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RESOURCES NEEDED TO PROTECT AND SECURE THE HOMELAND

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED SIXTEENTH CONGRESS

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CONTENTS

	Page
Opening statements:	
Senator Johnson	1
Senator Peters	2
Senator Portman	8
Senator Hassan	11
Senator Paul	13
Senator Carper	16
Senator Hawley	18
Senator Scott	21
Senator Romney	23
Senator Lankford	25
Senator Rosen	28
Senator Sinema	30
Prepared statements:	
Senator Johnson	43
Senator Peters	44

WITNESSES

THURSDAY, MAY 23, 2019

Hon. Kevin K. McAleenan, Acting Secretary, U.S. Department of Homeland Security	
Testimony	2
Prepared statement	47

APPENDIX

Minors, Families, Asylum chart	54
Statements submitted for the Record:	
Church World Service	55
National Treasury Employees Union	56
Responses to post-hearing questions for the Record:	
Mr. McAleenan	67

RESOURCES NEEDED TO PROTECT AND SECURE THE HOMELAND

THURSDAY, MAY 23, 2019

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

The Committee met, pursuant to notice, at 9:16 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Ron Johnson, Chairman of the Committee, presiding.

Present: Senators Johnson, Portman, Paul, Lankford, Romney, Scott, Hawley, Peters, Carper, Hassan, Harris, Sinema, and Rosen.

OPENING STATEMENT OF CHAIRMAN JOHNSON[1]

Chairman JOHNSON. Good morning. This hearing will come to order.

The hearing title is "Resources Needed to Protect and Secure the Homeland." We will review the budget of the Department of Homeland Security (DHS). We have the Acting Secretary of Homeland Security, the Honorable Kevin McAleenan, here to testify. I want to, first of all, appreciate and thank you for your long service to this country, and in particular at this moment where we are grappling with so many issues: the aftermath of an unprecedented level of disasters with hurricanes and fires in California, hurricanes obviously in the gulf coast, the disaster that is occurring at the border right now. And if we could just quick put up our chart.[2]

Not only do we have it on the chart, but we had an event in Oshkosh over the weekend that required a giveaway, so I quick produced out of my factory some cups with that exact same chart. But what it shows is how out of control this problem is. In the first 7 months of this year, we have over 300,000—the total is actually 312,000 individuals coming over the border illegally and being apprehended either as an unaccompanied alien children (UAC) or as part of a family unit. I know these are not for public release yet, so they are initial numbers. But in the first 3 weeks of May, another 65,000 unaccompanied children but, again, primarily people coming in as family units and were apprehended at the border, in between the ports of entry (POEs), and over 97,000 total apprehensions. So we are on a path of breaking again, from I guess it was March, 103,000, I believe it was April, 109,000 or 106,000, and now we will be beyond that in May.

[1] The prepared statement of Senator Johnson appears in the Appendix on page 43.
[2] The chart referenced by Senator Johnson appears in the Appendix on page 54.

So this is a growing problem. It needs to be taken seriously, and it is what you and the men and women that you lead are grappling with. God bless you for doing it. I mean that in all sincerity. I know because I have been to the border. We are going to be going to the border with the Ranking Member and a couple other Senators later today. We know what you are having to deal with, and it is an impossible task.

So, again, I just appreciate your dedication, your willingness to serve, and with that, I will turn it over to the Ranking Member.

OPENING STATEMENT OF SENATOR PETERS

Senator PETERS. Well, thank you, Mr. Chairman. And, Acting Secretary McAleenan, we appreciate you being here today.

I am going to defer on any of my opening comments. I know our time is limited. We have members that have a meeting coming up, and I know you are on a hard stop as well. I know Members of this Committee want to ask questions, so I will ask unanimous consent (UC) to put my opening statement in the record.[1]

Chairman JOHNSON. Without objection. I will ask the same request.

Senator PETERS. That sounds good.

I will turn it over to you.

Chairman JOHNSON. Mr. Secretary, it is the tradition of this Committee to swear in witnesses, so if you will stand and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. MCALEENAN. I do.

Chairman JOHNSON. Please be seated.

The Hon. Kevin McAleenan is the Acting Secretary for the Department of Homeland Security. He has been serving in this position since April 2019. Prior to this appointment, Mr. McAleenan had a distinguished career at U.S. Customs and Border Protection (CBP) where he recently served as Commissioner of CBP since January 2017. In 2015, Mr. McAleenan received the Presidential Rank Award, the Nation's highest civil service award. He holds a bachelor degree from Amherst College and a J.D. from the University of Chicago Law School. Mr. McAleenan.

TESTIMONY OF THE HON. KEVIN K. MCALEENAN,[2] ACTING SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. MCALEENAN. Thank you, Mr. Chairman, and thank you, Ranking Member Peters, and distinguished Members of the Committee, Senator Portman. I appreciate the opportunity to appear before you today. It is a sincere honor to serve as Acting Secretary and to represent the dedicated men and women of the Department of Homeland Security. I really do believe that DHS has the most compelling mission in government: to safeguard the American people, our homeland, and our values. As Acting Secretary, I intend to work with this Committee—and I have been in the last 6 weeks—and serve as an advocate for the Department to ensure our

[1] The prepared statement of Senator Peters appears in the Appendix on page 44.
[2] The prepared statement of Mr. McAlennan appears in the Appendix on page 47.

people have the resources and authorities they need to carry out their critical missions on behalf of the American people.

As we are highlighting the President's 2020 budget, I do want to point out a few of the key areas where there are critical investments across DHS and the multi-missions that we carry out. I want to ensure this Committee that we are not going to lose any momentum on our multiple missions from cybersecurity to disaster response as we see what is happening this morning with the floods in Oklahoma, the tornado that touched down in Missouri. We are going to stay on top of all of these mission sets, and I do want to highlight some of the investments there. And then, of course, I will speak to the border security crisis, which this Committee is very focused on and understands very well.

The President's budget requests funding for critical missions across the Department. For our Cybersecurity and Infrastructure Security Agency (CISA), the budget requests $1.3 billion to assess evolving cybersecurity risks, protect Federal Government information systems and critical infrastructure. The budget also supports the launch of Project 2020, a new initiative designed to get all States to a baseline level of election infrastructure and cybersecurity, well before the national elections of 2020.

The budget supports additional transportation security officers to enhance security effectiveness and stay ahead of increasing costs and growing traffic at airports nationwide. The $3.3 billion for Transportation Security Administration (TSA) also includes funding for an additional 700 screeners and 350 computed tomography (CT) units.

For the Federal Emergency Management Agency (FEMA), this budget provides a significant increase in the Disaster Relief Fund (DRF), begins implementation of new requirements in the Disaster Recovery Reform Act, and funds critical operational positions identified in the 2017 hurricane season after-action report. And for the U.S. Coast Guard (USCG), this budget continues efforts to fund the Offshore Patrol Cutter and advances the Polar Security Cutter program.

But with regard to border security and immigration enforcement, as you are well aware, we are in the midst of an ongoing security and humanitarian crisis at the Southwest Border. I think your chart puts that in stark context, stark relief, Mr. Chairman. Almost 110,000 migrants attempted to cross without legal status last month, the most in over a decade, and over 65 percent, as you highlight, were families and unaccompanied children. That means over 40,000 children entered our immigration system in a single month.

The President's budget will help address this for 2020. First it requests $523 million for the humanitarian crisis. This money will allow us to provide better care for those we come into contact with through apprehension, custody, detention, and removal.

Second, to address the border security aspects of the crisis, it requests $5 billion in funding for the construction of approximately 200 miles of a new border wall system, a proven deterrent requested by our front-line agents, and it also calls for 750 Border Patrol agents, 273 CBP officers, and over 660 U.S. Immigration and Customs Enforcement (ICE) front-line and support personnel.

The budget request will make much-needed upgrades to sensors, command-and-control systems, and aircraft to help our men and women combat criminals who are profiting from human suffering.

While our 2020 budget will help address this crisis, we will need additional funding much sooner. Given the scale of what we are facing, we will exhaust our resources before the end of this fiscal year (FY), which is why the Administration sent a supplemental funding request to the Congress over 3 weeks ago. In addition to the $3 billion in that request for the Department of Health and Human Services (HHS) to care for unaccompanied children, the request includes $1.1 billion for the Department of Homeland Security and would provide $391 million for humanitarian assistance, including temporary migrant processing facilities at the Southwest Border, $530 million for border operations, to include our surge personnel expenses and increased transportation and detention costs, and $178 million for operations and support costs including pay and retention incentives for our operational personnel as well as upgrading our information technology (IT) systems.

The supplemental request is critical, but unless Congress addresses the pull factors—namely, our vulnerable legal framework for immigration—children will continue to be put at risk during a dangerous journey to our border. Without these authorities and resources, the situation will remain untenable, and while DHS will continue to do all it can to manage this crisis in an operationally effective, humane, safe, and secure manner, every day that Congress does not act puts more lives at risk and increases the burden on the system.

Mr. Chairman, Mr. Ranking Member, I have been doing this for a long time. This is the third time I have been in a leadership role during a migration surge at the border of families and children, both in 2014 and 2016, at the end of the last Administration. We have more than doubled those two crises combined in the first 7 months of this year, and we are still in the middle of that effort.

We are doing everything we can to address it, as you will see, as you go down to the border again today. On the medical front, we had about 10 people providing medical care at our top central processing center as of a year ago. We now have 50 in that center alone. There is 24/7 coverage in all of our highest traffic sectors, and we are expanding. We have U.S. Coast Guard medical teams on the ground. We have Health and Human Services Public Health Service Commission Corps on the ground with us working to protect especially children that come into our custody.

We have expanded our facilities. We have already put up a thousand spaces of soft-sided facilities in two locations. We are going to have 10,000 by the end of next month to address this growing crisis. We have gotten tremendous support from the Department of Defense (DOD), the National Guard, from our State and local partners, and we are working closely with nongovernmental organizations (NGOs) and charities to try to help those in need. But none of that is going to be enough. We are still seeing too much tragedy, and this week and this month have been no exception. Forty percent of our agents are off the line doing processing, transportation, care, hospital watch, and feeding and cleaning of migrants in our custody. This leads to significant border security risks that I do not

think we can tolerate given the drug epidemic and the dangers to our communities across the country.

My second week in this job, I went to see the 9/11 Memorial Museum to get reinspired at the origin of the Department of Homeland Security, and it was a good reminder that Homeland Security, when we started, was nonpartisan. It was a nonpartisan mission that all Americans supported. I know this Committee works in that spirit. Through your prior hearings to become expert on this and help inform the American people, for your efforts to go to the border—and I know you are going again—this is a unique approach this Committee is taking to actually grapple with the problem based on a shared set of facts and solve it. I want to work with you and the Ranking Member and both parties. Our front-line agents and officers need it, and they deserve that support from this Committee. The children being put at risk do as well, and the security of our border and the future of our region depend on it.

So I appreciate the opportunity to appear before you today, and I look forward to the dialogue this morning.

Chairman JOHNSON. Thank you, Mr. Secretary.

I am happy to defer my questioning to you or to Senator Portman, just to keep things moving. Did you want to ask your questions now?

Senator PETERS. Yes, that would be great.

Chairman JOHNSON. OK. Go ahead, Senator Peters.

Senator PETERS. Well, thank you, Commissioner McAleenan, for your comments. I know you mentioned in your opening comments the challenges, the medical challenges in particular, that you are having along the border.

But last evening, it was reported that a young girl from El Salvador died last year while in custody, but her death was undisclosed publicly until last night, which made her now the sixth migrant child to die after crossing the Southern Border in less than a year.

We all agree that we must absolutely secure our borders, but the death of children—and I know you agree with this. The death of children in custody is simply unacceptable. But first we must identify what went wrong and ensure that this does not happen again. So some brief questions.

Yes or no, does every child in CBP custody have access to a pediatrician?

Mr. MCALEENAN. No.

Senator PETERS. Does the CBP have clear protocols regarding the transfer of children to a hospital when presenting acute symptoms, especially when we look at the aggressive nature of this current flu outbreak that we are seeing along the border?

Mr. MCALEENAN. Yes, and as Commissioner, I directed that all children coming into our custody be screened by a certified medical professional, and that is what we have undertaken steps to accomplish, both with our extension of our contract to get medical professionals into our facilities as well as partnering with the U.S. Coast Guard and the Public Health Service Commission Corps, and that effort is extensive and ongoing, with 65 people being brought to the hospital every day, watched and supported by agents and officers.

So this is a massive effort going on the border to protect children, and I know we have saved dozens and dozens of lives over the past several months.

Senator PETERS. Although there have been cases—in fact, we had a recent case of a 16-year-old that passed away who was not taken to the hospital. So there are obviously gaps that have to be filled.

Mr. MCALEENAN. He was both screened and offered medical care, and we are going to look forward to the findings of the Inspector General (IG) to see if we can do better. One of the key areas there, though, I have to highlight is the fact that HHS does not have enough funding for bed space for teenage males, and that is the main arriving unaccompanied child right now. So we are not able to move teenage males as expeditiously as we should be to the better situation for care within Health and Human Services, and we need that support from Congress in the supplemental.

Senator PETERS. I have asked many of your colleagues in prior DHS leadership and I will ask you again today: How long is too long to detain a child?

Mr. MCALEENAN. So detention for a child is for the safety of the child. That is the only reason to do it. We do not believe that children should be detained in Border Patrol stations very long at all. We would like to move them as swiftly as possible to Health and Human Services, to a more appropriate setting for unaccompanied children, where they can be placed with an appropriate sponsor through HHS' processes. And I think that is the best approach. I would like to get that to 24 hours to 40 hours and try to comply at all times with the standard in the Trafficking Victims Reauthorization Protection Act (TVRPA), which is 72 hours.

Senator PETERS. So I get the sense you are saying any time is really too long to detain a child, so you try to expedite——

Mr. MCALEENAN. An unaccompanied child. A child arriving with a parent, I do believe we should be able to have them in an appropriate setting with access to education, recreational space, medical care, and a courtroom where we can finish an immigration proceeding upon arrival at the border as opposed to——

Senator PETERS. As quickly as possible.

Mr. MCALEENAN [continuing]. Not finishing that. As quickly as possible, yes. There is no desire to detain children in any capacity for very long at all.

Senator PETERS. It has been reported that DHS is requiring FEMA, CISA, TSA, and other components to contribute staff to various border security missions. Securing our Northern and Southern Borders must be our top priority. We have a Northern Border in this country as well, two borders, and I am concerned about the patient impact on readiness in my State of Michigan as well as other Northern Border States.

So my time is short, but could you give me quickly a brief synopsis of the specific duties that these folks are being asked to do on the Southern Border—FEMA, CISA, TSA?

Mr. MCALEENAN. So as in any crisis, we do call on volunteers from across DHS to respond. Last year—or 2017, during the crises of Hurricane Harvey, Hurricane Irma, Hurricane Maria, we had up to 2,000 people deployed from across the Department at any given time. Right now we have about 250 volunteers that are deployed,

and what I have asked all of our leaders to do is make a risk assessment and carefully decide who is available to come support this crisis. But they are doing all kinds of duties, from attorneys to commercial driver's license holders that are helping transport migrants, to folks just simply helping with food service and care of people in our custody.

So it is a variety of missions, and we are very fortunate to have volunteers that are willing to help out in a crisis.

Senator PETERS. Obviously, a shortage of personnel is an issue for you, and even before the recent increase in migrant traffic at the Southern Border, it was clear that CBP was not adequately staffed to secure our borders and facilitate the other mission, which is to move legitimate trade and travel at our ports of entry. The CBP workload staffing model developed under your leadership as the CBP commissioner identifies a shortfall of thousands of CBP officials. Again, this is even prior to the current situation. To help address this gap in personnel, Senator Cornyn and I have introduced some bipartisan legislation, also Senator Portman has joined as well, to give clear authority and direction to hire much-needed CBP officers to the levels that were identified in the model that you put together. I am especially concerned about critical personnel being moved from Michigan to the Southern Border while Michigan continues to remain two of the three busiest border crossings in the Nation.

So, Acting Secretary, will you commit to working with Congress to advance this legislation and close the hiring gaps that we currently have with CBP officers?

Mr. MCALEENAN. I will, Senator, and appreciate greatly your support to additional hiring of CBP officers. It is one of the most critical occupations both for our security and facilitating trade and travel. We have netted 2,000 CBP officers over the last 5 years with Congress' support, and this year we are expecting to net over 1,200 additional CBP officers. Our hiring is very successful for CBP officers now based on a number of changes we have made with support from Congress, but I do think a model-based staffing strategy that accommodates the growing traffic, growing security threats, is an appropriate way to plan for the future, and I appreciate the legislative efforts to support that.

Senator PETERS. Great. Well, I appreciate your support in getting this legislation passed and signed into law to support your efforts.

Mr. Chairman, I have a little remaining time, but I will defer that so we make sure everybody has a chance to ask questions. We will stick to our strict 7-minute timeline.

Chairman JOHNSON. Absolutely. I am going to use my 7 minutes in little clips.

We were talking a little bit about the hiring rate. Is it true that we have a greater hiring than attrition rate right now?

Mr. MCALEENAN. For CBP officers, it significantly exceeds attrition. For our Border Patrol agents, it is much closer, unfortunately, to attrition, although we are making progress recovering from the shutdown period.

Chairman JOHNSON. That is good news. I am highly concerned with the current crisis, particularly until when you do not have the resources and you are requiring all these volunteers, that Border

Patrol officers will start quitting. I am highly concerned about the attrition rate. Have you seen any uptick at all on that in the recent crisis?

Mr. MCALEENAN. So our attrition is higher than I would like for Border Patrol agents. My first decision as Acting Secretary was to extend a 5-percent retention incentive to our agents who I think deserve it and are working incredibly hard at the journeyman level. So we need to continue to look at all ways to maintain our tremendous professional workforce, and I do think they need to see a light at the end of the tunnel from this kind of crisis. And working with Congress to solve it legislatively I think is our best approach to do that.

Chairman JOHNSON. Again, I want to urge all my colleagues here to support the emergency supplemental. It is just critical that you get that funding, and not just for HHS but the $1.1 billion that DHS is requesting in that as well. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman.

Mr. Secretary, we appreciate you coming back again, and you are here at a time where there is, without question, a crisis at the border. It is humanitarian. It is a drug crisis. It is an immigration crisis.

Just to put some numbers around it, if you could help us just so people can understand what is going on, my sense is there are now over 100,000 people coming to the border. My sense is there is about a 75-percent increase compared to last year in the number of children who are showing up at the border and about a 400-percent increase in the number of families coming to the border, so not only higher numbers but more families with children. Is that accurate?

Mr. MCALEENAN. That is exactly correct.

Senator PORTMAN. So it is overwhelming. And we appreciate your service and the service of the men and women of CBP and the Border Patrol who are trying to deal with this issue, many of whom are being pulled off their normal jobs, as I understand it, to deal with the humanitarian crisis. Is that accurate?

Mr. MCALEENAN. That is very true. I mean, the processing and care of families and children is much more intensive, and to have 40 percent of our Border Patrol agents engaged just in that function, not on the line, not addressing the border security parts of their mission, is a crisis by any measure. I know you have been committed, Senator, to countering the drug epidemic in our country, especially the synthetic opioid concerns. I am very concerned we are missing drugs right now on that border due to this crisis.

Senator PORTMAN. What we are seeing on the drug front is pretty scary because we have finally some progress on the opioid front. For the first time in 8 years, we have seen some decrease in overdose deaths. But what is happening in my State of Ohio and around the country is you see a lot more crystal meth coming in from Mexico. It is pure, it is powerful, it is inexpensive. Frankly, there are not any more meth labs in places like Ohio. Why? Because it is so darn inexpensive and so powerful to just buy the stuff

from the cartels coming up from Mexico. So you have heroin, fentanyl, cocaine, but now pure crystal meth.

On that, since you raise it, what is the single most important thing that we could do today to stop the crystal meth from coming across the border?

Mr. MCALEENAN. So the fiscal year 2019 budget does a tremendous amount for us in this regard, and we are going to deploy those resources. Nonintrusive inspection technology for the Southern Border is going to be able to dramatically increase the percentage of vehicles that we scan. It is going to be the single best tool we have to stop the increase of crystal meth.

Senator PORTMAN. So it is new technology that we have funded to be able to see if there is a truck coming through, for instance, a noninvasive technology to be able, in essence to see whether there are drugs there and then to be able to apprehend.

Mr. MCALEENAN. Right. The two additional points I would make, though, is the investments in the border wall and the system around that—the cameras, the lighting, the roads that allow us to gain access—that will help us address the increasing incidence of hard narcotics coming between ports of entry. And then, third, resolving this crisis, our agents can be back focused on the border security aspects of their mission.

Senator PORTMAN. Not pulled off for the humanitarian——

Mr. MCALEENAN. Those are the three things I would highlight.

Senator PORTMAN. Let us talk about push and pull factors for a second because ultimately what we are trying to do here in this Committee is to help you to be able to address this issue.

On the push side, we talk a lot about the Northern Triangle countries being countries where there is a lot of poverty and a lot of corruption and reasons for people to want to leave. So we have talked about how to get aid and have it be more effectively deployed in those countries. I think there is a general consensus among at least Members of this Committee that we should do a better job, and can. However, we are still going to have huge wage differentials. There are still going to be issues in El Salvador, Honduras, and Guatemala that cannot be addressed simply by aid packages.

So what are the pull factors? It seems to me the most important one right now, given this, again, 400-percent increase in families, 75-percent increase in kids, over 100,000 people a month now coming over that border, is there something going on with the asylum system because they are coming over to seek asylum. They are coming to your officers. They are not trying to avoid law enforcement. In fact, the wall probably is not helpful in this regard in the sense that they are not trying to climb over a wall. They are coming forward and saying that they would like to get asylum.

Tell us what happens, if you could, to these families when they approach one of your officers and ask for asylum. Are these individuals being processed? Are they being detained? Are they being allowed to go into the community? What is happening today?

Mr. MCALEENAN. So you are absolutely right, Senator, on the pull factors, and I would actually use your Committee's chart on this point because you see in fiscal year 2015 there, Flores reinterpreted. That has been the essential driver, frankly, for the in-

creased family units, is the fact that family units can no longer be detained together in an appropriate setting during a fair and expeditious proceeding to determine whether they have a valid asylum claim or other immigration rights, or——

Senator PORTMAN. Flores said that those family members with their children there are limited to 20 days, and that is in an emergency. Otherwise, they have to be released into the community. Is that accurate?

Mr. MCALEENAN. That is correct. And that certainty and that knowledge—that they will be allowed to stay in the United States indefinitely, pending a court proceeding that could be years away, depending on what jurisdiction they are in—is a huge draw. The smugglers have capitalized on that. They are advertising that fact. We hear that routinely from our interviews of families. We see that in the media.

Senator PORTMAN. What percent of those families who come up to the border and, again, approach your officers and ask for asylum are being released into the community within days?

Mr. MCALEENAN. One hundred percent.

Senator PORTMAN. One hundred percent?

Mr. MCALEENAN. Yes, and they are not necessarily asking for asylum. They do not have to. They can go into an immigration proceeding and not have to present that case for potentially years.

Senator PORTMAN. When they go into the community, you say it can take a while. It is over 2 years in Ohio, you should know, before we can have a court hearing.

Mr. MCALEENAN. Right.

Senator PORTMAN. It is over a 2-year period. What is the average around the country, do you know?

Mr. MCALEENAN. The average is around 2 years, and in some jurisdictions it is even longer.

Senator PORTMAN. Two years before the immigration hearing takes place.

Mr. MCALEENAN. Right.

Senator PORTMAN. And during that time period, can those individuals work?

Mr. MCALEENAN. Yes, by and large, although we are looking at tightening the rules so that there is not an opportunity to take advantage of the system.

Senator PORTMAN. So they have a work permit. My understanding is they do not get the work permit immediately, but after a certain period of time. Is it 6 weeks?

Mr. MCALEENAN. Right now it is in the 30 to 90-day range, that is correct.

Senator PORTMAN. And those individuals then are going to work. So if you were a trafficker, what you are telling people is, one, if you come to the border and seek asylum or even if you were coming to the border and seeking an immigration hearing, you will be released into the community for a couple of years, at least, before your hearing, and you will have the ability to work. And with the wage differential being able to make 10 times as much or sometimes as much as 20 times as much in the United States, do you think that is a factor?

Mr. MCALEENAN. I think not only is it a factor; that is directly how smugglers are advertising the opportunity to come to the United States right now.

Senator PORTMAN. So ultimately it comes down to the jobs.

Mr. MCALEENAN. Right.

Senator PORTMAN. We want to talk more about E–Verify at some point because we do not have the system to determine who is legal and who is not in our country, and we need to increase the mandatory use of E–Verify. Thank you, Mr. Commissioner, now Mr. Secretary.

Mr. MCALEENAN. Thank you.

Chairman JOHNSON. Thank you, Senator Portman.

Again, there is a great deal of interest in this hearing. We will have a lot of attendance, so we allowed 7 minutes, but we are going to keep people right at 7 minutes, so, Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Well, thank you, Mr. Chair and Ranking Member Peters. And thank you, Acting Secretary McAleenan, for being here to discuss all these important topics.

Mr. Secretary, as I am sure you are aware, convicted American Taliban fighter John Walker Lindh is reportedly being released from Federal prison today. Last week, Senator Shelby and I sent a letter to the Bureau of Prisons expressing concern over the anticipated release of John Walker Lindh as well as 108 other terrorist offenders scheduled to be released in the next 5 years. One of our concerns is the lack of adequate process to notify Federal, State, and local officials when a terrorist offender will be released.

Mr. McAleenan, do DHS Fusion Centers receive information from the Bureau of Prisons or probation and pretrial services regarding the release of a terrorist offender? And what is your process for sharing this information with local authorities?

Mr. MCALEENAN. That is a good question, Senator. I will look into that and get back to you on that.

Senator HASSAN. OK.

So moving forward, can I count on you to work with relevant agencies to develop a strategy to ensure that all necessary Federal, State, and local officials have the information that they need to keep communities safe when these individuals are released?

Mr. MCALEENAN. Yes.

Senator HASSAN. Thank you.

Later today I am headed to the Southern Border with Chairman Johnson and Ranking Member Peters and Senator Hawley to assess the situation on the ground. I took a similar trip last year to talk to port officers and ICE detention officers. I was impressed by my visits to El Paso and McAllen, Texas, where I saw the robust screening effort conducted by CBP of incoming traffic from Mexico, and we have talked a little bit just now about some of the technology that helps officers kind of immediately look—see what is different in a car that on the surface looks like a typical car.

However, stopping the drug cartels is not solely a matter of securing traffic coming into the United States. We have to attack the cartels' business model. That means stopping the flow of both drug

money and weapons that travel southbound into Mexico from the United States.

Unfortunately, as I saw on my trip last year, our current southbound screening effort is inadequate. We were told we need expanded facilities, more personnel, and updated technology in order to try to strengthen our ability to stop the flow of guns and money back into the cartels' hands.

So, Mr. McAleenan, I will ask you the same question that I asked Secretary Nielsen last year. Are you satisfied with the current state of southbound inspections?

Mr. MCALEENAN. No. I agree strongly with you that we can do more, and part of the nonintrusive inspection equipment that we are going to be purchasing with the fiscal year 2019 funding will go to outbound lanes. But to your point, we have been doing outbound alongside our Border Patrol agents and CBP officers jointly. We do not have agents available to do outbound right now. They are doing the inbound humanitarian mission.

Senator HASSAN. Right.

Mr. MCALEENAN. So we also can improve our efforts in coordination with the Government of Mexico. So I think there is a lot to do in that area, and we can get stronger.

Senator HASSAN. OK. Given the numbers and the humanitarian crisis that we are seeing now, I am taking it that you would not say we have made real progress on this issue since last year, on southbound——

Mr. MCALEENAN. The one area we are making progress is in acquiring the systems that will help us screen more vehicles going southbound, and more canine teams.

Senator HASSAN. OK.

Mr. MCALEENAN. And in our overall hiring of CBP officers, that will strengthen our base on the Southwest Border. But, no, with our agents now redeployed on humanitarian missions, with a new government coming in and establishing new relationships on the investigative side, I think we can do a lot more this year.

Senator HASSAN. OK. And so one of the other things I heard last year was that it may take some work and planning with local authorities on both the north and south side of the border to configure things in a way that allows those inspections to take place without interfering with local traffic and the like. Is that something that you guys have been addressing?

Mr. MCALEENAN. Absolutely. Every port of entry has plans for how to do outbound inspections given their unique flow of traffic, given the unique configuration of the footprints of ports of entry, which, again, have been there for a long time and were designed at a much lower volume of flow both north-and southbound. So, yes, we have plans locally for increased outbound efforts.

Senator HASSAN. Well, I would look forward to working with you on that, and I will take this as a commitment to continue to work on that, because I really think until we get to the southbound flow, we are not going to break up these business models.

Mr. MCALEENAN. An important aspect of the mission, I agree.

Senator HASSAN. OK. Mr. McAleenan, back in March I requested from Secretary Nielsen the case files for the reported 245 child separations that had occurred since a Federal judge ruled that these

separations must end. Understanding the need for privacy and confidentiality, I would have accepted redacted names and addresses.

A week after my request, a representative from CBP followed up to say that you as Commissioner of CBP could brief me on this matter but not until 7 weeks after my initial request. We responded with dates and times that worked but heard nothing back from your office until just 2 days ago, 10 weeks after my request when your office replied to say that you could not provide specific information on these 245 cases.

I will also note that just this week reports surfaced that, as we have talked about, 16-year-old Carlos Vasquez has died in Federal custody at the border, the fifth child to die, and just last night, as Senator Peters pointed out, we learned about a sixth child's death after apprehension by border agents.

This is incredibly disturbing and raises more serious questions about the treatment of children at the border. I know you care about it, but we obviously have to be able to implement real plans here to prevent these kinds of tragedies from happening.

Can you provide any update on the cases of these 245 separated children for us or about what CBP is doing to provide more accountability for the treatment of children at the border?

Mr. MCALEENAN. So, first of all, I will go back and look at your oversight request and make sure we are responding appropriately and timely.

Senator HASSAN. Thank you.

Mr. MCALEENAN. Thank you for raising it. I was not aware that we had been delayed in that response.

Second, I just want to emphasize that any separation that is occurring now is occurring for the benefit of the safety of the child. This is in compliance with the court order in Ms. L. It is in compliance with the Executive Order from the President from June 20 of last year. So we are seeing that, even though we have 1,500 to 2,500, some days over 3,000 families, separation is only occurring one to three times a day. So it is extraordinarily rare and under very controlled circumstances.

Senator HASSAN. I thank you for that answer, and because I am running out of time, I want to be respectful of the time here. But I want to say that if this is not all necessarily on you and your agents, but this Administration has given a variety of stories about family separation since they even officially began. So you can understand that from an oversight point of view, in order to protect children, we need this information and we need to engage with you to ensure what your intentions are, what you are saying to me now is actually what is happening.

Thank you, Mr. Chair.

Chairman JOHNSON. Senator Paul.

OPENING STATEMENT OF SENATOR PAUL

Senator PAUL. Thank you for your testimony. I think it is important that we know who comes to our country, who is visiting on student visas, if we have intelligence that they are here with bad intention we do not let them in, if they are not going to school they are sent back home. But we have a problem that seems to be recurring with one of our universities. Campbellsville University has

been around for 113 years. I have been there many times. It is a great college. It is a real college with a great reputation in our State. They have had three students recently come in on student visas that either had their visas taken away or were turned back. I do not think it is because there was any kind of actionable intelligence or that the kids did anything wrong or that the university did anything wrong. But the Border Patrol agents are simply saying it is a fake university, which, one, is very insulting to our university and to our State, but I think it is not just the border agent problem. It must be some kind of central list. Wouldn't you think they have to type into a list for a student visa and say what universities are on that list? The university is on the list of approved students. The only anomaly may be that it is an online course. Some of the students were coming into other airports, so they are coming into Los Angeles and they do part of the course in Kentucky and part of it online. But it is approved by ICE; it is approved by the government. But the problem is your officers—either it is not typed into the system correctly or whatever, but then they are insulting these students, turning them back, and insulting the university also.

We sent a letter to you 63 days ago, and I think there has been some response and I think some attempt to resolve this. But 10 days ago, another student was turned back.

Look, I am all for safety and I am all for not letting people come in here who are problems. But it does not sound like there was an individual problem here. There is more a systemic problem that you just do not have your list right or your agents do not have access to the list.

Do you know how it works? Does an agent type in a list to come up with a university when a student comes in from abroad?

Mr. MCALEENAN. Thank you, Senator. I do know how the student visa program works. It is managed by ICE. You have to have, first of all, a certified program, certified university, and then the individual student visa holder has to be confirmed to be part of that certified program.

Senator PAUL. I think all that is true, and they are still coming up and insulting our university and saying it is fake, and we have no evidence and no one has presented any evidence that they are not on the appropriate list.

Mr. MCALEENAN. Sure. I am not familiar with the individual case, but we will certainly look into it. I am glad you have gotten some response toward resolving it, but we will take a look.

Senator PAUL. We need more, and the sooner the better, because it is a big deal for someone to fly halfway around the world to go to school here and be, one, insulted, the university is insulted, and to then—we need some resolution. If you would try to help us with getting resolution, will you have somebody call us within a week or so and try to work through this so we do not have a recurrence?

Mr. MCALEENAN. We will follow up.

Senator PAUL. OK. The other issue I have is one we had with the last nominee for ICE. We were not too fond of him because of one his statements. One of his statements was that a cell phone is just like a shipping container, and not only do we object to that, we ob-

ject strenuously to that. We are insulted by the comment. Do you think a cell phone is the same as a shipping container?

Mr. MCALEENAN. So all goods that cross the border are subject to examination, but actually we have a specific policy for cell phones. It is different. They have a different level of data that they can contain, and that is why we have restrictive approaches to whether we can inspect it and how we inspect it.

Senator PAUL. Alright. We want you to be even more restrictive. We want the law changed. So Senator Wyden and I actually have a bill to require a warrant for U.S. citizens coming back home, because we think there is a great danger that if you have brown skin, a different accent, or a funny last name that does not look so-called American that you are going to get—all of a sudden they are going to say, "Give us your cell phone." And, if you have evidence someone is calling a terrorist, if you have someone that they are part of a terrorist cell, by all means stop them, keep them, do whatever it takes. But just random American citizens coming home being asked for their password to the cell phone we think is very intrusive without any kind of—other than, "We just think they looked suspicious." That is not enough. And so we are still troubled by the reports we hear on this, and we are going to keep pushing the issue. But it is very important for us to convey to you that we do not think a cell phone is a shipping container. You do have the right to go through luggage and shipping containers at the border. You do not really have a right to look at my Google searches and to look at everything I have stored on my phone, pictures, etc., and download that to a computer.

When you are taking phones and you are getting passwords, are you downloading content from the phone to a database?

Mr. MCALEENAN. So there are a couple different types of searches: a basic search where you would just look at the surface content of the cell phone, and then a more in-depth search of a phone or any contents—it would require reasonable suspicion, supervisory approval, and several additional safeguards.

Senator, I know your concerns are sincere and well informed on this issue. I do want to emphasize, though, that we have oversight over the selection for secondary and the selection for secondary that includes inspection of a cell phone device. And any indication that would be done on the basis of race, religion, or anything else would be unacceptable. And it is overseen not only by CBP's Office of Professional Responsibility but by our Civil Rights and Civil Liberties Office.

Senator PAUL. You can see how the danger occurs, though, because a lot of it is ambiguous when you go to what is suspicion. So you can see how there is a real danger and for people coming back to be targeted based on it, even if it is not spoken that there is a danger that there is a bias in the way this is happening. And so the regulations you have on the phone, on what you do to go to a phone search, are those printed and open and available to us?

Mr. MCALEENAN. Yes, we publish the policy online. I personally worked on the update and the more stringent requirements in the policy.

Senator PAUL. OK. I know you deal from your perspective. From our perspective there are many of us who think there should be a

legal requirement for a judicial search, that this is not the same as looking at the luggage. And so just at least realize that there are some of us that are very concerned about the invasiveness of this search. Thanks.

Chairman JOHNSON. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks. And thanks very much for visiting with us yesterday, Mr. Secretary, and sharing your thoughts and ideas with us.

I am going to ask you to use most of my 7 minutes to just sketch for us an outline that includes push and pull factors, includes Alliance for Prosperity, includes in-country asylum, includes changes in the way we process people at the border, immigration judges and so forth. Just take my 7 minutes and just put together a thoughtful, compassionate, smart, cost-effective plan. I think the smartest thing we could do would be actually do comprehensive immigration reform, and God willing, someday we will get back and do that. That is probably the ultimate answer. But just take the next 6½ minutes to do that for me, please.

Mr. MCALEENAN. Thank you, Senator, for that opportunity, and I think at the start of the hearing, the Chairman's opening statement, some of our discussions on the Flores case and the increased arrival of families and children over the last several years, I think we talked a lot about the pull factors, and the direct response to the fact that families can no longer be held, together, through an appropriate and fair proceeding and have essentially a guarantee of release and indefinite stay in the United States. That is a tremendous challenge. It has been exploited by smugglers who are advertising that opportunity, and that is what is causing the significant surge that we see this year.

Unaccompanied children as well, even if they do not have a valid asylum claim from Central America, are also not able to be repatriated under the Trafficking Victims Protection Reauthorization Act. Those are the two key factors we are facing.

And then the third, on the pull factor side, is the asylum gap, the fact that the credible fear standard is a possibility of proving an asylum case. That means that 87 to 92 percent of those who have that initial credible fear screening are passing it, but they do not actually see a judge for an asylum process for 2 to 5 years later. And when they go through an asylum process, we are only seeing 10 to 15 percent granted asylum.

So those are the three areas that are huge vulnerabilities in our legal framework that we have asked Congress to tighten down, and we sent language to the Hill multiple times. There is some good legislative work going on right now in the Judiciary Committee with Chairman Graham's bill, but we need to partner on that. That would address the pull factors quickly and immediately. The President highlighted Senator Graham's bill as an immediate approach to the crisis in his Rose Garden remarks on a broader approach to immigration reform last week.

On the push factors, they are significant and challenging. I have been to Central America three times in the last year. I will be going on Monday to meet with my minister counterparts in Guate-

mala, Honduras, and El Salvador in Guatemala City. I will be going back to the Western Highlands in Guatemala, which is really the source of most of the migration that we are seeing from Guatemala. About 40 percent of the total arriving at the border right now is from a specific region of Guatemala. I am going to one department where over 3.5 percent of that population has come to the United States in 7 months, and that is because they are facing poverty and economic opportunity gaps. The average age in Guatemala is 19. The people entering the job market are almost 200,000 a year while they are only creating 40,000 jobs.

So there is a huge economic driver and a huge opportunity gap. Senator Portman highlighted the wage differential as well. If you can make 15 to 20 times what you can make at home in a booming economy in the United States. and you have a guaranteed ability to stay indefinitely, that is a massive draw and incentive.

The second thing is there has been drought in this region for the last 5 years. That has affected the subsistence farming in the Western Highlands and the rural areas of Guatemala and Honduras as well. This is their crop cycle: corn, beans, and potatoes every year. The beans are not producing. That is their source of protein. That is a big issue. It is one that United States Department of Agriculture (USDA) and the United States Agency for International Development (USAID) have tried to help with, preparing crops that are drought-resistant. But that has been a massive impact. And then the global coffee price has cratered. That affected the employment in Guatemala as well. So there are big economic drivers.

On the security side, the situation is actually improving in all three countries. The murder rate has gone down significantly, 40 to 70 percent, depending on each country and in municipal areas. The strategy in El Salvador for a consolidated whole-of-government effort at the municipal level is working. They are reducing violence and creating additional economic opportunity. But there is so much more to be done. The governance issues, the corruption issues, definitely cause and produce push factors that are part of this crisis.

So we need a strategy that effectively tackles both. We need help from Congress to address the pull factors. We need more security investments that we are making to increase our capacity on the U.S. border. We need to partner with Mexico to tackle the transnational criminal organizations (TCO) that are exploiting vulnerable migrants. And we need to engage the governments of Central America, working with accountable partners on targeted programs that make an impact on our national interest.

So we have a lot to do, but I think we have a coherent strategy, we have a plan, but we need Congress to support to implement it, both on the resources and the authority side.

Senator CARPER. What role do Ambassadors play in those three countries?

Mr. MCALEENAN. I think our professional diplomats, led by two great Ambassadors and Charge d'Affaires Heide Fulton in Honduras are leading staffs that are well informed about the situations in those three countries. There are professional diplomats in USAID that are really driving some of the program successes that we are seeing, especially in El Salvador. I had the benefit of going to see them at work and see how hard they are working in partner-

ship. And I do think we have a great dedicated diplomatic corps that is trying to advocate for change and improvements in conditions in all three countries.

Senator CARPER. I would just say to my colleagues, there has not been a U.S. Ambassador in Honduras for over 2 years. That is shameful, and we have to be smarter than that. And the role that they play, the role that Jean Manes played, Ambassador to El Salvador following the election of a guy named Bukele, the new President-elect for El Salvador, and helping him prepare to assume office and put together his team, a hugely helpful, a hugely constructive role. In fact, we have been almost 2½ years without an ambassador in Honduras. It is just something that we ought to just raise our voices and say we can do better than this.

Real quick, tell us two or three areas where we can help you in terms of filling vacancies around you where you have a lot of acting people in place.

Mr. MCALEENAN. So we have several nominees in front of the Committee. I think getting an Inspector General for oversight is critical, and he has advanced through the Committee. Thank you for that.

We have a FEMA nominee, and we are heading into hurricane season next week. I would very much appreciate if we could schedule a hearing and move a tremendous nominee, Jeff Byard, through the process. Our Chief Financial Officer (CFO), obviously another critical role. So there are some nominees that we have sent up to the Senate and more hopefully that we will be able to produce in short order. But, having the right leaders in the right positions is very important to maintaining our momentum.

Senator CARPER. Good. Thanks so much.

Chairman JOHNSON. So now that I have a few more Senators, I do want to draw your attention again to the cup where we have put our chart on so hopefully people will not crumple it up and throw it away. But the point I wanted to make is just in the first 3 weeks of May, 65,000 additional people have been added to that bar. My guess is this bar will show close to 400,000 in the first 8 months compared to 120,000 in all of the year 2014. So 400,000 is probably where we will end up for the month of May. So this is a growing crisis, and we have to support the Secretary. We have to pass that emergency spending bill. Senator Hawley.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you, Mr. Chairman.

I want to start by talking about the disaster, the tornadoes that touched down in my State last night causing very significant damage. We have lost, I am afraid, three lives in southwest Missouri, also causing very significant damage in the middle of the State. We are still assessing the extent of the damage, and I will be seeing it for myself very soon.

I understand FEMA dispatched a search and rescue team. Thank you for that. I am wondering if you can speak to what more FEMA might be prepared to do to help.

Mr. MCALEENAN. Yes, I reached out to our Acting Administrator Pete Gaynor this morning on these issues. FEMA is on top of it, and he noted the search and rescue team, very concerned, and

please let me acknowledge the loss of life. FEMA will be there. We will respond in support of your State and local authorities to address any damage from the storm.

Senator HAWLEY. Great. Thank you very much. I look forward to working with you on that.

As you know, we are also in the midst of a major flood event in the State of Missouri, and Missourians are tough. There is nobody tougher. But we are going to need Federal assistance to help rebuild those communities, those farms, and those towns, and I look forward to working with you on that as well.

Let me ask you about another major problem in my State, which is the epidemic of drugs flowing into the State. I noticed in your written testimony that the words "illegal drugs" appear just once, which I was a little bit surprised by, so let me give you a chance to elaborate here. The drugs coming across the Southern Border are making their way, I know, into cities across the country, but Missouri is very hard hit, and we have an epidemic of meth, our law enforcement agents will tell you. Most Missourians probably do not realize that the meth that is flooding into Missouri now is not produced in the State anymore. It comes across that Southern Border.

Talk to us about the drug crisis that we are facing at the border and that is affecting my State and I suspect all of the States of those of us sitting here.

Mr. MCALEENAN. Yes, the drug crisis is both acute and devastating. We had a colloquy with Senator Portman about both opioids and the increasing meth. If you talked with sheriffs and State and local police over the last 2 years west of the Mississippi, they would have been talking about meth, not the opioid or synthetic opioid crisis. Now you are seeing meth expand east of the Mississippi as well. This is devastating, and it is our responsibility at DHS to do better with this challenge.

As you noted, 90-plus percent of both heroin and meth are coming from Mexico now. Mexican cartels have made it into a superlab science, and we are working with the Mexican authorities to try to take out some of these labs in key areas that we have helped them identify. But we need to do more at that immediate border as well. The investment from fiscal year 2019 in increased nonintrusive inspection technology are going to be a game changer for us. Right now, about 85 percent of our seizures come from X-rays of personally owned vehicles. We are only getting to 2 percent of those cars right now. With the investments we got last year, we are going to be able to get up to 40 percent, and that is going to completely change our dynamic in terms of risk-assessed targeted inspections.

For commercial vehicles, we are at 17 percent. We are going to be able to take that up over 70 percent in a matter of 2½ years. That is going to be a very different target for the smugglers to try to get through. We are also increasing our canine teams, which are the second highest referral rate for our drug seizures.

I do want to emphasize, though, that between the ports, investments are also critical. The border barrier, the wall system, with lights, cameras, sensors on top of that——

Senator HAWLEY. Tell us why that is so important?

Mr. MCALEENAN. Because we are seeing increasingly smugglers using between ports methods to bring in hard narcotics. That was not a significant phenomenon 5 years ago. It is growing now, and it is a huge challenge. In Rio Grande Valley (RGV), where we have the epicenter of the humanitarian crisis that we are talking about, last month we made a seizure of 750 pounds of cocaine in one seizure. They felt confident enough to bring that many drugs across, and we had one Border Patrol agent who laid in the brush for a week straight because he was worried about that stretch of border. He knew that they were using families to divert resources, so he laid in that stretch of brush and caught that load. I called him and talked to him about how dedicated he was to sit there for a shift and a half, 7 days in a row, before he finally got that load. We know what is happening. We know they are using families to divert our resources and bring drugs behind them, and the border wall changes that dynamic.

Senator HAWLEY. What other resources do our agents need to combat this drug-smuggling epidemic?

Mr. MCALEENAN. So we need better aviation surveillance. We have asked for surveillance sensors in the 2020 budget that will help our aviation platforms target crossings. We need the innovative towers that we are putting in place. We have received support from Congress 3 years in a row for innovative, cost-effective programs on emerging technologies that are going to expand our surveillance capability. We need to finish our fixed tower deployment. That surveillance technology and the ability of our agents to respond effectively in a mobile way is a huge factor in our success.

Senator HAWLEY. Can I just ask you, how is the growing crisis, the asylum crisis and the illegal immigration crisis that we are seeing, that the Chairman has been talking about earlier today, how is that affecting your ability to combat the drug-smuggling crisis as well?

Mr. MCALEENAN. So the first time I publicly referred to this as a "border security and humanitarian crisis" was last June when we had one-fourth of the traffic we have now. So the humanitarian crisis is drawing away our Border Patrol agents. Forty percent of their time now is spent on transportation, processing, care, hospital watch, medical, food preparation for migrants. They are not on the line where we need them.

In parts of El Paso Sector, we are depleted 60 or 70 percent from what we would like to be in our forward deployments on the line. That dynamic has to change. We need our agents back doing what the American people want them to do, protecting them on the border.

Senator HAWLEY. Well, is it fair to say that this Congress' inability to deal with the immigration and asylum crisis is helping fuel the drug epidemic crisis?

Mr. MCALEENAN. They are directly related.

Senator HAWLEY. Let me ask you this: How frequently is Border Patrol apprehending members of transnational criminal gangs like MS–13?

Mr. MCALEENAN. So last year we apprehended 17,000 people with criminal records. We are going to exceed that significantly this year. We had 808 gang members in 2018. We have more so far

coming this year. So there is a population—it is not just families and children. They are the bulk of who is crossing now. They present unique challenges. But we are talking about 35 percent of that traffic are people trying to evade capture, and hidden within that 35 percent are criminals, gang members, and drug smugglers. So we have to address this comprehensively.

Senator HAWLEY. Thank you very much.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Scott.

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. First of all, thank you. Thanks for what you do.

I was just down in Panama and met with some DHS representatives to talk about narcotrafficking and the violence that is part of it, and I met with the Drug Enforcement Agency (DEA), DOD, and they were talking about if they had some additional resources, the countries just north of there were a lot of the narcotrafficking is coming out of, they could do a lot, and they thought that would have a positive impact on dealing with what is happening on our border.

What do you need and what can we do, what can Congress do to be more helpful in that arena?

Mr. MCALEENAN. Thank you, Senator, and thanks for visiting with our people. I think one of DHS' strengths is our ability to support and work with foreign partners to make an impact on our security as far away from our border as possible and really building their capacity, sharing information, and trying to make an impact together. I think Panama is one of our best examples of that. Both the ICE and Homeland Security Investigations (HSI) presence as well as the CBP, the U.S. Coast Guard, partnerships with Panama, I think are really a good example for the entire hemisphere, and we have made a lot of progress in the last 5 to 7 years specifically with the Government of Panama.

You talk about the trafficking challenges in that region. The Andes are the highest cocaine-producing rate. We still see lots of cocaine coming to our border. Actually, the numbers have been increasing the last 3 years. Addressing that at the source with U.S. Coast Guard on the water, with maritime patrol, aircraft in the air, is really our best defense. And those interdictions are often driven by good intelligence sharing, by investigative efforts with HSI, DEA, and our intelligence community (IC) partners working with the Colombian Government, Panamanian Government, and others to try to get those interdictions before they get out on the open water and land somewhere in Central America or Mexico and end up trying to come across our land border.

So those partnerships forward-deployed are critical. The investments in the Coast Guard fleet I would highlight are absolutely essential to helping us sustain a presence on the water there in the source and transit zones. And then our P–3 fleet for CBP, our unmanned aircraft systems (UAS) fleet, the Guardians that are the maritime patrol version of our predator drones—those are called "MQ–9s"—those are critical assets, and we appreciate Congress' continued support for that.

Senator SCOTT. They also talked about the fact that the—I guess it must have been from—they are coming further south, from South America. They are getting out further into the Pacific and then coming in, and there was possibly a need for additional—I do not know if it is DOD or Coast Guard assets. Can you talk about that?

Mr. MCALEENAN. Yes, so we are seeing routes going around the Galapagos and then coming north. From Baja California, we are seeing routes going out west of Catalina and coming up to the middle of California. So open ocean, maritime patrol capability, whether it is emergency technologies with micro satellites, whether it is unmanned maritime drones, we need to look at opportunities to innovate in this space because we are seeing incredible efforts by cartels to avoid our current patrol efforts. So not only investments in what we are already doing conventionally, but we need to look out over the horizon and see what else kind of—what technologies we need to get better at this challenge. I agree with both.

Senator SCOTT. The Comptroller General was just in, I guess this week, talking about they reviewed how agencies contract, and they were talking about FEMA to a certain extent. It seems like I had every plague there was when I was Governor of Florida. I had health and hurricanes and everything. What opportunities do you have, whether it is through FEMA or through anything else DHS is doing that you can save money, that you could allocate more dollars to issues we are dealing with on the border?

Mr. MCALEENAN. So that is actually a good question. At CBP, it was an area we worked very diligently on. Our procurement and acquisition staff, we reorganized them 2 years ago, and they have been very effective at getting good value for government, lowering our protest rate, ensuring we are using small and disadvantaged businesses. I think that is actually the story DHS-wide. We have a tremendous Chief Procurement Officer in Soraya Correa who oversees this effort. I looked at the FEMA numbers. We are looking at thousands of contracts that FEMA has issued in response to storms in your State and others that have been devastating over the past several years, and only four or five of them have had issues where they needed to be canceled.

I think the record is actually pretty good. I know there has been some high-profile concerns, but that is something I will look at as Acting Secretary and make sure we are getting best value, saving money for the American taxpayer, and applying it to our mission priorities.

Senator SCOTT. From my standpoint, first off, FEMA has been a great partner. They really did a great job in everything you could imagine. They really were a really good partner. But I think there is a lot of money to be saved with, in one contract in particular, how you they do debris, which is not done—I think FEMA pays for it, but it is done through the Corps at the prices that the Corps contracted for the same company was multiples of what that same company would do business in Florida for. It was not a little bit. It went from $7 to $8 a cubic yard to $72. So, I mean, it was a lot of money. So anything that we can do that can be helpful to you to save money there, that you might have money allocated to things that are a bigger problem, I would like to work with you on.

Mr. MCALEENAN. We will commit to that.
Senator SCOTT. Thank you.
Mr. MCALEENAN. Thank you, Senator.
Chairman JOHNSON. Senator Romney.

OPENING STATEMENT OF SENATOR ROMNEY

Senator ROMNEY. Thank you. Very much appreciate your testimony today and this opportunity to talk about your budget as well as policies relating to our border.

Just a comment at the outset, which is it is hard for me to understand why border security has become such a partisan issue, and I think that there are people who have politicized it, much to the peril of those who are doing so. I do understand that there are political issues associated with how we have to deal with our Deferred Action for Childhood Arrivals (DACA) individuals, how we have to deal with the 11 or 12 million or so people who have come here illegally in the past and have been here for some period of time and raised their families here. People are concerned about whether we are going to have a system of legal immigration based upon joining families back together, family reunification versus a merit-based system. These all have, I think, understandable political back-and-forth. But securing the border and keeping people from flooding over the border illegally is something which I would think one could take out of the realm of politics. And I think those that are making this a political issue perhaps—and I just think it is a real loser, by the way, from a political standpoint, in part because without a completed wall, without the technology that we can avail ourselves of, we are going to see more and more drugs come into the country with people dying as a result of those drugs coming in. We are going to have a flood of children coming that get separated from parents and go off into foster settings in many cases—unaccompanied children, that is. It is just a series of horrible potential outcomes or horrible reality that is occurring. I hope we are able to deal with the loopholes and gaps in our legal system that has caused to a great degree this extraordinary crisis to occur.

But with that said, let me turn to a question I would just like to ask you. You have spoken about the importance of the wall, using better technology to interdict, our Coast Guard as well, in the open seas, closing the loopholes. And you mentioned that a number of people in Central America and Mexico, for that matter, look across the border and say, all right, I can get $15 an hour up there, and I am getting $1 an hour down here, and they are going to find a way—one way or the other, they are going to find a way to get here because of that enormous economic advantage in doing so.

Some of us feel that we really should mandate a requirement that businesses use E–Verify, and that if a business does not use E–Verify and if they are found to have hired someone who is not here legally, the business should be heavily sanctioned and fined, penalties, whatever, for not having used the E–Verify system.

Do you believe that mandating E–Verify use with penalties would help and reduce the magnet, if you will, that brings people who just want to come here for economic opportunity?

Mr. MCALEENAN. Thank you, Senator. Just specifically on your E–Verify question, we support comprehensive use of E–Verify. Every employer should avail themselves of this opportunity. We just finished a development project to make it available for any employer, all 50 States, who wants to sign on. It is a robust IT system, and it provides quick responses on people's lawful status in the United States. That employment magnet that you referenced, Senator, the booming U.S. economy, I should have included that in my response to Senator Carper as one of the huge pull factors. It is the opportunity we have right now in the United States, and E–Verify is a tool to help make sure that that is done in a lawful manner.

If I could add just one other point to your opening, I did close my oral statement with a request and an ask and an acknowledgment of this Committee's ability to work in a bipartisan way, in a problem-solving way, and how welcome that is. I started after 9/11. Having border security be a politicized issue is new, and I do not think it is acceptable to the American people, so I applaud your call for taking that out of the dynamic and let us look at the problem and let us grapple with it and try to come up with shared solutions, so thank you.

Senator ROMNEY. Thank you. And now to a couple of topics that relate to the numbers, as this is a budget discussion as well or primarily. An enormous increase in the budget request for FEMA, looking at the President's request in 2019 and 2020, and then comparing that with what was enacted in 2018, it is up some 40-plus percent. Why is there such a substantial increase there?

Mr. MCALEENAN. I think the bulk of that is to get the Disaster Recovery Fund to the level it needs to be to both address the past storms in 2017 and 2018 but have it prepared for the future, and it is a scalable drawdown. It does not have to stay obligated if we do not need to use it.

Senator ROMNEY. In a similar vein, there is an enormous increase in ICE, from $7.5 million enacted in 2018 to $9.3 million requested in 2020. Why the substantial increase there?

Mr. MCALEENAN. Sure. I think there are two main issues. One, we need a lot more professionals at ICE. We have asked for 1,660 additional Homeland Security Investigation agents, ICE Enforcement Removal Officers, and support personnel and attorneys. Right now, our Enforcement of Removal Operations (ERO) are sized for 34,000 people in custody, but they are holding 51,000. That means it takes longer to get each case processed, to get removals occurring, and they do not have the strength to do all of their missions at the same time. They are also fully involved in the border crisis. We have hundreds of agents surged to the border dealing with child-smuggling issues. They have come up in the first 3 weeks of that operation with 160 prosecutions for adults who are smuggling children across and posing as family units. We need more capability to do that work. So that is first, is the personnel.

And, second, on the ICE side, it is just investing in our systems, our attorneys to get through the court proceedings and a broad variety of requirements we have and really just fund the bed space, the increased detention requirements from an increased flow across the border.

Senator ROMNEY. You indicated also, in response to another question from one of my colleagues, the important role that the Coast Guard is playing in interdicting drug trafficking that is bringing ships in some cases north of Catalina Island, and yet the Coast Guard budget request is down pretty substantially from what was spent in 2018. Why the reduction in spending or funding for the Coast Guard?

Mr. MCALEENAN. I think the main difference there—and I have talked to Commandant Schultz about whether he is getting the resources he needs to keep his capital investments moving forward. I think the big difference is a one-time initial startup cost for buying the ice breaker for the Arctic. That is not required in the 2020 budget. We are going to sustain that program, but we do not need that first investment. I think that is the big difference in the 2019 and 2020 budgets.

Senator ROMNEY. Thank you. My time is up.

Chairman JOHNSON. Senator Lankford.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Mr. Chairman, thank you so much.

We have a lot to cover, as you have seen, and we have gone through quite a bit. Let me go back to a couple of issues that we have already started to address a little bit. One is on the drug interdiction issues, and what I want to do is be able to walk through the drug interdiction and what we are seeing coming from Mexico versus coming from China. One is obviously coming by mail more, and sometimes the Chinese are sending it to Mexico, then Mexico is actually bringing it north from there. So help us understand what you see is the difference between the amount of drugs coming into the United States from Mexico and the amount of drugs coming in through China.

Mr. MCALEENAN. Thank you, Senator. There are two main vectors, frankly, for synthetics, especially synthetic opioids, fentanyl, carfentanil, and analogs. So in this massive flood of e-commerce, this tremendous growth of mail shipments coming from China, express consignment coming from China, we are seeing hard narcotics, vials of fentanyl, 25 grams that we are trying to detect in this flood of packages, and it is very potent. The drug seizures we are making in the mail environment are 90 percent pure on average, so a very small amount could actually be pressed into pills at a very high level in terms of making profit and producing doses in the United States.

On the Mexican side, we are seeing prepackaged fentanyl doses often in pill presses that it is more at the 10-percent purity level. So it is a much lower level, but it is produced ready to use as opposed to needing further processing in the United States. I think the bulk of our volume seizures are still on the Southwest Border for all drugs, but including our synthetic opioids. We do see precursors coming from China and other countries being synthesized by cartels in Mexico and then smuggled across our border in increasing amounts as well. They tend to seek to seize the market share on any new opportunity to smuggle drugs into the United States. So that is what we have seen with fentanyl as well.

Senator LANKFORD. So what is the cooperation like right now with the Mexican Government since the bulk of the drugs coming into the United States are coming across our Southwest Border?

Mr. MCALEENAN. So we have established connections with the new leaders of our counterpart agencies, from Attorney General of Mexico (PGR) that does the investigations to the Federal police, which is transitioning into a national guard status. Right now they just had a very overwhelming vote in support of transition to a national guard. That is going to be a 5-year process. We know what it is like to merge and change as a department. We did that in 2003 extensively. That is a distraction, so that is something that we want to work with our partners to make sure we remain focused on the threats. We have good relationships with their head of security, Secretary Durazo, and we are going to stay focused on this issue and try to maintain our efforts.

We have seen targeted takeouts of meth labs based on intelligence and information sharing from U.S. law enforcement. So I think that is a positive sign.

Senator LANKFORD. That is a positive sign. Talk to me about the effectiveness or non-effectiveness of new fencing. You have replaced some of the fencing in San Diego and some of that area.

Mr. MCALEENAN. Right.

Senator LANKFORD. You have had enough time to be able to evaluate it. How is that working compared to old fencing?

Mr. MCALEENAN. Yes, a complete difference, and I am glad you asked that question because there has been a lot of reporting that suggests this is not a new capability; this is just replacement; this is not helpful; this was not important border wall. It could not be further from the truth. Those were our top requirements. We had this dilapidated wall. This was the first wall built because it was needed the most in San Diego and in El Centro Sector, for instance. Now having a 30-foot wall in El Centro Sector where there is a mall within 40 yards of the border has completely changed that dynamic. The traffic has dropped off the table in that area, and we are able to deploy and use our agents more efficiently in other parts of the sector.

Senator LANKFORD. So do you have a good idea of side by side what the movement of individuals or drugs used to be through that same area and what it is now with the new fencing?

Mr. MCALEENAN. We do. I can get you that data. The percentage drop has been dramatic.

Senator LANKFORD. That would be great. We would love to be able to see that, because obviously there has been a lot of pushback to say this is just replacement so it makes no difference. The numbers that I have seen on a preliminary basis show a pretty significant difference between that new fencing and between the older fencing that was not very effective at all.

Let me shift gears a little bit. My State has been like several States. We have had a tremendous amount of water come on us. The flooding in my State has been pretty dramatic and continues to increase, and we have storms predicted in the next 4 days in a row again. So this is an area that I am tracking very closely, working with the Corps of Engineers and with others that are there.

FEMA has been on the ground. We appreciate FEMA's engagement there, and we will continue to be able to work with you on that.

What do you need at this point that you do not have already for disaster relief, whether that be in my State of Oklahoma, whether it be in Missouri, whether it was a tornado last night in Jefferson City, whether that be in Florida, Puerto Rico, or in California?

Mr. MCALEENAN. I think we have the resources and the support we need to support Oklahoma in this recovery. I talked to the Governor 2 weeks ago about the flooding and the potential for increased flooding as the rains continue and the river stays very high. We are very worried about it, and what I heard was the partnership between the State and locals and FEMA has been tremendous on this, that they are getting what they need at the State level. But I absolutely want to continue the communication, would love to hear from your office if there are opportunities to improve that.

Senator LANKFORD. Thank you. We will continue to walk through that. FEMA's cooperation has been excellent, and we appreciate that continued engagement there.

I need to ask you just a couple other quick things. One is on the Coast Guard process. You and I have talked briefly before that, as far as interdiction on the water, the Coast Guard process for interdictions in Customs and Border Patrol have two different structures to do interdiction. The Coast Guard process is much longer than Customs and Border Patrol, and I have always wondered within DHS, while we have two entities, both on the water, one has one process, one has another, and the Coast Guard process is a much longer process. I would like for you just to be able to take a look again and to be able to help our Coast Guard folks do a faster interdiction as the Customs and Border Patrol does currently as well.

There is also some non-lethal resources that Customs and Border Patrol have when they are on the water that the Coast Guard does not have access to, and it would be helpful to be able to help both those entities on the water to be able to get that level of engagement in interdiction faster.

Let me shift a little bit to cybersecurity. What DHS did in the 2018 election was pretty remarkable and your engagement and lean-in. A lot of threats, a lot of lessons learned from 2016, very different DHS engagement in 2018. I know you are staying engaged, but I need to ask you about that. How is the engagement for election security? And knowing that every Federal agency looks to you to be able to help them with cybersecurity for that entity, how is that going as far as resource-wise?

Mr. MCALEENAN. Yes, so this is something I have been working on multiple times a week in my 6 weeks as Acting, but it is also an area where I have high confidence in Chris Krebs and the leadership of our CISA team. I think they have a great strategy to capitalize on the successes and momentum from 2018 for the 2020 election. "Protect 2020" we are calling it. They want to get to all 8,800 jurisdictions in the country, not just all 50 States but all the jurisdictions that are overseeing elections, and make sure that they have the right systems in place that, if they want scanning or penetration testing, we can do that in advance and help them prepare.

And really, I think the relationships and the communication is robust. We have built a lot of trust from 2016 to 2018 in our partnerships with State and locals. So I feel very good about the election security strategy.

In terms of the interagency on the Federal network side, we do have good buy-in on our protections at the edge of the gateway, the EINSTEIN system and others. We do need to continue to work on that. Talking with the CISA team, their top three priorities are getting better at what they already do—Federal networks, election security, and soft targets; and then, of course, working supply chain issues where we see components being brought into the supply chains that could have vulnerabilities; and obviously industrial control systems. That is a huge challenge for cyber. It could have the biggest impact, everything from power to pipelines. So we are going to stay on top of it across those areas.

Senator LANKFORD. Please do. Kevin, thanks for all your work on this.

Mr. MCALEENAN. Thank you.

Senator PORTMAN [presiding.] Senator Rosen.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you. I want to thank you for bringing this important hearing here today, and I want to thank you for your service for so many years. It is really important, and your knowledge is great, and your compassion as well.

I want to ask a couple of questions on family separation. A couple weeks ago, my colleague Congressman Carbajal and I sent a letter about misleading information we received last year when we visited the border. I have not yet received a response from your Department, but maybe you could provide me with some answers.

Recent news reports indicate that DHS and HHS officials exchanged emails on June 23, 2018, acknowledging that the Departments did not have the necessary information to reunite migrant children with their families. In those email exchanges, DHS and HHS admitted, and I am going to quote here, "In short, no, we do not have any linkages from parents to children. We have a list of parent alien numbers, but no way to link them to children."

On that same day, DHS issued a fact sheet claiming the Department knew the location of all the children in custody, that the Department had a process in place for the families to know the location for the children, and had a central database you could access and update.

So just 2 days after that, Congressman Carbajal and I on June 25 traveled to the border to tour Tornillo, the unaccompanied minor facility. We were falsely told by leadership in those DHS and HHS facilities that the Departments had the necessary information to reunite the families.

So my question I am hoping to ask you, Acting Secretary, taking a step back, how could you or how would you explain the discrepancy between the private emails exchanged between the government officials and the fact sheet published to the public the same day?

Mr. MCALEENAN. Thank you for the question, Senator. I will do my best to explain it here and then make sure that we have an appropriate and robust response to your inquiry.

So there are five different components involved primarily in dealing with immigration, three agencies within DHS, Health and Human Services Office of Refugee Resettlement (ORR), and the Department of Justice Executive Office for Immigration Review (DOJ EOIR). All five manage different IT systems. Let us just start with that. That is a challenge.

On April 19, 2018, CBP, at the request of HHS, implemented an adjustment to its system to be able to capture parent-child relationships more explicitly in our data at the border.

Now, that is a CBP system. It is not necessarily available directly to all HHS personnel as of June 2018. So when you are seeing an email like that—and I would want—I am giving you a broad answer.

Senator ROSEN. Right.

Mr. MCALEENAN. I am not answering what the individuals who are sending that email are thinking or talking to specifically, but my interpretation of that is that having to go to a list of parent alien numbers means that they have to go to a different system. They cannot automatically see the linkages between the parent and child in the two different systems.

Senator ROSEN. You think it was a lack of communication interagency?

Mr. MCALEENAN. A lack of system integration interagency. I think the communication was very good, and I want to comment on the reunification in a second. But, first, we are going to fix this. It is one of my priorities as Acting Secretary to have a unified immigration portal that allows that data to connect and be integrated across agencies. That is doable. We did it for 47 departments and agencies for trade data when I was the Deputy Commissioner of CBP in the automated commercial environment called the "single window." We can improve this process and certainly help ensure relationships are captured between people arriving at the border. So that is a priority.

The reason I know, that I can say with confidence, that the data was captured and the intent of what was said publicly about our systems was borne out, is the reunifications actually happened pretty rapidly, and the reunifications were broadly successful by HHS working with ICE and CBP data.

Senator ROSEN. So let me follow up on that. Of the children that are still separated from their families—and we know there are still quite a few—in your estimation how many cases still lack the information necessary for reunification? And could you provide that information to us?

Mr. MCALEENAN. So that is being provided by Health and Human Services in, I think, biweekly filings to the Ms. L court, the exact status of that, and I would refer you for an official answer to that data and to HHS. My understanding is that every single child has an identified parent relationship at this point.

Senator ROSEN. OK. We will refer out to that.

I have another couple things. In my estimation, of course, your Department has a lot of work to do to regain the public trust, in-

cluding mine, and so as you lead the Department forward, will you personally commit to all of us to truthfully respond to the Committee that your Department will not mislead us again in the way we were misled last year when I visited the border, no matter what the severity of issues are at hand?

Mr. MCALEENAN. So law enforcement depends on public trust. That is a fundamental requirement to carry out our mission and carry out our jobs. I will ensure that, as long as I am Acting, we are going to do our level best to explain what is happening to Congress and to the American people on all aspects of our mission.

Senator ROSEN. Thank you. I have one last question quickly on family separation, and the training that you are providing for the DHS officers to determine or not whether families are falling into the criteria of needing to be separated, what you are going to do going forward. You said you have a lack of bed space, lack of detention space. What are your plans going forward to train your officers to take care with these families when they are going through this?

Mr. MCALEENAN. Thank you for the question. So a case where a child and a parent are separated now is extraordinarily rare. It is done for the safety of the child, if there is a serious criminal violation, an indication that the parent presents a risk to that child, if there is a communicable disease issue for either the parent or the child or they need to go to emergency care. It is happening one to three times a day out of up to 3,000 families arriving. I just want to be very clear it is a very rare situation, and it has defined criteria that we have, by policy, mandated for our personnel in the field in accordance with the Ms. L court order and the President's Executive Order from June 20 of last year. So it is extraordinarily rare.

In terms of the process for doing that, I think there is an opportunity with our Civil Rights and Civil Liberties Office to look across our Department and see if we can ensure that we are doing it consistently for CBP or ICE, for instance, and that we are taking all steps to consider the care of the child, the mental concerns a child might have in that scenario, and explain it effectively. I think there is an opportunity there I would like to work on.

Senator ROSEN. Thank you.

Senator PORTMAN. Senator Sinema.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Thank you, Mr. Chairman.

Our Nation faces a crisis along the Southern Border, and I am working with local leaders in Arizona, my colleagues in Congress, and the Administration to stop the flow of migrants to the Southern Border and ensure the fair and humane treatment of migrants who do come. This situation on the ground with our communities, NGO's, and our border workforce is not sustainable, so we must work together to find bipartisan and common-sense solutions.

Acting Secretary, I am glad you are here today. I look forward to our discussion.

The lack of transportation resources to manage the flow of migrants is a serious problem in Arizona. We need help transporting migrants between interception, detention facilities, and ICE and getting migrants to NGO's to facilitate further transportation.

Could you review DHS' capability to provide additional transportation resources in Arizona, including resources from outside CBP or ICE, and get back to me on what the possibilities are?

Mr. MCALEENAN. I can do that.

Senator SINEMA. Great. This is going well, Chairman.

When searching for solutions to a crisis, it is always important to think outside the box, and I hope that you are encouraging your organization to tackle the challenges with the migrant crisis in this manner.

I think the transportation issue calls for some outside-the-box thinking. It is in DHS' best interest to work with the NGO groups on how best to manage migrant transportation after they leave DHS custody. But I have heard from some constituents about ideas such as working with sponsors to fund charter bus routes to ease the pressure on crowded Greyhound routes. Such ideas have merit, but will probably need DHS assistance and cooperation to be effective.

Could you also take a creative look at what other support DHS could provide to these NGO's on the transportation front and work with us on the ground in Arizona on those possibilities?

Mr. MCALEENAN. Yes, we will do that, Senator. I think innovation and partnership are going to be critical as we are managing this crisis. They have been to date with State and local authorities in Arizona and elsewhere.

I will just highlight one quick example of that innovation and creativity. Our Acting Commissioner John Sanders at CBP has been instrumental in bringing together faith-based organizations and NGO's with resources away from the border that want to or are able to help the NGO's at the border that are doing so much work in your State, in El Paso, in South Texas with Sister Norma Pimentel's organization, and really that has brought in lots of additional resources and funding that is supporting the border entities. I think we can do the same kind of thing on transportation, not only engaging our Greyhound partners to increase routes, but also look at other creative solutions. In addition to applying the funding we are getting from Congress, we are buying buses for CBP, we are borrowing commercial driver's license (CDL) drivers from the Department of Defense, and we have asked for more transportation funding in the supplemental.

Senator SINEMA. Great. I believe we need to treat all migrants who come to our country fairly and humanely. We also need to determine who is eligible for asylum and who comes to our country as an economic migrant. And the key part of that effort, of course, is the determination of credible fear. Do you feel that the Department has sufficient authority to allow immigration and asylum officers to ask enough questions of migrants to get at the truth of any credible fear claims?

Mr. MCALEENAN. I think there are two elements to that. Resources is part of it, being able to take the time at the front end to assess the situation. And we are seeing that, unfortunately, with family units right now the volume is so high, our Border Patrol agents are not able to spend adequate time with each family to do their interviews to assess the family relationship or if there are any concerns of smuggling or trafficking. I know that because we

have deployed HSI agents from ICE to both El Paso and RGV over the last 3 weeks. Out of 516 interviews, they found 160 cases of fraud. Granted, these were targeted cases based on risk, based on visuals and prior interviews by Border Patrol. But that is an incredibly high percentage, and they are prosecuting the adults involved. But I am very worried that resource-wise we do not have enough, to your point, to detect that fraud and protect the safety of children that could be trafficked or smuggled by adults right now given the flood, the crush.

The other aspect of credible fear, though, is the standard. There is clearly too big a gap between the front-end bar on credible fear, a possibility of proving an asylum case, and the ultimate determination by a judge. To have 85 to 90 percent pass that first bar but only 10 to 15 percent pass the asylum bar, with a 2 to 5-year gap between those two findings, that is obviously a gap in the framework that is allowing and inciting additional traffic to our border. So I think we need to address not only the resources side but the standard.

Senator SINEMA. What would you suggest that Congress do to help close that gap between the initial interview and the determination in front of a judge?

Mr. MCALEENAN. We have provided language to the Senate Judiciary Committee that would apply a different standard on the front end of the credible fear that we think would still allow valid asylum cases to go forward, but reduce that huge gap between the credible fear findings and the asylum findings.

Senator SINEMA. Do you believe that you have the current authority to expand the questions asked at the beginning when folks are intercepted to create a, for lack of a better word, stronger record or longer record to help prepare for litigation? Is that something you have the current authority to do, or do you need Congress' action to ask more questions?

Mr. MCALEENAN. We do have the authority, and we are actually implementing a more standardized approach to those initial questions. My concern is the resources right now and the ability for agents to spend the time they need to do that questioning effectively.

Senator SINEMA. So if you had sufficient resources and personpower, you could ask more questions at the front end that would help better prepare a case for presentation in front of a judge to either make the claim or to show that there is not evidence for adequate asylum status?

Mr. MCALEENAN. Right, or presentation to an asylum officer as well.

Senator SINEMA. Great. CBP has indicated that it has reassigned over 700 officers from ports of entry and airports around the Nation, including some from the Tucson area in Arizona. We also know that there is an effort to transfer TSA officers from airports to assist the Border Patrol. I have some concerns about these decisions and their impact on security. Could you tell me a little bit more about where officers were reassigned from and to so we can better understand the strategy that you are using to move officers?

Mr. MCALEENAN. Sure. I was Commissioner at CBP when we started the deployment of CBP officers to support our Border Pa-

trol agents, and it was simply to increase our ability to safely care for families and children in our custody, and that was the more immediate need than addressing wait times of commercial traffic, for instance, which is critical to our commerce, as you know well. The Nogales-Mariposa port of entry is one of the most important arteries for trade with Mexico across the whole border. But we had a more important and acute need to take care of children. So that is how we made that determination.

We have now balanced the sourcing of our CBP officers to include Northern Border locations, airports and seaports from around the country, and not just our Southern Border field offices. So that is the strategy we are applying there, and certainly we are eager to get those officers back doing their primary mission if we can help mitigate this crisis.

In terms of TSA or other components of DHS that we have asked to surge volunteers to help at the border, this is what we do in a crisis, what we do in response to a natural disaster, for instance. Very clearly, we are not going to allow an increase of risk in our aviation security system, not going to allow that. We do not even have any transportation security officers (TSOs) deployed at this time as volunteers. We have our Federal air marshals who are part of Visible Intermodal Prevention and Response (VIPR) teams who are mobile to begin with that are helping on the border, and we are taking office management staff and other capabilities as volunteers. We are looking for attorneys, we are looking for CDL drivers, but not TSOs yet. TSOs might be required in the future, but, again, we had 2,000 people deployed as volunteers for Hurricane Harvey. We only have 250 or so right now for this crisis.

So it is going to be managed carefully. We are not going to increase risk in other mission areas. But we might increase wait times here or there, and we have had that effect at the ports of entry on the border, and that is a concern.

Senator SINEMA. Thank you, Mr. Secretary.

Thank you, Mr. Chair.

Senator PORTMAN. Thank you, Senator Sinema.

So, Mr. McAleenan, you have done a terrific job, in my view, of answering questions and showing your vast amount of experience in this area, and we need you right now, and so we thank you for being here. We understand you are willing to stay until 11:10. We have had the first round for everybody. We are going to have a second round. It will be a lightning round. We are going to try 4 minutes here, and I appreciate the fact that my colleague Senator Peters has allowed Senator Lankford and me to go, and also, Senator Hassan, thank you, because we have to leave just before 11. And so if you are willing to stay, we will get to everybody's second round. Thank you, Senator Lankford.

Senator LANKFORD. Kevin, thanks again for the work. I need to also thank you for the new advisory committee that you put in place for houses of worship. After the attacks in Pittsburgh, after the attacks in Texas, after the attacks that we have seen in multiple places, that is a very helpful thing, so thanks for engaging us. Anything in particular we need to know about that that we can help and assist in what your work is?

Mr. MCALEENAN. So we are very concerned about the increased attacks on houses of worship of all faiths, both here in the United States and globally. The recommendation, frankly, of the Committee on Homeland Security, Chairman Thompson and Ranking Member Rogers, I looked at it, talked with our team, and we have asked the Homeland Security Advisory Council who has provided just outstanding advice. This is a bipartisan group of experts, former leaders, State and local leaders, and they have given us great advice across all kinds of missions.

Senator LANKFORD. Right.

Mr. MCALEENAN. And I think asking them to take on this challenge and look at how we engage faith-based organizations, houses of worship on their security, on their preparedness, on concerns in their communities, regardless of the motivation or ideology behind the violence, we want to get in front of that and prevent it, and obviously partner with the Federal Bureau of Investigation (FBI) to address it if it does occur.

So I am looking forward to their recommendations. They took on the task. Judge Webster, a hero of the United States, is still working to help secure the country well into his 90s. He received the task, and they are going to follow up on it aggressively. So thank you.

Senator LANKFORD. No, thank you for stepping up. That is a great need. Whether it is in Charlotte, Pittsburgh, California, or Texas, we have seen violence in houses of worship, and to be able to have some attention there is exceptionally helpful.

I want to bring up a conversation you and I can have at a later time about the use of E–Verify and also I–9. For employers that use E–Verify, they also have to use I–9. They are really using two different systems. They are going two different directions. It is redundant paperwork. We have to figure out a way to be able to have our systems have one set, whether it is I–9 or E–Verify, but one way to be able to do this for the sake of our employers, to be able to verify legal status.

I do need to ask, because you and I have talked before, about what I think the term was is "recycled children" coming across the border, the same child coming across claiming multiple families. Are you still seeing that area or are you still seeing adults that are claiming to be a child at 17 but they are really 19, 20, or 21? And how is that going in determination?

Mr. MCALEENAN. We are seeing both. Having the same child smuggled twice by different adults is not as prevalent yet, but we have identified three significant cases where this was an intentional strategy, bringing children in, then flying them back to Central America, and having another adult take them to the border and fake a family relationship. So that is unacceptable. We obviously see juveniles well—we see 20-year-olds and those well into their 20s pretending to be juveniles. We have 3,500 cases of fraud, either in family relationship or an adult claiming unaccompanied child status so far this year.

What we are determining, though, with this HSI deployment is that the problem might be bigger than we thought it was based on the initial findings from their 3 weeks on the ground. We also have a rapid Deoxyribonucleic acid (DNA) pilot that is ongoing to deter-

mine—help us determine family relationships. On the first day of that pilot, we had 12 adults come forward and say, "It is not my child." The first day of the pilot in one location.

So that is a major concern, and so we need to expand our capability to identify those relationships, to attack the fraud, and then the technology support for our agents and officers to do that.

Senator LANKFORD. And find out whose child that is that has just been smuggled and removed.

Mr. MCALEENAN. Right.

Senator LANKFORD. Thank you very much.

Senator PORTMAN. Thank you, Senator Lankford.

You all just talked for a moment about this issue of attacks on houses of worship, and I wanted to follow up with you on that, if I could. In the wake of the terrible tragedies in Pittsburgh and San Diego with regard to the synagogues and houses of worship in places like Texas and Charleston, you at DHS have been supportive of what is called the "Nonprofit Security Grant program." However, it is not authorized. We do it as a carveout in the appropriations bill. This is funding that goes not just for the advice and expertise—and I appreciate the fact that the advisory committee is now getting going because we need to provide best practices to these groups—but it also provides grant funding to be able to ensure that you have safer facilities. Whether it is a synagogue or a church or community center or school, unfortunately it is needed.

So Senator Peters, who is here with me today, and I have just introduced legislation. It is $75 million a year authorization, the Nonprofit Security Grant program. Again, it is something that has been supported but not authorized.

One, we would love you to support that legislation so that we can have some certainty going forward and begin to really build this program to the point that it can provide better protection.

But, second, in terms of where the money goes, there is a Government Accountability Office (GAO) report that just came out recently that said that your risk assessment they are using does not take into account all the diverse threats that are out there today.

So two questions. One, would you support our authorization legislation? Second, based on this recent GAO report, are you reevaluating the risk assessment formula to make account of these diverse threats?

Mr. MCALEENAN. Thanks for the question, Senator. First of all, I will look at the nonprofit groups and the authorizing language. I would be happy to look at that and get back to you shortly. That is something I would like the Homeland Security Advisory Council to advise us on, what support do we need to provide as the Federal Government in this sector going forward. So I would be happy to work with you on that.

In terms of the risk assessment, I am not familiar with that GAO recommendation, but I know our departmental processes to assess and respond to the GAO recommendations are extensive, and we will certainly take that on.

Senator PORTMAN. This was a 2018 report, so I think it now is probably something that your folks have taken a look at and analyzed. So if you could get back to us in a couple of weeks with your response, that would be terrific.

Again, sadly, we have this continued threat out there, and we need to do more.

With regard to fentanyl, we talked earlier about what is going on on the border, the crystal meth coming over affecting my State of Ohio and so many other States, as well as cocaine and heroin. Some of the fentanyl comes from Mexico as well. Most of it is coming from China. But the major threat we still face in this country is directly from China coming into the United States through our own U.S. Mail system. That is why we passed the Synthetics Trafficking and Overdose Prevention (STOP) Act here last year in Congress. We are now trying to implement it.

The post office is behind. They were supposed to have 100 percent of packages coming from China be able to be screened by having this advance electronic data. Unfortunately, it is only 76 percent as of January. They are supposed to meet a target of 70 percent of all packages from around the world. Unfortunately, they were only at 57 percent.

This affects you directly because your Customs and Border Protection people do not have the ability to be able to get the information to screen these packages, pull off the vulnerable packages without this advance electronic data.

So my question to you today is: What are you doing to ensure compliance with the STOP Act? Are you coordinating with the U.S. Postal Service (USPS) to try to get these percentages up to the requirement under the STOP Act? And what more can we do to ensure that all aspects of this law are being complied with?

Mr. MCALEENAN. Sure. Thank you, Senator, and thank you for your ongoing support of DHS in this area and really holding us and the Postal Service accountable for getting better in the mail environment. I think that is critical.

Seventy-six percent is not where we need it to be for China given the threat. It was less than 10 percent 2 years ago, and I do think that the support and pressure from the STOP Act and others have helped us get better with the Postal Service.

I can tell you this is a priority diplomatically all the way up to the Presidential level, engaging personally with President Xi on this issue, our Ambassador, the State Department—they are all engaged on China taking harsher measures on fentanyl, illicit fentanyl production and shipment out of China. That is going to continue to be a diplomatic priority and one that I certainly favor from a DHS perspective.

I do want to just point out, though, that we have gotten a lot better with that 76 percent. We are getting more and more seizures that have been targeted based on information, and we are able to work with the Postal Inspection Service and HSI to go and take down that pill press domestically. We have had half a dozen cases of significance in that regard just in the last 6 months. That is something I want to make sure we get better at, and we are going to keep pressing.

I can tell you the Postmaster General Megan Brennan, who I have met with a dozen times in the last year, is very focused on this mission and working hard to try to increase those percentages, but we have got to get better.

Senator PORTMAN. Well, I appreciate your personal commitment to it and your meetings with me over the years, really, and meeting with her as well. I just want you to keep the pressure on them because this is still the deadliest substance affecting us, killing more people than any other drug.

Mr. MCALEENAN. No question.

Senator PORTMAN. Senator Peters.

Senator PETERS [presiding.] Thank you, Mr. Chair.

Mr. McAleenan, recent news articles and litigation have highlighted the issue of government watchlists, especially in relation to intrusive and lengthy secondary screenings when traveling. Michigan, as you know, has a very rich history of welcoming diverse communities from around the world, and they are an integral part of the life of our State. But, unfortunately, many are also frequently subject to disruptions, which sometimes can last an hour or more, whenever they travel.

So my question to you, sir, is: Is the Department studying ways to streamline screenings, especially for American citizens who are forced to undergo long secondary screenings?

Mr. MCALEENAN. We are, and I can tell you I am familiar with some of the issues with routine border crossings in Detroit, for instance, in your State. The watchlist serves a very important purpose for identifying risk, and a border crossing event is an important opportunity to see if there is a security threat. When that becomes routine, when that becomes an issue with a daily crosser who is a U.S. citizen, even if there is valid security concerns, that is something we generally would modify.

So after an appropriate number of inspections, appropriate coordination with any investigative agency, we will reduce or not have that watchlist record fire on primary. So we are changing that. It is something we monitor carefully.

The other challenge we have is very similar names, date of birth issues. So somebody having a secondary examination who is not actually the subject of the watchlist record, we have put in place a primary lookout override function that allows us to not hit on that other traveler the next time. So that is something that we can always put in place. An individual who has concerns should ask for a supervisor, express those concerns, and we can address them.

Senator PETERS. What is the Department doing to ensure that the staff is conducting secondary screenings that are sensitive to many of the cultural as well as religious considerations of folks who are being screened?

Mr. MCALEENAN. Right. We spend a lot of time on the training, and our policies are very clear on this. There is no room for bias or discrimination in our secondary procedures, in our approaches to interviewing those who are crossing our border. If there are concerns, we want to hear a complaint that we can follow up on at the supervisory level or with our Office of Professional Responsibility if it is a misconduct issue.

For all of our personnel that are involved in counterterrorism response and expertise—we call them our "Tactical Terrorism Response Teams"—at ports of entry, they go through a higher level of training that involves sensitivity issues with questioning, with certain populations and religious concerns as well. So that is a

commitment I have. I helped design that training way back in the Office of Anti-Terrorism era when I was the first Director at U.S. Customs Service and then CBP. It is a commitment that we have improved over the years, and I do think we are doing that quite well. It is something we have partnered with the Civil Rights and Civil Liberties Office on, and I commit to ensuring that we continue that effort.

Senator PETERS. Well, I appreciate that commitment, and we have spoken about this issue several times. And as you know, I am still hearing an awful lot of complaints, lots of concerns.

Mr. MCALEENAN. Right.

Senator PETERS. So I would certainly hope that we can continue to work together to find out exactly where those gaps are and how we can fill those gaps. So I appreciate your commitment.

Mr. MCALEENAN. If I could just add, Senator, if you could get individual permission from your constituents to share those complaints, we are able to follow up and identify if there is a challenge or a pattern or training opportunity.

Senator PETERS. Great. We will do that.

I want to build my last question here on Senator Portman's questions relating to attacks on houses of worship and the work that I am doing with him on a grant program. But my question is: On May 8, Chairman Johnson and I sent you, FBI Director Wray, and Attorney General Barr requests for information about your Department's use of Federal resources to detect and to prevent domestic terrorism. We wrote you during a time of some disturbing increases in white supremacist violence, including the murder of white nationalists and neo-Nazis in Charlottesville, the Tree of Life synagogue attack in Pittsburgh, Pennsylvania, Emanuel AME Church in Charleston, Oak Creek, Wisconsin, and many, many more attacks that I know you are very well aware of.

Are you concerned about this rise of white supremacist violence? And does the DHS have the flexibility in your authorities to respond to this evolving threat?

Mr. MCALEENAN. So, first, we are very concerned about it, and this is going to be a priority of our Targeted Violence and Terrorist Prevention Office, which we have just created and broadened their mandate in the last 6 weeks at DHS. White supremacists, extremist violence is a huge issue and one that we need a whole-of-community effort for. It has been the ideology that has motivated a number of those faith-based attacks that we have been talking about and are going to be a focus of our Homeland Security Advisory Council review.

For DHS, our mission is prevention on this front, intelligence sharing with State and locals, and then support to Joint Terrorism Task Force (JTTF) investigations by the FBI. The FBI is obviously the lead investigative component, but we are going to maintain that commitment. Threats evolve. This is an evolving and increasingly concerning threat.

Senator PETERS. Well, we requested a response yesterday from your office. I understand this morning we have received some information, but I need your commitment that we will have your full cooperation as both Chairman Johnson and I look at this issue. So I appreciate that. Do I have your commitment?

Mr. MCALEENAN. You do.

Senator PETERS. With that, Senator Hassan.

Senator HASSAN. Well, thank you, Ranking Member Peters. And, again, Mr. Acting Secretary, thank you for spending a long morning with us.

Mr. MCALEENAN. Sure.

Senator HASSAN. We appreciate it very much.

I have two questions. They are both follow ups really in a way to others. Senator Portman talked about our ongoing battle about opioids generally but fentanyl in particular. Last Congress, we passed and the President signed into law the International Narcotics Trafficking Emergency Response by Detecting Incoming Contraband with Technology (INTERDICT) Act, which provides more technology for border agents to detect fentanyl at the border. When I was at the border last year, I heard that agents still did not have access to this equipment. Former Secretary Nielsen stated that it was unacceptable when she testified before this Committee last May.

Can you provide an update to the Committee on the status of implementing the INTERDICT Act?

Mr. MCALEENAN. I believe we have implemented the INTERDICT Act at the highest-traffic locations for concerns for fentanyl or synthetic opioids, and we have dramatically increased our testing capability across the board. That does not mean we have it everywhere we need it or in every port of entry. The investments in fiscal year 2019, which we are currently procuring and deploying, will help augment that, but, absolutely, we will look at our laydown to make sure it is comprehensive and supports this critical mission area.

Senator HASSAN. So have all the fiscal year 2019 funds been spent?

Mr. MCALEENAN. Not yet.

Senator HASSAN. Not yet.

Mr. MCALEENAN. No, they are currently in the planning and deployment phase.

Senator HASSAN. And are all the machines that you have operational at this time?

Mr. MCALEENAN. Any new machines that were purchased under the INTERDICT Act, unless there is a maintenance issue, yes, they are operational.

Senator HASSAN. OK. What still needs to be done? Just expanding them to other sites?

Mr. MCALEENAN. Correct.

Senator HASSAN. OK.

Mr. MCALEENAN. We deploy on a risk-based, prioritized basis, and so that will be the mail facilities, express consignment, the major Southwest Border ports of entry, and then we try to get to the rest of the key areas.

Senator HASSAN. OK. And so do you have the funding that you need to do that?

Mr. MCALEENAN. I believe so. I will report back to you if we are missing resources.

Senator HASSAN. Alright. Please do. We would love to stay up to date on that with you.

I also wanted to follow up on the issue of domestic terrorism. I greatly appreciate the attention of DHS and my colleagues on fighting domestic terrorism against houses of worship and faith-based groups. As Senator Peters just mentioned, like him, Senator Grassley and I have also sent your agency a letter expressing concern over the rise of domestic terrorism and requesting more information on what DHS is doing to prevent and mitigate this threat to ensure public safety.

I want to ask you just a series of questions to get a better sense of the resources that the Department has dedicated to combating domestic terrorism, and since we have limited time, let us see if we can do a lightning round.

I take it that you agree that domestic non-foreign terrorist organization-inspired terrorism is on the rise, as stated in this Administration's National Strategy for Counterterrorism.

Mr. MCALEENAN. Yes.

Senator HASSAN. Given the emphasis of domestic terrorism in this National Strategy, does DHS have a 2019 strategy specifically addressing the rise in domestic terrorism threats?

Mr. MCALEENAN. So we are working on a formal strategy, but we do have that as a priority operational effort already.

Senator HASSAN. And as you work on that formal strategy, once you get it done, I take it you will share it with the Committee.

Mr. MCALEENAN. Yes.

Senator HASSAN. On a related note, what percentage of the Department's budget is specifically dedicated to addressing domestic terrorism? And how does that amount compare to previous years?

Mr. MCALEENAN. I do not have that information here, but we can get back to you on that.

Senator HASSAN. Thank you. I would love it if you would get back to us on that.

How many intelligence analysts at DHS headquarters tasked with the primary responsibility of covering domestic terrorism are there?

Mr. MCALEENAN. I will get back to you on that as well. But what I can tell you is that under Under Secretary Glawe, he has forward-deployed a number of the intel analysts to work directly embedded with State and locals around the country, not only in our Fusion Centers but in key sheriffs' and police departments around the country, and that is one of their focus areas.

Senator HASSAN. I will ask a similar update about how many policy and program staff you have exclusively focusing on domestic terrorism.

Mr. MCALEENAN. OK.

Senator HASSAN. I share the concern that it is on the rise here. I have been concerned that resources that once were devoted to domestic terrorism have been taken and used other places, and it is one thing to say we care about it and are committed to it, which I believe and I understand it is another thing to have the resources, personnel, and focus to do it. So I will look forward to that update from you, and thank you.

Mr. MCALEENAN. Thank you.

Senator PETERS. Thank you, Senator Hassan.

We have 3 minutes remaining in the hearing. Senator Rosen, they are yours.

Senator ROSEN. All right. Well, let us see how fast I can talk.

I want to talk about Temporary Protected Status (TPS) just a tiny bit. There have been serious allegations of improper political interference in the decisionmaking process surrounding the termination of TPS for people from El Salvador, Nicaragua, and several other countries. Thousands of them live in Nevada. So as you know, the Immigration and Nationality Act provides for TPS status in cases where the Secretary of DHS finds that civil unrest, violence, natural disasters, or any other temporary conditions preventing foreign nationals from returning safely home to their countries or where their home countries cannot absorb them.

A Federal judge has recently written in deciding to terminate TPS status of Haiti, El Salvador, Nicaragua, and Sudan, they changed the criteria applied by the prior Administrations and did so without any explanation or justification in violation of the Administrative Procedure Act. I am going to go quickly. I have two questions.

I know that these decisions are currently the subject of litigation, but since you have taken over the Department, have you looked into the decisionmaking process for TPS status determination? And will you commit to cooperating with the Inspector General with that investigation looking into improper political influence in the decisionmaking process for changing this criteria?

Mr. MCALEENAN. So understanding the importance of TPS decisionmaking, I have in my first 6 weeks asked when our next decision is coming up. But I have been informed about the ongoing litigation, and it is something we will do carefully, applying the standards appropriately, if and when the next TPS decision is presented.

Senator ROSEN. Thousands of people in my State are depending on a fair decision on this, so I look forward to working with you. Thank you for staying extra.

Mr. MCALEENAN. Thank you, Senator.

Senator PETERS. Thank you, Acting Secretary McAleenan. We appreciate you being here today. We appreciate your testimony, and I will look forward to working with you in the months and years ahead.

The hearing record will remain open for 15 days, until June 7 at 5 p.m., for the submission of statements and questions for the record. And with that, the hearing is adjourned.

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

APPENDIX

Chairman Johnson's Opening Statement
"Resources Needed to Protect and Secure the Homeland"
Thursday, May 23, 2019

As prepared for delivery:

I would like to thank Acting Secretary McAleenan not only for testifying before the Committee today, but also for his willingness to lead the Department during this critical time. The Department of Homeland Security currently faces a number of urgent and pressing challenges. One in particular—the crisis at our southern border—highlights the chaos that can result when Congress fails to act, whether not closing legal loopholes or not properly resourcing the Department and its components.

As you know, we have a crisis at our southern border. According to the Department, Customs and Border Protection will likely apprehend one million migrants by the end of the year. We have not seen numbers like this in over a decade, and the nature of the problem has changed fundamentally: unlike past migration spikes, the migrants crossing today are mostly families and unaccompanied children. This presents a significant challenge for the Department, which was not set up to process a substantial number of family units and children. Congress needs to take action, including a serious look at the resources and authorities that DHS requires to address the crisis and secure our open borders.

There are many other serious challenges facing the Department: the Department must secure our border, safeguard our critical infrastructure from physical and cyber threats, protect our nation's transportation systems, and prepare and help the nation recover from natural disasters. Drugs and human smuggling not only occur along our porous borders, but also through our maritime borders. The U.S. Coast Guard apprehended an estimated $6.1 billion in drugs and detained over 600 suspected smugglers in Fiscal Year 2018. As the nation's drug epidemic devastates our communities, the Coast Guard needs sufficient resources now more than ever.

Adversary countries and non-state actors continue to look for cyber vulnerabilities in our nation's critical infrastructure. Last year, this Committee authorized the Cybersecurity and Infrastructure Security Agency, an agency within the Department with the authority to lead public-private engagement about how we protect and secure our cyber networks. Congress should continue to provide the necessary resources to defend the country in cyberspace.

Emerging and evolving threats to the homeland need our attention. Malicious actors search for new ways to threaten the homeland, including by using drones and new ways of developing and deploying weapons of mass destruction—both threats this Committee addressed with meaningful legislation last Congress. However, more work is needed; specifically, Congress and the Department must implement mitigation solutions for a potential electromagnetic pulse attack or geomagnetic disturbance to our electric grid.

The Department has requested $92 billion, including $19.4 billion in FEMA disaster relief funding. Additionally, on May 1st, the Administration sent Congress a request for supplemental appropriations including $1.1 billion for DHS's border operations. I thank Mr. McAleenan for stepping up and leading the Department during a time of crisis, and I look forward to discussing how Congress can help the Department carry out its missions.

U.S. Senate Committee on Homeland Security and Governmental Affairs
"Resources Needed to Protect and Secure the Homeland"

OPENING STATEMENT OF RANKING MEMBER GARY C. PETERS
May 23, 2019
AS PREPARED FOR DELIVERY

Thank you, Mr. Chairman. And thank you, Secretary McAleenan, for being here today.

The Department of Homeland Security has a simple mission that is tremendously difficult to execute: safeguarding the American people. As the youngest, yet third-largest executive department, DHS has faced unique challenges since its creation.

Unifying the efforts of over 240,000 hardworking employees across 22 agencies while managing a $75 billion budget is a staggering task under the best of circumstances; and the Department is clearly not enjoying the best of circumstances.

Dynamic, external pressures are bearing down on the Department.

Unprecedented numbers of migrant families and children are arriving at southern border, increasingly complex cyberattacks are straining our networks, a surge in white supremacist violence is presenting new challenges in safeguarding our communities, and natural disasters fueled by climate change are causing incredible amounts of damage to our infrastructure, homes, and small businesses.

At the same time, internal problems are weakening the Department's ability to adequately respond.

Staffing shortages and low morale were exacerbated by the recent government shutdown. We have seen difficulties coordinating with other agencies, scattered, inconsistent direction from the White House, and a lack of Senate-confirmed leadership in many top positions.

Today, we are here to work together to confront all of these challenges – external and internal alike – and ensure the Department of Homeland Security is able to keep the American people safe.

Hardworking law enforcement officers, public servants, and volunteers along the southern border are doing their best to manage the arrival of tens of thousands of families every month as they flee violence and extortion.

Tragically, we have now seen the death of six minors taken into custody at our Southern border in less than a year. this is simply unacceptable and we must do better. We must secure our Northern and Southern borders, but there is no one-size-fits all approach. We need the right mix of staff, technology and infrastructure.

We need a Department that is adaptable, forward leaning, and data-driven – both on our borders and in cyberspace. In recent years, we've seen cyberattacks with severe ramifications for both government and the private sector. We must continue and accelerate efforts to position DHS to effectively combat sophisticated cyber-threats.

We also cannot relent in our effort to fight and prevent terrorism, both foreign and domestic.

Chairman Johnson and I recently requested information on DHS resource prioritization related to the shifting terror threats our nation faces. Americans should feel safe in their churches, mosques, and synagogues knowing that DHS is working to keep them safe from acts of terror spawned by white supremacism, Islamophobia, and anti-Semitism.

Border security, cybersecurity, and counterterror challenges are all constantly evolving and so are the natural disasters faced by FEMA.

Unfortunately, climate change is fueling increasingly destructive hurricanes, tornadoes, floods, and wildfires.

Even as these terrible disasters occur more frequently and with more severity, EMA personnel are being asked to suspend their disaster response mission to assist with other DHS needs at the southern border.

TSA agents and cybersecurity professionals within DHS are also being asked to volunteer for deployment to the southern border, and while the work ethic of these professionals should be commended, nobody can be in two places at once.

There are difficult decisions ahead and we need to have a robust discussion about the Department's budget needs and how you are balancing these critical priorities.

We must get this right. We owe it to the American people to be careful stewards of taxpayer dollars while ensuring that the Department of Homeland Security is effectively safeguarding our national security.

We also owe it to the hardworking men and women of DHS, who are under immense pressure to do their jobs flawlessly and don't get the recognition they deserve.

Thank you for being here today, Secretary McAleenan.

I look forward to a frank and productive conversation.

TESTIMONY

OF

KEVIN K. MCALEENAN

ACTING SECRETARY

U.S. DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

"THE FY 2020 DEPARTMENT OF HOMELAND SECURITY BUDGET"

BEFORE THE

UNITED STATES SENATE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

May 23, 2019
Washington, D.C.

Chairman Johnson, Ranking Member Peters, and distinguished Members of the Committee:

It is a privilege to appear before you today to discuss the Department of Homeland Security's (DHS) essential missions and to present the President's Fiscal Year (FY) 2020 Budget for the Department.

DHS is comprised of 14 major components employing more than 240,000 men and women dedicated to the mission of ensuring the safety and security of our great nation. I want to start by thanking the men and women of the Department of Homeland Security for their extraordinary service to our nation. The men and women of DHS are exceptional and dedicated professionals who are on watch 24 hours a day, 365 days a year. Their mission is to protect Americans from threats by land, sea, air, and in cyberspace, while also promoting our nation's economic prosperity. They work tirelessly to strengthen the safety and security of our nation from persistent and emerging dangers, including terrorists, transnational criminal organizations, rogue nation-states, and natural disasters.

Although our mission statement is simple, the mission itself is extremely complex. The Department's reach is global; spanning more than 7,450 miles of U.S. border and 95,000 miles of coastline to 4.5 million square miles of U.S. Exclusive Economic Zone (EEZ) and regions of the high seas known for smuggling operations. Our reach continues into the cyber world where nefarious actors attack U.S. financial, technological, and electoral interests. The Department is also responsible for the security of our traveling public and movement of goods through international trade. It is our dedicated personnel who not only achieve DHS's global reach, they also create efficient and effective operations 24 hours a day. I am proud to lead and represent the dedicated men and women of DHS as they are America's frontline defense.

The FY 2020 President's Budget for DHS requests $51.7 billion in net discretionary funding and an additional $19.4 billion for the Disaster Relief Fund (DRF) supporting response to and recovery from major disasters. The President's Budget proposes to strengthen the security of our nation through enhanced border security, immigration enforcement, cyber security, transportation security, resilience to disasters, and senior leadership protection.

Highlighting some of the Department's accomplishments provides a mere glimpse of the threats to our nation's security. At the completion of FY 2018, Customs and Border Protection encountered more than 683,000 illegal migrants and inadmissibles, Homeland Security Investigations made more than 34,000 criminal arrests, of which 4,300 were gang-related; and law enforcement agents and the United States Coast Guard (USCG) seized more than one million pounds of illegal drugs. Keeping our traveling public safe is another vitally important job for DHS. For example, in FY 2018 the Transportation Security Administration (TSA) screened more than 800 million aviation passengers while preventing almost 4,200 firearms from being carried onto aircraft.

In 2018, the United States endured significant natural disasters such as Hurricanes Michael and Florence and the deadliest wildfires in California's modern history including the one that obliterated the town of Paradise. Preserving life and reclamation efforts, FEMA obligated more

than $9.2 billion in Public Assistance, including funding to clear debris, rebuild roads, schools, libraries, and other public facilities, and provided more than $1 billion in Individual Assistance to survivors. These are just a few examples of how our men and women deliver on a daily basis for the American people.

Security of our Nation's borders remains a primary focus of the Administration and the Department, and doing more with less is an unacceptable method for achieving mission goals. This situation on the border with unprecedented numbers of families and children represents an acute and worsening crisis. CBP encountered nearly 40,000 children in the month of April alone. Our immigration system is not equipped to accommodate the significant change in migration patterns from one largely composed of single adults from Mexico to one comprised mainly of families and unaccompanied children from non-contiguous countries. Previous patterns—somewhat predictable in composition and predicated on seasonal variations—are no longer the norm. Unlawful migration through the U.S. southern border has increased by over 60 percent from the previous year. In addition, the speed with which illegal migrants are transiting through Mexico to reach our southern border is frustrating our best efforts to respond quickly and keep pace with the overwhelming numbers of migrants arriving at the southern border.

The migration flow and the resulting humanitarian crisis is now even more dire and is rapidly overwhelming the ability of the Federal Government to respond. In March, U.S. Customs and Border Protection (CBP) encountered over 103,000 illegal border crossers and inadmissible aliens, and in April that number exceeded 109,000—the highest monthly levels in more than a decade.

Despite heroic efforts, the Nation's ability to humanely and compassionately care for vulnerable populations and expeditiously process and detain those who should not be admitted is being stressed to the breaking point. Unaccompanied children and families are crowded into U.S. Border Patrol stations that were never intended as long-term shelters. U.S. Border Patrol personnel no longer have the ability to identify, process, and transport all of those apprehended at the border to safe and secure facilities designed to house them, but have instead been increasingly pressed into service to provide critical humanitarian, medical support, and transportation services for this uniquely vulnerable population.

While our FY 2020 budget will help address this crisis, we will need additional funding sooner. Given the scale of the crisis, we will exhaust our resources before the end of this fiscal year, which is why the Administration sent a FY 2019 supplemental funding request to Congress earlier this month. The $4.5 billion FY 2019 supplemental request includes $1.1 billion for the Department of Homeland Security to address the immediate humanitarian crisis.

The Southwest Border still lacks a permanent wall and persistent domain awareness in vulnerable areas. The FY 2020 Budget requests $8.6 billion in DHS and DOD funding for the construction of approximately 300 miles of new border wall system. A border wall is a proven deterrent that enhances U.S. Customs and Border Protection's (CBP) ability to apprehend those entering our Nation illegally; it is foundational to any strategy of achieving operational control of the Southwest Border.

Domain awareness complements a permanent wall through actionable intelligence. The current crisis at the border demands persistent awareness to allow our agents to respond rapidly and effectively to any incursion, and achieving this level of awareness requires a commitment to the procurement and sustainment of technology. The President's Budget requests upgrades to sensors such as the Remote Video Surveillance System (RVSS) and associated command and control (C2) systems, continued procurement of the Multi-Role Enforcement Aircraft, and UH-60 Blackhawk Helicopter upgrades. Through continued domain awareness and border wall construction, DHS increases its chances of mission success of ensuring that our Nation's Southwest Border and our citizens are secure.

Border security in itself is not enough. We must continue to address those who already have entered our country illegally. We must further immigration enforcement. The U.S. Immigration and Customs Enforcement's (ICE) average daily population (ADP) forecasting model reinforces a budget increase to 54,000 beds. This increase allows ICE to handle continued migration flows, enhance enforcement activity within our borders, and remove those who have entered illegally and are presenting a danger to our communities. The President's Budget maintains safe and secure facilities for 2,500 families.

For lower-risk apprehended aliens, funding is requested to expand the Alternatives to Detention (ATD) program to 120,000 daily participants. The ATD program supervises certain individuals using a combination of personal visits and monitoring technology, allowing individuals to remain in their communities while their cases are processed. Additionally, the Transportation and Removal Program requires additional resources in FY 2020 to ensure the safe and secure transportation of aliens who are either subject to Final Orders of Removal or require transfer within the United States.

Investment in our most critical resource, human capital, remains a high priority for me. Funding is included in the request for 750 additional Border Patrol Agents, 273 CBP Officers, and more than 1,660 ICE frontline and support personnel. Retaining our personnel is a priority, and the Department continues to look for affordable and effective retention measures, especially for our Border Patrol Agents.

The FY 2020 Budget also requests increased resources for international trade and travel requirements. In 2018, the President signed the National Security Presidential Memorandum establishing the National Vetting Center (NVC). The NVC utilizes law enforcement and classified data to better identify potential threats to the homeland. It brings together different streams of information and intelligence into a single process for adjudicating applications for travel to the U.S. Through this technology, CBP can now receive near-real time responses from Intelligence Community partners for more than 35,000 ESTA applications each day.

Our nation's defense continues beyond the physical borders and into the high seas. It is the USCG that stands as our phalanx to those who threaten our maritime interests. Since 1790, the USCG has performed its vital mission of saving those in peril while promoting our national security and economic prosperity in a complex and evolving maritime environment. The FY 2020 Budget is committed to maintaining USCG readiness levels and continued modernization with new and more capable assets. The President's Budget includes more than $1.1 billion for

recapitalization of Coast Guard resources including, but not limited to, the genesis of the third Offshore Patrol Cutter, procurement of two Fast Response Cutters, funding to continue efforts toward constructing the nation's first Polar Security Cutter, and aircraft sensor modernization. Additionally, this budget includes funding for a 3.1 percent pay raise for our military personnel.

Continuing efforts to improve public transportation resiliency, DHS is steadfast in addressing areas of vulnerability. Although heavily fortified, the public air-travel system must evolve with changing threats. TSA is an intelligence-driven, national security organization employing risk-based security principles to actively combat evolving threats to our critical transportation infrastructure.

TSA continues to experience airline passenger volume growth at airport checkpoints nationwide. Additional Transportation Security Officers (TSO) are needed to uphold security effectiveness and compliance, keep screening times on pace with volume growth, and stay ahead of increasing costs and security demands at airports nationwide. The $3.3 billion requested for the Screening Workforce adds 1,028 screener positions for a total of more than 46,600 TSOs, the highest level in history. The request proposes a $1.00 increase in the 9/11 passenger security fee in order to cover a greater share of the costs of aviation security. This is a minimal fee increase and should be considered seriously by Congress. The budget also funds an additional 320 computed tomography (CT) units. The CT units are used in airport screening lanes to effectively detect smaller and more artfully concealed threats within carry-on bags.

DHS continues to improve its collective efforts in cybersecurity with the recent creation of the Cybersecurity and Infrastructure Security Agency (CISA). In passing the *Cybersecurity and Infrastructure Security Agency Act of 2018*, Congress recognized that the role played by CISA has never been more important. Requiring collaboration between both government and private-sector organizations, CISA is charged with protecting the nation's critical infrastructure from physical and cyber threats. Through this mission, DHS is focused on improving our digital defense as cybersecurity threats continue to grow in scope and severity.

To assess evolving cybersecurity risks and protect Federal Government information systems and critical infrastructure, the FY 2020 President's Budget includes more than $1.3 billion for Federal Network Protection (FNP) and Infrastructure Security. Included in FNP are the Continuous Diagnostics and Mitigation, the National Cybersecurity Protection System – known operationally as EINSTEIN-and Federal Network Resilience. These systems in conjunction with the National Cybersecurity and Communications Integration Center (NCCIC) provide the technological foundation to secure and defend the Federal Government's civilian information technology infrastructure against advanced cyber threats.

The resiliency mission is carried even further through the Federal Emergency Management Agency (FEMA). Its mission reduces loss of life and property and protects the nation from all hazards by leading and supporting the nation in a risk-based, comprehensive emergency management system. Before, during, and after disasters, FEMA focuses on supporting and empowering disaster survivors by increasing their capacity to take effective and practical steps to help themselves, their families, and their communities. The better prepared that citizens are to assist themselves and others in times of need, the stronger our nation will be in the event of

future emergencies.

Therefore, the FY 2020 President's Budget requests increased funding for programs that support FEMA's three primary strategic goals of: building a culture of preparedness, increasing catastrophic disaster readiness, and reducing FEMA complexity. Requested funds support the implementation of FEMA Integration Teams (FIT) who develop relationships with state emergency management offices, enhancing the coordinated state and Federal response. The budget also includes funding for the FY 2020 Disaster Relief Fund in support of disaster declarations for hurricanes Harvey, Irma, and Maria, and for the California wildfires. Communications between first responders is vitally important for immediate real-time information sharing during all threats, hazards, or incidents. Thus, I am committed to ensuring that our first responders can communicate effectively and the request for CISA includes $167.3 million for emergency communications towards this effort.

I greatly appreciate the Congress authorizing the Countering Weapons of Mass Destruction Office (CWMD) last year. CWMD leads provides the subject matter expertise and helps to equip the Department's field operators so they may effectively defend against weapons of mass destruction, including potential terrorist use of WMD. The President's Budget continues to enable our efforts to develop a robust and technologically advanced analytic capability combating chemical, biological, radiological, and nuclear threats to the homeland and our interests. Additionally, funding is requested for the Radiation Portal Monitor Replacement Program (RPM RP) supporting CBP's operational effectiveness at the Nation's land, sea, and air ports of entry. Ensuring the effective and safe movement of goods through our ports, the RPM technology provides the cost-effective capability to scan cargo for radiological and nuclear threats without an adverse impact to the flow of commerce.

The U.S. Secret Service carries out the unique and integrated missions of protecting senior leadership and investigating threats to the nation's financial system. Best known for protecting the President, the Vice President, their immediate families, visiting heads of state, and other designated individuals, the Secret Service also protects the White House Complex, the Vice-President's Residence, foreign diplomatic missions, and other designated buildings. Further, it coordinates security at designated National Special Security Events such as the State of the Union Address. Vitally important to our economic way of life, the Secret Service protects our financial infrastructure by investigating counterfeiting, crimes related to financial securities of the United States, identity theft, and computer fraud. The President's Budget includes $33.4 million to hire additional Special Agents, Uniform Division Officers, and administrative, professional, and technical personnel to achieve an end strength of 7,777, the highest in Secret Service history. The 2020 Presidential Election is only 18 months away, and the Budget includes almost $151 million to ensure that the 2020 Presidential Campaign is adequately resourced for the protection of major candidates, nominees, their spouses, and nominating conventions.

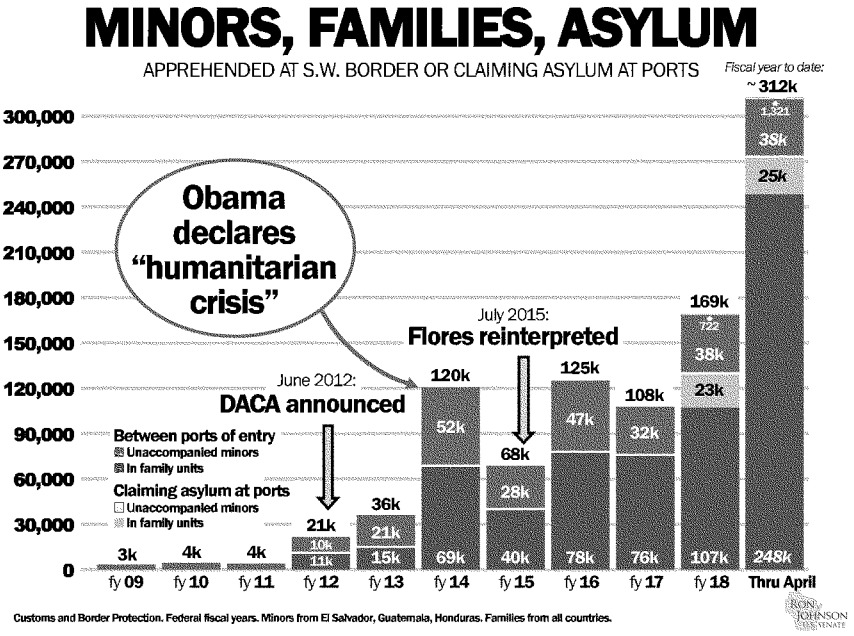
Finally, since our founding, DHS agencies have operated in temporary spaces and in offices scattered throughout D.C. metropolitan area. This has made it difficult for 240,000 employees to operate as "one" Department. But starting in April 2019, we have a new base of operations. After many years, we have finally moved onto the St. Elizabeths Campus in Southeast

Washington, D.C.; the home of the new DHS Headquarters. The FY 2020 budget requests $224 million ensuring momentum into this first class facility. St. Elizabeths will become the primary hub of a more focused, more unified, more effective, Department of Homeland Security. We have this Committee to thank for the historic move, and I look forward to welcoming all of you to visit.

I continue to be amazed by the professionalism, dedication, and conviction that the DHS employees exhibit on a daily basis. Their resolve and devotion to the homeland security mission is on display daily, and the security of our nation depends on Congress properly resourcing the very people charged with safeguarding the American people, our Homeland, and our values.

The FY 2020 President's Budget requests the necessary funding for the Department of Homeland Security to carry out its wide-ranging, day-to-day mission. We are challenged everyday with crises spanning Southwest Border security to daily cyber-attacks, and I call on Congress to assure the security of our Nation by providing the proper funding required to do our jobs.

Thank you for the opportunity to appear before you and discuss the Department's FY 2020 Budget submission. I look forward to taking your questions.


MINORS, FAMILIES, ASYLUM
APPREHENDED AT S.W. BORDER OR CLAIMING ASYLUM AT PORTS
Fiscal year to date:
~312k
1,321
38k
25k
248k
300,000
270,000
240,000
210,000
180,000
150,000
120,000
90,000
60,000
30,000
0
Obama declares "humanitarian crisis"
June 2012:
DACA announced
July 2015:
Flores reinterpreted
Between ports of entry
Unaccompanied minors
In family units
Claiming asylum at ports
Unaccompanied minors
In family units
3k
4k
4k
21k
10k
11k
36k
21k
15k
120k
52k
69k
68k
28k
40k
125k
47k
78k
108k
32k
76k
169k
72
38k
23k
107k
fy 09
fy 10
fy 11
fy 12
fy 13
fy 14
fy 15
fy 16
fy 17
fy 18
Thru April
Customs and Border Protection. Federal fiscal years. Minors from El Salvador, Guatemala, Honduras. Families from all countries.
RON JOHNSON U.S. SENATE

CWS Statement to the U.S. Senate Committee on Homeland Security and Governmental Affairs, pertaining to its hearing "Resources Needed to Protect and Secure the Homeland" on Thursday, May 23, 2019

As a 73-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions and 23 refugee resettlement offices across 17 states, Church World Service urges Congress to cut funding for immigration detention, deportation, and border militarization and to demand accountability over the Department of Homeland Security (DHS). **We urge Congress to reduce funding for Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) that has fueled family separation and the immoral and illegal treatment of asylum seekers and other immigrants.**

CWS urges the administration to rescind its April 2018 information-sharing agreement between DHS and the Department of Health and Human Services (HHS) that turns HHS into an immigration enforcement agency and prolongs family separation. The agreement "requires HHS to share the immigration status of potential sponsors and other adults in their households with DHS to facilitate HHS's background checks." The population of detained unaccompanied children ballooned, and although HHS announced that it would stop requiring fingerprints from all household members of sponsors, ORR continues to share information about all potential sponsors with DHS, needlessly prolonging child detention.

CWS is strongly opposed to any proposal that would undermine *Flores* protections or increase 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 children and "no child should be in detention centers or separated from parents." CWS urges Congress to reject any proposal that would expand family detention or violate the *Flores* agreement's long-standing consensus that children should not be detained for longer than 20 days.

CWS is equally troubled by proposals to 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. Weakening existing legal protections, especially for children, undermines the United State's moral authority as a leader in combating human trafficking and increases vulnerabilities for trafficking victims by curtailing access to due process, legal representation, and child-appropriate services.

Congress and the administration should utilize community-based, least-restrictive alternatives to detention (ATDs) that connect individuals with family members, faith-based hospitality communities, and local services to help them navigate the legal system. For example, the Family Case Management Program (FCMP) is effective and less expensive than detention, allowing people to be released, connecting them with legal counsel, providing case supervision, and helping with child care. The program is 99 percent effective at having families show up for check-ins and court appearances and also ensures departure from the United States for those who are not granted protection.

Immigration policies that repeatedly result in death do not make us secure. The death of multiple children in CBP custody pointedly highlights the urgent need for shifts in policy. Border crossings have declined to near-record levels; the uptick in arrivals this year stems from families fleeing violence, persecution, and desperation from El Salvador, Honduras, and Guatemala. Militarizing the border and separating families undermine our moral and legal obligations and are ineffective, as families continue to seek safety. The United States can humanely process all families and individuals who arrive at our borders seeking protection.

CWS strongly opposes sending troops to the border and any other policy that further militarizes our border. Border communities are some of the safest in the country. The most recent data available shows each Border Patrol agent along the Southwest border apprehended on average about 3 migrants per month, still below FY 2000 levels (approximately 16 migrants per month). With CBP's all-time high funding for border security procurement and development alone, legislators should be looking for ways to rein in CBP's draconian enforcement efforts.

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 FY19, 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 to meeting its FY19 refugee admissions goal and rebuilding the resettlement program, returning the program to historic norms.**

As a faith-based organization, we urge Congress to hold the administration respecting the humanity and dignity of all asylum seekers, unaccompanied children, and others seeking protection.

STATEMENT OF ANTHONY M. REARDON
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION

REOURCES NEEDED TO PROTECT AND SECURE THE HOMELAND

BEFORE THE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS
UNITED STATES HOUSE OF SENATE

May 23, 2019

Chairman Johnson, Ranking Member Peters, and distinguished members of the Committee, thank you for the opportunity to submit this statement for the record. As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 27,000 Customs and Border Protection (CBP) Officers, Agriculture Specialists and trade enforcement personnel stationed at 328 land, sea and air ports of entry across the United States (U.S.) and 16 Preclearance stations currently at airports in Ireland, the Caribbean, Canada and the United Arab Emirates. CBP's Office of Field Operations (OFO) pursues a dual mission of safeguarding American ports by protecting the public from dangerous people and materials, while enhancing the nation's global and economic competitiveness by enabling legitimate trade and travel. OFO is the largest component of CBP responsible for border security –including anti-terrorism, immigration, anti-smuggling, trade compliance, and agriculture protection—while simultaneously facilitating lawful trade and travel at U.S. ports of entry that are critical to our Nation's economy. In addition to CBP's trade and travel security, processing and facilitation missions, CBP OFO employees at the ports of entry are the second largest source of revenue collection for the U.S. government. In 2018, CBP processed more than $2.8 trillion in imports and collected approximately $44 billion in duties, taxes, and other fees.

According to CBP onboard staffing data, there is a shortage of approximately 3,700 CBP Officers at the ports of entry. Unfortunately, the Administration has not included sufficient funding in its Fiscal Year (FY) 2020 budget request to address this significant staffing gap. Instead, the Administration's FY 2020 budget requests only $28 million to fund the hiring of 171 new Customs and Border Protection Officers, 91 Mission and Operational Support positions, and five Agriculture Specialists. According to CBP, these 267 new OFO employees in the FY 2020 budget request are designated to go to San Luis, AZ, Blaine, Cincinnati, and Boston. CBP's limited OFO personnel request is intended to test a "Proof of Concept" that if the OFO allocations in its own Workload Staffing Model (WSM) at these four ports of entry are

fully met, then these ports should function without excessive wait times, overtime or other economic consequences of short staffing.

While I am pleased that the Administration included some new funding for the hiring of critically needed CBP Officers, Agriculture Specialists and support staff, the FY2020 budget request for this "Proof of Concept" experiment does not by any means meet CBP's staffing needs. During post shutdown negotiations earlier this year, the House majority proposed funding 1,000 CBP Officer new hires, and ultimately the FY 2019 final funding agreement provided $58.7 million to hire 600 new CBP Officers.

According to CBP's most recent analytic workload staffing models— the FY 2018 CBP Officer WSM, the FY 2018 Agriculture Resource Allocation Model (AgRAM), and the FY 2017 Resource Optimization Model (ROM) for Trade Positions--an additional 2,516 CBP Officers, 721 Agriculture Specialists and at least 150 trade operations specialists need to be funded and hired in order to meet current staffing needs at the U.S. ports of entry.

CBP employees at the ports of entry are not only the first line of defense for illegal trade and travel enforcement, but their role of facilitating legal trade and travel is a significant economic driver for private sector jobs and economic growth. According to CBP, for every 1,000 CBP officers hired there is an increase in the Gross Domestic Product (GDP) of $2 billion; $642 million in opportunity costs are saved (the amount of time that a traveler could be using for purposes other than waiting in line, such as working or enjoying leisure activities); and 33,148 annual jobs are added. **If CBP filled the 3,700 needed new positions, the impact could be as high as a $7.4 billion increase in GDP; a $2.38 billion savings in opportunity costs; and the creation of 122,650 new private sector jobs.**

In addition, according to the Joint Economic Committee (JEC), the volume of commerce crossing our borders has more than tripled in the past 25 years. Long wait times lead to delays and travel time uncertainty, which can increase supply chain and transportation costs. According to the Department of Commerce, border delays result in losses to output, wages, jobs and tax revenue due to decreases in spending by companies, suppliers and consumers. JEC research finds border delays cost the U.S. economy between $90 million and $5.8 billion each year.

NTEU commends Ranking Member Peters and Senator John Cornyn for introducing **S. 1004, *the Safeguarding American Ports Act*, a stand-alone legislation that would authorize the hiring of 600 additional CBP Officers annually until the staffing gaps in CBP's WSM is met.** NTEU strongly supports this CBP Officer staffing authorization bill and urges every member of the Senate to support this bill.

NTEU also asks Committee members to request from the Senate Appropriations Committee up to $120 million in Fiscal Year (FY) 2020 direct appropriations for the hiring of 600 CBP Officers, 100 CBP Agriculture Specialists, and additional needed non-uniformed Trade Operations and support staff.

NTEU is not alone in seeking increased funding to hire new CBP Officers at the ports. A diverse group of business, industry and union leaders have joined forces in support of legislation and funding to hire more Customs and Border Protection personnel and alleviate staffing

shortages at the nation's ports of entry. The coalition – which includes leading voices from various shipping, tourism, travel, trade, law enforcement, and employee groups –sent the attached letters urging Senators to cosponsor S. 1004 and Senate appropriators to provide the funding necessary to hire at least 600 new CBP Officers annually (see Exhibit A.)

CBP Officer Overtime

Due to the ongoing current staffing shortage of 3,700 CBP Officers, CBP Officers nationwide are working excessive overtime to maintain basic port staffing. Currently, CBP Officer overtime pay is funded 100% through user fees and is statutorily capped at $45,000 per year. All CBP Officers are aware that overtime assignments are an aspect of their jobs. However, long periods of overtime hours can severely disrupt an officer's family life, morale and ultimately their job performance protecting our nation.

In addition, since CBP Officers are required to regularly work overtime, many of these individual Officers are hitting the overtime cap very early in the fiscal year. This leaves no overtime funding available for peak season travel, resulting in critical staffing shortages in the third and fourth quarter of the fiscal year that usually coincide with holiday travel at the ports.

At many ports, CBP has granted overtime exemptions to over one-half of the workforce to allow managers to assign overtime to Officers that have already reached the statutory overtime cap, but cap waivers only force CBP Officers already working long daily shifts to continue working these shifts for more days. Officers are required to come in hours before their regular shifts, to stay an indeterminate number of hours after their shifts (on the same day) and are compelled to come in for more overtime hours on their regular days off as well. Both involuntary overtime--resulting in 12 to 16 hour shifts, day after day, for months on end--and involuntary work assignments far from home, significantly disrupt CBP Officers' family life and erode morale. As NTEU has repeatedly stated, this is not a long-term solution for staffing shortages at the ports and has gone on for far too long.

Temporary Duty Assignments at Southwest Land Ports of Entry

Due to CBP's ongoing staffing shortage, since 2015, CBP has been diverting hundreds of CBP Officers from other air, sea and land ports to severely short-staffed Southwest land ports for 90-day Temporary Duty Assignments (TDYs).

CBP recently announced a new round of CBP Officer TDYs to be voluntarily reassigned to Border Patrol sectors across the southwest border. NTEU has learned that in **June and July CBP will be deploying a total of 731 CBP Officers to designated Border Patrol Sectors to replace CBP Officers deployed in April and have reached the end of their 60-day TDY deployment. In this latest deployment, 245 Officers will be sent from the SW Border Field Offices with the remaining 486 officers coming from the other Field Offices. Officers being redeployed are from the nation's most short-staffed land ports on our southern border.**

This redeployment is making the existing problems at the ports even worse and resulting in hours-long delays, since most of the CBP Officers being redeployed are from the nation's most

short-staffed land ports on our southern border. If these reassignments continue, they could lead to even more extensive staffing shortages at other critical land ports of entry on the southern and northern borders, and at international air and seaports. Reduced personnel numbers at other ports threatens CBP's capacity to carry out critical immigration, trade and health related inspections and to interdict illegal drug shipments.

According to a newly-released study "The Economic Costs of the U.S.–Mexico Slowdown," by the Perryman Group that was commissioned by IBC Bank in conjunction with the Texas Association of Business, Texas Border Coalition, Texas Business Leadership Council and the Border Trade Alliance, this most recent TDY has resulted in a significant slowdown at the US-Mexico border and led to substantial economic harms. Millions of trucks cross the southern border every year, and delays at the border cause logistical problems. The current slowing on the US-Mexico border is reducing efficiency and costing the US economy billions in output and hundreds of thousands of jobs.

The study further states that if the diversion of CBP Officers from the Southwest border international land ports continues, the state of Texas alone could lose more than $32 billion in gross domestic product in just over three months. If there is a one-third reduction in trade between the U.S. and Mexico over a three-month period, the cost to the US economy would be over "$69 billion in gross product and 620,236 job-years (when multiplier effects are considered). Almost half of these losses occur in Texas."

NTEU urges Congress to require CBP to allocate personnel and resources appropriately to ensure timely processing of people at all ports of entry and better manage the changing demographic flows at our southern border. To end all of these TDYs, CBP must fill existing CBP Officer vacancies and fund the hiring of the additional CBP Officers called for in CBP's own WSM. Without addressing the 3,700 CBP Officer shortfall, allocating adequate staffing at all ports will remain a challenge.

Opioid Interdiction

CBP OFO is the premier component at the Department of Homeland Security (DHS) tasked with stemming the nation's opioid epidemic--a crisis that is getting worse. According to a May 2018 report released by the Senate Homeland Security and Governmental Affairs Committee Minority titled *Combatting the Opioid Epidemic: Intercepting Illicit Opioids at Ports of Entry,* "between 2013 and 2017, approximately 25,405 pounds, or 88% of all opioids seized by CBP, were seized at ports of entry. The amount of fentanyl seized at the ports of entry increased by 159% from 459 pounds in 2016 to 1,189 pounds in 2017."

On January 26, 2019, CBP OFO made their biggest fentanyl seizure ever, capturing nearly 254 pounds of the deadly synthetic opioid at the Nogales port of entry. According to the Drug Enforcement Administration, just two milligrams of fentanyl is considered a lethal dose. From the January 26 seizure alone, it is estimated that **CBP Officers seized enough fentanyl to kill 57 million people.** That's more than the combined population of the states of Illinois, New York and Pennsylvania. The street value for the fentanyl was over $102 million. CBP Officers also seized an additional 2.2 pounds of fentanyl pills and a large cache of methamphetamine.

The majority of fentanyl is manufactured in other countries such as China, and is smuggled primarily through the ports of entry along the southwest border and through international mail and Private Express Carrier Facilities, e.g. FedEx and UPS. Over the past five years, CBP has seen a nearly 50 percent increase in express consignment shipments from 76 million to 110 million express bills and a 200 percent increase in international mail shipments from approximately 150 million to more than 500 million. Yet, according to CBP, over the last three years, there were only 181 CBP employees assigned to the five Postal Service International Service Centers and 208 CBP employees assigned to the Private Express Carrier Facilities. NTEU's funding request would allow for increases in CBP OFO staffing at these facilities.

Noting the positive impact of hiring additional CBP Officers, it is troubling that the President's 2017 Border Security Executive Order and his subsequent budget request did not ask for one additional CBP officer new hire. In 2017, CBP Officers at the ports of entry recorded over 216,370 apprehensions and seized over 444,000 pounds of illegal drugs, and over $96 million in illicit currency, while processing over 390 million travelers and $2.2 trillion in imports through the ports. Imagine what they could do with adequate staffing and resources.

Agriculture Specialist Staffing

CBP employees also perform critically important agriculture inspections to prevent the entry of animal and plant pests or diseases at ports of entry. Agricultural Specialists provide a critical role in both trade and travel safety and prevent the introduction of harmful exotic plant pests and foreign animal diseases, as well as potential ag/bio-terrorism into the United States. All ports of entry are currently understaffed relative to mission goals and workload requirements of Agricultural Specialists. For years, NTEU has championed the CBP Agriculture Specialists' Agriculture Quality Inspection (AQI) mission within the agency and fought for increased staffing to fulfill that mission. The U.S. agriculture sector is a crucial component of the American economy, generating over $1 trillion in annual economic activity. According to the U.S. Department of Agriculture, foreign pests and diseases cost the American economy tens of billions of dollars annually.

Because of CBP's key mission to protect the nation's agriculture from pests and disease, NTEU urges the Committee to authorize the hiring of these 721 CBP Agriculture Specialists identified by CBP's AgRAM to address this critical staffing shortage that threatens the U.S. agriculture sector.

CBP Trade Operations Staffing

In addition to safeguarding our nation's borders and ports, CBP is tasked with regulating and facilitating international trade. CBP employees at the ports of entry are critical in protecting our nation's economic growth and security. **For every dollar invested in CBP trade personnel, we return $87 to the U.S. economy**, either through lowering the costs of trade, ensuring a level playing field for domestic industry or protecting innovative intellectual property. Since CBP was established in March 2003, however, there has been no increase in non-uniformed CBP trade enforcement and compliance personnel. Additionally, CBP trade operations staffing has fallen below the statutory floor set forth in the Homeland Security Act of 2002 and stipulated in the FY 2017 CBP Resource Optimization Model for Trade Positions.

NTEU strongly supports funding for 140 new hires at the CBP Office of Trade through direct appropriations to support Trade Facilitation and Trade Enforcement Act implementation.

CBP Funding Sources

CBP collects Customs User Fees (CUFs) , including those under the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA), to recover certain costs incurred for processing air and sea passengers and various private and commercial land, sea, air, and rail carriers and shipments. The source of these user fees are commercial vessels, commercial vehicles, rail cars, private aircraft, private vessels, air passengers, sea passengers, cruise vessel passengers, dutiable mail, customs brokers and barge/bulk carriers.

COBRA fees are deposited into the Customs User Fee Account and are designated by statute to pay for services provided to the user, such as 100% of inspectional overtime for passenger and commercial vehicle inspection during overtime shift hours. Of the 24,576 CBP Officers currently funded, Customs User Fees (CUFs) fund 3,825 full-time equivalent (FTEs) CBP Officers. Further, Immigration Inspection User Fees (IUF) fund 4,179 CBPO FTEs. **CUF and IUF user fees fund 8,004 CBPO FTEs or one third of the entire CBP workforce at the ports of entry.**

NTEU strongly opposes any diversion of CUFs. Any increases to the CUF Account should be properly used for much-needed CBP staffing and not diverted to unrelated projects. Unfortunately, while section 52202 of the FAST ACT indexed CUFs to inflation, it diverted this funding from CBP to pay for unrelated infrastructure projects. Indexing COBRA CUFs to inflation would have raised $1.4 billion over ten years—a potential $140 million per year funding stream to help pay for the hiring of additional CBP Officers to perform CBP's border security, law enforcement and trade and travel facilitation missions. **Diverting these funds has cost CBP funding to hire over 900 new CBP Officers per year since the FAST Act went into effect. These new hires would have significantly alleviated the current CBP Officer staffing shortage.**

In order to find alternative sources of funding to address serious staffing shortages, CBP received authorization for and has entered into Reimbursable Service Agreements (RSAs) with the private sector, as well as with state and local governmental entities. These stakeholders, who are already paying CUFs and IUFs for CBP OFO employee positions and overtime, reimburse CBP for additional inspection services, including overtime pay and the hiring of new CBP Officer and Agriculture Specialist personnel that in the past have been paid for entirely by user fees or appropriated funding. According to CBP, since the program began in 2013, **CBP has entered into agreements with over 149 stakeholders covering 111 U.S. ports of entry, providing more than 467,000 additional processing hours for incoming commercial and cargo traffic.**

NTEU believes that the RSA program is a band aid approach and cannot replace the need for Congress to either appropriate new funding or authorize an increase in customs and immigration user fees to adequately address CBP staffing needs at the ports.

RSAs simply cannot replace the need for an increase in CBP appropriated or user fee funding—and make CBP a "pay to play" agency. NTEU also remains concerned with CBP's new Preclearance expansion program that also relies heavily on "pay to play." Further, NTEU believes that the use of RSAs to fund CBP staffing shortages raises significant equity issues between larger and/or wealthier ports and smaller ports.

NTEU Recommendations

To address CBP's workforce challenges, it is clearly in the nation's economic and security interest for Congress to authorize and fund an increase in the number of CBP Officers, CBP Agriculture Specialists, and other CBP employees.

In order to achieve the long-term goal of securing the proper staffing at CBP and end disruptive TDYs and excessive involuntary overtime shifts, NTEU recommends that Congress take the following actions:

- Enact S. 1004, *the Safeguarding American Ports Act*;
- Support funding for 600 new CBP Officers in FY 2020 DHS Appropriations;
- Support funding for 721 new CBP Agriculture Specialists, as well as additional Trade Operations Specialists and other OFO support staff; and
- Fully fund and utilize recruitment, relocation and retention incentives.

Congress should also redirect the increase in customs user fees in the FAST Act from offsetting transportation spending to its original purpose of providing funding for CBP Officer staffing and overtime, and oppose any legislation to divert additional fees collected to other uses or projects.

Shutdowns, pay freezes, and proposed cuts to benefits, rights, and protections do nothing to help with recruitment and retention of CBP Officers. The employees I represent are frustrated and their morale is indeed low. These employees work hard and care deeply about their jobs and their country. These men and women are deserving of more staffing and resources to perform their jobs better and more efficiently.

Thank you for the opportunity to submit this statement for the record.

Exhibit A

May 1, 2019

The Honorable Gary Peters
724 Hart Senate Office Building
United States Senate
Washington, DC 20510

The Honorable John Cornyn
517 Hart Senate Office Building
United States Senate
Washington, DC 20510

Dear Senators Peters and Cornyn:

As stakeholders interested in the facilitation activities of Customs and Border Protection (CBP) at land, sea, and air ports-of-entry around the globe, we thank you for introducing S. 1004, the Securing America's Ports of Entry Act, which would increase the authorized number of CBP officers by 600 annually to help the agency meet its current and future staffing needs. The bill also would provide better information about CBP's infrastructure needs at its ports-of-entry, as well as much needed transparency and accountability regarding the agency's increasing reliance on reimbursable services agreements and temporary duty assignments to cover its system-wide staffing shortfalls.

We share your commitment to ensuring that America's borders remain safe, secure, and efficient for all users, while enhancing our global competitiveness through the facilitation of legitimate travel and trade. With CBP's onboard data and most recent workload staffing model showing a shortage of over 3,700 CBP officers, current staffing levels fail to address the growing demands of travel and trade at our ports-of-entry. Providing additional CBP officers at this time of growing volumes of international passengers and cargo will both reduce lengthy wait times and facilitate new economic opportunities in communities throughout the United States.

Increasing CBP officer staffing is an economic driver for the U.S. economy. According to the Joint Economic Committee (JEC), "every day 1.1 million people and $5.9 billion in goods legally enter and exit through the ports of entry." CBP estimates that the annual hiring of an additional 600 CBP officers at the ports-of-entry could increase yearly economic activity by over $1 billion and result in the addition of over 17,000 new jobs.

While the volume of commerce crossing our borders has more than tripled in the past 25 years, CBP staffing has not kept pace with demand. Long wait times at our ports-of-entry lead to travel delays and uncertainty, which can increase supply-chain costs and cause passengers to miss their connections. According to the U.S. Department of Commerce, border delays result in losses to output, wages, jobs, and tax revenue due to decreases in spending by companies, suppliers, and consumers. The travel industry estimates long CBP wait times discourage international visitors, who spend an average of $4,200 per visit, from traveling to the United States. JEC research also finds border delays cost the U.S. economy upwards of $5 billion each year.

Thank you for your leadership on these important matters. Please let us know if we can be of any assistance to your efforts.

Sincerely,

Airports Council International – North America
American Association of Port Authorities
National Treasury Employees Union
American Association of Airport Executives
Borderplex Alliance
Border Trade Alliance
Cargo Airline Association
Cruise Lines International Association
Federal Law Enforcement Officers Association
Fresh Produce Association of the Americas
Global Business Travel Association
National Association of Waterfront Employers
New York Shipping Association
United States Maritime Alliance
U.S. Chamber of Commerce
U.S. Travel Association
West Gulf Maritime Association

May 1, 2019

The Honorable Shelley Moore Capito
Chairman
Subcommittee on Homeland Security
Committee on Appropriations
United States Senate
Washington, DC 20510

The Honorable Jon Tester
Ranking Member
Subcommittee on Homeland Security
Committee on Appropriations
United States Senate
Washington, DC 20510

Dear Chairman Capito and Ranking Member Tester:

As stakeholders interested in the facilitation activities of Customs and Border Protection (CBP) at land, sea, and air ports-of-entry around the globe, we urge you to provide additional appropriations in Fiscal Year 2020 for at least 600 new CBP officers over the current staffing level to help the agency meet its current and future staffing needs.

With CBP's onboard data and most recent workload staffing model showing a shortage of over 3,700 CBP officers, current staffing levels fail to address the growing demands of travel and trade at our ports-of-entry. Providing additional CBP officers at this time of growing volumes of international passengers and cargo will both reduce lengthy wait times and facilitate new economic opportunities in communities throughout the United States.

Increasing CBP officer staffing is an economic driver for the U.S. economy. According to the Joint Economic Committee (JEC), "every day 1.1 million people and $5.9 billion in goods legally enter and exit through the ports of entry." CBP estimates that the annual hiring of an additional 600 CBP officers at the ports-of-entry could increase yearly economic activity by over $1 billion and result in the addition of over 17,000 new jobs.

While the volume of commerce crossing our borders has more than tripled in the past 25 years, CBP staffing has not kept pace with demand. Long wait times at our ports-of-entry lead to travel delays and uncertainty, which can increase supply-chain costs and cause passengers to miss their connections. According to the U.S. Department of Commerce, border delays result in losses to output, wages, jobs, and tax revenue due to decreases in spending by companies, suppliers, and consumers. The travel industry estimates long CBP wait times discourage international visitors, who spend an average of $4,200 per visit, from traveling to the United States. JEC research also finds border delays cost the U.S. economy upwards of $5 billion each year.

We share your commitment to ensuring that America's borders remain safe, secure, and efficient for all users, while enhancing our global competitiveness through the facilitation of legitimate travel and trade. Therefore, we request at least 600 new CBP officers in Fiscal Year 2020 to continue building on the staffing advances made in recent years.

Thank you for your consideration of this request.

Sincerely,

Airports Council International – North America
American Association of Port Authorities
National Treasury Employees Union
American Association of Airport Executives
Borderplex Alliance
Border Trade Alliance
Cargo Airline Association
Cruise Lines International Association
Federal Law Enforcement Officers Association
Fresh Produce Association of the Americas
Global Business Travel Association
National Association of Waterfront Employers
New York Shipping Association
United States Maritime Alliance
U.S. Chamber of Commerce
U.S. Travel Association
West Gulf Maritime Association

Post-Hearing Questions for the Record
Submitted to the Honorable Kevin K. McAleenan
From Senator Ron Johnson

"Resources Needed to Protect and Secure the Homeland"

May 23, 2019

Question#:	1
Topic:	Questions for the Record
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Ron Johnson
Committee:	HOMELAND SECURITY (SENATE)

Question: The enclosed questions for the record were sent to the Department of Homeland Security (specifically, then-Executive Associate Director Albence and then-Acting Deputy Commissioner Perez) by Senators Portman, Lankford, McCaskill, Heitkamp, Peters and Harris on October 4, 2018. The questions are in response to a hearing the Committee held on September 18, 2018, titled "The Implications of the Reinterpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives." I am disappointed that to date, the Department has failed to respond to the Senators' questions. As Chairman of the Committee, I am re-submitting my colleagues' questions from October 4, 2018, and I ask for your prompt reply.

Response: The responses to these Questions for the Record are attached. Furthermore, the U.S. Department of Homeland Security (DHS) sincerely apologizes for the tardiness of the responses.

Post-Hearing Questions for the Record
Submitted to Matthew Albence & Robert Perez
From Senator Claire McCaskill

"The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives"

October 3, 2018

Question#:	1
Topic:	Projected Detention Costs
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: The Government Accountability Office (GAO) released a report in April of this year, which found that U.S. Immigration and Customs Enforcement (ICE) had a number of inaccuracies in the agency's calculations for projected detention costs. One example, from fiscal year (FY) 2015, showed that ICE underestimated their immigration detention expenses for that year by $129 million. GAO made five recommendations to ICE to ensure that ICE's methodology for determining detention costs are sound.

Has ICE taken steps to implement the recommendations put forth by GAO?

Response: U.S. Immigration and Customs Enforcement (ICE) has taken necessary steps to improve business practices and implement procedures based on the U.S. Government Accountability Office's (GAO) recommendations. These include, but are not limited to, implementing a prioritization model to rank all agency resource requests, multiple third-party assessments of ICE's bed rate calculation methodologies, and implementing cost modeling and statistical analysis into ICE's budget requests to ensure repeatable processes.

Question: How will ICE ensure that any estimation of the cost of family detention is accurate going forward?

Response: ICE's family detention estimates are based on firm-fixed-priced contracts, which enable ICE to ensure a high level of accuracy in its cost estimating. ICE continues to assess the accuracy of family detention costs. ICE has three Family Residential Centers, all of which are firm-fixed-price structured contracts. These contracts provide for a price that is not subject to any adjustment based on the contractor's cost experience in performing the contract. It provides maximum incentive for the contractor to "control" costs and perform "effectively," and also imposes a

Question#:	1
Topic:	Projected Detention Costs
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

minimum administrative burden upon the contracting parties. This allows ICE to conduct better assessments and reviews related to forecasting resources for family detention.

Question: As a matter of policy, do you think that ICE should develop cost models for detention prior to expanding detention significantly?

Response: ICE developed cost models to estimate resources needed to support fluctuations in the average daily population. ICE continues to improve these models to ensure processes are repeatable.

Question#:	2
Topic:	Funds Reprogrammed
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Historically, U.S. Immigration and Customs Enforcement has had to request that funds be reprogrammed to cover the cost of additional detention beds. For the past five fiscal years (FY), please provide the amount that has had to be reprogrammed to cover the cost of detention budget overruns.

Response: The table below provides the reprogramming amount for custody operations only. The source of the data in the table is the U.S. Department of Homeland Security (DHS) Fiscal Year (FY) 2018 Transfer and Reprogramming Notification. The FY 2018 reprogramming amount for Custody Operations was $118 million.

PPA	2014	2015	2016	2017	2018
Custody Operations	$261 million	-	$127 million	$135 million	$118 million
	To accommodate the large number of family apprehensions in FY 2014; funds were used to open the Artesia and South Texas FRC facilities.	No reprogramming for Custody Operations in 2015.	To cover increasing adult detention costs and healthcare costs for higher than anticipated Average Daily Population (ADP) levels and an increase in adult bed rate.	To cover a funding shortfall due to an updated ADP projection of 39,250 detention beds (36,250 adults and 2,500 family) at an adult bed rate of $132.59 and a family bed rate of $319.37.	To support an increase in ADP over the enacted level.

One of the constraints and challenges of our annual appropriation is ensuring resources can support an ever-changing immigration enforcement operational environment and the associated population. The reprogrammed amounts for Custody Operations should not be characterized as budget overruns but more so, the cost of maintaining immigration detention operations due to an increase in population growth above appropriated levels.

Question#:	3
Topic:	Estimated Cost for 15,000 Beds
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: According to ICE, to house all families for 30 days, ICE would need approximately 15,000 beds. What is the estimated cost for adding an additional 15,000 family residential beds? Please provide a breakdown that includes the cost of construction, facility management staff (medical, educational, security), the average daily bed rate, and any other significant cost drivers.

Given adequate funds, how quickly would ICE be able to construct facilities that could house 15,000 beds? How quickly would ICE be able to finds adequate staff?

Response: U.S. Immigration and Customs Enforcement continues to review and assess programmatic requirements for detention management due to changes in the operational environment.

The total estimated reoccurring cost of an additional 15,000 family residential beds is $1.77 billion. Construction costs are not known due to multiple factors, such as the size of the facility or the available locations able to meet the standards for a Family Residential Center (FRC). Current FRC costs are fixed price contract agreements, which do not vary based on occupancy rates.

Question#:	4
Topic:	Detaining Families or Adults
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Part of ICE's mission is to promote homeland security and public safety. Given limited resources, do you believe that it is more important to spend taxpayer dollars detaining families or detaining individual adults? Which of those categories of migrants do you consider more of a threat to public safety?

Response: U.S. Immigration and Customs Enforcement (ICE) focuses its resources on individuals who pose a threat to national security, public safety, and border security. Therefore, all of those in violation of U.S. immigration laws may be subject to immigration arrest, detention, and, if subject to a final order of removal, removal from the United States.

ICE expends significant resources to ensure those who pose a public safety or national security threat are apprehended, detained, and removed. However, ICE also enforces immigration laws against those who threaten the security of the country's borders and immigration system. Notably, in Fiscal Years 2017 and 2018, approximately 90 percent of ICE arrests involved an alien with a criminal conviction, a pending criminal charge, or a prior removal order that was subject to reinstatement. Provided an alien is not subject to mandatory detention, ICE considers the danger and risk of flight posed by an alien's release in making custody determinations. Determinations are made on a case-by-case basis considering all available information.

The influx of family units and others across the Southwest Border, which began in 2014 and has primarily consisted of individuals from the Northern Triangle countries of Guatemala, El Salvador, and Honduras, has strained the capabilities of federal agencies, as well as communities within the interior of the United States. Many of these individuals have attempted to illegally enter the country, posing a threat to border security and violating U.S. immigration laws.

ICE found that many recently arrived families do not appear for court hearings and ignore lawfully issued orders of removal; even those who are placed on Alternatives to Detention abscond at a higher rate than other participants.[1] Because this population has demonstrated a high flight risk, ICE believes that detention is a necessary tool to effectuate removal in cases where it is legally appropriate.

[1] In Fiscal Year 2018 through July, the absconder rate for family units was 27.7 percent, while it was 16.4 percent for non-family unit participants.

Question#:	4
Topic:	Detaining Families or Adults
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Would you support reallocating funds that are currently funding adult beds to cover the cost of additional family beds?

Response: ICE does not currently require reallocation of funds from adult beds to cover the cost of additional family beds, but would go through the reprogramming process should the operational environment require such a change.

One issue that continues to limit the efficacy of adding additional family beds is judicial decisions interpreting the *Flores* Settlement Agreement (FSA). Under the court's interpretation of the FSA, the U.S. Department of Homeland Security generally may only detain alien children with a parent or legal guardian for approximately 20 days before releasing them from ICE custody. In some circumstances, this results in family units being released into the interior of the United States.

Question#:	5
Topic:	Alternatives to Detention I
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the average length of time an individual or family is monitored through alternatives to detention (ATD)?

At the hearing, you indicated that some immigrants are on ATD through to the final adjudication of their immigration cases. Please provide the number of individuals or families for each year between FY 2015 through FY 2018 that were on ATD throughout the entire adjudication of their immigration case up to and including when they were deported or granted asylum and the specific program that these individuals were a part of. How many of these individuals absconded?

At the hearing, there was general agreement that ATD had a 97-99% success rate in ensuring appearances at immigration proceedings. Since ATDs appear successful in getting families to show up to court, why does ICE believe that families need to be detained before this point in the process? Has ICE considered using existing detention space to detain families after their asylum claims are rejected rather than before?

Response: Generally, due to limited Alternatives to Detention (ATD) resources, an individual's participation in the ATD program is limited to 14-18 months. This happens typically when individuals must be terminated from the program to make room for new participants, many of whom are recent border crossers. Thus, it is very uncommon for an individual to remain on the program throughout the pendency of their removal proceedings.

U.S. Immigration and Customs Enforcement (ICE) is unable to provide information on the number of individuals who remained in the program throughout their removal proceedings. However, given that it typically takes several years for immigration cases to conclude once assigned to the non-detained docket, ICE expects this number to be very small.

The below charts illustrate how many family units and non-family units were terminated from the program from Fiscal Years (FY) 2015 to 2018, including information related to absconders, removals, and benefits granted during this time. However, ICE notes that widely reported "compliance rates" above 90 percent refer to whether an alien attended a specific, scheduled court hearing, but do not address success across the entire immigration process. Such compliance rates do not account for all individuals who later abscond—something which becomes more frequent once an individual has been ordered

Question#:	5
Topic:	Alternatives to Detention I
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Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

removed—or who are arrested for criminal offenses and subsequently removed from the program as a result.

In addition, while ATD is generally effective at monitoring compliance with release conditions and appearance at court hearings for its vetted participants, it is not a soulation applicable to all current challenges to the enforcement of immigration law. It is not an effective tool for monitoring those who have already been ordered removed or for recent arrivals with no community ties. In fact, because most recently arrived family units have no existing ties to the community, and may not even know their final geographic destination (which is necessary for effective ATD monitoring), they abscond at much higher rates than traditional participants. In FY 2018, the absconder rate for family units was 27.4 percent, compared to 16.40 percent for non-family unit participants. ATD was designed to monitor a relatively small, vetted portion of the non-detained docket and is not a viable substitute for detention, as it is not effective at ensuring those with final orders depart as required.

ICE supports increased detention capacity; however, there will always be some segment of the population who are not or cannot be detained for various reasons. For these individuals, ATD is usually more appropriate than release with no monitoring at all. Again, ATD is not a viable substitute for detention, but rather a tool to increase compliance rates and monitoring of those who are released from custody and assigned to the non-detained docket.

As long as resource and legal constraints prevent ICE from detaining all individuals through the pendency of their removal proceedings, there will be a need for ATD programs. There is an extremely large number of aliens who are not held in custody, nor assigned to ATD Intensive Supervision of Appearance Program III, but nevertheless are required to attend U.S. Department of Justice Executive Office for Immigration Review hearings and comply with release conditions. ICE Enforcement and Removal Operations does not have the resources to appropriately monitor those cases, keep the aliens in question informed, and immediately enforce removal orders when received. ATD allows for closer monitoring for at least a fraction of all these non-detained cases.

Below you will find the total number of ATD terminations for family units and non-family units from FYs 2015 to 2018.

Question#:	5
Topic:	Alternatives to Detention I
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

FY 2015 - FY 2018 (through August) ATD Non-Family Unit Terminations					
FY	**Total Terminations**	**Removals***	**Absconders**	**Relief/Benefit Granted****	**All Other Terminations**
FY 2015	12,509	1,191	1,107	363	9,848
FY 2016	12,925	768	1,580	358	10,219
FY 2017	16,056	944	2,432	436	12,244
FY 2018 (through August)	18,026	1,180	2,908	584	13,354
Total	**59,516**	**4,083**	**8,027**	**1,741**	**45,665**

FY 2015 - FY 2018 (through August) ATD Family Unit Terminations					
FY	**Total Terminations**	**Removals***	**Absconders**	**Relief/Benefit Granted****	**All Other Terminations**
FY 2015	3,747	153	967	76	2,551
FY 2016	8,462	207	2,630	304	5,321
FY 2017	20,135	339	4,635	492	14,669
FY 2018 (through August)	26,606	344	7,314	347	18,601
Total	**58,950**	**1,043**	**15,546**	**1,219**	**41,142**

*Removals identified on the basis of ATD termination code A[2] or L[3]. Removals indicate number of removals from the United States.

**Relief/Benefit Granted identified on the basis of ATD termination code B[4]. Data from BI Inc. Participants Report, August 31, 2018. U.S. Border Patrol (USBP) Arrest Data October 1, 2013, through August 31, 2018. Family Unit subject apprehensions represent all USBP apprehensions of adults (18-years-old and over) with a Family Unit classification who were subsequently enrolled into ATD.

[2] Termination Code A is issued to any participant who has a final order of removal and their departure has been verified.
[3] Termination Code L is issued to any participant who has been issued a voluntary departure order and their departure has been verified.
[4] Termination Code B is issued to any participant who has been issued a benefit and is no longer required to participate in the ATD program. Types of benefits include, but are not limited to: cancellation of removal, adjustment of status, grant of asylum, or a grant of admission.

Question#:	5
Topic:	Alternatives to Detention I
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

With regard to utilizing existing detention space to detain families after their asylum claims are denied by an immigration judge (IJ), when an IJ issues a removal order, such a removal order is not final unless the alien waives appeal. Many aliens reserve their right to appeal and ultimately file an appeal to the Board of Immigration Appeals (Board) within the 30-day window for appeal. Such aliens are not subject to mandatory detention until and unless a final removal order is issued by the Board or they fail to file an appeal within the 30 days. Thus, while ICE could take the alien into custody when an IJ issues a non-final removal order, the aliens would still be eligible for a bond from an IJ. While some IJs will decline to issue such aliens a bond during the pendency of their appeals, it has been ICE's experience that many IJs will nevertheless issue a bond to such aliens while their appeal is pending, making it a waste of resources for ICE to arrest such aliens when the IJ issues a non-final removal order in many cases. Moreover, for those cases on the non-detained docket, the vast majority receive multiple continuances and calendar resets, and many aliens ordered removed by an IJ on the non-detained docket are ordered removed *in absentia* and thus are not physically present in court at the time removal is ordered.

If ICE were to arrest aliens at the time an IJ issues a non-final removal order, it is estimated that ICE ERO would need personnel and equipment resources akin to its existing Fugitive Operations footprint 129 teams, at a cost of approximately $159 million to cover all locations. Currently, ICE does not have the funding to support such an expansion. ICE would need additional Family Residential Center space to house such family units, and while continuing to comply with the *Flores* Settlement Agreement and subsequent judicial decisions.

Question#:	6
Topic:	Family Units Absconded
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: ICE data indicates that 28.4% of family units absconded in FY 2018. Yet ICE data also indicates that 99% of families on ATD go to their court appearances. Assuming no family units absconded while in detention, how can both be true?

Response: The Alternatives to Detention (ATD) Intensive Supervision Appearance Program III (ISAP III) is a supplemental release condition and a means of ensuring compliance with other conditions of release. When participants are assigned to ATD – ISAP III, U.S Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations is able to obtain accurate, up-to-date information about participants that otherwise would not be captured for those on the non-detained docket. This information may be used to support Fugitive Operations teams in the recovery of those individuals who fail to comply with their release conditions and abscond.

The 27.4 percent represents 8,299 out of 30,322 families assigned to ATD – ISAP III in Fiscal Year 2018 who absconded, and were therefore unenrolled from the program. The court appearance rate calculation of 99 percent, however, only includes those individuals who are "active" participants at the time of their hearing. Individuals who abscond and individuals who are criminally arrested while on ATD, among others, are immediately unenrolled from the ATD program. Therefore, individuals who are unenrolled from the program before their scheduled hearing would not impact court appearance rates based on current methodology. This methodology is currently under review as it can be misleading.

In addition, because of delays in scheduling at immigration courts, many individuals are not required to attend any court hearings during the short period they are enrolled in ATD and the significant backlog in proceedings for those assigned to the non-detained docket. In some locations, aliens on the non-detained docket may wait more than one year for their first hearing. It is noteworthy that nearly all of the hearings attended by ATD participants are not final merits hearings where an alien's relief application(s) may be denied and the alien ordered removed. In other words, the majority of the hearings attended by ATD participants are initial master calendar hearings or subsequent master calendar hearings at which aliens are most likely to appear.

Thus, while it is important to understand how often ATD participants attend their scheduled hearings, this metric cannot be used in isolation to measure program success.

Question#:	6
Topic:	Family Units Absconded
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

ICE continues to work with the U.S. Department of Justice's Executive Office for Immigration Review, on ways to expedite the ATD docket so that court appearance rates, as well as compliance with immigration judge orders, can produce more functional statistics for the ATD program in the future.

Question#:	7
Topic:	Families Not Detained
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Are all families that are not detained put on ATD? If not, why not? If the reason is resource constraints, has the administration requested additional resources for ATD in any of its budget requests between FY 2016 and FY 2018?

Response: No, not all families released from custody are assigned to the Alternatives to Detention (ATD) program. Due to limited ATD resources and the length of time it takes for an individual's case to conclude on the non-detained docket, U.S. Immigration and Customs Enforcement (ICE) is unable to keep individuals enrolled in the ATD program through the pendency of their removal proceedings at current funding levels and apprehension rates.

The ATD program is not available in all locations throughout the United States; depending on where the individual resides, coverage may not be available for all family units. Additionally, at current apprehension rates, the number of ATD slots that would be needed to enroll all family units in ATD (assuming there are no coverage issues) for the duration of immigration court proceedings would be cost prohibitive, with no guarantee that the individual will comply with the judge's removal order in the end.

Increases in ATD funding have been requested in previous years to expand the program and to ensure sufficient monitoring and oversight of the current population. Significant investment in ATD, without fixing the immigration court backlog or gathering additional information on whether individuals would comply with the judge's decision in the end, would not be a prudent use of government resources.

ICE continues to work with the U.S. Department of Justice's Executive Office for Immigration Review, on ways to expedite the ATD docket and improve court appearance rates as well as compliance with immigration judge orders.

Question#:	8
Topic:	Children Detained
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Do you believe there should be an upper limit on how long a child should be detained? If so, how long?

Response: U.S. Immigration and Customs Enforcement (ICE) notes the length of time an individual or family unit spends in detention varies based on many case-specific factors. ICE believes immigration cases should be heard in a timely fashion, and supports the hiring of additional immigration judges by the U.S. Department of Justice and additional attorneys by the ICE Office of Principal Legal Advisor to help address current case backlogs. However, ICE also believes detention is an essential tool to effectuate removal, and notes many recently arrived families do not appear for court hearings and ignore lawfully issued orders of removal. Notably, for family units encountered at the Southwest Border in Fiscal Year (FY) 2014, as of the end of FY 2017, 44 percent of those who remained in the United States were subject to a final removal order, of which 53 percent were issued *in absentia*. ICE's immigration detention aids in ensuring that an alien in detention is present for immigration hearings where they may request and receive relief for which he or she has applied and is eligible, or is available for removal when such relief applications are denied.

ICE's immigration detention lasts only as long as needed. Detention is not indefinite, in that the process provided ensures an alien will either obtain relief from removal (for which he or she has applied and is eligible) and be released, or obtain a final order of removal and be removed. Moreover, aliens who are eligible may request a bond hearing before an immigration judge.

Question#:	9
Topic:	Family Units Arrested for Removal
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: In FY 2018, how many family units has U.S. Immigration and Customs Enforcement (ICE) arrested for removal?

Response: 26 family unit aliens were booked in with U.S. Immigration and Customs Enforcement (ICE) as the arresting agency. Seven of these aliens have subsequently been removed.

Question: How many of these family units:

Have one or more members that had been convicted or charged with any criminal offense, or committed acts that constitute a criminal offense (excluding violations of immigration law)?

Response: All 26 aliens are immigration violators and did not have past criminal charges or convictions at the time of arrest.

Question: Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency?

Response: ICE is unable to statistically report on this information, as this question refers to all government agencies involved in various parts of the process, including HHS and DOJ, and ICE only has access to its own system of record.

Question: Were brought or guided to this country illegally by a smuggler?

Response: ICE is unable to statistically report on this information. While ICE believes this phenomenon to be widespread, many of those who have been guided by a human smuggler are unlikely to provide law enforcement with this information.

Question: Used false personal documentation to gain illegal entry in the United States?

Were posing as part of a family unit that was determined to be fraudulent?

Response: ICE is unable to statistically report on this information.

Question: Have abused any program related to receipt of public benefits?

Response: ICE is unable to report on this information, as it does not possess data on public benefits programs.

Question#:	9
Topic:	Family Units Arrested for Removal
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Are subject to a final order or removal?

Response: ICE's system of record indicates that seven of the aforementioned family unit aliens had final orders of removal. Please see below for additional information:

Fiscal Year 2018 Book-ins of Family Unit Aliens Arrested by ICE through September 15, 2018	
Final Order Status	**Book-ins**
With Final Order	7
No Final Order	19
Total	26

Question: Pose a risk to public safety or national security?

Response: None of the aforementioned family unit aliens fall within the two requested categories.

Question: Do not fall under any of the above criteria?

Response: ICE is unable to provide this information, as many of the answers to these questions cannot be statistically reported.

Question: Have one or more members enrolled in the Deferred Action for Childhood Arrivals (DACA) program?

Response: Out of the 26 A-Numbers provided, none of them are associated with the submission of an I-821D, Consideration of Deferred Action for Childhood Arrivals form.

Question#:	10
Topic:	New Flores Rule
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 6, 2018, the Department of Homeland Security (DHS) and the Department of Health and Human Services (HHS) announced the proposal of a new rule that would implement some aspects of the Flores Settlement Agreement and allow ICE to hold families with children in family residential centers for longer than the current 20-day practice.

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

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

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

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

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

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

Response: The proposed amendments to the DHS and HHS regulations on the *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,* were published in the Federal Register on September 7, 2018, and were open for public comment through November 6, 2018. In this Notice of Proposed Rulemaking (NPRM), U.S. Immigration and Customs Enforcement (ICE) states that, "at this time, ICE is unable to determine how the number of Family Residential Centers (FRCs) may change due to this proposed rule. There are many factors that would be considered in opening a new FRC, some of which are outside the scope of this proposed regulation, such as whether this type of facility would be appropriate, based on the population of aliens crossing the border, anticipated capacity, projected average daily population, and projected costs." 83 FR 45519 (Sept. 7, 2018).

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Committee:	HOMELAND SECURITY (SENATE)

Additionally, the NPRM states that "this proposed rule would implement the *Flores* Settlement Agreement (FSA) by putting in regulatory form, measures that materially parallel its standards and protections, and by codifying the current requirements for complying with the FSA, the Homeland Security Act, and the Trafficking Victims Protection Reauthorization Act." *Id.* at 45488.

The capacity of the three FRCs provides for a total of 3,326 beds. As a practical matter, given varying family sizes, each family's gender composition and housing standards, not every available bed will be filled at any given time, and the facilities may still be considered at capacity even if every available bed is not filled. In other words, as the NPRM states, "while the Department of Homeland Security (DHS) acknowledges that this rule may result in additional or longer detention for certain minors, DHS is unsure how many individuals will be detained at FRCs after this rule is effective or for how much longer individuals may be detained because there are so many other variables to consider. Therefore, DHS is unable to provide a quantified estimate of any increased FRC costs." *Id.* at 45514.

The operational standards of the FRCs are outlined in great detail in Exhibit 1 of the FSA. The standards of the FSA, which ICE proposes to codify, "at a minimum … must include, but are not limited to: proper physical care (including living accommodations), food, clothing, routine medical and dental care, family planning services, emergency care (including a screening for infectious disease) within 48 hours of admission, a needs assessment (including both educational and special needs assessments), educational services (including instruction in the English language), appropriate foreign language reading materials for leisure time reading, recreation and leisure time activities, mental health services, group counseling, orientation (including available legal assistance), access to religious services of the minor's choice, visitation and contact with family members, a reasonable right to privacy of the minor, and legal and family reunification services." *Id.* at 45501.

Due to the Executive Office for Immigration Review's (EOIR) current hiring levels and continued expansion, and without concurrent ICE Office of the Principal Legal Advisor (OPLA) appropriations or funding, OPLA will be unable to meet its immigration court litigation responsibilities, including reducing the backlog of the detained docket, without a substantial increase in attorneys and support staff. OPLA is confronting attorney and support staff shortages, while EOIR steadily increases its immigration judge (IJ) corps. At the beginning of Fiscal Year (FY) 2018, ICE was short 243 attorneys and 149 legal

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Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
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Committee:	HOMELAND SECURITY (SENATE)

support staff.[5] ICE received only 70 new attorney positions in FY 2018.[6] Meanwhile, EOIR was fully funded to fill its 50 vacant positions and hire 100 additional IJs, more than double ICE's forecast. Once EOIR has onboarded its currently budgeted 484 IJs, ICE personnel shortages will balloon to more than 600 attorneys and nearly 300 legal support staff. If EOIR hires 100 IJs in FY 2019,[3] OPLA's staffing shortfall will increase by an additional 279 attorneys, 87 support staff, and 28 supervisory attorneys. With the additional field resources, ICE would be able to appear in an additional 459,800 hearings, complete an additional 114,240 Notice to Appear reviews, and, in coordination with EOIR, reduce the number of cases currently pending before the court.

The resource disparity between ICE and EOIR means that ICE will soon reach a point where it will not have personnel or facilities to appear before the new immigration courts, causing severe delays in immigration court dockets. For example, ICE will not be capable of adequately staffing immigration courts or managing the existing court docket and backlog in cooperation with EOIR. In addition, DHS priority cases will not get the attention they deserve (e.g., bond hearings, criminal alien cases, cases involving terrorist or human rights abusers), immigration fraud perpetrated by aliens in removal proceedings will be detected less often, and immigration violators in general will be more likely granted relief by IJs (who will know that ICE lacks the resources to appeal or otherwise contest adverse decisions). ICE will also have limited resources to respond to the ongoing Southwest Border activity and meet any number of other legal and operational support requirements resulting from increased immigration enforcement activity.

ICE's ability to provide day-to-day support to ICE operational components will be severely degraded as ICE personnel assigned to direct support roles will be recalled to appear in immigration court. For instance, ICE will be required to end the very successful Special Assistant U.S. Attorneys (SAUSA) program and recall ICE Homeland

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[5] ICE has spent years developing a Workload Staffing Model, which the ICE Office of the Chief Financial Officer validated as that model relates to ICE's immigration court litigators.

[6] Of note, the Consolidated Appropriations Act of 2018 Explanatory Statement indicates that the 70 attorneys were to be used to augment the, "Homeland Security Investigations Law Division," an ICE headquarters division currently comprised of less than 40 attorneys. Although not legally binding, the Explanatory Statement reflects that Congress did not even intend to augment ICE's capacity to cover immigration court. Of conrse, given the Homeland Security Act's assignment of responsibility to ICE to perform that function, these enhancements are being allocated accordingly. No facilities funding or vacant office space exists to accommodate 70 new headquarters attorneys.

[3] The House version of the FY 2019 budget provides for 100 additional IJs. Meanwhile, OPLA will only receive 48 total positions according to the House mark or no positions if the Senate allocation is implemented.

Question#:	10
Topic:	New Flores Rule
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
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Committee:	HOMELAND SECURITY (SENATE)

Security Investigations-embedded attorneys to fill immigration court attorney requirements. SAUSAs have already been recalled due to staffing shortages to cover immigration court in OPLA field offices located in Baltimore, Maryland; El Paso, Texas; and Eloy, Arizona. Additionally, one SAUSA departed ICE for an opportunity in the U.S. Department of Justice, reducing the number of attorneys assigned as full-time SAUSAs from 24 to 20. SAUSAs have played a key role in support of prosecuting criminal immigration and customs laws.

Without additional resources, the only way ICE can ensure it can prosecute cases on the detained docket is by pulling in embeds, SAUSAs, and managers to cover court. In addition, on a case-by-case basis, OPLA may not send attorneys to prosecute the non-detained immigration court cases to cover the detained docket.

Currently, OPLA resources are so limited that OPLA is detailing attorneys and support staff to cover two new EOIR dockets (with four IJs) in Chaparral, New Mexico, and in Jena, Louisiana (five IJs). OPLA offices are sending staff to these locations at the expense of their own limited resources. EOIR also plans to open new courtrooms in Sacramento and Van Nuys, California, in 2019; OPLA has no presence in either location, thus, requiring more details in the future. The current strain on OPLA resources is untenable.

Question#:	11
Topic:	Known or Suspected Terrorists
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: According to information provided by ICE, as of September 2018, there were over nine times as many known or suspected terrorists (KST) on ICE's non-detained docket as on the detained docket in FY 2018. Why were those individuals not prioritized for detention? Do you believe that ICE is adequately prioritizing resources to detain individuals who pose the greatest threat to national security?

Response: U.S. Immigration and Customs Enforcement (ICE) focuses its enforcement resources on individuals who pose a threat to national security, public safety, and border security, though all of those in violation of U.S. immigration laws may be subject to immigration arrest, detention, and, if subject to a final order of removal, removal from the United States. Aliens identified as known or suspected terrorists (KSTs) are among the cases that ICE prioritizes for detention and removal; the agency has not diverted resources away from conducting enforcement action against this population.

In response to your previous inquiry on this subject, ICE provided data on individuals in its system who an officer had noted could be a potential national security or public safety threat. However, upon detailed examination of these records, ICE determined the vast majority of such aliens are not KSTs, and more common reasons that an officer may note a potential safety concern include suspected gang membership or serious criminal history.

Below, please find updated information on KSTs on ICE's docket as of October 20, 2018:

Currently Detained	Non-Detained	Total
56	118	**174**

Please note that while these 118 aliens account for only a small fraction of the approximately 2.6 million aliens on ICE's non-detained docket, ICE takes any potential nexus to terrorism extremely seriously. However, there are a number of legal reasons that a KST may not currently be detained in ICE custody or cannot be removed.

Following coordination with law enforcement partners, and consistent with applicable statute and regulation, ICE considers a wide array of factors in making bond determinations. Information that led ICE to make a designation in its internal databases that a particular alien is a KST is one of many relevant factors. While information leading to such a designation is a negative factor when considering bond for an alien, in many cases, immigration judges within the U.S. Department of Justice's Executive Office

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for Immigration Review (EOIR) have jurisdiction to reconsider ICE's bond determinations and may order an alien released on bond regardless of ICE's assessment. Consequently, many of the aliens who are granted a bond are released pursuant to a decision made by EOIR, not by ICE. However, in instances where ICE has information suggesting that an alien presents a national security or public safety risk, ICE coordinates, as appropriate, with relevant law enforcement partners to mitigate any known risk to the public.

Additionally, ICE notes that pursuant to the Supreme Court decision in *Zadvydas* v. *Davis*, 553 U.S. 678 (2001), a person cannot be detained indefinitely, and post-removal-period detention should only be used when there is a significant likelihood that an alien will be removed in the reasonably foreseeable future. As a result of this decision, many aliens who cannot be removed must be released from ICE custody. This may include KSTs. However, as noted above, in cases where ICE has information that an alien may present a serious national security or public safety risk, ICE coordinates with law enforcement partners to address any such risk.

Question#:	12
Topic:	Inadmissible Family Units
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Between fiscal year (FY) 2015 and FY 2018, how many family units did Customs and Border Protection (CBP) encounter that were inadmissible?

Response:

Fiscal Year	USBP Family Unit Apprehensions	OFO Family Unit Inadmissible Aliens	CBP Family Unit Totals
2018	107,212	53,901	161,113
2017	75,622	33,924	109,546
2016	77,674	35,476	113,150
2015	39,838	-	39,838

NOTE: Family Unit represents the number of children under 18 years oldand parent or legal guardian with whom the child is apprehended withby the U.S. Border Patrol (USBP) or children under 18 years old deemed inadmissible with a parent or legal guardian by the Office of Field Operations (OFO). FY 2015 data for the Office of Field Operations (OFO) is unattainable as Family Units were not tracked until March 2016.

Question: How many of these family units:

Had one or more members that were convicted or charged with any criminal offense, or committed acts that constitute a criminal offense (excluding violations of immigration law)?

Response:

Fiscal Year	USBP Totals	OFO Totals	CBP Total
2018	87	135	222
2017	99	240	339
2016	123	142	265
2015	126	-	126

NOTE: FY 2015 data for the Office of Field Operations is unattainable as Family Units were not tracked until March 2016.

Question: Have engaged in fraud or willful misrepresentation in connection with any official matter or application before a government agency?

Question#:	12
Topic:	Inadmissible Family Units
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Response: CBP does not collect/track this type of information.

Question: Were brought or guided to this country illegally by a smuggler?

Response:

Fiscal Year	USBP Totals	OFO Totals	CBP Total
2018	8,298	-	8,298
2017	7,859	-	7,859
2016	14,826	-	14,826
2015	11,146	-	11,146

OFO does not collect/track this type of information.

Question: Used false personal documentation to attempt to gain illegal entry in the United States?

Response:

Fiscal Year	USBP Totals	OFO Totals	CBP Total
2018	22	-	22
2017	14	-	14
2016	12	-	12
2015	16	-	16

OFO does not collect/track this type of information

Question: Were posing as a family unit that was determined to be fraudulent?

Response:

Fiscal Year	USBP Totals	OFO Totals	CBP Total
2018	502 (since 4/19/18)	-	502
2017	-	-	-
2016	-	-	-
2015	-	-	-

CBP did not start tracking Fraudulent Family Units until April 2018. OFO does not collect/track this type of information.

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Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Were subject to a final order or removal?

Response: This is a determination that occurs generally subsequent to their processing by CBP; therefore, CBP has no metrics on this subject.

Question: Were determined to pose a risk to public safety or national security?

Response: The data below refers to individuals who were found inadmissible based on Section 212(a)(3) of the *Immigration and Nationality Act*, Security and Related Grounds,.

Fiscal Year	USBP Totals	OFO Totals	CBP Total
2018	0	28	28
2017	0	30	30
2016	0	12	12
2015	0	-	-

Question: Did not fall under any of the above criteria?

Response:

Fiscal Year	USBP Totals	OFO Totals	CBP Total
2018	98,303	53,738	152,041
2017	67,650	33, 654	101,304
2016	62,713	35,464	98,177
2015	28,550	-	28,550

Question: Had one or more members that were enrolled in the Deferred Action for Childhood Arrivals (DACA) program?

Response:

Fiscal Year	USBP Totals	OFO Totals	CBP Total
2018	0	-	0
2017	3	-	3
2016	2	-	2
2015	15	-	15

OFO does not have access to data that would indicate if the subject is enrolled in the DACA program.

Question#:	13
Topic:	Children Detained at Ports of Entry
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 27, 2018, the Department of Homeland Security (DHS) Office of Inspector General (OIG) released a report which found that that during the family separation crisis hundreds of children were detained at ports of entry and Border Patrol Stations longer than the required 72 hours. What steps has CBP taken to ensure that children are no longer held for such long periods of time?

Response: Each port of entry has a finite capacity in which to accomplish multiple missions: national security, counter-narcotics, facilitation of law trade, and processing of all travelers. CBP must manage this limited space to best ensure safety and security for travelers and our officers, while facilitating timely processing for U.S. citizens and lawful permanent residents, visitors with appropriate travel documents, and individuals without documents sufficient for admission or other lawful entry. This processing occurs in conjunction with inspections for drugs and prohibited items as we strive to protect the homeland. Processing individuals without documentation is particularly resource intensive. It may take hours before the necessary sworn statements, consulate checks, and paperwork are complete. These checks are necessary for CBP to verify the identity and criminal history of these individuals seeking to enter the United States without proper documentation.

- CBP processes all aliens who arrive at a U.S. port of entry.
    - All administrative admissibility processing is separate from any criminal prosecution.
    - CBP closely monitors the processing of cases to ensure that cases are processed expeditiously in accordance with the applicable law.
    - When CBP completes its administrative processing, the aliens are referred for custody with ICE ERO to wait further interviews with USCIS and/or hearings before an Immigration Judge.
    - CBP prioritizes the processing of Unaccompanied Alien Children (UAC) and families ahead of the processing of other cases in secondary inspection.

CBP only maintains custody of inadmissible aliens for the minimum time necessary to complete the inspection and for another agency to accept custody.

Expanding physical capacity (buildings and infrastructure) at Ports of Entry is a challenge. Most POEs have a restricted footprint and were designed decades ago when volumes were significantly lower. CBP continues to work to expand capacity through

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hiring additional CBP Officers. CBP has made tremendous strides in hiring new CBP officers for the southwest border through judicious use of recruitment and retention incentives, and continues to expand best practices for hiring, such a "Fast-Track" hiring. On a daily basis, Port Directors work to maximize the available capacity to accomplish multiple mission requirements, including the processing of lawful trade and travel, to address our counter-narcotics mission, and the processing of individuals without travel documents. The number of inadmissible travelers CBP is operationally capable to process varies depending on overall port volume and enforcement actions. Because the mission ebbs and flows and changes, this number will also fluctuate from day to day. Importantly, CBP only holds individuals for the limited period of time necessary to complete processing and transfer to ICE ERO. Increasing the availability of additional custodial space at ICE/ERO facilities along with transportation support is critical. Diverting agency resources from outside the Southwest Border is neither sustainable nor suitable as it places additional stresses on those areas, creating longer wait times at airports and slower cargo processing in those areas from where CBP officers are being diverted.

The *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA) states that an unaccompanied alien child (UAC) must be transferred from DHS to the U.S. Department of Health and Human Services, Office of Refugee Resettlement (HHS/ORR) custody within 72-hours upon determining the alien is a UAC, absent exceptional circumstances. Consistent with the TVPRA, CBP notifies HHS/ORR upon such a determination and maintains continuous communication with HHS/ORR regarding placements of all UACs it processes. CBP monitors custodial durations of UACs held in CBP facilities to ensure proper resources are available to meet

Additionally, CBP is mandated to process UACs as expeditiously as possible in accordance with the *Flores* Settlement Agreement as through CBP's internal policies and procedures, including CBP's National Standards on Transport, Escort, Detention and Search (TEDS).

CBP whenever possible prioritizes the processing of UACs and family units. CBP strives to ensure all minors in its custody are treated with dignity, respect, and with special concern for their vulnerability as minors.

On September 28, 2018, the DHS Office of the Inspector General released a report titled, *Results of Unannounced Inspections of Conditions for Unaccompanied Alien Children in CBP Custody*. The OIG report found that CBP facilities were generally in compliance

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Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

with the CBP TEDS policy and the *Flores* Settlement Agreement, regardless of how long the minor was held in our custody.

Question#:	14
Topic:	IT Failures
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 27, 2018, DHS OIG released a report that found that DHS and CBP were not completely prepared to implement the Zero Tolerance Policy or manage the after-effects of the Policy. Specifically, DHS OIG identified issues regarding lack of integration between component information technology systems, unreliable data reporting on family separations, and dissemination of inconsistent or inaccurate information to detainees. What steps have been taken to remedy the IT failures that led to inaccurate or incomplete information being transferred between CBP and other DHS components of federal agencies?

Response: U.S. Immigration and Customs Enforcement (ICE) and U.S. Customs and Border Protection (CBP) have independent information technology (IT) systems that are designed to efficiently enforce immigration laws under their respective authorities. As such, each IT system is designed according to the enforcement business process of each agency. However, all data is stored in the Enforcement Integrated Database (EID), which serves as the combined data repository for ICE and CBP applications and contains immigration data related to encounters, subjects, arrests, detentions, and removals.

Regarding family separations and reunification, ICE has longstanding policies and procedures that govern these processes. However, such separations have typically occurred when there are concerns about a child's health, safety, and well-being. As a result, ICE did not have a systematic process in place to track these limited cases prior to the zero tolerance policy. While ICE worked with other involved agencies to bring about reunifications, as ordered by the court in *Ms. L* v. *ICE*, No. 18-cv-428 (S.D. Cal.), the agency also worked concurrently to update its systems so that, going forward, ICE personnel will be able to easily identify any alien that CBP flags as a member of a family unit.

In August 2018, CBP implemented system updates to track family separations. The EID was updated to ensure family separations were captured upon apprehension and available for use during immigration enforcement activities. ICE was then able to use the information to identify members of family units and separated individuals through IT system notifications and reports.

Post-Hearing Questions for the Record
Submitted to Matthew Albence & Robert Perez
From Senator Rob Portman

"The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives"

October 3, 2018

Question#:	15
Topic:	Case Backlog
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: The backlog of pending immigration court cases exceeds 700,000 cases. What resources would the Department of Justice and Department of Homeland Security need to reduce that backlog by half over a two-year time frame? Please specify what those resources are, how they would enable the federal government to reduce the backlog, and an estimate of how much they would cost.

Response: Based on current dockets before the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR), pending immigration court cases have grown to more than 797,000 as of October 31, 2018. Though, with current staffing levels, the backlog is projected to easily exceed 1 million cases by the start of Fiscal Year (FY) 2020. To reduce the current number of pending immigration cases by 50 percent over two years, the U.S. Immigration Customs and Enforcement (ICE) Office of the Principal Legal Advisor (OPLA) would require an additional 1,713 total resources, including 1,187 line attorneys, 368 field legal support staff, and 158 field supervisory attorneys. This would result in a first-year personnel cost of approximately $81.9 million, and additional cost of $123.3 million for associated facilities. This effort would essentially double the size of the program and, as a practical matter, require multiple years to recruit and onboard the necessary resources and provide for the corresponding facility needs.

Since FY 2018, EOIR has received funding to hire 180 new Immigration Judge (IJ) teams (1,080 positions), including 30 IJ teams in a supplemental appropriation associated with the FY 2019 Humanitarian Assistance and Security at the Southern Border Act, while OPLA has received only 120 positions and no positions associated with the supplemental appropriation. For FY 2019, the House mark recommended 100 additional IJ teams; which, if appropriated, would further increase OPLA's need for additional personnel.

Question#:	15
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Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

OPLA only received 70 positions in FY 2018, despite OPLA's request for 195. For FY 2019, OPLA's budget submission included 338 attorney positions; however, the Senate mark provided no positions and the House mark would only fund 46 positions, which is again significantly less than required. OPLA needs an additional 830 resources, including 505 field line attorneys, to respond to the IJ allocation in FY 2018 and the House mark in FY 2019. When Congress appropriates new EOIR personnel and construction dollars for new courtrooms, OPLA must concurrently be appropriated a corresponding number of attorneys, support staff, and construction dollars to appear before the new IJs in the new courtrooms.

Additionally, OPLA is also facing a critical shortage in facilities-related funding to keep pace with new courtroom construction by EOIR. EOIR is fully funded for construction of new courtrooms across the country, some of which are in cities that OPLA currently has no presence in. To build offices for OPLA staff to meet this unprecedented EOIR courtroom expansion, OPLA requires $9.9 million in FY 2019 and $27.2 million through FY 2020. Further, because few OPLA facility projects meet the $2 million threshold for procurement, construction, and improvement funding, OPLA must fund nearly all field facility projects with operations and support funding, which negatively affects payroll and general expenses necessary for personnel and other mission-critical requirements.

OPLA recognizes that it must operate in a resource-constrained environment and does not advance these resource needs lightly. However, without an appropriately trained, equipped, and resourced ICE legal program, the following adverse consequences transcend OPLA:

- Unchecked IJs will terminate and indefinitely continue removal proceedings;
- Terrorists, human rights abusers, and criminal aliens will be granted release on bond by IJs and receive immigration benefits leading to U.S. citizenship;
- Immigration fraud will go undetected, undermining the very integrity of our immigration system; and
- Removal proceedings will be less fair for the aliens themselves, as ICE OPLA attorneys will not be there to help IJs identify viable legal claims that aliens may be able to assert and ensure appropriate development of the record.

In addition to the resource challenges facing ICE OPLA, ICE Enforcement and Removal Operations would also require corresponding resources to complete additional removals of those receiving final orders. Because detention is necessary in most cases to successfully carry out removals, these resources would include additional detention bedspace and personnel.

Post-Hearing Questions for the Record
Submitted to Matthew Albence & Robert Perez
From Senator Heidi Heitkamp

"The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives"

October 3, 2018

Question#:	16
Topic:	Proposed Rule
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 6, 2018, the Department of Homeland Security ("DHS") and Department of Health and Human Services ("HHS") jointly announced a proposed rule ("NPRM" or "proposed rule") that would address the terms of the Flores settlement agreement ("FSA"). Examining this proposed rule, including its impact, costs, and benefits, was relevant to the topic of the hearing held on Tuesday, September 18, 2018, but went largely unaddressed. The proposed rule represents a clear statement on how the Administration seeks to end the FSA.

Why did your testimony, both submitted to the Committee prior to the hearing and presented at the hearing, not address the proposed rule that was recently published by DHS and HHS?

Response: The proposed amendments to DHS and HHS regulations on the *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, were published in the Federal Register on September 7, 2018, and the proposed rule was open for public comment through November 6, 2018. This Notice of Proposed Rulemaking is the official document that announced and explained the agency's plan to address the relevant and substantive terms of the Flores Settlement Agreement (FSA) in regulation. DHS welcomed comments on the proposed rule and encouraged them to be submitted as part of the public docket.

All significant issues raised in public comments received will be addressed in the final rulemaking.

Question#:	17
Topic:	Full Cost-Benefit Analysis
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: The Office of Management and Budget classified the proposed rule as "significant," which means that it requires a full cost-benefit analysis under Executive Orders 12866 and 13563. Additionally, the FSA has been in effect since 1997. However, despite two decades implementation experience, throughout the proposed rule, the DHS and HHS state they are unable to quantify the cost of the changes they propose due to a myriad of factors, variables, and uncertainties. The NPRM states no less than a half-dozen times that DHS and HHS are unable to present estimates for the costs of this rule.

If the NPRM seeks to merely codify the Flores agreement with a few changes, why are you struggling to provide a detailed quantitative analysis of the impact of these changes?

What are the "other variables to consider" that are preventing DHS, HHS, and the Department of Justice ("DOJ") from formulating the cost of this proposed rule?

Response: In the notice of proposed rulemaking (NPRM), *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, published on September 7, 2018, as part of the baseline analysis for the proposed rule DHS provides the existing annual costs of the current three Family Residential Centers (FRCs) and a description of the type of services provided by the private contractors as well as the variable costs charged to U.S. Immigration and Customs Enforcement (ICE). In 2015, the three FRCs cost ICE $323,264,774; in 2016 $312,202,420; and in 2017, $231,915,415. These are costs that ICE currently incurs to operate under the *Flores Settlement Agreement* (FSA) and are not considered a cost of the proposed rule.

The rule proposes to adopt provisions that parallel the relevant and substantive terms of the FSA, with some modifications to reflect intervening statutory and operational changes. These modifications may result in additional or longer detention for certain minors. It is for these impacts that DHS was unable to provide a quantified cost estimate because there are many variable that would affect them. DHS discusses the multiple variables and their particular complications or how they are beyond the scope of the proposed rule, which impact the number of future aliens, the length of stay, and potentially the costs of detention. DHS states, "Among other factors, these may include the number of minors and their accompanying adults who arrive in a facility on a given day; the timing and outcome of immigration court proceedings before an immigration judge; whether an individual is eligible for parole or bond; issuance of travel documents by foreign governments; transportation availability and scheduling; the availability of bed space in a Family Residential Center (FRC); and other laws, regulations, guidance, and

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policies regarding removal not subject to this proposed rule." 83 FR 45518 (Sept. 7, 2018)

One of the factors listed above is the number of minors and their accompanying adults who arrive in a facility on a given day. As explained in the NPRM, from year-to-year, the number of family units seeking entry into the country fluctuates. In the first five months of Fiscal Year (FY) 2018, the number of families increased by significant levels. An unprecedented number of family units from Central America illegally entered or were found inadmissible to the United States in recent years. In FY 2013, the total number of family units apprehended entering the United States illegally on the Southwest Border was 14,855. From October 2017 through July 2018, that figure increased to 77,802 family units apprehended at the Southwest Border, an almost 40 percent average annual increase in apprehensions since FY 2013.

DHS explains in the proposed rule, 83 FR 45518, "although DHS cannot reliably predict the increased average length of stay for affected minors and their accompanying adults in FRCs, DHS recognizes that generally only certain groups of aliens are likely to have their length of stay in an FRC increased as a result of this proposed rule, among other factors. For instance, aliens who have received a positive credible fear determination, and who are not suitable for parole, may be held throughout their asylum proceedings. Likewise, aliens who have received a negative credible fear determination, have requested review of the determination by an immigration judge, had the negative determination upheld, and are awaiting removal, are likely to be held until removal can be effectuated." Further, DHS states that in FY 2017, the total number of minors who might have been detained longer at an FRC is estimated to be the number of minors in an FRC who were not paroled or released on order of their own recognizance (131), plus the number of such minors who had negative credible fear determinations (349), plus administratively closed cases (1,465), plus those who were released and either had final orders of removals at the time of their release or subsequently received final orders following their release (842), for a total of 2,787.

As stated in the NPRM, 83 FR 45513, "Two of the FRCs are operated by private contractors, while one is operated by a local government, under contract with ICE. These are the amounts that have been paid to private contractors or to the local government to include beds, guards, health care, and education. The FRC costs are fixed-price agreements with variable costs added on a monthly basis. Overall, the fixed-price agreements are not dependent on the number of detainees present or length of stay, with some exceptions. At [the Berks Family Residential Center] Berks, the contract includes a

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per-person fee charged in addition to the monthly fixed rate. At two of the FRCs, Berks and [Karnes County Residential Center] Karnes, education is provided per the standards of a licensed program set forth in the FSA, at a per-student, per-day cost. Since FRCs are currently at limited available capacity and the configuration of limited available capacity varies from day to day across all FRCs, the number of children and adults vary at Berks day to day and the number of children at Karnes vary day to day. Thus, these costs charged to ICE vary from month to month."

DHS also discusses the complications of forecasting new FRCs in the proposed rule, 83 FR 45519. "At this time, ICE is unable to determine how the number of FRCs may change due to this proposed rule. There are many factors that would be considered in opening a new FRC, some of which are outside the scope of this proposed regulation, such as whether such a facility would be appropriate, based on the population of aliens crossing the border, anticipated capacity, projected average daily population, and projected costs."

Question#:	18
Topic:	Cost of Detention
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: In her testimony, Ms. Gambler and the GAO state that in FY 2013, the average daily cost of detention was $158 compared to $10.55 per day for alternatives-to-detention programs ("ATDs"). In the FY2018 budget justification from DHS, the daily cost of detention based on the average daily population for family beds is estimated to be $319.37, while adult beds are estimated at $143.01 per day.

What is the daily cost to detain:

an adult?

a child?

a family?

Response: The average daily bed rate enacted by Congress provided in the Omnibus is $126.52. This estimate is revisited during the course of the fiscal year as invoices are received to understand cost trends. U.S. Immigration and Customs Enforcement (ICE) will not know the final Fiscal Year (FY) 2019 average daily bed rate until it receives all FY 2019 invoices, which invariably is in the late fall timeframe. ICE does not track the costs of unaccompanied alien children (UAC)in the custody of the U.S. Department of Health and Human Services (HHS). However, ICE spends approximately $50 million per year on the temporary housing and transport of UAC from the U.S. Department of Homeland Security (DHS), pending their transfer to shelter facilities designated by the HHS Office of Refugee Resettlement. For FY 2019, ICE projects the daily cost to detain a family to be $318.79, per family member.

Question: How will those costs increase or decrease based on the implementation of the NPRM? In other words, what is the quantifiable benefit of codifying Flores through the rulemaking process?

Response: ICE does not expect a change in the daily detention costs for family detention as it relates to codifying *Flores*, because DHS already incurs the costs of implementing the standards for the care and custody of minors set forth in the *Flores* Settlement Agreement (FSA). The baseline discussion in the Notice of Proposed Rulemaking (NPRM), *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, published on September 7, 2018, beginning at 83 FR 45513 – 45514, discusses the costs already incurred to implement the FSA. The NPRM goes on to state that, "the

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primary benefit of the proposed rule would be to ensure that applicable regulations reflect the current conditions of DHS detention, release, and treatment of minors and UACs, in accordance with the relevant and substantive terms of the FSA, the Homeland Security Act of 2002, and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008." 83 FR 45520.

Question#:	19
Topic:	Reaching Out to Stakeholders
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: In your cost-benefit analysis of the NPRM, you cite Executive Order 13563 as a guide. Executive Order 13563 directs agencies to assess costs by reaching out to industry stakeholders before the NPRM is issued.

Did you reach out to industry stakeholders before issuing the NPRM?

Did your failure to reach out to stakeholders lead to your incomplete analysis of the costs and benefits of this rule?

How do you expect stakeholders to provide substantive comment on the rule's effect on them if you did not provide a thorough cost-benefit analysis in the NPRM?

Response: In the *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children* notice of proposed rulemaking (NPRM), published on September 7, 2018, the Department of Homeland Security (DHS) analyzed the impact on affected industries, specifically those contracted with DHS to operate Family Residential Centers (FRCs). As stated in the NPRM, "This proposed rule would directly regulate DHS and HHS. DHS contracts with private contractors and a local government to operate and maintain FRCs, and with private contractors to provide transportation of minors and UACs. This rule would indirectly affect these entities to the extent that DHS contracts with them under the terms necessary to fulfill the *Flores Settlement Agreeement*. To the degree this rule increases contract costs to DHS private contractors, it would be incurred by the Federal Government in the cost paid by the contract."

In the NPRM, DHS encouraged comments, views, and data from all interested parties on all aspects of the proposed rule.

All significant issues raised in public comments received will be addressed in the final rule.

Question#:	20
Topic:	Benefits to Children
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: At its core, Flores provides key protections for children in detention facilities. It does not relax its standards for an influx of children due to a humanitarian crisis or a crisis of the Administration's own making. However, the NPRM that seeks to codify Flores is not rooted in protecting migrant children. Instead, it focuses on the benefits on the easing of administrative burdens of the Departments subject to Flores.

What are the benefits to children for easing the administrative burdens on the government required by Flores?

What are the projected costs to a child's health, psychological welfare, social development, education, and familial relationships related to the NPRM's aim of allowing children to stay in government detention centers for longer than 20 days to ease administrative burdens?

What are you currently doing to ensure that the costs of childhood detention do not outweigh its administrative benefits?

Response: The Notice of Proposed Rulemaking (NPRM), *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children*, published on September 7, 2018, codifies the existing protections for minors and unaccompanied alien children (UAC) who are in the care and custody of the U.S. Department of Homeland Security (DHS) and U.S. Department of Health and Human Services (HHS). The existing operational standards of U.S. Immigration and Customs Enforcement's (ICE) Family Residential Centers (FRCs) are outlined in the *Flores* Settlement Agreement, and in greater detail in Exhibit 1 of the agreement. The standards of the *Flores* Settlement Agreement, which ICE proposes to codify, "at a minimum … must include, but are not limited to, proper physical care (including living accommodations), food, clothing, routine medical and dental care, family planning services, emergency care (including a screening for infectious disease) within 48 hours of admission, a needs assessment (including both educational and special needs assessments), educational services (including instruction in the English language), appropriate foreign language reading materials for leisure-time reading, recreation and leisure-time activities, mental health services, group counseling, orientation (including legal assistance that is available), access to religious services of the minor's choice, visitation and contact with family members, a reasonable right to privacy of the minor, and legal and family reunification services," as stated in the NPRM at 83 FR 45501 (Sept. 7, 2018). Furthermore, ICE's FRCs are designed to ensure the well-being of their residents, particularly children. Families have unsupervised freedom of movement throughout FRCs, are provided with three meals a day and 24-hour access to snacks and beverages, and may wear their own clothes or non-institutional clothing, which is provided by the facility.

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Topic:	Benefits to Children
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The FRCs include communal activity rooms, social and law libraries, dining rooms with enhanced child-specific and culturally sensitive food choices, televisions, and recreation and toddler play areas with a variety of indoor and outdoor daily recreation activities for children and adults. All school-age children receive educational services provided by state-certified teachers, and families receive mental health screenings upon admission, as well as ongoing medical and mental health care as needed.

All FRCs must maintain compliance with applicable state and federal regulations, as well as ICE's Family Residential Standards, and are subject to an independent compliance inspection program through a contracted team of juvenile subject matter experts.

Provisions of the *William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008*, Pub. L. 110-457 (Dec. 23, 2008), require ICE and other DHS components to transfer all UAC to the custody of HHS within 72 hours of a DHS determination that the child is a UAC, absent exceptional circumstances. ICE therefore defers to HHS for a response on UAC health and welfare.

Question#:	21
Topic:	Children's Welfare
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: A New York Times article published on September 12, 2018, cited HHS data stating 12,800 migrant children are currently detained in one of the many detention facilities across the United States. That number is five times the amount of children detained in May 2017, and detention centers are now nearing capacity.

What are the costs to children's health and welfare when they are crammed into detention centers operating at 90 percent capacity?

What environmental risks are children likely to encounter in these detention centers that are operating at or near capacity? For example, how does the Department evaluate the environmental effects of weather and the ability to play or go outside, access to fresh food and water, or the ability to feel safe and secure on a child's welfare?

Response: U.S. Immigration and Customs Enforcement (ICE) notes that the New York Times article mentioned above describes U.S. Department of Health and Human Services (HHS) shelters, rather than ICE facilities, and defers to HHS for additional information on facility capacity and its effects.

ICE's three Family Residential Centers (FRCs) house family units together and are designed to ensure the well-being of their residents, particularly children. Families have unsupervised freedom of movement throughout FRCs, are provided with three meals a day and 24-hour access to snacks and beverages, and have the option of wearing their own clothes or non-institutional clothing that is provided by the facility.

The FRCs include communal activity rooms, a social library, a law library, dining rooms with enhanced child-specific and culturally diverse food choices, televisions, recreation areas and toddler play areas; they also schedule a variety of indoor and outdoor daily recreation and exercise activities for both children and adults. All children of school age receive educational services provided by state certified teachers, and families receive mental health screenings upon admission, as well as ongoing medical and mental health care as needed.

All FRCs must maintain compliance with applicable state and federal regulations, as well as ICE's Family Residential Standards (FRS). The FRCs are also subject to an independent compliance inspection program through a contracted team of juvenile subject matter experts.

Question#:	22
Topic:	Appearing Without an Attorney
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: A justification for longer detention periods is to ensure detainees appear for their immigration court hearings.

How do you assess the costs and benefits of allowing children to appear in immigration courts without an attorney, parent, or legal guardian present?

Response: U.S. Immigration and Customs Enforcement (ICE) is required by the *Trafficking Victims Protection Reauthorization Act of 2008* to transfer UAC to U.S. Department of Health and Human Services custody within 72 hours of determining the child is a UAC, absent exceptional circumstances. 8 U.S.C. § 1232(b)(3). To the extent this question refers to children in the custody of HHS, ICE defers to HHS.

Post-Hearing Questions for the Record
Submitted to Matthew Albence & Robert Perez
From Senator James Lankford

"The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives"

October 3, 2018

Question#:	23
Topic:	Federal Licensing
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: As you know, the Flores v. Lynch ruled that alien minors must be released or transferred to a "licensed program" "as expeditiously as possible," and that a "licensed program" must both be: (1) "licensed by an appropriate State agency to provide residential, group, or foster care services for dependent children" and (2) "non-secure as required under state law." Does the federal government have the authority to license facilities instead of relying on state agencies?

Response: The U.S. Department of Homeland Security (DHS), and the U.S Department of Health and Human Services (HHS) are not proposing federal licensing instead of state licensing. DHS, in conjunction with HHS, published a Notice of Proposed Rulemaking (NPRM), *Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children* in the Federal Register for public comment on September 7, 2018.

As stated in the NPRM, licensing by an appropriate state agency "requirement is sensible for unaccompanied alien children because all states have licensing schemes for the housing of unaccompanied juveniles who are by definition 'dependent children'." Additionally, "if no such licensing regime is available…DHS proposes that it will employ an outside entity to ensure that the facility complies with the family residential standards established by U.S. Immigration and Customs Enforcement (ICE) and that meet the requirements for licensing under the *Flores* Settlement Agreement thus fulfilling the intent of obtaining a license from a state or local agency. That would thus provide effectively the same substantive assurances that the state-licensing requirement exists to provide."

Question#:	23
Topic:	Federal Licensing
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

To clarify, the proposed rule states that if state licensing is unavailable, DHS will provide oversight of family residential centers by hiring an outside entity to ensure compliance with the ICE's family residential standards, which include the same requirements listed in Exhibit 1 of the *Flores* Settlement Agreement. ICE encouraged the public to submit comments on the rulemaking. The comment period closed on November 6, 2018; all significant issues raised in public comments will be addressed in the final rulemaking.

Question#:	24
Topic:	Single Parents
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Are family detention facilities equipped to detain single fathers and/or single mothers with children of both genders?

Response: U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations manages and operates three Family Residential Centers (FRCs), in Pennsylvania and Texas. FRCs are ICE-run facilities used to accommodate alien families in ICE custody, including single parents with children of both genders. The facilities house families who were placed in administrative immigration proceedings.

FRCs maintain family unity upon intake. Housing assignment classifications conform to the familial relationship and adherence to the age/gender requirements. There are no restrictions on rooming related children together with their parent; however, there are restrictions by age and gender that inform whether more than one family unit can be housed together as outlined in head of household classifications. These restrictions limit the availability of bed space at FRCs.

Currently, the Berks Family Residential Center (BFRC) in Berks County, Pennsylvania, is the only FRC that can detain male head of household family units. BFRC can house male and female head of household family units with children of both genders.

Question#:	25
Topic:	Alternatives to Detention II
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Is the Alternatives to Detention program a viable alternative to placing illegal immigrants in detention facilities? If so, how much larger would the program need to be to allow individuals to use the program while also ensuring that all participants fully comply with their hearing schedule and, if ordered, actually leave the country?

Response: No, the Alternatives to Detention (ATD) program is not a substitute for detention, and U.S. Immigration and Customs Enforcement (ICE) does not support the release of individuals who pose a public safety risk or flight risk that cannot be mitigated with ATD. The use of ATD does not guarantee that individuals will attend their hearings or comply with a removal order if/when issued by an immigration judge. ATD does allow for closer monitoring of a small segment of the 1.6 million individuals assigned to the non-detained docket, but is not effective at ensuring court appearances and compliance with court orders.

It must be further noted that individuals are not released from custody because the ATD program exists, but rather because a determination has been made that detention is not possible or necessary. ATD is a compliance monitoring tool that is added to release requirements to increase the likelihood that a vetted, enrolled participant will comply with conditions of release.

For example, when determining whether an individual should be enrolled in the ATD program, numerous factors are taken into account during each individual case review. Factors considered include, but are not limited to, criminal and immigration history, supervision history, family and/or community ties, status as a caregiver or provider, and other humanitarian or medical considerations. ICE notes that an individual on ATD is provided the opportunity to demonstrate compliance with release conditions and potentially earn less stringent reporting requirements.

Due to limited ATD resources and the length of time it takes for an individual's case to conclude on the non-detained docket, it is generally not possible to keep individuals enrolled in the ATD program throughout the entirety of their removal proceedings, which may last for years, without significantly reducing the number of individuals who are able to participate in the program. Further, the most important factor that determines if an alien will actually be removed when a final order is issued is whether the person is in detention when this occurs. If an alien is not detained at the time, in many cases, ICE will have to expend significant resources to locate, detain, and subsequently remove the alien in accordance with the final order.

Question#:	25
Topic:	Alternatives to Detention II
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Please list the methods DHS uses to track the locations of those in the ATD program and how DHS determines which type of monitoring to use. Are there other types of tracking technology that DHS has or is considering to increase the Department's ability to track individuals in a non-invasive but effective way?

Response: Currently, the only consistent way for the ATD Intensive Supervision Appearance Program (ISAP) III to actively track a participant is through the assignment of a GPS ankle monitor. ICE is exploring the use of limited GPS data-point collection through the SmartLINK[7] application, but, at this time, there is no available data or analyses to truly compare against the GPS ankle monitor with regard to successes and failures. Further, the SmartLINK application was not intended to replace the GPS ankle monitor, but rather to provide another technology option for use for appropriate participants.

ATD's efficacy drops off sharply when used to monitor those who have already been ordered removed or for recent arrivals with no community ties, including the many family units who are being apprehended by U.S. Customs and Border Protection while attempting to cross the Southwest Border. When an individual fails to comply with their conditions of release, the ATD contractor informs the assigned deportation officer who updates the case management system and takes enforcement action as appropriate.

However, it is important to note that ICE fugitive operations budget is very limited, and that its fugitive operations have been limited as it has had to reallocate staff to respond to the crisis along the southwest border. These limitations adversely impact ICE's ability to rapidly respond when an alien fails to comply and to locate those who abscond. ICE also notes that while ATD can complement other immigration enforcement efforts when used appropriately on a vetted and monitored population of participants, the program was not designed to facilitate ICE's mission of removing aliens with final orders, and the agency lacks sufficient resources to locate and arrest the significant number of participants who abscond. Detention is the only method that will ensure court appearances and compliance with court orders of removal.

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[7] SmartLINK is a smart phone application that enables supervising officers and case managers to keep participants focused on the conditions of release by smart phone or tablet. The participant is able perform a recurring check-in, have identity verified, determine their location at the time of check-in, and quickly collect status change information. The application also allows for push notifications for meetings or appointments, turn-by-turn directions, and direct contact with the case specialist/case officer, and also has a searchable database for services.

Question#:	25
Topic:	Alternatives to Detention II
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: How many individuals on ATD abscond before a final removal order or decision is made in their case?

Response: There were 8,517 pre-order absconders in Fiscal Year 2018. This figure only includes individuals who were actively enrolled in the ATD program at the time they absconded. An absconder in this context is defined as an individual who has failed to report, who has been unresponsive to attempts by the U.S. Government to contact, and whom the U.S. Government has been unable to locate (i.e., a participant who cuts off the GPS unit, fails to return calls, ignores contact attempts, and the U.S. Government is unable to locate him or her physically).

Question: Are any unaccompanied or accompanied minor children monitored on ATD after being placed with a sponsor?

Response: No one under the age of 18 is allowed to participate in ATD as a head-of-household. They may, however, be dependents and thus be eligible to receive some of the services provided.

Question#:	26
Topic:	Access to an Attorney
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Is there any situation where a minor in custody would not be given an attorney or advocate while going through the legal proceedings? Does every minor have access to an attorney or advocate?

Response: As a preliminary matter, all aliens in removal proceedings have the right to retain and be represented by counsel of their choosing, at no cost to the government. *See* 8 U.S.C. § 1362. The U.S. Department of Homeland Security (DHS) is committed to ensuring that everyone in its custody has timely access to counsel.

Federal law and DHS policy mandate that DHS transfers any unaccompanied alien child (UAC) in its custody to the custody of the Secretary of Health and Human Services not later than 72 hours after determining that the child is a UAC, absent exceptional circumstances. 8 U.S.C. § 1232(b)(3). As a result, DHS defers to the Department of Health and Human Services for a response regarding access to attorneys and advocates for UAC in their custody.

Question#:	27
Topic:	Tracking Removals
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: How are removals tracked after a final order of removal is given?

Response: Removals are tracked in U.S. Immigration and Customs Enforcement's (ICE) system of record—the ENFORCE Alien Removal Module—and closed out in the system of record upon removal. Deportation officers assigned to individual cases track the progress of those cases throughout the removal process and execute the removal order once it is final and executable.

Question: Who pays for an immigrant on the non-detained docket who has been given a final order of removal to return to his or her home country?

Response: If ICE apprehends the alien and returns the alien to his or her country of origin, ICE pays for the removal. Otherwise, the alien pays for their own removal, often through purchasing a commercial airline ticket.

Question: How many immigrants have been released into the interior of the United States because his or her home country would not accept them after a final order of removal was issued in the United States?

Response: While most countries adhere to international obligations to accept the timely return of their citizens, ICE has confronted unique challenges with some countries that are either uncooperative in repatriating their citizens or unduly delay the acceptance of their citizens. In addition, ICE generally cannot detain an alien under a final order of removal for longer than 6 months once the alien has entered the period for removal, unless there is a significant likelihood that the alien will be removed in the reasonably foreseeable future. *See Zadvydas* v. *Davis*, 533 U.S. 678 (2001). As such, 5,307[8] immigrants have been released into the interior of the United States because his or her home country would not accept him or her after a final order of removal was issued in the United States.

Question: Does DHS track those individuals until deportation or removal is available?

Response: Yes, these individuals remain on the ICE non-detained docket and are assigned to officers for case management purposes.

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[8] Fiscal Year 2018 year-to-date ICE detention data is current through September 22, 2018.

Question#:	28
Topic:	UAC Entry
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Do you have data to show why UACs attempt to enter the US illegally instead of crossing legally at a port of entry? Is there any data that demonstrates a correlation between the spike in UACs crossing the border and the policy to place them with undocumented sponsors?

Response: CBP does not have data sets to show why UACs attempt to enter the U.S. illegally instead of crossing legally at a port of entry.

Question: Is there any data that demonstrates a correlation between the spike in UACs crossing the border and the policy to place them with undocumented sponsors?

Response: CBP does not have data that demonstrates a correlation between the spike in UACs crossing the border and the policy to place them with undocumented sponsors.

Post-Hearing Questions for the Record
Submitted to Matthew Albence & Robert Perez
From Senator Gary Peters

"The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives"

October 3, 2018

Question#:	1
Topic:	Mental Health Risks for Children
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Secnrity and Illegal Immigration Incentives
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: Our top priority should be the welfare and care of children. Numerous medical organizations agree that even brief stays in detention can lead to psychological trauma and lasting mental health risks. As follow up to the September 18, 2018 hearing, please respond to the following questions.

How long is too long to detain a child?

In proposing rollbacks to the Flores Settlement Agreement, has the Department of Homeland Security reviewed the extensive literature discussing the long-term health consequences that detention can have on children?

How does the Department of Homeland Security intend to mitigate the almost certain negative consequences of the detention of children?

Response: U.S. Immigration and Customs Enforcement (ICE) notes that the length of time an individual or family spends in detention varies based on many case-specific factors. Furthermore, ICE believes that immigration cases should be heard in a timely fashion and supports the hiring of ICE Office of Principal Legal Advisor attorneys and additional immigration judges by the U.S. Department of Justice to help address current case backlogs, and to reduce periods of detention for all detainees, including family units. However, it is worth noting that many recently arrived families do not appear for court hearings and ignore lawfully issued orders of removal, which is why ICE maintains the belief that detention is a necessary tool to effectuate removal in cases where it is legally appropriate.

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Primary:	The Honorable Gary Peters
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ICE stands by its testimony that its three Family Residential Centers (FRCs) are safe and humane. ICE's FRCs were developed in consultation with non-governmental organizations with relevant expertise, and are specifically designed to ensure the well-being of their residents. They offer an extensive range of services, including medical care, educational and legal resources, religious services seven days a week, and numerous daily indoor and outdoor recreational activities.

ICE takes its responsibility to provide appropriate care seriously, particularly when it comes to children, many of whom have recently endured a hazardous journey to the Southwest Border through no choice of their own. The FRCs are designed with the particular needs of this vulnerable population in mind, and ICE strongly believes the services they provide are appropriate. In fact, as detailed in the June 2017 DHS Inspector General's report,[1] ICE's FRCs were found to be "…clean, well-organized, and efficiently run," and the agency was found to be "…addressing the inherent challenges of providing medical care and language services and ensuring the safety of families in detention."

Unlike traditional detention facilities, FRC residents have unsupervised freedom of movement throughout indoor and outdoor areas of the facility. Residents also have the option of wearing their own clothes or non-institutional clothing that is provided to them by the facility, depending on personal preference, and have access to free laundry services, as well as an onsite barber shop. The FRCs also feature child-friendly décor and furniture, as well as toddler play areas, multiple gymnasiums, and communal spaces for dining, studying, and engaging in recreational activities.

All three FRCs offer a variety of indoor and outdoor daily recreation activities for both children and adults, and a monthly recreational schedule is posted within communal areas in each facility. Indoor activities offered include a variety of sports (e.g., basketball, badminton, indoor soccer, and volleyball), group exercise classes (e.g., Zumba), arts and crafts classes, karaoke, movie nights, and seasonal and holiday-themed activities. Outdoor recreational facilities include soccer fields, sand volleyball courts, handball courts, sand boxes, and play structures with slides and jungle gyms. In addition, residents also have access to musical instruments, as well as a law library and a social library, where additional scheduled activities include crochet, **Rosetta Stone** language learning

[1] "Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities." June 2, 2017. https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf?utm_source=E-mail+Updates&utm_campaign=e1d1c3e779-EMAIL_CAMPAIGN_2017_06_16&utm_medium=email&utm_term=0_7dc4c5d977-e1d1c3e779-45096257

Question#:	1
Topic:	Mental Health Risks for Children
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

classes, coloring activities and drawing contests, and reading sessions with parents and children. A wide selection of books are available in multiple languages, with an approximate 10-to-1 ratio of books to residents.

Educational services are also provided to all children from pre-K through high school, and include in-class instruction, as well as field trips. An initial aptitude test is provided within 72 hours of arrival to determine appropriate placement, and students are taught by state-certified and bilingual/ESL-certified teachers. Education is provided in accordance with state standards, and education records are provided to U.S. public schools upon request.

Dining at FRCs includes three free "all you can eat" meals each day, which are based on a six-week rotating menu that has been verified and approved by a licensed dietician, and feature child-friendly and culturally relevant options. Residents are also provided with 24-hour access to snacks and juice, and have the option of buying additional supplies from the commissary.

The FRCs also offer comprehensive medical care, and staffing includes registered nurses and licensed practical nurses, licensed mental health providers, mid-level providers that include a physician's assistant and nurse practitioner, a physician, dental care, and access to 24-hour sick call and emergency services, as well as a full pharmacy and immunizations. In addition, all families receive mental health screenings upon admission, as well as ongoing medical and mental health care as needed. Both individual and group therapy is offered, and mental health staff have biweekly meetings with educational staff to identify at-risk students and ensure that their needs are addressed.

Residents are able to receive family visitors seven days a week from 8 a.m. to 8 p.m., and have access to counsel seven days a week from 7 a.m. to 8 p.m. The FRCs provide legal orientation presentations every Monday, Wednesday, and Friday; play a "*Know Your Rights*" video in multiple languages on a loop on a dedicated channel in the common areas; and provide free telephone calls in support of all legal cases and credible fear interviews. Licensed childcare services are available from 8 a.m. to 8 p.m. to allow parents to meet with legal counsel, participate in the voluntary work program, or attend credible fear interviews, court, or medical appointments.

In addition, all FRCs must maintain compliance with applicable state and federal regulations, as well as ICE's Family Residential Standards, and are subject to an independent compliance inspection program through a contracted team of juvenile subject matter experts. Despite recent media reports, ICE believes these facilities offer

Question#:	1
Topic:	Mental Health Risks for Children
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

the best possible environment for family units that are waiting to have their cases heard by an immigration court. ICE believes that the treatment residents receive at the FRCs is appropriate and humane, and ICE continually monitors, evaluates, and makes improvements to programs as necessary.

Finally, regarding the proposed "rollback" of the *Flores* Settlement Agreement (FSA), as the U.S. Department of Homeland Security (DHS) states in the Notice of Proposed Rulemaking, "*Apprehension, Processing, Care, and Custody of Alien Minors and Unaccompanied Alien Children,*" the rule proposes to satisfy the basic purpose of the FSA in ensuring that all minors and unaccompanied alien children in DHS custody are treated with dignity, respect, and special concern for their particular vulnerability.

Post-Hearing Questions for the Record
Submitted to Matthew Albence & Robert Perez
From Senator Kamala Harris

"The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives"

October 3, 2018

Question#:	2
Topic:	Summer Camps
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Last year, the American Academy of Pediatrics warned that DHS facilities "do not meet the basic standards for the care of children in residential settings." On July 17, 2018, two doctors working on behalf of DHS publicly documented negligent and even abusive treatment at ICE family detention facilities in a letter to members of the U.S. Senate, concluding that, "there is no amount of programming that can ameliorate the harms created by the very act of confining children to detention centers."

You testified before the Senate Judiciary Committee on July 31, 2018, "With regard to the FRCs [the ICE Family Residential Centers], I think the best way to describe them is to be more like a summer camp." When pressed on this statement, you stated that you were "very comfortable" with the treatment of immigrants at these centers.

You reaffirmed this position in response to my questioning at the September 18, 2018 HSGAC hearing. I asked you if you believed these facilities were like summer camps and you responded, "I believe the standards under which they [children] are kept are very safe; they're humane." I asked if you have children or know children who have attended summer camp and whether you would send your children to one of these facilities. You responded that the "question is not applicable."

Please explain why you persist to describe ICE detention facilities that medical experts argue fail to meet acceptable standards for the care of children as "summer camps."

Please answer my question from the September 18, 2018 hearing-would you willingly send your children to stay in a family residential center?

Question#:	2
Topic:	Summer Camps
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Response: U.S. Immigration and Customs Enforcement (ICE) stands by its testimony that its three Family Residential Centers (FRCs) are safe and humane. ICE's FRCs are specifically designed to ensure the well-being of their residents, and offer an extensive range of services, including medical care, educational and legal resources, religious services seven days a week, and numerous daily indoor and outdoor recreational activities.

ICE takes its responsibility to provide appropriate care very seriously, particularly when it comes to children, many of whom have recently endured a hazardous journey to the Southwest Border through no choice of their own. The FRCs are designed with the particular needs of this vulnerable population in mind, and ICE strongly believes the services they provide are appropriate. In fact, as detailed in the June 2017 DHS Inspector General's report,[2] ICE's FRCs were found to be "clean, well-organized, and efficiently run," and the agency was found to be "addressing the inherent challenges of providing medical care and language services and ensuring the safety of families in detention."

Unlike traditional detention facilities, FRC residents have unsupervised freedom of movement throughout indoor and outdoor areas of the facility. Residents also have the option of wearing their own clothes or non-institutional clothing, which is provided to them by the facility, depending on personal preference, and have access to free laundry services and an onsite barber shop. The FRCs also feature child-friendly décor and furniture, as well as toddler play areas, multiple gymnasiums, and communal spaces for dining, studying, and engaging in recreational activities.

All three FRCs offer a variety of indoor and outdoor daily recreation activities for children and adults, and a monthly recreational schedule is posted within communal areas in each facility. Indoor activities offered include a variety of sports (e.g., basketball, badminton, indoor soccer, and volleyball), group exercise classes (e.g., Zumba), arts and crafts classes, karaoke, movie nights, and seasonal and holiday-themed activities. Outdoor recreational facilities include soccer fields, sand volleyball courts, handball courts, sand boxes, and play structures with slides and jungle gyms. In addition, residents also have access to musical instruments, as well as a law library and a social library, where additional scheduled activities include crochet, **Rosetta Stone** language learning

[2] "Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities." June 2, 2017. https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf?utm_source=E-mail+Updates&utm_campaign=e1d1c3e779-EMAIL_CAMPAIGN_2017_06_16&utm_medium=email&utm_term=0_7dc4c5d977-e1d1c3e779-45096257

Question#:	2
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Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

classes, coloring activities and drawing contests, and reading sessions with parents and children. A wide selection of books is available in multiple languages, with an approximate a 10-to-1 ratio of books to residents.

Educational services are also provided to all children from pre-K through high school, and include in-class instruction and field trips. An initial aptitude test is provided within 72 hours of arrival to determine appropriate placement, and students are taught by state-certified and bilingual/English as a Second Language-certified teachers. Education is provided in accordance with state standards, and education records are provided to U.S. public schools upon request.

Dining at the FRCs includes three free "all you can eat" meals each day, which are based on a six-week rotating menu that has been verified and approved by a licensed dietician and feature child-friendly and culturally relevant options. Residents are also provided with 24-hour access to snacks and juice, and have the option of buying additional supplies from the commissary.

The FRCs also offer comprehensive medical care, and staffing includes registered nurses and licensed practical nurses, licensed mental health providers, mid-level providers that include a physician's assistant and nurse practitioner, a physician, dental care, and access to 24-hour sick call and emergency services, as well as a full pharmacy and immunizations. In addition, all families receive mental health screenings upon admission, as well as ongoing medical and mental health care as needed. Both individual and group therapy is offered, and mental health staff have bi-weekly meetings with educational staff to identify at-risk students and ensure their needs are addressed.

Residents can receive family visitors from 8 a.m. to 8 p.m., seven days a week, and have access to counsel from 7 a.m. to 8 p.m., seven days a week. The FRCs provide legal orientation presentations every Monday, Wednesday, and Friday; play a "*Know Your Rights*" video in multiple languages, on a loop, on a dedicated channel in the common areas; and provide free telephone calls in support of all legal cases and credible fear interviews. Licensed childcare services are available from 8 a.m. to 8 p.m. to allow parents to meet with legal counsel, participate in the voluntary work program, or attend credible fear interviews, court, or medical appointments.

Finally, all FRCs must maintain compliance with applicable state and federal regulations, as well as ICE's Family Residential Standards, and are subject to an independent compliance inspection program through a contracted team of juvenile subject matter experts. ICE believes that the treatment residents receive at the FRCs is appropriate and

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Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

humane, and ICE continually monitors, evaluates, and makes improvements to programs, as necessary.

Question#:	3
Topic:	Doctors' Recommendations
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Have you or other ICE officials directly consulted with the two doctors working with the DHS Office of Civil Rights and Civil Liberties who sent the July 17, 2018 letter to Senators about what they observed during their investigations of ICE family detention facilities? Please provide written documentation.

What specific actions have you or other ICE officials taken to address these doctors' recommendations? Please provide written documentation.

Response: Dr. Allen and Dr. McPherson are contract consultants who participate in site visits with the U.S. Department of Homeland Security's (DHS) Office for Civil Rights and Civil Liberties (CRCL). Consistent with its statutory oversight authorities at 6 U.S.C. § 345 and 42 U.S.C. § 2000ee-1, DHS CRCL reviews and investigates complaints alleging violations of individual rights and liberties in DHS policies or activities. In these investigations, DHS CRCL at times engages the assistance of contracted subject-matter experts (SMEs) who participate in site visits and prepare reports of their findings. In those instances, DHS CRCL then prepares final recommendation memoranda, which include general and specific policy recommendations. U.S. Immigration and Customs Enforcement (ICE) carefully reviews such recommendations and responds to DHS CRCL, indicating whether it concurs with each recommendation. DHS CRCL has provided, and continues to provide, ICE with policy recommendations on a variety of issues, including ones related to specific detention facilities. ICE and DHS CRCL work to resolve ongoing concerns, and DHS CRCL's annual reports provide an overview of these efforts each year. Other than when DHS CRCL's contract consultants are on site in its facilities, ICE does not generally have direct contact with them.

Family Residential Centers (FRCs) are required to meet the ICE Family Residential Standards and are subject to an independent compliance inspection program through a contracted team of juvenile SMEs. Notably, ICE's Family Residential Standards were written with input from various SMEs, as well as government and non-government organizations.

ICE's three FRCs are safe and humane, and are specifically designed to ensure the well-being of their residents. ICE's FRCs offer an extensive range of services, including medical care, educational and legal resources, religious services 7 days per week, and numerous daily indoor and outdoor recreational activities. Additionally, as detailed in a June 2017 report by the DHS Office of Inspector General, ICE's FRCs were found to be "…clean, well-organized, and efficiently run," and the agency was found to be

Question#:	3
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Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

"…addressing the inherent challenges of providing medical care and language services and ensuring the safety of families in detention." Drs. Allen and McPherson themselves noted several improvements in medical and mental health care, as well as educational services in the FRCs following their last site visit in 2017; another DHS CRCL expert who also participated in the site visit indicated that she "[did] not anticipate a need for [DHS] CRCL to conduct further follow-up progress reviews." In sum, ICE takes its responsibility to provide appropriate care seriously, particularly when it comes to children. The FRCs are designed with the unique needs of this vulnerable population in mind, and ICE strongly believes the services they provide are appropriate.

Question#:	4
Topic:	Professional Organizations
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Have you or other ICE officials met with the American Medical Association or American Academy of Pediatrics to discuss ICE family detention facilities? Please provide written documentation.

Response: U.S. Immigration and Customs Enforcement (ICE) stands by its testimony that its three Family Residential Centers (FRCs) are safe and humane. ICE's FRCs were developed in consultation with non-governmental organizations with relevant expertise, and are specifically designed to ensure the well-being of their residents. The FRCs offer an extensive range of services, including medical care, educational and legal resources, daily religious services, and numerous daily indoor and outdoor recreational activities.

ICE takes its responsibility to provide appropriate care seriously, particularly when it comes to children, many of whom have recently endured a hazardous journey to the Southwest Border through no choice of their own. The FRCs are designed with the particular needs of this vulnerable population in mind, and ICE strongly believes the services they provide are appropriate. In fact, as detailed in the June 2017 DHS Inspector General's report, ICE's FRCs were found to be "...clean, well-organized, and efficiently run," and the agency was found to be "...addressing the inherent challenges of providing medical care and language services and ensuring the safety of families in detention."

All three of ICE's FRCs offer a variety of indoor and outdoor daily recreation activities for children and adults, and a monthly recreational schedule is posted within communal areas in each facility. Indoor activities offered include a variety of sports (e.g., basketball, badminton, indoor soccer, and volleyball), group exercise classes (e.g., Zumba), arts and crafts classes, karaoke, movie nights, and seasonal and holiday-themed activities. Outdoor recreational facilities include soccer fields, sand volleyball courts, handball courts, sand boxes, and play structures with slides and jungle gyms. In addition, residents also have access to musical instruments, as well as a law library and a social library, where additional scheduled activities include crochet, *Rosetta Stone* language learning classes, coloring activities and drawing contests, and reading sessions with parents and children. A wide selection of books are available in multiple languages, with an approximate 10-to-1 ratio of books to residents.

Educational services are also provided to all children from pre-K through high school and include in-class instruction and field trips. An initial aptitude test is provided within 72 hours of arrival to determine appropriate placement, and students are taught by state-certified and bilingual/English as a second language-certified teachers. Education is

Question#:	4
Topic:	Professional Organizations
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

provided in accordance with state standards, and education records are provided to U.S. public schools upon request.

Dining at FRCs includes three free "all you can eat" meals each day, which are based on a six-week rotating menu that has been verified and approved by a licensed dietician, and feature child-friendly and culturally relevant options. Residents are also provided with 24-hour access to snacks and juice and have the option of buying additional supplies from the commissary.

The FRCs also offer comprehensive medical care, and staffing includes registered nurses and licensed practical nurses, licensed mental health providers, mid-level providers that include a physician's assistant and nurse practitioner, a physician, dental care, and access to 24-hour sick call and emergency services, as well as a full pharmacy and immunizations. In addition, all families receive mental health screenings upon admission, as well as ongoing medical and mental health care as needed. Both individual and group therapy is offered, and mental health staff have biweekly meetings with educational staff to identify at-risk students and ensure their needs are addressed.

Question#:	5
Topic:	Referred for Trafficking
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: At the September 18, 2018 HSGAC hearing, I repeated a request I have made many times to DHS officials for information on the number of cases where an adult accompanied by a child along the Southwest Border was referred to the Department of Justice for prosecution or investigation for trafficking. I asked for this information by the end of the week and you responded that you would consult with your agency. Please explain the delay in providing me this information. What is the number and status of all cases since January 2017 where ICE or any other DHS Component has referred an adult accompanied by a child to DOJ for investigation or prosecution for trafficking? What are ICE's and DHS's policies for tracking this information? Please provide written documentation.

Response: Human trafficking is an involuntary, exploitation-based crime involving force, fraud, or coercion of either U.S. citizens or foreign nationals. Human trafficking victims do not have to cross a border to be trafficked, whereas human smuggling is transportation based and requires crossing an international border. Individuals who are smuggled into the United States do so voluntarily. As of August 31, 2018, U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) initiated more than 700 investigations of human trafficking, which resulted in more than 1,400 criminal arrests, 425 convictions, and more than 300 victims rescued.

ICE HSI does not track cases that have been referred to the U.S. Department of Justice (DOJ) for investigation or prosecution for trafficking that specifically involve children accompanied by adults apprehended at the Southern border, nor does ICE HSI have a policy for tracking such cases.

Question#:	6
Topic:	Family Case Management Program Termination
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Until ICE terminated it in June 2017, the Family Case Management Program educated families about legal requirements and reportedly resulted in their attending 99 percent of ICE check-ins and immigration court hearings. It also reportedly cost the government $36 per day per family, as compared to the over $300 per day to hold a family in an ICE family residential center. Were you involved in the June 2017 decision to terminate the ICE Family Case Management Program? If not, who made the decision to terminate this program? Please provide me with all written documentation about ICE's decision to terminate the Family Case Management Program.

Response: U.S. Immigration and Customs Enforcement's (ICE) decision to terminate the Family Case Management Program (FCMP) pilot was based primarily on cost and the fact that both the FCMP and Alternatives to Detention (ATD) program had very similar compliance rates, though FCMP resulted in far fewer removals. At the time of the decision, the FCMP cost $38.47 per day, while ATD cost $4.40 per day. For the cost of monitoring one family via the FCMP, ICE could enroll nearly 10 families (heads of households) on ATD. ICE enrolled record levels of individuals on ATD in Fiscal Year 2018, due in part to the decision to terminate the FCMP pilot.

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

Question#:	7
Topic:	Alternatives to Detention Analysis
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Has ICE undertaken any analysis about the effectiveness of alternatives to detention for immigrant families, including the Family Case Management Program?

If so, please provide written documentation.

If not, will you commit to conduct such analysis to ensure that ICE is pursuing the most humane and effective policies with respect to asylum-seeking families?

Response: Yes, U.S. Immigration and Customs Enforcement (ICE) has conducted analysis on the effectiveness of its Alternatives to Detention (ATD) program. The ATD program is not as effective as detention at ensuring the removal of aliens from the United States when ordered by an immigration judge, ensuring the whereabouts of aliens when their cases have concluded, ensuring cases are adjudicated quickly before the courts, or ensuring that all individuals required to attend immigration hearings appear for them. The ATD program is thus not an effective substitute for detention and is not effective at ensuring that individuals are monitored through the duration of their removal proceedings. The ATD program is not sufficiently resourced to ensure that all family units can be enrolled in ATD through the duration of their proceedings, or to ensure that ICE can quickly respond to alerts or provide adequate oversight of program participants. ATD is less effective than detention at ensuring compliance with removal orders issued by immigration judge.

However, the ATD program is effective at keeping better track of whether hearings are attended; whether individuals abscond or are arrested for criminal offenses; and whether other release conditions are being met. The ATD program is effective at more closely monitoring a small segment of the non-detained population and allows for much greater oversight than traditional release with very little supervision at all.

ICE analyzed the effectiveness of the Family Case Management Program (FCMP). In furtherance of the Administration's efforts to act as good stewards of taxpayer dollars, ICE decided to conclude the FCMP pilot in June 2017 and invest those resources back into pre-existing and more cost-effective ICE ATD programs, allowing more individuals to participate in the program. In fact, for the cost of monitoring one family via the FCMP, ICE could enroll nearly 10 families (heads of households) on ATD. The FCMP ($38.47 per day per family; roughly $16.73 per individual) was a more expensive enforcement tool compared to ATD ISAP III ($4.40 per day). The FCMP cost $6.1 million in Fiscal Year (FY) 2015, $4 million in FY 2016, and $7.4 million in FY 2017

Question#:	7
Topic:	Alternatives to Detention Analysis
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

before its discontinuation. During its lifespan, the program cost a total of $17.5 million, and resulted in the removal of only 15 individuals from the country, as opposed to more than 5,500 from ATD during the same period. The fact that ATD ISAP III was more effective than FCMP in leading to removal orders at a fraction of the cost played a role when determining the most appropriate use of taxpayer dollars.

ICE is committed to implementing policies that are humane to all individuals, including asylum-seeking families, consistent with current immigration laws.

Question#:	8
Topic:	Coercion and Abuse Allegations I
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Legal advocates have filed a complaint with the DHS Office of Inspector General and the DHS Office of Civil Rights and Civil Liberties alleging coercion and abuse of parents separated from their children to compel them to forgo their legal rights - including their right to reunify with their children or to lawfully seek asylum. This complaint alleges that DHS officers and agents verbally and physically threatened, insulted, denied food, and withheld feminine hygiene products from parents and even falsely told them that their children would be permanently taken from them. Some DHS officers and agents allegedly presented some parents with forms with options pre-selected and did not provide some with any explanation of their rights.

When did you become aware of these allegations?

What did actions, if any, did ICE take in response to these allegations? Please provide written documentation.

Has ICE conducted its own inquiry into these allegations?

If so, when will the inquiry be completed and will you publish it?

If not, will you commit to commencing an inquiry immediately?

Response: The U.S. Department of Homeland Security cannot comment on an ongoing internal investigation.

Question#:	9
Topic:	Guidelines I
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Will you commit to establishing clear, enforceable, and written guidelines and to conduct training with ICE officers and agents to ensure that there will never be coercion or abuse when forms are presented to individuals in custody to sign that may ask them to relinquish their legal rights?

Response: U.S. Immigration and Customs Enforcement (ICE) detention standards and policies ensure access to interpreter services for any detainee who has limited English proficiency. Please note that interpretation services are readily accessible for most languages; though, some less common and/or indigenous languages may require pre-scheduled appointments.

Regarding your other concerns, ICE employees are held to the highest integrity and ethical standards, and are expected to perform their duties in accordance with existing laws, regulations, policies, and/or procedures that govern their conduct and performance. Existing federal ethics statutes and regulations, along with ICE policies (e.g., the Employee Code of Conduct, the Memorandum on Reporting Misconduct, and the Table of Offenses Penalties) are disseminated routinely and reinforced annually through integrity awareness and ethics training.

ICE takes all allegations of employee misconduct seriously. The U.S. Department of Homeland Security Office of Inspector General reviews all allegations of misconduct involving ICE employees and reserves the right to take the lead on any investigation. Additionally, the ICE Office of Professional Responsibility (OPR) thoroughly, objectively, and impartially reviews and/or investigates all complaints brought forward. Allegations of misconduct by ICE employees can be reported to OPR, which promotes public trust and confidence by ensuring organizational integrity is maintained through a multi-layered approach using security, inspections, and investigations. Allegations of misconduct can also be directed to the Joint Intake Center via email at Joint.Intake@dhs.gov, via telephone at 1-877-2INTAKE, or via U.S. Mail at the following address:

U.S. Immigration and Customs Enforcement
Office of Professional Responsibility
P.O. Box 14475 Pennsylvania Avenue, NW
Washington, DC 20044

Question#:	10
Topic:	OIG Report I
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: A DHS OIG report issued on September 27, 2018 found that DHS officials provided no or inconsistent information to parents accompanied by children who were impacted by the Zero Tolerance Policy, which resulted in some parents not understanding that their children would be separated from them and some being unable to communicate with their children.

Will you commit to commencing an inquiry in response to this report immediately?

Response: U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement (ICE) perform an essential role in securing our Nation's borders at and between ports of entry and enforcing U.S. immigration law in the interior of the country. As part of securing the borders and enforcing immigration laws, both are committed to treating all people humanely. As noted in the U.S. Department of Homeland Security (DHS) response to the recent Office of the Inspector General draft report, the report makes no mention of the Department's significant effort to reunify families. DHS coordinated with the U.S. Department of Health and Human Services (HHS), which deployed HHS staff to ICE detention locations to ensure that communication between the parents and their children occurred. The Court in the *Ms. L. v. ICE* litigation specifically acknowledged the Government's strides in facilitating communication.

Question#:	11
Topic:	Communicating with Children I
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Please provide written documentation of ICE and DHS policies and procedures for alerting parents about their separation from their children and how they can communicate with their children while separated.

Response: U.S. Immigration and Customs Enforcement (ICE) cannot speak to the policies and procedures of U.S. Customs and Border Protection (CBP) for notifying parents about their separation and defers to CBP and other Department of Homeland Security Components for additional information.

However, if a family unit is separated while in ICE custody, ICE explains to the adult the reason why the family is being separated, where the adult is going to be detained, that the child(ren) will be in the custody of the U.S. Department of Health and Human Services (HHS), and how the adult will be able to get in contact with the child(ren) after the separation. Additionally, all detained parents must be provided a written and verbal "Notice of Potential Rights for Certain Detained Alien Parents Separated from their Minor Children." A posting of the Notice is also posted in all detention facilities, as required by the Court in *Ms. L* v. *ICE*.

In the event the parent or legal guardian is in ICE custody and the child(ren) is/are in HHS Office of Refugee Resettlement (ORR) custody following separation by CBP, the two Components collaborate to establish options for communication between the parent/legal guardian and the child(ren). ICE Enforcement and Removal Operations (ERO) officers and ORR staff and contractors collaborate to schedule communications via telephone, Skype, or FaceTime. ICE deportation officers assigned to a parent's case will work with ICE ERO's Custody Management division to provide information to the parent about the child and follow-up on questions regarding the separation.

ICE ERO has created posters in multiple languages that explain to a parent or legal guardian how to request an opportunity to communicate with his or her child(ren), and provided a phone number to the Detention Information and Reporting Line (DRIL) so parents could call if they were having trouble locating or communicating with a child placed in ORR custody or a local child welfare system.

ICE ERO officers in adult detention facilities, working with ICE ERO Field Office juvenile coordinators or the Custody Programs Child Welfare Team, identify the HHS facility in which the child(ren) is/are being housed and coordinate with HHS on possible

Question#:	11
Topic:	Communicating with Children I
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

times for the parent/guardian to communicate with the child(ren). Whenever possible, communication is conducted via video, but, at a minimum, is conducted telephonically.

Lastly, ICE notes that during the recent court-ordered reunification process, all parents were able to place free phone calls to their child(ren) who had been separated. Parents were not charged for these calls, although the frequency of these calls depended on logistical factors, including the number of available phones and facilitators to receive calls at ORR facilities.

Question#:	12
Topic:	Familes Separated
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: At the September 18, 2018 HSGAC hearing, I asked you if any families have been separated at the border since June 20, 2018, when the President issued his Executive Order.

You responded that "we [CBP] are not separating families at the border, at or between ports of entry" and that the only instances in which parents would be separated from an accompanying child would be if there were elements of false parentage, a criminal situation, or a health and safety concern. You said you would provide me with specific numbers.

Have families have been separated at the Southwest border since the June 20, 2018 Executive Order?

If so, please provide documentation of all cases, including the nationality and ages of adults and accompanying children, locations of the separation, and the specific reasons for each separation.

Response: The U.S. Customs and Border Protections Office of Field Operations and U.S. Border Patrol reported 156 adults and children that had been separations between June 20, 2018 and September 18, 2018.

CBP Family Separations
June 20, 2018 - September 18, 2018

Sector/Field Office: Age Group	ELSAL	GUATE	HONDU	MEXIC	NICAR	PERU	US	Grand Total
OFO-EL PASO		**3**			**1**			**4**
6-12		2						2
26-35		1			1			2
OFO-LAREDO			**6**	**5**				**11**
6-12			2	3				5
13-17			1					1
18-25				1				1
26-35			2	1				3
46-55			1					1
OFO-SAN DIEGO				**2**				**2**

Question#:	12
Topic:	Familes Separated
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

6-12				1				1
26-35				1				1
USBP-TCA		**2**		**4**				**6**
6-12		1						1
13-17				2				2
26-35		1						1
36-45				1				1
46-55				1				1
USBP-RGV	**23**	**16**	**28**	**4**	**2**	**3**	**1**	**77**
0-5	3	2	6		1	2		14
6-12	3	3	2	1			1	10
13-17	6	3	6	1				16
18-25			1					1
26-35	6	3	5	1	1	1		17
36-45	4	3	6					13
46-55	1	2	2	1				6
USBP-EPT	**3**	**6**	**8**					**17**
0-5	1	1	1					3
6-12			3					3
13-17		2	1					3
18-25	1	1						2
26-35	1		2					3
36-45		2	1					3
USBP-YUM		**18**	**4**	**2**				**24**
0-5		1	1					2
6-12		5						5
13-17		2	1	1				4
18-25		2	1					3
26-35		6						6
36-45		1		1				2
46-55		1	1					2
USBP-BBT				**1**				**1**
36-45				1				1
USBP-SDC	**3**		**2**	**2**				**7**
6-12	1			1				2
13-17	1		1					2
26-35	1			1				2
36-45			1					1
USBP-DRT			**4**					**4**
0-5			1					1

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Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

6-12			1					1
26-35			1					1
36-45			1					1
USBP-ELC		**2**	**2**					**4**
0-5			1					1
13-17		1						1
18-25			1					1
36-45		1						1
USBP-LRT			**2**					**2**
13-17			1					1
36-45			1					1
Grand Total	**29**	**47**	**56**	**20**	**3**	**3**	**1**	**159**

Question#:	13
Topic:	Training Regarding Children
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: As you know, there has been great public outrage at images of young children being held in CBP facilities. According to a June 18, 2018 NBC News article, young migrants were held in large metal detention cages and given just mylar blankets and camping pads to sleep on concrete floors for multiple nights. Further, affidavits have been filed this summer in litigation alleging that children faced limited access to food and water, spoiled food, freezing temperatures, and verbal and physical assault while in DHS facilities. Also, on August 16, 2018, Health and Human Services Commander Jonathan White testified to HSGAC that "In this year, we have seen many more who are what we call tender age, that is to say below 12 and under." These young children have been passing through CBP custody.

I have previously asked DHS officials about specific employee training pertaining to children and young children, including trauma-informed training where family separation is involved. I have yet to receive a response. I followed up on these requests at the September 18, 2018 HSGAC hearing, when I asked you what training CBP employees receive pertaining to children, including the handling of the youngest children in detention facilities. You said that you would provide me with this information.

What specific training and guidance do CBP employees receive about the handling, treatment, and care of children and young children, particularly trauma informed-care? Please provide written documentation.

Response: U.S. Customs and Border Protection (CBP) recognizes the importance of training frontline officers and agents in the care and welfare of all individuals, including children. For example, CBP Officers and Agents receive training on the proper processing, treatment, and referral of aliens. For Officers and Agents, training begins in their respective basic academies, reinforced through post academy mentoring and advanced training, and through periodic issuance of memoranda and policy reminders/musters. The Border Patrol Academy and Field Office Academy provides specific training on the *Flores* Settlement Agreement and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA). The Border Patrol Academy teaches CBP's National Standards on Transport, Escort, Detention (TEDS) policy and its provisions specific to juveniles, training devoted to screening for trafficking victims, child safety, and determining familial relationships. CBP law enforcement officers also receive training via an online training platform known as the Performance and Learning Management System (PALMS). Related courses include Human Trafficking and *Reno v.*

Question#:	13
Topic:	Training Regarding Children
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Flores. It is required for all CBP employees who encounter Unaccompanied Alien Children (UAC) to take these courses at a minimum.

Per CBP's interim Medical Directive signed on January 28, 2019, all juvenile aliens in custody receive a mandatory health interview during initial processing. Where contracted medical resources (Physician Assistants or Nurse Practitioners) are on staff, they also receive a mandatory medical assessment. This is an overall health evaluation and is not specific to "trauma informed" care.

Question: When was this training and guidance last updated?

Response: CBP continually updates its various policies regarding the care and treatment of young children. These policy updates are listed below:

- Human Trafficking Awareness (C102) - 7/18/18 update
- Cultural Diversity And Law Enforcement (C280c) - 8/31/18 update
- Personal Search Policy And Procedures (S340c) - 10/05/18 update
- Arrest And Detention (S360c) - 9/4/18 update

On October 5, 2018, CBP implemented the current version of CBP's National Standards on Transport, Escort, and Detention.

Question: Which child welfare and pediatric experts have you or other CBP officials consulted with in the development of this training and guidance? Please provide written documentation.

Response: In 2015, U.S. Customs and Border Protection (CBP) published its National Standards on Transport, Escort, Detention, and Search (TEDS) policy, the agency-wide policy setting nationwide standards governing CBP's interaction with detained individuals. TEDS governs CBP's commitment to the safety, security, and care of those in our custody. TEDS policy was developed in consultation with Subject Matter Experts from CBP's Office of Field Operations, the U.S. Border Patrol, DHS Civil Rights and Civil Liberties (CRCL), key government stakeholders and non-governmental organizations. It incorporates best practices developed in the field while reflecting legal and regulatory requirements.

Question#:	14
Topic:	Encouraging Asylum-Seekers
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Under the Immigration and Nationality Act, Section 8 U.S.C. 1225 and the U.N. 1967 Protocol to 1951 Refugee Convention and customary international law principle of non-refoulement, nearly all people who reach U.S. soil have the right to petition our government for asylum or other humanitarian protection, regardless of how they arrived.

However, a DHS OIG report issued on September 27, 2018 highlights that that CBP employees practice "metering" to limit asylum-seeker crossing of the international line from Mexico onto U.S. soil. On July 18, 2018, CBP Commissioner McAleenan informed the Senate Finance Committee that on any given day, CBP employees may ask asylum seekers at our three busiest ports to wait in Mexico. He noted that over 1,000 people were waiting in Mexico to enter the San Ysidro Port in California - some for as long as one to two weeks. According to the American Civil Liberties Union further, CBP employees allegedly prevented asylum seekers from accessing certain "non-designated" ports of entry.

Is it still DHS policy to encourage asylum-seekers to present themselves at ports of entry along the Southwest border for processing, rather than to enter between the ports?

Response: All applicants for admission to the United States should present themselves at a port of entry for inspection and processing. At times, due to operational capacity, as necessary to facilitate orderly processing, and to maintain the security and safety of the traveling public, individuals may need to wait in Mexico before being permitted to enter the POE. It is illegal to enter the United States at a location other than a designated port of entry. All aliens who arrive in the United States may apply for asylum.

Question#:	15
Topic:	Delay Tactics
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Would tactics to deny a person access to a U.S. port of entry because they seek humanitarian protection contradict international human rights norms?

Response: U.S. Customs and Border Protection (CBP) does not practice, coordinate, nor encourage tactics to deny a person access to a Port of Entry (POE). CBP does not turn asylum-seekers away from the POEs. At times, due to operational capacity, as necessary to facilitate orderly processing, and to maintain the security and safety of the traveling public, individuals may need to wait in Mexico before being permitted to enter the POE. Upon reaching the U.S. side of the border, all individuals are processed.

Question: Have CBP officials ever coordinated with Mexican officials - in San Ysidro or elsewhere - to deny asylum-seekers access to a port of entry at a time of their choosing?

Response: U.S. Customs and Border Protection (CBP) officials often work with Mexican officials on operational issues at the ports of entry. However, CBP processes individuals arriving at ports of entry in accordance with its own laws and does not interfere in Mexico's ability to enforce its own laws. CBP does not deny asylum seekers access to a POE at any time. At times, due to operational capacity, as necessary to facilitate orderly processing, and to maintain the security and safety of the traveling public, individuals may need to wait in Mexico before being permitted to enter the POE. Upon reaching the U.S. side of the border, all individuals are processed.

Question#:	16
Topic:	Asylum-Seeker Policy
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Has CBP headquarters established any policy or guidance for port directors on how to address circumstances when there is a larger influx of asylum-seekers attempting to enter a port?

If so, please provide written documentation.

If not, why has CBP failed to coordinate a national strategy to best allocate resources and ensure smooth processing of asylum applicants?

Response: The laws of the United States, as well as international treaties to which we are a party, allow people to seek asylum on the grounds that they fear being persecuted outside of the United States due to their race, religion, nationality, membership in a particular social group, or political opinion. U.S. Customs and Border Protection (CBP) understands the importance of complying with these laws and takes its legal obligations seriously. Accordingly, CBP has designed policies and procedures based on these legal standards in order to protect vulnerable and persecuted persons in accordance with enshrined legal obligations. CBP remains operationally agile, responding to influxes at our ports of entry with additional staffing as required.

CBP's Office of Field Operations processes all persons who apply for admission at Ports of Entry and does not turn away anyone who seeks asylum. At times, due to operational capacity, as necessary to facilitate orderly processing, and to maintain the security and safety of the traveling public, individuals may need to wait in Mexico before being permitted to enter the Port of Entry (POE). Upon reaching the U.S. side of the border, all individuals are processed.

If an individual arriving in the United States at a POE is subject to expedited removal, and the individual expresses a fear of return to his or her country of origin, his or her case is referred to an USCIS asylum officer and must be detained until a credible fear interview is completed, pursuant to Section 235(b)(1) of the *Immigration and Nationality Act* (INA). CBP maintains discretion to refer cases directly to Immigration Judges for proceedings under Section 240 of the INA.

Question#:	17
Topic:	Coercion and Abuse II
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Legal advocates have filed a complaint with the DHS Office of Inspector General and the DHS Office of Civil Rights and Civil Liberties alleging coercion and abuse of parents separated from their children to compel them to forgo their legal rights - including their right to reunify with their children or to lawfully seek asylum. This complaint alleges that DHS officers and agents verbally and physically threatened, insulted, denied food, and withheld feminine hygiene products from parents and even falsely told them that their children would be permanently taken from them. Some DHS officers and agents allegedly presented some parents with forms with options pre-selected and did not provide some with any explanation of their rights.

When did you become aware of these allegations?

What did actions, if any, did CBP take in response to these allegations? Please provide written documentation.

Has CBP conducted its own inquiry into these allegations?

If so, when will the inquiry be completed and will you publish it?

If not, will you commit to commencing an inquiry immediately?

Response: The U.S. Department of Homeland Security cannot comment on an ongoing internal investigation.

Question#:	18
Topic:	Guidelines II
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Will you commit to establishing clear, enforceable, and written guidelines and to conduct training with CBP officers and agents to ensure that there will never be coercion or abuse when forms are presented to individuals in custody to sign that may ask them to relinquish their legal rights?

Response: U.S. Customs and Border Protection (CBP) recognizes the importance of thoroughly training our frontline officers. Customs and Border Protection Officers (CBPOs) receive training on the proper processing, treatment, and referral of aliens. This training begins with CBP Field Operations Academy, and is reinforced through Post Academy training and the periodic issuance of memoranda and policy reminders/musters. The current training program for CBPOs, from academy training and continuing through post-academy mentoring and training, reinforces CBP officers must not coerce any alien to sign any forms.

DHS policy specifically prohibits any employee from improperly encouraging the alien(s) to withdraw their application for admission, failing to refer an alien(s) who claims a fear of return for an interview by an Asylum Officer for a credible fear determination, or incorrectly removing or sending back an alien who claims a fear of return to a country from which he/she/they claims fear.

CBP continuously issues guidance to CBPOs on this subject and has addressed processing inadmissible children within the past six months.

Question#:	19
Topic:	OIG Report II
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: A DHS OIG report issued on September 27, 2018 found that DHS officials provided no or inconsistent information to parents accompanied by children who were impacted by the Zero Tolerance Policy, which resulted in some parents not understanding that their children would be separated from them and some being unable to communicate with their children.

Will you commit to commencing an inquiry in response to this report immediately?

Response: U.S. Customs and Border Protection (CBP) is committed to monitoring and enforcing the integrity and professionalism of its workforce. To that end, CBP's Office of Professional responsibility (OPR) conducts investigations into all allegations of criminal conduct and/or serious misconduct. Matters that do not warrant an OPR investigation are referred to component management for processing. OPR will continue to process complaints and when warranted, investigate those matters so requiring further review.

Question#:	20
Topic:	Communicating with Children II
Hearing:	The Implications of the Re-interpretation of the Flores Settlement Agreement for Border Security and Illegal Immigration Incentives
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Please provide written documentation of CBP and DHS policies and procedures for alerting parents about their separation from their children and communication with their children while separated.

Response: Whenever U.S. Border Patrol (USBP) Agents determine that a family separation is warranted under the standards outlined in the *Ms. L v. ICE* preliminary injunction, USBP agents provide written information to parents explaining that they are being separated from their child and the procedures to locate their children and be updated on their welfare. This documentation provides the phone numbers and emails for both the U.S. Immigration and Customs Enforcement and U.S. Health and Human Services Office of Refugee Resettlement call centers.

CBP officers receive annual refresher training on the implementation of the *Flores Settlement Agreement* and TVPRA, including the processing of unaccompanied children.

CBP officers have been instructed to notify the parent when circumstances warrant separating a child from his or her traveling companion. This notification is also documented in the case processing system and on *Form I-213*.

Post-Hearing Questions for the Record
Submitted to the Honorable Kevin K. McAleenan
From Senator Thomas R. Carper

"Resources Needed to Protect and Secure the Homeland"

May 23, 2019

Question#:	2
Topic:	Proposed Flores Rule
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: In September 2018, the Trump administration published a proposed rule to amend the Flores Settlement Agreement; the Department of Homeland Security (DHS) has also sent Congress proposed legislation that would end DHS compliance with the Flores settlement by prohibiting any funds from being used to comply with the settlement agreement, and leaving decisions regarding detention at the sole discretion of the Secretary. In your testimony before this Committee on May 23rd, you referenced the fact that "families cannot be held together through a fair proceeding" in describing pull factors driving migration to our southern border.

Is it correct that a likely or possible outcome of the Department's proposed rule, and legislative proposal, would be that the Department could detain children or family units for durations in excess of 20 days?

Is the intent of this proposed change to deter migration to the U.S. southern border?

Response: The final rule was published on August 23, 2019 (84 FR 44392. It is currently enjoined by court order in *Flores v. Barr*, No. 85-544 (C.D. Cal. Filed July 11, 1985). Due to the ongoing litigation, the Department of Homeland Security cannot comment further at this time.

Question#:	3
Topic:	Effect Analysis
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: Is there any independent, or Department-developed, strategy or analysis that quantifies the deterrent effect that the proposed law change would have on apprehension rates at the southern border? If so, please provide that strategy or analysis, including any plans to construct or obtain any additional detention facilities, any planned or contemplated changes to detention standards or practices, any planned or contemplated changes to processing of asylum claims, costs associated with any new, expanded, or additional facilities, expected impact of strategy on length of stay and proportion of migrants detained following apprehension, and predicted effects on migration from the Northern Triangle and other countries. Please also provide current or recent estimates of the cost per bed per night associated with any such strategy, if available.

Response: The Departments' current operations and procedures for implementing the terms of the FSA, the Homeland Security Act of 2002, and the TVPRA are the primary baseline against which to assess the costs and benefits of this rule. DHS and HHS already incur the costs for these operations; therefore, they are not costs of this rule. The primary changes to DHS's current operational environment resulting from this rule are implementing an alternative licensing process for FRCs and making changes to 8 CFR 212.5 to align parole for minors in expedited removal with all other aliens in expedited removal, consistent with the applicable statutory authority. Subject always to resource constraints, these changes may result in additional or longer detention for some groups of minors. Specifically, minors who are in expedited removal proceedings whose credible-fear determination is still pending or who lack a credible fear and are awaiting removal are more likely to be held until removal can be effectuated. Furthermore, minors who have been found to have a credible fear or who are otherwise in INA section 240 proceedings, and who pose a flight risk or danger if released, are more likely to be held until the end of their removal proceedings, although limited bed space in Family Residential Centers (FRCs) imposes a significant constraint on custody of this cohort. DHS estimates the total number of minors in FY 2017 in groups that might be detained longer was 2,787 and in FY 2018 was 3,663. The numbers of accompanying parents or legal guardians are not included in these estimates. While the above estimates reflects the number of minors in FY 2017 and FY 2018 in groups of individuals that would likely be held until removal can be effectuated, DHS is unable to forecast the future total number of such minors that may experience additional or longer detention as a result of this rule, or for how much longer individuals may be detained because there are many other variables that may affect such estimates. DHS also notes that resource constraints on the availability of bed space mean that if some individuals are detained for longer periods of time, then less bed space will be available to detain other aliens, who in turn could be detained for less time than they would have been absent the rule. DHS is unable to

Question#:	3
Topic:	Effect Analysis
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

provide an aggregate estimate of the cost of any increased detention on the individuals being detained. To the extent this rule results in filling any available bed space at current FRCs, this may thereby increase variable annual costs paid by ICE to operators of current FRCs.

DHS notes that while additional or longer detention could result in the need for additional bed space, there are many factors that would be considered in opening a new FRC and at this time ICE is unable to determine if this rule when implemented would result in costs to build additional bed space. If ICE awarded additional contracts for expanded bed space as a result of this rule, ICE would also incur additional fixed costs and variable costs to provide contracted services beyond current FRC capacity.

Question#:	4
Topic:	Children's Needs
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: Recent media reports indicate that the Department of Health and Human Services (HHS) will now end English-language education, soccer and extracurricular activities, and legal aid due to budget constraints.

If Flores protections were overridden by Congress, how would DHS propose to ensure that children's educational and recreational needs are met?

Response: U.S. Immigration and Customs Enforcement (ICE) takes very seriously its responsibility to provide appropriate care to individuals in ICE custody, particularly as it relates to children.

ICE does not house unaccompanied alien children (UAC); however, ICE houses minors who are part of a family unit at its FRCs. FRCs are specifically designed to ensure the well-being of their residents and offer an extensive range of services, including medical care, educational and legal resources, daily religious services, and numerous indoor and outdoor daily recreational activities. These services are based on ICE Family Residential Standards (FRS), which were originally established from the standards outlined in the Flores Settlement Agreement but have improved over the years based on best practices.

All three FRCs offer a variety of indoor and outdoor daily recreational activities for children and adults, and a monthly recreational schedule is posted within communal areas in each facility. Indoor activities include a variety of sports (e.g., basketball, badminton, indoor soccer, and volleyball), group exercise classes such as Zumba, arts and crafts classes, karaoke, movie nights, and seasonal and holiday-themed activities. Outdoor recreational facilities include soccer fields, sand volleyball courts, handball courts, sand boxes, and play structures with slides and jungle gyms.

In addition, residents have access to musical instruments, a law library, and a social library where additional scheduled activities include crochet, Rosetta Stone language learning classes, coloring activities, drawing contests, and reading sessions with parents and children. A wide selection of books is available in multiple languages, with an estimated 10-to-1 ratio of books to residents.

Educational services are also provided to all children from pre-K through high school and include in-class instruction and field trips. An initial aptitude test is provided within 72 hours of arrival to determine appropriate placement, and students are taught by state-certified and bilingual/English as a Second Language-certified teachers. Education is

Question#:	4
Topic:	Children's Needs
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

provided in accordance with state standards, and education records are provided to U.S. public schools upon request.

All FRCs must maintain compliance with applicable state and federal regulations, as well as ICE FRS, and are subject to an independent compliance inspection program through a contracted team of juvenile subject matter experts. ICE believes that the treatment residents receive at FRCs is appropriate and humane, and ICE continually monitors, evaluates, and improves programs as necessary.

ICE defers to HHS for further information about HHS programs for UAC.

Question#:	5
Topic:	MOA
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: In May 2018, a Memorandum of Agreement went into effect mandating information sharing between HHS and DHS about unaccompanied children in government custody and their potential sponsors.

Since this agreement was signed, there have been reports of delays in placing children with sponsors due to fear potential sponsors may have that their information is being shared with Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP).

Please provide data on the average length of time children waited for sponsors prior to the Memorandum of Agreement (MOA), compared with after the MOA was signed.

How has this MOA affected the amount of time children are held in Office of Refugee Resettlement (ORR) custody, or the number of children in the federal government's custody overall?

Response: ICE defers to HHS.

Question: How many potential sponsors have been deported after having their information shared from ORR with ICE since the MOA was signed?

Response: ICE Enforcement and Removal Operations (ERO), U.S. Customs and Border Protection (CBP), and the HHS Office of Refugee Resettlement (ORR) entered into a memorandum of agreement (MOA) on April 13, 2018. The purpose of this MOA is to ensure that these signatories share relevant information concerning UACs, their potential adult sponsors, and adult members of those potential sponsors' households to verify that the potential sponsor is capable of providing shelter and care, and that the potential sponsor's cohabitants do not endanger the child after placement.

While the MOA was in full effect, from July 9, 2018 through February 21, 2019, ICE arrested 310 UAC sponsors. As of August 17, 2019, 130 of these individuals have been removed.

As a result of funding restrictions contained in Section 224 of the *Consolidated Appropriations Act, 2019,* ICE is no longer conducting arrests of sponsors or potential sponsors based solely on information received from HHS under the MOA. However, ICE notes that it does not exempt any class or category of alien in violation of federal immigration laws from potential enforcement action and will continue to conduct interior

Question#:	5
Topic:	MOA
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

enforcement in line with its mission and the laws passed by Congress. As a result, aliens who are identified as illegally present or otherwise removable through any legally permissible means may be subject to enforcement regardless of their status as a sponsor or potential sponsor.

Question#:	6
Topic:	Deaths in Custody
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: How many adults and children have died in DHS and HHS custody in Fiscal Year 2019?

To your knowledge, how many adults or children have died within one week of release from ICE or CBP custody?

In the cases of individuals who died shortly after being released from custody, please provide information on the length of their detention prior to release?

Response: In Fiscal Year (FY) 2019, as of June 14, 2019, five adults have died in U.S. ICE custody. No children have died in ICE custody in FY 2019 through July 5, 2019.

In FY 2019, as of July 5, 2019, seven adults and three children have died in CBP custody.

ICE and CBP are unable to provide the requested data on cases of individuals who died after being released from custody. Once an alien is released from DHS custody, DHS does not track this data.

Question#:	7
Topic:	Detention Facilities
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: Briefings to Congressional staff indicate that DHS is in various stages of planning, construction and acquisition for additional detention bed space.

Please provide a listing of any current or planned construction, acquisition, or expansion of detention facilities, including location, type of detention facility (i.e., single adult, family, temporary, permanent); the estimated cost of each planned expansion or construction project; the capacity of each planned project; and the timeline and completion date.

Response: The facilities to be used in ICE's Ramp Up plan will house single adults. While many of the negotiations are still underway and the complete costs have not yet been determined, based on current information, ICE estimates the cost to be $90 per bed.

Additionally, ICE has other facility acquisitions in various stages of the procurement process for the Detroit, St. Paul, Chicago, and Salt Lake areas of responsibility. At this time, ICE does not have any cost information for these facilities.

Question: Please also provide information on the appropriations funds or account being used to construct such facilities.

Response: When the acquisition of new bed space or access to a new facility is required, ICE enters into service contracts using funds from its Operations and Support account to do so. None of the facilities being brought online by ICE are being constructed by the agency.

Question: Is the Department working with any other Federal agencies to construct the new facilities? If so, please state which ones, and what their role in the project is.

Response: ICE has limited construction authority and is not constructing any new facilities.

Question#:	8
Topic:	UACs at Homestead
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: The Homestead facility in Florida is considered a "temporary influx care facility" that houses unaccompanied minor children. Because the facility is located on federal property, it is not required to obtain a license from the state of Florida.

How long, on average, are children being detained at Homestead?

Response: ICE notes that the facility described above is run by HHS and defers to HHS to provide the requested information. Additionally, ICE notes that absent exceptional circumstances, it transfers unaccompanied alien children to HHS no later than 72 hours after determining the child is a UAC, pursuant to the *Trafficking Victims Protection Reauthorization Act of 2008*.

Question#:	9
Topic:	E.O. Report
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 24, 2017, the President issued a Presidential Proclamation on Enhancing Vetting Capabilities and Processes for Detecting Attempted Entry Into the United States by Terrorists or Other Public-Safety Threats. The Proclamation was in addition to Executive Order 13780, and it banned the entry of foreign nationals from predominantly Muslim-majority countries.

In section 4(a) of the Proclamation, "The Secretary of Homeland Security shall, in consultation with the Secretary of State, devise a process to assess whether any suspensions and limitations imposed by section 2 of this proclamation should be continued, terminated, modified, or supplemented." Section 4 requires the Secretary of Homeland Security to submit a report to the President every 180 days on updates for the travel restrictions. Last year, Chad was removed from the list after the required 180-day review.

When is the next report due to the President? Has the required report been submitted every 180 days since the Proclamation was issued? If not, how many reports have been done since the Proclamation was issued?

Would you consider disclosing the latest report to this Committee?

Since the Proclamation was ordered, has it increased public safety? If so, please explain how.

How many waivers been granted to foreign nationals?

Response: As required by Presidential Proclamation 9645, the Secretary has submitted a report to the President every 180 days since its issuance assessing whether any of the suspensions and limitations imposed by section 2 of the Proclamation should be continued, terminated, modified or supplemented. The most recent report was submitted by the applicable September 24, 2019 deadline. For further inquiries regarding this submission, DHS refers the Committee to the White House.

The process of evaluating and engaging all countries with respect to established information sharing requirements has ensured additional, relevant information is available for DHS's border and immigration screening and vetting programs. For example, DHS has observed that foreign governments have notably improved reporting of lost and stolen passports to Interpol, a form of information sharing critical to DHS's ability to detect fraudulent travel documents. Engaging countries on information sharing

Question#:	9
Topic:	E.O. Report
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

requirements has also helped identify foreign governments that may be willing to work with DHS on border screening and vetting issues. Lastly, the regular review process required by the Proclamation assists DHS in prioritizing prospective foreign partnerships and allows the Department to better align its resource allocations against risk.

The U.S. Department of State (DOS), Bureau of Consular Affairs is responsible for administering the waiver process. Therefore DHS defers to DOS regarding the number of waivers granted.

Question#:	10
Topic:	Census Cybersecurity
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: In the Fiscal Year (FY) 2020 budget request, the Cybersecurity and Infrastructure Security Agency's (CISA) funding has remained flat from Fiscal Year 2019. In their FY2020 mark this week, House appropriators increased DHS CISA's budget by $408 million, more than the administration's request.

As you know, 2020 is an important year. Not only will we hold a presidential election, but the Department of Commerce must carry out the 2020 Decennial Census, which will be the first to be done electronically.

Please speak about CISA's efforts to ensure the cybersecurity of these two activities.

Please describe the Department's efforts to ensure the cybersecurity of the 2020 census, in particular personally identifiable information (PII)?

To your knowledge, will the Census Bureau be using advanced encryption standards to protect the sensitive personal information that is collected and stored on the network?

Response: The Department of Homeland Security's Cybersecurity and Infrastructure Security Agency (CISA) plays a leading role as the federal government's cybersecurity agency to provide operational and technical assistance to the U.S. Department of Commerce (DOC). The census is conducted by the DOC, which is ultimately responsible for securing its systems and managing risk.

CISA is supporting DOC and the Census Bureau's (Census) risk management efforts to secure the Census infrastructure. CISA is supporting cybersecurity readiness, operations and coordination leading up to, during, and following the 2020 Census, as follows:

- **Steady State Readiness** - CISA's steady state operations support includes preparatory activities to support DOC and Census efforts to evaluate and improve their cybersecurity planning and coordination to ensure robust interagency operations support.
- **Census Execution Enhanced Coordination** – CISA's enhanced coordination support efforts align with 2020 Census operation timelines and include ongoing operational support in an effort to prioritize any cybersecurity threats or vulnerabilities impacting 2020 Census activities.
- **Post-Census Execution Enhanced Coordination Closeout** - CISA will transition to the Post-Census Execution Enhanced Coordination Phase after 2020

Question#:	10
Topic:	Census Cybersecurity
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Census concludes, decreasing various support over timeline yet to be solidified with DOC and Census.

CISA's goals to support Census are:

- To provide DOC and Census with supporting services and subject matter experts that enable effective risk management for the 2020 Census;
- To support Census systems security enhancements, system readiness and resilience of critical Census systems, through the provisioning of security assessments, alignment with CISA-centric requirements, and cybersecurity best practices;
- To assist DOC and Census security program enhancements by ensuring routine, active coordination with CISA teams and facilitating ongoing and Census-relevant cyber information sharing and intelligence; and,
- To coordinate enhanced operational support to DOC and Census during the active period of the 2020 Census.

Protecting personally identifiable information (PII) is a critical concern for the 2020 Census. CISA is working with DOC and Census to ensure that CISA capabilities are available to support DOC and Census efforts to reduce the risk of PII exposure. CISA technical assessments conducted in response to DOC and Census request, include assessing for vulnerabilities and various protections employed to protect data collected by Census, which may include PII. All findings discovered at the time of the assessments are provided to DOC and Census leadership, along with recommended courses of action to address the findings. In addition, the CISA staff who are working to support the 2020 Census, that may potentially be exposed to Census data, are required to undergo a validation of the authorities covered by their security clearance, swear a lifetime oath per 13 U.S.C. to protect the confidentiality of all of the PII and other data collected and maintained by the Census Bureau to which they might be exposed, and take a mandatory data stewardship training administered by the Census Bureau.

CISA's Continuous Diagnostics and Mitigation (CDM) program is providing tools and services to CENSUS. It has already deployed a network cyber modeling capability creating a map of CENSUS's networks. In addition, it is expanding coverage of Asset Management capabilities to account for the growth of assets for the Decennial; providing implementation services to upgrade existing Network Access Control (NAC) for all devices throughout the CENSUS enterprise.; and conducting Incident Response Plan Reviews in preparation for any incidents to which CENSUS may have to respond.

Question#:	10
Topic:	Census Cybersecurity
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

CISA defers to DOC and the Census Bureau for the Census-related information. They are the primary responsible parties to develop and implement an architecture and specific technologies related to protecting the 2020 Census and associated data.

Regarding U.S. elections, they are more resilient now because of the progress DHS, state, and local officials have made since 2016. Through the Election Infrastructure Subsector (EIS) formally established in January 2017, DHS has worked with federal, state and local election infrastructure partners to establish the EIS Government Coordinating Council (GCC), which is a representative council focused on sector-specific strategies and planning. Additionally, the Election Infrastructure Information Sharing and Analysis Center (EI-ISAC) was established in February 2018 pursuant to a cooperative agreement with CISA, to allow stakeholders to share cyber threat information. All 50 states and more than 1,800 jurisdictions have signed up for this service.

Furthermore, CISA is providing voluntary assistance, such as vulnerability scanning, risk and vulnerability assessments, on-site or remote hunt and incident response assistance, sharing actionable information via the El-ISAC, and providing funding for sensors that enable EI-ISAC to detect intrusions on election infrastructure networks (ALBERT sensors). ALBERT sensors are present on election infrastructure in all 50 states, 97 localities, and 2 territories.

CISA and our state and local government and private sector partners have made significant progress toward election infrastructure security and resilience. Key accomplishments include improving the information sharing environment by EI-ISAC; developing new training and assessments to support election officials; conducting two National Election Tabletop Exercises; granting security clearance to more than 130 state and local election officials and vendors; partnering with the Intelligence Community to share classified information with election infrastructure stakeholders on multiple occasions; and implementing virtual National Cybersecurity Situational Awareness Rooms on election days (and in-person classified and unclassified rooms for the 2018 midterms) to facilitate rapid information sharing and provide election officials with virtual access to the 24/7 operational watch floor of CISA.

CISA's goals for 2020 include promoting auditability as a security practice; improving the efficiency and effectiveness of audits; incentivizing the patching of election systems; and working with states to develop current and target cybersecurity profiles using the NIST Cybersecurity Framework.

In conjunction with the Federal Bureau of Investigation (FBI) and the Office of the Director of National Intelligence (ODNI), DHS sponsored classified briefings for election

Question#:	10
Topic:	Census Cybersecurity
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

officials from all 50 states, and for all House Members, Senators, and their staffs. These briefings focused on increasing awareness of foreign adversary intent and capabilities against the states' election infrastructure, as well as discussing threat mitigation efforts.

CISA has also worked with the private sector vendor community to establish a corresponding Sector Coordinating Council. This council is broadly representative of the election industry community and serves as the primary coordination point between the Federal Government and the private sector on election infrastructure.

These are a number of activities that CISA is conducting related to the Census 2020 and Election 2020 efforts.

CISA defers to DOC and the Census Bureau for the Census-related information. They are the primary responsible parties to develop and implement an architecture and specific technologies related to protecting the 2020 Census and associated data.

Question#:	11
Topic:	Domestic Terror Threats
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: Violence by domestic extremist groups is on the rise. The President's FY2020 budget request asks for less than $3 million for the Office of Terrorism Prevention Partnerships-an office that has reportedly changed names several times during this administration.

How will the Department, under your leadership, work to identify these domestic terror threats with the current budget?

Response: With the establishment of the Office for Targeted Violence and Terrorism Prevention (TVTP), which incorporates the Office of Terrorism Prevention Partnerships, DHS is moving to a federated, whole-of-DHS approach to address all forms of terrorism in the homeland. TVTP is a programmatic office that will also serve to coordinate prevention efforts across the Department. This will better allow DHS to leverage the full range of its tools, capabilities and resources to prevent acts of targeted violence and terrorism from occurring in the homeland.

Currently, all TVTP positions work both domestic and foreign terrorist movements. Now that the DHS Counterterrorism Strategy is complete, portfolios are being reassessed, which may result in dedicating individuals to addressing specific terrorist movements or groups. We would be happy to provide a briefing to you to discuss how the office and its lines of effort will be adjusted.

In September 2019, DHS introduced its "Strategic Framework for Countering Terrorism and Targeted Violence," which explains how the Department will use the tools and expertise that have protected and strengthened the country from foreign terrorist organizations to address the evolving challenges of today. Our first guiding principle highlights how we must understand and adapt to the threat environment: as threats against the Homeland evolve, the Department must adapt its intelligence capabilities to new security landscapes and craft innovative responses.

We are working on an implementation plan now, and will follow with a public action plan, explaining to the American people in greater detail how we will accomplish our strategic goals. We look forward to working with Congress to demonstrate how we will reinvest in programs and efforts that have enhanced our security, while incorporating key strategic changes that will allow us to address the threats we currently face.

Currently, the draft Senate homeland security appropriation bill contains a $17.5 million increase for TVTP that the Acting Secretary has requested. Should that become law,

Question#:	11
Topic:	Domestic Terror Threats
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

TVTP would obtain an additional 16 personnel as well as re-establish its prevention grant program. Of these positions, 8 would serve a field-deployed staff supporting locally-based prevention efforts, 4 would serve as grant managers overseeing the grant program, and 4 would serve as program analysts supporting an expanded awareness briefing campaign. Of the funds, $10 million would go into the prevention grant program.

Question#:	12
Topic:	White Supremacists
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Thomas R. Carper
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the Office of Terrorism Prevention Partnerships doing to address threats from all extremist groups, including white nationalists and white supremacists?

To your knowledge, has the threat of violence from white supremacy groups subsided or grown in the past year?

Response: The Office for Targeted Violence and Terrorism Prevention (TVTP), which incorporates the Office of Terrorism Prevention Partnerships, widens the scope of previous efforts by ensuring that all forms of violent extremism or targeted violence that threaten homeland security, regardless of the grievances driving them, are addressed. TVTP field staff deliver trainings and technical assistance to support the development of local prevention frameworks. The Office also engages key local stakeholders (e.g., civil society groups, mental health professionals, non-profit organizations, academia, law enforcement agencies, social services, and other government offices) to develop the trust and information sharing that is critical to forming effective prevention frameworks

We learned a lot from our experience with Countering Violent Extremism (CVE) programs across DHS. TVTP will build upon what works best and introduce new programs institutionalizing some of the innovative programs developed by state and local partners funded through DHS's CVE Grant Program. We will continue with the multiple terrorism prevention programs we were running with TVP's DHS partners including the Office for Civil Rights and Civil Liberties (CRCL), the Federal Law Enforcement Training Centers, and others —such as public awareness campaigns, community engagement, training for state and law enforcement, and engagement with the private sector to combat terrorist use of social media—but now we will also address targeted violence.

It is also worth noting that DHS established TVTP in response to what we are hearing from our state and local partners: Right now, targeted violence is as much a concern as terrorism, and the tools that can help prevent these acts are similar for both. TVTP will also allow us to better coordinate and leverage the full range of DHS's tools, capabilities and resources under a clearly defined set of priorities.

The DHS Strategic Framework for Countering Terrorism and Targeted Violence elucidates the nature of today's domestic challenges and, in particular, the dangers of white supremacist violent extremism.

Post-Hearing Questions for the Record
Submitted to the Honorable Kevin K. McAleenan
From Senator Maggie Hassan

"Resources Needed to Protect and Secure the Homeland"

May 23, 2019

Question#:	13
Topic:	DHS Fusion Centers
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Do DHS Fusion Centers receive information regarding the upcoming release of terrorist offenders from the Bureau of Prisons or Probation and Pretrial Services? What is your process for sharing this information with local authorities?

Response: Since the Bureau of Prisons is run by the Department of Justice (DOJ), this question should be deferred to DOJ. However, I&A does actively promote the sharing of this type of information with local authorities. As of April 2019, the Office of Intelligence and Analysis (I&A) has partnered with the Bureau of Prisons Counter Terrorism Branch (CTB) to make products available to the state and locally owned National Network of Fusion Centers (NNFC) via the Homeland Security Information Network-Intelligence (HSIN-Intel) community of interest (COI), including advisories, intelligence summaries, and release rosters.

The HSIN-Intel COI is located on HSIN and has been designated as the official unclassified platform for the NNFC for intelligence and information sharing. The purpose of HSIN-Intel is to provide intelligence stakeholders across the Homeland Security Enterprise with a secure platform for effective, efficient, and timely collaboration and sharing of information, data, products, analytic exchange, and situational awareness. HSIN-Intel is a vetted community of intelligence professionals from homeland security, intelligence, and law enforcement communities at all levels of government who share homeland security-related information and analyses in order to address threats to the Homeland.

Question#:	14
Topic:	Domestic Terrorism
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Does DHS have a 2019 strategy specifically addressing the rise in domestic terrorism (i.e. non-Foreign Terrorist Organization) threats?

If so, please provide a copy of this strategy.

What percentage of the Department's budget is specifically dedicated to address domestic terrorism? Please provide a breakdown of funding allocated to domestic terrorism in 2019 and for the past 10 years.

Response: Domestic terrorism is a key issue addressed in the new DHS Strategic Framework for Countering Terrorism and Targeted Violence. It also contains a significant discussion of how a whole-of-society approach will be implemented to prevent individuals from mobilizing to violence in the name of any ideology.

Combating and mitigating potential acts of violence and terrorism focuses on defeating the techniques, tactics, and procedures (TTPs) used by terrorists inspired by all ideologies. While our Department has a number of professionals with expertise in understanding particular subsets of terrorists, our counterterrorism approach does not, generally, target specific groups so much as the TTPs (online radicalization, social media distribution, etc.) and avenues all terrorists may use to conduct attacks (i.e. aviation security, transportation security, etc.). We implement this approach by hardening our trade and travel systems and empowering our personnel and State and Local partners to be more aware of the nature of the threat and the TTPs that present vulnerabilities to the Homeland.

Subsequently, we do not have firm statistics as to the percentage of personnel time and other resources that were used to combat domestic terrorism in particular. The *Homeland Security Act of 2002*, as amended, assigns the Department a number of "primary missions," including the mission to "prevent terrorist attacks within the United States," to "reduce the vulnerability of the United States to terrorism," and to "minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States." Unlike Title 18 of the U.S. Code, which does distinguish between "international" and "domestic" terrorism in a definitional section, the Homeland Security Act does not draw any such distinction, instead providing a general definition of terrorism without explicit reference to either an international or domestic nexus.

Consistent with the Act's broad focus on "terrorism" generally, without limitation to specific types or origins of potential terrorist threats or activities, the Department's broad

Question#:	14
Topic:	Domestic Terrorism
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

terrorism prevention authorities apply equally to the prevention of international or domestic terrorism. To continue the example above, the Department's authorities related to transportation security—including, for example, its passenger and cargo screening authorities and its authority to issue transportation security directives and regulations in emergency situations—do not distinguish between international or domestic terrorism, allowing the Department to ensure the security of the transportation system without limiting its focus to a particular strain or origin of a potential threat.

Question#:	15
Topic:	Intelligence Analysts
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Are there intelligence analysts at DHS headquarters tasked with the primary responsibility of covering domestic terrorism? If so, how many? Please also provide this number for the previous 10 years.

Response: There are intelligence analysts and officers at DHS Headquarters and in the field with the responsibility of covering domestic terrorism. This includes DHS intelligence personnel assigned to the DHS Counterterrorism Mission Center, the US Government's National Counterterrorism Center (NCTC), and the Federal Bureau of Investigation (FBI), who is the lead for the US Government regarding the Domestic Terrorism threat. The specific number of personnel with responsibility to cover terrorism, domestic or otherwise, is classified. I&A would be happy to provide a classified briefing on this matter, to include the historical evolution of DHS's resources covering this threat.

The following represents the approximate percentage of I&A's finished intelligence production disseminated from the counterterrorism mission that addressed domestic terrorism:

Fiscal Year	FY14	FY15	FY16	FY17	FY18	FY19*
Percentage of Production	3.8%	2.3%	2.8%	3.4%	1.5%	4.9%

*FY19 reflects data through September

The following represents the approximate percentage of I&A's tactical intelligence reports that addressed domestic terrorism:

Fiscal Year	**FY14**	**FY15**	**FY16**	**FY17**	**FY18**	**FY19***
Percentage of Reporting	<1%	<1%	<1%	3.4%	10.5%	10.5%

*FY19 reflects data through September

I&A's realigned focus on mission centers has allowed for increased efficiencies for CTMC and OSCO staff, as well as the over 100 deployed intelligence operations specialists, to continue to support production and reporting associated with domestic

Question#:	15
Topic:	Intelligence Analysts
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

terrorism. The personnel support the development of products or reports that addresses a wide range of threats, and in some cases are managed at the regional or local level. The number of personnel devoted to a particular threat ebbs and flows based on the threat environment.

Additionally, I&A administers the Homeland Security Information Network-Intelligence (HSIN-Intel), a secure web-based portal for sharing intelligence products. Through HSIN-Intel, I&A is able to support the widest dissemination of its intelligence products. HSIN-Intel currently makes available over 42,000 products, including hundreds of products focused specifically on domestic terrorism. Of these 42,000+ products, 11,500 were shared in 2019 resulting in over 91,000 views, representing a 133 percent increase in average products shared per month from 2016-2019.

I&A will continue to increase its efforts to produce strategic and tactical intelligence, in close partnership, as appropriate, with NCTC and the FBI on priority domestic terrorism topics.

Question#:	16
Topic:	Domestic Terrorism Staff
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: How many policy and program staff do you have Department-wide looking exclusively at domestic terrorism as of May 2019? Please provide an office breakdown. Please also provide this number for the previous 10 years.

Response: The Department has numerous prevention and protection efforts that counter terrorism and targeted violence. By design, these efforts use an all-threats, capabilities-based approach focused on threat identification and prevention through the targeting of cross- threat indices of radicalization and/or movement towards action to ensure DHS and its partners are able to preempt or counter threats, regardless of how they may evolve.

These capabilities have been used to address domestic terrorism, along with all other threats, since 2009. However, we do not have firm statistics as to the percentage of personnel time and other resources that were used to combat domestic terrorism in particular.

Below we provide information about the programs and activities that have been used to combat domestic terrorism. Where we can provide information about resourcing and other programmatic changes during the past 10 years, we do so. Please note, the answers that follow are not tied to a specific domestic terrorist ideology or perpetrator, as they are focused on the identification of multi-threat indices of radicalization and/or movement towards violence.

The information below is organized by the following categories: Prevention Programs, Protection Programs, and Law Enforcement Investigations. The first two categories seek to provide support to our partners in the field – state, local, tribal, and territorial governments, non-profit organizations, including houses of worship, and the private sector – as they carry out prevention and protection activities. The latter set of activities are those for which the Department contributes directly to the combatting terrorism mission.

Prevention Activities:

With the formation of the Office for Targeted Violence and Terrorism Prevention (TVTP), DHS will have a more coordinated approach to the threat from domestic terrorism. TVTP has several predecessor offices -- the DHS Office of Terrorism Prevention Partnerships (OTPP), established on November 27, 2017, by former DHS

Question#:	16
Topic:	Domestic Terrorism Staff
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Acting Secretary Elaine Duke, and the DHS Office for Community Partnerships (OCP), established September 28, 2015, by former Secretary Jeh Johnson. But aspects of TVTP's work trace its roots to efforts and programs launched by CRCL in 2006. See chart below for a historical record of resources and personnel dedicated to these efforts:

Fiscal Year	Office Name	Appropriated FTE	Non-reimbursable Detailees	Contractors	Appropriated Funds ($ m)	Reprogrammed Funds ($ m)	Grant Funds ($ m)
FY14 and Before	CVE Working Group	NA	NA	NA	$0.0	NA	$0.0
FY15	Office of the CVE Coordinator	NA	5	0	$0.0	$1.5	$0.0
FY16	Office for Community Partnerships	12	3	0	$3.1	$8.6	$10.0
FY17		16	10[1]	25[2]	$3.5	$0.0	$0.0
FY18	Office of Terrorism Prevention Partnerships	12	1	0	$2.9	$0.0	$0.0
FY19	Office for Targeted Violence and Terrorism Prevention	14	0	0	$2.8	NA	$0.0
FY20 House Mark-up		12	NA	NA	$2.8	NA	$0.0

[1] Not all detailees performed for the entire fiscal year.
[2] This is a total number of individuals assigned to DHS HQ Office Space or Field locations, others provided deliverable from off-site and cannot be counted accurately. Not all individuals were assigned to DHS locations performed for the entire fiscal year.

Question#:	16
Topic:	Domestic Terrorism Staff
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

As a mission area, prevention is the least mature of the preparedness spectrum (i.e., prevention, preparedness, mitigation, response, recovery). The establishment of TVTP allows DHS to work more strategically, leveraging the Department's many activities – described below - to better prevent acts of targeted violence and terrorism.

Currently, TVTP manages an existing grant program and coordinates policies, strategies, plans, and programs that address domestic terrorism. Examples of some of the work include domestic terrorism awareness briefings and training for law enforcement, communities, and social media companies and engagement with private sector partners to counter domestic terrorism content on the internet. TVTP is developing the Department's prevention framework, which will outline future lines of effort and roles and responsibilities for those activities. We are also examining some of the legal challenges that inhibit our ability to combat domestic terrorism in the same way we can counter international terrorism. We look forward to working with Congress to explore ways in which we can address these challenges, while also maintaining privacy and civil rights and civil liberties.

Below is a table with a more detailed listing of prevention programs, descriptions, the nexus to domestic terrorism prevention efforts, and the DHS Offices and Components which conduct the work:

Prevention Activities	Notes	DHS Components
Community Engagement *(began 2006)*	▪ Formal and structured prevention-related activities began in 2006. ▪ Community Roundtables bring together leaders from diverse communities to capture the issues, concerns and ideas of the communities most affected by DHS programs and policies. ▪ National phone calls hosted by the Incident Community Coordination Team (ICCT) offer opportunities for communities to engage with DHS in the aftermath of an incident. ▪ DHS is currently engaging with communities affected by DT violence.	CRCL

Question#:	16
Topic:	Domestic Terrorism Staff
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Research for Prevention (began ~2006)	▪ DHS funds research on terrorism prevention and conducts evaluations of terrorism prevention programs. ▪ Efforts include supporting Centers of Excellence, sponsoring original research, evaluating promising practices, and convening academic and subject matter experts from around the world to contribute to evidence-based practices and programs for DHS. ▪ National Threat Assessment Center (NTAC) conducts research on targeted violence and mass attacks and developed the Threat Assessment model that is used to assist schools, government agencies, and law enforcement in developing targeted violence prevention plans.	S&T, USSS, PLCY/TVTP
Information Sharing for Prevention (began *~2008)*	▪ DHS conducts open source research and provides analysis and shares information on DT to state and local law enforcement as well as other stakeholders. ▪ DHS has produced homeland security reference aids on domestic violent extremist movements. ▪ DHS has maintained and updated a Web Portal on the Homeland Security Information Network (HSIN), which allows us to conduct outreach efforts and share information with our Federal, State, Tribal, Territorial, Private Sector, Academia, and International partners as appropriate. ▪ NTAC disseminates reports and guides, conducts trainings, and provides consultations on all forms of targeted violence, including DT, to law enforcement and other public safety partners.	I&A, USSS

Question#:	16
Topic:	Domestic Terrorism Staff
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Training: Awareness Briefings & Exercises *(began ~2009)*	▪ DHS began delivering awareness briefings to communities about radicalization and mobilization to violence around 2009. ▪ Briefings have since evolved and developed for additional including law enforcement and social media companies, incorporating all forms of terrorism. ▪ DHS has also funded training providers to develop courses for law enforcement that helping students to identify threats, to include those from DT movements. ▪ In 2017, the DHS-hosted interagency CVE Task Force commissioned a specifically designed DT version of the Community Awareness Briefing.	CRCL, FEMA, FLETC, USSS, TVTP, I&A
Public Awareness (began 2010)	▪ The "If You See Something, Say Something®" campaign educates and encourages the public to report suspicious activity.	OPE
Field Staff / Regional Coordinators *(began 2011)*	▪ DHS deployed its first representative deployed to conduct CVE engagement and coordinate regional efforts in 2011. ▪ In 2017, DHS piloted deployment of field staff deployment to 16 cities nationwide. ▪ Supported the development local and statewide frameworks to prevent all forms of terrorism.	PLCY/TVTP
Grants & Technical Assistance *(began 2016)*	▪ Congress authorized a first-of-its-kind CVE Grant Program for 2-year period of performance. ▪ 15 of 25 law enforcement and NGO grantees are performing projects to address DT.	FEMA, TVTP

Question#:	16
Topic:	Domestic Terrorism Staff
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Tech Sector Engagement & Preventing Terrorist Use of the Internet *(began 2017)*	▪ In 2017, DHS increased its engagement with social media companies to address terrorist use of the internet by international and domestic actors. ▪ DHS also supported development of the first Digital Forum on Terrorism Prevention, created in 2017 to build the capacity of credible non-government voices against terrorism. ▪ The Third Digital Forum in late 2018 had a higher ratio of community partners in the audience and a greater focus on domestic terrorist movements than the prior two events.	PLCY/TVTP

Protection Activities:

Many of the Department's domestic terrorism capabilities help protect soft targets, such as schools and houses of worship, from potential attacks. The DHS protection mission includes, but is not limited to, the following:

- DHS's Cybersecurity and Infrastructure Security Agency (CISA) develops and shares active shooter preparedness resources, including instructional videos, guides, pamphlets, and posters, which are available on DHS's active shooter preparedness website – www.dhs.gov/active-shooter-preparedness – and are tailored to first responders, security professionals, and private citizens. A number of these resources are available in nine different languages. These resources address a variety of topics, such as tips for recognizing signs of potential workplace violence, how to develop an emergency action plan, actions that may be taken during an active shooter situation, and strategies to aid in recovery from an incident. Since its creation in 2012, the website has received more than two million views.

One of the more widely-used training courses developed by the Department is "*Active Shooter: What You Can Do*." This one-hour course, which is available online through the Federal Emergency Management Agency's (FEMA) Emergency Management Institute, provides non-law enforcement individuals with recommended actions to take if faced with an active shooter situation. Since its release in 2011, nearly 900,000 people have completed the course.

- In addition to online training, CISA offers in-person, scenario-based workshops featuring facilitated discussions to engage private sector

Question#:	16
Topic:	Domestic Terrorism Staff
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

professionals and law enforcement representatives from federal, state, and local agencies on how to prepare for and respond to an active shooter situation. The eight-hour workshops incorporate interactive sessions, hands-on planning, and first-hand accounts of survivors and responders to help participants evaluate current response plans and capabilities and develop coordinated responses to active shooter incidents. Since its initial offering in 2011, the Department has conducted more than 260,270 workshops involving over 35,000 participants.

- Additionally, located across the country, CISA's Protective Security Advisors are security subject matter experts who advise and assist public and private sector partners in enhancing security and resilience. Many of these activities address active shooter preparedness, to include facility risk assessments, briefing strategies for mitigating the impacts of an active shooter event, and local and regional active shooter exercises.

- CISA also conducts approximately 25 exercises annually on a variety of scenarios, with active shooter scenarios as one of the more frequently requested scenarios. The Department also provides resources to assist the public and private sectors to conduct their own tabletop active shooter exercises. These "tabletop in a box" exercises allow users to leverage pre-built exercise templates and tailor them to specific needs in order to assess, develop, and update emergency plans, programs, policies, and procedures.

- FEMA and the Federal Law Enforcement Training Centers (FLETC) also offer training for law enforcement and first responders. These training programs cover a wide range of topics, such as active shooter response, incident management, and tactical medical care. In addition, the Department has also developed and deployed a virtual training platform to assist first responders to create and practice response plans and tactics for active shooter events. The Enhanced Dynamic Geo-Social Environment—or "EDGE"—virtual training platform allows first responders to role- play complex scenarios in a virtual environment, improving and reinforcing coordination, communication, and critical decision-making skills.

- In addition to our training and capacity-building roles, the Department's Federal Protective Service secures over 8,500 federally- owned and leased facilities, including approximately 3,000 public-facing federal facilities that provide a benefit or direct service to citizens (e.g., Social Security

Question#:	16
Topic:	Domestic Terrorism Staff
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Administration buildings, Armed Forces Recruiting Centers) and transportations hubs located adjacent to or near federal facilities. Services provided include tenant engagements to identify and mitigate potential threats and vulnerabilities, review and rehearsal of facility emergency plans, and active shooter and workplace violence awareness training for tenants.

- In its role as chair of the Interagency Security Committee (ISC), the Department coordinated the development of *Planning and Response to an Active Shooter: An Interagency Security Committee Policy and Best Practices Guide*, published in 2015. This guide streamlined existing ISC policy on active shooter incidents into one cohesive policy and guidance document to enhance preparedness for an active shooter incident at non-military federal facilities. Many of the principles included in the ISC guide can be found in other guidance materials the Department has developed for other types of infrastructure, such as the *Primer to Design Safe School Projects in Case of Terrorist Attacks and School Shootings*, the *Protective Measures Guide for the U.S. Outdoor Venues Industry*, and the *Guide for Developing High-Quality Emergency Operations Plans for Houses of Worship.*

- The Non-Profit Security Grant Program, administered by FEMA, which is designed to protect non-profit organizations' facilities, including houses of worship, from terrorist attack by providing up to $100,000 in physical security enhancements.

- CRCL engages with communities affected by domestic terrorism violence and supports the design and delivery of awareness briefings and exercises as well as providing awareness briefings targeted specifically to law enforcement.

- The U.S. Secret Service's National Threat Assessment Center (NTAC) conducts research, training, consultation, and information sharing on targeted violence with law enforcement and other public safety partners. NTAC's research has included targeted violence incidents directed against the government and military, law enforcement, houses of worship, and schools. NTAC also provides training programs for law enforcement, government agencies, school personnel, and others on preventing targeted violence in their communities. NTAC has provided training to over

Question#:	16
Topic:	Domestic Terrorism Staff
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

155,000 recipients on threat assessment and prevention best practices, and offers consultative services to a variety of entities, including federal, state, and local government agencies, law enforcement, schools/school districts, and policymakers.

Law Enforcement Investigations:

The Department of Justice, the Federal Bureau of Investigation, and state and local law enforcement have the lead for investigating and prosecuting domestic terrorism cases. DHS, however, is the largest federal contributor to FBI's Joint Terrorism Task Forces (JTTF), providing personnel from CBP, ICE/HSI, and USSS. These personnel, when appropriate and requested by JTTF leadership, use their authorities and capabilities to support domestic terrorism investigations.

At the tactical level, law enforcement and intelligence personnel may be assigned to work on a taskforce or a case that addresses a particular threat, (e.g., racially/ethnically motivated violent extremist group planning an attack, a designated transnational criminal network, a human trafficking ring, or an attack plot of a foreign terrorist organization). These assignments are often threat-based, case-driven, and managed at the local field office level. The number of personnel devoted to a particular threat ebbs and flows on any given day based on the local threat environment. Thus, we are not able to provide a comprehensive list of staff and resources that have supported the countering domestic terrorism mission since 2009.

Question#:	17
Topic:	Domestic Terrorism Grants
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Has DHS funded any grants for this fiscal year that would prevent or combat domestic terrorism?

If so, how many, who are the recipients, and how are funds being used to achieve the goals of combating domestic terrorism?

Response: The Department has not yet settled on grant funding formulas or goals for FY 2020. The CVE Grant Program will largely conclude in early FY2020. The majority of grant recipients in this program have applicability to all forms of violent extremism and therefore address the threat of domestic terrorism. The program specifically references domestic terrorism in the first paragraph of the program description. Following award, with DHS approval, several projects moved from focusing solely on ISIS/Al Qaeda to addressing all forms, in recognition of the changing threat picture.

Many of the prevention activities currently supported by the CVE Grant Program are allowable under FEMA's State Homeland Security Grant Program (SHSGP) and Urban Areas Security Initiative (UASI), including planning, training, exercises, and community outreach and engagement. All SHSGP and UASI grants must have a nexus to terrorism, but generally, the tools and programs that can help prevent terrorism also help prevent acts of targeted violence, so they are eligible under a dual-use case. Funding for non-profits for prevention work has occurred in a few limited instances as sub-grants from the UASI and SHSGP programs, but not in any strategic way. FEMA does provide non-profit houses of worship with grant funds for protective measures under the Non-Profit Security Grant program. In addition, there is no way for non-profits to compete directly for funds for targeted violence and terrorism prevention without the states initiating an opportunity. California has done this one time.

Question#:	18
Topic:	Office for Targeted Violence and Terrorism Prevention
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: What resources will be dedicated to preventing domestic terrorism under the new Office for Targeted Violence and Terrorism Prevention, how many staff will cover domestic terrorism in this office, and who will lead the new office?

How will DHS, through the Office for Targeted Violence and Terrorism Prevention, empower state and local communities while still assessing the issues on a federal level?

Response: With the establishment of the TVTP Office, DHS is moving to a federated, whole-of-DHS approach to address all forms of terrorism in the homeland. TVTP is a programmatic office that will also serve to coordinate prevention efforts across the Department. This will better allow DHS to leverage the full range of its tools, capabilities and resources to prevent acts of targeted violence and terrorism from occurring in the homeland.

Currently, TVTP is allocated 14 full-time, permanent employees and a budget of $3 million. Of these, 11 are either in place or onboarding to join the office, representing an increase over FY 2018 personnel levels. We are working to fill the remaining positions. Given the focus of TVTP to prevent all forms of terrorism, all of these positions work both domestic and foreign terrorist movements. Should the $17.5 in additional funds allocated in the currently-drafted Senate homeland security appropriation bill become law, TVTP would obtain an additional 16 personnel as well as re-establish its prevention grant program. Of these positions, 8 would serve a field-deployed staff supporting locally-based prevention efforts, 4 would serve as grant managers overseeing the grant program, and 4 would serve as program analysts supporting an expanded awareness briefing campaign. Of the funds, $10 million would go into the prevention grant program.

Portfolios within the office will be adjusted now that the DHS CT Strategic Framework is complete; this may result in dedicating individuals to addressing specific violent extremist movements. We would be happy to provide a briefing to you to discuss how the office and its lines of effort will be adjusted.

The director position is currently vacant and is in the hiring process. The acting director is the deputy director and a career senior executive who was previously the acting director of TVTP's predecessor, the Office of Terrorism Prevention Partnerships.

Prevention requires a 'whole-of-society' approach, which DHS facilitates. DHS supports *local* efforts to prevent individuals from mobilizing to violence by engaging state and local government agencies, the private sector, civic and other non-profit organizations,

Question#:	18
Topic:	Office for Targeted Violence and Terrorism Prevention
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

law enforcement agencies and mental health and social services organizations. DHS also funds prevention programs and encourages state and local approach to prevention.

While the existing terrorism prevention programs work with many elements of society outside of government, tapping into existing whole-of-society efforts in cities and states will be a key efficiency. For example, there is a lot of work on violence prevention in many urban areas. Governors have recently taken the lead on school violence prevention, and public health entities are organizing to handle the opioid epidemic. DHS's role will include ensuring that all parts of the country have the capabilities to prevent targeted violence and terrorism as part of an integrated effort.

We learned from our experience with CVE programs. The Office for Targeted Violence and Terrorism Prevention (TVTP) was created to emphasize the importance of preventing terrorist radicalization and recruitment while also countering targeted violence, such as mass casualty shootings and school violence. TVTP is collaborating with other relevant DHS components to identify areas to strengthen and weave integrate the Department's prevention efforts by filling gaps and preventing duplication. Specifically, TVTP:

- Coordinates policies, strategies, plans, and programs that address domestic terrorism, centered on the Department's prevention framework, which will outline future lines of effort and roles and responsibilities for prevention activities.
- Facilitates awareness briefings and training for law enforcement, communities, and social media companies, and engages with private sector partners to counter domestic terrorism content on the internet.
- Leverages field staff to assist states and communities in building prevention programs and statewide frameworks, like in Colorado and California.
- Manages the CVE Grant Program. DHS Grantees are establishing successful intervention, counter narrative, training and resilience prevention programs against terrorism.

DHS established TVTP partly in response to what we are hearing from our state and local partners: Right now, targeted violence is as much a concern as terrorism, and the tools that can help prevent these acts are similar for both. TVTP will also allow us to better coordinate and leverage the full range of DHS's tools, capabilities and resources under a clearly defined set of priorities.

Question#:	19
Topic:	LEO Training
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Since the start of 2019, what training has DHS provided to law enforcement officers on domestic terrorism?

Response: FLETC offers two courses that include information about domestic terrorism:

- The first is Lesson Plan 2601, entitled "*Terrorism*," which is a course contained within FLETC's Center Basic training programs as well as in several advanced and agency-specific training programs.
- The second is Lesson Plan 2841, entitled "*Fundamentals of Terrorism Prevention*," which is a course that was developed in collaboration with the DHS CRCL, with support from the Office for Community Partnerships, a predecessor to TVTP.

Additionally, CRCL and TVTP have provided some limited training for state and local law enforcement officers on DT in the form of the Law Enforcement Awareness Brief (LAB) on Terrorism Prevention. LAB training has been delivered to 375 law enforcement officers in Colorado in recent months.

Several grantees under the Countering Violent Extremism (CVE) Grant Program conduct work related to law enforcement training and fully integrate domestic terrorism into their efforts.

The Cybersecurity and Infrastructure Security Agency's Office for Bombing Prevention (OBP) has conducted 110 Counter-IED & Risk Mitigation training events for 594 participants in the Emergency Services sector since the beginning of FY 2019.

Additionally, 1,438 law enforcement officers have completed Web-based Training (WBT) courses provided by the Office for Bombing Prevention in FY 2019.

Question: If so, what does this training entail?

Response:

- *Terrorism* is a review of the common trends of domestic and international terrorism incidents. The training provides insight to the Office of the Director of National Intelligence (ODNI) National Intelligence Council's key judgments of terrorist threats to the U.S. homeland, the National Security Strategy, the failures revealed by the events of September 11, 2001, and information about domestic terrorist movements

Question#:	19
Topic:	LEO Training
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

and foreign terrorist organizations. This course also identifies social networking operational security, current groups/trends, radicalization methods and material support for terrorist organizations and describes the terrorism prevention strategies for the U.S. homeland as noted in the National Strategy for Homeland Security.

- *Fundamentals of Terrorism Prevention* was designed to prepare law enforcement personnel to provide a LAB on the subject of Terrorism Prevention (TP). The material covers current and relevant material on terrorist/violent extremist activity and trends as well as research-based information on the potential processes of radicalization to violence. Also covered are concepts associated with the law enforcement role in preventing and mitigating terrorism/violent extremism.

- The LAB is a national, multi-part program with a DHS-delivered "training of trainer (ToT)" course that trains local law enforcement instructors to, in turn, deliver the LAB as a jurisdiction-specific, customizable 2 – 5 hour briefing for line officers. The LAB addresses the threat of DT throughout the training. The Denver Police Department uses a portion of its CVE Grant funding to provide a version of the LAB, including elements related to DT, to its officers. Furthermore, the LAB delivered by TVTP field staff in Colorado, has been modified to incorporate the full DT CAB, given the request for additional DT information in that region.

- The Global Peace Foundation has used its CVE Grant to develop prevention-focused training for several audiences in New Jersey including Law Enforcement Professionals (this includes officers, LE agency civilians, prosecutors, judges, and probation and parole officers). The training for law enforcement is a ToT approach and includes domestic terrorism information throughout. It has been custom built to include specific case examples in New Jersey.

- The National Consortium for Advanced Policing is developing an implementation guide for medium and large law enforcement agencies; it fully includes the domestic terrorism threat in its approach and offers information on how training supports an integrated law enforcement effort.

- The Dearborn Police Department offers training to the public, and includes a module on Preventing Domestic Terrorism and Hate Crimes.

Question#:	19
Topic:	LEO Training
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: How many law enforcement officers enrolled and completed this training in 2019?

Response:

- The first iteration of Lesson Plan 2841 (Fundamental of Terrorism Prevention) remains pending, so no enrollment or completion numbers exist.
- The table below contains the 2019 enrollment information for Lesson Plan 2601 (Terrorism):

Program	Checked-In Students	Completed Students	Pending Completion (still in training)
CBP_AMBTP - CBP Air and Marine Training Program	48	24	24
CITP - Criminal Investigator Training Program	641	321	311
ICE_ERO-BIETP - ICE_ERO-Basic Immigration Enforcement Training Program	95	22	71
ICITP - Introduction to Criminal Investigation Training	24	24	0
LMPT - Land Management Police Training Program	46	0	46
UPTP - Uniformed Police Training program	526	191	320
USMP_IS - U. S. Mint Police In-Service	22	0	22
Total	**1402**	**582**	**794**

- FLETC has incorporated the LAB into its courses and, after undergoing the DHS training of trainers, the Denver Police Department has rolled out the LAB training to 225 law enforcement officers during the course of the grant. The DHS field representative in Colorado has provided training to an additional 150 officers in other areas of Colorado from October 2018 – May 2019.
- From August 2017 to March 2019, the Global Peace Foundation has provided training to 761 law enforcement professionals. As a training of trainers model, the grantee has heard from trained individuals their intent to provide it further throughout the state, and is exploring ways to further leverage networks of professionals to expand the reach of the training.

DHS also recently established the National Threat Evaluation and Reporting (NTER) Program within the Office of Intelligence and Analysis to advance law enforcement and homeland security partners' ability to identify, evaluate, and report/share tips and leads

Question#:	19
Topic:	LEO Training
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

linked to emerging homeland security threats, including those associated with potential mass casualty incidents, targeted violence, etc., in addition to terrorism threats. Some of the efforts that the NTER program has taken to combat targeted violence:

- Provides training to assist our law enforcement and homeland security partners to evaluate tips and leads from a behavioral threat-based approach to help identify and prevent potential mass casualty incidents and instances of targeted violence regardless of ideology.

- Established a working group, co-chaired with the United States Secret Service National Threat Assessment Center, of identified subject matter experts from across a wide array of disciplines, including mental health, school safety, prisons, and academia. These subject matter experts assist the NTER Program in developing a training curriculum focused on the application of behavioral indicators and assessments to the review of tips/leads to identify and prevent mass casualty attacks or incidents of targeted violence.

Question#:	20
Topic:	Hate Crime Reporting
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Given the Department's role in training state and local law enforcement nationwide, and the frequent overlap between incidents of domestic terrorism and hate crimes, how is DHS supporting interagency efforts to increase hate crime reporting?

Response: CRCL is supporting interagency efforts to increase hate crime reporting in the following ways.

CRCL conducts regular Community Engagement Roundtables that help develop standing relationships and trust with civil society. In FY 2018, CRCL conducted 75 roundtables. During many of those, CRCL continued to support interagency efforts to increase hate crimes reporting by working with the U.S. Department of Justice Civil Rights Division, the Federal Bureau of Investigation, the U.S. Attorney's Office, and state and local law enforcement in conducting presentations on what constitutes a hate crime under federal, state, and local laws. Additionally, CRCL often uses these community engagement roundtables to promote DHS tools designed to help civil society protect against hate crimes and other violence against faith-based institutions and communities, tools such as the security assessments and active shooter trainings available through DHS Protective Security Advisors as well as the FEMA-administered non-profit security grant program.

CRCL also coordinates the Incident Community Coordination Team (ICCT) national conference call mechanism, which allows DHS and our federal partners to engage with impacted communities at the grassroots level in the immediate aftermath of an incident including those that may overlap between domestic terrorism and hate crimes. CRCL convened recent ICCT calls in the immediate aftermath of synagogue attacks in Pittsburgh, Pennsylvania and Poway, California; New Zealand; and the attacks in Sri Lanka. ICCT calls average between 350 to 500 stakeholder participants.

Last, is the LAB on Terrorism Prevention, a training program for state and local law enforcement officers on domestic terrorism and hate crimes. The LAB is a national, multi-part program with a DHS-delivered "training of trainer" course that trains local law enforcement instructors to, in turn, deliver the LAB as a jurisdiction-specific, customizable 2-5 hour briefing for line officers. The LAB addresses the threat of domestic terrorism and hate crimes throughout the training. With the increased awareness that the LAB provides in defining what constitutes a hate crime, national statistics and trends of hate crimes, and how hate crimes are connected to DT, state and local law enforcement are better situated to accurately report hate crimes they encounter. Currently the continuation of this initiative is on hold pending additional funding, however, in FY 2018 FLETC has incorporated the LAB into its courses, and, the Denver

Question#:	20
Topic:	Hate Crime Reporting
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Police Department has rolled out the LAB training to 225 law enforcement officers during the course of its CVE Grant Program grant. Additionally, the DHS field representative has provided training to an additional 150 officers in other areas of Colorado from October 2018 – May 2019.

Question#:	21
Topic:	Bug Bounty Program
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Last year, I introduced legislation with Senators Portman and Harris, the "Hack DHS Act" that became law on December 21, 2018. This law required the Department of Homeland Security to establish a bug bounty pilot program at DHS within 180 days. We will soon hit that 180 day deadline. What is the status of the implementation of Hack DHS and the bug bounty program, and does DHS have the resources it needs to successfully implement this program?

Response: Following the passing of the *SECURE Technology Act of 2018*, DHS began to fulfill the objectives. Two of the main tenets are establishing a Vulnerability Disclosure Program (VDP) and launching a bug bounty pilot (BBP) program. The VDP is in the process of being developed. The policies and procedures are being reviewed by leadership. Supporting systems are being developed and tested. To fulfill the BBP, DHS Office of the Chief Information Security Officer has partnered with CBP, using their established process and contract vehicle leveraging HackerOne.

Post-Hearing Questions for the Record
Submitted to the Honorable Kevin K. McAleenan
From Senator Kyrsten Sinema

"Resources Needed to Protect and Secure the Homeland"

May 23, 2019

Question#:	1
Topic:	Family Reunification I
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: According to the GAO report published in February 2019 titled, "Unaccompanied Children", the government identified 2,816 children separated as of December 2018. Of the 2,816 children, 2,657 children were released and 159 remained in ORR custody.

As ORR is an office within HHS, how has DHS worked to ensure there is interagency coordination efforts in place for successful family reunification?

Response: The Department of Homeland Security (DHS) and U.S. Department of Health and Human Services (HHS) have established a process to ensure parents and legal guardians know the location of their child(ren) and have regular communication after separation up to the point where a family is reunited. As part of the apprehension, inspection, detention, and prosecution process, aliens who enter illegally—both adults and children—are initially detained by U.S. Customs and Border Protection (CBP). Upon completion of processing by CBP, and where a separation occurs, parents are transported to U.S. Immigration and Customs Enforcement custody (ICE) or in the event of criminal prosecution, transported to U.S. Marshal Service custody. The child is then considered to be an unaccompanied alien child (UAC) and is transported to HHS' Office of Refugee Resettlement (ORR). ICE and HHS ORR each play a role in reunification. After it is determined that a child is eligible to be reunited with his or her parent(s) or legal guardian(s), the parent(s) or legal guardian(s) and child(ren) are transported so that they may be reunified.

Question#:	2
Topic:	Referral Notes
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Prior to April 2018, the data systems used by CBP and ORR lacked a field that would indicate a child was separated from their parent versus an unaccompanied child in the system. The February 2019 GAO report noted that CBP and ORR made changes to their data systems to allow them to designate cases in which children were separated from their parents. The report further noted that between April 2018 and August 2018, ORR was not always provided with information on unaccompanied children when children were transferred from CBP to ORR. As such, I am concerned there is a lack of information regarding cases in which children are separated from their families.

Are Border Patrol agents required to include information on whether a child has been separated in the referral the agents send to ORR?

If so, how does CBP ensure that referral notes reflect whether children are separated from their parents versus an unaccompanied child in the system?

If not, why has DHS determined such data is not required?

Response: CBP operates the e3 portal, which serves as the CBP portal to the ICE Enforcement Integrated Database (EID) and the DHS Automated Biometric Identification System (IDENT) to collect and transmit data related to law enforcement activities. e3 collects and transmits biographic, encounter, and biometric data for identification and verification of individuals encountered at the border for CBP's law enforcement and immigration mission.

In the event that CBP separates a family, CBP checks a box in e3, which then generates a form to be sent to ORR. The electronic referral form which the USBP's alien processing system,e3 sends to ORR does not indicate if a child was separated from a parent or legal guardian. However, the form does possess a "referral notes" section where information regarding a family separation may be captured. When a separation does occur while in USBP custody, processing agents will document that in the referral notes. Additionally, the name and alien registration number will be forwarded in the referral notes in order to facilitate reunification. In addition, each USBP sector has a juvenile coordinator that will ensure that any separations are also annotated within the HHS electronic system of record.

The e3 system serves as the CBP portal to the U.S. Immigration and Customs Enforcement's (ICE) Enforcement Integrated Database (EID) and the DHS Automated Biometric Identification System (IDENT) to collect and transmit data related to law

Question#:	2
Topic:	Referral Notes
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

enforcement activities. e3 collects and transmits biographic, encounter, and biometric data for identification and verification of individuals encountered at the border for CBP's law enforcement and immigration mission.

Question: Because of the multiple agencies involved in family reunification, is there a single database that HHS and DHS can access to reference information on children who were separated from their parents as a result of the "zero tolerance" policy?

Response: Although there is no formal shared database, CBP, ORR, and ICE each have dedicated personnel that work together to compile a weekly list of new separations and to update information related to any prior separations. This process has been approved by the judge in the *Ms. L* case as sufficiently documenting separations.

In close coordination with Federal partners, CBP is also developing a Unified Immigration Portal (UIP), an integrated solution that will enable a view of immigration data for agencies across the immigration enterprise and provide access to complete, real-time information on a common platform. The UIP directly improves conditions on the Southwest border by enabling quicker processing times and improving the ability to identify serious offenders and match person centric data across the immigration domain. CBP is working with DHS Components of ICE and USCIS as well as our strategic partners at HHS/ORR and the Department of Justice (DOJ) Executive Office for Immigration Review (EOIR) to accomplish this task. UIP will use a federated approach to sharing of immigration data or 'events.' This allows agencies to manage their domains within the immigration mission, while also accessing an accurate, real-time, unified view of immigration information on a common platform, using technologies such as a Distributed Ledger. UIP will use a phased implementation plan that builds upon the progress made by DHS components that are already working to identify shared events. UIP will allow for increased accuracy and transparency across the immigration domain including better tracking of families, family separations, and unaccompanied children.

Question#:	3
Topic:	Family Reunification II
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: A March 30, 2019 AP article titled, "CBP expected to release an estimated 5,600 migrants in the Valley" notes that from October to February in Fiscal Year 2019, 136,150 families were apprehended at the southern border. If that trend continues, there will be 326,760 family apprehensions for FY19, a more than 200 percent increase from FY18. I am concerned that this increase in family apprehension will further complicate family reunification efforts.

How does DHS interpret the court decision in Ms. L v. ICE that provides a standard to determine when a parent is unfit to take care of the child or presents a danger to a child?

How does DHS work to reunite families after the condition causing the separation, such as a criminal history or illness, is resolved?

Response: As per CBP interim guidance, a parent or legal guardian may be separated from the child if the parent or legal guardian presents a danger to the child. Additionally, in the case where CBP agents or officers identify signs of abuse, neglect, trafficking, or if the parent or legal guardian has a record of violent criminal history, the child will be referred to appropriate entities to assist with providing the necessary care and attention for the child. When a child is separated from a parent or legal guardian, the child generally is considered as a UAC. Absent extraordinary circumstances, UAC must be transferred into the custody of the HHS ORR within 72 hours of the UAC determination. In these cases, the role of ICE is limited to transporting UAC from CBP custody into HHS ORR custody.

After DHS determines that a child is eligible to be reunited with his or her parent or legal guardian, ICE cooperates with its interagency partners, primarily CBP and HHS, to assist in the reunification by transporting the parents or legal guardians and children so that they may be reunified.

Additionally, DHS is unable to comment on the pending *Ms. L.* litigation; however, the parties regularly file Joint Status Reports with the court, which are publicly available.

Question#:	4
Topic:	Port Officer Transfers
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: At the April 9 HSGAC hearing titled, "Unprecedented Migration at the U.S. Southern Border: Perspectives from the Frontline," I asked Randy Howe, Executive Director for Operations at the Office of Field Operations to discuss with me and provide the analysis that was done before port officers were transferred away from ports of entry to assist the Border Patrol in managing the significant migrant flow between ports of entry. Mr. Howe indicated that no such analysis had been done. As you are aware, I am greatly concerned about the impact of the transfers of port officers away from our ports on the flow of trade, security and officer morale. I have heard from port officers in Arizona who regularly work 16-hour days and from community leaders who see long delays in border crossing waits.

What analysis is DHS doing now or planning to do to determine the impact of these transfers of port officers on the flow of trade, port security, and officer morale?

Response: CBP temporarily reassigned 731 CBP Officers from air, sea, and land ports of entry across the nation to lessen the impact to any single location and assist with the current migration crisis by supporting the acute need to take care of children and support U.S. Border Patrol (USBP) operations. Balancing the sourcing of our staffing has allowed CBP to maintain a staffing level to meet the demands of the workload. We continue to look for better, more efficient and effective means of ensuring we respond to our core mission priorities while responding to the migration crisis. Certainly, as I indicated in the hearing, we are eager to get these officers back doing their primary mission.

CBP is actively communicating with our trade partners and other stakeholders in order to address any concerns that may arise and to find ways to minimize any potential impacts of this migration crisis. During this year's surge in migrant apprehensions, we began meeting with business leaders to help them develop business resumption plans in the event of disruptions. As part of this effort, we committed to locally realigning personnel and augmenting service hours to address local disruptions, when feasible, based on workload and resource constraints. Currently, we are reengaging with businesses on their resumption plans and working with local partners to find ways to minimize the impact of this crisis.

Question: Given the reports that as many as 700 port officers have been reassigned away from ports and airports, what adjustments has DHS had to make at land ports of entry to maintain security standards?

Question#:	4
Topic:	Port Officer Transfers
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Response: DHS has asked for surge volunteers to help at the border; that is what we do in a crisis, such as in response to a natural disaster. While we have temporarily reassigned CBP Officers from air, sea, and land ports of entry across the nation, CBP continues to remain vigilant in its security posture throughout the nation. Those officers who remain at the home ports of entry are working to meet the demands of our workload with as little disruption to service as possible while maintaining their border security posture.

Question: What steps is DHS taking to mitigate the impact of overtime shifts on employee morale?

Response: Overtime is utilized to maximize employee resources, as well as for seizure/arrest processing that goes beyond an Officer's regular duty hours. Maximization of employee resources provides the agency with greater flexibility to ensure there are enough frontline personnel assigned to address peak travel times and increased workloads and that we also have the appropriate number of personnel to maintain our core mission of anti-terrorism and border security.

The following describes how OFO currently assigns overtime:

- Backfills to maintain minimum daily staffing levels to address regular and reccurring workload (backfills are usually required when Officers are on leave, attending training, and/or are TDY to another port);
- For non-24 hour ports of entry, after-hours international flight and/or vessel arrivals that require CBP processing;
- During peak seasons (traditionally in the summer), augmentation of regular staff to address increased passenger workload;
- During Special Operations that address specific threats (terrorism and/or narcotic);
- Detentions of potential violators who are found to be inadmissible and need to be transported to overnight facilities (until they are scheduled to depart on a subsequent date);
- Detentions of potential internal narcotics couriers who are transported to a medical facility until they pass all of their ingested contraband; and
- Seizure and arrest processing.

Each Port Director is required to monitor his/her overtime budget and overtime plans to mitigate any impact from additional overtime shift needs on employee morale.

Question#:	5
Topic:	Coordinating with NGO's and Communities
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Local Non-Governmental Organizations (NGOs) and communities have played critical roles in helping our nation manage the ongoing migrant crisis. The NGOs and communities have taken the lead in coordinating the basic necessities such as food, clothing and shelter for migrants who are released from DHS custody, as well as helping the migrants develop a travel plan to reach their sponsors. This effort has placed a tremendous financial and logistical burden on these organizations and local governments.

How can DHS improve the relationship between itself, NGOs, and local communities during this crisis?

Response: DHS recognizes the strain that this crisis is placing on communities along the southwest border. The Department and its component agencies are working closely with community leaders, law enforcement, public health, and non-governmental (NGOs) and faith-based organizations (FBOs) to respond to this crisis, engaging at both headquarters and field levels.

For example, CBP and USBP Sector leadership engages with these NGOs/FBOs, as well as local officials by communicating about aliens released from CBP custody. This type of engagement enables the Department and its component agencies to understand concerns as they arise, particularly those surrounding the public health and safety of the communities in which DHS operates. DHS components are also working with national-level NGOs/FBOs and associations to identify humanitarian resources, including shelter capacity, medical services, and transportation support to reduce the burdens on Southwest Border communities, NGOs/FBOs, and Department operations.

Question: What instructions have you given your local leaders in the field about coordinating with NGOs and local communities?

Response: Field commanders are fully empowered to engage with NGOs and local communities concerning the on-going migrant crisis.

CBP encourages its local offices to engage and participate in the communities where offices (e.g., ports of entry and Border Patrol Stations) are located. CBP Officers and employees are members of the local communities where they work to facilitate legitimate travel and trade occurs, while preventing the entry of contraband and individuals who would harm the United States. Relationships with the members of local communities is critical to the success of CBP.

Question#:	5
Topic:	Coordinating with NGO's and Communities
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: One of the key issues I hear about from the NGO community is a lack of information sharing about when and where migrants are going to be released by DHS. NGOs would welcome 24-hours' notice before a drop-off and increased use of online databases regarding pending releases. What gets in the way of DHS sharing more information – and earlier in the process – about the schedule for migrant releases with NGO partners?

Response: The sheer volume of migrants being released creates difficulties engaging NGO partners about migrant release. DHS components are encouraged to notify the NGO community of anticipated releases.

Question: The ongoing migrant crisis is a federal challenge and will require a federal effort to solve. Part of the challenge that needs solving is how best to spend federal resources. As we have discussed, one need is to ensure we have enough asylum officers and immigration judges to quickly and fairly make credible fear determinations. Another aspect of this resource challenge is if NGOs and local communities should have access to federal resources to help them manage their critical role in helping the federal government manage the flow of migrants.

Would you support developing additional ways to make federal resources, including financial resources, available to NGOs to help them handle this burden?

What would be the best way to provide such financial resources to NGOs?

Response: We respectfully defer to Congress and to the NGOs to decide that.

Post-Hearing Questions for the Record
Submitted to the Honorable Kevin K. McAleenan
From Senator Jacky Rosen

"Resources Needed to Protect and Secure the Homeland"

May 23, 2019

Question#:	6
Topic:	Targeted Removals
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: In an ICE notification sent to congressional offices in May, the agency announced that it would heighten its focus on the removal of undocumented immigrants who have been convicted or charged with assault, drug offenses, gang violence, and DUIs, among other offenses. What's concerning is that within that communication, there is also the following: "while our focus remains on removing criminals that meet the aforementioned criteria, ICE officers and agents may encounter additional aliens during enforcement operations who may be in the United States in violation of federal immigration laws. Those persons will be evaluated on a case-by-case basis and, when appropriate, arrested and detained by ICE." An article in the Washington Post reported that top immigration enforcement at DHS challenged a secret White House plan to arrest thousands of parents and children in 10 major U.S. cities. The plan was to send a message that the United States was going to get tough by detaining and deporting recent immigrants including families with children.

Is your Department currently working on plans to deport thousands of families and children, as suggested in these reports? If so, what is the purpose? Where does this rank on DHS' priorities list?

Are there other offenses that would fit the criteria for targeted removal? Of the undocumented immigrants that ICE encounters during operations without criminal records, what does ICE mean by "persons will be evaluated on a case-by-case basis"? Can you please elaborate?

Response: U.S. Immigration and Customs Enforcement (ICE) conducts targeted operations across the country that are based on intelligence-driven leads. ICE prioritizes resources on identifying and removing public safety and national security threats, while not excluding those who have violated U.S. immigration law. During all immigration

Question#:	6
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Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

enforcement actions, ICE takes great care to ensure the safety of the aliens encountered, its officers, agents, and the public.

Enforcement operations have been a regular part of ICE's duties for many years. Under the President's Executive Orders and pursuant to Department of Homeland Security guidance, except in certain limited circumstances, ICE does not exempt classes or categories of removable aliens from potential enforcement. Therefore, all those in violation of U.S. immigration laws are subject to arrest, detention, and, if subject to a final order, removal from the United States.

ICE continues to prioritize its limited resources on public safety threats and immigration violators, as reflected by the fact that over 90 percent of ICE's Enforcement and Removal Operations (ERO) administrative arrests have either a criminal conviction(s), pending charge(s), an outstanding final order of removal, or illegally reentered the country after previously being removed.

Question#:	7
Topic:	Discretion
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Now that you are the head of the Department, do you have plans to implement policies that provide DHS personnel discretion on individual cases?

Are you currently being forced to choose between following the law and following orders from the White House? If not, can you please explain the why reports suggest that there have been confrontations between you and White House officials on DHS operations and staffing decisions.

Response: As Acting Secretary McAleenan has repeatedly testified under oath, he has never been asked to do anything unlawful by the President or anyone else in the White House.

Question#:	8
Topic:	Binary Choice Policy
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Media reports in April suggested that the Department of Homeland Security (DHS) is once again considering implementing a "binary choice" policy, which would likely result in wide-scale family separation. Under this policy, immigrant families apprehended at the U.S./Mexico border would be given a choice: 1) stay together by waiving their Flores rights - which would otherwise require their children's release from unlicensed family detention centers after 20 days; or 2) agree to family separation in order to secure their children's release from detention (while the parents remain detained).

Has DHS issued a memo on the so-called "binary choice" policy? If so, what is the status of this memo? Is this policy still being considered by DHS? Has DHS consulted the Department of Health and Human Services (HHS) or child welfare experts in discussions around the binary choice policy? In particular, have HHS or child welfare experts been asked for feedback on the implications of detaining children for prolonged periods in unlicensed facilities or in creating a situation in which many families are once again separated? If not, why not? Has DHS consulted HHS on how such a policy could impact Office of Refugee Resettlement (ORR) capacity and ability to adequately provide services to unaccompanied children within ORR care and custody?

Response: Consistent with longstanding executive branch policy, DHS respectfully declines to discuss or disclose information that is deliberative, pre-decisional, and/or attorney-client privileged.

Question#:	9
Topic:	ATDs
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: There are proven and cost-effective alternatives to detention (ATDs), including community-based programs, that can be - and have been -successfully utilized by DHS to release many families together, while ensuring their compliance with immigration proceedings. Has DHS considered further expanding use of these ATDs, rather than implementing a binary choice policy?

Response: The ICE Alternatives to Detention (ATD) program is a tool that was designed to complement ICE immigration enforcement efforts by offering increased supervision to monitor compliance for a thoroughly vetted group of aliens who are not currently detained. However, it is important to note that ATD is not a substitute for detention, which is typically necessary in order to remove aliens who have received a final order of removal. Over 85 percent of ICE removals in Fiscal Year (FY) 2019[1] involved detention, along with 82 percent in FY 2017 and FY 2018. Additionally, ATD is not suited for many aliens, including those who are subject to mandatory detention under U.S. immigration laws, those with a criminal history, and/or those who are unlikely to comply with the terms of the program.

As of June 2019, there are more than 101,000 aliens enrolled in ATD, 53,000 aliens in detention, and more than 3 million aliens on ICE's non-detained immigration docket—including more than 1 million aliens who have already been issued a final order of removal by an Immigration Judge (IJ). While ICE has expanded its use of ATD from approximately 23,000 participants in FY 2014 to over 101,000 today, this expansion has come with a number of challenges, including particularly high levels of absconders among recently enrolled family units.

While ATD participants comply with hearing and program requirements at moderate levels, non-compliance rates increase sharply when used on aliens who have already been ordered removed or for recent arrivals with no community ties, including the many family units who are being apprehended by U.S. Customs and Border Protection while attempting to cross the Southwest Border.

Many such families claim a fear of returning to their countries, and due to court decisions interpreting the *Flores* Settlement Agreement, ICE generally is unable to hold these aliens in detention for more than approximately 20 days. Thus, families are being released, whether on ATD or not, in record numbers due not only to insufficient family

[1] As of June 8, 2019.

Question#:	9
Topic:	ATDs
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

detention space but also due to ICE's inability to use its detention authority in light of the *Flores* Settlement Agreement and judicial decisions interpreting it. In FY 2019 YTD,[2] the absconder rate[3] for family units stands at 26 percent, significantly higher than the 12.2 percent absconder rate for non-family unit participants, demonstrating the growing challenges such enrollments create for immigration enforcement.

ICE also notes that while ATD can complement other immigration enforcement efforts when used appropriately on a vetted and monitored population of participants, the program was not designed to facilitate ICE's mission of removing aliens with final orders, and the agency lacks sufficient resources to locate and arrest the significant number of participants who abscond. In addition, cases on the non-detained immigration court docket often take years to complete, while detained cases are prioritized and ICE's average length of stay for an alien in detention is approximately 30 days. As a result of these differing case timelines, as well as additional costs related to ATD absconders and other program violators, daily rate comparisons of ATD and detention cannot fully capture the costs related to aliens in each group, and the costs of ATD may exceed those of detention in many cases. For these reasons, enrolling more aliens in the ATD program without adding other appropriate resources, such as additional fugitive operations officers, IJs, and support personnel, will contribute to existing largescale problems in the U.S. immigration system rather than addressing them.

[2] As of April 30, 2019.
[3] Absconder Rate = Count of Absconders/Count of Terminations.

Question#:	10
Topic:	Releasing Families
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Many humanitarian organizations along the U.S./Mexico border work in partnership with DHS agencies to ensure safe and planned release of vulnerable populations (released on ATDs out of DHS processing centers), which helps ensure DHS has consistent capacity to process those apprehended. For example, some of these non-profits are in daily communication with Customs and Border Protection in order to receive released families and meet their immediate needs. And, both Customs and Border Protection (CBP) and Immigration and Customs Enforcement (ICE) continue to release large numbers of families to non-governmental organization (NGO) service providers along the border with some NGOs, including Annunciation House in El Paso and Catholic Charities Rio Grande Valley, receiving 600 - 1000 family members/day from CBP and ICE combined. While the NGOs have assisted these families, they are doing so on a charitable basis and their resources are running low.

Is CBP currently working with ICE, or does it have plans to work with ICE, to coordinate releasing families to humanitarian organizations along the border? If no, why not?

Response: CBP generally maintains close communication and coordination with ICE when releasing aliens from CBP custody.

Question: The February spending package agreement included language mandating that ICE resume the Family Case Management Program (FCMP), including $30.5M in funding (over two years) to resume the program. Does CBP have any plans to allocate funding for a similar program to support and ensure immigration compliance for the families it is releasing?

Response: Once individuals are released from CBP custody and into the Nation, CBP no longer has jurisdiction. CBP does not have statutory authority nor resources to enact such a program.

Question#:	11
Topic:	MPP
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: In January 2019, the Department of Homeland Security issued new policy guidance on the "Migrant Protection Protocols" or the "Remain in Mexico" policy. Under the Remain in Mexico policy, certain asylum seekers, including families, are sent back to Mexico to wait throughout the duration of their U.S. immigration court proceedings, which could take months or years, during which people often are living in dangerous and inadequate conditions. Although the policy is being challenged in federal court, it is currently proceeding.

To date, how many individuals has DHS returned to Mexico under the "Migrant Protection Protocols" or Remain in Mexico policy? How many of these individuals are part of an arriving family unit? Does DHS have plans to expand this policy beyond the San Ysidro, Calexico, and El Paso Ports of Entry? If so, where and when?

Reports indicate that DHS has returned individuals who are pregnant and one child with a neurological disorder, despite the guidance that individuals with known medical issues should not be subject to the policy. Has DHS investigated these cases? If so, what were the results of that investigation? What new or additional actions is DHS taking to ensure that individuals with known vulnerabilities are not returned?

Response: Under the Migrant Protection Protocols (MPP), aliens entering or seeking admission to the U.S. from Mexico – illegally or without proper documentation – may be returned to Mexico and required to remained outside of the U.S. for throughout the duration of their immigration proceedings. As of June 12, the United States had returned a total of 10,589 aliens to Mexico under MPP. 8,003 were family unit aliens.

On June 7, the United States noted its intention to "immediately expand the implementation of the existing Migrant Protection Protocols across its entire Southern Border." For its part, the Government of Mexico agreed to "authorize the entrance of all of those individuals for humanitarian reasons…[and] offer jobs, healthcare and education according to its principles." Expansion will entail increasing throughput at the existing locations (San Diego, El Paso, Calexico, Laredo, and Brownsville), establishing new locations, and widening the amenable populations at all locations. DHS has been collaborating with the U.S. interagency to plan for expansion, but there is not an established timeline. As DHS continues to implement MPP across the Southwest Border, we are working with our partners in Mexico so each new location becomes operational in a way that ensures a safe and orderly flow of individuals at the border.

Question#:	11
Topic:	MPP
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Every person placed into MPP is concurrently placed into Section 240 removal proceedings; thus, MPP is not specific to asylum seekers. If at any point an alien claims a fear of being returned to Mexico, ICE officers and/or attorneys will report this claim to CBP which coordinates with USCIS to arrange for a fear assessment with an asylum officer.

Under the current policy, those not amenable to MPP include unaccompanied alien children; citizens or nationals of Mexico; aliens processed for expedited removal; aliens with special circumstances including known physical, or mental health issues; criminal aliens or those with a history of violence; and those who are more likely than not to face persecution or torture in Mexico. Consistent with the policy, aliens with known physical or mental health conditions are not subject to MPP.

Pregnancy is not a basis for categorical exclusion from MPP. In some cases, pregnancy may not be observable or disclosed, and may not in and of itself disqualify an individual from being amenable for the program. While pregnancy may contribute to CBP determining that an alien is not amenable to MPP, such determinations are made on a case-by-case basis. To the extent there are such considerations, the Port Director and Chief Patrol Agent of each individual location maintain their discretion to review each case on an individualized basis.

Question#:	12
Topic:	WSO Program
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Earlier this month, ICE announced the creation of a new program, the Warrant Service Officer Program, which is intended for local law enforcement to circumvent prohibitions placed by state and local policies that limit cooperation with DHS. The WSO program would allow law enforcement to honor immigration detainers even though local communities have formally opposed and voted against such policies. This is very concerning because the new proposed program deputizes local police officers as immigration officers. In Nevada, one in five residents is an immigrant, while one in six residents is a native-born U.S. citizen with at least one immigrant parent. This program will further make police departments less trusted by local immigrant communities and place our cities and states at greater risk, given that these collaborations are likely to lead immigrant communities to not report crime in their communities due to fear of becoming a target of this new initiative.

What is the purpose of this new program? Why is this new program needed, especially when local jurisdictions have expressly weighed in and opposed cooperating with ICE? What does the new Warrant Service Officer Program do that is not currently happening under existing 287g programs?

Response: The Warrant Service Officer (WSO) Program was created to provide an opportunity for jurisdictions who are precluded from honoring ICE detainers as a matter of local policy or law to cooperate with ICE. This new process is in response to requests for operational flexibilities received from members of the National Sheriffs' Association and the Major County Sheriffs of America. Under the WSO Program, nominated state or local law enforcement officers will be trained, certified, and authorized by ICE to serve and execute ICE-issued administrative warrants of arrest and serve warrants of removal against designated aliens in their agency's jail or correctional facility at the time of the alien's scheduled release from criminal custody in order to transfer custody of the alien to ICE.

Although the WSO Program derives its authority from section 287(g) of the Immigration and Nationality Act, the WSO Program is different from the traditional 287(g) Jail Enforcement Model (JEM) Program. Unlike 287(g) JEM officers, WSOs will not interview individuals regarding alienage and removability, nor will they process aliens who are in the United States in violation of immigration law. Rather, WSOs will receive only limited authorization to serve and execute ICE-issued administrative warrants on behalf of ICE on designated aliens in their agency's jail or correctional facility as described above.

Question#:	13
Topic:	Stable ICE Funding
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: I'm concerned about a number of mismanagement issues at DHS, and while they may not have started under your leadership, it is your responsibility to fix them now. One concern is ICE's chronic fiscal mismanagement. ICE received substantial budget increases in the past two years solely for detention and deportation operations. The pattern seems to be that ICE runs out of funds and then has to come back to Congress for more. Congress approves the additional funding, and then that new increased budget is the starting point for negotiations the following year. Furthermore, DHS has transferred funds into ICE from other agencies, including FEMA.

Do you have a plan to eliminate the abuse and mismanagement, and place ICE on a more stable funding track?

Response: ICE takes seriously its responsibility to ensure that taxpayer funds entrusted to the agency are properly and prudently managed. ICE leadership will continue to prioritize this management responsibility, holding all staff accountable for anything that otherwise detracts from this obligation.

Due to the unprecedented border surge, DHS may be required to use authorities within the annual DHS Appropriation to reprogram funds to cover additional detention and transportation expenses in excess of the FY 2019 budget. If this requirement materializes, it is a function of substantially increased numbers of aliens migrating to the southern border and coming into the custody of U.S. Customs and Border Protection. As a federal law enforcement entity, ICE is bound to abide by federal law, and in the case of additional detention and transportation resources, ICE is required to uphold the applicable provisions in the Immigration and Nationality Act.

Resources requested in the President's Budget transmitted in 2018 for requirements in FY 2019 reflect needs forecasted many months into the future. Invariably, there are changes to the operational profile for our front-line agents and officers that have resource implications sometimes unaccounted for during deliberations toward an enacted fiscal year budget. Operations during this current humanitarian crisis keep the frontline operational profile fluid, necessitating resource increases through the authorized reprogramming of appropriated funds.

Question#:	14
Topic:	Detention Budget
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: The appropriation for detention and enforcement increased by nearly one billion dollars in two years from $3.2 billion in FY2016 to $4.1 billion in FY2018. Even so, ICE continues to overspend its detention budget. What measures are being taken to decrease the number of immigrants held in detention?

If Congress were to cut the appropriation for detention and enforcement, what would ICE do in response?

Response: In Fiscal Year 2019, CBP to apprehended an unprecedented number of unaccompanied alien children, family units, and single adults at the Southwest Border (SWB). Once aliens are apprehended by CBP, they are typically transferred to ICE custody (or HHS ORR custody in the case of unaccompanied alien children). The unprecedented numbers of migrants have significantly overwhelmed ICE's detention capacity. As a result, ICE has been forced to release family units into the interior of the United States due to insufficient detention capacity.

ICE exercises its detention and release authorities in accordance with applicable law, including U.S. Supreme Court precedent, which either mandates detention or allows for release in certain circumstances. ICE custody and release determinations are made as prescribed by controlling law. When a controlling statute provides for an exercise of discretion, ICE will conduct a case-by-case review and exercise discretion when appropriate. Many individuals apprehended by ICE are subject to mandatory detention by statute. Individuals may be subject to mandatory detention based on certain criminal convictions and criminal activity, among other reasons.

ICE's detention capacity is severely overwhelmed, and the agency is currently exceeding the appropriated average daily population. As a result, ICE is unable to detain all aliens who enter illegally that are subject to mandatory detention, as mandated by Congress. This issue continues to be exacerbated by the significant increase in apprehensions along the SWB as well as the approximate 9,000 adults in CBP custody currently awaiting an ICE detention bed.

ICE will need additional resources to keep pace with the current rate of apprehensions. If such resources are not provided as ICE's bedspace requirement significantly exceeds its funded detention bed levels, ICE will have to resort to releasing migrants who are subject to mandatory detention, criminal aliens, and those who pose a public safety or flight risk.

Question#:	15
Topic:	Funds Transfer
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Summer approaches, and with it the beginning of hurricane and wildfire season. Do you anticipate additional transfer of funds from FEMA to other agencies for the purposes of detention?

Response: The Administration submitted a Supplemental request to Congress, which will enable an appropriate DHS response to the humanitarian crisis along the Southwest Border. DHS is hopeful Congress will take action on the Administration's request soon. However, if this does not occur, the Department is reviewing all available funding sources, which could be used to support this humanitarian crisis. The FY 2019 DHS Appropriations Act does provide authority for the Department to reprogram funds with the appropriate notification to Congress. If the Congress does not act on the Administration's Supplemental request, this could impact other mission operations throughout the Department.

Question#:	16
Topic:	DHS Surge Force
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Resource management is not just a fiscal problem, but also a workforce problem. A recent report indicates that DHS's Cybersecurity and Infrastructure Security Agency (CISA) sent out an email asking employees to consider a "short-term deployment to the southern border." TSA also plans to deploy several hundred officials to the southern border.

Plainly, how did we get to this point where we have a federal agency with a workflow and staffing plan that appears to have failed utterly?

Response: On May 29, 2019, U.S. Border Patrol agents apprehended the largest group of individuals ever encountered crossing the border unlawfully. Agents took custody of over 1,000 people after they illegally crossed the border in El Paso, Texas. All members of the group were from Guatemala, Honduras, or El Salvador. The group included over 900 family unit members, over 60 unaccompanied alien children, and just under 40 single adults. These groups contribute to the more than 675,000 aliens apprehended or encountered at ports of entry on the Southwest Border so far this fiscal year.

In the month of May alone, CBP apprehended and encountered more than 144,000 who entered illegally or were determined to be inadmissible at a port of entry aliens—almost triple the number compared to a year ago. CBP total enforcement actions this May were 623 percent higher than May 2017 and 206 percent higher than the May average over the past seven years. In addition, since April 2019, ICE has dedicated over 400 investigative personnel to assist in combatting family fraud and child smuggling, with 395 individuals accepted for prosecution by DOJ.

We cannot continue to handle the influx and volume of people attempting to come across our border without the proper resources. Our system is pushed to the limit. We have continued to avail ourselves of every available DHS resource. We have requested volunteers among DHS staff, and we have redeployed personnel, including CBP personnel from the northern border, to assist with efforts along the Southwest Border. We have also asked Congress for several narrow and targeted changes to our laws that will restore integrity to our immigration system and remove the incentives for families and children to cross our border illegally. In the interim, DHS will continue to do everything possible to respond to this emergency in a responsible manner, but Congress must help by providing the resources DHS needs to address this unprecedented situation.

Question#:	16
Topic:	DHS Surge Force
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Can you describe the job functions of the CISA and TSA agents who are being redeployed?

Response: Below are the job functions performed by all volnuteers from component agencies, including CISA and Transportation Security Agency (TSA):

- Conducting welfare checks of detainees in detention areas and assessing safety and well-being of detainees while pending processing or transportation.
- Distributing meals and snacks when directed by CBP and requested by aliens in custody.
- Distrubiting supplies to include toiletries, blankets, clothing, and other items.
- Condcuting administrative duties that alleviate CBP Agents and Officers from non-processing duties. This allows the Agents and Officers to focus on processing of those aliens in detention for an increased speed of transferring to ICE ERO.

Question: CNN quoted from an email from a senior TSA official who wrote: "We understand that we are accepting some risk as we enter a very busy summer."

What do you believe to be the risk of these redeployments?

Response: Like other DHS offices and Components, TSA has been asked to support the Department's Southwest Border efforts. TSA determined that supporting those efforts would not negatively impact the security effectiveness of security operations at our Nation's airports. Instead, TSA identified the primary risk to aviation security related to the deployment of employees to the Southwest Border to be that passenger volume could exceed TSA's security screening resources at one or more airports. In general, TSA strives to maintain a balance between operational mission requirements and staffing needs, so that airports do not experience strained capacity and excessive passenger wait times for checkpoint and checked baggage screening operations.

To minimize the potential impact of deploying volunteers to the Southwest Border, TSA implemented layered reviews by our Security Operations office and TSA airport leadership. To ensure no single airport would be overburdened by volunteer deployments, Security Operations limited the total number of volunteers for most of the larger airports. TSA is also distributing volunteers across several waves of deployments to further mitigate the impact to airport operations.

Additionally, TSA identified a handful of airport locations with staffing challenges that were not authorized to provide volunteers. TSA expects overall support for the Southwest Border will impact less than 1% of its 63,000 overall workforce. These

Question#:	16
Topic:	DHS Surge Force
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

mitigations will ensure the appropriate balance between operational mission requirements and staffing needs, and reduce the likelihood that passenger volume will exceed TSA screening resources.

Question#:	17
Topic:	Separation Guidance
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS has continued to separate children from their parents, allegedly only in cases where there is concern for the well-being and safety of the child. The January 2019 HHS OIG report found that DHS reported to ORR that 65 of the 118 children separated between July and November 2018 were separated because the parent had a criminal history, but DHS did not provide details of that history. Additionally, service providers, including the U.S. Conference of Catholic Bishops and Migration and Refugee Services (MRS), have seen cases in which the separation did not appear to be in the child's best interest and for good cause. In a previous February 2019 hearing before the House Judiciary Committee, CBP Chief Carla Provost testified that DHS has written guidance that it is actively using to determine when family separation is appropriate.

Is this still the case?

Response: In compliance with the Executive Order and the preliminary injunction in *Ms. L v. ICE* and all other appropriate legal authorities, CBP may separate an alien child from his or her parent or legal guardian when they enter the United States if that parent or legal guardian poses a danger to the child, is otherwise unfit to care for the child, has a criminal history, has a communicable disease, or is transferred to a criminal detention setting for prosecution for a crime other than improper entry. CBP may also separate an alien child from an individual purporting to be a parent or legal guardian in certain circumstances, such as where CBP is unable to confirm that the adult is actually the parent or legal guardian. Given the nature of CBP facilities, a parent and child who are being separated (even on the basis of the parent's purported danger to the child) may remain in close physical proximity during their time in CBP custody."

Question: If so, can you please share a copy of that guidance with the Committee?

Response: CBP has internal guidance implementing the *Ms. L* preliminary injunction. Due to ongoing litigation, CBP respectfully declines to provide this guidance at this time.

Question: Did DHS consult HHS or other child welfare experts in developing this guidance, particularly with regard to when separation would be appropriate for the welfare of the child? If no, why not?

Response: Due to the timeliness required to implement the new guidance, DHS did not consult with child welfare experts.

Question#:	17
Topic:	Separation Guidance
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Further, is DHS providing training for its officers specifically to determine whether or not a family falls into these criteria?

Response: When CBP encounters an alien family unit (consisting of either one or two parents/legal guardians with his or her minor child), CBP will not separate the child from either parent/legal guardian unless the specific criteria provided in the preliminary injunction in *Ms. L v. ICE* are met. With the appropriate approvals, CBP can separate where a parent/legal guardian is being referred for prosecution (other than for improper entry), the parent/legal guardian presents a danger to the child, the parent/legal guardian has a criminal history, the parent/legal guardian has a communicable disease, or CBP is unable to determine the familial relationship. Additionally, CBP will not separate two-parent families unless both adults meet the criteria to require separation from the child(ren).

In instances where a separation is warranted, a senior manager (GS-14 or above) must be notified, approve the separation, and contact the ICE/ERO local juvenile coordinator. Approval and notification cannot be delegated below a senior manager (GS-14).

The criteria for family separations has been communicated through the use of memorandums issued on June 27, 2018, and for two parent families on September 27, 2018.

The Border Patrol Academy does not provide formal training regarding family separation nor currently does it have criteria in place to determine unfit parents. Border Patrol Agents learn to make such determinations through On-the-job training and practical experience shadowing or working alongside a senior agent.

Question: If so, what does the training consist of outside of existing training on Flores and the Trafficking Victims Protection Act?

Response: No additional academy training is offered beyond annual refresher training on the *Flores* Settlement Agreement, the Trafficking Victims Protection Reauthorization Act (TVPRA), and the processing of UAC is separate from the individual memorandums on compliance with the *Ms. L v. ICE* case on family separations.

CBP carries out its mission of border security while adhering to U.S. and legal international obligations for the protection of vulnerable and persecuted persons. The laws of the United States, as well as international treaties to which the United States is a party, allow people to seek asylum on the grounds that they fear being persecuted outside of the United States because of their race, religion, nationality, membership in a

Question#:	17
Topic:	Separation Guidance
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

particular social group, or political opinion. CBP understands the importance of complying with these laws, and takes its legal obligations seriously. Accordingly, CBP has designed policies and procedures based on these legal standards, in order to protect vulnerable and persecuted persons in accordance with these legal obligations.

CBP further recognizes the importance of thoroughly training its frontline officers. CBP officers receive training on the proper processing, treatment, and referral of aliens who express a fear of return. This training begins at CBP Academies, and is reinforced through post-Academy training and the periodic issuance of memoranda and policy reminders/musters.

Question#:	18
Topic:	Humanitarian Workers at the Border
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: One of the few sources of relief for migrant families at the southern border is humanitarian assistance provided by NGOs. Relief organizations are doing their best to provide medical care, transportation, and information about court appearances to vulnerable individuals who cross the border. Meanwhile, the White House is requesting an increase in $377 million in funding for "Operation Guardian," a joint operation that will use the National Guard to support CBP, effectively militarizing the border and making it even more difficult for humanitarian organizations to provide relief.

Does DHS have a policy guiding how its officials should treat humanitarian workers, journalists, and lawyers at the southern border?

Do you believe this policy is being followed?

Response: DHS does not have a policy that guides interactions with the groups described above. Requests to provide humanitarian or other assistance at DHS facilities are considered on a case-by-case basis.

Question: Is DHS conducting surveillance of humanitarian workers, journalists, and lawyers at the southern border?

Response: DHS is not conducting surveillance of individuals based on their role as humanitarian workers, journalists, or lawyers at the southern border.

Question: Are you aware of a list used by CBP agents to stop, detain, question, and search dozens of reporters, attorneys, and relief workers?

Response: In October 2018, the threat level of the Central American migrant caravan in Mexico reached higher than normal levels; some individuals within the caravan demonstrated disruptive tendencies, and the caravan presented transportation, medical, and housing challenges to the Government of Mexico. Reports indicated that the migrant caravan had swelled to approximately 10,000 migrants destined to the Tijuana, Baja California area. Information from within the caravan indicated that upon arrival, the participants intended to breach the border en masse. Due to this situational threat, Customs and Border Protection (CBP) leadership aligned resources to respond to the caravan.

To address these developing threats, CBP partnered with the Government of Mexico and law enforcement agencies within Mexico. A number of individuals were identified as

Question#:	18
Topic:	Humanitarian Workers at the Border
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

possibly assisting migrants in crossing the border illegally and/or as having some level of participation in violent incursion events, which have resulted in the assaults of both CBP officers and U.S. Border Patrol agents at various locations along the Southwest Border. Such individuals included—but were not limited to, nor were indidividuals targeted based on their status as—journalists, photographers, and migrants organization volunteers. As such, CBP created records to facilitate interviews and inspections, and to further any possible investigations.

CBP followed through with appropriate investigatory queries and compiled relevant information from various sources to determine if subsequent investigation was warranted. Information requests were formulated and disseminated in an effort to identify individuals actively engaged in organized caravan activities or witnesses who could validate collected information. Efforts to gather this type of information are a standard law enforcement practice.

At the time in question, CBP was also investigating possible violations of 8 U.S.C. § 1324, which states, any person who encourages or induces an alien to enter the United States, knowing or in reckless disregard that such entry is or will be in violation of law, will be subject to criminal penalties. In doing so, CBP preliminarily identified several individuals who were subjected to additional inspectional processes to determine whether they were engaging in unlawful activity. Some of the individuals either had a nexus to media outlets, or worked in some capacity with a shelter housing migrants destined to the United States, or an organization with a migrant specific mission. Of the identified individuals, seven have been referred for an inspection since January 19, 2019.

It is important to note CBP is tasked with protecting our Nation's borders as well as enforcing and administering numerous laws at our Nation's ports of entry. All international travelers attempting to enter the United States, including all U.S. citizens, are subject to examination upon each arrival into this country. Occasionally, CBP may inconvenience law-abiding persons in our efforts to detect, deter, and mitigate threats to our homeland. We rely on the patience, cooperation, and understanding of travelers to ensure the effective protection of our borders.

However, CBP has policies in place that prohibit discrimination against arriving travelers and does not target journalists for inspection based on their occupation or their reporting. CBP adheres to the May 17, 2019 Memorandum from the Acting Secretary titled *Information Regarding First Amendment Protected Activities*. CBP does not profile, target, or discriminate against any individual for exercising his or her First Amendment rights. Moreover, as Acting Commissioner Morgan has stated publicly, any harassment or improper treatment of journalists because they are journalists is unequivocally

Question#:	18
Topic:	Humanitarian Workers at the Border
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

unacceptable, and any reports or allegations of such treatment will be swiftly referred to CBP's Office of Professional Responsibility.

Question#:	19
Topic:	CBP Misconduct
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: There have been several news reports regarding the conduct and use of excessive force from several Customs and Border Protection officers. One that I would like to highlight is of an officer being accused of using a Border Patrol truck in order to apprehend a 23-year-old Guatemalan immigrant that was crossing the border. According to a sworn affidavit filed by a special agent with DHS' Office of Inspector General, the agent in question first made contact by accelerating his vehicle in pursuit of the 23-year-old, striking him twice and knocking him to the ground. At his court hearing, the judge presiding over the case immediately recommended that he receive medical attention to treat several abrasions on his body. The same agent referred to migrants in custody as "disgusting" and "subhuman, unworthy of being kindling for a fire" in text messages sent among several Border Patrol agents. The Border Patrol attorney told the court that this behavior is "commonplace throughout the Border Patrol's Tucson Sector" and "part of the agency's culture."

Secretary McAleenan, during your time as CBP Commissioner, would you say that the kind of behavior we are seeing illustrated in these news reports is "commonplace" and part of the agency's culture?

Response: It has not been my experience that the behavior you are describing is commonplace or part of the agency's culture.

Question: If not, then what mechanisms are currently in place to screen or determine whether an officer is operating under racial bias?

Response: Service in CBP is not conscripted duty. Employees know well in advance the work they will be engaged in and the likely locations for initial duty assignments. They are subjected to intensive screening and background investigations prior to being offered employment. They are then required to pass a rigorous academy and learn to speak Spanish. Once graduating the academy, the employee's actions and performance are scrutinized and monitored while completing a probationary period. This scrutiny includes monitoring for any ill treatment or biases in carrying out duties. Post-Academy training includes a module of Professionalism and Integrity to include cultural sensitivity

Question: And if there are mechanisms in place, what does CBP do once that information is discovered?

Response: Once CBP is made aware of alleged racial bias or alleged civil rights or civil liberties abuses on the part of a CBP employee, a criminal misconduct case is opened and

Question#:	19
Topic:	CBP Misconduct
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

referred to the OIG for review and investigative determination. Should the OIG refer the matter back to CBP for action, CBP's Office of Professional Responsibility (OPR) would initiate a criminal investigation in conjunction with the appropriate U.S. Attorney's Office.

Question: What is DHS' policy for investigating claims that its employees use excessive force or other cruel, inhumane treatment of individuals in DHS custody?

Response: DHS policy strictly prohibits all forms of excessive force or other cruel, inhumane treatment of individuals in DHS custody. Under uniform procedures, all such policy violations are immediately documented and referred to the DHS OIG for independent review and investigative determination. Within the CBP OPR Investigative Operations Division (IOD) is the Joint Intake Center (JIC), which serves as the central point for receiving, processing, and tracking allegations of misconduct involving personnel and contractors employed by CBP and ICE. The JIC provides CBP and ICE with a centralized and uniform system for processing reports of alleged misconduct. All reports of misconduct are coordinated with the DHS OIG for independent review and assessment. Some allegations are retained by the OIG for investigation while others are referred back to the JIC for assignment to the appropriate office for investigation, fact-finding, or immediate management action. If misconduct is substantiated, appropriate corrective action will be initiated. However, the Privacy Act generally precludes CBP from releasing information on disciplinary or other corrective actions taken against employees.

Question#:	20
Topic:	Children in Vans
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: NBC News reported recently that in July 2018 in Los Fresnos, Texas, CBP agents left 37 migrant children waiting in vans for up to 39 hours in some cases before reuniting them with their parents. Multiple news outlets reported incidents of CBP personnel confiscating medication from migrant children and adults in CBP custody.

Why did CBP leave migrant children in vans for hours or even days?

Response: DHS and HHS are working tirelessly to reunite parents and children within the court ordered timeline. To do so requires large scale transfers of minors to ICE custody and both agencies have been actively engaged managing the logistical challenges these large scale transfers present. In order to facilitate more efficient reunification of family units going forward, ICE has leveraged additional resources to enhance processing capacity for adults/parents held in the Port Isabel Detention Center (PIDC). The safety and wellbeing of children remains our top priority as we work to comply with the court's order as expeditiously as possible.

Absent extenuating circumstances, on average, most children brought to PIDC for transfer to DHS custody by HHS are reunified with their parents within three hours of their arrival.

Following processing delays on July 15-16, which resulted in some children staying overnight in PIDC, DHS took immediate action to resolve the situation and the delays were resolved. These children have all been reunited with their parents and since then, no child has spent more than a few hours waiting to be reunited with their parents.

Question: What are your protocols or guidelines when transporting migrant children?

Response: CBP's protocols and guidelines for transporting migrant children are identified in CBP's National Standards on Transport, Escort, Detention and Search (TEDS). Section 5.4 of this policy describes the requirements for transporting children:

Transport of UAC: *UAC must not be transported in vehicles with unrelated adults when separate transportation is immediately available. When separate transportation is unavailable, all necessary precautions must be taken to ensure the UAC's safety, security, and well-being, including separation from unrelated adults by either a separate passenger compartment or an empty row of seats.*

Question#:	20
Topic:	Children in Vans
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Child Safety Restraints*: All juveniles must be transported as safely as possible given the circumstances, which must include the use of child safety restraints when available.*

Notification of Accompanying Adult*: Whenever possible, officers/agents must inform or notify any accompanying adult relative or legal guardian when the transport of a juvenile to a medical facility is necessary for an X-ray search, body cavity search, or MBM. Such persons may be allowed to be present at the medical facility at the discretion of the CBP supervisor, and consistent with the operational office's policies and procedures.*

Question: Was there any disciplinary action taken by your Department for all of those involved in the operation?

If so, how did the Department address this?

What training and guidelines has the Department put in place to ensure this never happens again?

Response: DHS and HHS are working tirelessly to reunite parents and children within the court ordered timeline. To do so requires large scale transfers of minors to ICE custody and both agencies have been actively engaged managing the logistical challenges these large scale transfers present. In order to facilitate more efficient reunification of family units going forward, ICE has leveraged additional resources to enhance processing capacity for adults/parents held in the Port Isabel Detention Center (PIDC). The safety and wellbeing of children remains our top priority as we work to comply with the court's order as expeditiously as possible.

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Question#:	21
Topic:	Confiscating Medication
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: Does CBP confiscate medication from migrants pursuant to DHS policy, practice, and/or procedure?

Response: All medications will generally be maintained with the detainee's personal property unless other conditions warrant, such as the medication needing to be regularly administered due to need, and/or needing to be properly stored as the prescription requires. Additionally, medication that cannot be identified and verified to be legitimate is confiscated; and the detainee is sent for a medical evaluation and replacement with a FDA-approved medicine.

Qnestion: Does DHS policy provide for medical assessments of detainees before medication is confiscated?

Response: On January 28, 2019, CBP released Directive 2210-03, *CBP Interim Enhanced Medical Efforts*. This policy directs U.S. Border Patrol (USBP) agents and Office of Field Operations (OFO) officers to perform a health interview for all aliens in USBP and OFO custody under the age of 18, and in some cases, adult aliens. In addition, CBP is providing additional resources to the USBP Stations and OFO Ports of Entry through expanded contract medical professionals. These additional medical professionals are stationed at CBP facilities and assist officers in determining the health needs of the alien population and when transportation to a hospital is required. Finally, CBP continues to analyze the impact of Directive 2210-03 to inform development of a comprehensive health and medical policy that will ensure the appropriate care is available to all aliens encountered by CBP personnel. CBP is engaging experts in the health, academic, and child care professions to provide guidance in the development of this policy

Question: In the event that CBP or other DHS officials confiscate medication from a detainee, is there a policy, practice, and/or procedure providing for the return or replacement of medication?

Response: Per CBP policy, medication that cannot be identified and verified to be legitimate is confiscated, and the detainee is sent for a medical evaluation for replacement of the medication with an FDA-approved medicine, if appropriate.

Question: Please describe the Department's guidelines for medical assessment and treatment of detainees.

Question#:	21
Topic:	Confiscating Medication
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Response: When encountering a migrant, CBP officers and agents adhere to CBP's TEDS policy document. In addition, CBP's Commissioner issued an Interim Enhanced Medical Directive on January 28, 2019. This document expands the health interviews and medical assessments for all minors and some adults encountered by CBP.

Question#:	22
Topic:	National Security Priorities
Hearing:	Resources Needed to Protect and Secure the Homeland
Primary:	The Honorable Jacky Rosen
Committee:	HOMELAND SECURITY (SENATE)

Question: The Department of Homeland Security was established for the purpose of combating terrorism and keeping Americans safe. On January 29, 2019, FBI Director Christopher Wray, CIA Director Gina Haspel, and Director of National Intelligence Daniel Coats testified before the Senate on worldwide threats, but did not mention the U.S.-Mexico border being a threat.

What are the Department's current national security priorities? What are the threats at the U.S.-Mexico border? If so, are these threats related to terrorism? How do you assess threats and how does the Department prioritize its scarce resources?

What is the role of the White House in directing DHS's homeland security priorities? Please provide the names of White House officials with whom you have discussed DHS's homeland security priorities.

Response: In December 2017, the White House issued the National Security Strategy, which set forth the Administration's national security priorities. DHS is prominently represented throughout the strategy, and *Securing the U.S. Borders and Territory* is the first priority listed in the document. In addition to the National Security Strategy, the National Security Council's NSPM-4 policy process provides an opportunity for routine engagement in which the White House provides guidance on priorities for DHS and its interagency counterparts.

DHS has extensively communicated with Congress and the American public on the threats at the U.S. Southwest Border. We face multiple threats to the homeland security mission on our border with Mexico, including the illegal entry of persons and smuggling of narcotics. We are observing increases in illegal crossings and arrivals of inadmissible persons at ports of entry across the entire Southwest Border that impact homeland security, exploit our laws, and challenge our resources and personnel. Additionally, transnational criminal organizations smuggle narcotics through shipments, mail, and express consignment; by individual travelers; and by sophisticated transportation networks. Among the vast illicit flows of people and goods to the United States, foreign terrorist organizations remain interested in entering the United States and conducting attacks against the American people.

DHS balances the myriad of threats facing the United States and engages in a robust planning and budgeting process to optimize resource allocation in a constrained budget environment and best protect the Homeland.

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