conversations, of course, with the President, generally speaking, are protected under privilege.

But what I would say is his explanation in general in public has been that he hoped Congress would act, that it didn't have to come to issuing the emergency declaration if Congress had met his request to fund the resources that CBP has requested.

Chairman THOMPSON. To your knowledge, are you aware of family members who have been separated from their children and deported back to a country without their children?

Secretary NIELSEN. Yes, sir.

Chairman THOMPSON. Can you provide this committee with a list of those individuals?

Secretary NIELSEN. I am happy to do that with the one caveat that, as you know, that is part of on-going litigation in *Ms. L*, and as long as there are no privacy concerns from the court, of course we are happy to provide that. A lot of the information is in the *Ms. L* court with respect to each migrant.

I would also just note that, consistent with long-standing practice and the law, before we deport any alien after they have gone through the process and receive a final order of removal, we do ask them if they would like to take their children with them. At that same time, their consulate or embassy, for purposes of issuing them travel papers, also asks them, Would you like to be removed with your children as you are removed? As part of *Ms. L*, the judge also asked us to go back—ask the parents again, in conjunction with the ACLU, which we did.

So there was no parent who has been deported, to my knowledge, without multiple opportunities to take their children with them.

Chairman THOMPSON. So is this with counsel present?

Secretary NIELSEN. I am sorry?

Chairman THOMPSON. Is this with their attorney present?

Secretary NIELSEN. I can't speak to every case with that, sir.

Chairman THOMPSON. So what is—

Secretary NIELSEN. They have the right to a counsel, as you know, but the U.S. Government does not pay for that, pursuant to the law.

Chairman THOMPSON. So explain how one would acquire counsel if they don't know it.

Secretary NIELSEN. We give them lists of available resources, legal resources in the area. We work closely with the NGO's to ensure that they understand the options for that. Then certainly, when they work with the consulates and embassies as part of that removal process to receive the travel authorization, the embassies and consulates also provide them with information and ability to access counsel.

Chairman THOMPSON. Some of us have had an opportunity to see some of the enhanced barriers being placed on ports of entry. We tried to find a policy directive that said we should close lanes and put barriers on those, concrete barriers and barbed wire. Are you familiar with any such policy?

Secretary NIELSEN. The general direction for the safety of the migrants and the officers who work at the ports of entry is to ensure a controlled environment, particularly after we saw the violence from one of the caravans in the fall. Many of the local border chiefs, border—excuse me, the OFO officers at the ports determined what was needed to ensure that there was safety and security at the ports. So that is for the migrants, that is for the officers.

So generally speaking, that was done on a case-by-case situation with the overall direction to ensure the integrity and safety of that area.

Chairman THOMPSON. So there is no written policy?

Secretary NIELSEN. It is not a policy, sir, per se. But the direction is clear—to protect officers and migrants and ensure a safe and orderly flow.

To do that, we have to make sure that the migrants go through the designated area. So the enhancements to the port of entry was to disable them from at their own risk, which we have seen many times, running across lanes of traffic or trying to go around a port of entry.

Chairman THOMPSON. Thank you.

The Chair now recognizes the Ranking Member.

Mr. ROGERS. Thank you, Mr. Chairman.

I want to follow up on something you referenced in your opening statement and then the Chairman probed you on, to more fully understand this asylum-seeker circumstance.

You made reference in your statement that for many of—well, first of all, that 90 percent of the asylum seekers are denied when they actually finally have their hearing. Those 90 percent generally have already blended into the society. We can't get rid of them.

If we know only 10 percent are going to be approved based on history, I just don't understand why we are letting people in while they wait on their hearing. You made reference in your statement that many of them are allowed to stay in Mexico until their hearing date.

My question is, why aren't all of them required to stay in Mexico until their hearing date, so that way we can monitor them while they are here for the hearing and if they are approved, they can



stay, if they can't, they go back to Mexico? Is that because of some statutory reason or why?

Secretary NIELSEN. It is actually more based around we are trying to do this in a very reasoned way. So we are expanding that program across the border. We work and notify the Mexicans as we do that. You have seen statements made by their equivalent to Secretary Pompeo and my equivalent that they are determined to protect the humanitarian rights.

So we do it in conjunction with them. As we expand the program, we are doing it in a systematic way. But the goal is to expand that across the border.

Mr. ROGERS. So you are trying to get to the point where only people can get in for the hearing at the time of the hearing?

Secretary NIELSEN. Yes.

Mr. ROGERS. Excellent.

What can we help you with to make that happen more rapidly?

Secretary NIELSEN. So we have all of the authority we need from the underlying INA statute. What we are looking for is additional requests, if any, that we need to come back to you with. This requires some new things—for example, transportation from the ports to the courts. So when we have the court date, we will go back to the port to pick up the migrant, take he or she to the court. That is not a transportation need we have had in the past.

So that is just one example, but we are looking through to see if we can fund those as we expand the program with our current resources. If not, we would come back with a request.

Mr. ROGERS. My understanding is that the Mexican government has made available asylum to all asylum seekers who have been coming from south of Mexico into the country trying to get to the United States. Is that accurate?

Secretary NIELSEN. My understanding is they have offered both asylum to the vast majority, if not all, of the migrants but they have also offered work permits.

Mr. ROGERS. So if somebody is fleeing Venezuela or Honduras because of their concerns over safety, and they get into Mexico, by the time they get to Mexico's northern border to come in our country, there is no danger to them and their safety.

Secretary NIELSEN. My plea to anybody that chooses to take this journey is to please seek protection as soon in the journey as possible. It is an extraordinarily dangerous journey. So my advice to migrants throughout the region is please accept protection as soon as possible.

Mr. ROGERS. OK.

I would like to give you some time—you made reference to the Northern Triangle that you—in your opening statement—if you would like to talk more about it, would you tell us what you had in mind?

Secretary NIELSEN. Sure. So beginning about 9 months ago, I traveled to the region many times between the border and the Northern Triangle in Mexico. I have been there about 25 times and have had multiple discussions with my partners in the Northern Triangle.

What we are working on together are ways to dismantle transnational criminal organizations, to identify the criminals who

are preying on the vulnerable populations, to work with international organizations such as UNHCR to increase asylum capacity in the region, to make sure that we are sharing information so we understand who is in the flow—that latter relates to the increases in special interest aliens that are in the flow—and to make sure that we can keep families together. So how can we design a system that begins at the start to make sure that migrants are protected and they don't need to take this dangerous journey?

Mr. ROGERS. Great. Do you know how much the smugglers charge people to get across the border generally?

Secretary NIELSEN. So it varies. Our estimates and then most recently as last week what we heard from Mexican counterparts is about \$6,000 a migrant. It is more for families.

Mr. ROGERS. To your knowledge do they coach the migrants as to what to say when they get to the border to be able to get in?

Secretary NIELSEN. We have seen instances, absolutely, throughout the region where they are provided information on pieces of paper. There are also advertisements through social media. There is a WhatsApp conversation particular to this, to give them, if you will, specific words to claim credible fear once they reach our border.

Mr. ROGERS. Great.

Thank you. My time is expired. I appreciate your service.

Chairman THOMPSON. Thank you.

The Chair now recognizes the gentlelady from Texas, Ms. Jackson Lee.

Ms. JACKSON LEE. Let me thank the Chairman and the Ranking Member for holding this hearing and the Chairman's leadership on the issues.

Madam Secretary, let me thank you for your service.

Over of the past couple of months, I am very proud of the Members of this committee, particularly my colleagues on the Democratic side, who almost everyone have been to the border because of their desire to be proficient and efficient on making the right decisions.

So my knowledge of this committee has been that every single Secretary of Homeland Security I have had a terrific working relationship with regardless of the Presidential politics or party, because our commitment here is to secure the Nation. I believe if a horrific tragedy happens again, it is this committee and that in the Senate that will be looked to by the American people to devise the right approach.

Do you believe that you, as Secretary of Homeland Security, have the independence of the White House to make the right decisions? Can you independently make a decision in contrary to the President of the United States on behalf of the American people for what is best for them?

Secretary NIELSEN. Ma'am, what I can tell you is I take my oath with utmost extreme importance. I always do my best.

Ms. JACKSON LEE. Is that your oath to the American people or your oath to the President of the United States?

Secretary NIELSEN. No, ma'am. The oath, as you know, is to the Constitution and the people.

Ms. JACKSON LEE. Right, and in that vein, do you have the ability to make independent determinations?

Secretary NIELSEN. I do what I believe is best for the men and women of DHS and this country.

Ms. JACKSON LEE. Have you advised the President on his emergency declaration? Have you given him the grounds for this emergency declaration in the context of what emergency means?

Secretary NIELSEN. What I have done is I have given him all the facts from the men and women working at the border, many of whom I know you have met with, and thank you for that. So what I do is I give him the operational reality. Here is what we are facing, here is what we are seeing, here are the facts. By my read of it, it is an emergency, it is a dual crisis. That is the information I provide.

Ms. JACKSON LEE. Well, if there is any data that you have given him in particular, I am going to request that it be made available to this committee, whether in a Classified session, or not, in writing. If there have been any memos that you have directed to the President that would have given him the basis of calling for, in my opinion, a false emergency declaration, I will not judge your data, and you are giving facts, then I would like that to be submitted to this committee. Let me—

Secretary NIELSEN. Ma'am, if I could, I would be remiss if I didn't say, much of the information that I give in private to the President, of course, is covered under confidentiality privileges. We are happy to give you any information that we work on from the operators, we are very transparent. Most of that information, as you know, is published on our website. Happy to give you that. But I would not be able to speak to any particular conversation I had with the President.

Ms. JACKSON LEE. Well, I will not dwell on that. I will leave this to the Chairman of the full committee on the question of confidentiality. I think Members of Congress are due Classified information and there is a question of confidentiality or privilege. I am not sure what you are exerting here. But I would offer that—

Secretary NIELSEN. I am not—it is not mine to exert or waive.

Ms. JACKSON LEE. Right. So I would say that I would want the material that you had provided to the President of the United States to make his decision.

Let me ask you, do you have a census of all of the children that are being detained in the various facilities, both the ones at the border and others, that are in partnership with HHS? Do you know how many young people are detained?

Secretary NIELSEN. Yes, ma'am. I don't have that number in front of me. We have all of the numbers—

Ms. JACKSON LEE. Would you provide that for me?

Secretary NIELSEN. Yes.

Ms. JACKSON LEE. The next question is, what is the pathway of reuniting those children detained? My number is about 12,000-plus. What is the pathway for reuniting those children presently existing in detention centers who have been there for 1 year, 2 year, 3 years-plus?

Secretary NIELSEN. So, the best data that we have is the data that is been approved from the *Ms. L* case. I believe you all have

access to that. I don't want to take up time, unless you would like me to, in reading it. But it walks through how many children remain in the custody—

Ms. JACKSON LEE. But can you give me a number for the record?

Secretary NIELSEN. Yes. So, there is—sure. It breaks down two—of the original 2,816 that the court identified, 2,735 have been discharged.

Ms. JACKSON LEE. Right. But I am asking you for those that are in the partnership between Homeland Security and HHS, you have centers around the Nation, some run by Southwest Keys, upwards of 12,000 children. Have you tried to reunite them with some guardian or family member?

Secretary NIELSEN. Yes. So, HHS is, as you know, under TVPRA, it is required to find a sponsor for the child. That is what they do. So that is part of—

Ms. JACKSON LEE. That is a program that I designed and I believe that it should be in cooperation. I would ask you on the record not to give the answer now but I need to know the numbers and how many are being reunited. Because ICE has represented that they are stopping those families from being reunited.

Secretary NIELSEN. ICE is not stopping families from being represented. There are 3—

Ms. JACKSON LEE. Reunited.

Secretary NIELSEN. Reunited. There are 3 instances, long-standing practice, which CBP, not ICE, encounters a family unit presenting as a family unit, where separation may be necessary. The first one is if the adult accompanying that child is not a parent or legal guardian. The second, if there is a risk to the child. The third is if the parent otherwise needs to go to a custodial prosecutorial setting.

Long-standing process, the numbers are not high, happy to provide them with you. But that is what CBP does at the border for the protection of the child.

Ms. JACKSON LEE. Mr. Chairman, thank you. I will have questions for the record. Thank you. The answers have not been given. Thank you so very much.

Chairman THOMPSON. Thank you very much. Chair recognizes the gentleman from New York, Mr. King.

Mr. KING. Thank you, Mr. Chairman.

Secretary, thank you for your service and I appreciate you being here today. I would like to focus, if we could, on unaccompanied minors, specifically involving MS-13. My district, unfortunately, is probably the epicenter of MS-13. We had a series of 25 murders within 18 months in the fall of 2015 to the spring of 2017. I think almost all the victims were immigrants, documented and undocumented.

So it was a slaughter within the immigrant community. What we found was that many of those murders were carried out by unaccompanied minors. I think in the most recent series of indictments, of the 11 indicted for murder, 7 of them had come across as unaccompanied minors.

Let me commend your Department and others. Since April 2017, there have been no murders. There are 25 in the previous 18 months, none in Suffolk County since then. I commend you for

that. HSI has done an outstanding job. FBI, Justice Department, are working in conjunction with the Suffolk and Nassau County police. So I thank you for that.

But what was found at the time was that these minors coming across, a number of them, were actually sent by MS-13 or—if they weren't sent by MS-13, the families that volunteered to take them in from HHS were either supporters of MS-13 or had relatives back in Central America whose lives were being threatened if they did not take them in. Then they went into the schools and in certain schools, there are actually areas of the school that were taken over by MS-13 young people.

Again, as I said, a series of the—and lots of those murders were carried out by MS-13. What the police said at the time was, they were concerned that there was no vetting when these unaccompanied minors—I know they get turned over to HHS so this is more—maybe more of an HHS issue than yours.

But again, as to whether or not they had any MS-13 connections, nor was there any vetting of the families who were volunteering to take them. Nor were the local police notified when these unaccompanied minors were coming into these school districts. The school district had no choice but to take them.

So, I ask you now, is there increased vetting as to knowing whether or not these unaccompanied minors have any MS-13 connections, whether or not the families volunteering to take them have MS-13 connections, and are local law enforcement notified when these unaccompanied minors come into their districts?

Secretary NIELSEN. Thank you. Let me take them in bite sizes. We do now do background checks. One of the things I was very concerned about when I came in as Secretary is that we were not doing enough to protect children to ensure that the adult coming to pick them up out of HHS care did not pose them a threat. Certainly one of the threats that could be posed would be if that adult was part of MS-13.

We now do background checks. HHS uses the information on that background check to determine the suitability of the sponsor before they release the child. I am not aware, and I am happy to get back to you, for the record, I am not aware of HHS consistently tells communities where UACs are placed and if there is a concern that the UAC might have gang ties. I am not aware of that but I am happy to get you that information from HHS.

On the front end, when we encounter UACs, certainly if we believe they are a risk in any way, the brief time that we have them before we transfer them to HHS, we will separate them out from the other population of children for the safety of the other children. But other than that, we do not have a systematic way to ask UACs or look into their background while they are in our custody.

Mr. KING. Do you feel there is enough cooperation between DHS and HHS?

Secretary NIELSEN. We do work very closely together. Day to day, we share the modeling, the projections, what children are coming in, what children they are releasing. It does, in my opinion, need to be a bit stronger with respect to ensuring that the sponsors do not pose a threat.

Mr. KING. OK. Thank you, Secretary.

Again, thank you for your efforts. It has been—again, that drop-off for murders has been phenomenal. From 25 to zero. So thank you very much.

Chairman THOMPSON. The Chair now recognizes the gentleman from Rhode Island, Mr. Langevin.

Mr. LANGEVIN. Thank you, Mr. Chairman.

Madam Secretary, welcome. Thank you for being here today.

Now let me establish, from the outset, that we all want stronger border security. The question is what is the most efficacious way of getting us there and not creating a solution that fills a political promise but doesn't really achieve strong border security.

So I want to just follow up on an issue brought up by the Chairman earlier regarding border crossings. Look, I have long held that and I have an interest in ensuring that we are making policy based on sound data and credible threats. So it is my understanding, and you have testified to some of this this morning, that your Department keeps accurate statistics of the number of apprehensions at the border. Is that correct?

Secretary NIELSEN. It is, yes.

Mr. LANGEVIN. These statistics are compiled annually by U.S. Customs and Border Protection and published publicly on its website. That is correct?

Secretary NIELSEN. Yes. We actually compile them monthly and publish them, but yes.

Mr. LANGEVIN. According to this report, so the number of apprehensions at the border in 2000 was 1.6 million. Does that sound right?

Secretary NIELSEN. It was over a million. Yes, sir.

Mr. LANGEVIN. OK. These statistics show that in 2018 the number of apprehensions had fallen to just under 400,000. That is a drop of 75 percent. Is that right?

Secretary NIELSEN. Yes, sounds about right.

Mr. LANGEVIN. OK. So I have a chart that I would like to display that shows the change in apprehensions. So I want to ask you about what the President had said about border apprehensions. While touring the South Texas border on January 10, the President stated of the Border Patrol, there were so many apprehensions ever in our history. So, Secretary Nielsen, what the President said was not accurate, was it?

Secretary NIELSEN. I apologize. I don't know the full context of that. What I can tell you is we have encountered more family units per month than ever in history.

Mr. LANGEVIN. No, no. What the President said, is it accurate or not?

Secretary NIELSEN. I just don't know the context of his statement, sir. If he was talking about family units in a particular sector, that is—

Mr. LANGEVIN. No, no. I am talking about the number. We went from 1.6 million in 2000, apprehensions, and 400,000 in 2018. The President said that there were never so many apprehensions at the border in history, up until now. Is that accurate? Was the President accurate?

Secretary NIELSEN. Again, it depends on the context, because it depends on the type of migrant, sir.

Mr. LANGEVIN. OK. It is either—the 400,000 figure is either accurate or it is not. If it is accurate then the President was not accurate. Is that correct?

Secretary NIELSEN. Again, we have had monumental high numbers in some areas of the border—

Mr. LANGEVIN. Mr. Chairman, I am just trying to get a yes or a no. It seems self-evident—

Secretary NIELSEN. Sir, I just don't know the—

Mr. LANGEVIN [continuing]. To me.

Secretary NIELSEN. I just don't know the context of his statement.

Mr. LANGEVIN. OK.

Secretary NIELSEN. So I am trying to give you my most accurate testimony. What I can tell you is that, in some places, we have had record months of families. In some areas, we have had record numbers of apprehensions.

Mr. LANGEVIN. OK. Well—

Chairman THOMPSON. The gentleman, I think he is asking for the total number, not a selected category.

Secretary NIELSEN. The total number, we are on track for this year for 900,000 apprehensions at the border.

Chairman THOMPSON. But that wasn't the question.

Secretary NIELSEN. OK.

Mr. LANGEVIN. Is the President misleading the American people? Is he accurate in what he is saying? It is the largest amount of detentions or is it not, apprehensions at the border?

Secretary NIELSEN. In some categories, we have had record-breaking apprehensions.

Mr. LANGEVIN. OK. Well, the President has claimed—and the way I read it, it has misled the American people. It gave the public fundamentally flawed factual information on a key border question. Did you take any steps to correct the information when the President stated what he did?

Secretary NIELSEN. We provide information that we gather from CBP and, well, all of our components for that matter. We provide them as a matter of course, to the White House, and we try to put those numbers in context.

Mr. LANGEVIN. Well, Madam Secretary, you know, the reason I ask these questions is they really go directly to the heart of the rationale for the President's emergency declaration. The President has been telling the public that there is an emergency at the border because crossings and apprehensions are at record-high levels.

But as you really have conceded yourself in the testimony, the facts are exactly the opposite when you are talking—looking at the actual number. Apprehensions today are substantially smaller than they were 20 years ago. So my time is expired, but it is inaccurate. It is deceitful, I believe, to be inflating numbers or making statements that are not accurate. The President is just wrong.

Secretary NIELSEN. Chairman, would you mind if I just responded briefly? What I would say, sir, if the larger question is about the emergency, unfortunately, what we are seeing is a very different situation. So it is not just the number. It is the abuse of the migrants along the way. It is the sexual abuse. It is the vio-

lence. It is the new phenomenon that we see of large groups coming, which the system was not prepared to care for.

Many of our facilities were made for maybe 100 people a day. We are seeing 1,800 family units in a given sector on a given day. So when you put all of the facts together, the problem is not just the vastly increasing numbers, and again, we jumped another 30 percent from last month. But it is the type of migrant that our system is not set up to protect.

Originally, it was single adults from Mexico; now it is mostly Central Americans, and the vast majority are vulnerable populations, which are families and children. All of that together is a crisis, because the system is not built for that type of flow.

Chairman THOMPSON. Well, Mr. Langevin, we will follow up with some more direct information on that. I would ask the Secretary if yes or no would be very helpful in some of the questions that you asked. I think that is what Mr. Langevin was really trying to get to. Not anything else.

The Chair recognizes the gentleman from Texas, Mr. McCaul.

Mr. MCCAUL. Thank you, Mr. Chairman.

Madam Secretary, welcome to this committee. I have been following the border probably longer than I care to—back when I was a U.S. attorney, Western District of Texas, to 15 years on this committee, a Chairman of this committee. Hard to get a good solution, but I can tell you, at least as I see it, and I just want to get your understanding, that the threat has changed.

It used to be in the old days, we had predominantly males crossing for work. Now we have more family units than ever crossing because the coyotes understand the legal loopholes that we talked about. They now know how to exploit them and they are. They are making a heck of a lot of money off it in the process and putting children in harm's way up that dangerous journey as they go northbound. In fact, in February, I think the apprehensions were 76,000 immigrants that were apprehended at the border.

Then you throw on the fentanyl, the meth labs, dangerous drugs coming into this country, the human sex trafficking. I think it is a crisis. I think the President is correct in saying it is an emergency and that we need dire action now.

I am disappointed we didn't pass the Goodlatte-McCaul bill last November. I think it would have solved a lot of these problems. But about every Democrat voted against it and 20 Republicans voted against it. That was a historic opportunity and here we are talking about this problem when we know that the laws are the magnet that draw them into the United States of America.

Until Congress acts—I look at you and I feel not sorry but—it is not your fault. It is Congress that has failed to act to solve this problem. Until Congress acts to solve the problem, we are going to continue to have this constant problem on our border.

I think the President is doing everything he can, in a creative way, as well, to get security down there that I think is very important. But I want to also talk about root causes. You talk about the Northern Triangle. You spent a lot of time down there, I am going down with the—put my foreign affairs hat on, the Chairman of Foreign Affairs Committee and I are going down to Colombia, to Venezuela. You have got 3 million migrants coming out of Ven-



ezuela into Colombia and they are probably going to start heading up north.

This is a humanitarian crisis and it is worse. We are going down there, and we are also going to go to the Northern Triangle. Can you tell us the latest on this Central American Security Initiative and how we can stop these families from making—paying \$6,000—you must be very desperate to say, Here, Coyote, let me give you \$6,000 to take my child up north. Very desperate situation. What can we do to stop that desperation?

Secretary NIELSEN. I would just—in the time that I have, let me just give you a couple examples and I can also refer back to a question that Congresswoman Jackson Lee asked me. The number of unaccompanied children is part of the humanitarian crisis. These are children whose parents decided to send them alone on a very, very dangerous journey at the hands of, most often, smugglers and coyotes or traffickers, into the United States.

What we hear from the Northern Triangle governments, they have said this publicly, I am sure that they will tell you when you visit them, is they want their children back. Our laws uniquely allow us to send Mexican children back home after they have gone through a process, and/but do not have a legal right to stay. But under the law, we cannot send children from other countries back except for Mexico and Canada.

So the Northern Triangle governments have said to us, they will say to you, Please send us our children back. We want them reunited with their families and communities here. We don't want the smugglers to be able to convince parents to send children on this perilous journey where they are absolutely victims of violence and abuse.

As you know, sir, very unfortunately, because of the increase of violence, at ICE, when we have families with children, we have to give every girl a pregnancy test over 10. This is not a safe journey. So I ask again that we change the law, we treat all children the same, and we afford them the opportunity to go back home if they have no legal right to be in the United States.

The other part of this that I think we need to do is we need to find a way to be able to keep families together. Families need to be able to be kept together, go through the process. If they have a legal right to stay, we will welcome them here. If they don't have a legal right to stay, the most humanitarian thing to do is to remove them efficiently and effectively. Both of those changes we need from Congress.

Mr. MCCAUL. Thank you, Madam Secretary. I see my time is expired.

Chairman THOMPSON. Thank you very much. Chair now recognizes the gentlelady from New York, Miss Rice.

Miss RICE. Thank you, Mr. Chairman.

Madam Secretary, I just want to ask you to qualify the question that was asked before. Can you confirm that there has never been a parent deported under your tenure without finding out if they want their children to go with them? Simply yes or no. Can you confirm that?

Secretary NIELSEN. To the best of my knowledge, every parent was afforded that option.

Miss RICE. OK. Secretary Nielsen, on June 17, 2018, you tweeted, We do not have a policy of separating families at the border. Period. Then-Attorney General Jeff Sessions announced the Justice Department's zero tolerance policy to prosecute all individuals who crossed the border outside of ports of entry. He made that announcement on April 6, 2018.

In a memo to you, dated April 23, regarding the Justice Department's zero tolerance policy, CBP Commissioner Kevin McAleenan, USCIS Director Francis Cissna, and then-ICE Acting Director Thomas Homan stated DHS could also permissibly direct the separation of parents or legal guardians and minors held in immigration detention so that the parent or legal guardian can be prosecuted pursuant to these authorities. Did you read that memo? Yes or no.

Secretary NIELSEN. Yes.

Miss RICE. Did you concur with this assessment made by your component agency leaders? Yes or no.

Secretary NIELSEN. There are many assessments in there. I concurred with their recommendation on what to do to increase consequences for those crossing the border illegally.

Miss RICE. The piece that I just read, do you concur with that?

Secretary NIELSEN. I am sorry, could you read that particular—

Miss RICE. DHS could also permissibly direct the separation of parents or legal guardians and minors held in immigration detention so that the parent or legal guardian can be prosecuted pursuant to these authorities. That specific statement—

Secretary NIELSEN. As I understand it, we have the legal authority to do that, yes.

Miss RICE. Did you agree with that?

Secretary NIELSEN. What I agreed to do is—

Miss RICE. No, did you agree with that—

Secretary NIELSEN. But that wasn't—

Miss RICE [continuing]. Assessment that they made?

Secretary NIELSEN. That wasn't a recommendation, ma'am. It is a legal—it is a legal statement. We do have the legal authority to do it, as I understand it.

Miss RICE. Were you aware that the zero-tolerance policy would lead to minors being separated from their parents? Yes or no.

Secretary NIELSEN. As we increased consequences for those who break the law, just as everywhere—

Miss RICE. Yes or—

Secretary NIELSEN. Ma'am—

Miss RICE. I have such limited time, Madam Secretary. I am sure you can appreciate that. Can you please—

Secretary NIELSEN. As a—as a consequence—

Miss RICE. Just answer yes or no?

Secretary NIELSEN [continuing]. For a parent going to jail, we in this country do not take the children to jail.

Miss RICE. So I take that as a yes, that you understood that the zero tolerance policy was going to lead to minors being separated from their parents?

Secretary NIELSEN. As it has in the last three administrations.

Miss RICE. OK. So the answer is yes. At the end of February, BuzzFeed News reported that you did not issue guidance on how to implement the zero-tolerance policy until May 4, which was about a month after the Attorney General Sessions announced the policy. Did you discuss this policy with Attorney General Sessions before he announced it on April 6? Yes or no.

Secretary NIELSEN. This was an on-going discussion.

Miss RICE. No, yes or no. Did you discuss the zero-tolerance policy with the then-Attorney General Sessions before he made the announcement on April 6? Yes or no.

Secretary NIELSEN. At some time before the announcement, we had the conversation. I did not know he was making that announcement that day.

Miss RICE. But you knew—you had a conversation with him about the zero-tolerance policy, yes or no?

Secretary NIELSEN. Zero tolerance means prosecuting those who break the law, yes, we as law enforcement agencies—

Miss RICE. Yes, thank you.

Secretary NIELSEN [continuing]. Talk about prosecuting those who break the law—

Miss RICE. Thank you. Thank you. So then why did you wait until May 4 to issue implementation guidelines?

Secretary NIELSEN. Because we wanted to work within the Department to ensure we could do it in an appropriately safe way with compassion. As you mentioned the memo from my component heads came April 23. I then issued after many consultations with them the direction to increase prosecution between ports of entry, which is the only place where that is against the law, for all adults coming across the border illegally.

Miss RICE. So we all know the results of the policy, and the compassionate, lack of compassion—

Secretary NIELSEN. Ma'am, it is not a policy, it is the law. We enforce the law.

Miss RICE. The policy is a policy. You just talked about discussing that policy with the then-attorney general. So I have 1 minute left, I have three quick questions. During your tenure as Secretary, how many times have you waived environmental regulations required under the Endangered Species Act for border barrier construction?

Secretary NIELSEN. There are multiple laws that we look at, I can get you—

Miss RICE. I am asking you specifically about this—

Secretary NIELSEN. I understand, and I am trying to answer it. I believe 4 or 5—

Miss RICE. Four or 5—

Secretary NIELSEN. But I will get you the exact answer.

Miss RICE. During your—thank you. During your tenure as Secretary, how many times have you waived environmental regulations under the Clean Water Act for border barrier construction?

Secretary NIELSEN. It would be the same number. Again, I am happy to get you the exact number.

Miss RICE. OK. During your tenure as Secretary how many times have you waived environmental regulations under the Clean Air Act for border barrier construction?

Secretary NIELSEN. It should be the same. I will get you the number.

Miss RICE. OK, thank you. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much. The Chair now recognizes gentleman from New York, Mr. Katko.

Mr. KATKO. Thank you Mr. Chairman, and thank you for the kind words about my father, I very much appreciate it. Welcome, Ms. Nielsen, it is nice to see you again. I have a rather unique perspective on the border and I know a lot of people are going to talking about the immigration component.

But the crisis isn't just—not with respect to immigration, it is with respect to the drugs that are pouring across this border and that are killing our kids at a rate of 5 an hour for heroin alone, which is frightening.

One of the big components of that fentanyl, and just a tiny amount of fentanyl is what is proving fatal, most of the heroin overdoses now because fentanyl is being mixed with the heroin. Can you tell me if there has been any significant seizures of fentanyl at the border recently?

Secretary NIELSEN. At the border, yes. In the interior as well—ICE overall interdicted more—enough fentanyl last year to kill every American twice over—

Mr. KATKO. That is frightening.

Secretary NIELSEN. Substantial amounts of fentanyl.

Mr. KATKO. So that is enough to kill every single American?

Secretary NIELSEN. Twice, yes, sir.

Mr. KATKO. Amazing. Now when I was on the border, I was a Federal prosecutor in El Paso, Texas and I was charged with going after a cartel-level drug traffickers and we could literally get on the roof of the U.S. Attorney's Office in El Paso with binoculars and see one of the cartel member's houses across the border in Juarez.

So—and I am intimately familiar—based on the prosecutions I did there, about their patterns and practices. I know that they use oftentimes the same smuggling routes for drugs that they use those for human traffickers, as well.

But I also know that when you beef up security and you beef up scrutiny at the ports of entry, at least back when I was there in the mid-1990's that they often just simply went around and avoided the ports of entry. Can you tell me, is that still holding true today, where if you put a pressure point in one place, they find the other holes in the border and go across there?

Secretary NIELSEN. Yes, sir, that is still true.

Mr. KATKO. OK. So with respect to that, is it important—isn't it fair to say it is important that if you have—if you increase the scrutiny at the ports of entry, which is absolutely critical, that you also need to beef up the other parts of the border with barriers where necessary, and sensors and all the other things?

Secretary NIELSEN. It is not an either/or—

Mr. KATKO. That is exactly right—that is my point.

Secretary NIELSEN. Yes.

Mr. KATKO. OK. So I think it is incumbent when we have this discussion to understand that we all agree—both sides of the aisle—that beefing up the ports of entry and the security, and using the highest technologies we can there is critically important.

I was always amazed at the ingenuity of the drug traffickers in secreting the drugs—and humans in vehicles coming into the ports of entry, so we have got to do that. But as soon as you do that they are going to go out to the areas where the weak points are. Can you tell me where some of the weak points are now that need barriers?

Secretary NIELSEN. Sure, particularly in the Rio Grande Valley which is one of the areas that we will focus on with the new border funding. El Paso is a particular area where we see increased flow, particularly with the number of families, it is well over 1,000 increase in families traveling through that particular area. Of course when I say El Paso—you know I mean the sector—

Mr. KATKO. El Paso sector, I understand.

Secretary NIELSEN. Yes, sir, through the ports of entry. So those are the two main areas. As you know we have a border security improvement plan that we provide, that we update each year and we go in a risk-based way as to where those smuggling routes and violence are.

Mr. KATKO. Now the barrier that is being contemplated, that has been a subject in much consternation over last several months, it is not for the entire Southern Border, is it?

Secretary NIELSEN. No, sir.

Mr. KATKO. How much are we really talking about? How many more additional miles of barrier are we talking about?

Secretary NIELSEN. About 700—a little more than 700.

Mr. KATKO. That—and is it fair to say that up until this administration it is been a pretty bipartisan agreement that barriers are needed at certain points along the border?

Secretary NIELSEN. Yes, sir.

Mr. KATKO. OK. I want to switch gears, if I may, just for a moment with respect to cybersecurity, which I am the Ranking Member of that subcommittee right now. There is a bill that we are going to be submitting next week that suggests and asks that a Cyber Security Infrastructure Advisory Committee be created, similar to what we did with TSA—the ASAC Committee. Are you familiar at all with that bill, and are you—do you think an advisory committee is necessary?

Secretary NIELSEN. So we are happy to work with you on that. We do have a critical infrastructure advisory council already, but we have been looking into whether we need something that can focus more specifically on cyber because it is a unique expertise as you all know. So we are happy to continue to have our staff work with you on technical assistance on that.

Mr. KATKO. Right, and as far as saying that cybersecurity is probably one of the biggest threats to our country right now overall, and so the more we can have information flowing going back and forth between the stakeholders and Homeland Security, the better it is going to be.

Secretary NIELSEN. Yes, sir. I know it is not the particular topic today, but I will just say as I have said before—the threat to cybersecurity is blinking red, it is absolutely one of—if not the highest threat that we have faced in the homeland.

Mr. KATKO. Thank you, Ms. Nielsen. I yield back, Mr. Chairman.

Chairman THOMPSON. Thank you. Chair now recognizes gentleman from California, Mr. Correa.

Mr. CORREA. Thank you, Mr. Chairman, and thank you for holding this most important hearing, and, Secretary Nielsen, thank you very much for being here as well, ma'am. We just wanted to very quickly follow up with some of the comments made from my colleague—learned colleague from New York, Mr. Katko.

Ma'am would you say as they continue to squeeze the Southern Border, are we going to look—there is so much money in drugs now.

Secretary NIELSEN. Yes, sir.

Mr. CORREA. You just came back from the Northern Triangle, you know what's causing all kinds of problems is our U.S. dollars corrupting those systems in Central America.

So as you continue to squeeze the Southern Border, would you say our sea ports are also going to be susceptible as being areas of the smuggling, and possibly the Northern Border—Canadian border, would you say that is also a place that could be used—if not now, but in very near future by smugglers to bring in drugs?

Secretary NIELSEN. We do it all based on risk, but yes, sir, criminals will find a way unfortunately to do whatever their criminal act—

Mr. CORREA. As long as we keep use—paying for those—unfortunately those illicit drugs people are going to find a way.

Secretary NIELSEN. The drug demand is a very large problem, yes, sir.

Mr. CORREA. Thank you. I am going to shift very quickly ma'am, and last year, Secretary Nielsen, I sent you a letter regarding family separation dated June 20, 2018. I have not gotten a response yet from your office that is satisfactory. These are black-and-white questions.

I resubmitted this letter to your Border Patrol Chief Carla Provost last week, and I am going to submit the same letter to you today. I am hoping that we can work together to find some answers to these questions on family separations. One of my new assignments is I am going to be Chair of a subcommittee on TSA security.

Like everybody else in this committee, we are all concerned about safety, especially terrorists, anti-terrorists activities. You stated recently that, to Congress, in fiscal 2017, DHS prevented 3,700 known or suspected terrorists from coming into the United States. I think most of these were being stopped at our airports. Is that correct?

Secretary NIELSEN. Yes, sir.

Mr. CORREA. Something like 3,700 were actually stopped by our TSA agents at airports, maybe less than 100 Southern Border—excuse me—less than 10 at the Southern Border and more like 100 at our Northern Borders. That sound about right?

Secretary NIELSEN. The majority were through the air environment. The only thing I would just add is many of them are actually identified by CBP as part of the vetting before they travel. So they are either stopped from traveling or, as you say, stopped by TSA or CBP once they arrive.

Mr. CORREA. So this is the work that you do in coordination with other nations around the world? Brazil—I know Brazil is a very popular jump-off point to the United States, in terms of possible suspected terrorists.

Secretary NIELSEN. Brazil has a much more open visa enterprise. So, because of that, yes, sir, we do see it being exploited, unfortunately.

Mr. CORREA. The reason I ask this is because I want to do a deeper dive into some of these numbers to really put our resources where we really need to focus on stopping terrorists. In fiscal year 2018, open-source reporting by CBP data, only 6 suspects caught at the Southern Border. I presume you continue to have the vast number being stopped at our airports?

Secretary NIELSEN. So I can't speak to the—as you can understand, I can't speak to the particular number of terrorists stopped at the Southern Border because that is Classified, at least not in this setting.

Mr. CORREA. Correct. I will look forward to working with you in a Classified setting to address these issues.

Secretary NIELSEN. I would be happy to. Just really quickly, for perspective, though. I would say, as you know, there is another category called special interest aliens, where those who have been identified as individuals who travel or have other aspects that are very similar to a terrorist. We do have increasing numbers of those coming throughout the system—

Mr. CORREA. Let me say, I am running out of time. I want to work with you on these issues—

Secretary NIELSEN. I understand.

Mr. CORREA [continuing]. And deeper dive. But our TSA officers, I am concerned because TSA was put together after 9/11. They were actually being paid by the airports at that time. Now, we find out, TSA officers have to be professionals. They have to be well-trained because we see where the challenge is when it comes to stopping terrorists coming into the United States.

So I look forward to working with you and coming up with a package for some of these officers to make sure they are the best of the best. Finally, I wanted to say, I was in the Northern Triangle, I think, the day or so before you were there.

Secretary NIELSEN. Yes.

Mr. CORREA. I want to say, hats off to those northern tribal countries trying to work with us. I know Honduras, for example, the jump off point to a couple of those caravans, the president of Honduras told us that 90 percent of that first caravan, those folks had actually been returned to Honduras.

The second caravan, about 5,000, 60 percent had actually been returned, and the rest has actually stayed in Mexico. What I am trying to say, if I would make factual—if I had more time is, this is not a border issue. This is a regional refugee challenge.

My colleague, Mr. McCaul, talked about all the refugees from Venezuela to Colombia, but this is a refugee issue. Mexico, I understand, is holding a lot of those refugees and offering them, in your words, permits to stay, work permits. I am hoping we can turn the discussion from building a wall to border security to addressing a refugee crisis in this continent.

The one—if I may, Mr. Chairman, the one word people in Central America kept repeating to me was folks in Central America want hope, hope for a better life, a better job, some security. I hope you can sit down and put the political rhetoric aside and focus on giving these human beings a little bit of hope of staying and building lives.

Mr. Chair, I yield.

Chairman THOMPSON. Thank you very much. The Chair recognizes the gentleman from North Carolina, Mr. Walker.

Mr. WALKER. Thank you, Mr. Chairman. Thank you, Secretary Nielsen, for being here today. Secretary Nielsen, what is the volume of drugs that is coming through the Southern Border illegally?

Secretary NIELSEN. I don't have—I don't have the exact figure at my fingertips, but it is going up, particularly cocaine, methamphetamines and, unfortunately, fentanyl.

Mr. WALKER. Our numbers show, since fiscal year 2012, about 15 million pounds seized. Does that sound—that is in the ballpark?

Secretary NIELSEN. It does, but it sounds like it might not include the Coast Guard.

Mr. WALKER. OK. So, 15 million pounds, that—would you say that is a crisis, 15 million pounds?

Secretary NIELSEN. Yes, sir.

Mr. WALKER. We talked about fentanyl a little bit earlier, a drug so powerful that less than 5 pounds can kill over a million people. Our numbers show that almost 1,700 pounds in fiscal year 2018. Is that somewhere in the ballpark?

Secretary NIELSEN. Yes.

Mr. WALKER. Would that be a crisis to the DHS?

Secretary NIELSEN. It is because it is an extraordinary danger to our communities, but it is also a danger to those who are inspecting packages. We have spent a lot of time on training. We had to do a lot of things differently, even for the dogs who were dying just by virtue of breathing the fumes from the fentanyl.

Mr. WALKER. We have talked about the massive amount of individuals—or people coming across the Southern Border. Do you have any estimates per year of what that looks like?

Secretary NIELSEN. We are on track right now to be at 900,000 this year.

Mr. WALKER. Are apprehensions of family units and aliens of accompanied alien children increasing or decreasing right now?

Secretary NIELSEN. They are increasing extraordinarily rapidly. Family units went up about 30 percent from last month, and the same for UACs. Those are the two vulnerable populations that are dramatically increasing.

Mr. WALKER. Yes, I think in the fiscal year 2018, the number was 107,000. Already, the first 4 months of fiscal year 2019 that starts in October is 99,000. Now, have you had a chance to meet former DHS Secretary Jeh Johnson?

Secretary NIELSEN. Yes.

Mr. WALKER. OK. I wonder if we would also consider this a crisis, because, since the previous administration, that number has increased 572 percent. My question, at what point does it become a crisis?



Secretary NIELSEN. Sir, if you ask the men and women of DHS they would tell you, when one migrant dies, when one person is not afforded the opportunity to efficiently claim asylum, they would tell you—for a community that has been the victim of violence due to criminals that come in that flow, they would tell you, any—it just takes one. It takes one terrorist, it takes one criminal to ruin a family's lives, and it takes one overdose to kill an American.

Mr. WALKER. Did you have any idea of the level of how difficult and dangerous the issue was just a few years ago before you took the position? Or has this been something that has been sort-of a knowledge that you have ascertained since you have been in the position of Secretary?

Secretary NIELSEN. I, before becoming Secretary, did not have the opportunity to speak in detail to the men and women on the front lines. No, I was not aware of how dangerous a situation it is.

Mr. WALKER. Do you think most Americans truly understand how dangerous this situation is?

Secretary NIELSEN. I do not, no.

Mr. WALKER. If most Americans had a chance to go to the border, would they consider this a crisis?

Secretary NIELSEN. Yes, sir, just by the pure numbers coming in and our inability of the system to properly take care of them.

Mr. WALKER. What kind of job do you say the men and women that work for Immigrations Custom and Enforcement, ICE, what kind of job on the front lines are they doing?

Secretary NIELSEN. Extraordinary. They work every day, many times at risk of their own lives. Assault on Border Patrol agents continue—or, excuse me, on Border Patrol officials continue to rise.

They do it with compassion. They live in these communities. They enforce the law, but they want to make sure and continue to ask me to ask to Congress to change the laws so that the system can be more humane.

Mr. WALKER. You know, we talk a lot about as far as people having input who actually are on the front lines doing the work. I—according to our numbers—in 2017—we talk a lot about children and we should.

We should make sure that we restore as many children as we can. I did hear the three reasons of why that may be a problem sometimes prosecutorial, the guardian poses a risk or there is another issue that you have to take a look at.

But according to our numbers there were 906 children that were rescued from exploitation just in 2017. Does that number match your numbers, as well?

Secretary NIELSEN. Yes, sir. Human trafficking and child exploitation are something that we are working on. We are about to release the first ever DHS strategy to combat that. But yes, the numbers are going up.

Mr. WALKER. So all of these numbers continue to go up, whether it is the human trafficking or it is the drug smuggling. The former colleague just talked about the more we squeeze the border. Well, evidently the numbers continue to rise. So as we look at all these numbers, in summary, can you tell the American people this is not manufactured crisis, this a legitimate National emergency?

Secretary NIELSEN. This is a legitimate National emergency, this is a twin crisis, and we can do better as a country. We have to have a system where we can protect vulnerable populations, we can secure our border which is our sovereign responsibility, we can protect communities, while facilitating legal trade and travel.

Mr. WALKER. Thank you, Mr. Chairman.

Chairman THOMPSON. Thank you.

The Chair now recognizes the young lady from New Mexico, Ms. Torres Small.

Ms. TORRES SMALL. Thank you, Mr. Chair.

Secretary NIELSEN. I am the only Member on this committee that represents a Southern Border district. In fact, I include—and it includes 180 miles, almost, of that Southern Border and a lot of it is remote, rugged terrain. We have seen in recent months that my district has experienced more migrant families showing up between ports of entry and—such as the boot heel of New Mexico.

As we have learned through the tragedy of two migrant children deaths under CBP custody, most of the CBP facilities near these rural areas aren't equipped to process large groups of migrants. We have to ensure that our agents on the ground have the adequate resources and technology to effectively patrol these areas, keep our communities safe, and provide quality care to migrants voluntarily presenting at our border.

What changes in policies and procedures have you implemented to ensure that CBP can adequately adapt to the rise of people voluntarily presenting at the border and who are showing up between ports of entry, specifically in these remote areas?

Secretary NIELSEN. So what we have done, I would take it a couple different ways. On the health screening, as you know, unfortunately particularly because of those remote areas, many of the migrants when they reach our border are very sick.

So I have worked with CDC, we have worked with HHS, we have worked with the local communities. I have spoken to your previous Governor and your current Governor about this exact issue. I have asked my bipartisan advisory council to look at this particular issue on families and children and what we can do better.

We have increased our medical screening. We screen every child that comes into CBP care. ICE, as you know, if the migrants proceed onto ICE detention, do receive, within 7 days, a full medical checkup. So we focused a lot on the—on the medical part.

In terms of the ability to understand what migrants are coming through remote areas, we are working much more closely with Mexico to identify the flows so that we can have CBP there to rescue them as soon as possible. As you know, we rescued 4,300 in distress last year alone, many of them coming through remote areas where they are dehydrated, they are cold, they are otherwise sick, they haven't had adequate resources and food for quite some time.

So we continue to look at all of the processes, but this is something that we are trying to do the best we can within the limited resources that we have.

Ms. TORRES SMALL. One of the issues that I didn't quite hear addressed there is transportation.

Secretary NIELSEN. Yes.

Ms. TORRES SMALL. As you know, one of the children who died, part of the challenge was the transportation to a medical facility. So sometimes the hardest but most-learned lessons come from past failures. What is the status of the investigation into the deaths of those two children? When will you release the results of those?

Secretary NIELSEN. So, as I understand, the status of the investigation right now is with the medical examiner. So until the medical examiner in both cases releases their final findings, our Office of Professional Responsibility and our investigator general cannot complete their report. I did ask this question recently, I have not been able to ascertain from the ME when that will be done. But as soon as that will be done, the other parts of the oversight will wrap up their investigations and I am sure they will provide, as appropriate, their findings.

Ms. TORRES SMALL. Do you have any sense of a time line?

Secretary NIELSEN. I don't. I have asked, of course, that we do it as quickly as possible. There are some extenuating circumstances there. I think the ME is trying to look at information about the health of the child as they traveled along the journey. So I really don't. I wouldn't want to speak for them.

Ms. TORRES SMALL. What can you do to make sure that it comes—happens as quickly as possible, as you said?

Secretary NIELSEN. I can just keep bugging them and ask that we do it very speedily so that we can incorporate any lessons learned into our processes and procedures.

Ms. TORRES SMALL. Thank you. Are you looking into the policy of metering at the ports and how that might increase the role of human traffickers to take migrants between ports of entry and also drive them to these rural areas?

Secretary NIELSEN. So, it does—as I mentioned earlier, it does have to be an “and” approach, it can't be an “either/or” approach. The queue management at the ports is simply to ensure that CBP can perform all its statutory missions but, very importantly, to protect the migrants coming in. As you know, when you have seen the facilities, they were built for maybe 100 people a day. They are just not adequate to process and hold large numbers of people.

Ms. TORRES SMALL. One of the challenges, though, is if you are controlling it at the ports of entry, they can still go to a place between the ports of entry where there is the same lack of facilities and sometimes worse. So are you looking at that impact?

Secretary NIELSEN. Yes, ma'am, and that is why our operators have asked for impedance and denial in the form of obstacles.

Ms. TORRES SMALL. Thank you. What has done—CBP done to minimize attrition in hard-to-fill locations such as Lordsburg or Deming to make sure that we have agents in our most remote stations?

Secretary NIELSEN. So, we continue to look at this, I know we are running short on time. I am happy to work with you. We work closely with the unions on this issue. We are looking at everything from retention bonuses to ability to add additional salary when we transfer, additional benefits on the backend, but, yes, this is a problem that we take very seriously and where we are working with all parties on.

Chairman THOMPSON. Thank you very much.

Chair now recognizes gentleman from Louisiana, Mr. Higgins.

Mr. HIGGINS. Thank you, Mr. Chairman. Madam Secretary, thank you for your time, your dedication to our country and for your devotion to restore sovereignty along our Southern Border. My colleague earlier, Representative Langevin, put a graph up.

I have asked that it be put back up, that request had been declined. But I will refer to it because it certainly shows that an all-of-the-above strategy to secure our border works. Since 2000, our colleague's graph showed a decrease in illegal apprehensions.

Since 2000, 19 years ago, we have built more than 650 miles of physical barriers along the border to help control illegal crossings. We have deployed sensor technology and increased Border Patrol staffing. This is exactly why—and a bipartisan solution exists before us, my friends, and it does not make sense to me why this has become a partisan issue since President Trump's election. Physical barriers, technology, enhanced capacity to respond, they work.

This does not mean the current crisis does not exist. Let me just put this in context for the American people. Perhaps the most famous invasion in the history of the world, D-Day, 73,000 American troops landed in the D-Day invasion. We have 76,103, according to my numbers, apprehensions along our Southern Border last month. We have a D-Day every month on our Southern Border.

Just to put this in context for America, yes, physical barriers work. Enhanced technology works. The ability to respond and arrest, to process works. Of course, none of us want to separate families. We, as Congress, we have to fix the laws and allow these law enforcement professionals to do their job. I know the men and women of Border Patrol be highly professional and patriotic in their mission to secure our border.

I know first-hand from my experience as a cop, from my service on this committee, and from standing alongside front-line defenders, our border agents deserve respect. They certainly have mine.

I would like to highlight two cases, Mr. Chairman, which exemplify the professional manner in which border agents conduct themselves. On the morning of January 22, a Honduran gentleman, along with his elderly wife, illegally crossed into the United States. They were apprehended and taken into custody by Border Patrol.

A few days later, while still in U.S. custody, the Honduran gentleman complained he didn't feel well. He had received medical care, he was immediately brought to a hospital, medical center in El Paso. Within hours, the Honduran gentleman was treated by a team of American doctors less than 12 hours after reporting his discomfort. He had a brand-new pacemaker surgically implanted. The next day, he was given medical clearance and his follow-up prescriptions.

American taxpayers gave this man a pacemaker that crossed into our country illegally. We are certainly a compassionate and generous Nation.

Another such example involves a forced separation of a mother and her child by coyotes which, by the way, human coyotes give our animal friends a bad name. The smugglers convinced a mother that it was easier to move the pair separately. They separated the child from their parents, they left the 3-year-old child on the banks of the Rio Grande.

It was Border Patrol agents who rescued that child. It is Border Patrol agents who rescue thousands of people from smuggling and trafficking routes every year. The Southwest Border is arduous terrain, difficult, inhospitable terrain. Those who choose to come here illegally do so at great risk to themselves, their families, and certainly their children if they bring them.

Madam Secretary, please share with America—how many rescues did Border Patrol successfully perform last year?

Secretary NIELSEN. Over 4,000, sir.

Mr. HIGGINS. Over 4,000 rescues. Madam Secretary, if you were given more funding and additional qualified agents, would you be able to better secure our border and more compassionately enforce the laws that you have sworn to uphold?

Secretary NIELSEN. Yes, sir, again what is important to understand is first of all this is a National security concern to protect our border. Second, Congress has directed DHS to take operational control of the border. I cannot do that with these laws and with these resources.

Mr. HIGGINS. Thank you, Madam. It is our responsibility to change the laws where they need to be changed. I am committed to work with my colleagues in a bipartisan manner, Mr. Chairman, to change the laws as necessary. It is the law enforcement professional's job to uphold those laws and they are doing so now. I yield.

Chairman THOMPSON. Thank you very much. The gentleman from Louisiana complimented our men and women who are doing this job. For the record, Madam Secretary, how many vacancies to you have in CBP as of this hearing?

Secretary NIELSEN. I am happy to get back to you—what I can tell you, the good news is last year was the first year that we were able to hire more than who left. So we are reversing the trend there.

Chairman THOMPSON. Give me a guesstimate.

Secretary NIELSEN. Sir, I don't want to guess under oath, I am happy to get you the number.

Chairman THOMPSON. So if I said you had over 2,000 vacancies what would you say?

Secretary NIELSEN. I would say I would be happy to get you—respectfully sir, I just—I don't have—

Chairman THOMPSON. Does that sound about right?

Secretary NIELSEN. I will get you the number.

Chairman THOMPSON. A thousand?

Secretary NIELSEN. Sir, I will get you the number.

Chairman THOMPSON. Please get me the number.

Secretary NIELSEN. Yes, sir.

Chairman THOMPSON. Chair recognizes the gentlelady from Illinois, Ms. Underwood.

Ms. UNDERWOOD. Thank you, Mr. Chairman. There are a lot of lawyers in this room and I am not a lawyer, I am a nurse. Madam Secretary, I want to be very clear about what the family separation policy is doing to children's mental and physical health. I want to know if DHS even considered their health when developing these policies.

So I only have 5 minutes, so for these questions I am looking for a yes or no answer if you could? When you officially began family

separation in spring 2018 were you aware of research showing it causes trauma that can do both immediate and long-term damage to children's health?

Secretary NIELSEN. The information that I was aware of at the time was that the trauma is from part of the journey to come up to the border illegally.

Ms. UNDERWOOD. OK—so again, we are looking for yes or no answers, ma'am.

Secretary NIELSEN. That was what I do know within the context of the question.

Ms. UNDERWOOD. OK. Were you aware that the trauma of family separation is connected to something called toxic stress?

Secretary NIELSEN. I have—not familiar with that term, no.

Ms. UNDERWOOD. OK, were you aware that toxic stress can actually change a child's brain because it is still developing?

Secretary NIELSEN. I wasn't familiar with the term.

Ms. UNDERWOOD. OK, were you aware that the effects of these traumas are accumulative, they get worse the longer the trauma goes on?

Secretary NIELSEN. Can I—yes, I will—sorry. I would like to clarify because we are missing a bigger point here, but yes, ma'am, I am sorry respectfully let me answer your questions.

Ms. UNDERWOOD. Were you aware that the traumatic effects don't go away, even if a child is reunited with their family?

Secretary NIELSEN. I understand that they are—no.

Ms. UNDERWOOD. OK. Were you aware that family separation can lead to behavioral changes and learning delays for children?

Secretary NIELSEN. Just to be clear, family separation includes the 60,000 UACs who are separated by their parents before they ever got to the border.

Ms. UNDERWOOD. I understand. My question is about the traumatic effects.

Secretary NIELSEN. I am—so let me just say this and maybe it will help you with your questions. Families need to be put together, children should never be put in this situation.

Ms. UNDERWOOD. Thank you.

Secretary NIELSEN. We need to fix the systems so that they are not.

Ms. UNDERWOOD. Thank you. Were you aware that family separation can lead to behavioral changes and learning delays for children?

Secretary NIELSEN. Again, kids should be with their families.

Ms. UNDERWOOD. I—OK, so I will take that as a no. Were you aware that it increases a child's risk of heart disease, diabetes, and cancer?

Secretary NIELSEN. I would ask all parents to go to ports of entry, not to separate their children and send them on the journey alone.

Ms. UNDERWOOD. OK—

Secretary NIELSEN. And not to break U.S. law.

Ms. UNDERWOOD. Thank you. Were you aware that it increases a child's risk of anxiety, depression, and substance abuse? As a reminder, these are yes or no questions.

Secretary NIELSEN. I—ma'am, if I just cut to the chase, I think we are agreeing children need to be with their families. We need to fix the system so that we can enable them to do that—

Ms. UNDERWOOD. I understand. Ma'am I am trying to ascertain your knowledge—your prior knowledge of the health impacts of these children when they are separated at the border.

The American Psychological Association reports that family separation is on par with beating and torture in terms of its relationship to mental health. Were you aware of that research prior to instituting the policy of family separation?

Secretary NIELSEN. We—there is no policy of family separation. What we did was increase the number of parents that we referred for prosecution. That is what we have done for the last three administrations because it is the law—

Ms. UNDERWOOD. Thank you. I will take that as a no. Let's go back even further to the El Paso pilot program for family separation that reportedly began in 2017. Yes or no, did DHS consult with any pediatric health experts before beginning the pilot?

Secretary NIELSEN. I was not at DHS at that time, I was there in July. I was not aware of the pilot at that time. Then I was working in a different department.

Ms. UNDERWOOD. OK, so that would be a no.

Secretary NIELSEN. No, ma'am, I just can't speak to it—I wasn't there—

Ms. UNDERWOOD. OK.

Secretary NIELSEN. I am not going to speak to what I don't know.

Ms. UNDERWOOD. Thank you. Yes or no, did DHS collect or analyze any medical data from the pilot program to evaluate how family separation affects a child's physical and mental health?

Secretary NIELSEN. Yes, as I said I have advisory council looking at it right now who includes a well-known doctor who is looking at these issues.

Ms. UNDERWOOD. Can you provide a copy of that data and DHS's analysis to our committee?

Secretary NIELSEN. Of course. The report is not finished, but it is a FACA body, so everything is public.

Ms. UNDERWOOD. Great. Did you consult with any pediatric experts before this policy officially began in the spring of 2018?

Secretary NIELSEN. We generally and regularly work with them, as you know the children are cared for by Health and Human Services—

Ms. UNDERWOOD. Right.

Secretary NIELSEN. But to the extent that we have children in DHS detention centers we follow all guidelines by the AMA—

Ms. UNDERWOOD. Right.

Secretary NIELSEN. We work very closely with the medical community.

Ms. UNDERWOOD. OK, so then would you provide a copy of that communication from DHS with those experts to the committee?

Secretary NIELSEN. Sure, when it becomes available.

Ms. UNDERWOOD. OK. Thank you. So the American Academy of Pediatrics wrote to DHS 6 times to explain how family separation hurts children, and made a number of public statements—yes or no, are you aware of those warnings?

Secretary NIELSEN. I am, which is why I continue to ask this committee to work with me so that parents do not separate their children. There were 60,000 last year that were separated by their parents.

Ms. UNDERWOOD. Thank you.

Secretary NIELSEN. You are talking about 2,000 children that resulted from their parents choosing to break the law which is why I have continually asked parents to go to a port of entry.

Ms. UNDERWOOD. Thank you. So from what I have heard today, I am not sure if DHS was so negligent that they didn't know how traumatic family separation was for children or if they knew and did it anyways. But in my opinion, both are unacceptable.

Tearing kids and their parents apart like this immoral—ma'am, it is un-American and it is just plain wrong. Thank you for holding this hearing, Mr. Chairman. Secretary Nielsen, I will be following up. I yield back.

Secretary NIELSEN. So, sir, I would like to respond briefly, if I could—

Chairman THOMPSON. Chair recognizes the gentlelady from Arizona, Ms. Lesko.

Secretary NIELSEN. Sir, if I could just—if I could just really quickly because I think it is very important to just put this in a brief context.

Chairman THOMPSON. No.

Secretary NIELSEN. OK.

Chairman THOMPSON. The gentlelady's time has expired.

Secretary NIELSEN. I didn't have any time, just to be clear, to respond. But OK, thank you, with respect. I appreciate that.

Chairman THOMPSON. Madam Secretary.

Secretary NIELSEN. Oh, thank you.

Chairman THOMPSON. Editorializing is not part of the rules. So I would just remind you of that. The gentlelady from Arizona, Congresswoman Lesko.

Mrs. LESKO. Thank you, Mr. Chairman, and thank you, Secretary, for being here. You have a very difficult job, and I believe you are doing a good job. I have 5 minutes, I have a question, but I do want you to follow up on what you just wanted to say.

Secretary NIELSEN. I just want to clarify really quickly. There is so much misunderstanding. There was—the only instances at which children have ever been separated in the last 2 years is the 3 instances that I went over, which is long-standing practice, and when the parents chose to break the law.

Just like when parents break the law in the United States of America, we do not put the children in jail with the parents. So the parents came illegally. If they would come to a port of entry, there is no family separation. If we pick up a family in the interior, there is no family separation, which is why there has never been a comprehensive policy of family separation. I am sorry, ma'am. Please.

Mrs. LESKO. Thank you. Madam Secretary, would you categorize or believe that the men and women that are with the Border Patrol and ICE are experts on illegal immigration and what is happening at the border, since they are there each and every day and dealing with these items? Would you believe they are experts on this?

Secretary NIELSEN. I do. Yes, ma'am.



Mrs. LESKO. Madam Secretary—Mr. Chairman—Madam Secretary, do you believe—would you say that these men and women who work for Department of Homeland Security, who have the boots on the ground each and every day, and are dealing with this, do they believe that there is a crisis on our Southern Border and a National humanitarian and security crisis?

Secretary NIELSEN. Yes, ma'am.

Mrs. LESKO. Thank you. Madam Secretary, as you—as someone who is the head of this agency, who I assume has gone to the border numerous times, has talked to Border Patrol agents and ICE agents and other DHS employees on numerous occasions, do you consider yourself well-versed in what is happening at our Southern Border, and what is happening about illegal immigration in our country?

Secretary NIELSEN. I do, yes. I have taken substantial opportunities to meet with the experts and to understand the problem and the complexity of the laws.

Mrs. LESKO. Thank you. So, therefore, Madam Secretary, I would ask you, do you believe that we are in a—that there is a crisis on our Southern Border, that there is a National security and humanitarian crisis at our Southern Border? Do you believe that the President of the United States was justified in declaring a National emergency?

Secretary NIELSEN. Ma'am, it is an emergency. As a Secretary of Homeland Security, I can no longer assure you of who is coming into this country. That is a direct National security threat. We are on par to have over 900,000 this year, first of all.

Second of all, I have seen the vulnerable populations. I have been to Mexico; I have talked to the Northern Triangle countries. This is a true humanitarian crisis that the system is enabling. We have to change the laws.

Mrs. LESKO. Thank you, Madam Secretary. You know, I was here when we tried to pass immigration law last year, which would have combined common-sense immigration reforms that would have helped solve some of these problems, especially the cartels abusing our loose immigration laws on asylum claims.

It would have helped decrease the number of people that are traipsing thousands of miles to get into the United States, that you have said 30 percent of the women are being sexually assaulted. I believe you said, the children—the girls, at 10 years old, have to be tested for pregnancy because of these sexual assaults that are going on.

This is just—please, my colleagues, please, let's work in a bipartisan fashion. We were trying to be bipartisan last year when we tried to pass immigration reform, combined with border security funding. Unfortunately, not one of my Democratic colleagues voted for that.

The bill did not pass. Would we please stop being so partisan on this issue and against President Trump and please, let's try to solve this problem for the sake of our entire Nation? Thank you. I yield back.

Chairman THOMPSON. Thank you very much.

To the gentlelady from Arizona, there is no question about bipartisan, but if—it is just one side. You know, Democrats do have

opinions, and when our opinions are not valued, then we vote against it. A genuine bipartisan effort in this area and in other areas would be more than appreciated.

Madam Secretary, according to your records, at the end of fiscal year 2018, there were 3,740 vacancies in CBP, there was 1,815 vacancies in Border Patrol. So I await your numbers, but that is a lot of vacancies. If we have some problems, some of us would say, let's fill the vacancies that Congress has been so graciously supportive of accommodating you. But almost 5,000 vacancies is a lot of vacancies.

Secretary NIELSEN. Sir, if I could really quickly. We would be happy to work with you on that. As you know, we do have new hiring strategies. I will just note that it is a very difficult environment right now. It is a very dangerous job. We have an increase of 40 percent in assaults on Border Patrol. We are working to hire, having more fairs, more ways. So, happy to work with you on that. We agree on the need for additional—

Chairman THOMPSON. Madam Secretary, I look forward to working with you. If you bring it to our attention, that it is a problem, we will work with you. But to my knowledge, it has not been brought to my attention, as Chair, nor have we ever had a hearing talking about the problems with filling vacancies within that Department. If there is an issue to go with it, we would be more than happy to work with you.

The Chair now recognizes the gentlelady from Michigan, Congresswoman Slotkin.

Ms. SLOTKIN. Thank you, Mr. Chairman. Thank you, Secretary Nielsen for coming before us. I represent Michigan, so the Northern Border. I know we are talking a lot about the Southern Border. Let's remember that we have significant border locations to our north, and they shouldn't be ignored.

I am also a former CIA officer and DOD official, so I am a big believer in border security and have spent my life preventing homeland attacks. But I also believe we have to be a country of morals and values. The separation of children, it didn't matter who you were, where you got your news, the vision of a small child in a cage, separated and crying, I think just hits everyone's heart. We cannot be a country that perpetuates that.

So I just want to understand, separated out from the situation, the unaccompanied minors, which are a large group of people. There are parents, you are right, send them up here on their own coming across the border. Leave that aside, because that was a big problem under the Obama administration, many administrations before. The separation of families, the purposeful separation of families once they arrived as a family unit. Did you initiate the separation of families for the express purpose of deterring families from coming to the United States?

Secretary NIELSEN. No. I did not. Again, the whole purpose of that was to increase consequences for those who choose to break the law. That is a bedrock of our criminal—as you know—the way that our criminal system works. If there is no consequence, we do not see the instances of the crime decreasing.

So what we did was we increased the number of prosecutions. We didn't make up the law, the law was already there. Former ad-

ministrations also referred adult parents for prosecution. We took the prosecution numbers from about 20 percent to about 55 percent.

Ms. SLOTKIN. So what did you do? I understand it is complicated, we have a big bureaucratic system. When you saw those pictures of babies in cages, what did you do? What did you do, to just scream bloody murder up the chain to the President, to say, I cannot represent an agency that is forcing its Border Patrol to do this? What did you do?

Secretary NIELSEN. So I went to the border. I spoke to the men and women there. I looked at the facilities myself. I talked to HHS, to understand and visited their facilities, as well, to understand the care that they provide to the children once they are in their custody. Then I spent a tremendous amount of time working with the Northern Triangle in Mexico to stop the phenomena closer to the source to help stabilize those areas so that the children and families are not traveling here.

Ms. SLOTKIN. OK. It just feels like it potentially wasn't enough if we are still dealing with those separations.

Secretary NIELSEN. Just to be clear, we are not. We do not refer parents currently for prosecution, even when they break the law by entering our country between ports of entry.

Ms. SLOTKIN. So switching gears to the Northern Border. So, I am also very concerned—our border agents do amazing things every day. We have a much higher volume of traffic of trade coming through our Northern Border than through our Southern Border, and I am concerned about the vacancies. Have any border personnel from the Northern Border been moved and detailed to the Southern Border to fill staffing gaps? Can you give me a couple of details on that, if so?

Secretary NIELSEN. Sure. We did have—we have surge models throughout the Department, whether it is FEMA, whether it is TSA, we do everything based on risk. So when we saw risk in gaps, we move around the personnel in a temporary fashion to address that gap.

Ms. SLOTKIN. I just feel like the attention has all been focused on the Southern Border when in reality the volume of trade and then also the people watch-listed, the volume is much higher coming through the Northern Border.

I think you made some misleading statements, and I think it is important to be very, very specific when we are talking about a terrorist threat or watch-listed individuals, some misleading information about the number of watch-listed individuals coming through our Southern Border. Can you state for the record, are more watch-listed individuals coming through our Northern Border or our Southern Border?

Secretary NIELSEN. So I don't remember actually answering that question. I think the question was about the known or suspected terrorists that we stop a day on the Southern Border, what I was saying is there were about 3,000 special interest aliens that we stopped at that border compared to the Northern Border. Again, as you know, the number of terrorists actually crossing the border is Classified. Happy to do that in a different setting.

Ms. SLOTKIN. OK. I will look forward to doing that and I yield the rest of my time to Congresswoman Rice.

Secretary NIELSEN. I would say really quickly, we do take the Northern Border seriously. I just met with your colleagues on the Senate side from Michigan. We have the border strategy implementation plan coming out soon. We do have a Northern Border strategy, which you know focuses on security, critical infrastructure and all of the interdependences between, so happy to come talk to you more about that.

Ms. SLOTKIN. Thank you for not forgetting about us. I appreciate that.

Chairman THOMPSON. The gentlelady from New York.

Miss RICE. Thank you, Mr. Chairman, and thank you, Ms. Slotkin. I think it is really important, taking—continuing what Congresswoman Slotkin was talking about, about making the record very clear and not allowing any misleading statements.

It was a policy announced by the attorney general of this country that families were going to be separated. That was a policy. He did not say we are going to start enforcing a law. It was a policy by this administration that only ended when there were pictures of little kids in cages that had been ripped away from their parents.

So I think it is really important, Madam Secretary, that you talk about it and you use the right language. This was not the law, OK? This was a policy that the attorney general of this country announced was a new policy they were going to rip kids away from their parents. So I think it is very important that the record reflect that. I thank my colleague, Ms. Slotkin, and I yield back.

Secretary NIELSEN. OK. So, respectfully, sir, I would like to respond to that, because—

Chairman THOMPSON. Let me just say, do it in writing so we won't have the confusion—

Secretary NIELSEN. I would like to respond quickly, because I can tell you—

Chairman THOMPSON. No, no, no, gentlelady. We have been back and forth.

Secretary NIELSEN. We have. But it is appropriate for me to clarify for the record, because I think you are trying to get to the truth. I think that is what you were, too. So I just want to just quickly say that the AG memo that was issued directed all U.S. attorney offices along the Southwest Border to prosecute all adults who were referred for prosecution. That is what it did.

Miss RICE. That is a policy. That is a policy.

Secretary NIELSEN. Not as you described it.

Miss RICE. Madam Secretary, that is a policy, when you knew that that policy was going to result in children having to be taken away from their parents. That is a policy. You should admit it.

Secretary NIELSEN. The consequence of any adult going to jail in this country is they are separated from their child. That wasn't the point of it. The point was to increase prosecutions for those breaking the law and not exempt any class of aliens. That is what the AG directed.

Miss RICE. It was very clear what the attorney general meant.

Chairman THOMPSON. Well, we will follow up with that. For the record, Madam Secretary, are we still using cages for children?

Secretary NIELSEN. Sir, we don't use cages for children. In the border facilities that you have been to, they were not made to detain children. As the children are processed through, they are in some parts of those facilities.

Chairman THOMPSON. Madam Secretary—

Secretary NIELSEN. Yes. I am being as clear as I can, sir. Respectfully, I am trying to answer your question.

Chairman THOMPSON. Just yes or no. Are we still putting children in cages?

Secretary NIELSEN. To my knowledge, CBP never purposely put a child in a cage, if you mean a cage like this.

Chairman THOMPSON. Purposely or whatever, are we putting children in cages as of today?

Secretary NIELSEN. Children are processed at the border facility stations that you have been at, some of the—

Chairman THOMPSON. I have seen the cages. I just want you to admit that the cages exist.

Secretary NIELSEN. Sir, they are not cages.

Chairman THOMPSON. What are they?

Secretary NIELSEN. Areas of the border facility that are carved out for the safety and protection of those who remain there while they are being processed. If we have two gangs, we separate them into separate areas of that facility.

Chairman THOMPSON. No, no, no. Madam Secretary—

Secretary NIELSEN. A father and daughter, we separate that from another son.

Chairman THOMPSON. We are not going to go through the semantics. Now, I saw the cyclone fences that were made as cages. You did, too. All you have to do is admit it. If it is a bad policy, then change it. But don't mislead the committee. Do not mislead the committee.

The Chair recognizes the gentleman from Tennessee, Mr. Green.

Mr. GREEN of Tennessee. Thank you, Mr. Chairman, and Ranking Member and Secretary, thank you for the hard work that you do leading probably one of the most diverse departments in all of our Government. As an emergency medicine physician, I trained in my emergency medicine residency down in Texas, did some rotations in Austin, Texas. I have pronounced opiate overdoses. I have pronounced those people dead and it is a horrific thing to have to do.

As I understand it, 300 deaths a week in this country are happening due to heroin overdose and that 90 percent of that heroin is coming across the Southern Border. It has been suggested by the folks on the other side of the aisle that that is only at points of entry. I would like to ask you, if you could tell us about what is happening between the points of entry, the drugs that you guys are seizing, and what you are expecting is going though.

Secretary NIELSEN. Sure. So, first of all, this is another example of it is not an either/or. We thank this committee and others who supported our request for additional non-intrusive inspection equipment, which will vastly help our interdiction efforts at the ports. We do see criminals continuing to take advantage of gaps between the ports of entry where there is no barrier and smuggle drugs in.

We also unfortunately see them using families and children as pawns. So often they will send a group of migrants across the border in one area where there is no barrier, while CBP is responding to that location. They then will smuggle drugs nearby through another vulnerable part of the border.

Mr. GREEN of Tennessee. There is a—changing the subject a little bit, there is a *New York Times* article this—I believe it was Saturday. The title of the article is “You Have to Pay with Your Body”. It is about a woman who hired a coyote to bring her over the border. Of course, she was assaulted many times during that process.

*The New York Times* article then said that she was held once she got to the United States and repeatedly raped by the coyotes. I just ask the question, I guess it is 31 percent of women that are coming across the border this was are having to face similar experiences. How many women does it take being raped before this really is a crisis?

Secretary NIELSEN. Sir, if you are asking my opinion, it is one. It is one child who dies, it is one woman who is raped, because this system doesn’t need to work that way. We can fix the system to protect venerable populations.

Mr. GREEN of Tennessee. Thank you, I would agree 100 percent with you. In regard to the child separation, and we have talked about the cages here, as I recall, the images that circulated around the internet were actually from the Obama administration. They later found out that the picture that circulated the internet of a child in a cage came from the time frame when it was the Obama administration.

My question, doesn’t it seem reasonable that if all the investigations that are going on—and you just recently have been subpoenaed to provide information about the names of children that have been separated. Unfortunately, they only ask you to go back to the Trump—you know the window of the Trump administration in those subpoenas.

It seems to me that if it were—because we are concerned about the children, if the images are really from back in the Obama administration, why wouldn’t we ask for that data going back further than just the Trump administration?

It is really about protecting and caring for and making sure the safety of the children. Why wouldn’t we go back to when the separations really started?

Let me just stop you, you don’t have to answer that question. I will answer it for you. It is because this isn’t about just the safety of children, it is about slamming the President.

Let me ask you this question, it is a hypothetical, I only have a little bit of time left. How many lives could we actually save—yes, how many lives could we save if we really secured our border?

Secretary NIELSEN. You know, again I would be hazarding a guess here, sir, but we have 4,300 that we have saved if you extrapolate out those unfortunately that we find have died along the journey, hundreds of thousands.

Mr. GREEN of Tennessee. Yes, I would think it would be that number, too. How many women in that—if we were going to multiply the 31 percent times just this year, how many women in the

first few months of this year have come across the border illegally that way that you have processed?

Secretary NIELSEN. I don't have the breakdown of women from family units—

Mr. GREEN of Tennessee. OK.

Secretary NIELSEN. But the family units have continued to go up—

Mr. GREEN of Tennessee. It would be great to know that number, and then we can multiply it times Doctors Without Borders as 31 percent and come up with that many women probably got raped this year, because of our failed policies. Thank you. I yield.

Chairman THOMPSON. Thank you. The Chair now recognizes the gentlelady from Nevada, Ms. Titus.

Ms. TITUS. Thank you, Mr. Chairman. You know, I have been sitting here listening to this for quite a while, and just want to make a couple of observations. One is the choreography is just amazing. When the Democrats ask a question, Madam Secretary, you never have the answer.

You don't have any of the numbers and you are going to get back to us, but when the Republicans ask a question, boy, you are right on top of that with the statistics and the numbers, you have got it all right down there in front of you. I wonder if this has kind-of been orchestrated.

Second, there is a great deal of obfuscation. We talk about the zero tolerance or family separation—you say, it is not a policy, it is the law, you are obeying the law, no, it is a policy, you are not doing it now. If you are not doing it, are you breaking the law—which is it?

Then you said that cybersecurity is a red light that is blinking that is the most dangerous thing that is facing this country. Yet you requested \$8 billion for a wall and only \$1.35 billion to deal with cybersecurity. That seems to me a, kind-of a misplaced priorities there.

Then going back to the Chairman's point about the number of vacancies in the border—and our personnel, I would ask you and I know this is a topic for tomorrow but it is kind-of interesting that you paid \$1.9 million to Accenture to help you with that problem and they have hired 35 agents. So yes, I would say there is a pretty big management problem.

But my question is a broader one. We know that we need comprehensive immigration reform, we would like to see it bipartisan. We are reached across the aisles since I was first elected here and got nothing in return.

But it is more than just border control. We need to deal with the DREAMers, the DACA recipients, TPS—they are all living in the situation of uncertainty. You testified that you had never met a DREAMer last year. I wonder is that still true?

Secretary NIELSEN. No, ma'am. As you know they have under the court case right now they are legally present and we continue to renew those who are part of the original application process.

Ms. TITUS. So have you talked to this DREAMer, do you know anything about their story? I mean, I have got thousands of—13,000, actually—DREAMers in my district, I know their life sto-

ries, I know about their families. I am not just sitting across a courtroom from them. Have you met with any of them?

Secretary NIELSEN. I think that is why we agree that they deserve a legal status, which is what I have said every time I have testified. I support a legal status for the DACA population.

Ms. TITUS. So you don't think the DREAMers are a security threat to this country?

Secretary NIELSEN. When they commit a crime, or they otherwise fail a background check, as you know, they no longer are covered under the DACA program.

Ms. TITUS. Do you feel that they are a security threat to this country?

Secretary NIELSEN. Some of them have committed crimes, they are no longer part of DACA. So by definition, if you are a DACA recipient, you have not committed a crime.

Ms. TITUS. Do you feel like they are a threat to our economy?

Secretary NIELSEN. Ma'am, I support their legal status.

Ms. TITUS. So that means you would support a clean bill to give DACA recipients a pathway to citizenship?

Secretary NIELSEN. No, I would not. The reason for that is because we can't handle that situation without handling the situation that brought them here to begin with. I don't want to inadvertently create a new pull factor. I want to make sure that we secure the border and that we are able to give legal status to the DACA population.

Ms. TITUS. So you don't think they are a security threat, you don't think they are an economic threat, but you wouldn't support any kind of pathway to citizenship?

Secretary NIELSEN. I won't support things that will continue the crisis that we have at the border by serving as a pull factor alone, no ma'am.

Ms. TITUS. Well, what about the people who are TPS, who are here now? They are not—

Secretary NIELSEN. I also—

Ms. TITUS. They live here now, they have been here 20 years. We have many families that are mixed status, do you see them as a security threat, or an economic threat? Would you support some kind of protection for them as a pathway to citizenship?

Secretary NIELSEN. Yes, ma'am, and in the letter to Senator Shelby from the White House during the appropriations negotiations, the administration also supports that.

Ms. TITUS. If we brought a clean bill to give TPS pathway to citizenship, you and the administration, and your colleagues across the aisle would support that? Because there is a bill that is on the table right now, Promise Bill, I believe, is the acronym for it.

Secretary NIELSEN. Ma'am, as the Secretary for Homeland Security, I can't support something that will automatically—I mean, every time we have done a program that provides additional paths for citizenship for those who are illegally present, it does serve as a pull factor.

Ms. TITUS. TPS is not illegally present.

Secretary NIELSEN. Their status—we have a court case, as you know, but the program itself was temporary. So they do not have the temporary protected status, but we of course are not deporting



them as we work through the court case. But I agree with you that, yes, we need to provide a legal status.

What I am concerned about is I want to make sure that we secure the border at the same time, and reduce the pull factor so that people are under the impression they can come here without any legal right to stay, to then be subject to protections later.

Ms. TITUS. In your opening statement you said you want to encourage and support legal immigration. It is the illegal immigration you are worried about. Is not TPS, and are not the DREAMERS—are not they under the category of legal immigration?

Secretary NIELSEN. The TPS was a protected temporary status, as you know. They—

Ms. TITUS. Legal, or illegal?

Secretary NIELSEN. It is neither, they are—

Ms. TITUS. It is not legal?

Secretary NIELSEN. They are legally present—

Ms. TITUS. Yes.

Secretary NIELSEN. But they are not immigrants.

Ms. TITUS. I yield back, Mr. Chairman. Thank you very much for your patience.

Chairman THOMPSON. Thank you. Chair now recognizes the gentleman from Texas, Mr. Taylor. The Chair now recognizes the gentleman from Pennsylvania, Mr. Joyce.

Mr. JOYCE. Thank you, Mr. Chairman, for yielding. I would like to thank you, Secretary Nielsen, for appearing before this committee to speak on the vital issue of border security, particularly on the Southern Border.

The consistent inability of Congress to comprehensively address this matter has left you and the President with the inability to take the actions that are necessary, to provide what we need for protection. Lack of border security has downstream consequences in our country.

One of these I would like to refocus on and that is the opioid crisis and the devastation and the heartbreak it has created particularly in my home State of Pennsylvania. I, too, have met with corners. As a doctor, as a legislator the opioid-related deaths in my home State are on the upswing and are consistently above the National average.

Some reports, as we have discussed, indicate that almost 90 percent of heroin is illegally smuggled into our country through our Southern Border. Secretary Nielsen, do you believe that a physical barrier is necessary in places of high risk along our Southern Border to stem the flood of narcotics into our country?

Secretary NIELSEN. Yes, sir, I do.

Mr. JOYCE. Thank you. As a doctor, as a legislator facing this incredible opioid crisis, watching families separated, watching children and young adults die, do you and other experts believe that the construction of additional barriers and walls will help combat the opioid flow into our country?

Secretary NIELSEN. Absolutely.

Mr. JOYCE. Thank you. I yield back my time.

Chairman THOMPSON. Thank you. The Chair now recognizes the gentlelady from New Jersey, Mrs. Watson Coleman.

Mrs. WATSON COLEMAN. In a bipartisan fashion. Thank you very much, Mr. Chairman. Thank you, Madam Secretary, for being here. I have got a whole bunch of questions, and I am going to ask that where you can you just tell me yes or no. Question, what does a chain link fence enclosed into a chamber on a concrete floor represent to you? Is that a cage?

Secretary NIELSEN. It is a detention space, ma'am, that you know has existed for decades.

Mrs. WATSON COLEMAN. Does it differ from the cages you put your dogs in when you let them stay outside? Is it different?

Secretary NIELSEN. Yes.

Mrs. WATSON COLEMAN. In what sense?

Secretary NIELSEN. It is larger. It has facilities. It provides room to sit, to stand, to lie down.

Mrs. WATSON COLEMAN. So did my dog's cage. Are the jails different than the cages that you have allowed the children to be put in?

Secretary NIELSEN. I am sorry. Which jails?

Mrs. WATSON COLEMAN. Are the jails that you put their parents in? Or the adults that come here with children that you say are coming here illegally?

Secretary NIELSEN. The detention centers, most of them, no, ma'am. They have a border around the outside. But they essentially sleep in dorm-like conditions.

Mrs. WATSON COLEMAN. So they live in better conditions than the children.

Secretary NIELSEN. No, ma'am. I just want to be very clear on this. As migrants are processed through the Border Patrol station, which were not built, again, for vulnerable populations, they are there for up to 72 hours.

Mrs. WATSON COLEMAN. I just want to know if the children are in cages, what do you consider the detention facilities to be? Because I am suspecting that you are putting children in places that seem to be less livable than these adults.

I want to have—I have a number of questions. I want to start by discussing Maria Juarez, a toddler who died in my home State of New Jersey, after being detained by DHS. After fleeing violence in Guatemala, she and her mother were detained by CBP and held in ICE custody at a private facility in Texas. Within a week, Maria began to exhibit upper respiratory symptoms, including congestion, a cough, and severe fever of 104 degrees. Maria and her mother were released after 3 weeks in custody and cleared for travel to New Jersey by personnel in Texas who did not have the requisite credentials doctors to provide medical clearance.

After arriving, her mother took Maria to an emergency room almost immediately. She remained hospitalized for the rest of her life, 6 weeks, dying on Mother's Day last year. Outside doctors made it clear that Maria did not receive the medical care she deserved while in custody of DHS.

Secretary, after learning of Maria's death, did you immediately take any action to improve access through the quality of health care at DHS facilities, yes or no?

Secretary NIELSEN. Yes, we continue to do all we can to improve within our resources.

Mrs. WATSON COLEMAN. Is there an outside investigation every time someone dies in DHS custody so that we can understand what happened?

Secretary NIELSEN. OPR investigates every one under—either in addition to or under direction of the IG.

Mrs. WATSON COLEMAN. On a different topic, we all should know, border security isn't just about the Southern Border, and this has been raised a couple of times. So I want to ask about a concerning program I recently learned about where TSA is working with the Saudi government to create a Saudi Arabian Federal air marshal program that would have Saudi government agents fly armed on flights to the United States.

The Saudis are actually paying the salaries of several full-time TSA employees working on this program. As a section of the 9/11 Commission report stated, while in the United States, some of the 9/11 hijackers were in contact with and received support or assistance from individuals who may be connected with the Saudi government.

Madam Secretary, is this really happening, No. 1? Will you commit to provide this committee any and all documentation of this program, including training materials being shared with the Saudis and who is being trained?

Secretary NIELSEN. We are happy to provide you materials, ma'am, and come brief you. I am happy to have the TSA administrator—

Mrs. WATSON COLEMAN. All right, how long would I have to wait to get this information?

Secretary NIELSEN. That I can't answer, but what I can do is get you an answer today as to when we could be able to provide that to you.

Mrs. WATSON COLEMAN. Thank you. I don't know if I asked this—I was talking so fast. Do you continue to separate parents from children as they are coming across the border?

Secretary NIELSEN. In 3 instances, when the child is at risk, the adult accompanying them is not a parent or guardian, and the third instance is when the parent needs to go to a custodial environment.

Mrs. WATSON COLEMAN. So are any of these coming at the port of entry, seeking asylum?

Secretary NIELSEN. Some of—sure. Some of them might be claiming asylum, yes, ma'am.

Mrs. WATSON COLEMAN. OK. Thank you very much. I yield back.

Chairman THOMPSON. Thank you very much. The Chair now recognizes the gentleman from Mississippi, Mr. Guest.

Mr. GUEST. Thank you, Mr. Chairman.

Madam Secretary, I first want to thank you and the men and women that serve under you for the important role that you provide in protecting our country. I want to ask you a couple of questions as it relates to the current situation at our Southwest Border. Do you believe that we are currently seeing an immigration crisis on our Southwest Border?

Secretary NIELSEN. Yes, I do. The numbers are increasing so quickly that our system, which I have testified to before, was at the breaking point. It is clearly breaking.

Mr. GUEST. Do you believe we are also facing a human trafficking crisis on our Southwest Border?

Secretary NIELSEN. Yes, sir.

Mr. GUEST. Finally, do you also believe that we are facing a drug trafficking crisis on our Southwest Border?

Secretary NIELSEN. Yes.

Mr. GUEST. Particularly I want to turn my attention through the remainder of my questioning toward the drug trafficking. As I look at the figures that have been provided, it appears that we are on track to seize a record number of illegal narcotics that are being attempted to be introduced into our country. Does that seem correct?

Secretary NIELSEN. Yes.

Mr. GUEST. What can we do as a country? What is the single most effective thing that you believe that we can do to prevent illegal drugs from entering America?

Secretary NIELSEN. We need to take operational control of the Southern Border. So that is increasing our ability to detect at the ports of entry. It is also having situational awareness, impedance and denial and responsibilities between the ports of entry.

Mr. GUEST. Do you believe that a physical barrier is an important part of our strategy to decrease the flow of illegal drugs from entering America?

Secretary NIELSEN. I believe that. But more importantly, the men and women and professionals of CBP believe that.

Mr. GUEST. I think there was a question earlier about what we are doing along our Northern Border. Do we have the same type of crisis at our Northern Border that we are currently seeing on our Southern Border?

Secretary NIELSEN. We do not have a humanitarian crisis and we certainly do not have the numbers of those trying to enter illegally without a legal right to stay.

Mr. GUEST. I believe you talked in your official testimony about the transnational criminal organizations, or what we commonly refer to as drug cartels.

Secretary NIELSEN. Yes, sir.

Mr. GUEST. What can we do as a Congress to provide you additional support as we seek to fight drug cartels from bringing their controlled substances into our country?

Secretary NIELSEN. Congress has been extraordinarily helpful, thank you, with both the INTERDICT Act and the STOP Act. Those have been very helpful in giving us additional authorities to comprehensively look at the drug issue.

At this time, we believe we have all the authorities we need. We work throughout the Department to combat this. This is part of that regional compact that I mentioned that we hope to sign soon with the Northern Triangle.

But we also work very closely with international partners throughout the world to dismantle all of the illicit marketplaces. ICE alone has over 200 investigations into the illicit marketplaces to take them down where they are selling the drugs.

Mr. GUEST. Just in general, would you agree that we as a Congress have not given you the tools that you and your officers need

to prevent drugs from illegally entering the country across our Southwest Border?

Secretary NIELSEN. Sir, we need a barrier. We cannot take operational control of the border without it.

Mr. GUEST. So—and I would agree. Is your opinion, the opinion of experts that you have spoken with, without a physical barrier, it would be all but impossible for us to secure our border from those people seeking to introduce the poison that we know as whether it be cocaine, methamphetamine, heroin, fentanyl, from entering our country through our Southwest Border?

Secretary NIELSEN. Yes, sir. The professionals speak in terms on a risk-based way of vanishing time. In other words, there are parts of the border where the cities in Mexico and the United States are so close together that a drug smuggler or a mule can disappear in a matter of seconds into the United States, without a physical barrier.

Mr. GUEST. Ma'am—Madam Secretary, wouldn't it be advantageous if we were able to funnel all of traffic, whether it be commercial, passenger, traffic, through our ports of entry where we could then concentrate our technology and our manpower on screening individuals and vehicles entering the country there instead of having to spend man-hours and manpower securing the unsecured portion of our border that do not currently have a physical barrier?

Secretary NIELSEN. Yes, sir, and it would reduce the humanitarian crisis.

Mr. GUEST. One final question, Madam Secretary. Some Members of Congress have advocated abolishing ICE, the Immigrations and Customs Enforcement, which is an agency that is under your control. My question is, would this make our communities safer? Or would the American public be placed at greater risk if we as a Congress took the unprecedented move to abolish this needed law enforcement agency?

Secretary NIELSEN. I can say with absolute certainty that the United States would be unsafer, sir. Part of their mission is anti-trafficking, they do counter-child exploitation, they do counter-weapons of mass destruction proliferation. They also help with antiquities and returning illicit goods because they also have Customs enforcement.

But they are a top-notch investigative unit of the U.S. Government. They are mimicked as a best practice throughout the world. Without them, we would not be able to protect children and victims of trafficking.

Mr. GUEST. Thank you. I yield back, Mr. Chairman.

Chairman THOMPSON. Thank you. Chair now recognizes the gentlelady from California, Ms. Barragán.

Ms. BARRAGÁN. Thank you. Madam Secretary, I serve as the second vice chair for the Congressional Hispanic Caucus. It has been some time since you have come and you have met with us. Will you commit today to coming back to meet with the Congressional Hispanic Caucus?

Secretary NIELSEN. Yes.

Ms. BARRAGÁN. OK, do that soon?

Secretary NIELSEN. If—yes.

Ms. BARRAGÁN. Great, thank you. Madam Secretary, we know that ex-FBI Director James Comey took contemporaneous memos on his meeting with Trump and his interactions. We also know that your former boss, Secretary John Kelly, also wrote contemporaneous internal memos about his interactions with the President, in particular, how he was ordered to give Mr. Kushner the top security clearance.

My question is very simple, and I remind you, Ms. Secretary, that you are under oath. Have you taken any contemporaneous memos about your interactions with President Trump?

Secretary NIELSEN. No, I have not.

Ms. BARRAGÁN. Madam Secretary, do you know how many children have died in CBP custody under your tenure as Secretary?

Secretary NIELSEN. Yes. So we have the numbers for CBP and ICE.

Ms. BARRAGÁN. Can you give me the numbers of how many children have died?

Secretary NIELSEN. Yes, I can, if you will give me 1 second. I just don't want to misspeak. But this last year we had—or so far this year, we have had 3, as you know, in CBP custody—

Ms. BARRAGÁN. So far, Madam Secretary? Are you expecting more children to die?

Secretary NIELSEN. No, ma'am. I just want to be accurate with the time. To be clear, any death is a tragedy. Any death should be prevented. Part of what I have asked this body to do is change the laws so that we have a better chance—

Ms. BARRAGÁN. Do you know the names of the children that have died?

Secretary NIELSEN. One was a stillborn death, but the other two were Felipe and Jakelin.

Ms. BARRAGÁN. Have you spoken to their families at all, Madam Secretary?

Secretary NIELSEN. I have not spoken with their families, no, ma'am.

Ms. BARRAGÁN. OK. I want to turn to—I want to turn to a slide that I have, if we can put it up. There it is. You testified that asylum seekers are not being turned away at the ports of entry. Is that your testimony here today?

Secretary NIELSEN. They are not turned away, they are brought in—I am not sure if you are talking about the migrant protection protocol. But in that case—

Ms. BARRAGÁN. Any asylum seeker who comes to a port of entry, you—you basically have just said—

Secretary NIELSEN. They are allowed to make their claim.

Ms. BARRAGÁN. OK. Well, let me tell you, Madam Secretary, either you are lying to this committee or you don't know what is happening at the border. I have been there first-hand, and I have seen it twice. More recently, it just happened on Saturday, when I happened to be crossing the border with my mother. I heard a gentleman say, I am from Honduras. I want to apply for asylum. He was already at the turnstile, at the PedWest entry.

The agent said, Sir, unless you have a visa, you need to leave. You need to go away. They didn't say what you just said people do. They didn't say, Here is where you go get on a list. They didn't say,

Here is the information where you go get access to counsel. As a matter of fact, I pulled out my phone, I started to record. You know what? I was asked to stop recording.

Why? Because they don't want the American people knowing what is happening at that Southern Border. Madam Secretary, I don't know if you know what is happening, or if this is happening without you knowing, but it is totally unacceptable. As a Member of this committee, you are darn right I am going to hold this—you accountable for knowing what is happening at the border.

Do you know—do you know that two Members of Congress had to sleep overnight and spent 14 hours in the cold, on the concrete, at the Otay Mesa point of entry so that Maria, the woman who was tear-gassed at the port of entry, would be allowed to present herself because she was on U.S. soil and legally that is what asylum allows? Did you know that?

Secretary NIELSEN. Ma'am, what I know is I would ask you—

Ms. BARRAGÁN. Yes or no, did you know that two Members of Congress had to do that?

Secretary NIELSEN. I know that we have a process, as I—

Ms. BARRAGÁN. OK, you obviously don't know. But see, this is what I am saying. You don't know these things. Two Members of Congress. Does it take two Members of Congress to be there to witness somebody presenting themselves for asylum at the port of entry? That is not what the law says. Are you familiar with the asylum laws, Madam Secretary?

Secretary NIELSEN. Yes.

Ms. BARRAGÁN. Where in the asylum law does it say that when you present yourself at a port of entry—and by the way, when you are on U.S. soil, that you can be sent by another agent to another port of entry? Is it anywhere in the asylum law?

Secretary NIELSEN. What we are trying to do is—

Ms. BARRAGÁN. It is not in there. I know—it is a yes or no. It is not in there.

Secretary NIELSEN. What we are—

Ms. BARRAGÁN. Because what you all are doing is not within the confines of the law. You talk about a list. Under what authority is there, in U.S. law, that a list could be started to have people wait in Mexico? Do you have that authority?

Secretary NIELSEN. Yes, ma'am.

Ms. BARRAGÁN. What is—under the—what authority?

Secretary NIELSEN. The authority is to do all that we can to protect the migrants coming here. It says—

Ms. BARRAGÁN. OK, well that is not what—that is not what the asylum law says—

Secretary NIELSEN. Asylum law says—

Ms. BARRAGÁN. I would ask, can you produce—can you produce every single list at the port of entry that is under U.S.—

Secretary NIELSEN. I do not—we do not have the list, to be clear. The list is in Mexico.

Ms. BARRAGÁN. So you have the authority to do a list but you don't have access to a list? You don't control that list?

Secretary NIELSEN. What I mean by the list, ma'am, is that we—

Ms. BARRAGÁN. So you are basically farming this out to the Mexican authorities—

Secretary NIELSEN. Would you like me to answer any of your questions, Congresswoman—

Ms. BARRAGÁN. Well, you don't have answers. You—

Secretary NIELSEN. But how do you know? Because you are not giving me the opportunity—

Ms. BARRAGÁN. Because these are simply yes or no questions.

Secretary NIELSEN. It is—

Ms. BARRAGÁN. It is authority—there is this law, this is what it is under, and you haven't done that. The very last thing I want to say because my time is up is you said that you wanted to give direction on how to implement the zero tolerance policy because you wanted to do it with compassion. Do you know how outrageous that sounds? You wanted to separate children and families and you wanted to do it with compassion? So in the mean time, you didn't do anything at all and you let kids be separated without tracking them.

Do you know how outrageous that is, Madam Secretary? You have no feeling, no compassion, no empathy here.

Chairman THOMPSON. Gentledady's time has expired—

Ms. BARRAGÁN. I yield back.

Chairman THOMPSON. Thank you.

Chair now recognizes the gentleman from Texas, Mr. Crenshaw.

Mr. CRENSHAW. Thank you, Mr. Chairman. Thank you, Madam Secretary, for being here and helping us answer the fundamental question of whether we care about our sovereignty and the rule of law in our country. Unfortunately, the now cynical view that I am not so sure we all agree on that, that we all value the rule of law and value the ability to manage our border effectively.

A lot of questions have come up about the humanity of our policies, as they should. There is some rightful anger about family separation. But unfortunately, it is myopic because nobody ever talks about the other issues that we might have when it comes to our humanity.

There was a young woman in my office yesterday, she is from Mexico, she is about 18 years old. She was taken across the border, kidnapped about 5 years ago, on the third attempt, because they were turned back twice by Border Patrol. The third attempt, they made it through and she was brought to New York City where she was raped approximately 30 times a day for 5 years. I don't know why nobody talks about that kind of stuff.

When I was at the border in McAllen, in 1 day, in 1 location, 16 kids came across with adults that didn't—that were not their parents. Further questioning and follow-through led to a stash house of 54 people kidnapped inside in Houston. Nobody talks about that humanity.

Those are direct results of the fact that our asylum laws are taken advantage of, those are direct results of the fact that that woman in my office was allowed to walk straight across the border, nobody stopped her, there is no wall, nothing, would have been turned back otherwise and not been in New York City to suffer the absolute nightmare that she did.



Then we get to the question of whether walls work and this has been a really fun conversation over the last couple months. Do walls work? Madam Secretary, would you agree that there is 3 parts to security—personnel, technology, and barriers?

Secretary NIELSEN. Absolutely.

Mr. CRENSHAW. Can you just take one of those away?

Secretary NIELSEN. No, sir.

Mr. CRENSHAW. When I was down at McAllen and Brownsville, what we see is Brownsville has about 35 miles worth of barriers, and as a result, only 6 percent of the crossings in that sector take place because walls work. Would you agree with that?

Secretary NIELSEN. Walls work, yes, sir, as evidenced.

Mr. CRENSHAW. McAllen, about a thousand people were crossing in—on some days, because they don't have the infrastructure. Would you agree that the biggest difference between the McAllen corridor and the Brownsville corridor would be the physical barriers?

Secretary NIELSEN. The wall system, yes, sir.

Mr. CRENSHAW. Been a lot of red herrings that have been thrown out there to argue these points. Drugs like fentanyl come through ports of entry, yes, we know. You would agree with that, right?

Secretary NIELSEN. Yes.

Mr. CRENSHAW. Does that have anything to do with the conversation about whether we need barriers between ports of entry?

Secretary NIELSEN. It does not, because it is not an either/or.

Mr. CRENSHAW. There is a—there is always the conversation about we just need more technology, because then the border agents can just chase people around, as we see—because we can sense them coming through.

Is that the only solution, or do you need that plus barriers plus personnel?

Secretary NIELSEN. No, we need all three. We also need the ability to detain and remove when there is no legal right to stay.

Mr. CRENSHAW. There is the point often made that the border crossings are the lowest in years—we had about 400,000 last year, although that is quickly on the rise of—as you have noted, 76,000 just this last month. The point is often made that because it is lower than in the year 2000 that there is no crisis.

Is that accurate? Is 400,000 a year a low number?

Secretary NIELSEN. Sir, it is not, but again, if I could, respectfully, it is because of the flow, it is because these are families, it is because these are children, that is why it is a crisis. It is a terrible, horrific journey that they undertake.

Mr. CRENSHAW. Let's get to that. As these arguments are made against points that, frankly, we are not even making, you mention the children and why that is the nexus of this crisis.

Why does that happen? Is it because of our asylum laws? Is it because of the fact that if you bring a child across the border, well—and I think, as you mentioned this before, if you bring a child with you, it is your ticket into the United States, all you have to do is claim asylum.

Would you agree that our asylum process is completely taken advantage of?

Secretary NIELSEN. Yes, sir.

Mr. CRENSHAW. Would you agree that if we were to put more resources at ports of entry so that we could humanely bring people in and hear their asylum case but not let them loose into the country, would that dramatically reduce these illegal crossings, as well? Would that be part of the solution, as well, to reform the actual asylum process?

Secretary NIELSEN. Yes.

Mr. CRENSHAW. Are there any other issues in the last 20 seconds I have that—that you want to mention or follow up on?

Secretary NIELSEN. I appreciate that. I would just say that my heart breaks for the system that we have. It does not allow us to help vulnerable populations as soon in their journey as we need to help them.

There is nothing humane about a system that contemplates what we see today, that contemplates 60,000 children coming across the border unaccompanied, that contemplates the rape and abuse, the trafficking, the child exploitation, the 70,000 Americans who died last year from drugs.

I am extraordinarily compassionate in my job, which is why I am asking Congress to work with me to change the laws so that we can have a safe and orderly flow, so we can take care of those who need asylum, so that we can take care of the vulnerable populations who believe they have no options in their country.

That is why I spend so much time in the Northern Triangle, to help them build resilience and stability. Apologies, but thank you for the time, I just wanted to clarify.

Mr. CRENSHAW. Thank you, I yield.

Mr. CORREA [presiding]. Thank you. Ms. Nielsen, before I move to Mr. Rose, just very quickly, any thoughts on a matrix to measure the efficiency of all these taxpayer-invested dollars? Does the wall work? How efficient is that versus, you know, investing, for example, in a fusion center in the Northern Triangle?

Any thoughts? Are we putting one together, these matrix and how these investments work?

Secretary NIELSEN. Yes, sir. A lot of it is covered in the border security improvement plan, but we are happy to come brief you in detail on anything you would like us to come—

Mr. CORREA. Love to have a detailed deep dive on these matrices on the efficiency. Now, Mr. Rose, if I can, please?

Mr. ROSE. Thank you, Chairman. Madam Secretary, it is good to see you again and, you know, I want to start off, first of all, I don't doubt your love of this country and I understand that you are serving it. That is not what this is about.

But what this is about here is solving problems and saving lives and upholding our values. My district, Staten Island and South Brooklyn, has lost an ungodly number of people to the opioid epidemic. My district has lost an ungodly number of people to terrorist attacks.

So as we look at the facts, I want to make sure that we are operating on the same plane here. First of all, is it true that your data—your own Department's data shows that the vast majority of drugs coming through the border—heroin, methamphetamine, fentanyl—are found at ports of entry?

Secretary NIELSEN. Where we can detect it, yes, sir.

Mr. ROSE. In most cases, it is over 80 percent?

Secretary NIELSEN. Right, but I just want to clarify we don't know what is coming between—

Mr. ROSE. Well so—so that—that is what I wanted to get into next. So now you could easily say in response to that that is true, but that is just what we are measuring.

Do you have any sense then of across the entire border, across our entire—the entire country, hypothetically, theoretically, based off your simulations, what percentage of our drugs is coming in from ports of entry or any other sources? What is the breakdown?

Secretary NIELSEN. The breakdown—and I am happy to show you the—the modeling, we would love to come in and chat more. What I can tell you is the instances of interdiction of illicit drugs has gone up across the board.

So it has gone up at the ports of entry thanks to new technology, but it has also unfortunately gone up between ports of entry. When you try to compare the two, the majority of the drugs continues to come through the ports of entry, but we are seeing the amount increase between the ports of entry.

Mr. ROSE. So the vast majority are still coming in through the ports of entry based off these models?

Secretary NIELSEN. Yes, and thank you for the NII equipment.

Mr. ROSE. Yes, so then what my question is, is what are your priorities based off that model? Please—please, for the respect of all of our intelligence, because I am doing my best to respect yours and your service—what are your priorities based off that model to address fentanyl streaming into our country and killing our kids?

Secretary NIELSEN. So what we do, we look at it from a risk-based perspective of today's threats, but we also have to anticipate where the flows go tomorrow, which is why between the ports is concerning. But as you know, we also look at the mail, so we have also used the authorities that we have to work to identify the fentanyl coming from China.

We are working with China on—they have agreed to make illegal some of the precursors to fentanyl, so we are working there. We have border enforcement security teams throughout the Nation, where we work with State and locals on investigations to really get at the cartels and the trafficking within the country.

Then we work at the source through the National Targeting Center with our international partners to ensure as much as we can—

Mr. ROSE. But what I—what I did ask—and again, I am trying not to be adversarial here—is in terms of, based off this model and the fact that you are dealing with limited or not zero sum amount of funds, your priorities, as my understanding, are mail, ports of entry.

I did not hear you say, though, that my priority to prevent the children in Staten Island and throughout this country from dying from overdoses is the border, is the border wall. So I want to understand here, because that is what we have declared a state of emergency around. That is what declared it around.

So I want to understand how many less children will be dying because of this border wall. I do not understand the math or the science or the planning behind this. That is my issue. I do not un-

derstand how this leads to any positive effect on the opioid epidemic, to any positive effect in terms of our efforts at counterterrorism. What models are this based off of?

Secretary NIELSEN. We are happy to come share with you in detail, sir, but in general, the impedance and denial prevents that smuggling through that part of the border where we have physical barrier. So the criminal then has a choice. They can try to smuggle through the ports of entry where we are also increasing technology, or they go and find another part of the border that is unsecured.

Mr. ROSE. So you think that our current stance with this additional investment at ports of entry is satisfactory at this point?

Secretary NIELSEN. No, sir. I think it helps us at the ports of entry, but what we see is the increase of interdiction of drugs between ports of entry.

Mr. ROSE. How much more money do you need at our ports of entry?

Secretary NIELSEN. Right now we have this wonderful influx to get NII machines. So I would love to get back to you. We are going to see how much more that improves our ability to interdict.

Mr. ROSE. Thank you.

Mr. CORREA. Thank you, Mr. Rose.

If I can call now on Mr. Green, State of Texas?

Mr. GREEN of Texas. Thank you.

Madam Secretary, what happened to give me your tired, your poor, your huddled masses yearning to breathe free, the wretched refuse of your teeming shore, send these, the homeless, the tempest-tossed to me, I lift my lamp beside the golden door? What happened?

Madam Secretary, asylees are not illegals. Madam Secretary, do you know the number of people who came through Ellis Island?

Secretary NIELSEN. No, sir, not—

Mr. GREEN of Texas. I do. Twelve million. Do you know where they came from?

Secretary NIELSEN. All over the world.

Mr. GREEN of Texas. I do. Germany, Ireland, Britain, Scandinavian countries, Southern and Eastern Europe. They were not illegals. There was no flotilla in New York Harbor to prevent them from coming to Ellis Island. There was no family separation at Ellis Island.

Past administrations have, when asylees were trying to get to this country, found ways to accommodate asylees. They didn't build walls. When the Cubans were fleeing Castro, we created wet foot, dry foot. One foot on dry land and you could walk on in to a pathway to citizenship.

Madam Secretary, you know who Scarface is?

Secretary NIELSEN. I am sorry—

Mr. GREEN of Texas. I will tell you. Al Capone, the son of Italian immigrants. Not all of those people who came through Ellis Island were saints. Scarface was a bootlegger, dealt in prostitution, gambling, one of the greatest criminals this country has ever suffered. The son of immigrants, it is unfortunate. I would never want a Scarface in our country, I don't want MS-13 in our country, but I also don't want to see a wall as a solution to a humanitarian crisis.

Madam Secretary, these Border Patrol agents are also victims. The children, but the agents are victims, too, because they are required to enforce a corrupt policy, a policy that separates babies from their mothers, places them in cages.

I was at the border, I saw those babies locked up on top of each other. We would not treat animals, the Humane Society wouldn't allow it, the way those babies were treated. Madam Secretary, they are victims.

You have all of these vacancies in part because a good many people don't want to be a part of that kind of circumstance. They are victims, too. The children are victims, and the people who are forced to do what they are doing to these babies are victims, too.

Madam Secretary, here is the problem. We have surpassed our color quota. There are those who believe that we already have too many people of color in this country. And these, one of whom happens to be the President of the United States of America, would institute policies that would prevent people of color from coming to this country.

White babies would not be treated the way these babies of color are being treated, Madam Secretary. This is about color. We have opened our doors. Your tired, your poor, huddled masses yearning to breathe free, except we now have our quota of people of color. I yield back the balance of my time.

Secretary NIELSEN. Sir, if I could just respond to a couple of things. We do—

Mr. GREEN of Texas. Mr. Chairman, if she responds, I would like to have the opportunity to respond to her response.

Chairman THOMPSON [presiding]. Well, the gentleman made statements. He really didn't ask any questions, so in interest of time we will—

Secretary NIELSEN. But—OK.

Chairman THOMPSON. We will go to the gentleman from Kansas City, Mr. Cleaver.

Mr. CLEAVER. Thank you, Mr. Chairman.

Thank you, Madam Secretary, for being here today. I am conflicted. In seminary, we were required to study Robert Frost and Dr. John Swomley, a legendary author and theologian, forced us to study all the writings of Robert Frost.

One of them is called Mending Wall, which you may be familiar with. One of his most famous—he wrote it in 1914, just outside of Boston. When you have to dissect that, what did Robert Frost mean in the opening line, which says, and I quote, "Something there is that does not love a wall." Something there is that does not love a wall, Robert Frost, 1914.

So you dissect it, Frost is saying nature—shorten this—nature or God does not love a wall. We can speak euphemistically, metaphorically that walls don't make good neighbors. Walls make long-term enemies.

I may be wrong about everything. You know, I have studied seminary through college and then spent 3½ years in seminary. So, we started this whole issue. I mean, if you look at the Great Wall of China, do you have any idea how many times China has been invaded since they built the wall?

Secretary NIELSEN. No, sir.

Mr. CLEAVER. I mean, you wouldn't know that. I am not trying—so I am not—it is not—most historians would say a lot, because there is no—we—I mean, we can't even figure out—historians can't figure out how many times they have been invaded.

Started building on it 200 B.C., primarily to keep the Hans out, the aliens, I guess we would call them today. As you know, that didn't help. It went all the way through the Ming Dynasty.

What I am trying to come to the conclusion for of my question is, do you see anything wrong with the United States of America, the most powerful nation that God has allowed to exist, building a wall?

Secretary NIELSEN. Sir, the idea in part of the wall is actually to ensure safe and orderly flow, which actually protects those traveling. When they come through the desert or they come through more remote areas, they put themselves at risk and they almost always do that by paying a smuggler who then further preys upon them.

So the idea of a barrier is a safe and orderly flow so that migrants who choose to come here come through a legal port of entry where they can be cared for. That is where the resources are, that is where we can provide them the best medical care, and that is where we can most quickly process their claim.

Mr. CLEAVER. Thank you. The busiest and the longest land border in the world is what?

Secretary NIELSEN. I would say it is ours.

Mr. CLEAVER. The busiest and the largest, the longest land border in the world is between the United States and Canada.

Secretary NIELSEN. But that is not the busiest, sir, but it is the longer—though it is the longer border, yes.

Mr. CLEAVER. We might have to have an argument about the busiest based on—I don't want to get into the trade amounts coming across the border from Canada, but it is 5,525 miles, and we have a lot of illegal people coming across the border, particularly between Vermont and Quebec, and the going fee is about \$4,000 to bring people across the border.

It just—and the numbers coming across—I am sure you know this—are increasing. So, my final question—I have 12 seconds—would you be OK with building a wall to separate the United States and Canada?

Secretary NIELSEN. So we do everything by risk, as you know, sir. Right now, the risk is not such that it would necessitate physical barriers, but we do very closely work with the Canadians to ensure safe and orderly flow.

What we do is we continue to analyze that daily to ensure that we do have mechanisms to provide security to both countries and to those traveling populations.

Mr. CLEAVER. My time is up. Thank you.

Chairman THOMPSON. Thank you very much. Chair now recognizes the gentlelady from Florida, Mrs. Demings.

Mrs. DEMINGS. Thank you so much, Mr. Chairman.

Secretary Nielsen, thank you for being with us today—I apologize for being a little late, so you may have already answered this question, but let me just ask you, do you agree with the President declaring a state of emergency at the border?

Secretary NIELSEN. I do believe it is an emergency.

Mrs. DEMINGS. Do you think that same system or process could use to address mass shootings in America to make sure that we have the resources that we need to deal with mass shootings?

Secretary NIELSEN. I would have to refer, of course, to the—I am not—

Mrs. DEMINGS. Give me your personal opinions and views. Since you do deal with the security of our Nation, what do you feel about declaring a state of emergency as it pertains to mass shootings in this country since countless numbers of people die right before our very eyes on a regular basis?

Secretary NIELSEN. We need to do a lot more. That is a particular authority that the President has, but in general is it an emergency that we need to address? Yes.

Mrs. DEMINGS. So do you think that declaring a state of emergency as it pertains to mass shootings in this country would be a process that the President should consider?

Secretary NIELSEN. Again, I can't speak to his particular authority there, but what I can say is what we are doing at DHS, happy to tell you now or later.

Mrs. DEMINGS. How many Customs and Border Patrol officers or agents have you had to die in the line of duty during your tenure?

Secretary NIELSEN. We have had—I have the numbers here. I can look them up, but it is about, you know, 15 to 20. I am sorry—

Mrs. DEMINGS. I would just ask you, Secretary—

Secretary NIELSEN. Not in the line of duty. Not in the line of duty. We have had—

Mrs. DEMINGS. OK, how many in the line of duty at this—

Secretary NIELSEN. Zero.

Mrs. DEMINGS. Border—

Secretary NIELSEN. Zero.

Mrs. DEMINGS. Where there is a crisis?

Secretary NIELSEN. Zero.

Mrs. DEMINGS. Zero have died in the—

Secretary NIELSEN. In this last year.

Mrs. DEMINGS. How many Customs and Border Patrol officers or agents would you say have been seriously injured in the line of duty at the border, the Southwest Border in particular, during your tenure?

Secretary NIELSEN. So we could get you those figures. We have at least 60 instances of rockings and the assaults have gone up 40 percent.

Mrs. DEMINGS. OK, I remember a city near Orlando where there was 1 murder in January and 1 murder in December and they reported that murder rate had gone up 100 percent. So you are not—you don't know in terms of serious injury, how many officers or agents have been seriously injured during your tenure?

Secretary NIELSEN. Happy to get you that information.

Mrs. DEMINGS. At this crisis at the border? OK, change of direction for just a minute. Secretary Nielsen, you know that the Fifth Amendment requires that private property owners must receive just compensation for property seized under eminent domain. Is that correct?

Secretary NIELSEN. Yes.

Mrs. DEMINGS. OK, in some cases, the Federal Government can assume ownership of private property before compensation has been adjudicated and before a land owner has received payment for their land. Now, we can certainly debate whether seizing of land from private property owners is the right thing to do or not.

We know that some property owners in Texas whose land may be seized, they had deeds predating State-hood in Texas, but I would like to focus on just compensation. Determining just compensation seems to be a challenge for the Department.

There have been reports about the discrepancies between those who are represented by—have legal representation versus those who don't and what the Department feels the land value is versus other sources. How does the Federal Government determine just compensation for land seized at the Southwest Border?

Secretary NIELSEN. It is usually based on the market rate, the amount of acreage and then, of course, a variety of other factors, including the terrain of the land and what it could otherwise be used for.

Mrs. DEMINGS. *USA Today* has reported that some landowners were offered less than \$100, while the market value was up to 120 times greater. You said that they used fair market value to determine that?

Secretary NIELSEN. The general market value, yes.

Mrs. DEMINGS. OK. So do you have any explanation at all for the discrepancies?

Secretary NIELSEN. I am happy to look further into it and come and talk to you about it.

Mrs. DEMINGS. What Federal resources exist to help landowners, who are the mercy of the Federal Government, negotiate just compensation for their land?

Secretary NIELSEN. To my knowledge, the United States does not have the ability to pay for counsel for them. But, of course, it usually takes 12 to 16 months for this process to complete. So, during that time, we work very closely both with the area—the courts, if they are involved, and the landowner.

Mrs. DEMINGS. Looking at the area on the border where the President seems determined to build a wall, regardless of the necessity to do that, how many land owners would be affected?

Secretary NIELSEN. I don't have a particular number, ma'am. As you know and as you described, some of the parcels, it is very difficult to determine who owns them. We have, actually, people looking through microfiche to ensure that we do our very best to identify owners of particular parcels of land.

Mrs. DEMINGS. Secretary Nielsen, I am out of time, but we certainly have a lot more to discuss on this issue. I will yield back. Thank you and thank you, Mr. Chairman.

Chairman THOMPSON. Thank you very much.

I thank the witness for her testimony and the Members for their questions. I ask unanimous consent to enter statements into the record from organizations regarding asylum seekers, families and children in DHS's custody, and other border security issues. Without objection.

[The information follows:]



## STATEMENT OF AMNESTY INTERNATIONAL

MARCH 5, 2019

On behalf of Amnesty International<sup>1</sup> and our more than 2 million members and supporters in the United States, we hereby submit this statement for the record.

Amnesty International is an international human rights organization with national and regional offices in more than 70 countries, including in the United States and Mexico. One of Amnesty International's top global priorities for the past several years has been protecting the human rights of refugees and asylum seekers around the world, including those who arrive to the U.S. border in search of safety. Amnesty welcomes this oversight effort by the Committee on Homeland Security of the policies and practices of the Department of Homeland Security (DHS) related to the U.S. border.

Through extensive research and documentation, Amnesty International has concluded that the Department of Homeland Security, under the leadership of Secretary Kirstjen Nielsen, has engaged in an all-out assault on the right to seek asylum at the U.S. border. DHS has undermined the the right to asylum by: (1) Turning back asylum seekers who attempt to seek asylum at ports of entry (as they are authorized to do under domestic and international law); (2) separating parents and children to deter families who attempt to come to the United States in search of safety; and (3) detaining record numbers of asylum seekers, including children, who face abuse and ill treatment at the hands of DHS officials.

## WHO IS SEEKING ASYLUM AT THE U.S. BORDER?

Though members of the current administration, including Secretary Nielsen, have portrayed individuals seeking protection at the border in alienating terms, the vast majority of these individuals are fleeing record levels of insecurity, instability, and repression in their home countries. They are survivors of violence, not perpetrators of it.

Amnesty International has documented that this violence, which occurs against a backdrop of generalized impunity and lack of government protection, drives people to leave Honduras, Guatemala, and El Salvador—collectively, the most common countries of origin of asylum seekers at the U.S. Southern Border.<sup>2</sup> In this environment of violence and insecurity, nationals of these countries face numerous particularized risks, including forced recruitment of children and adolescents, extortion, death threats, and even murder at the hands of the maras, or powerful criminal groups acting as quasi-state authorities, exercising territorial control in various parts of these countries.<sup>3</sup> Sexual violence, especially against women and members of the LGBTI community, is endemic.<sup>4</sup>

Over the past 5 years, in response to these risks, the number of asylum claims from these 3 countries of origin around the world have increased. As Customs and Border Protection (CBP)'s own apprehension data shows, in January 2019 alone, over 60 percent of individuals apprehended at the border, and nearly half of all individuals seeking admission at ports of entry, were family units and unaccompanied children.<sup>5</sup>

While Secretary Nielsen has dismissed the human right to seek asylum as an inconvenient "loophole,"<sup>6</sup> it is in fact a bedrock principle of international and domestic law. Under the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol (the latter of which the United States has signed and incorporated into do-

<sup>1</sup>Amnesty International was awarded the Nobel Peace Prize in 1977.

<sup>2</sup>Amnesty International, "Americas: Stuck at the Door," Nov. 2018, available at: <https://www.amnesty.org/download/Documents/AMR0194472018ENGLISH.PDF>, at 4.

<sup>3</sup>Id.

<sup>4</sup>Amnesty International, "No Safe Place: Salvadorans, Guatemalans, and Hondurans Seeking Asylum Based on their Sexual Orientation and Gender Identity," Nov. 2017, available at: <https://www.amnestyusa.org/wp-content/uploads/2017/11/No-Safe-Place-Briefing-ENG-1.pdf>; Kids in Need of Defense, Latin America Working Group, and the Women's Refugee Commission, "Sexual and Gender Based Violence & Migration," May 2018, <https://supportkind.org/wp-content/uploads/2018/05/SGBV-Fact-sheet.-April-2018.pdf>.

<sup>5</sup>See Customs and Border Protection, "FY19 Southwest Border Statistics," available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration>.

<sup>6</sup>"Transcript: Homeland Security Secretary Kirstjen Nielsen's Full Interview With NPR," May 11, 2018, available at: <http://www.wlrn.org/post/transcript-homeland-security-secretary-kirstjen-nielsens-full-interview-npr>.

mestic law through the 1980 Refugee Act),<sup>7</sup> governments have the obligation not to forcibly return individuals to a place where they would fear harm—not just their countries of origin, but any other place where a person would have reason to fear for their lives.<sup>8</sup> To ensure this obligation is met, Congress has codified the right to seek asylum both at and between ports of entry in domestic law,<sup>9</sup> and it has specifically mandated that U.S. authorities refer individuals who express a fear of return at the border to a “credible fear” process to assess their asylum claims.<sup>10</sup>

PUSHBACKS, METERING, AND “REMAIN IN MEXICO”: HOW DHS IS ILLEGALLY TURNING BACK ASYLUM SEEKERS AT THE U.S.-MEXICO BORDER

Though the number of border crossers are at historic lows, DHS has institutionalized a practice of restricting access to territory for asylum seekers, forcing them to wait in Mexico at grave personal risk, with the goal that they will be dissuaded from seeking protection. These measures range from the informal practice of artificially lowering, or “metering,” the number of asylum applicants allowed to access U.S. territory per day to the formally-announced Migrant Protection Protocols, popularly known as the “Remain in Mexico” policy. They collectively reflect how DHS has illegally restricted the right to seek asylum at the U.S. border, circumventing Congressional intent in the process.

In May 2018, Secretary Nielsen confirmed that DHS was “metering,” or limiting, the number of asylum seekers allowed to enter U.S. territory,<sup>11</sup> stationing CBP officials at bridges leading to ports of entry to turn back asylum seekers.<sup>12</sup> Before 2017, when the practice intensified, asylum seekers who approached U.S. officials at ports of entry to express a fear of return and need for protection could typically access U.S. territory and an asylum procedure, as Congress has required. Now, CBP officials are instead pushing them back to Mexico, where their names are placed on a series of ad hoc waiting lists at ports of entry managed variously by Mexican authorities, NGO groups, and even fellow asylum seekers; at some ports of entry, there are two, competing lists, creating an environment ripe for abuse.<sup>13</sup> Depending on the number of people on the list, asylum seekers are forced to wait for weeks to months in this state of limbo.<sup>14</sup> While no official statistics on the number of people CBP officials have illegally pushed back in this manner are available, Amnesty International has documented that this practice has affected thousands of asylum seekers, including families with children.<sup>15</sup>

In December 2018, DHS announced that it would be implementing a policy popularly known as “Remain in Mexico,” which it has misleadingly labeled as the “Migrant Protection Protocols.”<sup>16</sup> Under the program, certain individuals seeking asylum at the border are forced to stay in Mexico at great risk to their personal safety for the duration of their proceedings, which can take months or even years. In the early days of its implementation in January and February 2019, the “Remain in Mexico” policy has already implicated vulnerable individuals in its sweep, including families with children and LGBTI-identifying individuals,<sup>17</sup> and DHS has announced plans to expand the program, including to individuals who are apprehended between ports of entry.<sup>18</sup>

<sup>7</sup>Convention and Protocol Relating to the Status of Refugees, available at: <https://www.unhcr.org/3b66c2aa10>.

<sup>8</sup>Amnesty International, “You Don’t Have Any Rights Here: Illegal Pushbacks, Arbitrary Detention & Ill-Treatment of Asylum-Seekers in the United States,” Oct. 2018, available at: <https://www.amnesty.org/download/Documents/AMR5191012018ENGLISH.PDF> [hereinafter “You Don’t Have Any Rights Here”].

<sup>9</sup>8 U.S.C. sec. 1158(a).

<sup>10</sup>8 U.S.C. sec. 1225(b).

<sup>11</sup>Id. at 11 (quoting DHS Secretary interview on Fox News, 15 May 2018).

<sup>12</sup>DHS Office of the Inspector General, “Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy,” Sept. 27, 2018, available at: <https://www.oig.dhs.gov/sites/default/files/assets/2018-10/OIG-18-84-Sep18.pdf>, at 5–7.

<sup>13</sup>Strauss Center, “Asylum Processing and Waitlists at the U.S.-Mexico Border,” [https://www.strausscenter.org/images/MSI/AsylumReport\\_MSI.pdf](https://www.strausscenter.org/images/MSI/AsylumReport_MSI.pdf), at 5.

<sup>14</sup>Id. at 6.

<sup>15</sup>“You Don’t Have Any Rights Here,” at 17.

<sup>16</sup>“Migrant Protection Protocols,” Jan. 24, 2019, available at: <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

<sup>17</sup>See Human Rights First, “A Sordid Scheme: The Trump Administration’s Illegal Return of Asylum-Seekers to Mexico,” 13 Feb. 2019, <https://www.humanrightsfirst.org/resource/sordid-scheme-trump-administration-s-illegal-return-asylum-seekers-mexico>.

<sup>18</sup>Dara Lind, “Remain in Mexico: Trump’s quietly expanding crackdown on asylum seekers, explained,” VOX, March 5, 2019, <https://www.vox.com/2019/3/5/18244995/migrant-protection-protocols-border-asylum-trump-mexico>.

The practice of pushing back asylum seekers through metering or the “Remain in Mexico” policy, either to await their ability to articulate a fear of return in a credible or reasonable fear interview or the outcome of their asylum case, violates international and domestic law, is practically unjustified, and comes at significant human cost.

As explained above, the U.S. Government—in this case, DHS—has a statutory obligation to receive asylum seekers’ claims, thereby ensuring the U.S. Government does not run afoul of its obligation to refrain from forcibly returning individuals to harm.<sup>19</sup> Even the statutory provision supposedly authorizing the “Remain in Mexico” initiative explicitly excepts individuals in expedited removal proceedings, a category which covers most individuals who apply for asylum at the border.<sup>20</sup> Even at the outermost perimeter of the border, the turning away of asylum seekers clearly violates the Government’s obligations under international law.<sup>21</sup>

Secretary Nielsen’s attempts to justify these practices by citing “capacity constraints” are belied by reality. Border crossings are at all-time historic lows,<sup>22</sup> while the number of CBP officials is now at a historic high of nearly 60,000 agents,<sup>23</sup> with funding for an additional 600 CBP officials appropriated just last month.<sup>24</sup> This represents more than double the CBP personnel since DHS’s creation in 2003, when border crossings were 3 times as high as they are now.<sup>25</sup>

Furthermore, though ports of entry along the border have vastly differing capacities to detain and process individuals, metering and pushbacks have been universally implemented at all of them. Senior CBP and ICE officials at the San Ysidro port of entry, which is the busiest land border in the Western hemisphere, informed Amnesty International in 2018 that CBP has only reached its detention capacity a couple of times per year.<sup>26</sup> Yet in 2017 and 2018, CBP personnel frequently turned away even small numbers of asylum seekers at San Ysidro and other ports of entry, without explaining why.<sup>27</sup>

Finally, and most importantly, though terms like “metering” place a clinical, anodyne gloss on the practice, make no mistake: This is a dangerous policy that places asylum seekers directly in harm’s way. In April and May 2018, Amnesty International documented first-hand the negative consequences of CBP’s refusal to receive asylum seekers’ requests for protection after interviewing asylum seekers who had been pushed back. In one shelter in Tijuana, a transgender Guatemalan woman named Maritza recounted being turned away from San Ysidro when attempting to seek asylum; upon return to Tijuana, she was detained and beaten by local police.<sup>28</sup> Shortly afterward, a group of 6 armed men attacked a Tijuana shelter where 11 LGBTI asylum seekers had been staying, yelling homophobic slurs and threatening to kill them if they did not leave the neighborhood. Though the group approached CBP officials to request asylum and convey the threats they’d suffered, the officials maintained that they still had no “capacity” to process the asylum seekers.<sup>29</sup> In February 2019, 2 Honduran teenagers—both still children—were killed near the youth migrant shelter where they were staying while they waited to apply for asylum.<sup>30</sup>

Amnesty International has previously documented the many risks asylum seekers face in Mexico: Following a comprehensive survey, we concluded that nearly 40 percent of individuals surveyed who were detained by Mexican immigration authorities had been unlawfully returned to harm’s way, and 75 percent of those surveyed were

<sup>19</sup> See 8 U.S.C. sec. 1158(a); 8 U.S.C. sec. 1225(b).

<sup>20</sup> See Hillel R. Smith, “Expedited Removal of Aliens: Legal Framework,” CONGRESSIONAL RESEARCH SERVICE, Sept. 19, 2018, <https://fas.org/sgp/crs/homesecc/R45314.pdf>.

<sup>21</sup> See “You Don’t Have Any Rights Here,” at 17.

<sup>22</sup> Linda Qiu, “Border Crossings Have Been Declining for Years, Despite Claims of a ‘Crisis of Illegal Immigration,’” N.Y. TIMES, June 20, 2018, <https://www.nytimes.com/2018/06/20/us/politics/fact-check-trump-border-crossings-declining.html>.

<sup>23</sup> See “CBP Snapshot: A Summary of Facts and Figures,” March 2018, <https://www.cbp.gov/sites/default/files/assets/documents/2018-Mar/cbp-snapshot-20180320.pdf>.

<sup>24</sup> See Dept. of Homeland Security Appropriations Act 2019, Title II, available at: <https://www.Congress.gov/bill/116th-congress/house-joint-resolution/31/text>.

<sup>25</sup> See supra note 16.

<sup>26</sup> See “You Don’t Have Any Rights Here,” at 17.

<sup>27</sup> Id.

<sup>28</sup> “You Don’t Have Any Rights Here,” at 23.

<sup>29</sup> Id.

<sup>30</sup> Julia Gavarrette & Heather Gies, “Honduran Teen Fled Gangs Only to be Murdered While at U.S.-Mexico Border,” THE INTERCEPT, Feb. 23, 2019, <https://theintercept.com/2019/02/23/unaccompanied-minor-migrants-us-border-policy/>.

never even informed of their right to seek asylum in Mexico.<sup>31</sup> One individual who Amnesty had spoken with after he was wrongfully deported from Mexico was killed by the very individuals he feared just days later.<sup>32</sup>

FAMILY SEPARATIONS: HOW DHS WEAPONIZED AN ILLEGAL PRACTICE TO DETER AND PUNISH ASYLUM SEEKERS

In April 2018, DHS implemented a campaign of forcible separation of thousands of asylum-seeking families under a so-called “zero tolerance” policy, by which it criminally prosecuted adults crossing between ports of entry (the same adults who, had they tried to approach at ports of entry, would likely have been pushed back thanks to the “metering” policy in place at those ports). Though the administration was ordered to cease separating children from their families in June 2018, months later, DHS continues to regularly separate children from their parents, as well as from other relatives and caretakers.<sup>33</sup> The full scope and scale of family separation is still unknown.

Based on public statements and internal memoranda by U.S. Government officials, there is overwhelming evidence that family separations were intended to deter asylum seekers from requesting protection in the United States as well as to punish and compel those who did seek protection to give up their asylum claims. Numerous media reports document the leveraging of family separations to coerce asylum seekers to give up their claims in exchange for reunification;<sup>34</sup> on one occasion, Amnesty International witnessed first-hand an immigration judge tell a Brazilian grandmother who had been separated from her developmentally disabled grandchild that she could give up her asylum claim and be reunited with him or be deported without him, presumably after the denial of her claim.<sup>35</sup>

An internal DHS memo dating from December 2017, which was made available in January 2019, revealed that the agency conceived of the family separations policy as a means of deterring children and their families from coming to the United States.<sup>36</sup> Contrary to U.S. and international legal obligations, DHS never considered the children’s best interests in its cruel and unlawful family separation policy.

Furthermore, there still has not been a full reckoning of the scale of family separations. Amnesty International’s October 2018 report was the first to document how the number of family separations was far greater than DHS initially disclosed, and could be as high as 8,000 family units, if not more.<sup>37</sup> In January 2019, a report by the Office of the Inspector General of the Department of Health and Human Services revealed that the total number of separated families and children is “unknown.”<sup>38</sup> Though family separations are the subject of an on-going class action lawsuit, many of the affected families do not fall within the definition of the class, and thus DHS has not publicly counted the families not falling within class definition toward the total, though it has suggested that thousands more have been separated than it previously revealed.<sup>39</sup>

<sup>31</sup> Amnesty International, “Overlooked and Under-protected: Mexico’s Deadly Refoulement of Central Americans Seeking Asylum,” Jan. 2018, <https://www.amnestyusa.org/wp-content/uploads/2018/01/AMR4176022018-ENGLISH-05.pdf>, at 5.

<sup>32</sup> *Id.* at 9.

<sup>33</sup> Dara Lind, “Hundreds of Families Are Still Being Separated at the Border,” VOX, Feb. 21, 2019, <https://www.vox.com/2019/2/21/18234767/parents-separated-children-families-border-trump-jails>.

<sup>34</sup> “You Don’t Have Any Rights Here,” at 30 & note 102–103.

<sup>35</sup> “You Don’t Have Any Rights Here,” at 31.

<sup>36</sup> The memo is available here: <https://www.documentcloud.org/documents/5688664-Merkleydocs2.html>.

<sup>37</sup> “You Don’t Have Any Rights Here,” at 42; Amnesty International, “USA: Facts and figures on illegal pushbacks, arbitrary detention and ill treatment of asylum-seekers in the United States,” 22 Oct. 2019, <https://www.amnesty.org/en/latest/news/2018/10/usa-facts-and-figures-of-illegal-pushbacks-arbitrary-detention-and-ill-treatment/>. Part of the ambiguity stems from the fact that the various agencies “count” family units differently—while DHS and the Dep’t of Health and Human Services appear to count a family as a single “family unit,” CBP’s Southwest Border Migration Statistics appear to count “family units” as the total number of individuals in the unit. Compare “Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children” (7 Sept. 2018), available at: <https://www.gpo.gov/fdsys/pkg/FR-2018-09-07/pdf/2018-19052.pdf> (defining “family units” as a group of two or more aliens consisting of a minor or minors accompanied by his/her/their adult parent(s) or legal guardian(s)”) with “Southwest Border Migration Fiscal Year 2019,” available at: <https://www.cbp.gov/newsroom/stats/sw-border-migration> (defining “family units” as the total number of individuals in the units).

<sup>38</sup> Dep’t of Health & Human Services Office of the Inspector General, “Separated Children Placed in Office of Refugee Resettlement Care,” Jan. 2019, available at: <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.pdf>.

<sup>39</sup> *Id.*

Based on its research in 2018, Amnesty International found that the administration's deliberate and punitive practice of forced family separations in some cases constituted torture under both U.S. and international law. To meet the definition of torture, an act must be: (1) Intentional; (2) carried out or condoned by a Government official; (3) inflicting severe pain or suffering, whether physical or mental; and (4) carried out for a specific purpose such as punishment, coercion, intimidation, or for a discriminatory reason.<sup>40</sup> The Trump administration's deliberate policy and practice of forcible family separations satisfies all of these criteria.

In 2018, Amnesty International interviewed 15 adults whom DHS agencies separated from their children both before and after the introduction of the so-called zero-tolerance policy.<sup>41</sup> The separations happened in all 4 U.S. States along the U.S.-Mexico border (California, Arizona, New Mexico, and Texas), at the hands of both CBP and Immigration and Customs Enforcement (ICE) personnel. In all of those cases, prior to being separated, the families had requested asylum and expressed their fear of return to their countries of origin. According to the adults, in none of these cases did DHS personnel explain to the families the reasons for the separations at the time that they happened or allow them to defend their custodial right to family unity. DHS personnel simply separated the families—in some cases through the use or threat of physical force.

Amnesty International interviewed a Brazilian mother, Valquiria, who was separated from her 8-year-old son, Abel, with no explanation given, after the two approached CBP officials at a port of entry to seek asylum. Nearly a year later, Valquiria remains in detention at the El Paso Processing Center; on March 17, it will be 1 year since Valquiria was separated from her son. Abel has stared blankly for months at the door in the house where he lives, waiting for his mother to return.

"They told me, 'You don't have any rights here, and you don't have any rights to stay with your son,'" Valquiria recalled. "For me, I died at that moment. They ripped my heart out of me. It would have been better if I had dropped dead. For me, the world ended at that point. How can a mother not have the right to be with her son?"

#### DETENTION AND ILL-TREATMENT IN CUSTODY AS PUNITIVE MEASURES FOR SEEKING ASYLUM

Even for those asylum seekers who manage to access U.S. asylum proceedings, in recent years, an increasing number of them have been relegated to mandatory and indefinite detention as they fight for the right to be protected. As of January 2019, ICE was detaining close to 50,000 people per day.<sup>42</sup> Many of those detained are asylum seekers.

In January 2017, the administration adopted a policy requiring all asylum seekers to remain in detention for the duration of their proceedings, without parole, effectively punishing them for exercising the right to seek asylum. Although a court in June 2018 declared that individuals who had been found to have a "credible fear" of return to their home countries—and were thus authorized to proceed with their asylum claims—had to receive individualized determinations for parole from detention, the ruling applies only in certain jurisdictions, and a significant number of asylum seekers continue to languish in detention for the duration of their proceedings.<sup>43</sup>

Amnesty International has documented how particularly vulnerable individuals, including transgender asylum seekers, remain in detention for months at a time, where they are unable to access adequate health care and are vulnerable to abuse and ill-treatment while in custody, often after having suffered death threats, exploitation, and sexual violence in their home countries.<sup>44</sup> For example, since May 2018, Amnesty has advocated for the release of Alejandra, a trans woman and transgender rights activist from El Salvador who has been detained since December 2017 in the Cibola County Correctional Center in Milan, New Mexico, where she has been denied parole on three separate occasions despite her rapidly deteriorating

<sup>40</sup> U.N. Convention Against Torture and Other Cruel, Degrading, or Inhuman Treatment or Punishment, art. 1, available at: <https://www.ohchr.org/Documents/ProfessionalInterest/cat.pdf>.

<sup>41</sup> "You Don't Have Any Rights Here," at 36.

<sup>42</sup> Heidi Altman & Mary Small, "Immigration Detention and the DHS Negotiations: An Explainer," National Immigrant Justice Center, Feb. 11, 2019, <https://immigrantjustice.org/staff/blog/immigration-detention-and-dhs-spending-negotiations-explainer>; Detention Watch Network, "ICE's Fiscal Mismanagement: Fraud, Deceit, and Abuse," available at: <https://www.detentionwatchnetwork.org/sites/default/files/ICE%E2%80%99s%20Fiscal%20Mismanagement%20Deceit%20and%20Abuse.pdf>.

<sup>43</sup> "You Don't Have Any Rights Here," at 53.

<sup>44</sup> *Id.* at 54–55.

health.<sup>45</sup> In each of the three denials she has received, no reason is given for Alejandra's continued detention other than a checked box stating that Alejandra—who fled to the United States in 2017 after facing death threats and sexual assaults at the hands of both the Salvadoran military and the maras—is a “flight risk.”

Furthermore, detention creates an environment that is ripe for abuse and ill-treatment: Recent reports reveal troubling allegations of abuse at the hands of ICE officials responsible for the care of asylum seekers in their custody. A 2018 study of sexual abuse allegations made by individuals in ICE custody found that nearly 60 percent of the complaints reviewed involved perpetrators who were ICE officials.<sup>46</sup> In CBP custody, meanwhile, 2 children died over the course of a single month in December 2018, and reports document the verbal, physical, and sexual abuse children have faced at the hands of CBP agents over the past several years.<sup>47</sup>

AMNESTY INTERNATIONAL'S RECOMMENDATIONS

On illegal pushbacks of asylum seekers:

- Exercise greater oversight of DHS to halt the illegal pushback of asylum seekers and to understand the extent of the practice.
- Request regular information about the processing capacities and numbers of individuals turned back at all ports of entry.
- Implement measures clarifying that the purported justification for the “Remain in Mexico” program, Section 235(b)(2)(C) of the Immigration and Nationality Act, is not meant to apply to asylum seekers.
- Demand all information from the Government regarding cross-border negotiations undertaken in conjunction with metering and pushbacks, both practices which appear to require cooperation of Mexican government officials.
- Participate in delegations to ports of entry at the Southwest Border, including to migrant shelters adjacent to the ports of entry, to understand first-hand the impact of metering, pushbacks, and “Remain in Mexico.”
- Decline to continue funding CBP operations absent rigorous external oversight of CBP field operations and U.S. Border Patrol and increase funding specifically for the processing of asylum claims at the Southern Border.

On family separation:

- Pass legislation outlawing the separation of children and families unless clear and specific evidence exists that family unity is not in the child's best interests.
- Continue to exercise oversight of DHS's role in the family separation policy to understand the scope and extent of the policy.

On indefinite detention of asylum seekers:

- Pass legislation to provide for a presumption against detention of asylum seekers and to ensure the right to judicial review and due process in cases of detention.
- Support and fund community-based alternatives to detention, such as the former Family Case Management Program.

For more information, please contact Charanya Krishnaswami[.]

STATEMENT OF THE CENTER FOR VICTIMS OF TORTURE

MARCH 6, 2019

The Center for Victims of Torture (CVT) commends the House Homeland Security Committee for holding an oversight hearing on the Trump administration's border policies, which have contributed to the creation of an actual crisis at the U.S. Southern Border. We appreciate the opportunity to submit this statement for the record.<sup>1</sup>

Founded in 1985 as an independent non-governmental organization, the Center for Victims of Torture is the oldest and largest torture survivor rehabilitation center in the United States and one of the two largest in the world. Through programs operating in the United States, the Middle East, and Africa—involving psychologists, social workers, physical therapists, physicians, psychiatrists, and nurses—CVT annually rebuilds the lives of nearly 25,000 primary and secondary survivors, includ-

<sup>45</sup> Id.

<sup>46</sup> Alice Speri, “Detained, then Violated,” THE INTERCEPT, APR. 11, 2018, <https://theintercept.com/2018/04/11/immigration-detention-sexual-abuse-ice-dhs/>.

<sup>47</sup> Ashley Hackett, “Thousands of Children Have Suffered Abuse at the Hands of U.S. Border Protection Agents,” PACIFIC STANDARD, 25 May 2018, <https://psmag.com/social-justice/thousands-of-children-have-suffered-abuse-at-the-hands-of-us-border-protection-agents>.

<sup>1</sup> For questions or for more information about CVT's work in this area and on related issues, please contact Andrea Carcamo, Senior Policy Counsel at the Center for Victims of Torture[.]

ing children. CVT also conducts research, training, and advocacy, with each of those programs rooted in CVT's healing services. The organization's policy advocacy leverages the expertise of five stakeholder groups: Survivors, clinicians, human rights lawyers, operational/humanitarian aid providers, and foreign policy experts. The vast majority of CVT's clients in the United States are asylum seekers. Indeed, according to the Department of Health and Human Services Office of Refugee Resettlement, research indicates that 44 percent of asylum seekers, asylees, and refugees now living in the United States are torture survivors.<sup>2</sup>

CVT's extensive experience providing mental health services to asylum seekers and refugees in the United States and around the globe uniquely positions us to speak to the adverse effects certain border practices have on the mental health of children and adults fleeing persecution, as well as the United States' dwindling reputation as a global leader in human rights. We focus here on two such practices: The migrant protection protocols and family separation.

#### THE MIGRANT PROTECTION PROTOCOLS ARE PUTTING ASYLUM SEEKERS AT RISK OF FURTHER TRAUMATIZATION

Forcing people seeking safe haven in the United States to remain in Mexico during the pendency of their asylum cases is unnecessary, unsafe, and will exacerbate the pain and suffering the torture and trauma survivors already are experiencing.

According to the head of Mexico's National Migration Institute, Tonatiuh Guillen, Mexico is not prepared to host thousands of asylum seekers for years, or even months.<sup>3</sup> Its government simply is not equipped for the task the United States has imposed on it, especially when it comes to hosting torture and trauma survivors. Border cities are not safe for residents, much less for vulnerable populations, such as survivors of torture fleeing persecution.<sup>4</sup> Many asylum seekers will be at high risk of re-victimization by becoming targets for human trafficking, labor exploitation, rape, and kidnapping. A significant number of survivors of torture from Central America suffer violence at the hands of gangs that have powerful networks extending to Mexico,<sup>5</sup> making the country especially unsafe.

Even putting aside the host of serious dangers to which asylum seekers are exposed and additionally susceptible as a result of having to remain in Mexico, the policy is damaging. One of the most valuable resources survivors of torture have to help their recovery is the support of friends, family, and fellow countrymen. Many of the individuals who choose to flee to the United States do so because they have connections through friends or family. These contacts can prove invaluable for asylum-seeking survivors of torture or other trauma, as their contacts help them navigate within a new culture and language. CVT sees this with our clients; for example, Ethiopians who come to Minnesota because they have connections to family or to fellow Ethiopians there. Lack of access to these networks, and the support they provide, adds stress, and exacerbates trauma.

#### FAMILY SEPARATION EXACERBATES THE TRAUMA FACED BY FAMILIES FLEEING PERSECUTION

A significant number of the Central American families who come to the United States are survivors of torture,<sup>6</sup> and many more are fleeing persecution. Because of the nature of trauma, oftentimes children who accompany traumatized parents experience symptoms as secondary survivors (even if they have not been directly harmed previously). These highly traumatized populations are particularly vulnerable to the adverse effects of detention and separation from their loved ones.

According to Susan Jasko MSW, LICSW, a CVT therapist with over 20 years of clinical experience working with children and families:

<sup>2</sup> Office of Refugee Resettlement. Survivors of Torture Program. Retrieved from <https://www.acf.hhs.gov/orr/programs/survivors-of-torture>.

<sup>3</sup> McDonnell, Patrick (Dec. 21, 2018). Los Angeles Times. Mexico is Unprepared for the Deal it Made with the U.S. on asylum seekers, immigration chief says. Retrieved from <https://www.latimes.com/world/mexico-americas/la-fg-mexico-remain-20181221-story.html>

<sup>4</sup> Human Rights First (February, 2019). A Sordid Scheme: The Trump Administration's Illegal Return of Asylum Seekers to Mexico. Retrieved from [https://www.humanrightsfirst.org/sites/default/files/A\\_Sordid\\_Scheme.pdf](https://www.humanrightsfirst.org/sites/default/files/A_Sordid_Scheme.pdf).

<sup>5</sup> Squires, Scott (March 8, 2018). In Sight Crime. MS 13 Feud Spreads to Mexico, but Gang's Presence Remains Limited. Retrieved from <https://www.insightcrime.org/news/brief/ms13-feud-spreads-mexico-gangs-presence-remains-limited/>.

<sup>6</sup> Meyer and Pachico (Feb 1, 2018). Washington Office on Latin America. Fact Sheet: U.S. Immigration and Central American Asylum Seekers. Retrieved from <https://www.wola.org/analysis/fact-sheet-united-states-immigration-central-american-asylum-seekers/>.

“When children are young, they are bonding with their parents, and good bonding leads to positive relationships with other people in adolescence and adulthood. Breaking that bond can have consequences in the child’s ability to socialize with others. When children come from an area where they experienced violence, it teaches them that the world is not safe. Then, when they are separated from their parent, this idea is solidified, which can have a profound effect on the development of the child. If a child lives in a state of trauma, as children fleeing conflict areas that are separated from their families do, it can affect their brain development at a biological level as well.”

Many of the children Ms. Jasko has treated over the years were struggling with separation from or loss of parents, and all presented severe symptoms, including nightmares, fears, anxiety, and depression.

Ms. Jasko’s experience is far from unique. Indeed, over 20,000 medical and mental health professionals and researchers working in the United States (including Andrea Northwood, CVT director of client services), have previously made clear—directly to the DHS—that “[t]he relationship of parents and children is the strongest social tie most people experience, and a threat to that tie is among the most traumatic events people can experience.”<sup>7</sup> They further explained that separating a child from a parent causes an effect known as adverse childhood experience (ACE), which can lead to multiple forms of impairment and increased risk of serious mental health conditions including post-traumatic stress disorder (PTSD).

Disturbingly, this information was not new to officials from the Trump administration: On July 31, 2018, Commander Jonathan White, formerly of the Department of Health and Human Services, testified that he raised the very real concern that separating families could cause long-term emotional and psychological effects on children when the policy was presented to him before its implementation.<sup>8</sup>

While the damage to children must be central, we urge Members also to appreciate the harm family separation has caused, and continues to cause, to affected parents. At CVT, 67 percent of U.S.-based clients—refugees and asylum seekers from around the world—have been separated from their families, sometimes by force and other times by necessity when clients must flee without warning to escape imminent danger. During her time at CVT, in addition to her work with children, Ms. Jasko has also treated adult clients seeking asylum who had no option but to leave their country without their children. “The uncertainty of not knowing when they will next see their children makes me worry about my clients,” she says, “as they express feelings of hopelessness and suicidal thoughts.”

FAMILY SEPARATION IS A TECHNIQUE UTILIZED BY TYRANTS AND OTHER OPPRESSORS  
THAT THE UNITED STATES HAS LONG CONDEMNED

CVT has served hundreds of children, some of whom were subjected to separation as a tool to coerce their parents. For example, Jana, a 10-year-old Syrian girl, endured forced separation from her family and imprisonment before crossing the Syrian-Jordanian border seeking safety. She had been detained—along with other children—for nearly a month in an attempt to force her father to turn himself in. He did, and he was murdered. Saad’s little brother, a young boy, was held for 2 weeks in prison and tortured. The militia sent pictures of his abuse to Saad’s family with a message warning them to leave Iraq. When his little brother was returned to them, Saad and his family fled to Jordan.

This is what tyrants, dictators, and other oppressors do. It is not how democracies are supposed to behave. And yet, the Trump administration embraced the practice of separating children from their parents admittedly as a deterrent: To dissuade vulnerable people from seeking safe haven in the United States at all, and for those it did not entirely deter then to coerce them into forgoing their right to seek asylum and to sign a deportation order, which for many would return them to countries and circumstances where they face significant risk of further persecution, violence, or even death.<sup>9</sup>

<sup>7</sup> Physicians for Human Rights (June 14, 2018). Letter to Secretary Nielsen and Attorney General Sessions. Retrieved from [https://s3.amazonaws.com/PHR\\_other/Separation\\_Letter\\_FINAL.pdf](https://s3.amazonaws.com/PHR_other/Separation_Letter_FINAL.pdf).

<sup>8</sup> C-Span (July 13, 2018). Public Health Service Commander Warned Against Family Separation. Retrieved from <https://www.c-span.org/video/?c4742969/public-health-service-commander-warned-family-separations>.

<sup>9</sup> Van Schaak, Beth (Nov 27, 2018). Just Security. New Proof Surfaces that Family Separation was About Deterrence and Punishment. Retrieved from <https://www.justsecurity.org/61621/proof-surfaces-family-separation-deterrence-punishment/>; Bernal, Rafael (June 19, 2018). The Hill. HHS Official Says Family Separation Policy will “have Deterrence Effect.” Retrieved from



Family separation of this kind is not only immoral, it is also unlawful. Most directly, Article 31 of the Refugee Convention prohibits contracting States from “impos[ing] penalties” on the basis of how a refugee arrived to the United States—whether through illegal entry, presence, or without authorization. Indeed, the international community has recognized the importance of a child’s bond with a parent, for example through Article 9 of the United Nations Conventions on the Rights of the Child (CRC), 196 countries have agreed that they “shall ensure that a child shall not be separated from his or her parents against their will, except when competent authorities subject to judicial review determine, in accordance with applicable law and procedures, that such separation is necessary for the best interests of the child.”<sup>10</sup> Although the United States has not ratified this treaty (the only country in the world not to have done so), as a signatory the United States is bound to not engage in actions that “defeat” the CRC’s “object and purpose.”<sup>11</sup>

The United States must not underestimate how its actions reverberate globally; in particular the implicit permission that U.S. practice might give other nations to act the same. The United States cannot maintain a credible global leadership role in the human rights sphere if separating families to deter asylum seekers is the kind of example the Executive branch is going to set.

#### CONCLUSION AND RECOMMENDATIONS

Custom and Border Patrol’s actions at the border are the actual crisis at our Southern Border, which have a profound impact on the lives of some of the world’s most vulnerable people, torture survivors among them. The practices of family separation and returning asylum seekers to Mexico must be stopped, those responsible should be held accountable, victims deserve redress, and preventive mechanisms need to be adopted. More specifically, we urge the Executive branch and Congress to take the following actions, respectively:

##### *Executive Branch*

- Stop the expansion and implementation of the Migration Protection Protocols.
- Immediately reunify all families.
- End the practice of separating families to deter individuals from coming to the United States and seeking refuge.
- Ensure family separation determinations are not arbitrary, but instead made by child welfare professionals where the child’s safety is the primary consideration.
- Whenever there is an appropriate determination to separate a child from a parent for the child’s safety, ensure there is an adequate system to track the family and their relationship to each other.
- ICE and CBP must facilitate communications between a child and a parent who have been separated.

##### *Congress*

- Conduct rigorous, on-going oversight of family separation and its consequences, with an immediate focus on ensuring the Executive branch reunifies families and discontinues the practice of arbitrary family separation.
- Support the REUNITE Act.

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#### STATEMENT OF CWS

MARCH 6, 2019

As a 73-year-old humanitarian organization representing 37 Protestant, Anglican, and Orthodox denominations and 23 refugee resettlement offices across the United

<https://thehill.com/latino/393000-hhs-official-says-family-separation-policy-will-have-deterrence-effect>.

<sup>10</sup>United Nations Human Rights, Office of the High Commissioner (Sept 2, 1990). Convention on the Rights of the Child. Retrieved from <https://www.ohchr.org/en/professionalinterest/pages/crc.aspx>.

<sup>11</sup>United Nations Treaty Collection, Chapter XXIII (May 23, 1969). Vienna Convention on the Law of Treaties, Article 18. Retrieved from [https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mt\\_dsg\\_no=XXIII1&chapter=23&Temp=mt\\_dsg3&clang=en](https://treaties.un.org/pages/ViewDetailsIII.aspx?src=TREATY&mt_dsg_no=XXIII1&chapter=23&Temp=mt_dsg3&clang=en). Although the United States is not a party to the Vienna Convention, “many commentators claim that Article 18 reflects customary international law that is binding on nations that have not joined the Convention, a claim that the United States has not denied.” Curtis A. Bradley, Unratified Treaties, Domestic Politics, and the U.S. Constitution, 48 Harv. Int’l L. J. 307, 307–308 & n.1 (2007); see also *Roper v. Simmons*, 543 U.S. 551 (2005) (acknowledging “the overwhelming weight of international opinion against the juvenile death penalty,” including the direct prohibition in Article 37 of the CRC).

States, Church World Service urges the committee to exercise its oversight responsibility by holding DHS accountable to humanitarian principles stipulated in U.S.<sup>1</sup> and international<sup>2</sup> law. CWS urges the committee to do everything in its power to end family incarceration and separation, protect immigrant children, terminate the administration's "zero tolerance"<sup>3</sup> policy, and uphold U.S. asylum law. CWS affirms the right of individuals to seek safety and calls on Congress to recognize the importance of access to protection. In addition, the committee should ensure that DHS is operating the U.S. Refugee Admissions Program (USRAP) in good faith, in accordance with Congressional intent and The 1980 Refugee Act.<sup>3</sup>

CWS condemns the administration's policies that have caused family separation at ports of entry and between ports of entry, including of asylum seekers, as well as "zero tolerance" policies that detain and prosecute parents for migration-related offenses. Reports have surfaced that despite court intervention, family separations persist. Border agents have used vague allegations, such as illegal re-entry, to justify separating parents from their children. Reports have documented guards using the threat of separation as a method of discipline, as well as children experiencing signs of psychological and physical trauma due to such separation. Similar policies of detaining asylum-seeking families to deter migration have already been found to violate the law by a U.S. court. Allowing front-line agents to threaten family separation and refuse asylum claims undermines due process and results in deporting families back to harm. These policies also result in more unaccompanied children being placed in detention. CWS urges Congress to hold the administration accountable to terminating all "zero tolerance" policies.

Equally troubling is the expansion of family incarceration, which is plagued with systemic abuse and inadequate access to medical care. These conditions are unacceptable, especially for children, pregnant and nursing mothers, and individuals with serious medical conditions. The American Association of Pediatrics has found that family detention facilities do not meet basic standards for the care of children and "no child should be in detention centers or separated from parents." CWS urges Members of Congress to reject any proposal that would expand family incarceration or violate the long-standing child welfare consensus that children should not be detained for longer than 20 days.

CWS is strongly opposed to any proposal that would weaken or eliminate provisions in the Trafficking Victims Protection Reauthorization Act (TVPRA), which provides important procedural protections for unaccompanied children in order to accurately determine if they are eligible for relief as victims of trafficking or persecution. All people have the legal right to seek protection from persecution and violence.<sup>4</sup> Weakening existing legal protections for children would undermine the U.S. Government's moral authority as a leader in combating human trafficking, and would increase vulnerabilities for trafficking victims by curtailing access to due process, legal representation, and child-appropriate services. CWS urges the administration and Congress to affirm the right of all people to seek protection and ensure that individuals seeking safety are not returned to their traffickers and others who seek to exploit them.

The administration has also imposed multiple bans and a series of changes to the U.S. Refugee Admissions Program (USRAP) that have prolonged family separation and left tens of thousands of vulnerable refugees in limbo. It has decreased the number of refugees that can be resettled in the United States to a record low 30,000 in fiscal year 2019, after resettling less than half of last year's then-historic low of 45,000. Resettlement is the last resort for men, women, and children who cannot return to their home countries and cannot rebuild their lives in the country where they first fled. Resettlement is the already the most difficult way to enter the United States, but these bans, alongside many policy changes, have denied safety to tens of thousands of bona fide refugees and have reversed decades of U.S. leadership on refugee protection. We urge Congress to hold the administration accountable

<sup>1</sup> Immigration and Nationality Act § 208, 8 U.S.C. § 1157.

<sup>2</sup> The Convention on the Rights of the Child, Articles 2, 3, 6, and 22. [www.ohchr.org/en/professionalinterest/pages/crc.aspx](http://www.ohchr.org/en/professionalinterest/pages/crc.aspx); The Universal Declaration of Human Rights, Article 14. [www.un.org/en/documents/udhr/index.shtml#a14](http://www.un.org/en/documents/udhr/index.shtml#a14); United Nations General Assembly, Declaration on Territorial Asylum, 14 December 1967, A/RES/2312(XXII). [www.refworld.org/docid/3b00f05a2c.html](http://www.refworld.org/docid/3b00f05a2c.html); United Nations High Commissioner for Refugees, A Framework for the Protection of Children [www.unhcr.org/50f6c0b9.html](http://www.unhcr.org/50f6c0b9.html); United Nations High Commissioner for Refugees, Convention and Protocol Relating to the Status of Refugees. [www.unhcr.org/3b66c2aa10.html](http://www.unhcr.org/3b66c2aa10.html).

<sup>3</sup> Immigration and Nationality Act § 207, 8 U.S.C. § 1157.

<sup>4</sup> Article 14, The Universal Declaration of Human Rights. [www.un.org/en/documents/udhr/index.shtml#a14](http://www.un.org/en/documents/udhr/index.shtml#a14); U.S. Code Title 8: Aliens and Nationality, Chapter 12: Immigration and Nationality, Section 1158: Asylum. <http://uscode.house.gov>.

to meeting its fiscal year refugee admissions goal and rebuilding the resettlement program, returning the program to historic norms.

We implore DHS to actively protect refugees, asylum seekers, and other vulnerable populations, and we urge Congress to hold them accountable to that end. And we remind our elected leaders of Leviticus 19:33–34, which reads: “Any immigrant who lives with you must be treated as if they were one of your citizens. You must love them as yourself, because you were immigrants in the land of Egypt; I am the LORD your God.”

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LETTER FROM THE ELECTRONIC PRIVACY INFORMATION CENTER

March 5, 2019.

The Honorable BENNIE G. THOMPSON, Chairman,  
The Honorable MIKE ROGERS, Ranking Member,  
U.S. House Committee on Homeland Security, H2–176 Ford House Office Building,  
Washington, DC 20515.

DEAR CHAIRMAN THOMPSON AND RANKING MEMBER ROGERS: We write to you regarding the hearing “The Way Forward on Border Security.”<sup>1</sup> The Electronic Privacy Information Center (“EPIC”) is a public interest research center established in 1994 to focus public attention on emerging privacy and civil liberties issues.<sup>2</sup> EPIC is focused on the protection of individual privacy rights, and we are particularly interested in the privacy problems associated with surveillance.<sup>3</sup>

There are several border security proposals now before Congress that implicate the privacy rights of Americans. These practices include cell phone searches, scanning social media, and aerial drones.

EPIC writes to warn that enhanced surveillance at the border will almost certainly sweep up the personal data of U.S. citizens. Before there is any increased deployment of surveillance systems at the U.S. border, an assessment of the privacy implications should be conducted. Additionally, deployment of surveillance technology should be accompanied by new policy and procedures and independent oversight to protect citizens’ rights. And any law enforcement agency that uses surveillance tools should comply with all applicable laws, including open government obligations. The privacy assessments, policies and procedures, and oversight mechanisms should all be made public.

The American Bar Association recently adopted a new policy on privacy rights and border searches.<sup>4</sup> The policy “urges the Federal judiciary, Congress, and the Department of Homeland Security to enact legislation and adopt policies to protect the privacy interests of those crossing the border by imposing standards for searches and seizures of electronic devices, protection of attorney-client privilege, the work product doctrine, and lawyer-client confidentiality.”

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—almost a 60 percent increase from 2016.<sup>5</sup> Searches of mobile devices are “basic” or “forensic.” Under current policy, the Government may conduct a “basic” search—where an agent manually searches the de-

<sup>1</sup>*The Way Forward on Border Security*, U.S. House Comm. on Oversight and Gov’t Reform (Mar. 6, 2019), <https://homeland.house.gov/hearings-and-markups/hearings/way-forward-border-security>.

<sup>2</sup>See *About EPIC*, EPIC.org, <https://epic.org/epic/about.html>.

<sup>3</sup>EPIC, *EPIC Domestic Surveillance Project*, <https://epic.org/privacy/surveillance/>, Statement of EPIC, “Unmanned Aircraft Systems: Innovation, Successes, and Challenges,” Hearing Before S. Comm. on Commerce, Sci., and Trans., United States Senate, Mar. 13, 2017, <https://epic.org/testimony/congress/EPICSCOM-Drones-Mar2017.pdf>; *The Future of Drones in America: Law Enforcement and Privacy Considerations: Hearing Before the S. Judiciary Comm.*, 113th Cong. (2013) (Statement of Amie Stepanovich, Director, EPIC Domestic Surveillance Project), <https://epic.org/privacy/testimony/EPIC-Drone-Testimony-3-13-Stepanovich.pdf>; Comments of EPIC to DHS, Docket No. DHS–2007–0076 CCTV: Developing Privacy Best Practices (2008), [https://epic.org/privacy/surveillance/epic\\_cctv\\_011508.pdf](https://epic.org/privacy/surveillance/epic_cctv_011508.pdf).

<sup>4</sup>A.B.A., Resolution 107A (2019), <https://www.americanbar.org/content/dam/aba/images/news/2019mymhodres/107a.pdf>.

<sup>5</sup>Press Release, U.S. Customs and Border Protection, CBP Releases Updated Border Search of Electronic Device Directive and Fiscal Year 2017 Statistics (Jan. 5, 2018), <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-updated-border-search-electronic-device-directive-and>.

vice for information—with no suspicion of wrongdoing of the person whose device is subject to search.

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.<sup>6</sup> Following that decision, CBP updated its policy to require the reasonable suspicion Nation-wide.<sup>7</sup> Despite this change, Immigration and Customs Enforcement (ICE) has failed to issue 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.<sup>8</sup>

ICE should adhere to minimum Fourth Amendment standards of suspicion when conducting searches, particularly followed the Supreme Court’s recent decisions in *Carpenter v. U.S.* and *Riley v. California*.<sup>9</sup>

#### USE OF SOCIAL MEDIA PROFILING

DHS has repeatedly expressed interest in monitoring social media profiles to collect information on immigrants.<sup>10</sup> The department 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 techblogs, and *ABC News*.<sup>11</sup> DHS further sought to establish “extreme vetting” programs that would use secret algorithms to determine visa eligibility.<sup>12</sup> 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.”<sup>13</sup> Though that program was abandoned,<sup>14</sup> 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.<sup>15</sup> This is especially troubling given the agency’s insistence that social media profiles should be exempted from Privacy Act protections.<sup>16</sup>

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?
- Who will obtain the data and under what circumstances?
- How will ICE prevent at-risk communities from being scrutinized more harshly for exercising their First Amendment rights?
- Will ICE obtain additional personal data from social media companies?
- Does the agency plan to conduct Privacy Impact Assessments prior to undertaking new data-collection efforts?

<sup>6</sup>*United States v. Cotterman*, 673 F.3d 1206 (9th Cir. 2012) (en banc).

<sup>7</sup>Press Release, U.S. Customs and Border Protection, CBP Releases Updated Border Search of Electronic Device Directive and Fiscal Year 2017 Statistics (Jan. 5, 2018), <https://www.cbp.gov/newsroom/national-media-release/cbp-releases-updated-border-search-electronic-device-directive-and>.

<sup>8</sup>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>.

<sup>9</sup>*Carpenter v. United States*, 138 S. Ct. 2206 (2018) (cell phone location records are protected under Fourth Amendment); *Riley v. California*, 134 S. Ct. 2473 (2014) (a warrantless search of a cell phone during an arrest violates the Fourth Amendment.)

<sup>10</sup>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-SocialMedia-Info-Collection.pdf>.

<sup>11</sup>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>.

<sup>12</sup>EPIC, *EPIC, Coalition Oppose Government’s “Extreme Vetting” Proposal* (Nov. 16, 2017), <https://epic.org/2017/11/epic-coalition-oppose-governme.html>.

<sup>13</sup>*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>.

<sup>14</sup>EPIC, *ICE Abandons “Extreme Vetting” Software to Screen Visa Applicants* (May 18, 2018), <https://epic.org/2018/05/ice-abandons-extreme-vetting-s.html>.

<sup>15</sup>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-24mcontract-secretive-data-surveillance-company-can-track-you-962493>.

<sup>16</sup>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>.

## DRONES AT THE BORDER

Customs and Border Protection (CBP) is already deploying aerial drones with facial recognition technology at the border.<sup>17</sup> In 2013, records obtained by EPIC under the Freedom of Information Act also showed that the CBP is operating drones in the United States capable of intercepting electronic communications.<sup>18</sup> The records obtained by EPIC also indicate that the 10 Predator B drones operated by the agency have the capacity to recognize and identify a person on the ground.<sup>19</sup> The documents were provided in response to a request from EPIC for information about the Bureau's use of drones across the country. The agency has made the Predator drones available to other Federal, State, and local agencies. The records obtained by EPIC raise questions about the agency's compliance with Federal privacy laws and the scope of domestic surveillance.

Following the revelations about drone surveillance at the border, EPIC, joined by 30 organizations and more than 1,000 individuals, petitioned CBP to suspend the domestic drone surveillance program, pending the establishment of concrete privacy regulations.<sup>20</sup> The petition stated that "the use of drones for border surveillance presents substantial privacy and civil liberties concerns for millions of Americans across the country." Any authorization granted to CBP to conduct surveillance at the border must require compliance with Federal privacy laws and regulations for surveillance tools, including drones.

Much of this surveillance technology could, in theory, be deployed on manned vehicles. However, drones present a unique threat to privacy. Drones are designed to maintain a constant, persistent eye on the public to a degree that former methods of surveillance were unable to achieve. The technical and economic limitations to aerial surveillance change dramatically with the advancement of drone technology. Small, unmanned drones are already inexpensive; the surveillance capabilities of drones are rapidly advancing; and cheap storage is readily available to maintain repositories of surveillance data.<sup>21</sup> Drones "represent an efficient and cost-effective alternative to helicopters and airplanes," but their use implicates significant privacy interests.<sup>22</sup> As the price of drones "continues to drop and their capabilities increase, they will become a very powerful surveillance tool."<sup>23</sup> The use of drones in border security will place U.S. citizens living on the border under ceaseless surveillance by the government.

The Supreme Court has not yet considered the limits of drone surveillance under the Fourth Amendment, though the Court held 20 years ago that law enforcement may conduct manned aerial surveillance operations from as low as 400 feet without a warrant.<sup>24</sup> No Federal statute currently provides adequate safeguards to protect privacy against increased drone use in the United States. However, some border States do limit warrantless aerial surveillance. In 2015, the Supreme Court of New Mexico held that the Fourth Amendment prohibits the warrantless aerial surveillance of, and interference with, a person's private property.<sup>25</sup> Accordingly, there are substantial legal and Constitutional issues involved in the deployment of aerial drones by law enforcement agencies that need to be addressed.

<sup>17</sup>Russel Brandom, *The US Border Patrol is trying to build face-reading drones*, The Verge, Apr. 6, 2017, <http://www.theverge.com/2017/4/6/15208820/customs-border-patrol-drone-facial-recognition-silicon-valley-dhs>; Dept. of Homeland Security, *Other Transaction Solicitation (OTS) HSHQDC-16-R-00114 Project: Small Unmanned Aircraft Systems (sUAS) Capabilities*, Jul. 15, 2016, <https://www.fbo.gov/spg/DHS/OCPO/DHS-OCPO/HSHQDC-16-R-00114/listing.html>.

<sup>18</sup>EPIC, *EPIC FOIA—US Drones Intercept Electronic Communications and Identify Human Targets*, Feb. 28, 2013, <https://epic.org/2013/02/epic-foia---us-drones-intercep.html> (record received available at <https://epic.org/privacy/drones/EPIC-2010-Performance-Specs-1.pdf>).

<sup>19</sup>*Performance Spec for CBP UAV System*, Bureau of Customs and Border Patrol, <https://epic.org/privacy/drones/EPIC-2005-Performance-Specs-2.pdf>.

<sup>20</sup>EPIC, *Domestic Drones Petition*, [https://epic.org/drones\\_petition/](https://epic.org/drones_petition/).

<sup>21</sup>See generally EPIC, *Drones: Eyes in the Sky*, Spotlight on Surveillance (2014), <https://www.epic.org/privacy/surveillance/spotlight/1014/drones.html>.

<sup>22</sup>M. Ryan Calo, *The Drone as Privacy Catalyst*, 64 Stan. L. Rev. Online 29, 30 (Dec. 12, 2011); See also Jeffrey Rosen, *Symposium Keynote Address*, 65 Rutgers L. Rev. 965, 966 (2013) ("[A]s police departments increasingly begin to use drone technologies to track individual suspects 24/7, or to put areas of the country under permanent surveillance, this possibility of 24/7 tracking will become increasingly real.")

<sup>23</sup>Bruce Schneier, *Surveillance And the Internet of Things*, Schneier on Security (May 21, 2013), [https://www.schneier.com/blog/archives/2013/05/the\\_eyes\\_and\\_ea.html](https://www.schneier.com/blog/archives/2013/05/the_eyes_and_ea.html).

<sup>24</sup>See *Florida v. Riley*, 488 U.S. 445 (1989) (holding that a police helicopter flying more than 400 feet above private property is not a search).

<sup>25</sup>*State v. Davis*, 360 P.3d 1161 (N.M. 2015); see Brief of Amicus Curiae EPIC, id., available at <https://epic.org/amicus/drones/new-mexico/davis/State-v-Davis-Opinion.pdf>.

A 2015 Presidential Memorandum on drones and privacy required that all Federal agencies to establish and publish drone privacy procedures by February 2016.<sup>26</sup> Emphasizing the “privacy, civil rights, and civil liberties concerns” raised by the technology,<sup>27</sup> President Obama ordered agencies to ensure that any use of drones by the Federal Government in U.S. airspace comply with “the Constitution, Federal law, and other applicable regulations and policies.”<sup>28</sup>

However, the DHS has failed to produce reports required by the 2015 Presidential Memorandum. EPIC has submitted a FOIA request for DHS’s policies and reports required under the Presidential Memorandum, but the DHS has failed to respond.<sup>29</sup>

As surveillance technology becomes increasingly invasive, it is critical that the Homeland Security Committee ensure that individuals’ rights are protected. We ask that this letter be entered in the hearing record. EPIC looks forward to working with the committee on these issues of vital importance to the American public.

Sincerely,

MARC ROTENBERG,  
*EPIC President.*  
 CAITRIONA FITZGERALD,  
*EPIC Policy Director.*  
 JERAMIE SCOTT,  
*EPIC National Security Counsel.*

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STATEMENT OF FIRST FOCUS

MARCH 6, 2019

Chairman Thompson, Ranking Member Rogers, and Members of the House Committee on Homeland Security, we thank you for the opportunity to submit this statement for the record. First Focus is a bipartisan children’s advocacy organization dedicated to making children and families a priority in Federal policy and budget decisions. As an organization that advocates for the health and well-being of all children in the United States, we are deeply concerned with the Trump administration’s enforcement only approach to border security and the broader immigration enforcement attacks on immigrant children and families.

Immigration policies that guide enforcement procedures including the arrest, detention, and removal of non-U.S. citizens have a significant impact on the lives of the children involved in these circumstances. Despite being directly affected, children are often an afterthought in policy efforts to curb legal and illegal immigration. Recent changes to immigration and asylum policies are already having a significant impact on the lives of children and families.

The administration’s 2018 “zero-tolerance” policy resulted in thousands of children being separated from their parents, and families continue to be subjected to separation in some areas of the border due to the increased criminalization of asylum seekers.<sup>1</sup> Alarming, in October of last year, the Trump administration considered a renewed effort of forcing family separation by intimidating parents with the idea of keeping them detained indefinitely with their children in prison-like settings.<sup>2</sup>

During the recent series of House oversight hearings, on the “zero-tolerance” policy, it was evident that Federal agencies are content to pass the buck on the responsibility for reunifying children and families who were subjected to this cruel and unnecessary separation. Chief Provost of Customs and Border Protection (CBP) stated that in the eyes of her department the “zero-tolerance” policy was a “prosecution initiative” and reunification was not in their wheelhouse. Federal agencies must be held accountable for their roles in implementing this outrageous policy. It was the collective effort of multiple Federal agencies, and each agency must be involved in efforts to repair the damages.

<sup>26</sup> President Barack Obama, *Presidential Memorandum: Promoting Economic Competitiveness While Safeguarding Privacy, Civil Rights, and Civil Liberties in Domestic Use of Unmanned Aircraft Systems* (Feb. 15, 2015), <https://obamawhitehouse.archives.gov/the-press-office/2015/02/15/presidential-memorandum-promoting-economic-competitiveness-while-safegua>.

<sup>27</sup> *Id.* at § 1(e).

<sup>28</sup> *Id.* at § 1.

<sup>29</sup> EPIC, *EPIC v. DHS (Drone Policies)*, [https://epic.org/foia/dhs\\_2/epic\\_v\\_dhs\\_drone\\_policies.html](https://epic.org/foia/dhs_2/epic_v_dhs_drone_policies.html).

<sup>1</sup> <http://time.com/5534255/texas-civil-rights-project-report-2019/>.

<sup>2</sup> <https://firstfocus.org/news/press-release/statement-new-family-separation-efforts-will-lead-to-imprisonment-of-children>.

Additionally, in January, the administration increased their efforts to deter families with children from seeking asylum in the United States via the “Migrant Protection Protocols.” This so-called “humanitarian approach”<sup>3</sup> forces asylum seekers who have traveled thousands of miles to remain in Mexico for prolonged periods of time while their application for asylum is processed.

This program further exposes already vulnerable populations to violence, trafficking, and dangerous situations which is in direct contradiction to the administration’s stated purpose of the policy. According to a report by Kids in Need of Defense (KIND), “Children are languishing in dangerous and unsanitary makeshift camps. There is no running water and in some cases, irregular access to food.”<sup>4</sup> This program has caused a humanitarian crisis at our very border and once again, the Department of Homeland Security (DHS) has prioritized deterrence over the health and well-being of children and families.

Finally, we are alarmed at the increasing use of the term “loophole” when discussing protections for vulnerable children. We are concerned with the administration’s attempts to undermine protections including but not limited to, the Trafficking Victims Protection Reauthorization Act (TVPRA) and the *Flores* Settlement Agreement (FSA). Rather than weakening protections for children, Congress and the administration should be strengthening such guidelines. We have seen the need for strengthening these important protections in the deaths of 7-year-old Jakelin Caal<sup>5</sup> and 8-year-old Felipe Alonzo<sup>6</sup> while in the custody of CBP.

As the conversations continues with regards to the way forward on border security, we ask that Congress uphold current protections for migrant children and build on that foundation by instituting a “best interest of the child” standard for all immigration policies. Children are often invisible during the process of asylum, and children and parents are often seen as separate units. We ask that you consider the role of children in the family and understand it is in the best interest of the child to be free from fear, free from detention, and together with his/her loved ones.

We thank you again for the opportunity to submit this written testimony. We look forward to working with you to implement policies that will help shape this conversation and ensure that all children thrive in the United States. Should you have any further questions please contact Kristen Torres, Policy Director for Child Welfare and Immigration[.]

#### RECOMMENDATIONS

The United States must implement a “Best Interest of the Child” standard for all border security measures and immigration enforcement efforts.<sup>7</sup> This standard must ensure that a child’s safety is a priority in all decisions, the child has a voice in his/her proceedings, the child remains together with family members in the least restrictive setting, and all decisions must promote the health and well-being of the child.

##### *1. Guarantee Children Facing Immigration Court Proceedings Have Legal Representation*

Children must have a voice in the decisions that will affect the rest of their lives. In order to pursue this standard, we must ensure that all children in immigration proceedings, both accompanied and unaccompanied, have legal representation. Additionally, the needs of both the children and parents must be considered during proceedings. Children must be appointed an advocate who acts on the wishes and in the best interest of the child when determining the care and custody of immigrant children.

##### *2. Ensure Children are Free from Detention and Placed in the Least Restrictive Setting as Quickly as Possible*

The U.S. Government must seek out alternatives to detention (ATDs) for children and families. The detention of a child even if he/she is with family, is traumatic and has significant effects on a child’s mental health and physical development. Decades of litigation over the horrific conditions in which migrant children were being held in detention resulted in the 1997 *Flores* Settlement Agreement (FSA). This agree-

<sup>3</sup> <https://www.dhs.gov/news/2019/01/24/migrant-protection-protocols>.

<sup>4</sup> <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-children-at-the-u-s-border/>.

<sup>5</sup> <https://www.npr.org/2018/12/13/676622047/7-year-old-migrant-girl-dies-of-dehydration-and-shock-in-border-patrol-custody>.

<sup>6</sup> <https://www.npr.org/2018/12/25/680066848/8-year-old-migrant-boy-dies-in-government-custody-in-new-mexico-hospital>.

<sup>7</sup> <https://campaignforchildren.org/wp-content/uploads/sites/2/2018/12/Proactive-Kids-Agenda-FFCC-1.22.19.pdf>.

ment set National standards for the detention, release, and treatment of children in the custody of DHS and declares that children should be in the least restrictive setting. This agreement must not be undermined or modified to meet the needs of an enforcement-only approach to immigration reform. If the FSA is modified to allow for indefinite family detention, children will suffer negative life-long consequences and impediments to their childhood development.

*3. Prioritize Keeping Families Together in Immigration Policy Decisions When It Is in the Best Interest of the Child*

Family unity must be a priority in both the claims of the parent and the child involved in removal proceedings. Congress must prohibit the removal of children from their parents by DHS or the Department of Justice (DOJ) within 100 miles of the U.S. border unless it is in the child's best interest. Congress must also ensure that the best interest of the child is considered when determining repatriation or referral for prosecution of parents and legal guardians of children. Parents must be allowed to make arrangements for their child's care and for children to visit their parents while they are detained. U.S. Immigration and Customs Enforcement (ICE) must consider the best interests of the children in all detention, release, and transfer decisions affecting their parents. Family unity should be a priority both at the border and during interior enforcement activities such as workplace raids. Other steps to promote family unity include reinstating judicial discretion in cases involving the caregivers of minor children and allowing parents in removal proceedings to argue the hardship on behalf of their children.

*4. Ensure All Decisions Account for Child Well-Being and Healthy Development*

Finally, border security and immigration enforcement decisions involving children must incorporate child welfare professionals and consultation with experts on the healthy development needs of children. Qualified child welfare professionals and language interpreters must be available at ports of entry as well as Border Patrol stations. Additionally, more must be done to ensure children are guaranteed a safe and sanitary living environment, access to legal services, and access to food and climate appropriate clothing. Immigration enforcement decisions should never impede a child's healthy development or a child's right to education.

STATEMENT OF HIAS

MARCH 6, 2019

HIAS—the American Jewish community's global refugee organization, has been assisting refugees and immigrants for nearly 140 years. HIAS was founded to assist Jewish refugees arriving at Ellis Island. In 1904, we expanded our work and began providing legal assistance to immigrants facing deportation. Today, we provide comprehensive legal services to those of all backgrounds seeking safety in the United States.

Guided by our Jewish value of welcoming the stranger, and by the Jewish tradition of B'tzelem Elohim, the idea that all people deserve to have their human rights and dignity respected, HIAS remains on the front lines of refugee protection. At the U.S.-Mexico border, through our Border Fellows program, we have placed pro bono attorneys with legal service organizations in San Diego, California and El Paso, Texas. Our fellows provide legal representation to asylum seekers, including those in detention. For example, in San Diego, HIAS' Border Fellow is working on the case of a child who was born HIV positive. His mother passed away when he was very young, and his father left the family. The child, now 15 years old, is in a detention center while our Border Fellow works to have him reunited with his brother.

In January 2019, the Department of Homeland Security (DHS) implemented Migrant Protection Protocols (MPP), also known as the "Remain in Mexico" program, at the San Ysidro port of entry. MPP requires that asylum seekers wait in Mexico while their case moves through U.S. immigration courts.<sup>1</sup> As justification for this protocol, DHS asserted that this system will help secure our borders by ensuring that asylum seekers do not disappear into the country or use fraudulent claims to gain access to the United States.<sup>2</sup> In actuality, this unprecedented program makes

<sup>1</sup>U.S. Department of Homeland Security, *Policy Guidance for Implementation of the Migrant Protection Protocols*, [https://www.dhs.gov/sites/default/files/publications/19\\_0129\\_OPA\\_migrant-protection-protocols-policy-guidance.pdf](https://www.dhs.gov/sites/default/files/publications/19_0129_OPA_migrant-protection-protocols-policy-guidance.pdf).

<sup>2</sup>U.S. Department of Homeland Security, *Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration*, <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>.



it nearly impossible for asylum seekers to access the protections they are entitled to under both U.S. and international law.

Under American immigration law, people who arrive at the U.S. border have the right to seek asylum, and are permitted to remain in the United States while their claim is processed.<sup>3</sup> The Remain in Mexico program raises serious concerns about access to legal representation, due process rights of asylum seekers, and the ability of attorneys to represent their clients effectively and fairly.

HIAS' Border Fellows report that the Remain in Mexico program is making it extremely challenging for them to find and contact their clients, and nearly impossible to find confidential and secure places to meet and speak with them. The Remain in Mexico program also has created challenges for attorneys who have to make the trip to Mexico—a process that can take hours—and raises questions about the ability of legal counsel to represent clients and practice law while not in the United States.

HIAS also has concerns about the impact this program will have on the arrivals at other ports of entry. For example, in El Paso, TX, reported to be one of the next ports of entry where Remain in Mexico will soon also be implemented, the asylum approval rate is already at around 3 percent, and access to counsel can mean the difference between life and death.<sup>4</sup>

In 2018, prior to implementation of the Remain in Mexico program, HIAS staff met with humanitarian aid workers in Mexico's northern border region. It was clear that they were under-resourced and overwhelmed, and that many asylum seekers were going without access to safe housing or the support or resources they needed. These problems have only grown since Remain in Mexico was put in place.

At HIAS, we know that a border wall or Remain in Mexico will not deter families seeking safety from coming to the United States. Instead, it will impede life-saving access to safety, most immediately for those asylum seekers waiting in Mexico, but also for those who are forced to choose longer and more dangerous routes to reach El Paso and other ports of entry.

We ask that Members of the Homeland Security committee demand that the administration put an immediate end to programs and policies that violate U.S. and international law and put people who are pursuing their legal right to seek asylum at risk.

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STATEMENT OF KIDS IN NEED OF DEFENSE (KIND)

MARCH 6, 2019

Kids in Need of Defense (KIND) was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie, and is the leading national organization that works to ensure that no refugee or immigrant child faces immigration court alone. We do this in partnership with 585 law firms, corporate legal departments, law schools, and bar associations, which provide pro bono representation to unaccompanied children referred to KIND for assistance in their deportation proceedings. KIND has served more than 18,000 children since 2009, and leveraged approximately \$250 million in pro bono support. KIND also helps children who are returning to their countries of origin through deportation or voluntary departure to do so safely and to reintegrate into their home communities. Through our reintegration pilot project in Guatemala and Honduras, we place children with local nongovernmental organization partners, which provide vital social services, including family reunification, school enrollment, skills training, and counseling. KIND also engages in broader work in the region to address root causes of child migration, such as sexual- and gender-based violence. Additionally, KIND advocates to change law, policy, and practices to improve the protection of unaccompanied children in the United States, and is working to build a stronger regional protection framework throughout Central America and Mexico.

SUMMARY

Since its first days, the Trump administration has established border security as a key policy priority. As part of such efforts, the administration has pursued a host of policies aimed at deterring migration and restricting access to asylum and humanitarian protection by unaccompanied children and families in particular. These

<sup>3</sup>Immigration and Nationality Act (8 USC 1158), <http://uscode.house.gov/view.xhtml?req=granuleid%3AUSC-prelim-title8-section1158&num=0&edition=prelim>.

<sup>4</sup>TRAC Immigration, El Paso Immigration Court Processing, [https://trac.syr.edu/phptools/immigration/court\\_backlog/court\\_proctime\\_outcome.php](https://trac.syr.edu/phptools/immigration/court_backlog/court_proctime_outcome.php).

policies not only fail to make the United States safer but also place children fleeing grave violence in their countries of origin at even greater risk of danger, harm, or death. In addition to being inconsistent with the best interests of children, these policies defy our country's obligations under U.S. and international law.

This statement will chronicle the challenges that children encounter at each stage of the U.S. asylum process. First, it will discuss what happens when children reach the U.S.-Mexico border. Specifically, it will address how President Trump's "Remain in Mexico" policy and other practices are preventing unaccompanied children and families from accessing protection in the United States. Second, it will discuss the administration's "Zero Tolerance" policy and the on-going separation of families in the absence of clear standards and means of tracking family relationships and the reasons for such separations. Third, it will highlight the need for better conditions and standards of care in U.S. Customs and Border Protection (CBP) facilities. Finally, it will address the Trump administration's efforts to deter sponsors from coming forward to care for unaccompanied children, which have resulted in the prolonged detention and traumatization of thousands of children.

KIND rejects border security policies intended to deter children from seeking protection in the United States. We urge the committee to ensure that the Department of Homeland Security (DHS) complies with U.S. asylum laws and international commitments and allows unaccompanied children to present themselves at all ports of entry along the U.S. border. Further, we condemn separation policies that harm children's health and well-being, and their legal cases.

KIND recommends the following: (i) The Trump administration should end the "Remain in Mexico" policy; (ii) family separations should occur only when it is in the best interest of children; (iii) the Government should record the reason for separations, track separated families to allow for swift reunification, and allow parents to challenge separation decisions; (iv) immigration officers should efficiently transfer children's information between CBP, the Office of Refugee Resettlement (ORR), and attorneys; (v) the Government should improve the conditions of detention facilities in which children are held; (vi) DHS should release unaccompanied children to appropriate sponsors as soon as possible; and (vii) DHS should never use sponsors' information for enforcement purposes without considering the best interest of children.

We urge the committee to consider our recommendations and to hold the Trump administration accountable to do what Congress has mandated: Allow asylum seekers to apply for protection in the United States. Border security policies should protect the integrity of our immigration system and our Nation's commitment to extending protection to those in need of safety—particularly children.

#### THE "REMAIN IN MEXICO" POLICY SHOULD BE ELIMINATED

In December 2018, DHS Secretary Kirstjen Nielsen announced the Migrant Protection Protocols (MPP)<sup>1</sup>—or the "Remain in Mexico" policy—under which certain asylum seekers are forced to stay in Mexico pending their immigration proceedings in the United States.<sup>2</sup> Relatedly, in November 2018, DHS and the U.S. Department of Justice issued an interim final rule that, coupled with a Presidential Proclamation issued shortly after, would bar migrants from seeking asylum if they cross the border between official ports of entry.<sup>3</sup> Both policies disregard Congress' express intent to allow asylum seekers to apply for protection, regardless of where they enter the country.<sup>4</sup> They further violate international norms and treaties by which the United States is bound, including the 1951 Refugee Convention, which prohibits nations from expelling or returning refugees to a country where their lives would be threatened.<sup>5</sup>

<sup>1</sup> See Secretary Kirstjen M. Nielsen Announces Historic Action to Confront Illegal Immigration, Dep't of Homeland Security (Dec. 20, 2018), <https://www.dhs.gov/news/2018/12/20/secretary-nielsen-announces-historic-action-confront-illegal-immigration>; see also Memorandum on MPP Guiding Principles (Jan. 28, 2019) (hereinafter MPP Memorandum), <https://www.cbp.gov/sites/default/files/assets/documents/2019-Jan/MPP%20Guiding%20Principles%201-28-19.pdf>.

<sup>2</sup> MPP Memorandum, *supra* note 1 at 1–2.

<sup>3</sup> 83 Fed. Reg. 55934 (Nov. 9, 2018). The United States District Court of the Northern District of California issued an injunction against the measure. *East Bay Sanctuary Covenant v. Trump*, No. 3:18-cv-06810-JST (N.D. Cal. Nov. 19, 2018) (Order Granting Temporary Restraining Order).

<sup>4</sup> See INA § 208, 8 U.S.C. § 1158(a)(1) (2008).

<sup>5</sup> Nations are prohibited from expelling or returning a refugee to a country where "his or her life or freedom would be threatened on account of his or her race, religion, nationality, membership of a particular social group or political opinion." UNHCR, *Advisory Opinion on the Extraterritorial Application of Non-Refoulement Obligations under the 1951 Convention relating to the Status of Refugees and its 1967 Protocol* (Jan. 26, 2007), <https://www.unhcr.org/>

While the administration has asserted that the “Remain in Mexico” policy would not apply to unaccompanied children,<sup>6</sup> U.S. and Mexican officials are nonetheless preventing unaccompanied children from entering the United States to seek asylum. During a research mission to Mexico, KIND learned that CBP agents have turned back unaccompanied children to Mexico after telling them that they can no longer seek asylum in the United States.<sup>7</sup> Mexican officials are similarly blocking unaccompanied children from presenting themselves at U.S. ports of entry, and frequently transfer unaccompanied children seeking asylum in the United States to the custody of Mexico’s child welfare agency (DIF).<sup>8</sup> Once in DIF custody, these children are informed that they may seek asylum in Mexico or be deported to their countries of origin.<sup>9</sup> They are not informed of their right to seek protection in the United States.<sup>10</sup> Fearful of deportation by Mexican officials, some unaccompanied children have chosen to hide from Mexican officials or to cross the border between ports of entry—circumstances that increase the dangers facing vulnerable youth.<sup>11</sup>

Unaccompanied children face grave danger in Mexican border towns, where they may be preyed upon by smugglers and human traffickers.<sup>12</sup> Last December, 2 unaccompanied youth were tricked, abducted, tortured, and killed in Tijuana.<sup>13</sup> A third child escaped with wounds on his neck. He reported that he and his friends were kidnapped, tied to chairs, undressed, and tortured with scissors in an attempt to extort their relatives for money. Despite horrendous incidences like this, Mexican officials continue to block unaccompanied children from accessing U.S. ports of entry.<sup>14</sup>

Recently, the United States has returned several asylum-seeking families to Mexico under the Remain in Mexico policy<sup>15</sup>—exposing additional children to harm, danger, or death in Mexico.

*Recommendation.*—KIND urges the administration’s swift withdrawal of the “Remain in Mexico” policy and its renewed commitment to ensuring that all unaccompanied children are provided unfettered access to U.S. ports of entry to request protection. KIND recommends Congress’ continued oversight to ensure the administration’s compliance with asylum protections and procedures provided for by U.S. law and international treaty obligations, as well as laws providing for the appropriate care and treatment of unaccompanied children.

FAMILY SEPARATIONS SHOULD ONLY OCCUR WHEN A CHILD’S SAFETY OR WELFARE IS  
AT RISK

Announced in April 2018 and implemented in June 2018, the Trump administration’s “Zero Tolerance” policy resulted in the forced separation and traumatization of thousands of children.<sup>16</sup>

*4d9486929.pdf*. The United States is bound to the 1951 Convention as a signatory to the 1967 Protocol Relating to the Status of Refugees, Jan. 31, 1967, 19 U.S.T. 6223.

<sup>6</sup>MPP Memorandum, *supra* note 1 at 1.

<sup>7</sup>See KIND, *The Protection Gauntlet: How the United States is Blocking Access to Asylum Seekers and Endangering the Lives of Children at the U.S. Border* (Dec. 21, 2018) (hereinafter *The Protection Gauntlet*), <https://supportkind.org/resources/the-protection-gauntlet-how-the-united-states-is-blocking-access-to-asylum-seekers-and-endangering-the-lives-of-children-at-the-u-s-border/>.

<sup>8</sup>*Id.* at 2–3.

<sup>9</sup>*Id.*

<sup>10</sup>*Id.* at 3.

<sup>11</sup>*Id.*

<sup>12</sup>Jack Herrera, *Five Takeaways from the Lawsuit Over Trump’s Plan to Keep Asylum Seekers in Mexico*, *Pacific Standard* (Feb. 14, 2019), <https://psmag.com/news/five-takeaways-from-the-lawsuit-over-trumps-plan-to-keep-asylum-seekers-in-mexico>.

<sup>13</sup>Ed Vulliamy, *Tricked, abducted and killed: the last day of two child migrants in Mexico*, *The Guardian* (Feb. 16, 2019), <https://www.theguardian.com/world/2019/feb/16/tijuana-migrant-child-murders-mexico-us-asylum>.

<sup>14</sup>Herrera, *supra* note 12.

<sup>15</sup>See Rafael Carranza, *Tijuana struggles to accommodate migrant families as U.S. begins sending them back*, *Arizona Republic* (Feb. 20, 2019); Rafael Bernal, *DHS to Make Migrants Wait in Mexico While Asylum Claims Processed*, *The Hill* (Dec. 20, 2018), <https://thehill.com/latino/422267-dhs-to-make-migrants-wait-in-mexico-while-asylum-claims-processed>.

<sup>16</sup>This policy directed CBP agents to refer every individual apprehended near the border who did not present at an official port of entry to the Department of Justice (DOJ) for criminal prosecution, even when individuals exercised their lawful right to seek asylum. Adults were taken to Federal detention facilities while children were transferred into the care of ORR, which operates within the Department of Health and Human Services (HHS). Once separated from their parents, DHS classified the kids as “unaccompanied.” Press Release, KIND & Women’s Refugee Comm’n, *Family Separation at the Border* (May 30, 2018), <https://supportkind.org/media/family-separation-at-the-border/>.

In response to this crisis, KIND formed a dedicated Family Separation Response Team to provide direct legal representation to affected families. KIND witnessed first-hand the harmful effects that family separations have on children. Family separations harm children’s well-being and legal cases. Medical experts agree that the forced separation of migrant children who have fled violence has devastating consequences for their development, even if the separation is brief.<sup>17</sup> Children’s immigration cases are also affected because children are not likely to have information or documentation of their asylum claims. KIND has worked with children like Luisa, a 7-year-old who was separated from her father after they entered the United States last summer.<sup>18</sup> When KIND spoke to her, it was impossible to conduct even an initial legal assessment because Luisa could not stop crying. She was so distraught by the separation that she sobbed throughout the meeting.<sup>19</sup> Even if she had been able to communicate with her KIND attorney, she could not have made a case for asylum on her own because she did not know why her family fled.<sup>20</sup>

Unsurprisingly, the Trump administration’s “Zero Tolerance” policy sparked a global outcry. The United Nations Human Rights Office called for the United States to “immediately halt” the policy.<sup>21</sup> In *Ms. L v. Sessions*, a class action case challenging family separations that had occurred prior to the start of the Zero Tolerance policy, the presiding judge ordered the Government to stop the policy and to reunify separated children with their parents.<sup>22</sup> At the time, the Department of Health and Human Services (HHS) reported that 2,737 children needed to be reunified.

The Government is still separating families. The HHS Inspector General confirmed that at least 118 children were separated between July 1 and November 7, 2018<sup>23</sup> after the court order was issued. The total number and current status of children separated from their families are unknown.<sup>24</sup>

Importantly, there are no established standards for family separation determinations. Under prior administrations, DHS separated children from parents who posed a danger to them. However, the sweeping “Zero Tolerance” policy raised the urgent need for clear standards restricting the use of family separation for deterrence and permitting it only when it is in the best interests of a child. Currently, CBP officials, who lack specialized training in child development or welfare, are making these determinations;<sup>25</sup> family separation determinations do not involve the participation of or oversight by a child welfare expert.<sup>26</sup> Additionally, CBP officials are not required to provide any justification or written documentation to parents or guardians outlining the reasons for the separation. Because they have no vehicle to challenge assertions made against them, parents and guardians risk losing custody of their children without any judicial oversight.<sup>27</sup>

*Recommendation.*—First, KIND recommends that DHS enlist child welfare professionals to screen children. This way, separations are only conducted when professionals with expertise in child development and welfare have determined it is in the best interest of the child. At the very least, agents should receive training on how to apply the “best interests of the child” framework when they believe a child’s sepa-

<sup>17</sup> See KIND, Women’s Refugee Comm’n & Lutheran Immigration Serv., *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families* 12 (2017) (hereinafter *Betraying Family Values*), <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values>.

<sup>18</sup> KIND, *How You Can Help Separated Families and Ensure Protection for Children* (June 28, 2018), <https://supportkind.org/resources/how-you-can-help-end-family-separation-and-ensure-protection-for-children/>.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> U.N. Human Rights Office to U.S.: *Halt Trump Policy Separating Kids From Parents at Border*, USA Today (June 5, 2018), <https://www.usatoday.com/story/news/world/2018/06/05/united-nations-tells-u-s-stop-separating-children-parents/673090002/>.

<sup>22</sup> *Ms. L v. ICE*, No. 18–0428 (S.D. Cal. June 26, 2018) (Order Granting Plaintiff’s Motion for Classwide Preliminary Injunction), <https://www.aclu.org/legal-document/ms-l-v-ice-order-granting-plaintiffs-motion-classwide-preliminary-injunction>.

<sup>23</sup> U.S. Dept’t of Health & Hum. Serv., Office of Inspector General, OEI–BL18–00511, *Separated Children Placed in Office of Refugee Resettlement Care* (2019), 1 (hereinafter Inspector General Report), <https://oig.hhs.gov/oei/reports/oei-BL-18-00511.asp>; Miriam Jordan, *Family Separation May Have Hit Thousands More Migrant Children Than Reported*, N.Y. Times (Jan. 17, 2019), <https://www.nytimes.com/2019/01/17/us/family-separation-trump-administration-migrants.html>.

<sup>24</sup> Inspector General Report, *supra* note 23, at 13.

<sup>25</sup> Katie Tandy, *Family Separations Continue in Homeland Security “Gray Area” Despite Ban*, The California Report (Feb. 9, 2019), <https://www.kqed.org/news/11724799/family-separations-flourish-in-homeland-security-grey-area-despite-ban>.

<sup>26</sup> *Betraying Family Values*, *supra* note 17, at 7.

<sup>27</sup> *Id.*

ration from his or her family is warranted.<sup>28</sup> Second, family separation determinations and their rationale should always be recorded and shared with both parents and their legal counsel. Finally, DHS should implement an appeals process for challenging family separation determinations.

IF SEPARATIONS OCCUR, DHS SHOULD HAVE ADEQUATE TRACKING MECHANISMS TO RECORD CHILDREN'S INFORMATION

DHS has no consistent or comprehensive means to properly document family separations. There is no database or hotline that can help identify a separated family member's location or assist with reunification.<sup>29</sup> Separated families are left with little, if any, knowledge of their family members' locations. Even worse, many parents are deported without the knowledge of the child or the attorney.

Tracking mechanisms are failing. KIND continues to encounter cases in which neither ORR nor attorneys are notified when DHS separates a child from his or her family. In one case, a father was separated from his teenage daughter, and no information was given to justify the separation.

KIND only found out this child had been separated through interviews with the child. The separation was not recorded anywhere in the child's files.<sup>30</sup>

*Recommendation.*—All family relationships and the reasons for separations should be recorded in writing. This information should be accessible to parents, guardians, ORR, and attorneys. Furthermore, DHS should implement mechanisms that allow continued communication between parents and children, particularly when the parent is soon to be deported.

DETENTION FACILITIES HOLDING CHILDREN MUST IMPLEMENT BETTER STANDARDS OF CARE

This past year, two migrant children died in CBP custody. Jakelin Caal Maquin and Felipe Gomez Alonzo were only 7 and 8 years old, respectively, when they died. Both were actively seeking asylum after they crossed the U.S.-Mexico border.<sup>31</sup> Under the Trafficking Victims Protection Reauthorization Act (TVPRRA), CBP must generally transfer migrant children to ORR within 72 hours of determining that the child is unaccompanied.<sup>32</sup> However, children may be held in CBP custody for over 2 weeks.<sup>33</sup> According to CBP's own recordkeeping, 16 percent of migrants were held for over 72 hours, including children.<sup>34</sup> The American Academy of Pediatrics (AAP) has explained that detention impedes child development and causes severe psychological trauma.<sup>35</sup> Dr. Julie Linton, who co-chairs the AAP's Special Interest Group on Immigrant Health, has stated, "No amount of time in detention is safe for a child."<sup>36</sup>

CBP facilities do not meet minimum standards of care for children. Neither CBP agents nor CBP medical care providers are trained to care for children.<sup>37</sup> Under the Flores Settlement Agreement, the Government must provide children in custody with basic necessities like food, water, bathrooms, and emergency health services.<sup>38</sup>

<sup>28</sup>Id.

<sup>29</sup>Id. at 4.

<sup>30</sup>*Trump Administration's Inhumane Family Separation Policy Before the H. Comm. on Energy & Com.*, 116th Cong. (Feb. 7, 2019) (Statement of Jennifer Podkul, Esq. KIND Senior Dir. for Policy and Advocacy), <https://docs.house.gov/meetings/IF/IF02/20190207/108846/HHRG-116-IF02-WState-PodkulJ-20190207-U1.pdf>.

<sup>31</sup>Mariana Atencio, et al. *Border Facilities Still Need Fixing After Second Migrant Child's Death, Say Democrats*, NBC News (Jan. 7, 2019), <https://www.nbcnews.com/news/latino/border-facilities-still-need-fixing-after-second-migrant-child-s-n955876>.

<sup>32</sup>See generally William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, H.R. 7311, 110th Cong. (2008).

<sup>33</sup>Women's Refugee Comm'n, *Forced From Home: The Lost Boys and Girls of Central America*, (Nov. 9, 2015), [https://www.womensrefugeecommission.org/images/zdocs/forced\\_from\\_home\\_ex\\_sum.pdf](https://www.womensrefugeecommission.org/images/zdocs/forced_from_home_ex_sum.pdf).

<sup>34</sup>Human Rights Watch, News Release, *In the Freezer, Abusive Conditions for Women and Children in US Immigration Holding Cells* (Feb. 28, 2018), <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

<sup>35</sup>Julie M. Linton et al., *Am. Acad. of Pediatrics, Detention of Immigrant Children 6* (2017), <https://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>.

<sup>36</sup>Tara Law, *Children in Border Patrol Custody Are Still at Risk Despite New Guidelines, Pediatricians Say*, TIME (Dec. 17, 2018), <http://time.com/5489204/migrant-children-guidelines-health/>.

<sup>37</sup>Id.

<sup>38</sup>The 1997 Flores Settlement Agreement was the result of over a decade of litigation responding to the U.S. Government's detention policy of children. The Agreement set National

However, CBP facilities that hold children are greatly lacking. Reports about these facilities reveal they lack even basic provisions. Children sit around for days in facilities called “ice-boxes” (“hieleras”), which are freezing rooms that have no beds, no private bathroom, and lack any form of entertainment or distraction for the children.<sup>39</sup> Migrants sleep either on bare cement floors or on toilets. These rooms are not appropriate to house children for long periods of time.<sup>40</sup>

*Recommendation.*—The living conditions in DHS facilities are especially dangerous for unaccompanied children. These conditions must be improved for the welfare and safety of detained children. It is vital that Congress uphold the detention limits and other protections embodied in the *Flores* Settlement Agreement and the TVPRA. Additionally, Congress should direct the development of enforceable standards related to the transport and detention of children to ensure a minimum standard of care is provided.

#### DHS SHOULD NOT USE SPONSORS’ INFORMATION FOR ENFORCEMENT PURPOSES

In April 2018, DHS and HHS entered into a Memorandum of Agreement (MOA) pledging to share information openly between their organizations. DHS later issued a notice of a modified system of records to carry out this agreement.<sup>41</sup> Under the MOA, HHS has shared sponsors’ information with DHS, including for immigration enforcement. As a result, potential sponsors have had to choose between taking in a child in need or risking deportation.

The MOA has caused children to remain in Federal custody for longer periods of time. The use of sponsors’ information for enforcement purposes frustrates ORR’s ability to place children in the “least restrictive setting” in their best interest as required by the TVPRA and the *Flores* Settlement Agreement. Children have spent an average of over 70 days in custody, more than double the time under the Obama administration. This is a result of sponsors’ fear to come forward.<sup>42</sup> Under the MOA, Immigration and Customs Enforcement (ICE) has arrested 170 potential sponsors of unaccompanied children.<sup>43</sup> Nearly 64 percent of the sponsors, 109 in total, had no criminal record.

This policy deters individuals from sponsoring children. KIND has heard of cases where even those who are lawfully present may choose not to sponsor children to either avoid interacting with ICE or for fear of exposing others living with them.<sup>44</sup> For example, after Nicolas, a U.S. lawful permanent resident, received a call from his nephew requesting sponsorship, ICE aggressively questioned him and accused him of smuggling.<sup>45</sup> This was a baseless accusation, but Nicolas was so fearful of the interaction with ICE that he ultimately decided not to sponsor his nephew.<sup>46</sup> Similarly, KIND represented a child who had been separated from his father under the administration’s “Zero Tolerance” policy. The father had been removed from the

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standards regarding the detention, release, and treatment of all children in immigration detention and underscores the principle of family unity. It requires that: Juveniles be released from custody without unnecessary delay, and in order of preference to the following: A parent, legal guardian, adult relative, individual specifically designated by the parent, a child welfare licensed program, or, alternatively when family reunification is not possible, an adult seeking custody deemed appropriate by the responsible Government agency. Where they cannot be released because of significant public safety or flight risk concerns, juveniles must be held in the least restrictive setting appropriate to age and special needs, generally, in a non-secure facility licensed by a child welfare entity and separated from unrelated adults and delinquent offenders.” KIND, *Flores Settlement: Myth v. Fact* (June 15, 2018), <https://supportkind.org/resources/flores-settlement-myth-v-fact/>.

<sup>39</sup>Laura Gomez, *Deaths of migrant kids underscore risks of hieleras*, AZ Mirror (Dec. 18, 2018), <https://www.azmirror.com/2018/12/28/deaths-of-migrant-kids-underscore-risks-of-hieleras/>.

<sup>40</sup>Id.; see also Human Rights Watch, *In the Freezer: Abusive Conditions for Women and Children in US Immigration Holding Cells* (Feb. 28, 2018), <https://www.hrw.org/report/2018/02/28/freezer/abusive-conditions-women-and-children-us-immigration-holding-cells>.

<sup>41</sup>83 Fed. Reg. 20846 (May 8, 2018).

<sup>42</sup>Jonathan Blitzer, *To Free Detained Children, Immigrant Families Are Forced to Risk Everything*, The New Yorker (Oct. 16, 2018), <https://www.newyorker.com/news/dispatch/to-free-detained-children-immigrant-families-are-forced-to-risk-everything>. (“Officially, the H.H.S. claims that the average time is 59 days, but according to one of the Department’s own officials, who agreed to speak with me on the condition of anonymity, detained children now spend an average of 74 days in Federal custody.”)

<sup>43</sup>Geneva Sands, *ICE arrested 170 potential sponsors of unaccompanied migrant children*, CNN (Dec. 10, 2018), <https://www.cnn.com/2018/12/10/politics/ice-potential-sponsors-arrests/index.html>.

<sup>44</sup>See KIND, *Targeting Families* (Dec. 2017) (hereinafter “Targeting Families”), <https://supportkind.org/resources/targeting-families/>.

<sup>45</sup>Real name was changed to protect the identity of the person.

<sup>46</sup>Targeting Families, *supra* note 44, at 12–13.

country and, due to the MOA, reunification with the child's uncle was delayed. The combined trauma of having been forcibly separated from his father and having been detained for a prolonged period resulted in the child's asking to be repatriated to his country of origin, even though he had a credible fear of harm.

Recent language in the 2019 appropriations bill limits DHS's use of information obtained from HHS for immigration-related enforcement against sponsors.<sup>47</sup> This language is an important first step in curtailing the negative impacts of the MOA. However, it is not a complete prohibition on information sharing. For example, information may be used for enforcement purposes if someone is charged with a crime—even if there has been no conviction. Moreover, because this provision was part of an annual appropriations bill, it will only last through September 2019.

*Recommendation.*—Children endure psychological and emotional trauma when their detention is prolonged due to threats of immigration enforcement against their potential sponsors. DHS must carry out Congress' intent and formally and permanently cease using sponsors' information for enforcement purposes. Simultaneously, Congress should exercise its oversight authority to guarantee that the administration complies with Section 224 of the new appropriations bill.

#### CONCLUSION

Children and families seeking asylum in the United States are often escaping dangerous and violent conditions in their countries of origin. The opportunity of asylum seekers to pursue protection from harm is the very foundation of our country's asylum laws, and efforts to restrict access to humanitarian protection do nothing to make our country safer. Instead of restricting access to protection for unaccompanied children and families, the administration should ensure that all are provided due process and an opportunity to have their claims fully and fairly considered. We look forward to working with Members to ensure our country's continued commitment to justice and to the protection of the most vulnerable.

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#### STATEMENT OF PHYSICIANS FOR HUMAN RIGHTS\*

##### ZERO PROTECTION: HOW U.S. BORDER ENFORCEMENT HARMS MIGRANT SAFETY AND HEALTH

January 2019

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#### LETTERS FROM HONORABLE SHEILA JACKSON LEE

June 1, 2018.

The Honorable KRISTJEN NIELSEN,  
Secretary of Homeland Security, U.S. Department of Homeland Security, Nebraska  
Avenue Complex, 3801 Nebraska Avenue, N.W., Washington, DC 20528.

DEAR SECRETARY NIELSEN: I am writing to you with concerns following news reports about the separation of children from parents at the southern border. I fear is being done not for their well-being, but to visit distress on them and their parents.

The Administration's policy is resulting in increased separation of families. As parents remain in criminal proceedings or detention, children will be removed and placed in the care of the U.S. Department of Health and Human Services. Recent news reports of unaccounted children suggest, however, that the Administration lacks policies to ensure that such children are eventually reunified with their families. We also remain concerned about the negative health and social impacts of family separation. In fact, in response to DHS's new policy, the American Academy of Pediatrics released a statement urging the Agency to reverse course stating, "In fact, highly stressful experiences, like family separation, can cause irreparable

<sup>47</sup> Conf. R., *Continuing Appropriations for the Department of Homeland Security for Fiscal Year 2019, and For Other Purposes*, Sec. 224, at 24–25 (2019), <https://docs.house.gov/billsthisweek/20190211/CRPT-116hrpt9.pdf> ("None of the funds provided by this Act or any other Act, or provided from any accounts in the Treasury of the United States derived by the collection of fees available to the components funded by this Act, may be used by the Secretary of Homeland Security to place in detention, remove, refer for a decision whether to initiate removal proceedings, or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child . . . based on information shared by the Secretary of Health and Human Services.")

\*The document has been retained in committee files and is also available at <https://phr.org/resources/zero-protection-how-u-s-border-enforcement-harms-migrant-safety-and-health/>.

harm, disrupting a child's brain architecture and affecting his or her short- and long-term health." This separation is even more alarming when considered in the context of comments made by Trump Administration officials that suggested that the separation of families will deter individuals from migrating to the United States.

The actions by the Trump Administration are very alarming and if left unabated, could visit serious harm on the immigrant population within our borders, and could invite international criticism as a departure from the humane treatment of asylum seekers. Any justification that this policy is done under color of law is plainly wrong. Existing policies applicable for unaccompanied minors is not applicable for parents who come to the border seeking asylum with their children. If children appear at the border with their parents, there is no need to separate them. The Trump Administration's current tact is at best a perversion of the law, and at worse a mis-interpretation.

Please contact me [] if you have any questions or need additional information.

Very truly yours,

SHEILA JACKSON LEE,  
MEMBER OF CONGRESS.

*June 13, 2018.*

The Honorable KIRSTJEN M. NIELSEN,  
*Secretary of Homeland Security, Washington, DC 20528.*

DEAR SECRETARY NIELSEN: As a senior member of the House Committees on Homeland Security, and the Judiciary, the former Ranking Member of the Homeland Security Subcommittee on Border and Maritime Security, the current Ranking Member of the House Judiciary Committee's Subcommittee on Crime, Terrorism, Homeland Security, and Investigations, and the Member of Congress for the 18th Congressional District of Texas, I am writing to express my strong opposition to the proposal reported in the media of DHS's plans to build tent cities at military posts around Texas to shelter the increasing number of unaccompanied migrant children, separated from their parents at a port of entry being held in detention.

At the outset, it should be emphasized that children who have been removed from their parents or accompanying adults, without cause, should not be categorized as "unaccompanied." Unaccompanied children are foreign nationals or stateless persons below the age of 18, who enter the territory of the United States unaccompanied by a responsible adult, and so long as they are not effectively taken into care of such a person. The number of unaccompanied children should be accurately reported and the number of children forcibly removed from their parents or a responsible adults should not be categorized as unaccompanied. Reports indicate that since October 2017, DHS has taken as many as 700 children from adults claiming to be their parents, including more than 100 children under the age of four. It is the DHS's actions which turns accompanied children into unaccompanied children.

I object in the strongest terms to the Administration's plan to construct tent cities at military installations around the state of Texas to warehouse immigrant children. The current practice of the Trump Administration the taking children from their parents is unconscionable and should end immediately. The safety and well-being of those children in U.S. custody must be at the utmost concern. Military bases are not child care facilities and it is impossible to conceive how someone could confuse the two. These children are wards of the United States government and should receive the care and support they need to survive the trauma of traveling to the border over hundreds or thousands of miles in a desperate attempt to escape violence, poverty, or natural disasters.

These children should not be placed in camps in the Texas summer heat, which would be life-threatening. Further, the areas of Texas where military bases are located are known to be overpopulated with snakes, insects, and plants that are harmful or fatal if they come in contact with humans. Poisonous spiders like the black widow (*Latrodectus mactans*) and the brown recluse (*Loxosceles reclusa*) spiders pose a significant risk to children. Both of these species of spiders can be found indoors and outdoors throughout the State of Texas.

A more thoughtful and humane policy is needed, not the proposal under consideration that would embarrass our nation and cause irreparable harm.

Thank you for your consideration. Please contact me if you have any questions or need additional information. I can be reached to speak with you about this matter at my Washington DC office [.]

Very truly yours,

SHEILA JACKSON LEE,  
MEMBER OF CONGRESS.



Chairman THOMPSON. The Members of the committee may have additional questions for the witness, and we ask that you respond expeditiously in writing to those questions. Pursuant to the Committee Rule VII(D), the hearing record will be held open for 10 days. Hearing no further business, the committee stands adjourned.

[Whereupon, at 12:58 p.m., the committee was adjourned.]



## APPENDIX

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### QUESTIONS FROM CHAIRMAN BENNIE G. THOMPSON FOR HONORABLE KIRSTJEN M. NIELSEN

#### NATIONAL EMERGENCY DECLARATION

*Question 1.* President Trump declared a National emergency 25 days after first threatening to do so. What information was provided to the President that prompted him to declare a National emergency? Please provide any and all memos and related information, dated on or before February 15, 2019, that were provided to the White House and may have been used to justify the need for a National emergency declaration.

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 2.* On March 5, 2019, your Department released updated Southwest Border migration statistics that estimated a little more than 76,000 individuals were apprehended or inadmissible in February 2019. On March 6, you testified that you believed DHS was on track to apprehend over 900,000 in fiscal year 2019. Please provide the data and models that informed DHS estimates for apprehensions for the current fiscal year.

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

#### BORDER WALL

*Question 3a.* In February 2017, the Government Accountability Office (GAO) found that CBP had not developed any metrics to assess the effectiveness of physical infrastructure along the Southwest Border. GAO recommended that CBP develop metrics and CBP concluded and stated the metrics would be completed by September 2019.

What is the status of CBP's development of border wall metrics? What metrics has CBP used to measure the effectiveness of border barriers?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 3b.* Will these metrics allow for a comparison of the cost-effectiveness of barriers, additional CBP officers and agents, and technology at the border?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 4.* How does DHS determine "just compensation" for property owners as required under the Fifth amendment in eminent domain proceedings?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 5.* How many miles of the 654 miles of border fencing along the Southern Border were built before fiscal year 2017 without the use of the use of DHS's waiver authority? How many miles of the 33 miles appropriated in fiscal year 2018 will be built without the use of the waiver authority? Does DHS have any plans to use the waiver authority for the 55 miles Congress appropriated for fiscal year 2019?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 6.* GAO found that when CBP prioritized locations for new barriers in 2017, CBP did not analyze the cost of the barrier in that location (GAO-18-614). Given topography, land ownership, remoteness of the area, and other factors, costs can vary greatly and affect the cost-effectiveness of the barrier. How is CBP selecting future locations for border barrier construction? Will the estimated cost of construction be a component of this analysis?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 7.* The same GAO report found that locations for construction where barriers were categorized as low priority by a CBP model were recategorized as a high priority by an Operational Review Board. For example, El Centro dropped from first priority to fifth, Yuma dropped from second to sixth, and Laredo dropped from third to seventh. Instead, segments of the Rio Grande Valley became DHS's highest priorities. Did this change in prioritization based on land ownership, as identified in the GAO report? What other criteria were taken into consideration? Please explain the process and criteria used to reorder the segments.

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

#### METERING/MIGRANT PROTECTION PROTOCOLS

*Question 8.* The DHS Inspector General found that "metering" may have the effect of pushing people toward areas between ports of entry to seek out Border Patrol agents to claim asylum. Given the numbers of asylum applicants waiting entry at land ports, what has DHS done to specifically improve its capacity to process?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 9a.* As of January 28, 277 people have been found amenable to the Migration Protection Protocols (MPP), which requires Central American asylum seekers from the Northern Triangle to remain in Mexico as they await the adjudication of their case.

How is CBP determining which individuals are subject to MPP and which are not?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 9b.* What exact criteria is being used?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 9c.* What will the U.S. Government do if the Mexican government refuses to allow a migrant to return to Mexico after being processed?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 10.* The Department of Justice's Executive Office for Immigration Review's (EOIR) current notice procedure relies entirely on the individual maintaining up-to-date addresses which EOIR uses to mail notice of hearings. How will DHS ensure that these individuals receive notice of their hearings if the individual has no permanent address in Mexico and the 1-800 number provided is unavailable? How is DHS ensuring that people have adequate and timely notice of their hearings, especially in cases when the initial hearing date is subsequently canceled or changed?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 11.* How will the DHS regional compact with Central American countries address the root causes pushing people to leave the Northern Triangle and seek protection?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

#### CUSTODY MANAGEMENT

*Question 12.* In the past, Border Patrol agents apprehended primarily single Mexican adults who could communicate effectively in Spanish. But in recent years, a growing percentage of people apprehended by Border Patrol agents are from the Northern Triangle countries of Central America, and increasingly from Guatemala. Many of these individuals speak one of many indigenous languages. What steps does Border Patrol take to properly assess each migrant's language needs upon apprehension?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 13.* According to reports, Jakelin Caal's father speaks Q'eqchi' and Felipe Gómez's father speaks Chuj. From public reports, it appears that both families were presented only with English-language documents that were explained to them in Spanish. Were any steps taken to secure interpretation services for either of these families prior to the time that their children died in Border Patrol custody?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 14a.* On March 5, CBP notified the committee of their new Interim Enhanced Medical Efforts Directive issued on January 28, over a month after the death of Jakelin and a month after the death of Felipe.

What is the status of the permanent, CBP-wide medical directive that once issued will supersede this interim guidance?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 14b.* Has the CBP executive director for the Privacy and Diversity Office completed review of their five objectives and issued their recommendations? If not, when do you expect to receive their recommendations?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 14c.* What improvements have been made to CBP's health interview questionnaire since the deaths of Jakelin Caal and Felipe Alonzo-Gomez?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 15.* Recent media reports show an increase in ICE's detention of infants without providing adequate care, an issue cited in a recent complaint to the DHS civil liberties office, and sexual abuse of migrant children in U.S. custody. How does your Department intend to investigate and address these incidents?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

QUESTIONS FROM HONORABLE XOCHITL TORRES SMALL FOR HONORABLE KIRSTJEN M. NIELSEN

BORDER SECURITY

*Question 1.* Secretary Nielsen, the mountainous and backcountry terrain in remote areas along the Southern Border presents Border Patrol a challenging environment to effectively secure the border. In these areas, advanced detection and surveillance technology can serve as a force multiplier by helping agents surveil hard-to-access areas. The recently-passed fiscal year 2019 spending package allocates \$100 million in funding for border security technology, along with the \$200 million in carryover from fiscal year 2018.

Given the new challenges that Border Patrol agents are facing in between ports of entries, particularly in rural areas, do you believe DHS should ensure that a portion of these funds are used to deploy technology in rural and remote areas, such as the bootheel of New Mexico?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 2.* In recent years, has there been any border security technology deployed in New Mexico, and if not, does DHS plan to deploy technology projects in New Mexico?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 3.* Do you believe that border security investments in low-traffic, rural, and remote areas along the border should prioritize surveillance technology over barrier construction?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 4.* How is DHS ensuring that newly-appropriated funds are targeting the most up-to-date technologies and approaches to securing the border?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

SANTA TERESA PORT OF ENTRY/CONSTRUCTION OF WALL

*Question 5.* Secretary Nielsen, the Santa Teresa Port of Entry (POE) is one of the fastest-growing land ports of entry in the Nation and it is now in the top 10 southern land ports of entry in total trade. Last year, 20 miles of barriers were built along the Santa Teresa POE, which cost nearly \$80 million.

Why did DHS opt to spend nearly \$80 million on 20 miles of barriers instead of investing those funds to modernize the port and build on its economic growth?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 6.* Do you believe that investments in the Santa Teresa POE, such as extending its hours of operation or modernizing sectors of the port, could result in

increased trade with Mexico and increased economic growth to the surrounding communities?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

#### TRANSPORTATION OF MIGRANTS WITHIN CBP FACILITIES

*Question 7.* Secretary Nielsen, on December 8, Jakelin Caal Maquin died after waiting over 8 hours for transportation to travel 90 minutes from Antelope Wells to Lordsburg. It is my understanding that a great deal of this delay was due to the wait for transportation from a contracted bus service.

What efforts is CBP undertaking to increase its internal capacity to drive commercial vehicles for the transportation of migrants?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

#### QUESTIONS FROM HONORABLE LAUREN UNDERWOOD FOR HONORABLE KIRSTJEN M. NIELSEN

*Question 1.* Please provide an exact figure for the number of minors currently being held: (1) At any facility owned by, operated by, or in relationship with HHS and (2) at any facility owned by, operated by, or in relationship with DHS.

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 2.* Please provide an exact figure for the volume of illegal drugs seized by DHS in the process of entering the United States through our border with Mexico, including those intercepted by the U.S. Coast Guard.

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 3.* Please provide a detailed time line for the conclusion of investigations into the deaths of Felipe Gomez Alonzo and Jakelin Caal.

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 4.* When you officially began family separation in spring 2018, were you aware that the effects of toxic stress and trauma are cumulative—that they get worse the longer the trauma and stress go on?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 5.* When the family separation policy officially began in spring 2018, were you aware that family separation can lead to behavioral changes and learning delays for children?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 6.* When the family separation policy officially began in spring 2018, were you aware that family separation can increase a child's risk of heart disease, diabetes, and cancer?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 7.* When the family separation policy officially began in spring 2018, were you aware that it increases a child's recent risk of anxiety, depression, and substance abuse?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 8.* The American Psychological Association reports that family separation is on par with beating and torture in terms of its relationship to mental health. When the family separation policy officially began in spring 2018, were you aware of that research?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 9.* Did DHS consult with any pediatric health experts before reportedly beginning the El Paso pilot program for family separation in 2017?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 10.* As you promised in the hearing, please provide a copy of all data that DHS collected or analyzed from the pilot program to evaluate how family separation affects a child's physical and mental health.

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 11.* As you promised in the hearing, please provide a copy of the report produced by your “bipartisan advisory council” that addresses how family separation affects children’s mental and physical health.

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 12.* As you promised in the hearing, please provide a copy of any DHS communication with pediatric experts prior to May 1, 2018, regarding the effects of family separation on children’s mental and physical health.

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

QUESTIONS FROM RANKING MEMBER MIKE ROGERS FOR HONORABLE KIRSTJEN M. NIELSEN

*Question 1a.* A significant number of State and local governments are considering or have passed legislation that would blacklist or otherwise discriminate against any company involved in the design or construction of any extension of the wall along the Southwest Border. In addition, several cities are considering blacklisting contractors that provide database services that support Federal immigration priorities. I’m concerned that unless checked, this legislation will embolden State and local officials to obstruct the Federal Government’s lawful functions whenever it may serve their narrow political interests. Threatened by discrimination and without assurance that the Department of Homeland Security (DHS) will take a stand on such legislation, private companies are, understandably, hesitating to deliver on the goods and services necessary to protect our homeland security interests.

How does DHS plan to respond to these State and local governments on this issue?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 1b.* Will DHS be working with other agencies to react to these State and local governments on this issue?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 1c.* Can you provide a time line of any actions DHS plans to take?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 1d.* How do we prevent these harmful acts from affecting efforts to secure our homeland?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 2a.* Secretary Nielsen, can you provide a breakdown of how CBP plans to use the fiscal year 2019 appropriated funds for border security technology, including the leftover fiscal year 2018 funds?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 2b.* How are you ensuring that the newly-appropriated funds are targeting the most up-to-date technologies and approaches to securing the border especially in the high-traffic areas such as the Río Grande Valley and the San Diego and El Paso sectors?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 3.* Madame Secretary, was there anything asked of you or said over the course of the hearing that you would like to correct the record on?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

QUESTIONS FROM HONORABLE CLAY HIGGINS FOR HONORABLE KIRSTJEN M. NIELSEN

*Question 1a.* Secretary Nielsen, there are “dead spots” along both the Southwest and Northern Borders that have been a persistent officer safety issue due to the lack of ability for communication devices to work in those spots. I’ve also heard from agents and officers in the field that their devices need to be encrypted or their location information and communications could be intercepted by cartels. Coupling this with the increase in CBP agent assaults that you mentioned in your testimony and responses to member questions, this is a very troubling problem. CBP agents are deployed in isolated areas across the borders, where off-grid communications may be necessary.

How will the new ATAK secure communication devices address current communication problems along our borders? Are there gaps left after ATAK implementation such as with “dead spots”?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 1b.* How is DHS responding to the “dead spot” issue in terms of procurement?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 1c.* Is DHS considering low-cost commercial products to remedy some of these issues?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 2a.* Secretary Nielsen, there are a lot of numbers we keep track of when assessing operational control of our borders. The ones I most frequently hear about are “apprehensions” between the ports of entry and “inadmissibles” at the ports of entry. However, it is safe to say that we do not catch a lot of what or who crosses our border illegally.

What percent of people who enter illegally are we not apprehending?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 2b.* What percent of drugs that enter illegally are we not seizing?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 2c.* How accurate would you say your “got away” statistics are?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 3a.* We understand that AMO currently leases satellite communication (SATCOM) downlink functionality from the Defense Information Systems Agency for both its manned and unmanned operations. AMO has already committed considerable resources to this capability, yet it is our understanding that given the technological limitations of its currently leased satellite threads, AMO cannot utilize this functionality in more than one manned aircraft simultaneously without sacrificing unmanned operations.

What limitations exist that prevent full utilization of direct downlink capabilities across the entire manned aircraft fleet?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 3b.* What is the Department’s strategy to address these limitations?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 3c.* Has the Department considered what technologies are needed to address these limitations?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

*Question 3d.* If so, are there any procurement plans moving forward?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

QUESTION FROM HONORABLE MICHAEL GUEST FOR HONORABLE KIRSTJEN M. NIELSEN

*Question.* On March 4, 2019, a bi-partisan coalition of Members of the House and Senate sent a letter asking you to release supplemental H-2B visas per the authority granted by H.J. Resolution 31. Would you be able to provide more details on the number of H-2B visas DHS plans to release and the time line for this action?

Answer. Response was indicated to be For Official Use Only and is retained in committee files.

