

**DHS ACTIONS TO ADDRESS UNACCOMPANIED
MINORS AT THE SOUTHERN BORDER**

HEARING

BEFORE THE

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

FIRST SESSION

MAY 13, 2021

Available via the World Wide Web: <http://www.govinfo.gov>

Printed for the use of the
Committee on Homeland Security and Governmental Affairs



U.S. GOVERNMENT PUBLISHING OFFICE

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DHS ACTIONS TO ADDRESS UNACCOMPANIED MINORS AT THE SOUTHERN BORDER

THURSDAY, MAY 13, 2021

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

The Committee met, pursuant to notice, at 10:16 a.m., via Webex and in room SD-342, Dirksen Senate Office Building, Hon. Gary C. Peters, Chairman of the Committee, presiding.

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

OPENING STATEMENT OF CHAIRMAN PETERS¹

Chairman PETERS. The Committee will come to order.

Secretary Mayorkas, welcome back, and thank you for your willingness to testify and your continued service to our Nation. We appreciate that.

I know that you and the Biden administration as a whole inherited a number of very serious challenges, and I have been impressed with what you have accomplished in a relatively short time. Your efforts to support the wide distribution of vaccines to every community so we can get through this Coronavirus Disease 2019 (COVID-19) pandemic and your concrete actions to combat domestic terrorism, including white national violence, is appreciated. While you help ensure communities across the country are safer and more secure, we know that it is a big job that requires your constant attention.

While doing all of that, your Department has also grappled with the situation on our Southern Border, addressing the humanitarian challenges presented by the arrivals of unaccompanied alien children (UAC) while also working to keep our border secure. That is the focus of today's hearing, and I look forward to hearing about some of your successes and the challenges that you continue to face and the support and resources that your Department needs to effectively carry out your mission while ensuring appropriate care of people who are in DHS custody.

Although we saw higher-than-usual numbers of unaccompanied minors arriving at the border earlier this spring, these numbers appear to be decreasing. Even so, the significant numbers of mi-

¹The prepared statement of Senator Peters appear in the Appendix on page 43.

grants seeking asylum in the United States continues to present a very serious challenge.

Our Nation rightfully serves as a beacon for those who are fleeing persecution. We have an obligation to ensure that the migrants that our border security professionals encounter are being treated with dignity and have appropriate food, care, and shelter.

But we also must ensure that those efforts do not restrict the ability of border security personnel to continue their critical front-line mission to stop illicit drugs, contraband, and other illegal activity along our borders and help keep Americans safe.

Mr. Secretary, many of the challenges that you inherited were made worse because of the actions of the previous administration. The Trump administration's decision to suspend longstanding legal protections afforded to minors and those fleeing persecution for significant numbers of asylum seekers to wait in a very precarious condition in Mexico. As a result, when President Biden took office in January, there was already a significant population of vulnerable asylum seekers, especially minors, waiting to seek refuge in the United States from violence or persecution in their home countries.

The ongoing pandemic has compounded challenges faced by both the Department of Homeland Security (DHS) and the Department Health and Human Services (HHS) as they work to house unaccompanied children. COVID-19 health protocols have limited the amount of space and staff available at State-licensed shelters. These factors resulted in more than 5,000 children at a time being held for days in the care of Border Patrol agents who are simply not trained in child care.

These minors should have been transferred, ideally within hours, to Health and Human Services facilities where licensed child welfare professionals ensure they receive adequate care while waiting for release to sponsors in the United States.

I have had the opportunity to visit the Southern Border twice so far this year to see both the border facilities and the shelters for unaccompanied children firsthand and speak directly with the folks on the ground who are working to address these challenges.

During my most recent visit, I spoke with dedicated Border Patrol agents who are personally supplying toys and food to unaccompanied minors in their care at their own expense. They were going above and beyond their official responsibilities, and we all appreciate that effort. I am happy to see the DHS' recent efforts to help Health and Human Services identify additional shelter locations and expedite the safe transfer of these children, and it is beginning to show positive results.

I am encouraged to see a drastic reduction in the number of these vulnerable children in Border Patrol facilities and that they are staying for shorter periods of time. While the situation at our Southern Border continues to improve—thanks to the Biden administration's efforts, I will say—unfortunately, many challenges still persist, especially because of the population of migrants who are continuing to flee incredibly dangerous conditions in their home countries.

This Committee and Congress must work together to address the root causes of migration flows and ensure that the Federal agencies

in charge of responding to these challenges have the right resources and support. This is a big task, but it is not insurmountable.

Secretary Mayorkas, I look forward to hearing from you and how Congress can work with the administration to secure our borders and ensure we have sufficient personnel, provide asylum seekers with appropriate care, and ensure asylum applicants are processed efficiently and fairly to help address these concerns.

With that, I turn it over to Ranking Member Portman for your opening comments.

OPENING STATEMENT OF SENATOR PORTMAN¹

Senator PORTMAN. Thank you, Chairman Peters. I appreciate your moving ahead with this hearing, and it is critical we have it, and I appreciate the bipartisan oversight of the critical issues we will talk about today.

More than 50,000 unaccompanied children have come to our border during the 113 days since the first day of the Biden administration when they immediately began to put in place new policies. Typically, these kids were brought by unscrupulous traffickers and too often abused along the way.

This chart² behind me shows what has happened. It uses Customs and Border Protection (CBP) data to show that the crisis today is unprecedented, far worse than it was last year, and even substantially worse than 2019, when everyone considered it a crisis.

Here is 2019. Here is the Inauguration. Here is where we are today.

Because the focus today is on unaccompanied children, these numbers do not even include families which are also coming in in large numbers, 50 times higher than last year at this time, or single adults where there is a 20-year high, as predicted by the Secretary, a 20-year high in crossings, or, of course, the drug trafficking, which is a huge concern. We know that seizures of deadly fentanyl as an example are at a record high. We do not know how many of these deadly drugs are getting through, but it is most of them.

Last month, over 108,000 single adults were apprehended at the border, up from 96,000 in March and, again, seven times greater than last April. On top of that, the Border Patrol conservatively estimates that over 40,000 people who crossed illegally got away and were not apprehended in April. We have no idea who these individuals are.

Our Federal agencies on the border are, of course, overwhelmed. My hope is that today we can quickly get past the debate on the nature of this unprecedented surge so we can turn to solutions to stop this surge and ensure that vulnerable children are not further endangered by the policy choices being made here in Washington, DC.

Mr. Secretary, it has been two months since you, Chairman Peters, the Ranking and Chairs of the DHS Subcommittee on Ap-

¹ The prepared statement of Senator Portman appears in the Appendix on page 45.

² The chart referenced by Senator Portman appears in the Appendix on page 60.

propriations, and I traveled to El Paso to see this crisis at the border firsthand. I appreciated your support of our trip, and I have appreciated our conversations since.

What I learned on our fact-finding trip was that the Border Patrol is overwhelmed and short staffed because the overwhelming pressure at the border from not only the unaccompanied minors arriving but also the significant increase in adult and family arrivals we have discussed. I am proud of the Border Patrol agents and welcome the progress made in getting out of the situation we were in where so many children were crowded into CBP facilities. They have now gone into other government shelters run by HHS, so more frontline agents in the Border Patrol can now go back to their critical law enforcement duties along the border.

Border Patrol agents are doing the best they can in a very difficult situation, and we must support them, including providing additional resources. I learned the pressure on the Border Patrol of managing the influx of migrants, particularly processing children and families as they are detained, has taken them away from border enforcement activities. Human traffickers and drug smugglers know that. They are using unaccompanied children and families to divert Border Patrol agents so that they can cross the border with other illegal entries and illicit and deadly narcotics such as fentanyl that are killing Ohioans and others across our country, with record levels of drug overdoses and hurting families across the country.

I learned that the surge of children puts those children at risk of abuse and trafficking, even once they are in the United States. Remember, these children are only held until sponsors can be found in the interior of the United States. Then, as we have learned, regardless of the asylum adjudication that might occur, hardly any of these children will ever be returned to their home country. In fact, those who came in the last surge in 2019 I am told are almost all still here in the United States.

We have all heard the horrifying stories of the trauma some children experience on their way north. We have heard of sexual assault and other abuses, including, unfortunately, at HHS facilities. Now hundreds of Federal employees with no formal experience or training in child care are being brought in from other jobs around the country to help care for these children. I appreciate those volunteers, but I am also concerned that they do not have the training and experience to be able to properly care for them.

HHS is repeating the same mistakes of the two previous administrations as they deal with this crisis. With the overwhelming number of children, HHS has released children quickly without proper background checks of sponsors or other adults in the same household. We know that in some cases in the past, children have even been sent back to their traffickers, and HHS has lost contact with these kids.

I am glad that CBP has moved children to HHS, again, but these children have only been moved from one Federal agency to another. Now HHS is in crisis. Moving from one unsafe, overcrowded family to another is not a measurement of success. Neither is releasing them to sponsors who have not been properly vetted.

We have seen this before. While Chairman of the Permanent Subcommittee on Investigations (PSI), we issued three bipartisan investigative reports and held three hearings over two administrations on this very issue. We found that HHS failed to conduct background checks and as a result released children to human traffickers, including some who were placed into forced labor at an egg farm in my home State of Ohio.

A major issue left unresolved is that unaccompanied children remain at risk because no Federal agency claims legal responsibility or authority to ensure they are not being trafficked or abused once placed with a sponsor. There is no accountability.

These are all downstream problem statistics exist because of the surges and the incentives that encourage parents to send their children with human smugglers to enter our country unlawfully. The current policy is essentially that any child from anywhere, other than Mexico, who shows up at our Southern Border is allowed to come into the United States for an indefinite period of time. As long as that is true, in my view, the surge will continue.

I support more help to the Central American countries, the so-called Northern Triangle country, where most of these unaccompanied children are coming from. But no one who looks at this problem seriously can believe that any amount of aid to Central America will change the pull to come here in the short term. Properly targeted U.S. foreign assistance and engagement in the region can help to change conditions over time, but the crisis at the border is now.

There are three actions the administration must do and two actions Congress can do.

One is to support the Border Patrol with more agents, more technology, and certainly the completion of the parts of the border wall that are already paid for. My hope is that we made some progress on this issue just in the last 24 hours.

Second, we must provide incentives for children to apply for asylum from their home country, not to come to the border, and we must reinstate the safe third-country agreements so they can apply there.

Third, we should require immediate asylum adjudication at the border for children and families and adults. It will require some resources, but it is well worth it. We should not be releasing children to sponsors in the interior of the United States pending a decision. We should be making the decision at the border.

We should also pass our bipartisan bill, the Responsibility for Unaccompanied Minors Act, to require better background checks and to ensure accountability to be sure HHS keeps track of these children who have already come in. We also need to pass my legislation to mandate E-Verify to reduce the jobs magnet which is behind all of this. The sad reality is that some of these children are exploited and abused, including being forced to work in violation of labor laws in order to pay off their smugglers. That this is happening right now here in this country is unacceptable.

Mr. Secretary, again, I appreciate your being here today, and I look forward to discussing all these issues in more depth with you.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Portman.

Secretary Mayorkas, it is the practice of the Homeland Security and Governmental Affairs Committee (HSGAC) 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?

Secretary MAYORKAS. I do.

Chairman PETERS. Thank you. You may be seated.

Secretary Mayorkas is the seventh Secretary of the Department of Homeland Security. Previously he served the Department as Deputy Secretary and as a Director of U.S. Citizenship and Immigration Services (USCIS) and began his public service at the Department of Justice (DOJ).

Secretary, thank you again for appearing before this Committee, and I now recognize you for your seven minutes of opening remarks.

**TESTIMONY OF THE HONORABLE ALEJANDRO N. MAYORKAS,¹
SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY**

Secretary MAYORKAS. Thank you very much, Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee. Good morning and thank you for the opportunity to be here with you today.

This hearing addresses a subject of intense focus at the Department of Homeland Security. We are addressing the needs of unaccompanied children who arrive at our Southern Border without a parent or legal guardian, children who have fled torture, persecution, extreme violence, and poverty, many who have crossed Mexico in the grasp of smugglers with the hope of reaching safety and uniting with their parent or close relative here in the United States. These are children, many of tender age.

To address the needs of these children, we mobilize capabilities from our different agencies and offices. We called upon the dedication, expertise, and talent of the workforce of the Department of Homeland Security. I am privileged to speak with you today about the challenges we confronted, the actions we have taken to overcome those challenges, and the extraordinary results we have achieved thus far.

First, the challenges. We began our work with systems and tools that the prior administration had dismantled and with assistance programs that had been torn down or cut short. We had to rebuild while at the same time addressing the surge of unaccompanied children that had begun in April 2020, many months before we took office, and our efforts had to be undertaken in the midst of the COVID-19 pandemic.

We are dedicated to an orderly, safe, and humane immigration system, and, therefore, we stopped the prior administration's policy of expelling the unaccompanied children. We did not turn them away.

Because the prior administration failed to increase the Department of Health and Human Services' capacity to receive the unaccompanied children from Border Patrol stations within the required

¹The prepared statement of Mr. Mayorkas appear in the Appendix on page 52.

timeframe, children were staying in Border Patrol stations for too long. As I have said before, a Border Patrol station is no place for a child.

In late March, more than 5,700 children were in Border Patrol stations, and the average length of their stay was 133 hours. We managed the situation because of, quite simply, the selfless dedication, the heroism of the United States Border Patrol. I repeated then what I had said two weeks earlier: that we have a plan, that we were executing on our plan, and that it will take time. This is what we do, and we know how to do it.

On March 13th, I directed our Federal Emergency Management Agency (FEMA), to support an all-of-government effort to assist HHS in transferring and sheltering the children. Then I directed our expert U.S. Citizenship and Immigration Services personnel to serve as caseworkers to further support HHS, helping unite the children with their verified relatives here in the United States. Our Department's dedicated and talented workforce volunteered to provide further assistance.

We also deployed our Chief Medical Officer (CMO) and his team's expertise, instituting COVID-19 health and safety protocols, and mobilizing additional medical teams, including those of the United States Coast Guard (USCG). It is now about six weeks later. On March 29th, more than 5,700 children were in Border Patrol stations. Two days ago, there were 455.

On March 29th, 4,078 children were in Border Patrol stations, more than the maximum allowed, 72 hours. Two days ago, there were none.

On March 29th, the average length of time a child spent in a Border Patrol station was 133 hours. Two days ago, on May 11th, the average time was 22 hours.

The challenge is not behind us, but the results are dramatic, and not only did we mobilize the talented workforce of the Department of Homeland Security in partnership with our colleagues at HHS, we have also been reengineering the process from start to finish and creating new efficiencies. These changes are reducing the time a child spends in the shelter and care of HHS before being united with her or his parent or legal guardian in the United States.

More broadly, to effect more foundational change, our immigration strategy focuses on three key areas.

First, we are addressing the root causes of migration for the Northern Triangle countries, addressing the reasons why families send their children in the first place.

Second, we are building legal pathways for children and others to come to the United States if they qualify under the laws that Congress passed many years ago so that they do not think that they have to take the dangerous journey north.

Third, we are urging you to pass immigration reform. We are all in agreement that the system is broken. We need to come together to pass the proposed legislation that fixes the broken system.

Thank you again for the opportunity to be here today. I look forward to answering your questions.

Chairman PETERS. Thank you, Mr. Secretary, for your opening comments.

I just want to be clear. As I listened to your comments, as you opened it up, you stated that the number of unaccompanied children arriving at the Southern Border started to rise in the second half of last year, tripling between June and December 2020. Is that correct?

Secretary MAYORKAS. Mr. Chairman, the surge of unaccompanied children first began in April of last year, April 2020, and it swelled from there.

Chairman PETERS. So could you explain how the Trump administration anticipated and began making preparations for this increased arrival? As these unaccompanied children are coming in, what were they doing to prepare for this trend that was clear last year?

Secretary MAYORKAS. Mr. Chairman, they did nothing to facilitate addressing the surge. What they did was they dismantled the tools that we had to address it, and they tore down the programs that could have helped alleviate the pressure.

Chairman PETERS. They were dismantling facilities while we are seeing this surge begin? That does not seem logical to me.

Secretary MAYORKAS. Mr. Chairman, in my view, it was antithetical to not only our values and our principles, but also our operational needs.

Chairman PETERS. If efforts to expand HHS shelter capacity had started earlier, back in the time that we are talking about, in the fall or the early winter, could bottlenecks that had led to the 5,000 children in CBP, would that have been avoided?

Secretary MAYORKAS. Most certainly, Mr. Chairman. In fact, the conditions that were depicted on photographs that troubled us all but two months ago, those photographs would have depicted a very different situation at Border Patrol stations had we had the capacity for throughput that the operational efficiency of the system is predicated upon. But we did not have that capacity at HHS. We did not have the shelters and the processes in place and the resources in place to achieve that. That is what we have built.

Chairman PETERS. Yes, that is what you inherited, and you had to work pretty quickly to try to build and expand HHS capacity in order to transfer minors. How can the Department's expertise that you are bringing to bear now, such as the FEMA rapid response and contracting capabilities that I know you are using in order to expand that capacity, how can they be better leveraged in the future?

Secretary MAYORKAS. I think one of the things that we are looking at, Mr. Chairman, is actually equipping the Department of Health and Human Services with a Federal workforce. It is right now built on a contracting architecture, reliant on vendors. One of the models that we are taking a look at is whether there can be a permanent Federal workforce and then a contracting architecture to address surges as they arise, because we all know that surges arise periodically. They arose in 2019. They arose in 2016, in 2014, and well before then. Migration is a very dynamic and fluid challenge that we have faced for many years.

Chairman PETERS. Mr. Secretary, I know many children arrive at the Southern Border with caretakers who are not their parents. They are separated under U.S. law from them. This policy was de-

veloped with child welfare in mind to ensure that a child is not being trafficked, a victim of trafficking, or otherwise being taken advantage of.

At the same time, this policy can cause some heartbreaking separations even if they are temporary. Aunts can be separated from nephews and nieces. Grandparents can be separated from grandchildren. During my trip to the border last month, for example, I met a very young boy, who had arrived with his older brother, but was separated from him and being processed separately and, therefore, was alone.

Do you know how many children arrive with caretakers who are not their parents? Do you have any numbers related to that?

Secretary MAYORKAS. Mr. Chairman, I do not have those numbers with me. I would welcome the opportunity to see whether we collect that data and circle back with you. But if I can make a couple points, if I may, Mr. Chairman.

First of all, certainly I grew up in the law enforcement arena. I was a Federal prosecutor for 12 years, and I believe in enforcing the law. The law includes the humanitarian laws that Congress passed. Those, too, are deserving of enforcement, and, frankly, it is our obligation and commitment in government to enforce those as well. One law that the prior administration did not enforce was the Trafficking Victims Protection Reauthorization Act (TVPRA), and that is our obligation to enforce, and that is what we are doing.

Second, if I may, "Building Back Better" is not a slogan. It is a mandate. It is a mandate that I am obligated to carry out as a member of President Biden's Cabinet. And that is exactly what we are doing.

The issue that you raise is something that we are very carefully looking at, and not only have we brought our capacities, our talent, our expertise to bear to address the surge of unaccompanied children that started in April 2020, but we are taking a look at the process, the system, and how we can reengineer it for a better future. That reengineering has well begun and is underway and will continue to be executed consistent with the mandate that President Biden directed me to execute.

Chairman PETERS. The government's ability to ensure children are moved out of CBP facilities in a timely manner is dependent not only on HHS' bed capacity but also HHS' ability to officially release children to sponsors here in the United States. You have already discussed some of the ways that DHS has assisted HHS both in increasing bed capacity and in making the sponsor release process much more efficient. While I realize this is not specifically a DHS jurisdiction, could you just elaborate for the Committee on protections that remain in place to ensure that children are not being released into a dangerous situation?

Secretary MAYORKAS. Mr. Chairman, we have brought expertise to bear on that part of the process as well. We have dedicated very experienced asylum and refugee officers from U.S. Citizenship and Immigration Services who are expert in verifying the identity of individuals, and we work in tandem with experts from the Department of Health and Human Services to ensure that the individuals in whose care the children will be placed are qualified to be caretakers for those children. There is an extraordinarily important

data point here. Approximately 40 percent of the children who come to the border unaccompanied have a parent or legal guardian here in the United States. Over 90 percent of them have relatives here in the United States, and that is very relevant to our verification responsibilities that we execute in the hands of expertise.

Chairman PETERS. All right. Thank you, Mr. Secretary.

Ranking Member Portman, you are recognized for your questions.

Senator PORTMAN. Thank you, Mr. Chairman.

I said at the outset I hope that we can kind of move on from the debate about the crisis and what happened and how we got here. I have a lot of respect for you, as you know, Mr. Secretary, but I am not able to sit here and not comment on this idea that somehow this is Donald Trump's fault. I mean, you can say that the Trump administration should have been letting children in, but you have said instead you think it was inhumane what they were doing by turning children away based on Title 42, which said basically during the COVID-19 period we were not going to let folks in. And so that is fine, we can have that debate. But you cannot say that and then also say the Trump administration is at fault because they did not prepare for the surge. You are saying they did not allow children to come in because they, believed that under Title 42 they should not come in, as well as adults and families; therefore, kids did not come up to the border, they did not make that arduous journey from Central America; and then at the same time say they are at fault because they did not prepare for the HHS facilities that they knew were necessary. They did not know they were necessary because the kids were not coming in.

These are the facts. These are the charts. OK? I mean, let us just stipulate this so we can move on and talk about policy. This chart is very clear. You see where the yellow line is. That is the Biden administration Inauguration. Actually, I was generous. That yellow line should be one bar to the left. I gave kind of the whole situation a month to kind of percolate so people would know in Central America and elsewhere what was going on. Here is January 21st, this bar right here. Look at that surge. I mean, it is obvious what happened. And you have said it. You said they were not allowing unaccompanied kids or families or individuals to just come into the border and then go into the interior. They stopped that practice, and it had the intended effect. People stopped sending their kids up to Central America, paying smugglers, paying traffickers, those kids, as we have said, facing all kinds of assaults and exploitation.

So, we can agree to disagree on what the policy ought to be going forward. I get that. But let us at least stipulate as to what happened here. And what happened is when the Biden administration came in, they made a decision. You were asked to implement it. I remember talking to you at the time, and you realized this was going to result in some real issues. But the thought was this is the humane way to go, let us allow these kids to come in. So do not blame the previous administration for not having facilities that they did not need because they did not have the surge. Again, let us look at the numbers.

So here we are. “What do we do?” is the question. And for these kids, you had said earlier about the trauma some of them have faced and the difficulties that their families face in Central America. I get that. If I was a dad in Central America, I would want my kids to have a better life. As I have talked to children and families on the border, both on our most recent trip and previous trip, they all say the same thing to me, which is they do want their families to have a better life. These kids say they have come here to have the opportunity to have a life where they cannot just make more money but have, a life in the United States of America because it is a better place to live. I get that. I am all for legal immigration, and I am all for providing asylum to people who really have a credible fear of persecution. But what we have done instead is just opened the doors.

I would make the point that those children who came in 2019 during the last surge, I would ask you, Mr. Secretary, those children were allowed to come into the interior of the United States with sponsors. Some of those sponsors were unscrupulous, as we know, and we have done investigations on this and had hearings on this, and some of these kids were exploited. Some were not. But of those children who came in in 2019 who did not receive asylum because they did not meet the criteria for asylum, how many have been deported and sent back to their home countries?

Secretary MAYORKAS. Mr. Ranking Member, may I comment?

Senator PORTMAN. Yes, sir. But I would like an answer to that because I think it is illustrative of where we are now. You look at your own U.S. Immigration and Customs Enforcement (ICE) deportations in the month of April. I am told they were at a historic low, that people are not being sent back even if they do not receive the asylum. Only 15 percent of individuals from Central America, I am told—you can correct me—are successfully adjudicated, in other words, successfully, having claimed and received asylum. And my understanding is there is no process in place to send those other folks back to their country of origin. So surely these smugglers have the opportunity to tell these families in Central America, “Give your child to me, and that child will get into the United States and indefinitely will be able to stay there.”

So that is the policy we need to look at and we need to change. But could I hear your answer on the 2019 surge and how many of those children have been sent back to their home country?

Secretary MAYORKAS. Mr. Ranking Member, assuredly we will have the opportunity to discuss the many issues that you have raised. It will take me quite a bit of time to answer them fully, but I will do so in bullet point fashion as rapidly as possible.

First of all, my parents brought me here to this country so that my sister and I could have a better life, so I am very familiar with the challenges that we are addressing and more powerfully and heartbreakingly the challenges that the parents are facing when they send their children to traverse Mexico to reach our Southern Border.

Second, we speak of lawful pathways and support of them, and yet the prior administration tore those down, too. They tore down the Central American Minors (CAM) Program that provided a law-

ful pathway for the adjudication of children's rights to arrive here in the United States and stay in the United States under the laws that Congress passed, but that was torn down.

Senator PORTMAN. Mr. Secretary, just for a second, before we just continue the blame game here, how many children were processed over a three-year period through that program? Which I support, by the way, and I support reinstating it.

Secretary MAYORKAS. That program should have been built up rather than torn down.

Senator PORTMAN. How many children during the Obama Administration were brought in under that program?

Secretary MAYORKAS. I would be pleased to provide that data.

Senator PORTMAN. I think it is about 5,000 children. Five thousand children. Look at these numbers, over three years. I support that program. But let us not think that these are going to solve the problems that we face. Anyway, please continue.

Secretary MAYORKAS. That is 5,000 children that were expelled. Next, I do not think that the prior administration supported legal immigration. They threw up every obstacle possible to permit legal immigration.

Fourth, the asylum system is in need of improvement. It is in need of strengthening, and that is precisely what we are dedicated to achieving. It has been a years-long challenge preceding the Trump administration, preceding the Obama Administration, that the time of adjudication of asylum claims is too long. We need to shorten that, but not at the expense of permitting individuals to develop their legitimate claims through the recovery from the trauma that they might have suffered and so many, in fact, have suffered.

Last, with respect to our enforcement efforts, we are focused on enforcing the law and focusing on individuals who pose the greatest threat to public safety, national security, and border security, and that is what we are executing upon, just as I did as a Federal prosecutor for 12 years in a jurisdiction of approximately 18 million people with limited resources. We said we were going to allocate those resources to have the greatest public safety impact. I am proceeding no differently as the Secretary of Homeland Security.

Chairman PETERS. Thank you, Secretary Mayorkas. I appreciate it.

Senator Hassan, you are recognized for your questions. I need to momentarily step away to the Armed Services Committee to ask some questions, so the gavel will be turned over to Senator Carper.

Senator Hassan, you may ask your questions.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you very much, Mr. Chairman and Ranking Member Portman, for holding this hearing. Secretary Mayorkas, welcome and thank you for your service.

I want to start with a question about interagency coordination. At the end of 2020, even as the number of unaccompanied children began increasing, HHS capacity to shelter children remained limited. As numbers continued to rise in 2021, DHS mobilized support to provide care, speed up processing, and stand up emergency shelters. This included key assistance from FEMA, which helped HHS

open 14 emergency intake sites, as well as assistance from the U.S. Coast Guard and U.S. Citizenship and Immigration Services.

The surge of unaccompanied children has slowed recently from more than 52,000 children transported to the Office of Refugee Resettlement (ORR) facilities in March to approximately 20,000 children in April.

Secretary, given that the volume may continue to fluctuate, is DHS prepared to remobilize personnel and resources from FEMA or other parts of DHS when it is necessary?

Secretary MAYORKAS. Thank you very much, Senator. Yes, we are. But to something I said earlier, we are also focused upon building the capacity for the Department of Health and Human Services so that it has the resources to address its elements of the process of the care for young children.

Senator HASSAN. Thank you for that. But given the fluctuations, I just think you will need to have some flexibility there and supports available.

Secretary MAYORKAS. We most certainly do. We have that capacity, that surge capacity, if you will.

Senator HASSAN. OK.

Secretary MAYORKAS. The President has, in fact, directed an all-of-government effort to address that.

Senator HASSAN. Thank you. Let me turn to a different topic. There are several interagency and intergovernmental programs designed to identify threats and prevent dangerous people from entering our communities. These includes the Visa Security Program, the Refugee Admissions Program, USCIS processes to evaluate asylum claims, and the National Vetting Center (NVC) within DHS.

Secretary Mayorkas, do you believe that any of these vetting programs need to be enhanced to ensure that our programs can identify and prevent dangerous people from entering the United States?

Secretary MAYORKAS. Senator, we have tremendous vetting capabilities in the Department of Homeland Security and across the Federal enterprise. They are very strong vetting capabilities of which we are extremely proud and, of course, extremely proud of the personnel at the Department of Homeland Security that have developed and administer those vetting programs. But we never rest on what we have achieved. We are always looking at how everything we do can be strengthened and improved, and that is especially the case with our vetting programs, with the use of new technologies, new analytic tools, new sources of expertise.

Senator HASSAN. Thank you. Now I want to talk a little bit more about how we vet sponsors for unaccompanied children. Coordinated efforts between the Department of Homeland Security and the Department of Health and Human Services have reduced the time that unaccompanied children spend in government facilities. However, I am concerned—and you have heard it from other folks here this morning—about the vetting process for sponsors.

For example, in the past, HHS has sometimes failed to recognize that people who were sponsoring multiple unrelated children could also perhaps be human traffickers, that when they do that kind of sponsorship of unrelated children, they could be engaged in human trafficking, or that sponsors hopefully failed to ensure that children appear in immigration court.

I understand that HHS has primary responsibility for vetting sponsors, but could you explain how DHS is working with HHS to ensure that sponsors are appropriately vetted to prevent human trafficking, to ensure that children are placed in safe environments, and ensure that sponsors bring children into the immigration proceedings?

Secretary MAYORKAS. Thank you, Senator. We have achieved and are continuing to achieve efficiencies in the process, but never at the expense of the quality in our administration of the processes. That is quite evident in precisely the subject that you are focused upon, which is the vetting of the family, relatives, or sponsors of the unaccompanied children. It is precisely why we did not take from our volunteer workforce or our surge capacity workforce individuals unqualified to conduct that vetting. Quite the contrary, what we did was deploy experts in the vetting of individuals with respect to their identity and their qualifications.

We took asylum and refugee officers who deal with these very issues in the hottest spots around the world and applied their technical expertise and experience to the vetting of the sponsors. We are working as hard as we can to ensure that the mistakes of the past are not repeated. We learn from mistakes, and we move forward. And that is precisely what we are doing in our support of the Department of Health and Human Services that does indeed have ultimate responsibility for that part of the process.

Senator HASSAN. Thank you. Medical professionals have noted that unaccompanied children apprehended at the border suffer trauma before they ever enter DHS and HHS custody, trauma from being separated from their loved ones, from being in the company of strangers, or even from mental or physical abuse prior to or during the journey to the United States. In a briefing to the Committee, officials stated that DHS and HHS were focused on building trauma-informed procedures.

Secretary Mayorkas, could you tell the Committee about what DHS has done and what you further plan to do to address trauma experienced by children before they are in custody and to reduce trauma experienced by children while they are in custody?

Secretary MAYORKAS. Senator, we cannot overstate the trauma that some of these children have endured. It speaks to, on the one hand, the cruelty of some, but it also speaks poignantly of the resilience of the human spirit. It is remarkable what these children have gone through, but how they can see a better day ahead.

It is our responsibility, it is the responsibility of humanity, to address the needs of these children, and what we have done with our Chief Medical Officer, an extraordinarily talented and dedicated individual, Dr. Pritesh Gandhi, is to see what these children have gone through, what their needs are, and to bring that health professional counseling at the earliest possible time in our operational processes and the Department of Health and Human Services and their expertise in this area, to bring those resources to bear so that it exists throughout the period. One thing, why we speak of efficiency but not at the expense of quality, is sometimes it takes an individual time to work through the trauma they have suffered and articulate the claim for relief that they have legitimately under the laws that we have passed. We are very mindful of that.

Senator HASSAN. Thank you very much, and thank you, Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER [Presiding.] Senator Hassan, thank you for those questions. It is not every day that a former Chairman of this Committee is asked by the current Chairman and Ranking Member of this Committee to preside and to recognize another former Chairman of this Committee to ask questions of a former Deputy Secretary of the Department of Homeland Security. It is great to see you again, and, my friend, you are recognized.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Unprecedented. Thank you, Senator Carper. This does feel like old times back in 2014, a little *deja-vu*. You have the gavel, I am sitting next to you, and we are in the midst of a crisis at the border, even though some are denying it.

I know during my chairmanship in hearings where we were always going through the problem-solving process, I would often say the first step in solving any problem is admitting you have one. And it just does seem like we are in an utter state of denial.

I have a chart,¹ a little bit different than Senator Portman's. His is children. I have total apprehensions at the border. It shows clearly—it is galling, quite honestly, to hear that this is a crisis inherited by this administration. The Chairman is saying that the numbers are decreasing, the situation is improving, the surge started in April 2020. To the extent that we had any surge in 2020, it is because Democrat Presidential candidates were saying we are not going to deport anybody and we are going to give everybody free health care. That was an incentive; that was a pull factor.

But it is very clear what has been happening. The crisis in 2018, 2019, we had probably a little over 4,000 apprehensions per day. We have for the last four or five weeks been close to 6,000 per day. In 2014, we were dealing with around 2,000 per day. This is unprecedented what is happening here.

When you talk about the Trump administration dismantling things, what they did is they ended catch and release. They ended the enormous incentive for people to come into this country and exploit our very generous asylum laws.

Mr. Secretary, real quick, isn't it true that when cases are actually adjudicated on asylum, about 90 percent of them are denied?

Secretary MAYORKAS. I do not believe that is true, and—

Senator JOHNSON. What is the real percentage then?

Secretary MAYORKAS. Senator, I do not have the data right before me, but I am very happy—

Senator JOHNSON. OK. Please get that for me.

Let me ask you, have you done a cost study on how much money the taxpayers will waste, that is going to be expended by not honoring the contracts to build the final 250 miles of wall? Have you figured out how much that is going to cost the American taxpayer and get no wall built?

¹The chart referenced by Senator Johnson appears in the Appendix on page 63.

Secretary MAYORKAS. Senator, I certainly have taken a look at the expenses that were incurred in building the wall and, in my opinion, how much waste was caused by that construction when, in fact, we could have leveraged innovation of new technologies that prove far more effective in securing the border.

Senator JOHNSON. OK. I know you are in the state of denial, but let us go back to my chart here. What the Trump administration did is they ended the incentives, so they put in place Migrant Protection Protocols (MPP). Then they quite honestly threatened some tariffs to get cooperation from Mexico. That is that line right there, and you can see it worked. Add to that the imposition of Title 42. We pretty well stopped a robust surge of illegal immigration at the border, and that was pretty much in effect—again, it started ramping up when Democratic Presidential started talking about open borders and free health care. This is President Biden’s Inauguration. Here is the surge.

Let me talk about real numbers, too. At the height of the surge in May 2018, it was about a little over 7,000 unaccompanied children per month. In March 2020, right here, that had dropped to about 3,000. After Title 42, it dropped down to 741 per month. That was the low point. In March of this year, almost 19,000. Last month, in April, 17,000 unaccompanied children. Those are the numbers. We can talk about, percentages and tripling the number since April, but here is the problem. There is the surge. And it is undeniable, and yet you are denying it.

This is as close to open borders as we could possibly have. Don’t you think that is going to be even more of a pull factor?

Secretary MAYORKAS. May I have a minute to answer your question?

Senator JOHNSON. Again, is that going to be a pull factor or not?

Secretary MAYORKAS. Senator—

Senator JOHNSON. That is kind of a yes-or-no answer.

Secretary MAYORKAS. You have asked a few questions.

Senator JOHNSON. No, I have not really asked a question. So let me ask you some questions. I want to go back to—

Secretary MAYORKAS. If I may—

Senator JOHNSON. I want to talk about the February 18th interim guidance to all ICE employees in terms of carrying out enforcement removal priorities. First of all, was there any analysis regarding how the new priorities would impact crime and public safety before that guidance was issued?

Secretary MAYORKAS. Yes.

Senator JOHNSON. Can you provide us those documents of that analysis?

Secretary MAYORKAS. Senator, I have worked for 12 years as a Federal prosecutor. I have been in the immigration—

Senator JOHNSON. No, would you provide us those documents? Will you provide me those documents of that analysis?

Secretary MAYORKAS. Senator—

Senator JOHNSON. Yes or no?

Secretary MAYORKAS. Yes, I will.

Senator JOHNSON. OK. Thank you.

Was there any consultation or coordination with States regarding how the new guidelines would impact law enforcement and public safety?

Secretary MAYORKAS. Senator, one of the things that I have articulated in the promulgation of the guidelines that I will execute is that I will engage with the workforce of Immigration and Customs Enforcement—

Senator JOHNSON. No. The question is: Did you engage and coordinate with State governments prior to that guidance being issued? Yes or no?

Secretary MAYORKAS. Senator, I do not know what engagement preceded me. I took office in February—

Senator JOHNSON. OK. Can you check? And if there was, can you provide me that documentation?

Finally, talking about States—

Secretary MAYORKAS. Senator—

Senator JOHNSON. Again, we are running out of time. I do not want long answers. As local law enforcement is apprehending and holding illegal immigrants that they have flagged for removal—OK? So we have that group of people. Is ICE issuing detainers on every one of those individuals that local law enforcement is holding and that are flagging for removal?

Secretary MAYORKAS. I am sure they are not, nor should they be.

Senator JOHNSON. Can you tell me what percentage they would be issuing detainers on?

Secretary MAYORKAS. I do not have that percentage, and I will get that to you as well.

Senator JOHNSON. OK, good. Thank you.

My final question then is—because I was shocked when we were at the border. I have heard the word—we have become more efficient. Yes, you have become more efficient at apprehending, processing, and dispersing. I was shocked when we went down to the border and said that the guidelines for CBP is to literally process people in 8 hours and disperse them, get them out of CBP custody and send them all over the country.

I was also shocked to find out that we are not issuing notices to appear (NTA). What percentage of people are we dispersing around this country that do not even have a notice to appear?

Secretary MAYORKAS. Senator, the individuals who arrive at our border and are placed in the interior are subject to immigration proceedings, and they receive a notice to appear.

Senator JOHNSON. So 100 percent are receiving a notice to appear. That is your testimony?

Secretary MAYORKAS. The policy of our administration is that each individual is placed into immigration proceedings and receives a notice—

Senator JOHNSON. So you are not aware that CBP has been directed not to provide notice to appear as they are dispersing people into the interior? That is your testimony?

Secretary MAYORKAS. That is my testimony because the process is that U.S. Customs and Border Protection issues a notice to appear, and if, in fact, they are operationally not able to do so, the individual receives a notice to appear at an Immigration and Customs Enforcement office. Individuals in the interior are placed in

immigration proceedings in accordance with enforcement law, period.

Senator JOHNSON. I will be following up that with other information we have gotten. Thank you.

Thank you, Mr. Chairman.

Secretary MAYORKAS. Thank you. Mr. Chairman, may I make a couple points that I did not have the opportunity to make because I did not have an opportunity—

Chairman PETERS [Presiding.] Yes, it is important to have these questions answered, so you may continue, Mr. Secretary.

Secretary MAYORKAS. One of the things the Trump administration did was separate children from their parents, and they ripped sons and daughters out of the hands of fathers and mothers and said they would never see each other again. That is one of the things. Maybe that worked, and maybe it did not. But I will tell you what it did not work for, is the values and principles of this country. No. 1.

Senator ROMNEY. This is not a hearing about the Trump administration. This is a hearing about the current administration.

Chairman PETERS. Secretary, you may answer the question as you see fit. Let us have an open forum to discuss the issues before us. You may continue, Mr. Secretary.

Senator ROMNEY. Will we have enough time for—

Secretary MAYORKAS. No. 2—

Senator ROMNEY [continuing]. Questions from the Senators, to ask questions?

Chairman PETERS. You can have questions, but your questions take up the full seven minutes. We would certainly like to have the Secretary have an opportunity to answer these questions, Senator.

You may continue, Secretary.

Secretary MAYORKAS. The only additional thing I will say is that our—

Senator JOHNSON. I did not ask that question, by the way.

Senator ROMNEY. That is not a question.

Senator JOHNSON. I did not ask that question.

Chairman PETERS. If you could answer the questions as they were asked, I would appreciate it, Mr. Secretary.

Senator JOHNSON. I did not ask that question.

Secretary MAYORKAS. The only other thing I would say is that our enforcement efforts are focused on smart and effective enforcement that delivers the greatest public safety consequence. Thank you.

Chairman PETERS. Thank you.

Senator Rosen, you are recognized for your questions.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you, Chairman Peters, Ranking Member Portman, for holding this important hearing.

Secretary Mayorkas, I really want to take this moment to thank you, commend you for your compassion and for your leadership navigating this critical moment personally, professionals, and for the families that are going through this. Before I ask my question, I will allow you to use some of my time. If you have anything addi-

tional you would like to say, you can take that, and then I can go into my questions. Otherwise, I can go straight in. Mr. Secretary?

Secretary MAYORKAS. Thank you very much for that courtesy, Senator. I look forward to your questions.

Senator ROSEN. OK. Thank you.

I really just want to talk about, building on what Senator Hassan talked about, child welfare and child welfare professionals. Children in CBP custody, there are poor conditions, and the treatment has not been good. I worked with the last administration trying to develop a plan to bring child welfare professionals to all CBP facilities. Unfortunately, the previous administration ignored my requests.

And so to follow up on some of the recommendations proposed by child welfare advocates, are CBP facilities currently staffed with medical professionals with pediatric experience and child welfare professionals to provide those other wrap-around services that these children who are experiencing trauma or other issues, as Senator Hassan brought up? Do you have those folks at facilities?

Secretary MAYORKAS. Senator, we do have individuals with those capabilities and that expertise at Border Patrol stations. Of course, in March, when we experienced such a great surge, we did not have the ratio that was optimal. Our focus has been on moving the children out of the Border Patrol station as rapidly as possible to ensure that they are in the shelter and care of the Department of Health and Human Services that does indeed have a greater level of that expertise, as appropriately should be the case.

Senator ROSEN. Thank you. I want to build on that when we were working with the prior administration, and they were not really listening to what we were trying to ask them to do. Do non-governmental organization (NGOs) currently have access to CBP facilities to assist and augment any care or programming that these children might need? The prior administration was not allowing that as well.

Secretary MAYORKAS. Senator, there is some access, and that is one thing that we are taking a close look at, because, of course, when we were experiencing the greatest challenge, there were operational capacity issues with respect to providing that access. But we believe that that access will strengthen the efficiency of the system in all regards, and it is one of the areas that we are keenly focused on as we are improving and strengthening the process from beginning to end.

Senator ROSEN. Thank you. I am going to move on. I know Senator Johnson talked about Title 42, and so I am pleased that the Biden administration took immediate actions to reverse several of the previous administration's cruel and misguided policies. I do remain concerned about the continuation of Title 42, that policy that the Trump administration used to expel migrants across the board, including children and families desperately attempting to come here for our asylum process.

And so are you concerned that Title 42 could still be a new source of family separation? It is so painful and making migrant parents make that painful decision to separate from their children in order for them to find safety in the United States. What is DHS

doing to mitigate the risk of family separation while Title 42 is still in place?

Secretary MAYORKAS. Senator, we are certainly hearing anecdotally that some families self-separate to allow their children to enter the United States unaccompanied. That speaks to the trauma that these families have endured and their desperation to give their children a better life. Our exercise of Title 42 is the exercise of a public health authority to protect the American public with respect to COVID-19, as well as the migrants themselves. It is an exercise of authority that rests with the Centers for Disease Control and Prevention (CDC). The issue that your question addresses is something that we are keenly focused upon.

Senator ROSEN. Thank you. I know the prior administration as well when they were separating families, we are still concerned that the recordkeeping was not, I guess I will say, "adequate." That is how we will put that, lightly and diplomatically. I want to be sure that if families are self-separating, if there is separating going on, that we know where children go, where their parents go, because I never want to hear a story that some child could never find their parents again or do not know who they are. So can you let us know that you are doing that and how you are doing that, because that is keenly important to us.

Secretary MAYORKAS. Senator, I look forward to following up with you. I appreciate it.

Senator ROSEN. Thank you. One last thing on Title 42. We know that, of course, because of COVID that lies not within your Department. Do you anticipate with the vaccines becoming more available that Title 42 might be rescinded soon? Do you have anything that you would like to bring up about that for us?

Secretary MAYORKAS. Senator, I do not have a timetable. As I sit here today, I know that the Center for Disease Control looks at the public health landscape in determining whether its authorities need to continue to be exercised, and its responsibility is to look at that public health imperative and make that decision, and that falls within its jurisdiction.

Senator ROSEN. In my last 30 seconds, I will take the responses to these off the record, but we know that some migrants were removed by a tent court process. They really were not given a fair process. Are you considering allowing those individuals to represent their cases? Some of those cases also that were in the MPP program that remain in Mexico, they were closed. Are you considering opening these tent courts and these MPP cases? I will take those off the record to allow the next Senator to speak.

Chairman PETERS. Thank you, Senator Rosen.

Senator Lankford, you are recognized for your questions.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Thank you, Mr. Chairman. Secretary Mayorkas, thanks for being here.

The last time you were here, several months ago during the process of the nomination, I asked you about the border wall. You said you were studying that. I understand the administration called for a study that was completed the 21st of March. None of us have seen the results of that study, though there was a press release

that came out of your office saying that we are now protecting the border communities from the wall at this point.

When I was down at the border area—you have been down there as well a couple of times; thanks for doing that—in Arizona, this is what I saw.¹ The day that border wall construction stopped, miles and miles of wall with the gates incomplete, this seems to be the status that we are still at. This is nonsensical. As you know, the Border Patrol now has to park a vehicle right there next to that gap because on the other side of this fence is a city of 450,000 people on the Arizona—from the Arizona side into Mexico.

So my question to you is: What is the result of the study on the border wall completion? There is \$1.4 million that was passed with a bipartisan majority last year that is in the law to be able to complete this. Where is this going?

Secretary MAYORKAS. Thank you, Senator. Two things, if I may.

Number one, we have committed to finishing the levees as well as addressing the erosion of land under roads adjacent to the wall as two public health imperatives. We have made that decision, and we are studying the very issue that you identify here about how are we going to address, what is the most effective way to address gates and the completion of gates as well as the closing of gaps. That is something that is under review now.

Senator LANKFORD. So this requires a review to be able to evaluate if you should just hang the gate when the steel is sitting right there, if that should be complete?

Secretary MAYORKAS. The review is indeed underway.

Senator LANKFORD. What would be the challenge here? I would tell you people in my State and myself included, when I went and looked at it, I do not understand what needs a review to be able to evaluate if you just have to be able to close the gate, especially when the law already has set aside those dollars and it is already there.

Let me follow up on a couple of things. You have given testimony about the notice to appear. We understand there have been 19,000 individuals that have crossed the border this calendar year that were not given a notice to appear. Are you saying that is incorrect?

Secretary MAYORKAS. Senator, I am not aware of that number, but let me, if I may, say that it is our policy to issue a notice to appear to individuals who are permitted entry into the United States to make their claim. Ideally, they are issued the notice to appear at the Border Patrol station. If we are not able to do that, the objective is to issue them a notice to appear at the Immigration and Customs Enforcement office to which they are directed.

There was a time when we were unable to issue certain notices to appear and placed those individuals immediately in immigration proceedings. But our policy—

Senator LANKFORD. So our understanding is from being down in Texas, in Arizona, talking to some of the folks on the ground, we have the number of 19,000 individuals have been released into the country without a notice to appear. They are told to go to an ICE office wherever they are going in the country to self-report at the ICE office, basically turn themselves in there are ICE, and ask for

¹The picture of border wall appears in the Appendix on page 64.

a notice to appear. Do you know of any that have actually done that? Of the 19,000 that have been asked to do that, how many have actually done that?

Secretary MAYORKAS. I can get that number to you because we have seen a high rate, and I should say that individuals who do not appear are a priority of ours for apprehension in the service of border security.

Senator LANKFORD. I understand those were family units that are coming in, or it is a parent with a child, at least one child at that point, and they are told to be able to do that. The notices to appear that are being given out right now, do they comply with the previous Supreme Court orders that had been done to be able to make sure that they are consistent and they will stand up under the rule of law?

Secretary MAYORKAS. I believe they do, and I will confirm that, Senator.

Senator LANKFORD. Please do, because we have several Supreme Court rulings recently that have given greater clarity to those NTAs, and I want to make sure that we are actually not giving out something that will violate the Court in that.

Speaking of court, there was a court order that was done from Drew Tipton about the 100-day moratorium that was announced to not deport individuals even if a court had said they have a final order of removal. The Biden administration announced that. The Federal court in Texas immediately said, no, you cannot just do that. In the meantime, since that has occurred, if I am tracking these numbers correctly, ICE removals have fallen anyway by 50 percent from January to April of this year and by 70 percent from October to April of this year.

I want to ask you, are you complying with the Federal court order that ruled that you cannot just stop, you have to continue to be able to remove people that have a final order of removal?

Secretary MAYORKAS. We are complying with the court order, Senator. The policy was promulgated at the outset that there would be a pause on removals to enable the administration to review the policies. The court did, in fact, enjoin that pause, and the pause was indeed lifted, and new guidelines were issued.

Senator LANKFORD. That is a pretty stark drop in removals, though, that has already happened this year.

Also, the policy seems to be for ICE removals and for enforcement priorities that—it seems to me pretty high criteria at this point for removal of individuals, and if they are not on the predetermined list to be able to be removed, they have to go get permission in advance to be able to remove someone. ICE informed my staff on April 8th of this year that enforcement action directed at sex offenders that do not meet the aggregated felony criteria will require preapproval from the field office director or special agent in charge (SAC).

So my question is about this. Can you share with us today the number of sex offenders that ICE has declined to deport this year because they did not meet that criteria?

Secretary MAYORKAS. It is my view that individuals who commit sex offenses should be apprehended and removed.

Senator LANKFORD. Why is there a special request to get preapproval before you actually address that?

Secretary MAYORKAS. Senator, allow me to explain the process, because I have yet to issue my enforcement and removal priorities, and I intend to do so after engaging with the ICE workforce, hearing from our personnel on the front lines, as well as other stakeholders.

Senator LANKFORD. I would say there is a real concern about the additional hoops that people have to go through which seems to discourage them, and we see that in the numbers, a 50-percent drop.

Let me ask about Title 42, because when I was at the border, that was a major concern of folks on what to do on Title 42. You and I spoke about this the last time that you were here saying that you are going to study it and try to examine what to do on this. There is a significant number of people—in fact, of the 178,000 people that were encountered at the border last month, 111,000, almost 112,000 of them were turned around due to Title 42. The question is: How are you examining, what is your criteria for dropping Title 42? What is your plan? Because if you drop Title 42 at this point, there are 112,000 more people that are actually engaging across the border.

Secretary MAYORKAS. Senator, Title 42 is the CDC's public health authority.

Senator LANKFORD. Correct.

Secretary MAYORKAS. It is not a tool of immigration. It is a tool of public health. Therefore, the use of Title 42 will be governed by the CDC's analysis of the public health imperative.

Senator LANKFORD. But is the public health imperative in Mexico or in the United States?

Secretary MAYORKAS. It is the public health imperative with respect to the protection of the American people.

Senator LANKFORD. So that would be where they are coming from, if they are coming across the border from Mexico, the health status there?

Secretary MAYORKAS. I cannot speak to the precise analysis that the CDC undertakes, and I would be very happy to follow up with that.

Senator LANKFORD. Please do.

Mr. Chairman, thank you for the additional time. This is a very important issue that we started a couple of months ago that we still have to get clarity on how that is going to be handled, because this is a very serious issue of how those individuals that are currently being returned, what happens next? Thank you.

Secretary MAYORKAS. Thank you, Senator.

Chairman PETERS. Thank you, Senator Lankford.

Senator Romney, you are recognized for your questions.

OPENING STATEMENT OF SENATOR ROMNEY

Senator ROMNEY. Thank you, Mr. Chairman.

I must admit that I have found this hearing to be stunning in that it seems, Mr. Secretary, that you are proud of the progress being made by the administration, that things are going well at the

border. I look at this chart¹ that was prepared by Senator Johnson, and I see an extraordinary crisis. I mean, do you recognize this as an alarming crisis?

Secretary MAYORKAS. Senator, I look at immigration as a challenge that has been persistent for many years—

Senator ROMNEY. Of course, but we were running along here, and now we are seeing apprehensions at the border that have skyrocketed. As alarming, perhaps even more so, is the chart² that came from Senator Portman, which is unaccompanied children who are being let into the country, an explosion. Is this not a massive failure that would suggest that the administration needs to take immediate action to remedy what we are seeing here?

Secretary MAYORKAS. Senator, we have taken immediate action with respect to the unaccompanied children, and we have made—

Senator ROMNEY. Is the number coming down?

Secretary MAYORKAS. We are addressing that challenge with increasing efficiency every single day.

Senator ROMNEY. Increasing efficiency to get them moved to other parts of the country and with families and out of these crowded facilities. I understand that. I am delighted that we are not having kids sleeping on floors and in cages. But the number coming into our country and being released into our country is at a skyrocketed level, as is this. The question is: Do you have plans to do something dramatically different such that those numbers come down to an acceptable level? Because you can imagine this overwhelms our Border Patrol agents. If they have numbers like this they are dealing with, this means that the drug cartels can be smuggling through drugs because our folks are taking care of kids, they are taking care of people coming in illegally.

Do we have plans to dramatically address what is happening here?

Secretary MAYORKAS. Two points, if I may, Senator, both of which are extremely important. The laws of our country provide certain procedures and certain rights for children who arrive unaccompanied and have claims of asylum, who claim fear of persecution by reason of their membership in a particular social group, so—

Senator ROMNEY. I understand that.

Secretary MAYORKAS [continuing]. We have an obligation—

Senator ROMNEY. But we were turning those kids away under Title 42, and the new administration came in and said we will not turn them away, we will let them come in. I presume as a result of that the numbers went through the roof.

Secretary MAYORKAS. Senator, we are addressing the numbers consistent with the law under the Trafficking Victims—

Senator ROMNEY. Well, propose a new law. I mean, we have a crisis both for children—I mean, you talk about the humanitarian concerns of kids that come here, and I understand, we have addressed that—

Secretary MAYORKAS. These are children.

¹The chart submitted by Senator Johnson appears in the Appendix on page 63.

²The chart submitted by Senator Portman appears in the Appendix on page 60.

Senator ROMNEY [continuing]. You are addressing that. They are children. Think of them coming here all the way from Honduras. Think of the trial of going across the entire country of Mexico to get here, and then not being able to come into the country.

Yes, let us put this up.

Secretary MAYORKAS. Senator—

Senator ROMNEY. I mean, this is a crisis for children. The fact that these kids are coming here making that kind of journey, and they are not going to be allowed to stay in this country.

Secretary MAYORKAS. Senator, if I may, we are the United States of America. Ninety percent of these children have a parent or legal guardian in the United States, and they have a claim of fear of persecution—

Senator ROMNEY. So this is not a problem then? Your view is that this is the way it is going to be.

Secretary MAYORKAS. If I may, Senator, they have a claim under the law for humanitarian relief, either a claim of asylum or their claim for special immigrant juvenile status. And we can, in fact, meet the challenge of humanitarian—

Senator ROMNEY. What I find astonishing, Mr. Chairman, is that we have the Secretary responsible for securing our border and our immigration system who does not recognize these charts as being a problem, and there are human beings behind these numbers, and is not saying, hey, we have to make some changes immediately. I find that extraordinary and extremely damning.

Secretary MAYORKAS. No, I—

Senator ROMNEY. Let me turn to a different topic, and that is, some years ago immigration was, well, if you will, the huddled masses yearning to be free, and we were encountering people who wanted to come to this country, and we were able to offer them hope for a better life.

Today, increasingly, much of what we are seeing here is a result of cartels that have learned how to take advantage of current law in the United States to defeat our systems and not provide the people that are being brought here the opportunity that they were seeking.

I think there is an urgent need to rethink our immigration system to make sure that we recognize we are dealing with a different circumstance in many cases than we were before. A discussion of root causes, we need to address the root causes in Latin America, gosh, we have root causes in our own country. We have challenges here we cannot solve that we have been working on for years. The countries around the world who have problems, we cannot solve all the problems of the world, let alone the problems in Latin America and the problems here in our country.

Do you agree with this, that we have to focus on enforcing our border, finishing the border barrier, using the technology—by the way, if it is technology, use technology, but somehow deal with this in an urgent and aggressive manner.

Secretary MAYORKAS. Senator, we are indeed focused on securing our border and, in fact, using technology is the most effective or one of the most effective ways of doing it, first.

Second, I do agree with you that we do need change in the law, and that is precisely why I hope that Congress does indeed pass immigration reform.

Third, these are people yearning to be free, and what the cartels do, unfortunately, is too often control the means by which they arrive, not the reasons why they flee and why they seek relief, humanitarian relief in the United States under the laws that Congress passed many years ago.

Senator ROMNEY. You indicated the last time we were together that you would study E-Verify. Senator Portman and I, among others, have proposed a mandatory E-Verify system in our country. Do you believe that is a good idea? Florida is using that effectively. Should we have an E-Verify system for our country that is mandatory?

Secretary MAYORKAS. Senator, I believe in E-Verify. I think it is an effective tool. Its effectiveness grew under my administration as the Director of U.S. Citizenship and—

Senator ROMNEY. Should it be mandatory so businesses are required to check the legal status of people they are hiring?

Secretary MAYORKAS. Whether it should or should not be mandatory is actually something that I have not yet determined.

Senator ROMNEY. I will look forward to that determination. Thank you.

Chairman PETERS. Thank you, Senator Romney.

I have a quick question, because I think we should know this in the Committee. Senator Romney talked about the number of apprehensions that are occurring right now. That chart, if you could help me, because when I was down on the border, I understand that we are apprehending a lot of folks from Mexico, single adults who are coming across. They are being expelled from the country, but then they come back in a few days. You catch them; they go back. Is that reflected in those numbers? Give some clarity to us if you have an opportunity to see that chart.

Secretary MAYORKAS. It is very difficult for me to see, and forgive me, with my diminishing vision. But I do understand your question. What is likely measured is the number of encounters, and the number of encounters probably includes a great deal of duplication because there is recidivism. When an individual is expelled under Title 42, a single adult, we have seen that same individual return only to be expelled again, and that is one of the things that we are looking at in terms of a consequence regime.

Senator JOHNSON. Mr. Chairman, I have all the numbers. I would like to enter them in the record. In the second round of questioning, I will spout some of those things off. OK?

Chairman PETERS. That is fine.

Senator Carper, you are recognized for your questions.

Senator CARPER. Thanks. Mr. Secretary, thank you so much for joining us and for your past service to our country and your current service and your leadership.

Would you like to take a minute of time to respond to any questions that you did not have a chance to respond to?

Secretary MAYORKAS. Thank you for the opportunity. I look forward to your questions, Senator.

Senator CARPER. All right. Thanks. A number of us have had the privilege of traveling to the Northern Triangle countries—Honduras, Guatemala, and El Salvador—repeatedly in bipartisan groups. I hope to be part of one of those later this year and look forward to some of the Members of this Committee joining at that time.

I want to remind you of Scripture: When I was a stranger in your land, did you welcome me?

We are reminded in the *Flores* decision, which actually reflects and mirrors, I think, very much the message in Matthew 25. I think Matthew 25 is a moral obligation that we have to the least of these, including people who are trying to escape violence and crime and corruption and lack of opportunity, which we are implicit in. We are implicit in by virtue of our addiction to illegal drugs that are trafficked through these countries. We are implicit in their misery. The question is: What are we going to do about it? I would suggest that what we do about it is walk and chew gum at the same time.

We have some charts¹ here that indicate what has been going on at CBP in terms of how long we are holding kids and so forth. Let us see. Average number of hours children in CBP custody. What was it on March 28th? A hundred and three hours. What was it on May the 11th? Twenty-six hours in CBP custody. That is a reduction of 80 percent. That is improvement.

Do you have another chart? Number of children in CBP custody on March 28th, 5,767 children were in CBP custody, almost 6,000. May 10th, what is that? Two days ago. We had 455 children in CBP custody. That is a reduction of 92 percent. That is an improvement. That is a marked improvement. I just want to say to you but particularly the folks at CBP that the Department of Health and Human Services, whose work is making this possible, good work.

If we want to do something about these charts we have been shown by our colleagues with the most recent surge, we can do something about that, my friends. We can do something about that. Three primary reasons why people are coming out of these countries to try to get up here: No. 1, lack of opportunity and hope; No. 2, crime and violence; No. 3, corruption.

We created something called the “Alliance for Prosperity” a number of years ago, the idea that we would put money into fighting those three ills: crime and violence, corruption, lack of economic opportunity. The idea was that we would provide some money and in return each of these countries would provide money, a lot more than we were going to provide.

No. 2 was try to leverage money from other countries to help out in these three areas, to leverage money from NGO’s, to work and focus on these three areas.

The most recent trip I took was down to the border with a congressional delegation (CODEL) about a month ago, and we saw some indication that this kind of progress could be realized. I just want to take my hat off to the CBP folks, the men and women who are down on the border doing this work every day. I just want to take my hat off to the folks from HHS who are taking the hand-

¹The chart referenced by Senator Carper appears in the Appendix on page 61.

off and trying to do difficult work, important work, but in compliance with *Flores*.

Let me ask, Mr. Secretary, how important is it—and then I am going to ask you to be very brief in your responses. We have not had a U.S. Ambassador to Honduras for four years. Four years, no confirmed U.S. Ambassador to Honduras for four years. We do not have a confirmed U.S. Ambassador in El Salvador right now. We have a pretty good Ambassador—I talked to him just this past week, highly regarded. I think he is doing a good job. But if we want to do something about changing these numbers, why don't we confirm—why don't we get from this new administration—they have had a chance to get their feet wet now. We need them to nominate career Ambassadors, and we need to hold speedy hearings, vet them, and vote them up or down. I think one of the best things we can do is put in place career Ambassadors with Senate confirmation, Senate support, as much as anything. We need to make sure that they are surrounded by terrific staff in the embassies in Honduras, Guatemala, and El Salvador. They need to be the counterbalance to all the thugs and the crooks and the criminals down there that are using drug money that we provide to continue to screw up those countries. That is the first thing we can do.

The second thing we can do, and I think here is my question. I actually am going to ask a question. The ability for the young people or not so young people to apply for asylum within their own country, at our embassies, at our consulates, is that something that we are doing a satisfactory job and doing? If not, is there something that we on our side need to make that possible?

Secretary MAYORKAS. Thank you very much, Senator Carper. We are very focused on that. As I articulated at the very outset in my opening remarks, we have a three-pronged approach: to address the root causes, to build legal pathways, and to advocate for, with the hope that Congress will pass, immigration reform. And with respect to that second prong, I think that is what your question goes to, the building of legal pathways. If we can, in fact, adjudicate claims in the countries of origin or in truly safe places, then we will spare children the perilous journey north.

Senator CARPER. Why is it important for the Congress to take up and actually debate and pass comprehensive immigration reform? Why is that important in this debate today?

Secretary MAYORKAS. I think we all agree, the one thing that there is unanimity about is the fact that our current system is absolutely broken, and we can provide fixes through the legislation that has been proposed and is pending.

Senator CARPER. Let me say to my colleagues, I am not surprised but disappointed with the tenor of this hearing today. There is a problem here that needs to be addressed. There are a bunch of problems that need to be addressed, and our pointing fingers at one another and one administration or the other, that is not going to solve the problems. There are some things we can do and need to do, and if we will follow up and work together across the aisle and with this new administration, we could make great progress. We can turn this around. I want to do that. I want to do it with all of you.

Thank you.

Chairman PETERS. Thank you, Senator Carper. I think hopefully all of us will come together because these are serious issues that we need to deal with.

Senator Scott, you are recognized for your questions.

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. Hi, Secretary.

Secretary MAYORKAS. Good morning.

Senator SCOTT. First off, I am appreciative that you are trying to do your job with compassion. I do not think any of this is easy, and I think everybody that is involved in border security is having a very difficult time.

I had the opportunity to go down to the Arizona border with Governor Ducey, and when I went, what actually shocked me was we did an aerial tour and they had the wall, and you have heard all the stories—Senator Lankford brought it up—that they just did not put up the gates. They just stopped. I mean, you cannot—if you talk to people around the country, they look at that and say, “Why would that happen?” And, a lot of have said we need to use new technology. They had the lights and cameras up. And you talk to Border Patrol; they just did not electrify it. They just stopped. Right after January 20th, they just stopped.

When you look at this, you say there is no logic to this, right? I know we want to be a compassionate country, and we are a compassionate country, but we also have drugs come across our border. We have people that do—sometimes criminals come across the border, and we have wonderful people who want to come here and live our dreams.

When you and I talked before your confirmation, one thing you committed to me is you were always going to enforce the law. Do you believe that you and your agency are enforcing the existing laws?

Secretary MAYORKAS. Yes, we are.

Senator SCOTT. All right. There is none that you have any concern are not being enforced?

Secretary MAYORKAS. I believe that we are enforcing the laws in a smart and effective way, and, actually, we will do so smarter and more effectively as the days and weeks progress. I am very focused on that, and I am looking forward to actually meeting with the ICE workforce in the coming days to hear from them as front-line personnel to learn of their experiences, to inform the guidelines that I intend to promulgate.

Senator SCOTT. So you have seen this chart, the unbelievable increase in apprehensions, and also the chart that showed how many unaccompanied minors. Are you disappointed that President Biden and Vice President Harris have not taken the time to come to the border to see firsthand what a lot of us have seen, that there is clearly a crisis, that we have to—and you have said there are things we have to address. Are you disappointed that President Biden and Vice President Harris have not taken the time to come to the border?

Secretary MAYORKAS. Absolutely not. What the President and the Vice President have done is directed me to address the challenges at the border which are within my responsibility as the Secretary

of Homeland Security, and I have visited the border on multiple occasions thus far.

Senator SCOTT. As I talk to sheriffs in Florida, what they are seeing since Joe Biden's Inauguration is an unbelievable increase in fentanyl coming into Florida. The only thing they can say is it has to be it is coming across the border. According to CBP data, drug seizures are down significantly this year. Do you think the record-low drug seizures are because our CBP agents and their resources are being diverted to manage the humanitarian crisis at the Southern Border?

Secretary MAYORKAS. No. Our interdiction efforts continue effectively, Senator. We have a multi-tiered approach to the interdiction of drugs, contraband, and dangerous individuals. We take great pride in the capabilities of the men and women of the United States Border Patrol and, quite frankly, in the actions that I have taken. We launched Operation Sentinel to elevate and accelerate those actions, and as Senator Portman well knows, I overcame delays that preceded me in the promulgation of critical regulations to effect the Synthetics Trafficking and Overdose Prevention Act of 2017 (STOP) Act, which was a tremendous tool for law enforcement.

Senator SCOTT. Why would seizures be down then? If all that is happening, why are seizures—I mean, that is the data that is coming out of the administration.

Secretary MAYORKAS. Senator, I would like to review the data that you have and exchange data, because our interdiction efforts are quite effective. And, regrettably, we are interdicting a great deal of contraband that predominantly does not come in between the Ports of Entry (POE), historically has come through the ports of entry, in hidden compartments of vehicles. Our technology is tremendous, and the traffickers also use air assets, marine assets that we are interdicting as well.

Senator SCOTT. Does DHS feel like it has a duty to remove illegal aliens convicted of serious crimes, like sexually assaulting a child or manufacturing illegal drugs?

Secretary MAYORKAS. Yes.

Senator SCOTT. And is that happening?

Secretary MAYORKAS. Yes.

Senator SCOTT. OK. Can you commit that those individuals that are being released for future courts dates, like you talked about earlier, are clearly going to be deported if their asylum claims are rejected?

Secretary MAYORKAS. I am sorry. Can you repeat the question?

Senator SCOTT. If somebody has come in and they have been released, but their asylum claim is rejected, are they clearly going to be deported?

Secretary MAYORKAS. They are subject to removal, yes.

Senator SCOTT. Are they going to be?

Secretary MAYORKAS. As far as I know, yes.

Senator SCOTT. Do you think it is happening now?

Secretary MAYORKAS. I believe so. What I think we need to focus on, quite frankly, Senator—and this is something I spoke to earlier—is addressing the asylum system and strengthening and improving it so individuals who are actually eligible for relief and de-

serving of relief receive it in a reasonable period of time, and those who do not, the adjudications are delivered in a reasonable period of time, which is a problem that has plagued the asylum system for years and years and years.

Senator SCOTT. Going back to the wall and the technology that is not being connected to electricity, why is that?

Secretary MAYORKAS. Senator, we approach this in a very methodical and reasonable fashion, in my opinion, which is the border wall in many respects was not the most effective use of taxpayer dollars to secure the border. The paradigm that had bipartisan support certainly when I served as the Deputy Secretary was a paradigm of different types of assets brought to meet the challenge: physical barriers that were in existence, the use of technology, and harnessing innovation to really be force multipliers, as well as, of course, the brave and heroic men and women of the United States Border Patrol. It is that three-part effort that is most effective.

The methodology that was designed and is being implemented is let us put a pause on the construction of the border wall; let us assess what is actually needed to be completed, for example, the levees and the road erosion that we, in fact, have committed to; and let us take a look and see what does deserve and needs to be continued and what really should be stopped. We are taking a look at the gates, the gaps, the deployment of sensors in those parts that have been completed, and what is reasonable to complete in the judicious exercise of taxpayer dollars, and so that is what we are doing.

Senator SCOTT. It sounds really good. You know, just looking at it from the outside, it looks sort of crazy. That money has been committed, the wall is up, and the gates need to go up. Or the lights and the cameras are all there, and they are just not—I mean, it just does not seem logical to the American public.

Secretary MAYORKAS. I respectfully disagree, Senator. I think it is a logical way to approach, and if we can actually save the expenditure of dollars on something that should not be the subject of expenditures, it would be terrific if we can forestall that and use those funds more effectively in a different way.

Chairman PETERS. Thank you, Senator Scott.

Senator Hawley, you are recognized for your questions.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you very much, Mr. Chairman. Thank you for being here, Mr. Secretary.

I want to talk about the policies that have gotten us to where we are with our effectively open border, but let me first ask you about this. You said as recently as this week that the border is closed. Is that still your position today, the border is closed?

Secretary MAYORKAS. Yes, it is.

Senator HAWLEY. Don't you think you bear any responsibility for the current crisis by telling the world earlier this year that the border was open? Your words were, "We are not telling you not to come. We are just telling you that we are putting a system back in place in which you can come." I mean, don't you think people took your words at face value then?

Secretary MAYORKAS. Senator, I have never said that the border is open, and I have never—

Senator HAWLEY. “We are not telling you not to come.” How would you parse that?

Secretary MAYORKAS. Senator, I have never said that the border is open, and I have never believed that it should be an open border. We have laws that Congress has passed that are laws of accountability and also laws of humanitarian relief.

Senator HAWLEY. You did say that, “We are not telling you not to come,” though, right? You said that. You remember that.

Secretary MAYORKAS. I am sorry, Senator. I apologize.

Senator HAWLEY. You remember saying, don’t you, that “We are not telling you not to come”? Those are your words that you said in a press conference. You said that, right?

Secretary MAYORKAS. I do not recall saying that. I do not believe—

Senator HAWLEY. You do not recall saying that?

Secretary MAYORKAS. That is correct, Senator. I have never said—

Senator HAWLEY. We would be happy to refresh your memory for you in some questions for the record. That is interesting news, and I am sure everyone will—the Secretary has just said he does not have any memory of making those comments. That is extraordinary.

Secretary MAYORKAS. Senator, I have never said that the border is open.

Senator HAWLEY. Let me ask you about this. CBP data says that the agency had 178,000 enforcement encounters at the Southern Border in April. This is the highest in two decades. Of that total, what percentage were subject to immediate expulsion?

Secretary MAYORKAS. I will get that data to you. I do not have that at my disposal this morning.

Senator HAWLEY. Is it 100 percent? Is it 60 percent? Is it 20 percent? Do you have any idea?

Secretary MAYORKAS. 100 percent of families and single adults are subject to expulsion except for those with acute vulnerabilities, and we exercise that discretion. However, our ability to actually expel families under CDC’s Title 42 authority is limited by, for example, Mexico’s ability—capacity, I should say, to receive the expelled families, and that is what we are addressing as a result.

Senator HAWLEY. I think the number is around 60 percent or so are subject to immediate expulsion, which means we have a very large percentage of migrants who are permitted entry into the United States and are still here. But we will give that question again to you for the record so that you can go and look it up.

Let me ask you this: Why is it that this week—actually, late last night it was reported that CBP terminated a flight program that transferred families across the Southern Border for purposes of expelling them under Title 42. These flights were apparently canceled due to the pressure of left-wing groups. Is that accurate?

Secretary MAYORKAS. Senator, we make our decisions as we consider to be most effective in furtherance of our mission and not because of pressure by outside groups. I would be pleased to look into

the cancellation of the lateral flights and respond to you after I have done so.

Senator HAWLEY. So you are telling me here that the American Civil Liberties Union (ACLU) had no role in the termination of these expulsion flights? Is that your testimony?

Secretary MAYORKAS. Senator, we are addressing the claims of the ACLU. The ACLU has claimed that our exercise of the CDC's Title 42 authority is not supported by the law, and we are working with the ACLU—actually, adverse to the ACLU—

Senator HAWLEY. You are working with them, though?

Secretary MAYORKAS. If I may, Senator, we are adverse to the ACLU—

Senator HAWLEY. But you are working with them on this program? Is that why you canceled it?

Secretary MAYORKAS. If I may finish, Senator, we are adverse to the ACLU in litigation with respect to the legal authority underpinning our exercise of the CDC's Title 42 authority.

Senator HAWLEY. Right, but you are working with them in the termination of these expulsion flights?

Secretary MAYORKAS. Senator, the decisions with respect to expulsion flights are ours because of the decisions that we have made based on the reasons that we think are necessary to execute on our mission.

Senator HAWLEY. I think the fact that you are working with them is interesting news, so that is also quite relevant. We will give you this information as a question for the record.

Secretary MAYORKAS. Senator, they are suing us, and we are defendants. That is not what I—

Senator HAWLEY. I am just quoting back what you just said. You just said that, "We are working with them." The news reports indicate that you canceled these flights at their behest. You and I both know that there can be such a thing as friendly litigation, Mr. Secretary. I mean, let us not pretend otherwise. I am just repeating your own words to you. We will give this to you as a question for the record so that you can look into it further. I think that is interesting news.

Let me ask you about why you canceled the Safe Third Agreements with the governments of El Salvador, Guatemala, Honduras? These are agreements negotiated by the previous administration that the President canceled once he came into office. The President says that he is an avowed multilateralist, and yet one of the first things he did was to tear up these international agreements with other countries. How can you address the root causes of migration, as you keep talking about, if you are going to tear up international agreements that try to address these problems?

Secretary MAYORKAS. I will answer your question and make one comment, but before I do so, I have been a lawyer now for 35 or so years. "Friendly litigation" is a phenomenon with which I am completely unfamiliar.

Senator HAWLEY. Really? You are not familiar—wait a minute. You are not familiar with an outside group bringing litigation against the government that the government then accedes to in order to change the law? You have never heard of that phenomenon?

Secretary MAYORKAS. Senator, I am not familiar with friendly litigation. As a Federal prosecutor, I was a strong advocate for the U.S. Government in the pursuit of criminal accountability.

Senator HAWLEY. You have never heard—wait, this is interesting. You just brought it up. You have never heard of regulatory lawsuits in which outside groups bring suits against the Federal Government. The government then agrees to settle the suit or to change its rules, and it reaches a settlement that is favor—that the government actually wants to achieve? You have never heard of that before?

Secretary MAYORKAS. Senator, I have heard of resolutions of litigation. I have heard of settlements of litigation. I have heard of arbitration. I have heard of mediation. Friendly litigation, the commencement of friendly litigation is something with which I am unfamiliar. The reason why—

Senator HAWLEY. That is extraordinary.

Secretary MAYORKAS. The reason why the Safe Third Country Agreements were terminated is because there was nothing safe about them.

Senator HAWLEY. I am sorry. By which you mean what?

Secretary MAYORKAS. Senator, to have an individual fleeing persecution from Guatemala and considering Honduras a safe third country is actually empirically incorrect because—and we can take a look at the migration from Honduras and the number of people leaving Honduras for fear of persecution, and that is not our concept of a safe third country.

Senator HAWLEY. It is not your concept. So you think it is wise policy to come into office, to terminate these international agreements based on your judgment about these other countries, without consultation with them apparently, and then we see this massive—would you say that the children who have come to the United States and have gone through the border crossing have had to pay who knows what for the cartel are more safe because of your actions? Do you think that you have put them in less danger because of the agreements that you terminated and the opportunities to seek asylum and then wait in a third country you have denied to them? Do you think that your actions have made the situation better?

Chairman PETERS. Senator, you have gone over your time, but—

Senator HAWLEY. Could I get an answer to that question? Then I will stop.

Chairman PETERS. Yes, absolutely. Secretary, you may answer that question, but we have to be respectful of our three other Members that are waiting.

Secretary MAYORKAS. The Safe Third Country Agreements, in my opinion, put children in harm's way.

Chairman PETERS. Thank you, Senator Hawley.

Senator Ossoff, you are recognized for your questions.

OPENING STATEMENT OF SENATOR OSSOFF

Senator OSSOFF. Thank you, Mr. Chairman. Thanks to you and the Ranking Member for holding this hearing, and thank you, Mr. Secretary, for joining us today and for your testimony.

Mr. Secretary, on March 12th of this year, the Federal District Court for the District of Columbia blocked ICE from destroying records related to detainee sexual abuse and assault, records related to the death of detainees in ICE custody, records related to solitary confinement and other punitive measures imposed on ICE detainees, and other materials under a plan that has been approved by the National Archives and Records Administration (NARA).

Last month, Members of Congress wrote a letter urging DHS to reconsider its document destruction plans and policies in light of that March district court decision, and the letter explained that, "For Congress to effectively perform its oversight and legislative functions, it is essential that the government permanently retain records reflecting serious abuse, neglect, and misconduct."

In fact, the Senate's Permanent Subcommittee on Investigations has attempted to collect exactly these types of records from ICE going back to October 2019, only to have the agency continually delay its production of those requested records and misrepresent the completeness of the response, and many documents responsive to the Permanent Subcommittee on Investigations' request are still outstanding today.

Mr. Secretary, will you commit to a reappraisal of any DHS document destruction plans or policies that could impact the treatment of materials related to mistreatment of ICE detainees? And will you please commit now to ensure that ICE fully and immediately produces all records requested by the Senate Permanent Subcommittee on Investigations?

Secretary MAYORKAS. I do, Senator.

Senator OSSOFF. Thank you, Mr. Secretary. I appreciate that commitment.

I would like to ask you about the use of private companies in the immigration detention system, please. The Trump administration dramatically expanded the use of private companies in immigration detention. As of January of last year, ICE held 81 percent of detainees in its custody in privately owned or managed facilities. At the same time, detainees in these facilities have reported sexual abuse, unsanitary conditions, substandard medical treatment, and worse, including recent allegations in Irwin County, Georgia, of unnecessary and extreme medical procedures performed on female detainees.

The President's criminal justice plan during his campaign stated that the Federal Government "should not use private facilities for any detention, including detention of immigration detainees."

Mr. Secretary, as the administration moves to discontinue the use of privately run Federal prisons, what steps is your Department taking to end the use of privately run immigration detention facilities?

Secretary MAYORKAS. Senator, let me share with you, if I may, what I have done and what I am doing. I have read extensively about the use of detention in civil immigration proceedings as well as the conditions of detention in civil immigration proceedings. I have read accountability reports by the Office of Inspector General (OIG), our own Office for Civil Rights and Civil Liberties (CRCL). We now have a detention ombudsman, an Office of Detention Om-

budsman, and I have read reports by nongovernmental organizations.

I am very focused on the use of detention in civil immigration proceedings as well as the conditions in those facilities, and I intend to begin taking action very quickly.

Senator OSSOFF. Can you specify any steps that have been affirmatively taken to end the use of privately run immigration detention facilities?

Secretary MAYORKAS. Senator, I am going to be speaking with my workforce about my findings and my intentions. I have begun that dialog, and I would appreciate the opportunity to continue those discussions and take the actions that I think will be responsive to your concerns.

Senator OSSOFF. Thank you, and we will follow up on that in short order and hope to see some progress and some affirmative steps that you will have taken.

I would like to ask you about surveillance footage at DHS and specifically ICE detention facilities. I had a conversation with the Director of the Bureau of Prisons (BOP), Director Carvajal, at a hearing last month, and the BOP shared with my staff, pursuant to some requests for information that I had made, that Federal prisons only retain surveillance footage for 14 days before purging that footage to create space for new data. And recognizing that BOP administration is far outside of your purview, that appears to me to be a totally inadequate duration of retention of those records.

Given the scope of alleged detainee abuse and, indeed, corroborated reports of detainee abuse and substandard conditions at ICE detention facilities, I have similar questions about the retention of surveillance footage at those facilities. In May 2018, for example, a detainee died at a hospital shortly after entering ICE custody in New Mexico, but the private contractor running the detention facility deleted surveillance footage which could have clarified the circumstances of that death.

Mr. Secretary, my question for you is: Does ICE impose uniform surveillance footage retention policies on the private contractors who operate ICE detention facilities?

Secretary MAYORKAS. Senator, I do not know the answer to that question. I will have to follow up.

Senator OSSOFF. I would be grateful for that answer for the record.

And on a related note, Mr. Secretary, an ICE internal document was reported in 2019 to call for “an internal review of all facility inspection records for detention facilities after the death of a detainee in ICE custody.”

Are you aware, Mr. Secretary, whether ICE procedures require a detention facility to immediately preserve and share up the chain of command all surveillance footage and records related to the death of a detainee in ICE custody?

Secretary MAYORKAS. I certainly hope they do, Senator, and I will follow up on that with alacrity.

Senator OSSOFF. Thank you so much, and if they do not, will you commit, presuming you have the legal authority to do so, to making that DHS policy?

Secretary MAYORKAS. Yes. Absent some compelling reason why I should not, of which I am unaware as I sit here today and testify, most certainly.

Senator OSSOFF. I am grateful for your testimony, your candor, and for your service to the country.

Secretary MAYORKAS. Thank you, Senator.

Chairman PETERS. Thank you, Senator Ossoff.

Senator Padilla, you are recognized for your questions.

OPENING STATEMENT OF SENATOR PADILLA

Senator PADILLA. Thank you, Mr. Chair, and thank you, Mr. Secretary, for participating today and for your service.

A couple quick questions, quick yes-no questions, just to sort of calibrate the conversation, because as I entered the hearing mid-stream—I was coming from the Senate Judiciary Committee. I heard a whole lot of rhetoric.

So, first, is it lawful for someone to seek asylum in the United States? Yes or no.

Secretary MAYORKAS. Yes.

Senator PADILLA. Are there processes and procedures in place to consider requests for asylum? Yes or no.

Secretary MAYORKAS. Yes.

Senator PADILLA. As these requests for asylum are processed by the appropriate agencies, determination is some combination of approvals and denials? Yes or no.

Secretary MAYORKAS. Yes.

Senator PADILLA. OK. I just think it important for those watching at home to kind of put the conversation and issues raised in this hearing in the proper context.

I did want to follow up on something that Senator Hawley raised, a question about safe third countries. It is my understanding that during the Trump administration they never sent anyone back to El Salvador or to Honduras, and, indeed, less than 1,000 migrants were sent to Guatemala. So it does not seem like these so-called Safe Third Country Agreements were really used by the Trump administration. Agree or disagree? Or maybe you can verify the numbers.

Secretary MAYORKAS. Senator, I would have to get back to you with respect to the data, which I do not have before me this morning.

Senator PADILLA. OK. That would be helpful. I appreciate that.

Now, I did want to raise a question about collaboration between the Department and nongovernmental organizations. I am hearing from a lot of advocates and service providers in California that more communication and coordination would be helpful between DHS and the NGO's that are efficiently and safely providing service for immigrant families. Oftentimes, migrants are sent to areas of the country where shelters are already at capacity, though, and the Department is not sufficiently drawing upon resources in other regions of the country where providers have more capacity to continue to meet their needs.

Can you discuss any DHS efforts to improve communication and coordination with NGO service providers and how the Department

takes NGO feedback into consideration when making operational decisions?

Secretary MAYORKAS. Thank you, Senator. So we work very closely with nongovernmental organizations to address the asylees, the individuals who make asylum claims under United States law, to ensure that they are sheltered appropriately and that the COVID-19 health and safety protocols are administered in partnership with us and pursuant to an architecture of reimbursement that we work with the State and local officials on.

Early on, we heard the very same concerns that you reference this morning, that there were challenges with respect to the lines of communication, and so we addressed those, and we think we have made tremendous strides with the nongovernmental organizations in improving the lines of communication. That is not to say that everything works perfectly. The process is difficult. But when we learn of a shortcoming, we address it not only with respect to that particular relationship, but we take a look at whether there is any system improvements that we can institute. And so we are very proactive as well as reactive in improving and strengthening the communication lines with the nongovernmental organizations. They are critical partners in this.

Senator PADILLA. I look forward to following up with you on this as well, because as a proud representative of California, I know there are a number of local governments in addition to NGO's, particularly in Southern California, that have stepped up to try to be partners during this very unique time period and, some of the goodwill and well-intentioned gestures have meant facilities are near or at, maybe slightly beyond capacity, given, traditional occupancy limits, COVID protocols, et cetera. In other parts of the country, NGO's with capacity and experience, separate and apart from the funding question, are willing to be more helpful than I think DHS has taken them up on. So why not follow up with your team to share that information?

Secretary MAYORKAS. I look forward to that because we do work, of course, in close partnership with the Department of Health and Human Services. We look at the landscape of nongovernmental organizations across the country in the border area, I should say, and seek to place the families, the children, in the shelter where the capacity is greatest. It is a multifaceted analysis.

Senator PADILLA. I know there are multiple factors that are considered.

I do want to touch on what I think is an encouraging trend. I was glad to hear this week that the Department has decreased the amount of time that children spend in Border Patrol custody. As you recall, in March there were more than 5,000 children who were in Border Patrol custody specifically, each spending an average of 115 hours in Border Patrol facilities. But as of last Tuesday, I understand there are 455 children in Border Patrol custody, each spending an average of 28 hours in those facilities. That is a dramatic decrease in both the number of children in custody and the time spent in Border Patrol custody. Decreasing the time that migrants are in Border Patrol custody should be a top priority, especially for migrant children who are better cared for by far by HHS.

Can you discuss some of the steps that the Department and Border Patrol specifically have taken to decrease the time unaccompanied children are spending in Border Patrol custody and how we anticipate the time further going down going forward?

Secretary MAYORKAS. Thank you very much, Senator. I must really emphasize the extraordinary work of the United States Border Patrol, the men and women of the Border Patrol. Many of them are fathers and mothers who understand the plight of the children in whose care—the children were in the care of these heroic law enforcement officers.

First, we have deployed FEMA to assist HHS in increasing the number of shelters and intake facilities that it had so that we had places to move the children. Then we started delivering operational efficiencies, reducing the time that it took to actually place the child in those facilities. And now we are very focused on reducing the time not at the expense of quality, reducing the time between the HHS facility and the placement of the child with a relative or legal guardian here in the United States.

So it is shelter capacity, care capacity, process efficiency, three critical components of what we have delivered to achieve the dramatic results that you have noted.

Senator PADILLA. Thank you.

Chairman PETERS. Thank you, Senator Padilla.

The Chair now recognizes Senator Sinema for your questions.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Thank you, Chairman. I appreciate you for holding this hearing today. I am glad that Secretary Mayorkas has joined us to talk about the crisis at the Southwest Border. Secretary, I appreciate your commitment to responding to Arizona's needs during these challenges time.

As Chair of this Committee Border Management Subcommittee, I will continue to work to ensure that Congress and the administration take meaningful steps to secure the border, support our border communities and NGO's, prevent the spread of COVID-19, and treat all migrants and unaccompanied children fairly and humanely. That is why I recently introduced the bipartisan Border Solutions Act with Senator Cornyn. Our bill does not solve all the challenges of the border, but it does take meaningful steps to respond to the ongoing crisis by creating regional processing centers, improving the asylum process by ensuring that migrants get better legal assistance, and improving communication and coordination with local communities and nongovernmental organizations that are impacted by the crisis.

Secretary Mayorkas, that effort to improve communication and coordination is where I want to start today. I am pleased that Arizona ICE has responded to my concerns that our office raised regarding the release of single adult migrants at bus stops, and they have recently changed their policy. Bringing these individuals directly to nongovernmental organizations makes migrants and our communities safer, and I appreciate that. But under your leadership, ICE and DHS are working collaboratively with Arizona communities and NGO's to solve challenges. However, Arizona communities still worry about unannounced dropoffs of family units.

Which DHS rules and policies prevent your agency from providing notice before any migrants are going to be released in a community? how are you working to further solve this challenge?

Secretary MAYORKAS. Thank you very much, Senator. You did indeed bring your concerns to our attention, and those concerns were valid, and we took swift action. It is our commitment to ensure appropriate coordination and communication between Immigration and Customs Enforcement, the United States Border Patrol, and the local community officials. If, in fact, there is a breakdown, then that is our responsibility to ensure that it does not happen again. This is something that we are very focused on. Local officials do deserve to know of our actions that could impact their resources and their facilities, and we are very focused on continuing to strengthen that relationship, those relationships, and that dynamic.

Senator SINEMA. Thank you. I know we will continue working together to resolve this challenge.

My office has also received confirmation from local NGO and ICE officials that some COVID-positive migrants have been released into communities without sufficient resources or direct access to quarantine shelters. What are the Department's policies for releasing COVID-positive migrants? What steps can DHS take to improve these policies to keep both migrants and our communities safe?

Secretary MAYORKAS. Senator, under the tremendous leadership of our Chief Medical Officer, we have built an architecture of working with local officials and nongovernmental organizations to transport family members to local facilities through the nongovernmental organizations that have the capacity to test, isolate, and quarantine as necessary family members. This is an architecture that we have built in Texas, in Arizona, in California, and it is really a remarkable achievement.

We are continuing to look at that architecture to see how it can be strengthened and improved. We are committed to ensuring that individuals are indeed tested, isolated, and quarantined in the service of the public health imperative.

Senator SINEMA. Thank you. DHS recently finalized a contract with a private company to house migrants in Arizona and Texas hotels in order to improve processing capacity. What oversight is DHS conducting to ensure that these facilities meet the standards we expect of them, including sufficient access to legal and to case-work assistance?

Secretary MAYORKAS. Senator, there are really two ways to proceed in this regard. One is through licensed facilities, and the other, to ensure appropriate capacity and efficient and effective processes on licensed facilities. But we are committed to adhering to the very same standards across that landscape. So the fact that a facility is unlicensed does not mean that it should not have the very same standards for the care and custody and shelter of the individuals in its residence. And we are committed to and dedicated to adhering to those very same standards.

Senator SINEMA. Thank you. As you know, Secretary, I am extremely interested in the administration's efforts to improve the asylum process, including providing better access to legal counsel and legal orientation as a way to make the system more efficient.

That is a key reason why I recently introduced bipartisan legislation with Senator Cornyn to make the asylum process more efficient and also making it fairer.

What steps is the administration taking right now to improve legal orientation and legal access, including allowing migrants to easily make and receive phone calls at all DHS facilities?

Secretary MAYORKAS. Senator, I am very well aware of and appreciative of your efforts to improve the asylum process. That is an effort that we, too, are very dedicated to, and that process is underway.

We have learned of challenges to access to counsel by reason of inadequate telephone services, and we have installed additional telephone services in facilities. Access to counsel is a core principle in the administration of justice, and we are dedicated to achieving that across our enterprise. If there are any obstacles of which you are aware in individuals' ability to access counsel, please do continue to bring them to our attention so that we can solve them immediately.

Senator SINEMA. Thank you, Secretary. We will definitely follow up.

Mr. Chairman, I have a couple other questions, but I see that my time is expiring, so I will submit them for the record to the Secretary.¹

the Appendix on page 97.

I want to thank you again for holding this hearing and thank the Secretary for joining us today.

Chairman PETERS. Thank you, Senator Sinema.

Mr. Secretary, thank you again for being here. You have been generous with your time. But we have a couple just brief closing comments. I know Ranking Member Portman wanted to make a comment. Then I will close out the hearing.

Senator PORTMAN. Thank you, Mr. Chairman. To the Secretary, thank you for coming today. I think it was very important. We will have a lot of follow-up questions, as you saw.

I did want to say to Senator Sinema we appreciate her legislation on regional processing centers. It is consistent with what I talked about in my opening statement. I hope we can talk more about that maybe next time, about policy going forward, which would be more rapid processing of asylum claims.

I wanted to correct the record on the Central American Minors Program. You had pointed to that as one reason there has been an increase, because it was stopped in the Trump administration. I told you I supported the program. I said there were about 5,000 people that had gone through it in three years, and that was not very many compared to the problem we have. I was wrong. It is 3,500 went through it in three years, which is roughly the number of unaccompanied minors coming every week now.

So we look forward to talking about some of those policy questions going forward so that we can resolve the issues that I know you agree need to be addressed.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Ranking Member Portman.

¹The chart submitted by Senator Johnson appears in the Appendix on page 63.

Mr. Secretary, we have had a very thorough discussion today about the challenges that we face at the Southern Border and what the Department needs to address those challenges. Although I do not agree with the characterization of the situation by my Republican colleagues, I think it is very clear to me that we need to work in a bipartisan fashion to solutions on a multitude of challenges that we face. While there are issues where we will disagree here in this Committee, I think there are some areas of agreement. DHS certainly needs adequate resources. CBP officers and agents need support. And unaccompanied children need to be protected from violence and the transnational criminal organizations (TCOs) that seek them harm. I look forward to working with my colleagues and the Department on some common-sense solutions.

Secretary Mayorkas, thank you again for your attendance today and for your commitment to work with this Committee and to be available for our questions. We appreciate that.

The hearing record will remain open for 15 days, until May 28th at 5 p.m., for submissions of statements and questions for the record. With that, the hearing is now adjourned.

[Whereupon, at 12:28 p.m., the Committee was adjourned.]

A P P E N D I X

**Chairman Peters Opening Statement As Prepared for Delivery
Full Committee Hearing: DHS Actions to Address Unaccompanied Minors at the Southern
Border
May 13, 2021**

Secretary Mayorkas, welcome back. Thank you for your willingness to testify and your continued service to our nation.

I know that you, and the Biden Administration as a whole, inherited a number of serious challenges, and I've been impressed with what you have accomplished in a short period of time.

Your efforts to support the wide distribution of vaccines to every community so we can get through this pandemic, and your concrete actions to combat domestic terrorism, including white nationalist violence, will help ensure communities across the country are safer and more secure.

Your department has also grappled with the situation at our Southern Border, addressing the humanitarian challenges presented by the arrivals of unaccompanied children, while also working to keep our borders secure.

That is the focus of today's hearing. And I look forward to hearing about some of your successes, the challenges you continue to face, and the support and resources your Department needs to effectively carry out your mission while ensuring the appropriate care of people who are in DHS custody.

Although we saw higher than usual numbers of unaccompanied minors arriving at the border earlier this spring – these numbers appear to be decreasing. Even so, the significant numbers of migrants seeking asylum in the United States presents serious challenges.

Our nation rightfully serves as a beacon for those fleeing persecution. We have an obligation to ensure that the migrants our border security professionals encounter are treated with dignity, and have appropriate food, care and shelter.

But we also must ensure that those efforts do not restrict the ability of border security personnel to continue their critical frontline security missions to stop illicit drugs, contraband, and other illegal activity along our borders, and help keep Americans safe.

Mr. Secretary, many of the challenges that you inherited were made worse because of the actions of the previous Administration.

The Trump Administration's decision to suspend longstanding legal protections afforded to minors and those fleeing persecution forced significant numbers of asylum seekers to wait in precarious conditions in Mexico.

As a result, when President Biden took office in January, there was already a significant population of vulnerable asylum seekers, especially minors, waiting to seek refuge in the United States from violence or persecution in their home countries.

The ongoing pandemic has compounded challenges faced by both the Department of Homeland Security and Health and Human Services as they work to house unaccompanied children. COVID-19 health protocols have limited the amount of space and staff available at state-licensed shelters.

These factors resulted in more than 5,000 children at a time being held for days in the care of Border Patrol Agents, who are not trained in childcare.

These minors should have been transferred, ideally within hours, to Health and Human Services facilities where licensed child welfare professionals ensure they receive adequate care while waiting for release to sponsors in the United States.

I've had the opportunity to visit the Southern Border twice so far this year, to see both the border facilities and the shelters for unaccompanied children firsthand, and speak directly with the folks on the ground who are working to address these challenges. During my most recent visit, I spoke with dedicated border patrol agents who personally supplied toys and food to unaccompanied minors in their care, going above and beyond their official responsibilities.

I'm happy to see that DHS's recent efforts to help Health and Human Services identify additional shelter locations, and expedite the safe transfer of these children, are beginning to show positive results.

I'm encouraged to see a drastic reduction in the number of these vulnerable children in Border Patrol facilities, and that they are staying for shorter periods of time.

While the situation at our Southern Border continues to improve, thanks to the Biden Administration's effort, many challenges persist, especially because of the population of migrants who are continuing to flee incredibly dangerous conditions in their home countries.

This Committee, and Congress, must work together to address the root causes of these migration flows, and ensure that the federal agencies in charge of responding to these challenges have the right resources and support. This is a big task, but it is not insurmountable.

Secretary Mayorkas, I look forward to hearing from you about how Congress can work with the Administration to secure our borders and ensure we have sufficient personnel, provide asylum seekers with appropriate care, and ensure asylum applications are processed efficiently and fairly to help address these concerns.

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OPENING STATEMENT

RANKING MEMBER ROB PORTMAN

*DHS ACTIONS TO ADDRESS UNACCOMPANIED MINORS AT THE SOUTHERN
BORDER*

May 13, 2021

Thank you, Chairman Peters. I appreciate your moving ahead with this hearing and the bipartisan oversight of this critical issue.

More than 50,000 unaccompanied children have taken the dangerous journey to our border in the last 113 days since the Biden Administration's policies were put in place. Typically, these children were brought by unscrupulous traffickers and too often abused along the way. This chart behind me uses Customs and Border Protection data to show that the crisis today is unprecedented: far worse than last year, and even substantially worse than 2019, when everyone rightly considered it a crisis.

And, because the focus today is on unaccompanied children, these numbers do not even include families which are fifty times higher than last year at this time or single adults where there is a twenty year high or drug

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trafficking where seizures of deadly fentanyl are at a record high. Last month, over 108,000 single adults were apprehended at the border, up from over 96,000 apprehensions in March and seven times greater than last April. On top of that, the Border Patrol conservatively estimates over 40,000 people who crossed illegally “got-away” and were not apprehended in April. We have no idea who these individuals are.

Our federal agencies on the border are overwhelmed. My hope is that today is that we can quickly get past the debate on the nature of this unprecedented surge so we can turn to solutions to stop the surge and ensure vulnerable children are not further endangered by the policy choices being made here in Washington, DC.

Mr. Secretary, it has been two months since you, Chairman Peters, and the chair and ranking member of the DHS appropriations subcommittee and I traveled together to El Paso to see the crisis at the border firsthand. I appreciated your support of our trip and have appreciated our conversations since. What I learned on our fact finding trip was that **the Border Patrol is overwhelmed and short staffed because the overwhelming pressure at the border from not only from unaccompanied minors arriving,**

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but also the significant increase in adult and family arrivals we have discussed.

I am proud of our Border Patrol agents and welcome the progress made in getting children out of CBP facilities and into other government shelters run by HHS so more frontline agents can go back to their critical law enforcement duties. Border Patrol agents are doing the best they can in a very difficult circumstance and we must support them with additional resources.

I learned that pressure on the Border Patrol of managing the influx of migrants – particularly processing children and families as they are detained– has taken them away from border enforcement activities. Human traffickers and drug smugglers know that. They use unaccompanied children and families to divert Border Patrol agents so they can cross the border with other illegal entries and illicit and deadly narcotics such as fentanyl that are killing Ohioans with record levels of drug overdoses and hurting families across the country.

I learned that the surge of children puts those children at risk of abuse and trafficking once they are in the United States.

Remember, these children that claim asylum are only held until sponsors can be found in the interior of the United States. Then, as we have learned,

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regardless of the asylum adjudication – hardly any will even be returned to their home country. We have all heard horrifying stories of the trauma some children experience on their way north. We've heard of sexual assault and other abuses at HHS facilities. Now hundreds of federal employees with no formal experience or training in child care are being brought in from other jobs around the country to help care for these children.

HHS is repeating the same mistakes of the two previous administrations. With the overwhelming number of children HHS has released children quickly without proper background checks of sponsors or other adults in the same household. We know that in some cases in the past, children have even been sent back to their traffickers and HHS lost contact. I am glad that CBP has moved children to HHS, but these children have only been moved from one federal agency to another—and now HHS is in crisis. Moving from one unsafe, overcrowded facility to another is not success. Neither is releasing them to unvetted sponsors.

We've seen this before. While Chairman of the Permanent Subcommittee on Investigations, we issued three bipartisan investigative reports and held three hearings over two administrations on this issue. We found that HHS failed to conduct background checks, and as a result,

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released children to human traffickers who placed the children into forced labor on an egg farm in Marion, Ohio. A major issue left unresolved is that unaccompanied children remain at risk because no federal agency claims legal responsibility or authority to ensure they are not being trafficked or abused once placed with a sponsor.

These are all downstream problems that exist because of the surges and incentives that encourage parents to send their children with human smugglers to enter our country unlawfully.

The current policy is essentially that any child from anywhere other than Mexico who shows up at our southern border is allowed to come to the US for an indefinite period of time. As long as that is true the surge will continue.

I support more help for the Central American countries – where most of these unaccompanied children are coming from, but not one who looks at this problem seriously believes that any amount of aid to Central America will change the pull to come here in the short term. Properly targeted U.S. foreign assistance and engagement in the region can help to change conditions over time, the crisis at the border is now.

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There are three actions the administration must do—and two actions Congress can take:

- 1) Support Border Patrol with more agents, more technology, and the completion of the parts of the border wall already paid for. My hope is that we've made some progress on this issue in the past 24 hours.
- 2) Provide incentives for children to apply for asylum from their home country and reinstate safe third country agreements. And
- 3) Require immediate asylum adjudication at the Border for children, rather than releasing children to sponsors in the interior of the United States pending a decision.

We should also pass our bipartisan bill, the Responsibility for Unaccompanied Minors Act to require better background checks and ensure accountability to be sure HHS keeps track of these children.

We also need to pass my legislation to mandate E-Verify to reduce the jobs magnet which is behind all of this. The sad reality is that some of these children are exploited and abused including being forced to work in violation of labor laws in order to pay off their smugglers. That this is happening right now in America cannot be acceptable.

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Mr. Secretary, again, I appreciate you being here today and look forward to discussing all these issues with you.

Thank you.



TESTIMONY OF

Alejandro N. Mayorkas
Secretary of Homeland Security

BEFORE

U.S Senate Committee on
Homeland Security & Governmental Affairs

ON

“DHS Actions to Address Unaccompanied Minors at the Southern Border”

May 13, 2021
Washington, D.C.

Introduction

Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee.

It is an honor to appear before your Committee today to discuss the actions we have taken to address the needs of unaccompanied children at the Southwest Border.

Understanding the Challenge at the Border

In order to understand the challenge we face at the border and the work we have done to address the needs of unaccompanied children, it is important to understand what we inherited. To put it succinctly, the prior administration dismantled our nation's immigration system.

The changes made were not negligible. They terminated the Central American Minors program that allowed children to access protection without having to take the perilous journey north. They significantly constricted asylum law in ways that limited humanitarian protection for children fleeing violence. They cut hundreds of millions of dollars in foreign aid to the Northern Triangle countries of Guatemala, El Salvador, and Honduras as a penalty for not curbing irregular migration. Much of this aid was intended for the U.S. Agency for International Development's (USAID) programs in the region, which directly sought to help those vulnerable populations.

COVID-19 Complications to the Border Challenge

Compounding an already challenging situation at the border are the multi-faceted impacts of the COVID-19 pandemic. Since March 2020, the Department of Homeland Security has been assisting the Centers for Disease Control and Prevention in implementing a public health order under Title 42 of the United States Code.

DHS continues to expel the majority of single adults and many families. In certain areas where Mexico lacks the capacity to receive and house families, families may be excepted from the CDC Order, processed into the United States under Title 8 of the United States Code, and placed into immigration proceedings. Unaccompanied children are now excepted from the CDC Order and the CDC is continually reassessing the public health need for an order under Title 42 to address the COVID-19 public health emergency. The Biden Administration will not keep the Title 42 restrictions in place longer than necessary for public health.

Handling of Unaccompanied Children

Since April 2020, the number of encounters at the border has been rising due to ongoing violence, natural disasters, food insecurity, and poverty in the Northern Triangle countries of Central America. This resulted in a substantial strain on the processing, transportation, and holding capacity of the U.S. Border Patrol.

In response to the COVID-19 pandemic, the recommended temporary holding capacity within all Border Patrol facilities had been reduced by 75% to allow for increased physical distancing and to reduce the further spread of the disease.

Unaccompanied children posed a particular challenge for DHS because of the complete lack of urgency and attention the previous administration showed to the need to increase the Department of Health and Human Services' (HHS) ability to receive unaccompanied children from DHS's custody within the mandated time frame. The Office of Refugee Resettlement (ORR) at HHS is responsible for taking custody of unaccompanied children encountered by CBP within 72 hours, absent extraordinary circumstances. The previous administration imposed a months-long hiring freeze at ORR. Further, at a time when COVID-related requirements were limiting the availability of beds, the prior administration failed to activate additional bed capacity in the fall of 2020 despite early signs of an upward trend in unaccompanied children referrals. This delay put HHS behind the curve as encounters of unaccompanied children started to increase.

DHS Actions to Address the Needs of Unaccompanied Children

Entire systems are not rebuilt overnight. They do, however, require swift action to address pressing needs, especially when the health and safety of vulnerable children are concerned. I am pleased to share with you the actions we have taken to address the needs of unaccompanied children encountered at the border.

To respond to the increase in migration, while factoring in both capacity limitations imposed by the COVID-19 pandemic safety guidelines and the provision of appropriate resources for individuals in custody, CBP constructed two soft-sided facilities in the Rio Grande Valley in Donna, Texas and deployed 300 additional Border Patrol Agents from other areas to the Rio Grande Valley to increase processing and transportation capacity and to provide care for individuals in custody. CBP also constructed three additional soft-sided facilities, one each in Eagle Pass, Yuma, and Tucson, to further increase temporary holding and processing capacity. To provide additional capacity in Donna, Texas, CBP has initiated the construction of another soft-sided facility, which will open on or about May 25.

Despite these actions, HHS capacity limitations to accept transfers of unaccompanied children continued to put a strain on CBP resources as the number of unaccompanied children in custody began to grow.

On March 13, I directed DHS's Federal Emergency Management Agency to support a government-wide effort to safely receive, shelter, and transfer unaccompanied children to ORR care and custody and onward to a verified sponsor. FEMA immediately integrated and co-located with HHS to look at every available option to support a quick expansion of ORR's physical capacity for the care and custody of unaccompanied children, and to support HHS in managing overall operations. FEMA has deployed more than 100 employees to help HHS identify locations for emergency shelters, oversee construction, and manage operations.

Additionally, USCIS has trained and deployed more than 350 of its personnel to virtually interview unaccompanied children and potential sponsors, in order to provide case management

for unaccompanied children in HHS custody at Emergency Intake Sites (EIS). As of May 4, 2021, USCIS personnel have conducted nearly 4,000 interviews and recommended more than 2,200 children for release to a sponsor.

DHS and HHS also announced the termination of a counterproductive 2018 agreement that undermined the interests of unaccompanied children and had a chilling effect on potential sponsors (usually a parent or close relative) from coming forward to sponsor an unaccompanied child placed in the care of HHS. In its place, DHS and HHS signed a new Memorandum of Agreement that promotes the safe and timely release of unaccompanied children.

DHS stood up the interagency Movement Coordination Cell (MCC) to bring together colleagues from FEMA, ORR, U.S. Immigration and Customs Enforcement (ICE), and CBP to share a common operating picture. The goal of the MCC is to support the rapid transfer of unaccompanied children from CBP custody to ORR custody—whether to licensed bed facilities or the emergency intake sites stood up by HHS in collaboration with FEMA. This interagency approach has been remarkably successful in reducing the average time in custody that unaccompanied children spend in CBP facilities.

Other DHS employees from across the Department have been engaged in this herculean effort as well. The Federal Protective Service alongside other DHS federal law enforcement partners has helped provide security support to HHS facilities housing unaccompanied children. ICE has increased its transportation capacity to transfer these children to ORR. The DHS Volunteer Force has deployed more than 400 additional staff to provide onsite support at HHS facilities across the country. I am incredibly proud to serve alongside the women and men of DHS who have met this moment. This is what we do.

Improving the Health and Safety of Unaccompanied Children

The health and safety of unaccompanied children is a top priority. Under the leadership of the DHS Chief Medical Officer Dr. Pritesh Gandhi, we have put into place policies and procedures to address the health needs of unaccompanied children.

Unaccompanied children are now tested for COVID-19 either prior to or upon transport to HHS facilities. Transportation to HHS facilities now occurs with COVID-positive and COVID-negative cohorts. This has allowed more HHS beds to remain online and, importantly, has decreased transmission between children.

We are also conducting an ongoing comprehensive evaluation of COVID-19 mitigation procedures at the Southwest Border, starting in February and continuing to this date. As a result, CBP is following standard protocols for masking in all facilities. As part of a priority DHS-wide effort to reduce COVID-19 transmission, we also initiated Operation Vaccinate Our Workforce (Operation VOW), to vaccinate our front-line, Phase 1A/1B staff. As of the time of this report, over 75% of Phase 1A/1B DHS staff who have opted in to receive a COVID vaccine have now received at least one dose. Every CBP facility is being evaluated to ensure proper filtration is used where possible. Further, a system-wide effort is underway to integrate COVID-19 testing

data from CBP facilities and non-profit/local/state partners to provide a unified COVID-19 dashboard and enhanced situational awareness.

As the number of children increased in CBP border facilities, DHS proactively mobilized additional health providers in collaboration with the U.S. Coast Guard and U.S. Public Health Service. CBP coordinated the deployment of additional medical teams to Del Rio, Yuma, and the Rio Grande Valley. These additional healthcare providers allowed for enhanced medical surveillance and evaluation of children and for CBP to ensure medical staffing for multiple newly-established soft-sided facilities. In addition, CBP established enhanced medical support efforts for children facing overcrowding and prolonged time in custody, including daily health and wellness checks conducted by licensed professionals and allied health providers.

Results

Between March 13 and May 1, FEMA assisted in the activation of fourteen HHS EIS facilities. EIS facilities are operating in Texas, California, and Michigan, increasing the potential temporary bed capacity when fully staffed by 19,987 beds, or 1,999 percent.

This additional bed capacity, along with improvements in the process of safely releasing unaccompanied children to sponsors, has resulted in the reduction of the total number of unaccompanied children in CBP custody from 5,767 at its peak on March 29th to 455 on May 11th. During this same period, the number of unaccompanied children who have been in custody longer than 72 hours has decreased from 4,078 at its peak on March 29th to zero on the morning of May 11th, while average time in custody for unaccompanied children has fallen from 133 hours on March 29th to 22 hours on the morning of May 11th. This progress occurred while CBP encountered 18,000 unaccompanied children in the month of April. For the seven-day period ending May 10th, CBP transferred an average of 422 unaccompanied children a day to ORR, approximately two-thirds of CBP's total unaccompanied child population on a given day and more than keeping pace with daily apprehensions.

Addressing Root Causes and Expanding Legal Pathways

Addressing the needs of unaccompanied children at the border is, of course, an important priority. At the same time, the most sustainable solutions to our challenge at the border include addressing the root causes that drive people to migrate in the first place, and establishing safe and orderly pathways for individuals to seek protection and relocation avenues such as refugee resettlement and family reunification programs. We are working in partnership with the State Department and others on these efforts while addressing the current migration flow.

Central American Minors Program

DHS has been working closely with the Department of State on reinstating and improving the Central American Minors (CAM) Refugee/Parole program to reunite qualified children from El Salvador, Guatemala, and Honduras with their parent or parents who are lawfully present in the United States. This program provides a safe, legal, and orderly pathway to enable children at risk to reunite with their families in the United States.

We are working closely with the State Department to reopen the program in two phases. During the first phase, we are processing eligible applications that were closed when the program was terminated in 2018; this represents over 3,000 applications, totaling more than 3,800 individuals. After the Department of State and USCIS identified all suspended cases eligible for reopening, State announced the reopening of CAM on March 10 of this year. Since then, domestic resettlement agencies continue to contact eligible parents in order to verify that they are still lawfully present in the United States and wish to reopen their child's case. In the second phase, which will begin shortly, we will accept new applications pursuant to updated guidance.

During the life of the program, before it was closed, we reunified nearly 5,000 children safely and securely with their families, and we are committed to doing even more with the resumption of this program, which provides children with acute protection needs a safe, legal alternative to the dangerous overland journey that so many have attempted to undertake to our Southwest border.

Migrant Protection Protocols

As part of its phased approach to restore safe and orderly processing at the Southwest Border, the Biden Administration began processing into the United States certain individuals who were enrolled in the Migrant Protection Protocols (MPP) and have open proceedings before the Department of Justice's Executive Office for Immigration Review. To date, DHS—in coordination with interagency and international organization partners as well as the Government of Mexico—has processed over 10,000 migrants subject to MPP into the United States at six ports of entry along the Southwest Border while comporting with public health guidance regarding COVID-19.

DHS and its partners have been able to conduct this process safely during the COVID-19 pandemic by utilizing virtual registration, staging locations, and processing efficiencies to address public health concerns. During the staging process conducted by the international organizations, participating individuals undergo temperature checks, medical questioning, and COVID-19 testing prior to presentation at a designated port of entry. All individuals who are brought in through this process are tested for COVID-19 prior to entry. Individuals who test negative are presented at the port of entry as planned, while individuals who test positive (and their accompanying family members) complete an isolation period and are supported by the international organizations in seeking treatment, if necessary, before presenting at a port for processing.

Through this facilitated process to address certain individuals who were enrolled in MPP, DHS has demonstrated that using a specialized and scaled process, it can simultaneously maintain border security, humanely uphold immigration laws, efficiently process select populations at the Southwest Border, and protect communities against the further spread of COVID-19 in the United States.

H-2B Visas for Northern Triangle Countries

Last month, after close consultation with the Secretary of Labor, I announced I would exercise my authority under Section 105 of the Consolidated Appropriations Act of 2021 to provide 22,000 supplemental H-2B visas for fiscal year 2021, and that this exercise of authority would include safeguards for U.S. and H-2B workers. Of these visas, 6,000 will be reserved for nationals of the Northern Triangle countries of Honduras, El Salvador, and Guatemala.

This supplemental increase demonstrates DHS's commitment to expanding lawful pathways for opportunity in the United States to individuals from the region. We believe enhanced access to legal pathways will discourage many individuals from making the perilous journey to our border. The increase addresses the needs of U.S. employers at risk of suffering irreparable harm due to a shortage of workers to fill temporary jobs, while also establishing safeguards to ensure that U.S. workers are not adversely impacted by these additional visas. These workers return to their home countries, and the wages they have earned will help struggling Northern Triangle economies.

DHS Efforts to Address Human Smuggling Networks

Transnational criminal organizations (TCOs) pose significant dangers to migrants in Mexico and Central America. Human smugglers associated with TCOs not only seek to profit from their exploitation of these migrants, but also have little regard for their well-being, exposing them to violent encounters, injury, and death. These organizations are complicit in sexual assaults, human trafficking, and abandonment of these vulnerable migrants, including tender-aged children. In Fiscal Year 2020, Border Patrol located the remains of 250 migrants who died during their journey.

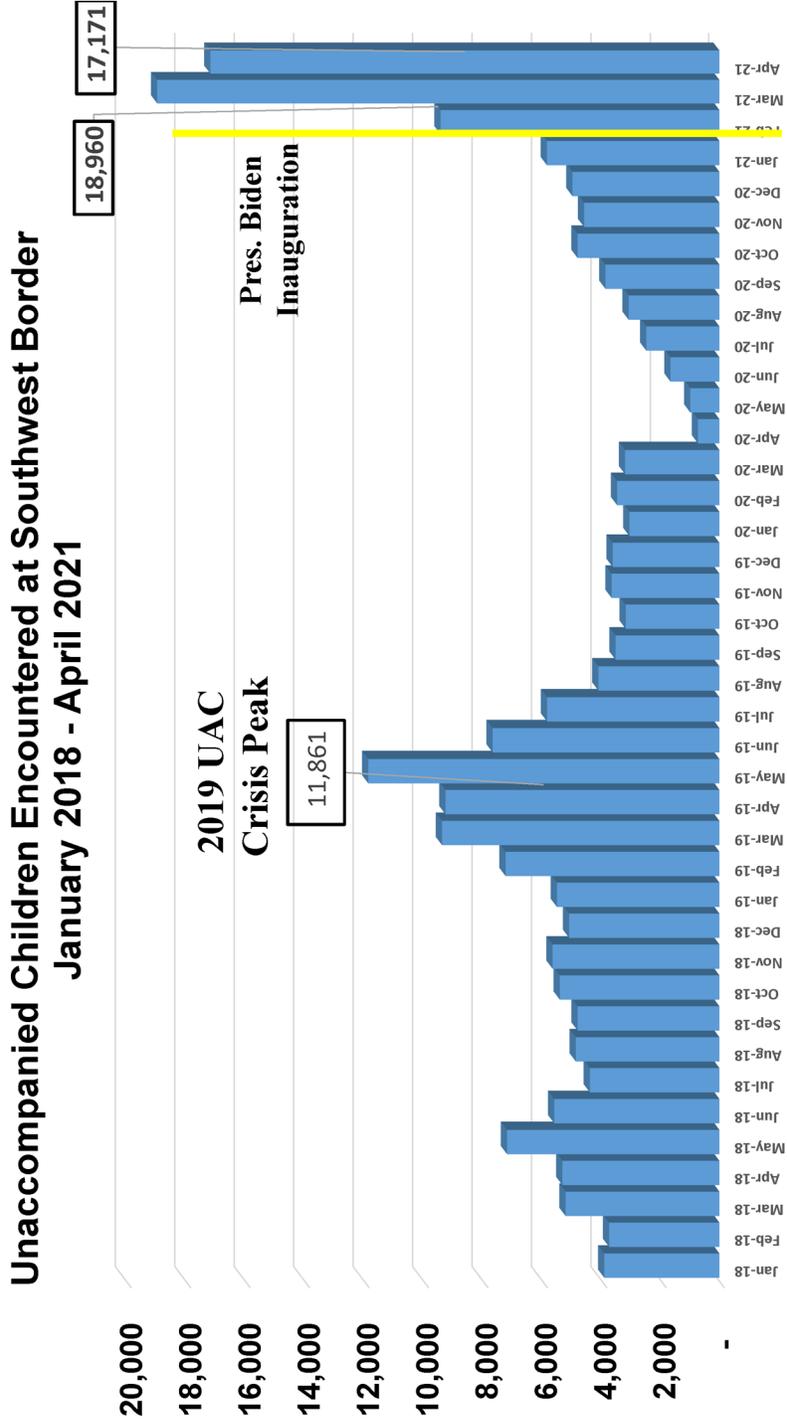
In order to bring all the resources of the government to bear on these human smuggling networks, CBP is leading a new anti-smuggling effort called Operation Sentinel. Operation Sentinel is a collaborative effort with ICE's Homeland Security Investigations, USCIS, the U.S. Department of State, and the U.S. Department of Justice's Federal Bureau of Investigation and Drug Enforcement Administration.

This new effort will target all personnel and identifiable resources that TCOs require to operate. Utilizing the full breadth of domestic and foreign authorities, data, analytic capability and capacity, Operation Sentinel is mapping the organizations' networks; targeting their members, associates, and assets; and employing a series of targeted actions and sanctions against them.

Conclusion

As the President recognized in his Executive Order on *Creating a Comprehensive Regional Framework to Address the Causes of Migration*, safely managing our borders is a critical endeavor that we are bound to by both law and duty. He also emphasized clearly that the securing of our borders must not cause us to ignore the humanity of those who seek to cross them. The dedicated DHS workforce has risen to that call for humanity through their herculean efforts to address the needs of unaccompanied children.

Thank you. I am pleased to answer your questions.



NUMBER OF CHILDREN IN CBP CUSTODY

March 28:
5,767 children
in CBP custody



May 10:
455 children
in CBP custody

92%
reduction

*Source: DHS 5/11 UAC Daily Report

AVERAGE NUMBER OF HOURS CHILDREN IN CBP CUSTODY

March 28:
133 hours
in CBP custody



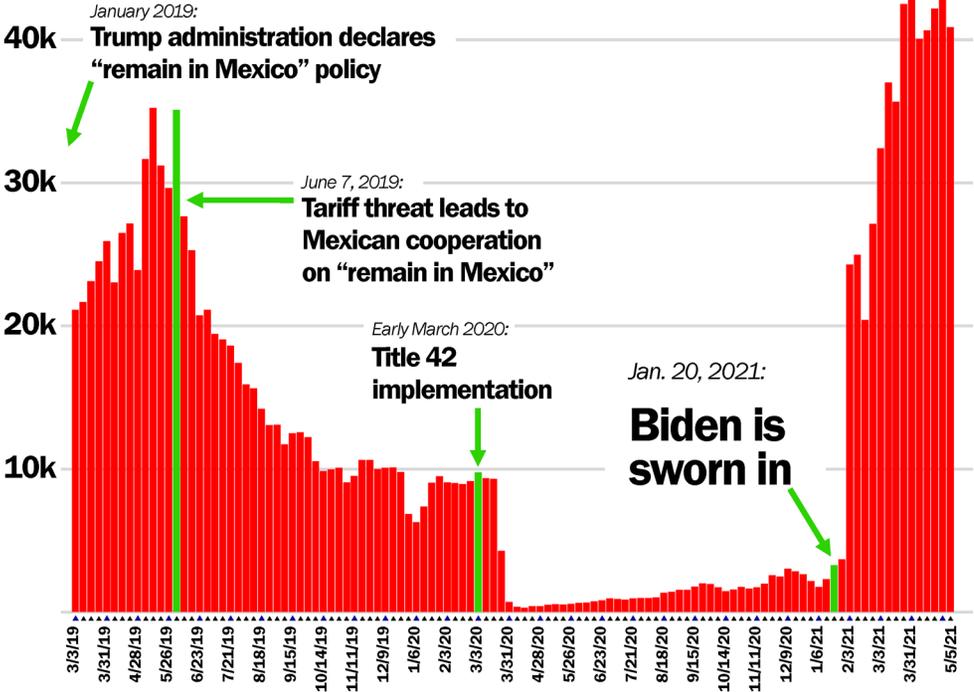
May 11:
26 hours
in CBP custody

80%
reduction

*Source: CBP memo

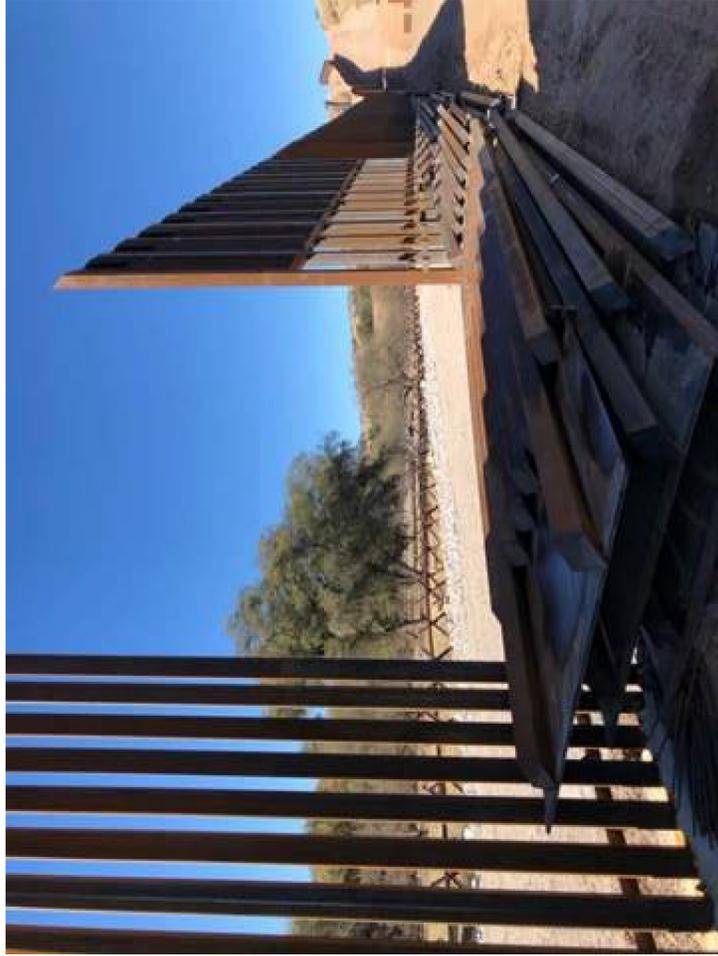
SW BORDER APPREHENSIONS

TOTAL BY WEEK: BORDER PATROL AND OFFICE OF FIELD OPERATIONS



Customs and Border Protection.







Statement for the Record by Kids in Need of Defense (KIND)

“DHS Actions to Address Unaccompanied Minors at the Southern Border”

Senate Committee on Homeland Security and Governmental Affairs

May 13, 2021

Kids in Need of Defense (KIND) is the leading national organization working to ensure that no child faces immigration court alone. KIND was founded by the Microsoft Corporation and the United Nations Refugee Agency (UNHCR) Special Envoy Angelina Jolie. We have served more than 20,000 unaccompanied children in removal proceedings, trained over 50,000 attendees in pro bono representation of these children, and formed pro bono partnerships with over 670 corporations, law firms, law schools, and bar associations. KIND’s social services program facilitates the coordinated provision to unaccompanied children of counseling, educational support, medical care, and other services. Additionally, the organization’s programs in Mexico and Central America work to address the root causes of forced migration and help protect the safety and well-being of migrant children at every phase of their migration journey.

KIND’s work with thousands of unaccompanied children has highlighted the myriad challenges confronting children in search of protection and the enduring importance of policies and legal safeguards in the U.S. immigration system to ensure their well-being, best interests, and fair access to protection. Many unaccompanied children have fled grave threats to their lives and safety in their countries of origin, including severe violence, abuse, and human trafficking. The perils facing children have only increased in recent years as a result of the COVID-19 pandemic, devastating hurricanes in Central America, and policies blocking children and families from requesting protection in the U.S. or expelling them to the very dangers they fled. Additional obstacles abound following a child’s arrival in the U.S., where they must navigate complex immigration proceedings and fight their deportation in order to obtain humanitarian protection, often without the assistance of an attorney.

Recognizing the particular vulnerability of unaccompanied children in the immigration system, a bipartisan Congress enacted, through the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), legal and procedural protections to ensure that unaccompanied children are treated fairly and humanely, that they are able to make their legal cases, and that no child is returned to harm. These safeguards, together with critical standards provided by the *Flores* Settlement Agreement and developed over decades, reflect our nation’s commitment to treating migrant and refugee children as children first and foremost. They remain of paramount and lifesaving importance today.

As the U.S. works to safely receive and care for unprecedented numbers of unaccompanied children that have arrived at the southern border in recent months it is clear that significant work remains to create a system that is truly reflective of and responsive to the needs and best interests of children. Implementing a model rooted in a fundamentally humanitarian and child protection approach—from a child’s first encounter at the border through the conclusion of his or her immigration case—will require creativity and ongoing collaboration by the Administration and Congress. These efforts must begin with building on, not eroding, fundamental protections in order to improve treatment and care of children in the U.S. immigration system while simultaneously supporting measures that ensure children will not be

forced to flee their countries to secure protection. For too long, policy approaches have turned our nation's back on children in search of safety in the name of deterrence and punishment. The current moment presents an opportunity to abandon these failed models and mark a new path—meeting children's need for care and protection with compassion and commitment.

We are encouraged by several recent actions of the Biden Administration to expand the ability of DHS and HHS to appropriately process, care for, and house unaccompanied children. These efforts include opening new CBP processing facilities for children and families and deploying the Federal Emergency Management Agency (FEMA) to support HHS in meeting intake and shelter needs.

We stand ready to work with DHS and Congress to support additional reforms to create a system that prioritizes and safeguards children's rights and well-being at all points. This statement highlights several priority areas: (1) the humanitarian reception of unaccompanied children at the border, including through the hiring of child welfare professionals in CBP facilities and compliance with the TVPRA; (2) ensuring fair access to protection for children in proceedings, including through provision of legal counsel; and (3) the expansion of regional protection initiatives and efforts to address root causes of child migration.

Recent arrivals of unaccompanied children seeking protection at the U.S. southern border

During the past decade, increasing numbers of unaccompanied children have fled to the United States in search of safety and protection. In FY 2014, CBP encountered 59,692 unaccompanied children at the U.S. southern border.¹ By FY 2019,² arrivals marked a one-year record, with 72,875 unaccompanied children encountered. More recently, encounters of unaccompanied children began rising in April 2020, then continued into the current year.³ In March 2021, arrivals reached the highest total of any month, with 18,500 unaccompanied children encountered at the U.S. southern border.⁴ Although arrivals of unaccompanied children have begun to decline in recent weeks, unaccompanied children continue to seek protection at the U.S. southern border in significant numbers.⁵

The recent rise in unaccompanied children seeking protection in the U.S. reflects a number of intersecting factors, including an ongoing humanitarian crisis in the Central American countries of El Salvador, Guatemala, and Honduras. Widespread gang violence; sexual- and gender-based violence; corruption; poverty; natural disasters; and other dangers imperil the lives and safety of many children throughout the Northern Triangle of Central America, leaving many with no choice but to flee their countries to search for safety.⁶ The COVID-19 pandemic and the devastation caused by Hurricanes Iota and Eta have only exacerbated dangers in the region.⁷

In recent years, the Trump administration reduced aid to the region, rather than strengthening foreign

¹ See Congressional Research Service, "Unaccompanied Alien Children: An Overview;" (Oct. 9, 2019); <https://fas.org/sgp/crs/homsec/R43599.pdf>.

² *Id.*

³ American Immigration Council, "Facts About the Current Situation at the Border" (Mar. 23, 2021);

<https://www.americanimmigrationcouncil.org/news/facts-about-current-situation-border>.

⁴ Julia Ainsley "Record number of unaccompanied children crossed the border in March" *NBC News* (Apr. 2, 2021); <https://www.nbcnews.com/politics/immigration/record-number-unaccompanied-children-crossed-border-march-n1262901>.

⁵ Nick Miroff, "Border crossings leveling off but remain near 20-year high, preliminary April data shows" *Washington Post* (Apr. 23, 2021); https://www.washingtonpost.com/national/mexico-border-crossings-april/2021/04/23/31206e82-a459-11eb-8a6d-f1b55f463112_story.html.

⁶ See Paula Dupraz-Dobias, "No easy solutions for tackling the Central American roots of the migration crisis" *The New Humanitarian* (Apr. 21, 2021); <https://www.thenewhumanitarian.org/analysis/2021/4/21/tackling-root-causes-of-migration-crisis-in-central-america>.

⁷ Nicole Narea, "Migrants are heading north because Central America never recovered from last year's hurricanes" *Vox* (Mar. 22, 2021); <https://www.vox.com/policy-and-politics/2021/3/22/22335816/border-crisis-migrant-hurricane-eta-iota>.

assistance to address the root causes forcing children from the region.⁸ It also weakened or terminated programs such as the Central American Minors Refugee/Parole (CAM) program,⁹ which enabled certain vulnerable children to seek protection while still in their countries of origin and to apply for refugee resettlement in the U.S. without having to undertake dangerous journeys.

Other Trump administration policies denied children and families the ability to request protection in the U.S. and forced them to remain in danger, contributing to bottlenecks at the border and an increase in unaccompanied children seeking protection this year. In March 2020, the Trump administration broadly suspended the entry of protection seekers, including unaccompanied children, into the United States through an order citing a rarely-used section of public health law.¹⁰ While the administration sought to characterize the “Title 42” policy as a necessary public health response to the COVID-19 pandemic, the policy has been broadly criticized by independent public health experts, who have underscored its lacking basis in public health and the U.S. government’s ability to uphold humanitarian laws and values while simultaneously protecting public health and safety.¹¹ Relying on this unlawful policy, the Trump administration expelled more than 15,000 unaccompanied children¹²—rapidly returning them to Mexico, Central America, and other countries—and to the very dangers they fled.

These expulsions violated the TVPRA by stripping children of vital legal safeguards and ultimately any meaningful opportunity to seek humanitarian relief.¹³ As a result, expelled children faced a heightened risk of human trafficking, persecution, and other grave harm—precisely the outcomes that the TVPRA was intended to prevent. By dispensing with screenings of children for trafficking and protection concerns, Title 42 meant that CBP failed to observe and respond to any evidence that children were trafficked into the United States for commercial sex or forced labor or would have faced return into trafficking situations.¹⁴ Moreover, by disregarding the legal definition of “unaccompanied alien child” provided for by Congress in the Homeland Security Act of 2002,¹⁵ the Trump Administration incentivized the rapid return of children to Mexico together with unscreened adults who could have posed a danger to them. In stark contrast to the TVPRA’s procedural protections, which require that unaccompanied children be transferred to the Office of Refugee Resettlement, where they can be assessed by attorneys and social workers specially trained to identify protection needs among this vulnerable population, children were instead returned to their countries of origin or Mexico without regard to the dangers they fled or might face. Far from deterring or disrupting human trafficking, Title 42 increased the risk that children would face exploitation and harm by unlawfully and callously disregarding anti-trafficking safeguards codified by Congress.¹⁶

Facing the same or worse dangers that initially compelled their flight to the United States in search of safety, many children expelled or turned back under Title 42 had no other option but to request

⁸ Lesley Wroughton, Patricia Zengerle, “As promised, Trump slashes aid to Central America over migrants,” *Reuters* (Jun. 17, 2019); <https://www.reuters.com/article/us-usa-immigration-trump/as-promised-trump-slashes-aid-to-central-america-over-migrants-idUSKCN1T2C7>.

⁹ David Nakamura, “Trump administration ends Obama-era protection program for Central American minors” *Washington Post* (Aug. 16, 2017); https://www.washingtonpost.com/politics/trump-administration-ends-obama-era-protection-program-for-central-american-minors/2017/08/16/8101507e-82b6-11e7-ab27-1a21a8e006ab_story.html.

¹⁰ Centers for Disease Control and Prevention, 85 Fed. Reg. 17060 (March 20, 2020).

¹¹ Priscilla Alvarez, “Health experts slam Trump administration’s use of public health law to close border” *CNN* (May 18, 2021); <https://www.cnn.com/2020/05/18/politics/border-closure-public-health/index.html>.

¹² Camilo-Montoya-Galvez, Adam Verdugo, “Nearly 19,000 unaccompanied children entered U.S. border custody in March — an all-time high” *CBS News* (Apr. 2, 2021); <https://www.cbsnews.com/news/immigration-unaccompanied-children-border-custody-record-19k/>.

¹³ KIND Policy Brief, “Sending Children Back to Danger” (Oct. 8, 2020); <https://supportkind.org/wp-content/uploads/2020/10/Updated-Expulsions-at-US-MX-border-10.8.20.pdf>.

¹⁴ *Id.*

¹⁵ P.L. 107-296.

¹⁶ KIND Policy Brief, “Border Closure Exposing Children to Heightened Risk of Trafficking and Exploitation” (Apr. 28, 2020); <https://supportkind.org/wp-content/uploads/2020/05/UC-Expulsion-and-Trafficking-5.19.pdf>.

protection at the border once more when the Biden Administration exempted unaccompanied children from Title 42 in February 2021¹⁷ as part of efforts to restore compliance with federal law and standards pertaining to the treatment of unaccompanied children.

Challenges in CBP custody and the ORR shelter system

Although unaccompanied children have sought protection in the U.S. in significant numbers for more than a decade, and despite periods of marked increases in arrivals in 2014 and 2019, prior administrations have neglected to implement systemic changes to ensure the U.S.' ability to safely receive and care for children at the border and in the ORR system, including in times of influx. Recent challenges, from the prolonged detention of children in CBP custody in prior months to delays in the release of children from ORR custody, only underscore the need for critical reforms to the border and shelter systems to prioritize the welfare and safety of children at all points.

It is widely understood that children have distinct needs from adults owing to their developmental stage, age, and experience, yet the U.S. immigration system has long failed to prioritize and meet these critical needs. Prior administrations have maintained or poorly adapted border facilities and procedures designed for adults and rooted in a law enforcement approach and used these for children, rather than transforming systems to appropriately center child welfare and the needs and rights of protection seekers. These failures jeopardize the safety and wellbeing of children and others in search of protection and undermine, rather than uphold, U.S. law.

As one example, DHS tasks law enforcement agents and officers, rather than professionals trained in child welfare, with overseeing the care of children in CBP custody and performing protection screenings of unaccompanied children. It is important that personnel specially trained in child development and trauma-informed approaches rather than law enforcement interact with the children upon apprehension. Reliance on this staffing model diverts CBP personnel from functions for which they have received specialized training and also has led to persistent violations of TVPRA requirements, risking the return of children to harm or danger. In 2015, for example, the Government Accountability Office documented extensive noncompliance by CBP agents and officers with TVPRA screening protocols for unaccompanied children from Mexico.¹⁸ Despite these longstanding and systemic problems, DHS has failed to fulfill Congress's directive in FY 2021 appropriations report language¹⁹ to hire specially trained child welfare professionals at all southern land CBP facilities who would perform children's protection screenings and oversee their care.

The federal government has also declined to comprehensively adopt reforms such as permitting HHS professionals with child welfare expertise to co-locate in CBP facilities. Under this arrangement, HHS staff could accelerate the sponsor vetting process for unaccompanied children who arrive to the U.S. with trusted caregivers other than parents or legal guardians and also ensure appropriate initial placements for any children temporarily transferred to ORR's custody. Longstanding concerns also persist regarding substandard conditions for children in CBP facilities that risk harm to children's physical and psychological health and limit their access to counsel.²⁰

¹⁷ Camilo Montoya-Galvez, U.S. will not expel unaccompanied migrant children under Trump-era policy now being reviewed" *CBS News* (Feb. 3, 2021); <https://www.cbsnews.com/news/migrant-children-biden-administration-will-not-expel-trump-policy/>.

¹⁸ GAO, "Unaccompanied Alien Children: Actions Needed to Ensure Children Receive Required Care in DHS Custody" (Jul. 14, 2015); <https://www.gao.gov/assets/680/671393.pdf>.

¹⁹ H.R. Report 116-458.

²⁰ See, e.g., University of Chicago Law School - Global Human Rights Clinic, et al., "Neglect and Abuse of Unaccompanied Immigrant Children by U.S. Customs and Border Protection" (May 2018); <https://chicagounbound.uchicago.edu/cgi/viewcontent.cgi?article=1001&context=ihrc>.

Prior administrations also have failed to undertake essential reforms to ORR custody of children. ORR has long relied on large-scale congregate care settings unsuitable for vulnerable children, without sufficiently expanding capacity in smaller-scale shelters and family-based care settings better aligned with children's best interests and domestic child welfare laws, such as the bipartisan Families First Prevention Services Act of 2018.²¹ Some of these facilities have failed to maintain proper conditions, and problems have included the incidence of sexual abuse of children by facility staff, inadequate and/or misguided mental health treatment, and a lack of suitable accommodations for particularly vulnerable children. The consequences of these systemic weaknesses were magnified by Trump Administration policies that prolonged children's time in government custody, such as a 2018 information-sharing agreement with DHS²² that discouraged potential sponsors from coming forward and significantly delayed children's release to loving caregivers.

Owing to these challenges, DHS and ORR were poorly positioned to safely receive and care for rising numbers of unaccompanied children arriving at the U.S. southern border in recent months. On March 28, CBP held 5,767 unaccompanied children in its custody.²³ Despite the TVPRA's requirement that DHS transfer unaccompanied children into ORR custody within 72 hours, many of these children languished in CBP detention facilities for well over 100 hours.²⁴ CBP law enforcement personnel, rather than child welfare professionals trained in children's unique needs and challenges, directed their care and conducted their protection screenings. In recent weeks, DHS has worked diligently to promptly transfer children to ORR custody and to significantly reduce children's time in CBP facilities,²⁵ yet reforms nevertheless remain critical.

Children in ORR custody have also faced substantial challenges, as has ORR itself. ORR's network of licensed children's shelters has operated at limited capacity due in part to pandemic-related occupancy restrictions on many congregate care facilities to prevent the spread of coronavirus.²⁶ This reduced capacity has been further strained by increases in the arrival of unaccompanied children seeking protection at the border. In response, ORR activated an "influx facility" in Carrizo Springs, Texas.²⁷ ORR's online Policy Guide defines an influx facility as "a type of care provider facility that opens temporarily to provide emergency shelter and services for UAC during an influx or emergency" and sets forth standards governing such facilities' operations.²⁸ Due partly to challenges in rapidly standing up new infrastructure, ORR has since established a number of emergency intake sites (EISs) where it is temporarily housing unaccompanied children.²⁹ The Policy Guide does not define EISs, distinguish them from influx facilities, or identify minimum standards or other policies associated with these sites. However, a May 5, 2021 Department of Health and Human Services (HHS) Fact Sheet delineates

²¹ Enacted as part of Public Law (P.L.) 115-123.

²² KIND, A Timeline: How the Trump Administration is Rolling Back Protections for Children (Jul. 2020); https://supportkind.org/wp-content/uploads/2020/07/A-Timeline_-Updated-July-2020-1.pdf.

²³ Priscilla Alvarez, "Number of unaccompanied migrant children in Customs and Border Protection custody falls 45%" CNN (Apr. 12, 2021); <https://www.cnn.com/2021/04/12/politics/border-migrant-children/index.html>.

²⁴ *Id.*

²⁵ See, e.g., Geneva Sands, Average time for unaccompanied children in CBP custody down more than 75 percent, CNN (May 6, 2021), <https://www.cnn.com/2021/05/06/politics/unaccompanied-migrant-children-border-patrol-custody-wait-time/index.html>; Priscilla Alvarez, Number of children held in Border Patrol facilities drops 84% since peak last month, CNN (Apr. 30, 2021), <https://www.cnn.com/2021/04/29/politics/border-patrol-unaccompanied-minors/index.html>.

²⁶ Priscilla Alvarez, "Biden administration tells facilities for migrant children to reopen to pre-pandemic levels" (Mar. 5, 2021); <https://www.cnn.com/2021/03/05/politics/immigration-border-crowding-covid/index.html>.

²⁷ Department of Health and Human Services, "Carrizo Springs Influx Care Facility" (Apr. 12, 2021); <https://www.hhs.gov/programs/social-services/unaccompanied-children/carrizo-springs-temporary-influx-facility-update.html>.

²⁸ ORR, Children Entering the United States Unaccompanied: Section 7;" <https://www.acf.hhs.gov/orr/policy-guidance/children-entering-united-states-unaccompanied-section-7#7.2>.

²⁹ Joel Rose, "Fewer Migrant Children Held In Border Detention Facilities, But Challenges Remain" (Apr. 15, 2021); NPR; <https://www.npr.org/2021/04/15/987615232/fewer-migrant-children-held-in-border-detention-facilities-but-challenges-remain>.

program responsibilities relating to EISs, and states that these sites “must provide basic standards of care to ensure the child’s physical safety, access to legal services information, and access to emergency clinical services” and acknowledges that, “[d]ue to their emergency nature, EIS may not be able to provide a full range of services to UC but are encouraged to offer case management services, educational services, and recreational time for UC as practicable.”³⁰

As the administration works to expedite children’s release from emergency and licensed facilities while ensuring child safety, it will become even more critical that ORR provides children with post-release services, including legal representation and social services, to ensure due process, children’s awareness of immigration court processes and responsibilities, and the safety and well-being of children in their sponsorship settings.

Recommendations

I. Humanitarian Reception of Children at the Border

A. Ensure Processing Consistent with the TVPRA and Terminate the Title 42 Policy

In recent months, the unique needs of unaccompanied children have assumed stark focus as thousands of children seek protection at the U.S. Southern border, forced to flee severe and ongoing violence and other dangers in their countries and the region. Many of these children are increasingly vulnerable as a result of having been previously returned to harm or required to delay their search for protection as a result of policies under the Trump Administration.

While the COVID-19 pandemic presents unique challenges and requires numerous considerations and precautions, it does not relieve the United States of its responsibility to comply with legal protections for unaccompanied children set forth in the TVPRA or other relevant standards, including those in the *Flores* Settlement Agreement and CBP’s own National Standards on Transport, Escort, Detention, and Search (TEDS). Compliance with these requirements is critical to ensuring the appropriate processing, care, and treatment of children in the immigration system and must remain an immediate and continued priority of the Biden Administration.

We commend the Biden Administration for beginning to unwind the unlawful Title 42 policy by resuming processing of unaccompanied children pursuant to the TVPRA, yet we remain concerned that the Title 42 policy continues to force families and others to return to life-threatening danger. Additionally, many unaccompanied children remain unable to access protection at U.S. ports of entry due to additional restrictions related to the COVID-19 pandemic. KIND is deeply concerned that as a result, unaccompanied children are being forced to undertake even more dangerous routes in search of protection in the U.S. and become increasingly vulnerable to harm and exploitation. We urge the Administration to immediately terminate the Title 42 policy in its entirety and recommend that DHS issue a policy clarifying that all unaccompanied children will be processed pursuant to the TVPRA at ports of entry and wherever they are encountered to ensure compliance with the law and children’s safety.

B. Hire Child Welfare Professionals

Children arriving to the U.S. are held during initial processing in CBP facilities wholly unsuited to their

³⁰ HHS, “Fact Sheet: Unaccompanied Children (UC) Program” (May 5, 2021); <https://www.hhs.gov/sites/default/files/uac-program-fact-sheet.pdf>.

needs and appropriate care and which are staffed by CBP officers trained in law enforcement, rather than in the development, welfare, and care of children. While broader reforms are critical to ensure the humanitarian reception of children in child-appropriate spaces, DHS can take immediate steps toward improving care of children in government custody by hiring licensed child welfare professionals to oversee the care and screening of children in all CBP facilities along the border. These professionals, who should be licensed in social work and have requisite training and experience in children's needs and development, can not only make sure that children's basic needs are provided for, but can also conduct screenings for protection needs as required by the TVPRA. By assuming responsibility for child care functions currently being performed by CBP officers, child welfare professionals can not only improve conditions for children but ensure that CBP officers are able to dedicate their time to the law enforcement functions for which they have received specialized training.

Congress directed DHS to hire child welfare professionals at all points along the southern border as part of both FY2020 and FY2021 appropriations legislation.³¹ Yet DHS has failed to implement this vital safeguard, sidelining both the wellbeing of children and congressional intent to improve conditions for them at the southern border. Noncompliance with this directive directly undermines DHS' ability to safely process children in CBP custody and must be immediately remedied through the hiring and placement of appropriate child welfare staff.

C. Facilitate Co-Location of HHS professionals in CBP Facilities

Among the high numbers of unaccompanied children arriving at the border are many children who traveled to the U.S. with family members or caregivers such as aunt/uncles, grandparents, or adult siblings who are not their parents or legal guardians. These children meet the legal definition of an "unaccompanied alien child," as defined by the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008.³² Accordingly, they must be afforded all the procedural protections accompanying this status through the conclusion of their immigration proceedings. At the same time, however, DHS and ORR can ensure that children do not face prolonged custody in CBP or ORR facilities or unnecessary separation from loving caregivers by immediately commencing the family reunification process in CBP custody. Through the placement of HHS federal field specialists in CBP facilities, ORR could consider caregivers traveling with a child as potential sponsors and facilitate the simultaneous release of the child and caregiver together. HHS staff can also rapidly identify children with known vulnerabilities or special needs and ensure their initial placement in facilities best suited for their needs and similarly ensure that the process of identifying potential sponsors for all unaccompanied children begins as soon as possible.

DHS recently undertook a pilot project to co-locate HHS professionals in CBP facilities. These efforts appear, however, to have been limited to a small scale and very limited responsibilities and were discontinued after a short time without a plan for expanding or implementing the practice more broadly. We strongly urge DHS to expeditiously address any roadblocks to the co-location of HHS professionals in CBP facilities and to facilitate implementation of this practice along the border.

D. Undertake Broader Reforms to Create a Humanitarian Reception Model

Transforming the current reception system, which is rooted in a law enforcement approach, to one that puts at its core the best interests and welfare of children will require long-term commitment and vision from the whole of government. Through engagement of a nongovernmental humanitarian actor DHS

³¹ H.R. Report 116-180; H.R. Report 116-458.

³² P.L. 107-296; William Wilberforce Trafficking Victims Protection Reauthorization Act, Pub. L. No. 110-457, 122 Stat. 5044 (2008) (TVPRA).

and HHS can help ensure the appropriate reception, screening, and care of children who arrive to the United States at or between ports of entry. DHS' recent deployment of the Red Cross to assist with the immediate needs of DHS and HHS is an important first step. Efforts to formalize a humanitarian reception model over the long-term should continue beyond the current response and involve outreach to and engagement with nongovernmental humanitarian organizations.

A critical component of these efforts should include coordination across agencies to modify border facilities to ensure the availability of child-friendly spaces for temporary processing, designated areas in which children can be screened by child welfare professionals in a confidential and child-appropriate manner, basic hygiene accommodations, and meeting spaces for in-person Know Your Rights presentations and other legal assistance by nongovernmental organizations. In addition, DHS should work to improve accountability and oversight of CBP's compliance with legal requirements and standards in the TVPRA, *Flores*, and TEDS by providing for access to CBP facilities and monitoring by independent third parties, including nongovernmental organizations. The emphasis at all times must be on ensuring the welfare, best interests, and rights of children, minimizing detention, and ensuring the safe and swift reunification of children with sponsors.

II. Ensuring Fair Access to Protection for Children in Proceedings

In addition to its role in receiving children arriving to the U.S., DHS has a vital role in upholding children's rights and ability to seek protection and to have their legal cases fully and fairly heard, both in immigration court and before U.S. Citizenship and Immigration Services (USCIS). Many unaccompanied children have claims for humanitarian protection such as asylum, Special Immigrant Juvenile Status, or visas for victims of severe crimes or human trafficking. The TVPRA provides several procedural protections to assist children in navigating the immigration system, including an opportunity to have asylum claims first heard by USCIS in a non-adversarial asylum interview, rather than in immigration court, access to counsel through HHS, and exemption from the one-year filing deadline for asylum claims, among other protections.

In recent years, however, several policies of the Trump Administration have impeded access to these critical protections and prevented unaccompanied children from fairly accessing legal relief for which they are eligible, risking the return of children to harm and undermining the integrity of the immigration system. Among these policies are measures that narrowed the discretion of immigration judges to administratively close, continue, or terminate cases to allow children time to find an attorney, prepare their legal cases, or apply for or receive decisions on applications for humanitarian protection that are adjudicated by USCIS. Other measures sought to deprive unaccompanied children of the TVPRA's procedural protections if they reunified with a parent or turned 18, contrary to the intent of the TVPRA and despite these children's continued vulnerability. The Trump Administration continued these efforts even amid the COVID-19 pandemic, moving forward with proceedings, deportations, and expulsions of unaccompanied children without regard to risks to the health and safety of children, federal government staff, and the public, or the fairness of children's proceedings.

A. Ensure TVPRA Protections Are Upheld Throughout Proceedings

DHS must take immediate steps to ensure that unaccompanied children's legal rights and safety are fully upheld, including during the COVID-19 pandemic. As a critical part of these efforts, DHS must ensure that all unaccompanied children are afforded the protections provided by the TVPRA—from initial processing at the border through the conclusion of their immigration proceedings. We urge DHS to coordinate with DOJ to promulgate regulations to make clear that once a child is determined to be an unaccompanied child pursuant to the legal definition that all protections and procedures outlined in the

TVPRA continue for the full duration of their legal cases, regardless of whether the child turns 18 or is reunified with a parent.

B. Support Legal Representation for Unaccompanied Children

DHS should also make clear and concerted efforts to improve the fairness of proceedings by supporting legal representation of unaccompanied children in any immigration proceedings before the Executive Office for Immigration Review (EOIR) or interviews before USCIS. Despite their unique vulnerability in the immigration system and legal provisions in the TVPRA providing for their access to counsel, more than half of unaccompanied children lack an attorney to assist them in navigating immigration proceedings with the highest of stakes for their lives and safety.³³ Government data illustrate the critical difference legal representation can make in a child's immigration case. From FY18 through the first half of FY19, unaccompanied children represented by counsel were 70 times more likely than unrepresented unaccompanied children to obtain legal relief.³⁴

ORR currently provides financial support to a network of nonprofit legal services providers to support legal representation for unaccompanied children but need far exceeds current funding and capacity. Amid high numbers of unaccompanied children arriving to the U.S., this due process crisis will only expand without sufficient support to ensure that no child faces immigration court alone. To ensure the provision of legal orientations, screenings, and legal assistance to the greatest number of children possible, KIND recommends that additional funding be appropriated for post-release legal services as part of FY22 Labor, Health, and Human Services appropriations legislation. We similarly urge DHS' support of post-release social services, which can assist children as they navigate transitions and heal from trauma, and, like legal services, also provide an extra set of eyes to help ensure a child's safety following release to a sponsor.

KIND also strongly supports legislative proposals that would provide for government-appointed counsel for all unaccompanied children and dramatically improve the fairness of the current system.

III. Advancing Regional Protection and Addressing Root Causes

Ensuring the protection of unaccompanied children requires not only creating child-sensitive protections and policies in the U.S., but meaningfully addressing drivers such as gang violence, gender-based violence, abuse, and other threats that force children to flee in search of safety. The Trump Administration met these realities with cruel deterrence measures that only heightened the risks to unaccompanied children and forced them to remain in or return to danger. Rather than closing the door on the most vulnerable, the Biden Administration must ensure access to protection and immediately restore and expand refugee processing and resettlement programs, while providing critical foreign and development assistance to civil society organizations to address root causes. This includes support of violence prevention programming, including those focused on gender-based violence, and capacity building for national child welfare and protection systems.

We are encouraged by DHS' restarting of the Central American Minors (CAM) program, which was first created in 2014 but was terminated by the Trump Administration in 2017. CAM previously allowed certain children from El Salvador, Guatemala, and Honduras with a parent lawfully present in the U.S. the opportunity to be considered for refugee resettlement while "in country," without having to

³³ KIND Fact Sheet, <https://supportkind.org/wp-content/uploads/2019/12/KIND-Fact-Sheet-January-2020.pdf>.

³⁴ KIND calculated this figure based on Executive Office for Immigration Refugee (EOIR) data published by the Congressional Research Service in its report titled "Unaccompanied Alien Children: An Overview," p. 15 (Oct. 9, 2019); <https://fas.org/sgp/crs/homsec/R43599.pdf>.

undertake dangerous journeys to the United States. Despite the important aims of the initial program, narrow requirements limited access to the program by many children in need. We welcome the recent reopening of CAM for eligible applications that were closed upon the program's termination in 2017, and we urge DHS to act swiftly to expand the program and its criteria to new applicants to make this pathway available to additional children as soon as possible.

Several improvements can help the program better achieve its goals and provide meaningful protection to children in need.³⁵ Among these, we recommend expanding eligibility for CAM to include children with trusted relatives such as aunts, uncles, or grandparents, who can care for them, regardless of their immigration status. We similarly urge that decisions on applications and the process move expeditiously so children are not forced to remain in dangerous circumstances to await relief. To ensure the program's success, DHS should work in collaboration with other federal agencies to ensure children applying for CAM have the information and support they need as they go through the process, including legal information and assistance, and safe shelter, and that outreach efforts reach children in rural villages, children with disabilities, and children who do not speak Spanish. We similarly urge the Administration to assist in expanding family-based resettlement programs such as the Protection Transfer Agreement (PTA), which serves children and families in imminent danger by allowing them to apply and be vetted for refugee resettlement in the U.S. and other countries. We look forward to collaborating with DHS and the Biden Administration to help restore the U.S.' leadership in global refugee resettlement and the protection of unaccompanied children.

Conclusion

In recent months, DHS has worked tirelessly to receive unprecedented numbers of unaccompanied children and to restore access to fundamental humanitarian protections denied to children by the Trump Administration's policies. We are encouraged by the agency's commitment to the fair and humane treatment of children arriving to the U.S. and to compliance with critical protections for them, including those in the TVPRA. Critical work remains, however, to ensure that the best interests and welfare of children are prioritized throughout the immigration system—from children's reception at the border to their legal proceedings and measures to address the root causes that forced them to flee their countries of origin. We look forward to working with DHS, Congress, and the whole of government to ensure that all unaccompanied children are treated as children first and foremost and have fair access to the protection they need and deserve.

³⁵ See, e.g., KIND, *Thwarted Potential: The Need to Revive and Expand the Central American Minors (CAM) Program As a Key Path to Protection for At-Risk Unaccompanied Children*, https://supportkind.org/wp-content/uploads/2020/11/Thwarted-Potential_-CAM-Report-FINAL-3.pdf

**Post-Hearing Questions for the Record
Submitted to the Honorable Alejandro Mayorkas
From Senator Rob Portman**

**“DHS Actions to Address Unaccompanied Minors at the Southern Border”
May 13, 2021**

Question#:	1
Topic:	Drug Trafficking
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: The criminal organizations trafficking deadly drugs over the border and into our communities are highly evolved criminal enterprises. What is this Administration's strategy for addressing the significant flow of deadly synthetic opioids like fentanyl from Mexico?

Response: There is no single entity or single solution that can stop the flow of dangerous illicit drugs into the United States or keep them from harming the American public. Tackling this complex threat involves a united, comprehensive strategy and an aggressive approach by multiple entities across all levels of government. As part of the Biden-Harris drug policy that prioritizes prevention, treatment, recovery, and harm reduction, part of the solution to the opioid overdose epidemic involves preventing illicit drug trafficking into the United States from its ports of entry. These substances can be marketed and sold on the dark web using cryptocurrency, and they are delivered to the purchaser through the mail and commercial carriers, but increasingly are moved across the nation's geographic borders by multiple conveyances.

Speaking with respect to DHS actions, through continued support from Congress, U.S. Customs and Border Protection (CBP), in coordination with our partners at the U.S. Departments of Justice (DOJ) and State (DOS), will continue to refine and further enhance the effectiveness of our detection and interdiction capabilities to combat transnational threats and the entry of illegal drugs into the United States.

CBP developed and implemented the CBP Strategy to Combat Opioids in 2018 to address the Nation's growing opioid epidemic. In 2020, CBP, like the rest of the country, felt the impact of COVID-19. Constraints associated with the COVID-19 pandemic including “daily travel [restrictions], U.S. border closings, closure of nonessential businesses, and broad shelter-in-place orders temporarily posed new challenges to criminal organizations and their efforts to move

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drugs throughout the United States during the first half of 2020”.¹ However, by summer, opioid seizures returned to pre-COVID levels, but with evidence that Transnational Criminal Organizations (TCOs) were changing their tactics, with indications that Mexico was becoming a primary source of fentanyl and its analogues. Previously, China was the primary country of origin for illicit fentanyl production. In Fiscal Year (FY) 2020, fentanyl-seizure rates increased to historic levels.

CBP’s Strategy to Combat Opioids continues into 2021, enhancing collaboration and information-sharing to combat illicit opioids, producing actionable intelligence on illicit opioids, targeting the opioid supply chain, and protecting CBP personnel from exposure to opioids.

Working together with the governments of Canada and Mexico and other international partners, the U.S. Department of Homeland Security (DHS) and CBP continue to work to stop the flow of illicit opioids and opioid analogues at the source. This coordinated work includes efforts to interdict illicit narcotics at or before reaching U.S. borders and investigation and intelligence-related efforts to drive a counter network approach to disrupt and dismantle the Organizations responsible for providing the drugs that poison and kill Americans.

DHS, the State Department’s Bureau of International Narcotics and Law Enforcement Affairs (INL), and USAID lead U.S. Government efforts to interdict illicit opioids and their analogues at or before reaching U.S. borders, and are actively engaged with our international partners. CBP utilizes a layered strategy that incorporates a broad range of tools and capabilities essential to the detection and interdiction of drugs and other contraband smuggled into the United States, including illicit opioids. INL and USAID coordinate efforts in the Western Hemisphere to apply a comprehensive approach including eradication, law enforcement, and working with the governments of narcotic producing countries to address the root causes of illicit crop cultivation such as alternative livelihoods programming.

CBP continues to take action against illicit fentanyl shipped to the United States through the mail. CBP operates within major international mail facilities, inspecting international mail and parcels arriving from more than 180 countries. Additionally, CBP and the U.S. Postal Service (USPS) are working to increase the amount of advance information that we receive on international mail. This advance information enables ICE and other agencies to identify networks of foreign suppliers and domestic importers that are responsible for smuggling fentanyl into the United States. These networks have been targeted for investigation and prosecution.

¹2020 National Drug Threat Assessment, Drug Enforcement Administration, U.S. Department of Justice, March 2021, page 9.

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CBP has enacted regulations that will strengthen the collection and sharing of advance electronic data (AED) by the USPS and CBP for international mail shipments under authorizations in the Synthetics Trafficking and Overdose Prevention (STOP) Act.

CBP works diligently to detect and apprehend persons seeking to cross our borders illegally. U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) also conducts investigative and intelligence related efforts to drive a counter network approach to disrupt and dismantle the TCOs responsible for smuggling illicit drugs across our border. CBP and HSI work collaboratively with other federal agencies to develop and implement special operations that focus on intelligence, data analysis and targeting/interdicting illicit opioids and their analogues.

As the investigative arm of DHS, HSI disrupts and dismantles global criminal enterprises and terrorist networks that violate the customs and immigration laws of the United States. HSI accomplishes its mission by utilizing its unique and expansive criminal and administrative authorities, strategic law enforcement and non-governmental partnerships, robust international footprint and connectivity, and cutting-edge technology and innovation. HSI and its foreign counterparts identify and target sources of supply and identify and disrupt transportation and smuggling routes. These efforts enable HSI and its partners to prevent dangerous narcotics and other illicit goods from reaching our borders, stop illicit southbound flows of illegally derived currency or weapons and uphold border security, protect the homeland, and ensure public safety. Land border contraband seizures are necessary but cannot degrade TCO capabilities or imprison TCO leadership without HSI investigations. HSI aims to push out the U.S. borders and stem illegal activity targeting the homeland while it is still abroad as HSI authorities do not start or stop at ports of entry or along the borders, but rather extend into international domains and into the interior of the United States.

Working in a collaborative environment, CBP and HSI provide support to HSI domestic and international offices by targeting illicit precursor movements within commercial modalities of transportation, to include air and maritime. HSI uses a methodology developed by special agents and analysts that blends interagency collaboration, industry partnerships, and computer-based analytical tools and techniques to process and derive meaning from large volumes of data. HSI employs multiple data streams and the subject matter expertise of CBP officers to illuminate anomalous shipments indicative of illicit contraband, to include precursor movements. The focus of this multi-agency taskforce is to degrade the transnational organized crime supply chain by targeting global maritime container shipments through emerging technologies and industry intelligence data.

An example of this effort is Operation Hydra, which is an HSI-initiated methodology that blends interagency collaboration, industry partnerships, and computer-based analytical tools and

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techniques to process and derive meaning from large volumes of data. It is an intelligence-based counter-narcotic operation designed to target the illicit shipments of fentanyl and methamphetamine precursor chemicals shipped from known foreign source locations that are destined for the United States. Operation Hydra has identified lawfully obtained data from U.S.-based financial institutions identifying significant financial flows from Mexico to China that has been associated with the purchase of large amounts of precursor chemicals. From this financial information, Operation Hydra identifies Chinese suppliers and Mexican buyers leading to multiple precursor seizures in the United States and in Mexico. In 2020, HSI, using this methodology, successfully interdicted approximately 844 kilograms in multiple seizures of 4-Anilinopiperidine Hydrochloride, the primary ingredient necessary for fentanyl production. If processed by Mexican cartel operatives, these chemicals would have resulted in an estimated 15,000 kilograms of fentanyl worth approximately \$486 million.

In addition to seizing illicit drugs destined for U.S. cities, HSI has built strong relationships with our international partner nations to stop the flow of precursors from China before these chemicals are manufactured into fentanyl and methamphetamine. To date, HSI has facilitated the seizure of over 400,000 kilograms of fentanyl and methamphetamine precursor chemicals destined for Mexico-based criminal organizations. HSI continues to build on this model by seizing precursors destined for Mexico before synthetic opioids can be produced and smuggled into the United States.

It is through coordinated, multi-agency, multi-jurisdictional investigations, and strong collaboration between federal, state, local, tribal, and international partners that HSI seeks to reduce the availability of illegal narcotics in the U.S. and to combat major transnational organized crime whose actions have far-reaching and detrimental impacts on the U.S. HSI's primary vehicle for combatting emerging and existing TCOs is the Border Enforcement Security Task Force (BEST).

BESTs are comprised of more than 2,000 law enforcement officers and personnel, including HSI special agents, task force officers, intelligence analysts, and investigative support personnel representing more than 200 federal, state, local, tribal, and international law enforcement agencies and National Guard units. BESTs eliminate the barriers between federal and local investigations (access to both federal and state prosecutors), close the gap with international partners in multinational criminal investigations, and create an environment that minimizes the vulnerabilities in our operations that TCOs have traditionally capitalized on to exploit our nation's land and sea borders.

BEST leads HSI's comprehensive, multi-layered strategy to address the national opioid epidemic, with increased numbers of HSI special agents at international mail facilities (IMF), express consignment hubs, and international airports acting as IMFs. Greater accessibility to and

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use of darknet marketplaces has enabled individuals and organizations to easily purchase contraband online which has increased the number of parcels being shipped to the United States. Immediate application of investigative techniques on seized parcels aids in establishing the probable cause needed to effect enforcement actions on individuals associated with fentanyl laden parcels. These seizures and arrests disrupt the movement of illicit opioids and opioid precursors transiting through the mail and express consignment shipments and aid in the dismantling of distribution networks.

The U.S. Coast Guard plays a critical role in the comprehensive approach to securing our borders. The Coast Guard counters Transnational Criminal Organizations (TCOs) by disrupting illicit drug trafficking as close to the source as possible. The Coast Guard is the lead and only federal maritime law enforcement agency with both the authority and capability to enforce national and international law, including drug interdiction, on the high seas. The Coast Guard uses cutters, boats, and aircraft in a layered approach to combat TCOs that transport illicit drugs from the source zone, through the Western Hemisphere Transit Zone (WHTZ), and into the United States.

Question#:	2
Topic:	Increased Drug Smuggling
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What is your assessment of the risk to the nation of increased drug smuggling due to the Customs and Border Protection having to focus on these migrant surges?

Response: CBP is aware that during periods of increased migration, such as the current surge which began in April 2020, TCOs utilize large groups of undocumented noncitizens in one area of the border to draw CBP resources away from other areas where they may attempt to smuggle illegal contraband into the country. We would also note that the vast majority of drug smuggling in the land environment occurs at the ports of entry (POE) and CBP is better positioned to disrupt these smuggling attempts thanks in part to the enhancements in technology that DHS has made at the POEs through the support of Congress; the investments in technology are a force multiplier in the land environment, particularly during times of increased migration. In addition, CBP's Air and Marine Operations and the U.S. Coast Guard work tirelessly to disrupt drug smuggling in the air and sea environments. CBP is continuously analyzing and directing resources where they are most needed in addition to using detection technology as part of our layered approach to security to prevent illegal drug flows and also ensure safety of officers and the noncitizens they encounter.

CBP Officers, Border Patrol Agents, and Air and Marine Operations Agents continue to disrupt the flow of illicit narcotics across the border. CBP continues to see an increase in fentanyl seizures; CBP seized 4,791 pounds of fentanyl in seizures in FY 2020 and 11,201 pounds of fentanyl in FY 2021, an increase of more than 130 percent. In FY 2021, 95 percent of CBP fentanyl seizures occurred at a port of entry along the southwest border.

The U.S. Coast Guard Seventh District Commander serves as the Director of Homeland Security Task Force Southeast, and is responsible for executing Operation Vigilant Sentry to help secure U.S. borders, monitor and deter migrant ventures, and disrupt illicit drug trafficking at sea.

Question#:	3
Topic:	Drugs Missed
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: While we know the amount of illegal drugs that were seized last month and over time, and are proud of the hard work of those agents at our ports of entry detecting and seizing these drugs, do you have any estimate of illegally trafficked drugs that were missed and not seized?

Response: CBP, INL, and USAID's efforts on narcotics interdictions have shown an increase in overall seizures during FYs 2020 and 2021; however, there is no way to measure narcotics that were not intercepted. The street values of some narcotics have dramatically increased due to reduced supply in alignment with increased seizure efforts.

Question#:	4
Topic:	Background Checks
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: According to DHS staff and news reports, over 450 federal employee volunteers are caring for unaccompanied children. Have these volunteers undergone a background check by a state agency that licenses people to work with children and what level of supervision and what specific training are these employees undergoing?

Response: DHS federal detailees supporting the unaccompanied children operations of the U.S. Department of Health and Human Services (HHS) have a completed and favorably adjudicated federal background investigation. Detailees helped supplement basic needs for the safety and health of children but were not a substitute for specially qualified individuals to ensure the health and safety of children. Their work was in accordance with the duties established in a Memorandum of Agreement (MOA) between the two agencies and operate according to onsite direction provided by HHS. The MOA details the general support and case management duties to be performed by the DHS detailees. General duties include maintaining initial support for and continuous line of sight with the children, completing intake checklists that collect data needed to locate family members, records management and processing assistance, and case management, which may include speaking with the children and/or their potential sponsor via phone or video link and in accordance with HHS procedures. For more information on the duties and operations, DHS defers to HHS.

The federal background investigation for each detailee meets the investigative standards established by the Security Executive Agent and the Suitability and Credentialing Executive Agent for the purposes of determining eligibility for logical and physical access, suitability, and Public Trust for Federal Government employment, eligibility for access to classified information, eligibility to hold a sensitive position, and fitness to perform work for or on behalf of the Federal Government as a contractor employee.

On March 17, 2021, the HHS Office of the General Counsel determined that the federal background investigations already completed by DHS satisfy the requirements of 34 U.S.C. § 20351, since DHS personnel would not be providing “childcare services.”

The checks conducted as part of each background investigation included law enforcement queries against the criminal history repository of the law enforcement agency(s) for any jurisdiction (federal, state, county, local military installations, etc.) where the subject has lived, worked, and/or attended school for any consecutive period exceeding six months during the most recent five years and, if applicable, the appropriate criminal history repository for any listed or developed arrests within the last five years. Federal Bureau of Investigation criminal history record checks include the National Sex Offender Registry File, Protective Interest Records, Gang File, Known or Appropriately Suspected Terrorist File, Wanted Persons File, Foreign Fugitive

Question#:	4
Topic:	Background Checks
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
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File, and Supervised Release File to help identify individuals on probation, parole, or supervised release or released on their own recognizance or during pre-trial sentencing. Additional investigative action was taken to obtain a result if no response to an automated query was received.

To further mitigate risk, all detailees undergo National Crime Information Center and National Law Enforcement Telecommunications System checks prior to deployment, above and beyond their existing investigation and suitability and/or national security determinations.

The DHS Office of the Chief Security Officer does not manage the detailees after deployment and is unable to confirm the level of supervision and training undergone by these detailees. DHS therefore defers to HHS on those areas.

Question#:	5
Topic:	Parents in U.S.
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What percentage of unaccompanied children arriving at the border have parents or guardians in the US and how is this information gathered and how is it verified?

Response: DHS defers to HHS to provide the percentage of unaccompanied noncitizen children with verified parents or guardians residing in the United States.

Question#:	6
Topic:	Assessment of Risk
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What is your assessment of the increase in risk to children of HHS' decision to suspend background checks for adults living with unaccompanied children released to sponsors and is this decision to suspend background checks for the benefit of the child or the benefit of HHS being able to make room for newer arrivals of unaccompanied children?

Response: Pursuant to 8 U.S.C. § 1232(c)(3)(A), HHS must make a determination that a proposed sponsor is capable of providing for the child's physical and mental well-being. DHS defers to HHS for additional information.

Question#:	7
Topic:	Northern Triangle Changes
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: In the last five years we've spent \$3.6 billion in aid for the Northern Triangle countries and over \$750 million in assistance to Mexico. President Biden is proposing \$4 billion for the region. If approved, how soon would the Northern Triangle be fundamentally changed in a way that their citizens will choose staying home over a dangerous journey to the United States?

Response: DHS defers to the U.S. Department of State (DOS) and the U.S. Agency for International Development (USAID) for more information and analyses related to U.S. Government-provided foreign assistance.

Lack of economic opportunity, high levels of violence and corruption, as well as failures in access to justice and in the rule of law in Mexico and the Northern Triangle countries, have propelled migration to our Southwest Border for decades. The adverse conditions have continued to deteriorate, as the COVID-19 pandemic and back-to-back hurricanes in 2020 further eroded livelihoods and contributed to insecurity and instability. In recognition of these challenges, President Biden laid out a vision of a “multi-pronged approach toward managing migration throughout North and Central America that reflects the Nation’s highest values.”²

We work in conjunction with the U.S. Departments of Justice, State, USAID, and HHS in an all-of-government effort to not only address the current situation at our Southwest Border, but also in support of the Biden Administration’s effort to build up opportunities and reduce violence to a point where potential migrants consider staying in their home countries as a more feasible option for their futures. These investments will take time to mature and impact irregular migratory flows. In the meantime, the U.S. Government continues implementing various short- and medium-term solutions such as developing legal and safe pathways to enter the United States without making a dangerous, irregular journey and improving the humanitarian protection system such that it does not take years to receive a determination. In addition, the U.S. government collaborates with countries within the region to provide additional alternatives for protection and opportunity for those most vulnerable.

² “Executive Order on Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border” February 2, 2021.

Question#:	8
Topic:	Discouraging Migrants
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What specific steps is DHS taking to discourage the citizens of these countries not to attempt to cross our border unlawfully?

Response: In support of the Administration’s focus on addressing root causes of migration and seeking a collaborative management framework for the region, DHS has partnered with its regional counterparts on several initiatives aimed at discouraging irregular migration and providing alternatives for safe, orderly, and humane regular migration consistent with our immigration laws. DHS increased the number of H-2B visas available for FY 2021 and allocated a portion to El Salvador, Guatemala, and Honduras. Creating the opportunity to work legally and on a temporary basis in the United States provides direct benefits to individual beneficiaries, their families, and their local communities. DHS is working together with its interagency partners (including DOD, DOS, and USAID), U.S. employers, and the Salvadoran, Guatemalan, and Honduran governments in the region to ensure a successful program. Additionally, on March 10, 2021, in close coordination with the Department of State, DHS restarted the Central American Minors (CAM) program to reunite eligible children from El Salvador, Guatemala, and Honduras with parents who are lawfully present in the United States. On June 15, 2021, the Departments expanded the eligibility for CAM to include certain U.S.-based parents or legal guardians who have a pending asylum application or a pending U visa petition filed before May 15, 2021. This important program supports family unity and diminishes the need for many unaccompanied children to make the dangerous and irregular journey to the United States border.

DHS has also partnered with the interagency (including DOD, DOS, and USAID), partner nations, and source countries for the U.S.-bound migration to support improved border security and internal checkpoints. These two measures create an environment that allows and encourages regular migration and the safe and orderly movement of people and goods, while also combatting human smuggling and trafficking. DHS also partners with other law enforcement counterparts to support investigations and prosecutions against corrupt activities at ports of entry and human smuggling networks.

Furthermore, the Administration has expanded the work with regional governments to investigate and prosecute individuals involved in the smuggling of migrants, including providing training and other assistance to partner nations and countries of origin to help collect evidence and to identify and prosecute those who facilitate migrant smuggling. In June 2021, the U.S. Attorney General announced the establishment of Joint Task Force (JTF) Alpha, a law enforcement task force marshalling the investigative and prosecutorial resources of the U.S. Departments of Justice and Homeland Security to holistically address the threats posed by the most prolific and dangerous human smuggling groups operating in Mexico and the Northern Triangle countries. The mission of this JTF Alpha is to disrupt and dismantle human smuggling

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networks that abuse, exploit, or endanger migrants seeking to unlawfully come to the U.S. from the Northern Triangle region and Mexico with a particular focus on leaders, organizers, significant facilitators, and networks that pose national security threats or have links to transnational organized crime.

Under this Administration, the United States is also partnering with other nations to launch Operation Sentinel, a new counter-network effort to dismantle transnational criminal organizations involved in smuggling migrants by targeting the individuals and resources connected to them.

In addition, DHS has resumed the use of expedited removal for certain family units who are not able to be expelled under Title 42 authorities. Families from countries with whom the United States shares Electronic Nationality Verification agreements – Honduras, El Salvador, Guatemala – can be processed through a more accelerated procedure to remove them back to their home countries.

Question#:	9
Topic:	Surge from Mexico
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: To what do you attribute the recent surge of single adults from Mexico, given that there doesn't appear to have been a dramatic change in circumstances in Mexico in recent months?

Response: The rising numbers are fueled by the worsening conditions in Mexico. Violence, natural disasters, food insecurity, and poverty have long existed in the region, but the crippling economic and health impacts of COVID-19 plus climate change are further exacerbating these issues. The COVID-19 pandemic has had and will continue to have an unpredictable and, likely, enduring impact. This will continue to exacerbate already existing push factors and thus increase irregular migration to the United States not only from Mexico but also from the region. CBP routinely sees seasonal fluctuations in the numbers of undocumented single adults attempting to cross the border.

Furthermore, the numbers of encounters do not correspond to the number of individuals CBP encounters. The large number of expulsions under Title 42 authority during the pandemic has contributed to a higher rate of recidivism as individuals make multiple border crossing attempts. As a result, total encounters somewhat overstate the number of unique individuals arriving at the border.

Question#:	10
Topic:	Counteract Signals
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Actions by the administration have been perceived by smugglers and migrants as a signal that the border is open, including releasing immigrants into the United States without a Notice to Appear. As news travels home that they were successful, what will it take to counteract the signal it sends that encourages smugglers and would-be migrants to try to cross our border unlawfully?

Response: The Administration has been clear and consistent from the beginning: the border is not open, and the United States continues to enforce our immigration laws. Anyone who chooses to travel to the Southwest Border and attempt to cross illegally is putting themselves and their families at risk, especially during a pandemic.

However, addressing the challenges we see at the Southwest Border must include strategies that go beyond our border to address the root causes of migration and legal pathways. DHS is working closely with other federal agencies, including DOS and USAID, to support other countries as they work to improve their respective humanitarian protection systems and to expand lawful avenues for migration to the United States and other countries as an alternative to the dangerous journey.

Question#:	11
Topic:	Mandatory E-Verify
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: In the hearing you stated that you had not made a determination yet regarding whether or not E-Verify should be mandatory. As you oversee the United States Citizenship and Immigration Services agency, you know that the current E-Verify system is not a heavy burden on businesses and quickly and securely provides hiring officials with data they need to verify employment status.

Given that the overwhelming majority of migrants are unlawfully coming here for jobs, why would mandatory E-Verify not be a part of an immigration reform to be considered by Congress?

Response: The President's legislative proposal, the *U.S. Citizenship Act*, creates an Employment Authorization Commission that will make recommendations to the Congress, the President, and the Secretary of Homeland Security regarding future policies to verify the eligibility of noncitizens for employment. The bill directs the Commission to evaluate methods for verification of employment eligibility and make recommendations for improvements to existing employment verification systems, such as the Form I-9 process and E-Verify. The Secretary supports this approach and look forward to working with the Congress as it considers this legislation.

**Post-Hearing Questions for the Record
Submitted to the Honorable Alejandro Mayorkas
From Senator Maggie Hassan**

**“DHS Actions to Address Unaccompanied Minors at the Southern Border”
May 13, 2021**

Question#:	12
Topic:	Flow of Money to TCO's
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: When I have visited the southern border, DEA and CBP officials have told me that to stem the flow of drugs, like fentanyl, into the United States, we need to stop the flow of guns and money from the United States to the cartels in Mexico. That means that in addition to screening traffic entering the United States, we must also increase our focus on screening traffic leaving the United States. This can help address the issue of transnational criminal organizations smuggling resources south, which they use to perpetuate the drug epidemic here in the U.S.

Secretary Mayorkas, do you believe DHS can do more to stem the flow of money to criminal organizations and degrade the ability of criminal organizations to traffic dangerous drugs into the U.S.?

Response: DHS continues to engage stakeholders, law enforcement partners, Mexican security counterparts, and members of the community to bring awareness and to combat the illicit flow of currency, firearms, gun parts, and ammunition from the United States to Mexico by targeting the financing, movement, and communications employed by the networks responsible for firearms procurement and smuggling. ICE HSI and CBP launched Operation Without a Trace in late 2019 to specifically target outbound weapons and currency smuggling on both sides of the border. Operation Without a Trace has resulted in tangible increases in interdicted firearms moving southbound, complements DOJ's Bureau of Alcohol, Tobacco, Firearms and Explosives (ATF) southbound firearms operations, and advances U.S. Counter Transnational Organized Crime objectives.

The focused outbound operations initiative under Operation Without a Trace fosters interagency and U.S.-Mexico bilateral collaboration and information sharing to take actions against identified threats, illuminate the threat networks, and enhance capabilities among the friendly network. The efforts leverage operational, intelligence, diplomatic, and public affairs resources to curb the southbound flow of weapons and currency and demonstrate responsiveness to GOM's appeal to the United States on this important issue. The increase of outbound operations has resulted in a

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significant increase in seizures of outbound firearms, firearms parts, ammunition, and illicit currency all of which help fuel the activities of transnational criminal organizations (TCOs).

CBP, HSI, and ATF continue to jointly coordinate a myriad of additional efforts under Operation Without a Trace, specifically including the following:

- CBP is using enhanced/actionable intelligence to conduct targeted outbound inspections and support HSI and ATF firearms investigations.
- CBP provides aviation support to domestic law enforcement partners during investigations and interior interdictions.
- CBP produces regular statistical seizure reports and reports highlighting notable seizures, which are shared with GOM counterparts, and demonstrate DHS commitment to outbound operations and enable GOM investigations and research. GOM provides reciprocal reporting, which CBP captures in intelligence products and uses in its own operations.
- Southwest border Field Offices conduct joint operations with Mexican counterparts, hold regular bilateral meetings, and regularly exchange cross-border information related to firearms and bulk cash smuggling. To date, field offices have not observed any negative impact stemming from the new Mexican National Security Law reform.
- U.S. Border Patrol (USBP) conducts mirrored patrols with Mexican security counterparts that have facilitated information sharing on stash houses and criminal activity and resulted in GOM seizures of weapons.
- HSI and ATF conduct outreach to Federal Firearms Licensed dealers to establish a relationship of trust for tips regarding suspicious purchases, and information sharing surrounding monetary reporting requirements pertaining to the Bank Secrecy Act.

Recently, ICE HSI and CBP partnered with the ATF in creating an online tip line in addition to a phone tip line to receive actionable information on and target those seeking to purchase, transport, and distribute firearms illegally. Additionally, a public information campaign was launched to ask the public for help through use of the established DHS tip line and online tip form. DHS law enforcement agencies investigate all tips to combat illicit Mexico-bound gun trafficking and reduce gun violence on both sides of the border. DHS continues to focus interagency discussion on priority issues and deliverables related to border and port security, to include arms and currency trafficking.

Lastly, DHS coordinates with the Government of Mexico (GOM) to leverage DHS's outbound efforts to advance broader bilateral initiatives of mutual interest, which include combatting outbound firearms smuggling and fentanyl production and distribution. In July 2021, in furtherance of ongoing binational security discussions, CBP hosted a senior GOM delegation in

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Texas to address firearms trafficking, seek collaborative binational operational solutions, and observe the challenges and successes of CBP's outbound operations at the Port of Laredo.

Question: Are there resources or other support you need from Congress to make that happen?

Response: CBP seeks robust international partnership in successful border management and countering outbound illicit currency and weapons along the U.S. Southwest border is no exception. While CBP seeks to enhance and improve its own outbound efforts, CBP also supports Mexican inspection capabilities and efforts through mentorship, information exchange, and subject matter expertise lent to DOS to support their equipment, technology, canines, and port modernization donations. CBP is also working to encourage broader sharing of ATF's eTrace results within the U.S. Government, to include those submitted by foreign partners to enhance the ability of CBP and HSI to enhance outbound targeting efforts, to complement criminal investigations, and to improve counter-network research.

CBP ports of entry (POEs) along the land border generally lack appropriate infrastructure for robust outbound enforcement. Improvements to the port infrastructure, to include the necessary footprint for innovative non-intrusive inspection technology and secondary inspections, will allow CBP to stem the flow of money and firearms that fuel transnational criminal organization operations and violence. The impact to outbound infrastructure or technology depends on changes to operational requirements. When these changes are known and finalized, CBP will assess and plan modifications.

To support operational requirements and CBP's mission, the FY 2022 President's Budget includes \$1.2 billion in new investments in effective and modern port and border security, including modernization of land POEs, investment in modern border security technology, and assets. The following key funding initiatives are also included:

- \$655 million for LPOE Modernization;
- \$129.8 million to procure technology and aircraft to secure the Nation's borders; and
- \$92.2 million for facilities construction, modernization, expansion, and critical repairs/maintenance to support U.S. Border Patrol, the Office of Field Operations, and HQ Mission Support requirements and daily operations.

**Post-Hearing Questions for the Record
Submitted to the Honorable Alejandro Mayorkas
From Senator Rand Paul**

**“DHS Actions to Address Unaccompanied Minors at the Southern Border”
May 13, 2021**

Question#:	13
Topic:	Vetting Sponsors
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rand Paul
Committee:	HOMELAND SECURITY (SENATE)

Question: In your written testimony, you refer to "safely releasing unaccompanied children to sponsors."

During the process for vetting sponsors for unaccompanied alien children, does the government ascertain the immigration status of potential sponsors?

Response: The safety and well-being of unaccompanied children remain of the utmost importance for DHS and HHS. For additional operational details regarding background checks, including ascertaining immigration status, DHS respectfully defers to HHS.

Question: If the government does not, how likely is it that these children are being placed into the custody of sponsors that are unlawfully present in the U.S.?

Response: As HHS is responsible for placement determination, DHS respectfully defers to HHS.

Question#:	14
Topic:	Root Cause Remediation Timeline
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Rand Paul
Committee:	HOMELAND SECURITY (SENATE)

Question: In your testimony, you asserted a need to address root causes of migration from Honduras, El Salvador, and Guatemala.

However, in early March 2020, the Government Accountability Office published a report stating that from 2013-2018, these countries received some \$3.7 billion in U.S. foreign aid. More recently, a news article dated May 11, 2021, says the Biden administration "has proposed a massive \$4 billion investment to help solve the issues" "like poverty, gang violence, and economic insecurity in Central America."

What is the federal government's expected timeline for when this "root cause" remediation effort in Central America will start to bear fruit?

What will this proposed \$4 billion be able to accomplish that the first \$4 billion did not? Because the evidence suggests that - with the notable exception of the Trump Administration's implementation of the Migrant Protection Protocols in late 2018 through early 2021 - very little has changed with respect to migration patterns of unaccompanied children since 2013.

Response: As noted previously, the Biden Administration has taken a "whole of government approach" in addressing the root causes of migration from high outward migration countries such as Honduras, El Salvador, and Guatemala, aimed to not only address the current situation at our Southwest Border, but also to build up opportunities and reduce violence to a point where potential migrants consider staying in their home countries as a more feasible option for their futures. DHS understands these investments will take time to mature and impact irregular migratory flows. In the meantime, the U.S. Government continues implementing various short- and medium-term solutions such as developing legal and safe pathways to enter the United States without making a dangerous, irregular journey, working with regional governments to counter migrant smuggling and reduce human trafficking, and improving the humanitarian protection system such that it does not take years to receive a determination. For instance, In March 2021, the United States reopened the Central American Minors program and, in June 2021, expanded it to additional categories of eligible U.S.-based relatives who can petition for their children. In addition, the U.S. government collaborates with countries within the region to provide other alternatives for protection and opportunity for those most vulnerable. DHS does not control or decide the amounts or types of U.S. foreign assistance for Central America and, as such, defers to DOS and USAID for more information and analyses related to U.S. Government-provided foreign assistance.

**Post-Hearing Questions for the Record
Submitted to the Honorable Alejandro Mayorkas
From Senator Kyrsten Sinema**

**“DHS Actions to Address Unaccompanied Minors at the Southern Border”
May 13, 2021**

Question#:	15
Topic:	Port Re-Opening
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Much of the regular travel through our land ports of entry has been severely limited throughout the pandemic. These restrictions on non-essential travel have been extended in 30-day increments since March 2020, with the most recent extension set to expire on June 21, 2021.

What metrics is DHS using to determine when it is safe to re-open our ports of entry to legal travel without compromising our country's public health?

Has DHS been consulting with local communities to ensure that they are prepared for changes in the status at our land ports of entry?

Response: On January 22, 2022, DHS extended the *Notification of Temporary Travel Restrictions Applicable to Land Ports of Entry and Ferries Service Between the United States and Canada and the respective Notification for Canada and Mexico* through April 21, 2022. These restrictions also can be modified or rescinded by the Secretary of Homeland Security (Secretary) at any point prior to April 21, 2022.

The updated travel notification only applies to noncitizens who are neither U.S. nationals nor lawful permanent residents. Under these temporary restrictions, DHS will allow processing for entry into the United States of noncitizen or non-LPRs who are fully vaccinated against COVID-19 and can provide proof of being fully vaccinated against COVID-19 upon request. The restrictions provide for limited exceptions, largely consistent with the limited exceptions currently available with respect to COVID-19 vaccination in the international air travel context. Unlike past actions of this type, this Notification does not contain an exception for essential travel.

This new travel system will create consistent, stringent protocols for all foreign nationals traveling to the United States – whether by air, land, or ferry – and accounts for the wide availability of COVID-19 vaccinations.

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Recently, the Secretary of Homeland Security announced the intention of lifting the limitations of non-essential travel for individuals who are fully vaccinated for COVID-19 to align with anticipated changes to international travel by air.

Question: What plans has DHS established to safely and efficiently return land ports of entry to fuller operations?

Response: Though restrictions remain in place, essential travel has continued to rebound towards pre-pandemic levels along the Southwest Border. Current passenger vehicle volumes at the Southwest Border are at approximately 85 percent of pre-pandemic levels, while commercial vehicle volumes are approximately 5 percent above pre-pandemic levels. CBP continues to track traffic volume at our Southwest Border ports of entry to determine peak travel times and will continue to deploy staff as appropriate.

As travel begins to resume, travel volumes and wait times are expected to increase. Travelers should plan for longer than normal wait times and long lines at U.S. land border crossings when planning their trip and are reminded to exercise patience. To help reduce wait times and long lines, travelers can take advantage of innovative technology, such as [facial biometrics](#) and the [CBP One™](#) mobile application, which serves as a single portal for individuals to access CBP mobile applications and services.

Question: Has DHS been consulting with local communities to ensure that they are prepared for changes in the status at our land ports of entry?

Response: DHS and CBP are committed to working with local communities and the governments of Canada and Mexico and we are looking concertedly at easing restrictions as soon as it is feasible to do so. Reevaluating these restrictions monthly has enabled us to make the best decisions for a public health and public safety standpoint without unnecessarily prolonging these measures. Every effort is being made to ensure the safety of individuals and local communities as we continue to facilitate essential trade and travel. CBP looks forward to a time when discretionary travel can resume across our mutual border. Regular exchanges remain on-going through established Border Community Liaison programs in both OFO and the USBP to address concerns surrounding community impacts.

Question#:	16
Topic:	Title 42
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Similarly, with regard to ending Title 42:

What metrics and other factors are being used to determine when Title 42 will be repealed or left to expire?

Response: DHS is assisting with the implementation of the CDC orders issued pursuant to HHS's public health authority (CDC Order). DHS defers to CDC on questions relating to the CDC Order.

Question#:	17
Topic:	Migrant Increase
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: What plans does DHS have in place to deal with increased number of migrants that will need to be processed by U.S. Customs and Border Patrol at the ports of entry?

Response: CBP's OFO leadership at the POEs closely monitor the dynamic border operations and shift resources as needed to accomplish our complex mission. CBP began deploying additional CBP officers from interior airports and seaports to Southwest border POEs on May 16, 2021 to assist with processing, facilitation, and enforcement operations at the Southwest border POEs. CBP continues to leverage technology to create efficiencies in processing at POEs.

Question: Has DHS been consulting with local communities to ensure that they are prepared to step in and assist as needed with more migrants being released into the U.S.?

Response: Yes, CBP works closely with our community partners to include state and local government agencies, NGOs, as well as law enforcement and health and safety experts when migrants are released into the U.S. The long-established Border Community Liaison Programs in both the OFO and the USBP provide close at hand local field site coordination with smaller NGOs and local governments as an extension of the overall national efforts.

CBP Intergovernmental Public Liaison (IPL) staff participates in multiple NGO calls on a weekly basis and attends a number of Southwest border NGO task force meetings. IPL regularly attends sector-based NGO task force engagements, including the U.S. Mexico Border Alliance, Humanitarian Working Group (Pima County, Arizona), Maricopa County Asylum Seekers Stakeholder Meeting, and Border Shelter Collaborative, to hear directly about the challenges and areas of concern from local NGOs. IPL staff has facilitated the participation of both sector and field office representatives at Southwest border NGO meetings to communicate with NGOs to ensure they are updated on the current state of the Southwest border and specifically their area of responsibility. It is during these regular engagements across all stakeholder groups that CBP can keep local communities apprised of issues that could impact them. Through discussion and question and answer sessions local communities can request any additional information that would assist them in planning efforts for changes in port traffic.

CBP field representatives also participate in the following Southwest border NGO meetings: California Welcoming Task Force, Mid-Texas Border Region (Laredo, Eagle Pass, and Del Rio), Frontera Welcome Coalition, and RGV Welcoming Committee. IPL staff facilitates briefings if there is a national policy, procedure, or initiative that should be communicated to NGOs. This supports collaboration and partnership between CBP and NGOs as they work to achieve their shared objectives of the security and safety of vulnerable persons. It is during these regular engagements across all stakeholder groups that CBP can keep local communities apprised of

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issues that could impact them. Through discussion and question and answer sessions local communities can request any additional information that would assist them in planning efforts for changes in port traffic.

IPL staff also engages with various intergovernmental agencies to ensure they are aware of all relevant CBP policies that may affect them. The IPL intergovernmental affairs branch regularly engages these stakeholders — including municipal, county, territorial, and state government elected officials and the associations that represent them — by attending conferences, direct phone calls, and virtual meetings with association committees and taskforces on CBP’s most recent policies and operations, current issues, and potential changes. IPL staff works in tandem with their counterpart offices throughout DHS and national association offices. It is during these regular engagements across all stakeholder groups that CBP can keep local communities apprised of issues that could impact them. Through discussion and question and answer sessions local communities can request any additional information that would assist them in planning efforts for changes in port traffic.

Lastly, the law enforcement branch within IPL coordinates meetings and briefings between CBP leadership and key Southwest border law enforcement officials and the national associations of police chief and sheriff that represent them to share information on the overall state of the border and to seek feedback on ideas, initiatives, and shared goals. At these meetings, law enforcement leaders are provided briefings and have the opportunity to ask questions about new or existing CBP policies and procedures that may impact their communities, emerging CBP issues, and ongoing operations. IPL staff ensures that these meetings are a forum where participants can candidly share information and seek consultation on border-related issues. It is during these regular engagements across all stakeholder groups that CBP can keep local communities apprised of issues that could impact them. Through discussion and question and answer sessions local communities can request any additional information that would assist them in planning efforts for changes in port traffic.

Question#:	18
Topic:	Ending MPP
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: To what degree will the process for ending Title 42 mirror the Administration's process for ending Migrant Protection Protocols (MPP)?

What lessons will DHS take from unwinding MPP to address any issues that may arise once Title 42 ends?

Response: The Migrant Protection Protocols (MPP) was premised on an immigration authority under Title 8 of U.S.C., whereas the authority under Title 42 of the U.S.C. is a public health authority belonging to HHS, not DHS.

DHS is currently under a district court order to “enforce and implement MPP in good faith.” The Administration continues to challenge this decision in court and the Secretary has issued a new memorandum terminating MPP, which DHS will implement as soon as practicable after issuance of a final judicial decision to vacate the injunction.

When public health officials deem it appropriate to end the use of Title 42, DHS will collaborate through a whole-of-government approach to process individuals who arrive at the Southwest Border under Title 8 authorities while fully executing its important homeland security and trade and travel facilitation missions. The collaborative interagency and international effort to process individuals who were returned to Mexico under MPP into the United States allowed DHS to conduct safe and orderly processing at ports of entry during the pandemic.

Question#:	19
Topic:	Future Challenges
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: I appreciated the discussion during this hearing regarding many of the challenges along the border. What current border challenge are not getting proper public attention, and what steps should Congress take to further engage on this challenge?

What steps do we need to take now to prepare for future challenges at our borders?

Response: Addressing the challenges we see at the border cannot be solved by law enforcement measures alone. This is why Congress should bolster efficiency and advance our American values throughout our immigration system by passing comprehensive immigration legislation as outlined in the U.S. Citizenship Act of 2021.

In addition to passing the U.S. Citizenship Act of 2021, we should address the very factors that cause individuals to flee their homes in the first place, including the ongoing violence, corruption, natural disasters, and lack of basic opportunities that impact countries in the Northern Triangle region, just as President Biden outlined in his Executive Order on *Creating a Comprehensive Regional Framework To Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*. Through engagement with regional governments and civil society, we are working to provide alternative legal pathways and greater access to our nation's immigration system, while increasing the capacity of other countries to shelter and provide assistance for noncitizens closer to home.

**Post-Hearing Questions for the Record
Submitted to the Honorable Alejandro Mayorkas
From Senator Josh Hawley**

**“DHS Actions to Address Unaccompanied Minors at the Southern Border”
May 13, 2021**

Question#:	20
Topic:	Press Conference Statement
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Josh Hawley
Committee:	HOMELAND SECURITY (SENATE)

Question: In the recent hearing, you stated that: "I never said the border was open". However, on March 1, 2020, you stated in a press conference in reference to migrants: "We are not saying don't come. We are saying don't come now." Do you recall this press conference statement?

How do you believe your words on March 1, 2020 were interpreted by migrants? In addition, please explain how this press conference statement is compatible with your repeated assertion that "the border is closed."

Response: Our message has been consistent from the beginning: The United States continues to strictly enforce the law, including CDC's public health order. Anyone who chooses to travel to the Southwest Border and attempts to cross without authorization is putting themselves and their families at risk, especially during a global pandemic.

We have made it clear that people should not make the dangerous journey, and individuals and families are subject to border restrictions, including expulsion under Title 42 authority.

President Biden is dedicated to a safe, orderly, and humane immigration system, which includes ensuring safe, orderly, and lawful pathways to migration so that people do not need to take the perilous journey and can avail themselves of our humanitarian laws.

Question#:	21
Topic:	Working with ACLU
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Josh Hawley
Committee:	HOMELAND SECURITY (SENATE)

Question: In the recent hearing, you stated that you were "working with" the American Civil Liberties Union regarding the cancellation of lateral transfer flights that facilitate Title 42 expulsions. Please describe in detail how you are "working with" the ACLU.

Response: DHS is assisting with the implementation of the CDC order issued pursuant to HHS's public health authority (CDC Order). DHS defers to CDC and DOJ on questions relating to the CDC Order.

Question#:	22
Topic:	Single Adult Surge
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Josh Hawley
Committee:	HOMELAND SECURITY (SENATE)

Question: Recent reporting suggests that single adults have driven an increase in illegal border crossings over the past month. In fact, data from Customs and Border Protection show a 12% increase in enforcement encounters in April for single adults when compared to March. Why is this surge occurring?

Response: We are seeing rising numbers generally because of issues such as violence, natural disasters, food insecurity, and poverty have long existed in these areas but have become more severe since the pandemic emerged. Additionally, CBP routinely sees seasonal fluctuations in the numbers of single adults crossing the border without appropriate documentation.

Furthermore, the numbers of encounters do not correspond to the number of unique individuals CBP encounters, as a single individual can be expelled multiple times under Title 42. Total encounters therefore overstate the number of unique individuals arriving at the border.

Question#:	23
Topic:	Increased Attention
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Josh Hawley
Committee:	HOMELAND SECURITY (SENATE)

Question: Is the increased attention paid to children and families due to the exemptions in Title 42 creating an opening for single adults to elude authorities?

Response: No. Neither the exception from expulsion for unaccompanied noncitizen children under the CDC Order nor any exercise of discretion by CBP to exempt certain undocumented noncitizens is driving the increase in CBP encounters of single adults. As mentioned in the previous questions, there are several country-specific factors driving the increasing number of undocumented noncitizens attempting to enter the United States. Furthermore, the number of unique single adults who are encountered is lower than the number of total single adults encountered, given that a single individual may be encountered multiple times.

Question#:	24
Topic:	Title 42 Policy
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Josh Hawley
Committee:	HOMELAND SECURITY (SENATE)

Question: Will you commit to maintaining your policy of expelling single adults under Title 42?

Response: DHS is assisting the CDC in implementation of its order. DHS defers to the CDC on all questions related to the duration of its order.

Question: What do your models show would be the impact of rolling back Title 42 expulsions for single adults? Would illegal crossings increase?

Response: While CBP anticipates that single adult encounters could increase after Title 42 expulsions cease, the current total number of encounters overstates the unique number of individuals who are crossing irregularly.

Question#:	25
Topic:	Immediate Expulsion
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Josh Hawley
Committee:	HOMELAND SECURITY (SENATE)

Question: April data from Customs and Border Protection suggests the agency counted over 178,000 total enforcement encounters at the southwest border in April. Of that total, what percentage were subject to immediate expulsion under Title 42?

Response: Of the April 2021 Southwest land border enforcement encounters, 63 percent were expelled under Title 42.

Question#:	26
Topic:	Got-Aways
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Josh Hawley
Committee:	HOMELAND SECURITY (SENATE)

Question: In April, how many illegal aliens do you estimate entered the country without being encountered or apprehended by Border Patrol?

Response: While devising a number for “Got-Aways” involves rough estimation, in April 2021, USBP recorded 40,200 Got-Aways nationwide. A “Got-Away” is defined as a subject at the Southwest border who, after making an illegal entry, is not turned back, apprehended, or encountered, and is no longer being actively pursued by U.S. Border Patrol (USBP) agents. In effect, a got-away is an individual that entered the United States illegally between ports of entry without being interdicted or inspected by a Federal law enforcement official with immigration authorities.

USBP has implemented a standard methodology for determining when to report a subject as a Got-Away. Some subjects are observed directly as evading apprehension; others are acknowledged as Got-Aways after experienced agents follow evidence that indicates entries have occurred, such as direct observation, imagery from cameras or radar, sensor activations, observations of foot sign (i.e., tracks), interviews with apprehended subjects, and communication between and among agents in the area, as well as station and sector.

Question#:	27
Topic:	Asylum Work Permits
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable Josh Hawley
Committee:	HOMELAND SECURITY (SENATE)

Question: According to USCIS data, in 2009, the first year of President Obama's term, the United States authorized work permits for about 16,000 illegal aliens applying for asylum. By the time President Trump took office, the United States was issuing about 150,000 work permits per year to these applicants, many of whom were eventually denied asylum. To address the abuse of our asylum system, the Trump administration finalized a rule, which went into effect in August 2020, that revised eligibility for employment authorization, such as extending the waiting period for asylum-seekers to receive a work permit to one year. Will you commit to keeping these changes in place, or do you plan to rescind this rule?

Response: On August 25, 2020, DHS published a final rule that modified DHS's regulations governing asylum applications, interviews, and eligibility for employment authorization based on a pending asylum application. (85 FR 38532). In the Spring 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions, DHS indicated that it intends to publish a proposal to rescind this rule.

On August 21, 2020, DHS published a final rule that removed a regulatory provision stating that U.S. Citizenship and Immigration Services (USCIS) has 30 days from the date an asylum applicant files the initial Form I-765, Application for Employment Authorization, to grant or deny that application. (85 FR 37502). On May 7, 2021, the Secretary of Homeland Security ratified this rule. In the Spring 2021 Unified Agenda of Federal Regulatory and Deregulatory Actions, DHS indicated that it intends to publish a proposal to change this rule.

**Post-Hearing Questions for the Record
Submitted to the Honorable Alejandro Mayorkas
From Senator James Lankford**

**“DHS Actions to Address Unaccompanied Minors at the Southern Border”
May 13, 2021**

Question#:	1
Topic:	CAM Parole
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Your written testimony discusses the re-opening of the Central American Minors parole program to help manage this crisis. As you are aware, the Trump Administration terminated this program under the assumption that the program's use of the Secretary's parole authority under 8 U.S.C. § 1182(d)(5)(A) was contradictory to the plain reading of the statute, which specifies that the exercise of parole "would generally be justified only on a case-by-case basis for 'urgent humanitarian reasons' or 'significant public benefit.'" Briefs filed by the Federal government in *S.A. v. Trump* suggest that 99 percent of cases filed under the CAM parole program were approved.

Your Department has not publicly announced when it resumed its operation of CAM parole. Can you please share with the Committee the date your Department resumed operation of this program and all policy and operational guidance related to its resumption?

Response: Parole is one component of the Central American Minors (CAM) program, a Priority-Two program through which certain U.S.-based parents may request access to the U.S. Refugee Admissions Program on behalf of their qualifying child in El Salvador, Guatemala, and Honduras. Only after a specially trained refugee officer from U.S. Citizenship and Immigration Services (USCIS) has conducted an interview and determined that a child does not qualify for refugee status, on a case-by-case basis that child may be considered for a conditional approval of parole if the interviewing officer determines that the child has a well-founded fear of harm based on other urgent humanitarian concerns. There is not a separate application for the parole component of CAM.

On June 13, 2018, a complaint was filed in the U.S. District Court for the Northern District of California, *S.A. v. Trump*, No. 18-cv-03539, challenging the August 2017 decision to terminate the parole component of the CAM program and related issues. Pursuant to the Final Judgment and Order for Permanent Injunction in *S.A. v. Trump* issued on May 17, 2019 and related settlement agreement, USCIS reopened and is continuing the processing of certain CAM parole

Question#:	1
Topic:	CAM Parole
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

cases under the previous CAM parole policies and procedures. Cases affected by this agreement include individuals who had received a conditional parole approval notice that USCIS then rescinded in 2017 following the termination of the parole component of the CAM program. Any initial CAM parole cases processed between May 17, 2019 and June 28, 2021 were cases reopened due to *S.A. v. Trump*.

On February 2, 2021, President Biden issued Executive Order 14010, "Creating a Comprehensive Regional Framework to Address the Causes of Migration, to Manage Migration Throughout North and Central America, and to Provide Safe and Orderly Processing of Asylum Seekers at the United States Border," which directed the Secretary of Homeland Security to consider taking all appropriate actions to reverse the 2017 decision to rescind the Central American Minors (CAM) parole policy and termination of the parole program. The Executive Order also directed the Secretary to consider actions to reinstitute and improve the CAM Parole Program.

On March 10, 2021, the U.S. Department of State (DOS) announced that the United States would restart the CAM program in a two-phased approach. Phase One is to reopen and process previously pending cases that were closed when the program was terminated in 2017, while Phase Two is to expand the program and accept new applications for processing. The parole component of the CAM parole program resumed under Phase One as part of this announced reopening, as described on the DOS website for the program. On June 15, 2021, the U.S. Department of Homeland Security (DHS) and DOS announced Phase Two of the reopening of the CAM program, which included an expansion of the program. Eligibility to petition is now extended to legal guardians, in addition to parents, who are in the United States pursuant to any of the qualifying categories (lawful permanent residence, temporary protected status, parole, deferred action, deferred enforced departure, or withholding of removal). The expansion also included certain U.S.-based parents or legal guardians with pending asylum applications or pending U nonimmigrant status petitions filed before May 15, 2021.

Question#:	2
Topic:	CAM Parole Applications
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: How many applications processed under the CAM parole program between December 1, 2014 and August 16, 2017, and between its resumption this year and May 21, 2021, broken down by age, sex, and country of origin have been approved and denied?

Response: CAM Parole Program Statistics for December 1, 2014 - August 16, 2017, available as of June 11, 2021.

Gender	Approvals	Denials
Female	750	22
Male	715	49

Age Range	Approvals	Denials
0-9	104	11
10-19	765	30
20-29	486	24
30-39	22	D ¹
40-49	54	D
50-59	32	D
60-69	D	D

Nationality	Approvals	Denials
Guatemalan	31	D
Honduran	325	D

¹ "D" indicates a value of 10 or fewer.

Question#:	2
Topic:	CAM Parole Applications
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Salvadoran	1,109	63
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CAM Parole Program Statistics Between March 10, 2021 (Resumption of the CAM Program) and May 21, 2021

Any initial CAM parole cases processed between May 17, 2019 and June 28, 2021 were cases reopened due to *S.A. v. Trump*. As of June 28, 2021, no CAM cases from the restart of the program have been referred for further parole processing.

Gender	Approvals	Denials
Female	153	D
Male	102	D

Age Range	Approvals	Denials
0-9	37	D
10-19	21	D
20-29	170	D
30-39	D	D
40-49	12	D
50-59	11	D
60-69	D	D

Nationality	Approvals	Denials
Guatemalan	D	D
Honduran	16	D
Salvadoran	239	D

Question#:	3
Topic:	Parole Authority Use
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: The White House indicated on a staff briefing on April 27, 2021 that it was contemplating the use of parole in other circumstances. Under what other circumstances is the Department contemplating the exercise of the Secretary's parole authority under 8 U.S.C. § 1182(d)(5)(A)?

Response: The Secretary may, in his discretion, parole any applicant for admission into the United States temporarily, under such reasonable conditions as he may prescribe, on a case-by-case basis for urgent humanitarian reasons or significant public benefit.² In accordance with the statute, DHS may use parole in furtherance of the directives in President Biden's Executive Orders 14010 and 14011. Pursuant to Executive Order 14010, *Creating a Comprehensive Regional Framework to Address the Causes of Migration, To Manage Migration Throughout North and Central America, and To Provide Safe and Orderly Processing of Asylum Seekers at the United States Border*, the Department is directed to "consider promoting family unity by exercising the Secretary's discretionary parole authority..."³ Additionally, Executive Order 14011, *Establishment of Interagency Task Force on the Reunification of Families*, states the Task Force will make "recommendations regarding the possible exercise of parole under section 212(d)(5)(A) . . ." to reunite parents and children who were separated between January 20, 2017, and January 20, 2021, in connection with the operation of the Zero-Tolerance Policy.⁴

Question: Has the Department considered the use of parole beyond the categories listed under 8 CFR § 212.5(b)?

Response: The Secretary may, in his discretion, parole an individual "into the United States temporarily under such conditions as he may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit."⁵ DHS is committed to the use of its parole authority in a manner that is consistent with the law.

Question: If so, under what instances has the Biden Administration contemplated the use of the Secretary's parole authority with regards to either a category or class of aliens or with regards to the concept of "parole-in-place"?

² INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A).

³ See EO 14010 Sec. 3(b)(ii) (Feb. 2, 2021).

⁴ See EO 14011 Sec. 4(b)(i)(A) (Feb. 2, 2021).

⁵ INA § 212(d)(5)(A), 8 U.S.C. § 1182(d)(5)(A).

Question#:	3
Topic:	Parole Authority Use
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Response: As noted above, DHS is committed to the use of parole in a manner consistent with the law and will consider using this statutory authority when warranted.

Question#:	4
Topic:	Border Wall Construction
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: During your confirmation, I asked you about your perspective on the Southern border and you mentioned that you would study the issue. Since then, your Department has released a press release on April 30, 2021 entitled: "DHS Announces Steps to Protect Border Communities from Wall Construction." In your study of the border wall issue, did you determine that the wall is an effective deterrent to illegal border crossing?

Response: DHS remains committed to ensuring the health, safety, and welfare of communities along the border, individuals encountered there, and Border Patrol Agents who patrol the area. On July 26th, 2021, DHS approved four projects in the Rio Grande Valley, San Diego, and El Centro Sectors to address life, safety, environmental, and other remediation needs related to the Department's plan for the use of border barrier funds. The projects include:

- **Ensuring power is fully restored to municipalities** on both sides of the border along the El Centro Sector utility relocation project.
- **Addressing numerous serious safety risks and environmental restoration** issues at the Rio Grande Valley Sector make safe and punch list project.
- **Powering San Diego Secondary Gates and Replacing Drainage Grates** to ensure that 33 vehicle gates that have been hung and built within the San Diego Secondary barrier alignment are operable. Once completed, these gates will provide Border Patrol Agents with critical access and mitigate life and safety risk for agents and migrants who may need emergency assistance in the area. In addition, there are 15 drainage grates requiring replacement and repairs in this same area that pose a risk to migrants and agents.
- **Repairing and reinforcing a small fence** between existing San Diego border segments.

These projects are consistent with the guiding principles in the DHS border wall plan ([the Plan](#)). DHS continues to review other paused border barrier projects presenting life, safety, environmental, or other remediation needs and will continue to conduct environmental planning. Future construction will be conducted in line with the intent to utilize a range of tools including smart border technology to enhance security along the border as warranted by requirements in specific areas.

Question#:	5
Topic:	Withholding Funds
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Congress has appropriated \$1.4 billion specifically for wall construction. You mentioned during your confirmation hearing that "The Department of Homeland Security is charged with enforcing the laws that Congress passes." You also mentioned in response to a question about ignoring laws duly passed by Congress that you are an "officer of the Court." In light of these responses during your confirmation, do you believe you are carrying out the law that Congress passed by continuing to withhold the use of these appropriated funds?

Response: On December 27, 2020, as a part of the fiscal year 2021 DHS appropriation, Congress appropriated \$1,375,000,000 for border barrier system. The Plan outlines how DHS will utilize that funding. It will include the following: (1) additional obligations for changes or cost overruns on other pending projects; (2) closeout of barrier projects turned over to DHS by the Department of Defense (DoD); and (3) sequential planning for DHS's highest priority projects to including contract solicitation after the completion of environmental planning and any other required activities. DHS is moving forward with the steps outlined above in a manner that is consistent with law.

Question#:	6
Topic:	Border Wall Contractors
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: On May 3, 2021, my staff provided requests for information to your Department and to the Office of Management and Budget (OMB) regarding the pause in border wall construction and the April 30, 2021 press release titled: "DHS Announces Steps to Protect Border Communities from Wall Construction." While we have not yet received a response from your Department, we did receive a response from OMB on May 12, 2021. OMB noted: "Of the total \$3.6 billion made available for border barrier projects under 10 U.S.C. 2808, \$2.1 billion is currently unobligated. An additional \$0.1 billion for a Navy project in Washington State that was deferred to make funds available for Section 2808 construction is also unobligated, but pursuant to a court order that is on appeal, the funds were released to the Navy. The Department cannot determine at this time the precise amount of the \$1.5B in obligated funds that could be deobligated for release back to the DoD Components because the costs of de-scoping or terminating contracts are subject to negotiation with contractors, which could take 12-18 months to complete."

My staff interprets this response to suggest that the Federal government may be required to pay border wall contractors over 1.5 billion taxpayer dollars to not build the wall. Is this accurate?

Response: We take our obligation to be responsible stewards of taxpayer dollars seriously. DoD has announced the cancellation of the border barrier projects DoD undertook pursuant to 10 U.S.C. § 2808. The U.S. Army Corps of Engineers (USACE), on behalf of DoD, administers the § 2808 construction contracts and may be able to provide additional information regarding the status of these efforts and anticipated termination costs.

Question: Has your Department finished studying the issue?

Response: On July 26th, 2021, DHS approved four projects in the Rio Grande Valley, San Diego, and El Centro Sectors to address life, safety, environmental, and other remediation needs related to the Department's plan for the use of border barrier funds. The projects include:

- **Ensuring power is fully restored to municipalities** on both sides of the border along the El Centro Sector utility relocation project.
- **Addressing numerous serious safety risks and environmental restoration** issues at the Rio Grande Valley Sector make safe and punch list project.
- **Powering San Diego Secondary Gates and Replacing Drainage Grates** to ensure that 33 vehicle gates that have been hung and built within the San Diego Secondary barrier alignment are operable. Once completed, these gates will provide Border Patrol Agents with critical access and mitigate life and safety risk for agents and migrants who may need

Question#:	6
Topic:	Border Wall Contractors
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

emergency assistance in the area. In addition, there are 15 drainage grates requiring replacement and repairs in this same area that pose a risk to migrants and agents.

- **Repairing and reinforcing a small fence** between existing San Diego border segments.

These projects are consistent with the guiding principles in the DHS Border Wall Plan ([the Plan](#)). DHS continues to review other paused border barrier projects presenting life, safety, environmental, or other remediation needs and will continue to conduct environmental planning.

Question#:	7
Topic:	Cost Estimates
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Can you please share with the Committee any cost estimates, written documents, policy guidance, studies, and/or briefing materials that the Department has created as it has assessed border wall contracts and implemented President Biden's moratorium on construction?

Response: Prior to the President's January 20, 2021, Proclamation entitled *Termination of Emergency with Respect to the Southern Border of the United States and Redirection of Funds Diverted to Border Wall Construction*, approximately 13 miles of existing flood control levees located in Hidalgo County, Texas, were modified or removed in preparation for levee barrier construction. On April 29, 2021, DHS authorized an exception to the Proclamation for urgent measures necessary to avert immediate physical dangers allowing CBP, in coordination with USACE, to resume construction to complete the flood barrier system in Rio Grande Valley, Texas and for CBP to take erosion control measures along a 14-mile stretch of border barrier in San Diego, California.

On July 26, 2021, DHS approved four additional projects in the Rio Grande Valley, San Diego, and El Centro Sectors to address life, safety, environmental, and other remediation needs related to the Department's plan for the use of border barrier funds. The projects include:

- **Ensuring power is fully restored to municipalities** on both sides of the border along the El Centro Sector utility relocation project.
- **Addressing numerous serious safety risks and environmental restoration** issues at the Rio Grande Valley Sector make safe and punch list project.
- **Powering San Diego Secondary Gates and Replacing Drainage Grates** to ensure that 33 vehicle gates that have been hung and built within the San Diego Secondary barrier alignment are operable. Once completed, these gates will provide Border Patrol Agents with critical access and mitigate life and safety risk for agents and migrants who may need emergency assistance in the area. In addition, there are 15 drainage grates requiring replacement and repairs in this same area that pose a risk to migrants and agents.
- **Repairing and reinforcing a small fence** between existing San Diego border segments.

Question#:	8
Topic:	Sensors and Cameras
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Is it your opinion that technology such as sensors and cameras qualifies as "border wall construction"?

Response: No. Technology such as sensors and cameras is part of CBP's "border wall system," but by itself does not constitute border wall or border barrier.

Question#:	9
Topic:	Land Development
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS recently acquired 33 miles of land for border wall construction, but it has not yet built on this land. Under the plan described in Presidential Proclamation 10142, what are the Department's plans for developing this land?

Please provide a cost analysis to support the Department's decision.

Response: As outlined in the Plan, DHS is reviewing the status of all pending border wall land eminent domain actions commenced between 2016 and 2020. This assessment process includes a review of whether such actions will be necessary after environmental planning is complete. If DHS determines that it no longer requires the use of land that is currently the subject of an adverse eminent domain proceeding, DHS will explore options to revest the land with its prior owners. We will base the decision to revest land on a number of factors, including whether or not individuals would like their land returned and whether the land will be necessary for life, safety, environmental, or other remediation. If DHS determines that additional land acquisition is necessary to complete the barrier projects contemplated by the Plan, DHS will initiate robust landowner engagement to be guided by the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended, 42 U.S.C. §§ 4601-4655.

Question#:	10
Topic:	60-Day Review
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: On January 20, 2021, President Biden suspended construction of the border wall and ordered a 60-day review of all border construction contracts. That study was due on March 21, 2021, but we on the Committee have not seen a copy. Has this study been completed and presented to the President?

If it has been completed, can you please share with the Committee:

A copy of the assessment of border construction described in Section 1 of Presidential Proclamation 10142;

A copy of the plan for redirecting funding and repurposing contracts described in Section 2 of Presidential Proclamation 10142; and

Any other cost estimate, document, briefing, draft memorandum, policy, or guidance created pursuant to Presidential Proclamation 10142?

Response: As noted, on June 11, 2021, DHS released its “Border Wall Plan Pursuant to Presidential Proclamation 10142.” The Plan sets forth the guiding principles for border barrier planning and construction and reflects the assessment of border barrier construction pursuant to Proclamation 10142. A copy of the Plan can be found [here](#).

Question#:	11
Topic:	Border Volunteer Force
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: You mentioned in remarks on March 16, 2021 that over 500 individuals were serving in a "volunteer force" at the Southwest border. I am concerned that this volunteer force represents a significant workforce and budgetary transfer from other Federal agencies to border enforcement. Can you describe to us the functions these individuals are fulfilling, the number of volunteers in the volunteer force, and the cost to the government of having this volunteer force?

From what agencies has the Department drawn for this volunteer force?

Response: The DHS Volunteer Force (VF), which was first utilized in 2018, provides support to CBP law enforcement officers on the ground, relieving them from performing administrative duties so they can focus on core law enforcement and border security responsibilities. Individuals deployed for the DHS VF for a 30 day detail but are rotated out each week based on mission requirements. They have been requested from all DHS operational components as well as headquarters offices with the understanding that components are not losing an employee or capability for any long period of time. Prior to deploying with the VF, Components must approve to ensure they can continue to support their internal mission and workloads. Components may then decide to allow the volunteer to deploy; delay their deployment until operationally feasible; or deny the deployment.

Typical non-law enforcement duties provided by the DHS Volunteer Force in support of CBP could include:

- Detainee Personal Property Management: tagging, bagging, sealing, storing, and retrieval
- Meal Prep and Supply Hand-out: heating food, hand-out of food/blankets, fill water jugs, provide cups, hand-out formulas/sanitary pads, etc.
- Warehouse Supplies: receive/distribute
- Supply Runs: pick up pre-purchased items such as food, detainee supplies, to/from vendor and station
- Prescription Medicine Runs: run medical scripts for local pharmacy pick-up
- Prosecution Case Files Run: walk/drive case files to/from station/site
- Basic Housekeeping: as needed (picking up trash, sweeping, fridge, shred paper)
- Assist in Control Room: monitoring and operating access doors, answering phones

Additionally, the DHS VF provides support to USCIS employees detailed to HHS to support virtual unaccompanied children case management.

Question#:	11
Topic:	Border Volunteer Force
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Since March 2021, 896 DHS employees have deployed through the DHS Volunteer Force. The salaries and travel costs associated with the deployment of those volunteers is reimbursed by the receiving agency (HHS or CBP) through an interagency agreement.

Question#:	12
Topic:	Volunteer Force Documents
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Please share with the Committee the following information:

Copies of all communications that have been sent to Federal workforces on behalf of the Department between January 2021 and today requesting that employees consider or accept details to assignments along the Southwest border.

Response: Please see the Secretary's Signed Memorandum to Component Heads 03.04.21 (Attachment A) and Deputy Under Secretary for Management Randolph Alles Memo to DHS Deputy Component Heads 3.11.21 (Attachment B)

Question: Copies all USA Jobs postings between January 2021 and today for detail opportunities with the Department to assignments along the Southwest border.

Response: DHS does not use USAJOBS to solicit volunteers.

Question: Copies of each agency and program office's detail agreements for detailees who have been accepted to serve in the volunteer force along the Southwest border.

Response: Volunteers are not on a detail, and therefore do not enter into detail agreements.

Question: Each facility where a volunteer force member has served, and the number of volunteers detailed to each facility.

Response:

Facility	Volunteers Assigned
Albion, MI	0
Dallas, TX	0
Del Rio Sector	63
El Paso Sector	20
Erie, PA	0
Ft. Bliss Army Base	61
Lackland Joint Base	11
Laredo Sector	61
Long Beach, CA	2

Question#:	12
Topic:	Volunteer Force Documents
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

McAllen, TX	0
Midland, TX	0
Pecos, TX	2
Pittsburgh, PA	0
Pomona, CA	1
Rio Grande Sector	46
San Antonio, TX	0
San Diego, CA	14
Tucson Sector	53
Yuma Sector	34

Question: The duties performed by volunteer force members and the number of members performing each duty listed.

Response: Duties: Typical non-law enforcement duties provided by the DHS VF in support of CBP could include:

- Detainee Personal Property Management: tagging, bagging, sealing, storing, and retrieval
- Meal Prep and Supply Hand-out: heating food, hand-out of food/blankets, fill water jugs, provide cups, hand-out formulas/sanitary pads, etc.
- Warehouse Supplies: receive/distribute
- Supply Runs: pick up pre-purchased items such as food, detainee supplies, to/from vendor and station
- Prescription Medicine Runs: run medical scripts for local pharmacy pick-up
- Prosecution Case Files Run: walk/drive case files to/from station/site
- Basic Housekeeping: as needed (picking up trash, sweeping, fridge, shred paper)
- Assist in Control Room: monitoring and operating access doors, answering phones
- Line of Sight Management: monitoring individuals to ensure they receive proper care

Question: Copies of any policies, guidelines, or other materials used in the evaluation and approval of volunteer force members.

Response: Volunteers are screened with a background investigation check, a CBP Office of Professional Responsibility check, Prison Rape Elimination Act assessment (2 DHS PREA Form Attachment C), '3 Health Threat Assessment_SWB March 2021' (Attachment D), '4 Anxiety-Depression-Survey' (Attachment E), and '5 Resilience-Survey' (Attachment F)

Question#:	12
Topic:	Volunteer Force Documents
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: All costs and expenses that are approved for members of the volunteer force (i.e. per diem).

Response: Pay is “reimbursed” through the volunteer’s home organization. Per diem is paid directly to the volunteer. Travel is arranged by CBP and costs are paid directly to the volunteer.

Question: Any cost estimates the Federal government has developed regarding the volunteer force.

Any cost estimates of the impact the volunteer force will have on sending agencies' budgets and workforces.

Response: Since March 2021, 896 DHS employees have deployed through the DHS Volunteer Force. The salaries and travel costs associated with the deployment of those volunteers is reimbursed by the receiving agency (HHS or CBP) through an interagency agreement. As of May 13, 2021, DHS has expended \$2.25 million for DHS VF volunteers, some of which will be reimbursed by HHS. As the receiving agency reimburses the sending agency for volunteers, the cost to the sending agencies should be zero.

Question: The affirmations required by employee supervisors for approval to serve in the volunteer force.

Response: Please see the DHS-DVF-Registration form and DHS-DVF-Deployment-Authorization form (Attachment G)

Question: A briefing on the background check procedures that are in place for members of the volunteer force.

Response: Volunteers are screened with a background investigation check, a CBP Office of Professional Responsibility check. Prior to volunteers completing their registration, they are briefed with the following: “DHS Volunteer Force participants will be required to have a current background investigation with their Component that meets the requirements of the position for which they are volunteering. DHS will conduct updated vetting checks as a part of participation in this effort to ensure compliance with the Prison Rape Elimination Act. DHS will also verify professional licenses, as applicable. DHS may share the results of the vetting checks with the volunteer’s home Component when the results may impact employment eligibility.”

Question: The statutory, regulatory, or other authority under which a Federal agency may request and receive approval for a volunteer force.

Question#:	12
Topic:	Volunteer Force Documents
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Response: Please reference the Department of Homeland Security Directive Number 125-02, Interagency Agreements, issued August 15, 2008 (Attachment H); and 5 U.S.C § 3341 and 31 U.S.C § 1535, 5 C.F.R. § 300.301 and 5 C.F.R. § 317.903. (Attachment I)

Question#:	13
Topic:	Redirected Funds
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: The U.S. Department of Health and Human Services has reportedly redirected more than \$2.1 billion of coronavirus response funds to manage the surge of unaccompanied children (UACs) at the border. Has your Department redirected any funds to manage this crisis?

If it has, can you please share with the Committee the following information:

The account from which the Department has redirected funds;

The account to which the Department has redirected funds;

The specific purpose for which the redirected funds were appropriated;

and, The authority under which the Department redirected such funds?

Response: As of the date of the hearing, DHS had not redirected any funds to manage the situation on the southwest border. On June 30, the Department submitted a reprogramming notification to the House and Senate Homeland Security Appropriations Subcommittees which redirected approximately \$174 million to ensure the critical requirements on the southwest border are properly funded.

Question#:	14
Topic:	Migrant Care Cost
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the total cost per-person, per-day to care for a migrant in CBP custody, including all services rendered by the Department or by contractors?

Response: The average per-person, per-day cost to CBP to care for a non-citizen in CBP custody, specifically in a temporary soft-sided facility location, is approximately \$309 for facility and related support expenses. Please see cost breakdown below.

Question: In providing this estimate, please provide a breakdown of the specific components of the per-person, per-day cost and any costs not included in your per-day cost.

Response: Costs may vary by soft-sided facility (SSF) location, with significantly increased costs when facilities are over capacity. The cost provided is an average cost of all current SSFs in four USBP sectors (i.e., Yuma, Tucson, Rio Grande Valley, and Del Rio). These daily per-person calculation includes costs for meals, snacks/water, and consumables (such as baby supplies, clothing, and hygiene kits). The per-person calculation also includes contract facility costs and wrap-around services such as expenses for janitorial and laundry services, caregivers, and security guards.

Components of Daily Per-Person SSF Cost (rounded to nearest dollar)

Food/Meals	\$28.00
Snacks/Water	\$15.00
Consumables (includes baby supplies, clothing, and hygiene kits)	\$14.00
Contract Facility Costs and Wrap-Around Services (includes janitorial, laundry, caregivers, and security guards)	\$252.00
Total Cost Per Person Per Day	\$309.00

Question#:	15
Topic:	NGO Funding
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Is the Department providing funding to any non-governmental organizations (NGOs) that operate outside of the continental United States which are providing to services to migrants in Mexico, the Northern Triangle Countries, Latin America, or South America?

If the Department is providing funding to any such NGOs, what services are being provided by such organizations?

What is the total cost of the contracts and/or grants provided to such organizations?

In what countries and cities have these organizations provided services funded by taxpayer resources?

Response: DHS does not provide funding to or enter into contracts with NGOs to provide services outside of CONUS. DHS defers to the Department of State regarding international funding for NGOs.

Question#:	16
Topic:	ICE Book-Ins
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: A document titled "EOFY2020 ICE Initial Book-Ins by FY2021 Interim CIEP Priorities & Other Criteria" that was published by Fox News on April 28, 2021 found that 73 criminal aliens convicted of sexual assault, 225 criminal aliens convicted of "sex offenses (not involving assault or commercialized sex)," 85 criminal aliens convicted of homicide, and 503 criminal aliens convicted of weapons offenses were listed as "No Known Priority" and thus would not have been deported under the Interim Priorities set by ICE Acting Director Tae Johnson on February 18, 2021. Was this document generated by ICE?

Are the data reported in the document correct, accurate, and/or valid?

If the data are not correct, accurate, or valid, can you please provide a corrected reporting of the data points listed in the document in the same format to the Committee?

If this is indeed an accurate document, were these numbers run before or after Acting Director Johnson issued the interim priorities?

What analysis/analyses were performed in generating the interim priorities?

Response: Following the issuance of the January 20, 2021 interim enforcement guidelines, the Secretary assumed office and has stated that sex offenders should be an enforcement priority, is committed to engaging with the ICE workforce and other law enforcement officers and stakeholders, and promulgate new enforcement guidelines that incorporate the feedback he received and lessons learned from his years as a federal prosecutor and an official of the Department of Homeland Security.

U.S. Immigration and Customs Enforcement (ICE) has generated many internal reports, data pulls, and analyses in support of understanding the interim priorities and their impact on agency operations and public safety, and the particular report you reference was generated on January 27, 2021 for internal analysis purposes. It is important to note that these kinds of analyses are internal deliberative documents that are preliminary in nature and are not the same as ultimate enforcement outcomes. The preliminary data pull in question represents a snapshot of raw data from agency systems which may have data quality concerns that need to be addressed during the deliberative process; furthermore, this data does not speak to whether ICE will take enforcement action against the noncitizens who appear on the report. The fact that a case does not automatically meet the current presumed priorities does not mean that ICE will not take enforcement action; to the contrary, when an individual has a criminal conviction that represents a threat to public safety, ICE officers and agents will frequently seek and receive approval to make an arrest in the interest of protecting American communities.

Question#:	16
Topic:	ICE Book-Ins
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

ICE Acting Director Tae D. Johnson’s February 18, 2021 memorandum provides that ICE will focus its limited enforcement and removal resources on presumed priority categories that meet certain national security, border security, and public safety criteria. However, many cases that do not meet the criteria of these three categories may still be enforcement priorities but require preapproval. It is important to note that the interim priorities *neither require nor prohibit* the arrest, detention, or removal of any noncitizen. Rather, ICE officers and agents are expected to exercise their discretion thoughtfully, consistent with ICE’s important national security, border security, and public safety mission.

As stated in the February 18, 2021 memorandum, a noncitizen is presumed to be a public safety enforcement and removal priority if he or she poses a threat to public safety and he or she has been convicted of an aggravated felony as defined in section 101(a)(43) of the Immigration and Nationality Act (INA). Sex offenses that generally fall under the aggravated felony definition include rape; sexual abuse of a minor; owning, controlling, managing, or supervising of a prostitution business; an offense described in 18 U.S.C. §§ 2251, 2251A, or 2252 (sexual exploitation of children, certain activities relating to material constituting or containing child pornography); or an offense described in 18 U.S.C. §§ 1590, or 1591 (trafficking with aggravated sexual abuse, sex trafficking of children). The INA also defines a conviction for an attempt or conspiracy to commit these offenses as an aggravated felony.

Whether a “sex-related” offense constitutes an “aggravated felony” under the INA depends on the applicable case-law, which varies across jurisdictions. While some of these offenses will automatically fall within the presumed priorities, in instances where the offense is not an aggravated felony but still represents a threat to public safety, ICE will go through the preapproval process described above to assess whether or not law enforcement action is warranted.

Note that under the February 18 memorandum, a noncitizen is also a presumed public safety priority if he or she has been convicted of an offense for which an element was active criminal street gang, as defined in 18 U.S.C. § 521(a), or is not younger than 16 years of age and intentionally participated in an organized criminal gang or transnational criminal organization (TCO) to further the illegal activity of the gang or TCO.

While ICE appreciates the significant interest in the interim priorities’ impact on the agency’s public safety mission and is committed to transparency surrounding this issue, it is important to consider the totality of the circumstances surrounding a piece of data such as this preliminary internal document. ICE’s public safety mission remains paramount, and noncitizens who have been convicted of serious crimes, including sex offenses, will remain one of the top enforcement priorities for ICE.

Question#:	16
Topic:	ICE Book-Ins
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

This past week, ICE arrested 302 sex offenders to date as part of a national enforcement effort called Operation SOAR (Sex Offender Arrest and Removal). Operation SOAR is a coordinated enforcement operation that builds on ongoing efforts to arrest and remove noncitizen sex offenders from our communities.

In support of this endeavor, ERO's Fugitive Operations Support Center has spearheaded a collaborative effort with the ERO Law Enforcement Support Center to identify criminal noncitizens who are registered as sex offenders. In accordance with the civil immigration enforcement priorities, ICE is focusing its limited resources on national security, border security, and public safety.

Question#:	17
Topic:	Aggravated Felony Definition
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: ICE informed my staff on April 8, 2021, that "enforcement action directed at sex offenders who do not meet the aggravated felony criteria will require preapproval from the Field office Director or Special Agent in Charge." My staff have asked ICE for examples of sex offenses that do not meet the aggravated felony definition at 8 U.S.C. § 1101(a)(43). Can you please share with the Committee the number of approvals and denials, broken down by ICE Field Office and all criminal offenses, of enforcement actions against sex offenders who do not meet the aggravated felony definition in the Immigration and Nationality Act (INA)?

Response: On January 20, 2021, President Biden issued Executive Order 13993, *Revision of Civil Immigration Enforcement Policies and Priorities*, 86 Fed. Reg. 7051 (January 25, 2021), which articulated the Administration's baseline values and priorities for the enforcement of civil immigration law. As a result, on February 18, 2021, Acting Director Tae D. Johnson issued a memorandum to ICE personnel entitled, *Interim Guidance: Civil Immigration Enforcement and Removal Priorities*, establishing interim guidance in support of the priorities set forth in the January 20, 2021 memorandum. This interim guidance will remain in effect until Secretary Mayorkas issues new enforcement guidelines, which are being developed in consultation with DHS Component leadership, the DHS workforce, and external partners.

The February 18, 2021, memorandum provides that ICE will focus its limited enforcement and removal resources on presumed priority categories that meet certain national security, border security, and public safety criteria. Cases that do not meet the criteria of these three categories may still be enforcement priorities but require preapproval. However, it is important to note that the interim priorities *neither require nor prohibit* the arrest, detention, or removal of any noncitizen. Rather, ICE officers and agents are expected to exercise their discretion thoughtfully, consistent with ICE's important national security, border security, and public safety mission, and the fact that a noncitizen offender may not automatically meet the priorities does not preclude ICE from taking enforcement action.

As stated in the February 18, 2021 memorandum, a noncitizen is presumed to be a public safety enforcement and removal priority if he or she poses a threat to public safety and he or she has been convicted of an aggravated felony as defined in section 101(a)(43) of the INA. Sex offenses that generally fall under the aggravated felony definition include rape; sexual abuse of a minor; owning, controlling, managing, or supervising of a prostitution business; an offense described in 18 U.S.C. §§ 2251, 2251A, or 2252 (sexual exploitation of children, certain activities relating to material constituting or containing child pornography); or an offense described in 18 U.S.C. §§ 1590, or 1591 (trafficking with aggravated sexual abuse, sex trafficking of children). The INA also defines a conviction for an attempt or conspiracy to commit these offenses as an aggravated felony.

Question#:	17
Topic:	Aggravated Felony Definition
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Whether a “sex-related” offense constitutes an “aggravated felony” under the INA, however, depends on both the specific statute of conviction and the applicable caselaw, which varies across jurisdictions. While many such offenses will automatically fall within the presumed priorities, in instances where the offense is not determined to be an aggravated felony but still represents a threat to public safety, ICE will proceed the preapproval process described above and may take enforcement action.

Per request, ICE is providing a summary of approvals and denials of enforcement actions against sex offenders during the months of March and April 2021 that required Field Office Director approval. While ICE is providing this information in the interests of transparency, it is important to note that this data represents a snapshot in time rather than the final status of enforcement action against a given noncitizen.

ICE further notes that because this formal preapproval process is still relatively new, many denials represented in the agency’s data are the result of paperwork that was submitted incorrectly or was incomplete on the first submission. Enforcement action in these cases may be subsequently approved once errors or omissions have been corrected. While the vast majority of the 277 preapproval requests for enforcement action against sex offenders during this time period were approved outright, of the 34 initial denials, all but six cases (2 percent) had been resubmitted and approved as of June 15, 2021.

In the first table below, ICE has provided a breakdown of each individual case that has been rejected without resubmission or remains pending and notes that cases may be subject to later approval if additional information is provided or circumstances change. The second table breaks down the 34 cases that were initially rejected, and the dates of their resubmission and subsequent approval. Cases that were initially rejected were resubmitted and approved on average within a week of the original submission, with most being approved on the same day. This data is as of June 15, 2021.

As always, ICE’s public safety mission remains paramount, and ICE officers continue to exercise their discretion in accordance with this mission and taking into account the unique circumstances of each case. While ICE’s mission is complex and the way the agency focuses its limited resources may shift in response to changing policy, noncitizens who have been convicted of serious crimes such as sex offenses have always been and will remain a focus for ICE officers and agents.

This past week, ICE arrested 302 sex offenders to date as part of a national enforcement effort called Operation SOAR (Sex Offender Arrest and Removal). Operation SOAR is a coordinated enforcement operation that builds on ongoing efforts to arrest and remove noncitizen sex offenders from our communities.

Question#:	17
Topic:	Aggravated Felony Definition
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

In support of this endeavor, ERO's Fugitive Operations Support Center has spearheaded a collaborative effort with the ERO Law Enforcement Support Center to identify criminal noncitizens who are registered as sex offenders. In accordance with the civil immigration enforcement priorities, ICE is focusing its limited resources on national security, border security, and public safety.

NCIC CODE/CRIME⁸	APPROVED	REJECTED	PENDING	TOTAL
1102 - RAPE WITH WEAPON	1			1
1114 - SEX ASHLT - SODOMY-GIRL-STGARM	4			4
1115 - SEX ASHLT - SODOMY-WOMAN-STGARM	2			2
1116 - STAT RAPE - NO FORCE	13			13
1117 - SEX ASHLT - CARNAL ABUSE	12			12
1123 - SEXUAL ASSAULT-DRUG-INDUCED	6			6
1198 - RAPE	15			15

⁶ This information reflects Arrest Approval Request Tool (AART) submissions between March 1, 2021 and April 30, 2021. These represent individual requests for enforcement action rather than individual noncitizens. There may be multiple requests associated with a noncitizen, and an initial denial may subsequently be approved once more information is provided.

⁸ ICE's system of record tracks and reports on criminality using the FBI's standard NCIC codes. These codes serve as a high-level categorization of general types of crimes and do not capture the details associated with each individual case.

Question#:	17
Topic:	Aggravated Felony Definition
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

1199 - SEX ASSAULT	56	4		60
3601 - SEX OFFENSE - AGAINST CHILD-FONDLING	37		1	38
3602 - SEX OFFENSE-GIRL	13			13
3603 - SEX OFFENSE-BOY	1			1
3604 - INCEST WITH MINOR	3			3
3605 - INDECENT EXPOSURE (TO MINORS AND ADULTS)	5	1		6
3611 - PEEPING TOM	1			1
3613 - SEX OFFENDER REGISTRATION VIOLATION(SEE MIS)	1			1
3614 - INDECENT EXPOSURE TO MINOR	8			8
3616 - LEWD OR LASCIVIOUS ACTS WITH MINOR	19			19
3618 - MOLESTATION OF MINOR	10			10
3619 - VOYEURISM	4			4
3699 - SEX OFFENSE	34			34
6401 - SEXUAL EXPLOITATION OF MINOR-MATERIAL-TRANSPORT	1			1
6402 - SEXUAL EXPLOITATION OF MINOR-MATERIAL-PHOTOGRAPH	4			4

Question#:	17
Topic:	Aggravated Felony Definition
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

6403 - SEXUAL EXPLOITATION OF MINOR-MATERIAL-FILM	1			1
6404 - SEXUAL EXPLOITATION OF MINOR-EXHIBITION OF MINOR	2			2
6405 - SEXUAL EXPLOITATION OF MINOR-SEX PERFORMANCE	10			10
6406 - SEXUAL EXPLOITATION OF MINOR-VIA TELECOMMUNICATIONS	2			2
6408 - ENTICEMENT OF MINOR FOR INDECENT PURPOSES-VIA TELECOMMUNICATIONS	4			4
6410 - ENTICEMENT OF MINOR FOR INDECENT PURPOSES	1			1
6499 - EXPLOITATION/ENTICEMENT	1			1
TOTAL	271	5	1	277

Timelines Between Initial Rejection and Subsequent Approval as of June 15, 2021

Question#:	17
Topic:	Aggravated Felony Definition
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

NCIC CODE/CRIME ⁹	REJECTED	REJECTION REASON	DATE OF REJECTION	DATE OF SUBSEQUENT APPROVAL
1199 - SEX ASSAULT	4	Requires more supporting information	3/11/21	-
		Requires more supporting information	3/23/21	-
		Not amenable to arrest	3/10/21	-
		Requires more supporting information	4/8/21	•
3605 - INDECENT EXPOSURE (TO MINORS AND ADULTS)	1	Requires more supporting information	3/10/21	
TOTAL	5			•

As noted above, as of June 15, 2021, only 5 of the 277 cases had not been approved for enforcement action and ICE officers are actively seeking additional information that could lead to approval in two of these cases. ICE is providing the status and reasons for lack of approval below:

Charge Code	Felony/Misdemeanor	Field Office	Reason for Rejection[HG(1)][ATT(2)]
1199 – Sex Assault	Misdemeanor	San Diego	A variety of factors, including: age of

⁹ ICE's system of record tracks and reports on criminality using the FBI's standard NCIC codes. These codes serve as a high-level categorization of general types of crimes and do not capture the details associated with each individual case.

Question#:	17
Topic:	Aggravated Felony Definition
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
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			conviction is almost 30 years old. The sexual battery conviction occurred in 1992 and had a sentence of 30 days.
1199 – Sex Assault	Felony	Los Angeles	A variety of factors including: age of conviction is 24 years old. Conviction occurred in 1997. Based on a more recent unrelated conviction, ICE is currently evaluating whether enforcement action is appropriate in this instance.
1199 – Sex Assault	Misdemeanor	Denver	A variety of factors, including: age of conviction is almost twenty years old. Conviction dates from 2002 and subject was not required to register as a sex offender.
3601 – Sex Offense Against Child - Fondling	Felony	San Antonio	Pending review.
3605 – Indecent Exposure	Misdemeanor	Dallas	Subject was released from ICE custody due to <i>Fraihat</i> court order on March 5, 2021.
1199 – Sex Assault	Felony	Newark	Communication with USCIS indicated that the subject has an approved “I-360 Petition for Amerasian, Widow(er), or Special Immigrant” and is eligible to readjust status. ICE is unable to

Question#:	17
Topic:	Aggravated Felony Definition
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			take enforcement action as a result.
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Question#:	18
Topic:	Enforcement Priorities
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: During the hearing on May 13, 2021, you testified: "It is my view that individuals who commit sex offenses should be apprehended and removed." You also shared in your testimony that you are in the process of developing your immigration enforcement priorities as Secretary. Will your enforcement priorities as Secretary prioritize the removal of criminal aliens convicted of homicide, sexual assault, other sex offenses, and weapons violations even if those convictions did not meet the definition of an aggravated felony in the INA?

Response: Yes.

Question: What analyses has the Department performed to ensure that these criminal aliens will be enforcement priorities?

Response: The Department has comprehensively analyzed its previous and interim enforcement and removal priorities. This includes reviewing DHS data on apprehensions, arrests, detentions, Notices to Appear (NTA), final orders of removal obtained, and individuals removed from the United States. Additionally, the Department is holding discussions with personnel from DHS Components and with subject matter experts.

Question: What timeline should the Committee expect for revised guidance that prioritizes enforcement actions against and the removal of criminal aliens convicted of sex offenses?

Response: DHS is working as quickly as possible to enact and implement new enforcement and removal guidelines. While it is important to move quickly to effectuate the updated guidelines, it is essential that those guidelines be informed by feedback and input from the ICE workforce. To date, the Secretary's engagements with the workforce have included an all-hands virtual town hall with ICE personnel, seven in-person town halls in ICE field offices across the country, two virtual town halls with ICE Field Office Directors and Special Agents in Charge, and numerous other discussions. DHS expects to finalize enforcement and removal guidelines in the coming weeks. The Department will issue these guidelines after engaging with the DHS workforce and internal and external stakeholders.

Question#:	19
Topic:	Without an NTA
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Data provided by your Department to the Senate Appropriations Committee show that around 19,000 migrants have been released without a Notice to Appear (NTA). You committed during the hearing to share this information with me. Can you please share with the Committee the number of migrants, in total and broken down by CBP sector and by month, who have been released by CBP since January 20, 2021 without a NTA?

Response: The process for providing someone with an NTA frequently takes hours, which has contributed to overcrowding in some USBP facilities. Due to these capacity issues and operational challenges, USBP began processing some individuals with a Notice to Report (NTR), which takes less time to process and has reduced time in custody. Issuance of an NTR is a temporary measure to address processing time challenges, and require individuals to report to an ICE office to receive an NTA. Any failure to report to ICE will be addressed through appropriate enforcement action. Individuals released with an NTR are provided Forms I-385 that instructs the individual to report to the ICE Field Office at their destination within 60 days of arrival into the United States to commence their immigration proceedings. Families who receive this form also receive a G-56 form in English and Spanish to help them find their local ICE Field Office. Before a family receives a Form I-385, CBP agents perform national security and border security checks and they collect biometric and biographic information, including fingerprints, photos, phone numbers, and an address in the United States; this background check is the same as background checks performed when a NTA is issued. The information CBP collects from an individual through the issuance of a Form I-385 can be tracked through DHS information systems. While individuals have 60 days to check in with ICE, many are proactively reaching out to ICE to begin their official immigration processing, including by receiving a NTA. Nearly 70% of the population have either already checked in with ICE or are still within the 60-day window to check in with ICE. Those who do not report, like anyone who is in our country without legal status, are subject to removal by ICE.

Please refer to the CBP Stats web page for current Notice To Appear/Order of Recognizance and I-385 – Released individuals: <https://www.cbp.gov/newsroom/stats/custody-and-transfer-statistics>.

Question#:	19
Topic:	Without an NTA
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
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▼ U.S. Border Patrol - Dispositions and Transfers

USBP Monthly Southwest Border Apprehensions by Processing Disposition

The processing disposition decision related to each apprehension is made on a case-by-case basis. The processing dispositions below are representative of the time data was aggregated. As dispositions are subject to change throughout the immigration process, the data does not necessarily reflect final dispositions or removals.

Processing Disposition	Oct-20	Nov-20	Dec-20	Jan-21	Feb-21	Mar-21	Apr-21	May-21
Expedited Removal (ER)	1,245	1,450	1,643	2,285	3,650	6,405	10,875	10,713
PACR, HARP, ACA ¹	0	2	0	6	2	13	25	2
Notice To Appear/Order of Recognizance, I-385 - Released ²	20	11	18	1,324	8,799	26,213	26,108	26,554
Reinstatement of Prior Removal	1,533	1,414	1,430	1,274	1,133	1,502	1,703	1,907
Voluntary Return	171	966	1,738	1,818	1,853	2,408	2,301	2,457

The Office of Field Operations (OFO) is not releasing individuals without an NTA.

Question#:	20
Topic:	Not Sharing Information
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: ICE notified the Committee via email on May 12, 2021 that "U.S. Customs and Border Protection does not notify ICE directly of family unit (FAMU) releases via prosecutorial discretion." The Department of Homeland Security, as you are aware, was created for the explicit purpose of sharing information among law enforcement agencies to protect the homeland and secure our borders. Why is CBP not sharing this information with ICE?

Is there a legal or regulatory basis for CBP not notifying ICE of migrants who have been released into the interior without NTAs?

Response: Under immigration laws, USBP retains discretion regarding the placement of inadmissible migrants into immigration proceedings. Such discretion is exercised on a case-by-case basis based on an assessment of the threat posed to national security, border security, and public safety. Following the collection of biographic and biometric information and conducting immigration and criminal records checks, USBP may make a determination to process certain individuals for release under an NTA or a Notice to Report (NTR) to ICE. Issuance of an NTR is a temporary measure to address processing time challenges and require individuals to report to an ICE office to receive an NTA. Any failure to report to ICE will be addressed through appropriate enforcement action.

CBP makes every effort to coordinate and share information with ICE. CBP shares information with ICE via the Unified Immigration Portal (UIP), where authorized users are able to access the appropriate dashboard and can review subject-level data at any time. Within UIP, there is a shared dashboard that lists an individual's intended destination, a field containing that information was recently added to our system, making an onward address easier to find (i.e. the same information existed in UIP before, but in a narrative section that would not have been searchable in the same way).

Question: You testified that "individuals who do not" check in with ICE "are a priority of ours for apprehension in the service of border security." ICE notified the Committee via email on May 12, 2021 that "U.S. Customs and Border Protection does not notify ICE directly of family unit (FAMU) releases via prosecutorial discretion." How can ICE prioritize the apprehension of migrants who have not checked in with ICE if CBP is not sharing information with ICE about the release of these migrants?

Response: Issuance of an NTR is a temporary measure to address processing time challenges and require individuals to report to an ICE office to receive an NTA. Any failure to report to ICE will be addressed through appropriate enforcement action. As mentioned above, CBP makes every effort to coordinate and share information with ICE. CBP shares information with

Question#:	20
Topic:	Not Sharing Information
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

ICE via the UIP, where authorized users are able to access the appropriate dashboard and can review subject-level data at any time. Within UIP, there is a shared dashboard that lists an individual's intended destination.

Also as noted above, USBP provides information on how and when to report to an ICE Field Office to every individual processed under an NTR based on geographic area of their intended destination. USBP continues to work with ICE and other agencies to share all relevant information for downstream or requirements across the immigration continuum, through the UIP.

OFO is not releasing individuals without an NTA.

Question#:	21
Topic:	Checked in with ICE
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: During your testimony, you told Senator Johnson that "the process is that U.S. Customs and Border Protection issues a notice to appear. And if in fact they are operationally not able to do so, the individual receives a notice to appear at an Immigration and Customs Enforcement office."

Of the 19,000 migrants who have been released without a Notice to Appear, how many have called ICE's Detention Reporting and Information Hotline or checked in with ICE at a local ICE Field Office?

Response: Issuance of an NTR is a temporary measure to address processing time challenges and require individuals to report to an ICE office to receive an NTA. Any failure to report to ICE will be addressed through appropriate enforcement action. As noted above, while individuals have 60 days to check in with ICE, many are proactively reaching out to ICE to begin their official immigration processing, including by receiving a NTA. Nearly 70% of the population have either already checked in with ICE or are still within the 60-day window to check in with ICE. Thousands of individuals call the Detention Reporting and Information Line (DRIL) each week for many purposes, including requests for information about which ICE field office to report to; presently ICE does not have a method to determine which of those callers received a NTR. ICE is actively working to address this issue.

Question#:	22
Topic:	Tracking Migrants
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: After your hearing on May 13, 2021, ICE informed my staff on a weekly update call that, as of May 13, 2021, 505 migrants who were released without an NTA have called the Detention Reporting and Information Hotline to check-in with ICE and receive a NTA. ICE mentioned that it was possible that some additional migrants may have called a local ICE field office; however, ICE also conceded that there was no way to determine whether any migrants have checked in with an ICE field office.

ICE informed my staff via email on May 12, 2021, that "U.S. Customs and Border Protection does not notify ICE directly of family unit (FAMU) releases via prosecutorial discretion." Data provided by DHS to the Senate Appropriations Committee indicate that roughly 19,000 migrants have been released without an NTA.

If ICE can only account for the whereabouts of 505 of the roughly 19,000 migrants who have been released from CBP custody without NTAs, and if ICE is not notified by CBP of migrants who have been released from their custody without an NTA, can the Department account for the whereabouts of the other 18,495 or so migrants who have been released without NTAs?

Response: ICE relies on the data collected by CBP. In cooperation with ICE, CBP has published a dashboard for reporting prosecutorial discretion (PD) releases that ICE personnel can access. ICE ERO has access to up-to-date information for each of the PD releases that CBP releases without an NTA via the Unified Immigration Portal (UIP). The non-citizens released by CBP are provided verbal and written instructions that they have 60 days to report to an ICE ERO office once they reach their intended destination in the interior of the United States. ICE ERO extracts data from the UIP related to the CBP PD Release population and monitors the resulting check-ins and issuance of charging documents. ICE can account for those non-citizens who have been released by the CBP without a NTA and who subsequently checked-in with an ICE ERO office, as well as whether charging documents were issued.

The UIP reports daily the number and identity of those that have been released including the intended locations where the noncitizen will check in. As mentioned above, ICE is currently finalizing a methodology to pair CBP encounters that were subsequently released on PD with the ICE encounters to enable reporting on this population.

Question: If the Department can account for the whereabouts of those migrants, can you please describe to the Committee how the Department is currently tracking and prioritizing those migrants for enforcement actions and removal?

Question#:	22
Topic:	Tracking Migrants
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
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Response: See response above. ICE ERO is monitoring the CBP PD release population for compliance with the instructions they were given, and for those that have checked-in is either processing them with charging documents or scheduling them to report to a local ICE ERO office to be processed for appropriate prioritization of enforcement and removal actions.

Question: If the Department cannot account for the status or location of 18,495 or so migrants, what efforts will your Department be taking to locate these 18,495 or so migrants and ensure that they are placed in removal proceedings, have any possible asylum claims adjudicated, and are removed if their asylum claims are rejected?

Response: CBP apprehends certain family units along the Southwest Border. Some may be released via prosecutorial discretion. They are issued a Form G-56, Interview Notice, and Form I-385, Request to Report, and instructed to report to an ICE field office at their final destination. Similarly, individuals who are released on an order of recognizance are issued a Form I-220A, Order of Release on Recognizance, or Form I-220B, Order of Supervision, with reporting requirements.

As a result, family units and individuals should be reporting to ICE ERO field offices for issuance of the appropriate charging documents, including NTAs, if they were released from CBP custody without one.

ICE relies on the data initially collected by CBP. In cooperation with ICE, CBP has published a dashboard for reporting PD releases that ICE personnel can access. The CBP UIP reports daily the number and identity of those that have been released, including the intended locations where the noncitizen will check in. As mentioned above, ICE is currently finalizing a methodology to pair CBP encounters that were subsequently released on PD with the ICE encounters to enable reporting on this population.

For those non-citizens who were released by CBP under prosecutorial discretion without a Notice to Appear and have already reported to an ICE Office, they will be processed with charging documents and prioritized for appropriate enforcement and removal action. ICE ERO has developed a new appointment scheduling tool to assist non-citizens with setting up an appointment due to the dramatic demand for processing non-citizens in this population that has both the capability to assist ICE ERO Officers in coordinating appointments as well as providing the non-citizens the ability to schedule appointments in advance of appearing in-person at the ICE ERO Office. ICE ERO expects to deploy this scheduling portal in early August 2021.

Regarding the efforts that DHS will take to locate those migrants released by CBP at the Southwest Border, depending on where a case may be within the removal process (pre or post final order), ICE will make reasonable attempts to make contact using a variety of different

Question#:	22
Topic:	Tracking Migrants
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methods, including contacting the obligor, tracking the noncitizen if being monitored via technology, making contact at the last known address, running database checks to locate, or referring to a fugitive operation team to apprehend.

Question#:	23
Topic:	NTA Compliance
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: You committed during the hearing to share with me the number and percent of Notices to Appear (NTAs) that comply with the Supreme Court's decisions in *Pereira v. Sessions* and *Niz-Chavez v. Garland*. Since January 20, 2021, how many and what percent of NTAs issued to migrants crossing the Southwest border, broken down by CBP sector, have complied and have not complied with the *Pereira* and *Niz-Chavez* decisions?

Response: Individuals processed by CBP who are provided an NTA are either turned over to ICE for further processing or directed to report to an ICE facility in the vicinity of their U.S. destination. CBP does not have the ability to directly schedule the date and time of an individual's court proceedings during CBP processing; ICE provides that updated information either at their initial processing or at the time an individual reports to an ICE facility. In accordance with the law and CBP policies and procedures, CBP generally has not scheduled court dates for individuals processed with an NTA.

Question#:	24
Topic:	Changes for Compliance
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: In light of the Pereira and Niz-Chavez decisions, what steps has the Department contemplated and what steps will the Department take to ensure that NTAs that are served on migrants who arrive at the Southern border are compliant with these decisions going forward?

Response: CBP has not made any immediate changes to current policies regarding the issuance of NTAs in response to these decisions. CBP is coordinating with ICE to formulate a long-term approach on NTA issuance.

Question: What is the timeline for implementing these changes?

Response: CBP is coordinating with ICE to formulate a long-term approach on NTA issuance.

Question: What issues, if any, are keeping your Department from issuing NTAs that comply with the Pereira and Niz-Chavez decisions?

Response: For those noncitizens released from CBP custody, depending on the location, CBP may not have access to the U.S. Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR) scheduling system to generate a hearing date and time. In locations where CBP and ERO are co-located, CBP is able to obtain the hearing date and time information from ERO, who has such access. The federal courts of appeal have consistently held that NTAs issued without hearing time and place information confer jurisdiction over removal proceedings and allow DHS and EOIR to carry out our principal functions within the removal context.

Question#:	25
Topic:	Fraudulent Families
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: When a migrant family presents at the border to CBP, what steps does the Department take to establish the validity of the family unit before release?

Response: CBP defines a family unit as a group of noncitizens which includes at least one child(ren) under the age of 18 accompanied by at least one parent(s) or legal guardian(s). Noncitizens that are subsequently found not to meet the definition of a family unit are placed in appropriate removal proceedings as single noncitizens.

When noncitizens are encountered at or between ports of entry, CBP makes every effort to determine if the noncitizens are indeed related (parents, brother, sister, aunt, legal guardian, etc.). This determination is based on, but not limited to, an agent or officer's experience, document review, and interviewing techniques. If the processing agent or officer determines that the noncitizens are related and are, in fact, a family unit, then they will process accordingly.

Question: How many fraudulent families has CBP caught since January 20, 2021?

Response: From January 20 through May 13, 2021, USBP has identified 52 family units, or 82 individuals, who were initially processed as part of family units but were determined not to meet the definition of "family unit" before processing was complete. The reasons for fraudulent family unit determinations include: a child was over the age of 18 or an adult accompanying a child was not a parent or lacked a legal guardian relationship to the child. OFO's system of record does not reflect fraudulent family units.

Question: Of those fraudulent families, how many children in those fraudulent families displayed signs of sexual abuse, trauma, or trafficking?

Response: CBP's system of record does not aggregate the number of children who have displayed signs of sexual abuse, trauma, or trafficking. However, CBP does provide information upon referral to HHS Office of Refugee Resettlement (ORR) of unaccompanied children who display signs of sexual abuse, trauma, or trafficking.

Question#:	26
Topic:	Biometric Collection
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: When I visited the Temporary Outside Processing Site (TOPS) under the bridge at the Donna Processing Facility, I noticed that CBP officials at the TOPS were using different biometric collection procedures from CBP officials at the Donna Processing Facility.

What procedures are required by policy or operational guidance to be used to collect biometrics at the TOPS and what procedures are required by policy or operational guidance to be used to collect biometrics at a CBP processing facility?

Response: Though the appearance or the sequence collection routine may differ, depending on collection device used, the data upload destination is the same for all devices. The devices enable criminal and immigration record checks. The biometrics gathered create either a new record of identification or confirm a match to a former record of identification of individuals who have already been enrolled in an official system of record. Biometrics taken at all USBP locations use only CBP-approved collection devices.

Question: If the TOPS and the Donna Processing Facility are required by policy and/or operational guidance to use the same biometrics collection procedures, why were the biometric collection procedures different between the TOPS and the Donna Processing Facility?

Response: Approved CBP biometric collection devices may differ in appearance because some are older than others. The collection standards are the same and the results are the same.

Question: Is there a legal or statutory basis for CBP's use of different biometric collection procedures at these two locations?

Response: No, the legal authorities remain the same. Collection procedures have changed over time as technology has advanced. For instance, ink-rolled fingerprint collection was still widely used until digital capture methods supplanted them. The end goal is the same: to uniquely identify a person.

Question#:	27
Topic:	Biometrics Constraints
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: The Department announced on May 7, 2021 that it was withdrawing "a proposed rule that would have expanded department authorities and requirements for collecting biometrics by removing age restrictions; requiring submission of biometrics for every applicant, petitioner, sponsor, beneficiary, or other individual filing for or associated with any immigration or naturalization benefit or request [...]; codifying the authority to use DNA test results; and authorizing the use of additional types of biometric modalities." What age restrictions, other statutory or regulatory provisions, or other operational constraints are keeping the Department from being able to collect biometrics and identify fraudulent family units?

Response: The Notice of Proposed Rulemaking *Collection and Use of Biometrics by U.S. Citizenship and Immigration Services* was a proposed rule concerning the use and collection of biometrics in the enforcement and administration of immigration laws by USCIS, CBP, and ICE.

Currently, pursuant to 8 C.F.R. §§ 215.8 and 235.1, certain noncitizens, including those under 14 and over 79, as well as individuals in certain visa classes, are exempt from biometric collection, which hinders CBP's ability to collect biometrics from some individuals.

In November 2020, CBP proposed a rule to support establishment of a comprehensive biometric entry/exit system. See "Collection of Biometric Data from Aliens Upon Entry to and Departure From the United States," 85 Fed Reg. 74162 (Nov. 19, 2020); "Collection of Biometric Data From Aliens Upon Entry to and Departure From the United States; Re-Opening of Comment Period," 86 Fed. Reg. 8878 (Feb. 10, 2021). This proposed rule would, among other things, amend existing regulations to require all noncitizens, regardless of age, to provide photographs upon entry and/or departure. CBP is currently analyzing all comments received during the notice and comment period. Based on this analysis, CBP will respond in the final rule and make any adjustments as necessary.

Question: Is it your opinion that these constraints hinder the Department's ability to ensure the safety, security, and welfare of unaccompanied minors?

Response: The health, safety, and welfare of unaccompanied children (UCs) in CBP custody is paramount. In accordance with the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) and CBP policy, CBP screens all UCs for signs or indications of trafficking. In September 2019, CBP implemented a revised screening form (CBP Form 93) to improve and assist in identifying UCs who may be victims of trafficking. CBP also revised mandatory annual training for law enforcement personnel.

Question#:	27
Topic:	Biometrics Constraints
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: If it is your opinion that these constraints hinder the Department’s ability to ensure the safety, security, and welfare of unaccompanied minors, what steps will you be taking to remove these constraints?

Response: As noted above, in November 2020, CBP published a Notice of Proposed Rulemaking, entitled “Collection of Biometric Data from Aliens Upon Entry to and Departure from the United States.” In addition to requiring that all noncitizens, regardless of age, provide photographs upon entry and/or departure for identity verification purposes, the proposed rule would eliminate permit the collection of photographs and other biometrics from travelers departing from airports, land ports, seaports, or any other authorized points of departure.

Question#:	28
Topic:	UAC Care
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Has the Department ever worked with the HHS to study or audit, formally or informally, the status and well-being of UACs after they have been released to sponsors?

If the Department has ever engaged in such a study, can you please share with the Committee a copy of the study?

If the DHS has not engaged in such a study, do you believe that such a study would provide significant public benefit and help the Department and HHS ensure that UACs are receiving appropriate care?

Response: DHS defers to HHS on whether they have conducted a study such as described in your question.

Question#:	29
Topic:	Self-Identified Minors
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Do you currently require CBP personnel to refer any individuals they encounter at the border who self-identify as minors but who CBP personnel reasonably believe may not be minors to ICE for further evaluation?

If you do currently require this, please share with the Committee copies of any agency guidance governing this requirement. If you do not require this, why not?

Response: At the time of encounter, CBP utilizes all available evidence to determine the age of an individual, to include questioning the individual and co-travelers regarding age; and contacting consular officials from the country of claimed citizenship to verify documentation. However, if there is no additional evidence available at the time to ascertain age, an individual's stated age is utilized. CBP does not utilize any forensic methods to determine age.

CBP does not refer these cases to ICE for further investigations of age determinations. In accordance with CBPs' National Standards on Transport, Escort Detention and Search (TEDS), if a detainee presents themselves as a juvenile they are treated as a juvenile until established otherwise. In accordance with the TVPRA, CBP generally is required to transfer unaccompanied children to the custody of HHS ORR. If a detainee presents themselves as an adult they will be processed as an adult unless a preponderance of evidence indicates they are juvenile, in which case they will be treated as a juvenile.

Question: Do CBP personnel have the independent discretion to refer any individuals they encounter at the border who self-identify as minors but who CBP personnel reasonably believe may not be minors to ICE for further evaluation?

If CBP personnel do have such discretion, please share with the Committee copies of any agency guidance governing the exercise of this discretion. If CBP personnel do not have such discretion, why not?

Response: CBP does not refer to ICE for further investigations. In accordance with CBP's TEDS Standards, those who present themselves as juveniles are treated as juveniles until it is established otherwise. In accordance with the TVPRA, CBP generally is required to transfer unaccompanied children to the custody of HHS ORR. Individuals who present themselves as adults are processed adults unless a preponderance of evidence indicates they are juveniles, in which case they will be treated as juveniles.

Question#:	30
Topic:	Gang Recruitment
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: If the Department is made aware that gang recruitment is occurring inside an Office of Refugee Resettlement facility, what steps would be taken to investigate and address those claims?

Can you please describe the investigation process and share with the Committee any agency guidance regarding this matter?

Response: As of June 9, 2021, ICE HSI has not received any claims of gang recruitment at HHS ORR facilities. If ICE HSI received credible information gang activity was occurring in a HHS ORR facility, ICE HSI would review the information for potential criminal investigation.

Transnational criminal street gangs such as MS-13 represent a significant threat to public safety in communities throughout the United States. Gangs strike fear into our local neighborhoods, commit violent crimes against our citizens, and facilitate criminal activity such as narcotics and firearms trafficking, sex trafficking, human smuggling and trafficking, and corruption.

To combat this threat, ICE Homeland Security Investigations (HSI) conducts complex multi-jurisdictional and international investigations that target gang leadership, members, and associates in the United States and abroad. ICE HSI works closely with DOJ to prosecute gang members and enterprises, often pursuing the Racketeer Influenced and Corrupt Organization Act, Violent Crimes in Aid of Racketeering, and criminal conspiracy charges to disrupt and dismantle gang operations and organizations. ICE HSI leverages its unique administrative immigration authorities, coupled with its broad criminal investigative authorities, to take gang members off our streets, and partners with ICE ERO to facilitate the removal of non-citizens associated with gangs or wanted for gang-related crimes in their home countries.

Since 2005—pursuant to an international initiative called Operation Community Shield—ICE HSI has been working with federal, state, local, and international law enforcement partners to identify violent street gangs and to arrest, prosecute, imprison, and/or deport transnational gang members. These efforts help suppress violence on our streets and help keep our communities secure. Since 2005, ICE HSI and its partners have made more than 70,000 gang-related criminal and administrative immigration arrests.

As of June 9, 2021, HHS ORR has shared 2,079 SIRs with ICE and to date, none have indicated gang-specific recruitment within HHS ORR facilities. The vast majority of referred SIRs concern gang-related threats or acts of violence against UCs prior to departure from their country of origin.

Question#:	30
Topic:	Gang Recruitment
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: If the Department does not investigate such claims, why not?

Response: As of June 9, 2021, ICE HSI has not received any claims of gang recruitment at HHS ORR facilities. If ICE HSI received credible information gang activity was occurring in a HHS ORR facility, ICE HSI would review the information for potential criminal investigation.

Question#:	31
Topic:	Title 42 Exceptions
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Can you please share with the Committee all policy and operational guidance and briefing materials related to the humanitarian exceptions to the CDC's Title 42 authority described in the Department's press release from May 12, 2021?

Response: Please see attachments.

THE RESPONSE TO THIS QUESTION IS FOUO//LES
AND WILL REMAIN ON FILE IN THE COMMITTEE OFFICES.

Question#:	32
Topic:	NGO Partners
Hearing:	DHS Actions to Address Unaccompanied Minors at the Southern Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: The Department's May 12, 2021 press release also states: "This humanitarian exception process involves close coordination with international and non-governmental organizations in Mexico and COVID-19 testing before those identified through this process are allowed to enter the country."

With what NGOs is the Department partnering for this humanitarian exception process?

Response: DHS currently receives direct referrals from two organizations, HIAS or the International Rescue Committee. DHS has specifically not publicly named these organizations due to security concerns with their operations and staff in Mexico. Each of these groups leverage further relationships with local non-governmental organizations (NGOs) with experience assisting immigrants to identify cases for referral.

Question: Do any of these NGOs receive taxpayer funds either through grants or contracts?

If so, how much taxpayer funds do these NGOs receive and for what specific purposes?

Response: Support for this effort is delivered by UNHCR in Mexico with funding from the Department of State. DHS is not party to any funding or contract decisions and refers further questions to the Department of State.

Question: Are the projects for which these NGOs receiving taxpayer funds located in the continental United States or outside the continental United States (e.g. in Mexico, Northern Triangle Countries, etc.)?

Response: Support for this effort is delivered by UNHCR in Mexico with funding from the Department of State. DHS is not party to any funding or contract decisions and refers further questions to the Department of State.



March 4, 2021

MEMORANDUM FOR ALL COMPONENT HEADS

FROM: Alejandro N. Mayorkas 
SUBJECT: Activation of the DHS Volunteer Force

This memorandum activates the DHS Volunteer Force in support of the 2021 Southwest Border Migration Surge. The DHS Management Directorate is authorized to work with U.S. Customs and Border Protection, Immigration and Customs Enforcement, and the Department of Health and Human Services to establish and operate the Volunteer Force (VF), and the Volunteer Force Coordination Cell (VFCC), in accordance with the existing VF Standard Operating Procedures and Playbooks.

As described in the Volunteer Force Coordination Cell Standard Operating Procedure, “The concept of the VF is to aid in completing routine support tasks so that Supported Operational Component personnel can focus on accomplishing their primary mission assignments to mitigate the challenge more quickly and effectively.” In 2019 volunteers assisted with, for example, the following duties:

- Managing the personal property of migrants;
- Preparing meals;
- Processing, inventorying, and distributing supplies;
- Transporting supplies and medicine;
- Delivering case files; and,
- Assisting in Control Room monitoring.

CBP would utilize the 2021 Southwest Border Migration Surge volunteers in similar capacities.

The VF shall be in operation for the duration of the 2021 Southwest Border Migration Surge until specific criteria are met and multi-Department mission execution can return to pre-activation status.

The DHS Chief Financial Officer Council shall convene to secure sufficient resources to fund the VF. The VF shall not deploy volunteers until a mechanism to fund the VF is in place.



Homeland Security

March 11, 2021

MEMORANDUM FOR DEPUTY COMPONENT HEADS

FROM: **RANDOLPH R. D. ALLES** Digitally signed by RANDOLPH D ALLES
Date: 2021.03.11 13:30:23 -0500
Deputy Under Secretary for Management

SUBJECT: Volunteer Detailees to U.S. Customs and Border Protection in Support of the 2021 Southwest Border Migration Surge

The Nation is witnessing significant increases of border enforcement actions along the Southwest Border (SWB) leading to apprehensions and custodial requirements for U.S. Customs and Border Protection's (CBP) U.S. Border Patrol (USBP) and Office of Field Operations (OFO) including Unaccompanied Alien Children (UAC) and Family Unit Aliens. It is anticipated that the enforcement actions will continue to grow over the coming months. This situation mandates immediate action to protect the life and safety of federal personnel and the aliens in custody. To support its mission and mitigate the situation, CBP is in need of federal employees from Department of Homeland Security (DHS) Components who volunteer to be placed on detail to assist in critical support functions.

The purpose of this Memorandum is to document the terms and conditions, including administration of and funding for, the detailing of personnel from various DHS Components (Sending Components) to CBP in support of the situation along the SWB. This Memorandum outlines and documents the necessary relationships between the operational (i.e., daily) control and administrative and management control of the detailees.

OBJECTIVES

1. Effectively respond to the ongoing situation along the SWB;
2. Obtain sufficient volunteers to meet operational requirements for SWB Operations; and
3. Establish mutual understanding between various DHS Components regarding volunteer detailees supporting SWB Operations.

DUTIES OF VOLUNTEERS

Efforts will be made to ensure that details will be commensurate to the current grade level of the individual detailee. In most cases, temporary promotions will not be afforded during the details. Individual detailees, at the discretion of CBP, will be assigned to perform some or all of the following duties at the SWB:

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1. Personal property management: Inventory, mark, secure, store, track, and retrieve personal property;
2. Meal prep and supply hand-out: Heat food, hand out food and blankets, fill water jugs, provide cups, hand-out formulas/sanitary pads, etc.;
3. Warehouse supplies: Receive, inventory, secure, and distribute;
4. Supply runs: Pick up pre-purchased items such as food and humanitarian supplies to and from vendors and USBP stations/OFO Ports of Entry;
5. Prescription medicine runs: Pick-up medical prescriptions from local pharmacies;
6. Prosecution case files run: Walk/drive case files to/from station/site;
7. Basic housekeeping as needed: Pick up trash, sweep, clean fridge, shred paper, and other related duties as assigned;
8. Assist in Control Room: Monitoring and operating access doors, answering telephones.

Individual detailees, at the discretion of CBP and in consultation with the DHS Office of the Human Capital Officer, can also be assigned to perform some or all of the following duties in the Volunteer Force Coordination Cell (VFCC):

1. Planning Section: Deploy volunteers, manage the Deployment Tracking System (DTS) for detailees, analyze and compile daily briefing reports, and manage deployment extensions;
2. Travel Management Section: Develop travel guidance, make travel arrangements for all SWB volunteer-related travel; direct support to travelers;
3. Human Resources/Administration: Manage volunteer rosters, develop time and attendance guidance, communicate with participating components;
4. Direct Field Support: Serve as key Point of Contact (POC) for VFCC Field Manager and Deputy Field Manager and sector and crew leads, collect Requests for Information (RFIs) from the field and lead VFCC resolution.

TERMS AND CONDITIONS OF DETAILS

1. Staff. The Sending Component will detail individuals based upon operational availability and as agreed upon by both CBP and the Sending Component. CBP will account for all assigned detail personnel on a daily basis through its Information and Incident Command Center, working with the VFCC.
2. Length of Detail. Details will be in increments of 120 days or less and consistent with 5

U.S.C., Section 334. The Sending Component will be responsible for ensuring a Standard Form 52 (Request for Personnel Action) is placed in the individual detailee's official personnel folder for each detail period including changes to the individual's Fair Labor Standards Act (FLSA) category, if any. To the extent allowable by law, individual details may be renewed by mutual agreement between CBP and the Sending Component. Alternatively, upon expiration of any individual's detail, CBP and the Sending Component may, by mutual agreement, select substitute detailees in accordance with this Memorandum. Details involving Senior Executive Service (SES) members or SES positions are subject to and will be consistent with the limitations prescribed in federal regulation at 5 CFR § 317.903(b), which provides time limits for such details.

3. Personnel & Administrative Responsibility. CBP will assume day-to-day supervisory responsibility for the individuals detailed. CBP and the Sending Component will share administrative control and responsibility for individual detailees. Administrative responsibility will be divided as follows:
 - a. Time and Attendance. Time and attendance actions and processes remain the responsibility of the Sending Component. The appropriate CBP Volunteer Force Crew Lead will provide information via e-mail or other appropriate means to the Sending Component POC on recorded time for each pay period to include hours worked and any leave taken. Given the operational tempo, significant overtime is anticipated with these details. Those on detail will be required to work a minimum of 80 hours every pay period.
 - b. FLSA For Exempt Employees Per 5 C.F.R. § 551.211. For any details of employees who are ordinarily exempt from the FLSA pursuant to 5 C.F.R. §§ 551.205 through 551.210, CBP will analyze the FLSA-exempt employee's detail work in accordance with 5 C.F.R. § 511.211. For any period in which the employee is deemed FLSA non-exempt, CBP will instruct the employee on the proper recording of FLSA overtime and inform the Sending Component that the employee's overtime hours should be compensated in accordance with the FLSA. The Sending Component will ensure that WebTA and payment for overtime is made consistent CBP's determination.
 - c. Leave. CBP will coordinate and approve/disapprove all individual detailee leave requests and forward to the Sending Component POC (or designee) to be processed.
 - d. Evaluation and Performance Ratings. Official performance evaluations and performance plans remain the responsibility of the Sending Component. CBP will designate a CBP Volunteer Force Crew Lead who, as needed or required by the Sending Component, will provide evaluative comments for the record and feedback at the end of the detail period and/ or each applicable evaluation period.
 - e. Security Clearances. CBP will assign duties based upon the individual detailee's current level of security clearance and/or background investigation, when able and

deemed appropriate. Individuals detailed to CBP must have the appropriate clearance level for the position to which detailed. If an individual detailee's access to classified information is suspended or revoked for any reason, CBP has authority to immediately terminate the detail. CBP will immediately return any detailee upon notification of an unacceptable determination by the Sending Component of the detailee's suitability and/or fitness for employment.

- f. **Conduct and Poor Performance.** CBP is authorized to return a detailee to the Sending Component prior to the end of the detail, or any extension or renewal, for alleged misconduct, poor performance, or any other reason CBP determines appropriate. CBP and the Sending Component shall coordinate to determine if an investigation is required, and as to which agency is best suited to perform the investigation, or whether a joint investigation is appropriate. CBP and the Sending Component shall share the resulting reports of investigation as allowed under applicable law.
- g. **Performance Awards.** The Sending Component will remain the approving and funding authority for performance awards. CBP will provide justification and recommendations regarding any performance awards. CPB may provide honorary and/or monetary awards in accordance with DHS and CBP directives and policy.
- h. **Supervision and Evaluation.** Each detailee will be assigned to a CBP Volunteer Force Crew Lead to function as individual detailee's local supervisor for purposes of the detail. Individual detailee's Sending Component supervisor will remain their formal supervisor of record.
- i. **Performance Standards.** The Sending Component will be responsible for setting performance standards, identifying training requirements, reviewing annual pay decisions, and promoting individual detailee in accordance with the professional standards, policies, and procedures established for all Sending Component personnel.
- j. **Facilities.** CBP will provide office spaces, facilities, equipment, and information management systems necessary for the detailees to execute duties and responsibilities. This provision includes access to the Sending Component information management systems, as required, in accordance with the DHS policies. CBP will arrange for appropriate access to relevant information systems to perform CBP's functions.
- k. **Training.** CBP will provide training to all detailees on the roles, responsibilities, policies and procedures of the assigned duties. CBP will make duty assignments based upon the individual detailee's existing knowledge, skills and abilities, when operationally feasible.
- l. **Accidents and Injuries.** CBP will document accidents or injuries that occur with a Sending Component employee who is detailed to CBP in accordance with the Federal Employee's Compensation Act (FECA) and the Department of Labor's

rules and regulations for implementation. In addition, medical clearance and other administrative actions needed to document the injury and employee's readiness to return to work shall be in accordance with DHS procedures in consultation with the Sending Component. The Sending Component will initially bear the cost of any FECA covered injuries and illnesses incurred during the detail period of its employee. To assist with the Sending Component's Occupational Safety & Health Administration Log and ensure that accident and injury rates remain proper at the end-of-year, CBP will obtain a 'special identifier' from the U.S. Department of Labor, Office of Workers' Compensation Programs to be assigned for such accidents, injuries and illnesses covered under this Memorandum. The Sending Component's Workers' Compensation Office will track the incident injury costs for each Chargeback Year. At the close of the Chargeback Year, the Sending Component will contact CBP Office of Finance to initiate the cost of injury recovery process.

- m. Federal Torts Claims Act. All DHS employees, while detailed to CBP pursuant to this Memorandum, shall be deemed a CBP employee for the purposes of the Federal Tort Claims Act, including the investigation and adjudication of any administrative claim.
4. Funding. CBP will enter into appropriate agreements with the Sending Component under the Economy Act, 31 U.S.C. § 1535, to reimburse the salaries, overtime as required by the overtime pay rules applicable to the individual, and benefits for all detailees under this Memorandum. Should subsequent legislative authority be granted authorizing the Sending Component to cover costs associated with base pay and related benefits of the detailees, then, without amendment to this Memorandum, the Sending Component will cover such costs beginning with the first full Pay Period after the effective date of said authority and for as long as the authority remains valid. Under any such authority, CBP will continue to reimburse the costs of overtime, as required by the overtime pay rules applicable to the individual, and related benefits. CBP will directly pay for all travel and Temporary Duty (TDY) costs for all detailees under this Memorandum, until terminated. CBP will fund any necessary CBP-related training required during the course of the detail and associated TDY travel costs, if any. Sending Component will be responsible for and continue to pay all annual performance related awards without reimbursement from CBP. CBP and the Sending Component will reconcile against the CBP daily personnel accountability reports and the DTS as a basis of any reimbursements.
 5. The Sending Component will periodically provide detailed invoicing to CBP outlining all costs incurred by the Sending Component associated with these Details for which reimbursement by CBP is sought.
 6. Position of Record. Upon successful completion of the detail, the individual(s) detailed to CBP under this Memorandum will return to the Sending Component to the same or equivalent position occupied and rate of pay he/she received at the time the detail began. If promoted by the Sending Component while on detail to CBP, the individual(s) should be returned to the new position upon successful completion of the detail. The

individual(s) will continue to accumulate time in grade step increases during his/her time at CBP.

7. This Memorandum supersedes any Memoranda previously entered into by CBP with any other DHS Components in regard to non-law enforcement Volunteer Details in support of the 2021 Southwest Border Migration Surge.
8. This Memorandum, in and of itself, does not result in the transfer of funds or other financial obligations between CBP and the Sending Components. No provision of this Memorandum shall be interpreted to require obligation or payment of funds in violation of the Anti-Deficiency Act, 31 U.S.C. § 1341. The activities under this Memorandum are subject to the availability of funds and actual budgetary resources.

cc:

Component Chief Financial Officers
Component Chief Human Capital Officers

Department of Homeland Security
Prison Rape Elimination Action (PREA) Form

6 Code of Federal Regulations Part 115
(Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities)

Your position has been designated as one that may require contact with CBP or ICE Detainees in the performance of your duties. As such, in accordance with 6 CFR Part 115.117 (a), you are required to answer the following questions.

- 1. Have you ever engaged in sexual abuse in a prison, jail, holding facility, community confinement facility, juvenile facility, or other institution as defined in 42 U.S.C. 19971?
Select
- 2. Have you ever been convicted of engaging or attempting to engage in sexual activity facilitated by force, overt or implied threats of force, or coercion?
Select
- 3. Have you ever been convicted of engaging or attempting to engage in sexual activity where the victim did not consent or was unable to consent or refuse?
Select
- 4. Have you ever had a civil or administrative adjudication against you for engaging in activity described in questions 1 through 3 above?
Select

My responses to the above questions are true and correct to the best of my knowledge and are made in good faith. I understand that a knowing and willful false response may result in a negative finding regarding my fitness as a contract employee or volunteer supporting CBP. Furthermore, should my answers change at any time I understand I am responsible for immediately reporting the information to my supervisor program manager.

Printed Name

Date

Signature

¹ The term "institution" means any facility or institution which is owned, operated, or managed by, or provides services on behalf of any State or political subdivision of a State; and which is: for persons who are mentally ill, disabled, or retarded, or chronically ill or handicapped; a jail, prison, or other correctional facility, a pretrial detention facility; for juveniles held awaiting trial; residing in such facility or institution for purposes of receiving care or treatment; or residing for any State purpose in such facility or institution (other than a residential facility providing only elementary or secondary education that is not an institution in which reside juveniles who are adjudicated delinquent, in need of supervision, neglected, placed in State custody, mentally ill or disabled, mentally retarded, or chronically ill or handicapped); or providing skilled nursing, intermediate or long-term care, or custodial or residential care.

PRIVACY NOTICE

AUTHORITY: 5 U.S.C. § 3341, 31 U.S.C. § 1535, Pub. L. 108-79, 6 CFR § 115.17, 5 CFR Part 731 and 5 CFR Part 736 authorize the collection of this information.

PRINCIPAL PURPOSE(S): DHS will use the answers provided in this questionnaire to perform a background investigation in order to evaluate your suitability to become a DHS Volunteer Force participant in compliance with the Prison Rape Elimination Act of 2003.

ROUTINE USE(S): This information may be shared with the applicant's home agency when the results may impact employment eligibility. DHS may share this information externally in accordance with the routine uses published DHS/ALL-Q23 Department of Homeland Security Personnel Security Management.

DISCLOSURE: Furnishing this information is voluntary; however, failure to provide accurate, complete information may result in delayed action or preclusion from volunteering.

Office of the Chief Human Capital Officer
Workforce Health & Safety Division
Health & Medical Readiness Branch

Deployment Health Threat Assessment- U.S. Southwest Border **March 2021 (updated)**

U.S.-Mexico Border Region – Región Fronteriza México-Estados Unidos



Map-courtesy of www.ruralhealthinfo.org

Important Note: This document is not a complete medical guide for travelers to this region. Consult with your doctor or travel clinic prior to departure for specific information related to your needs and your medical history. Recommendations may differ for pregnant women, young children, and persons who have chronic medical conditions. Consult the references for current health information and recommendations.

General Information

The Southwest Border (SWB) of the United States is an austere environment with many occupational hazards to consider prior to deploying. Communication via cellphones may be intermittent and unreliable in the SWB along the United States and Mexico (southern borders of Texas, New Mexico, and Arizona) and medical assistance including hospitals and ambulance service may be limited. Employees may be required to walk long distances, up and down steep rugged terrain, get in and out of various vehicles (including boats) unassisted, and respond quickly to life-threatening situations. During the winter months and especially summer months, the SWB area climate can vary in humidity and temperature (extremely arid, humid, and high temperatures) which may worsen respiratory conditions. Other environmental health threats such as increased mosquito activity and tick-borne diseases may be increased in summer months. Consult your private healthcare provider for individualized care recommendations. If you have a disability and need accommodations, please request this through your supervisor prior to deployment.

HEALTH CONCERN RELATED TO ZIKA VIRUS

There is no current local transmission of Zika virus in the continental United States, including Florida and Texas, which reported local transmission of Zika virus by mosquitoes.

Visit the Areas with Risk of Zika page at <https://www.cdc.gov/zika/geo/index.html> to learn more.

Residents and visitors of the Rio Grande Valley should remain on alert for Zika and take precautions even during the winter months because it often stays warm enough there for mosquito activity to continue through much of the winter, and there are reports of Zika activity in communities on the Mexican side of the border.

Zika Precautions

There is no vaccine to prevent or medicine to treat Zika. Travelers can protect themselves by taking the following measures to prevent mosquito bites:

- Cover exposed skin by wearing long-sleeved shirts and long pants
- Use EPA-registered insect repellents containing DEET, picaridin, oil of lemon eucalyptus (OLE), or IR3535. Always use as directed
 - Pregnant and breastfeeding women can use all EPA-registered insect repellents, including DEET, according to the product label
 - Most repellents, including DEET, can be used on children aged >2 months
- Use permethrin-treated clothing and gear (such as boots, pants, socks, bed nets, and tents). You can buy pre-treated clothing and gear or treat them yourself
- Stay and sleep in screened-in or air-conditioned rooms, used bed net if available

IMMUNIZATION RECOMMENDATIONS

- **Influenza** – Recommended for all travelers. Flu (including 2009 H1N1) is transmitted throughout the year in the tropics and all travelers are at increased risk. Consider a standby treatment course of oseltamivir (brand name: Tamiflu®) for unvaccinated travelers, especially those who are at risk for complications from influenza.
- **Typhoid** – Not recommended for U.S. region **unless** traveling to Mexico side of SWB. Recommended for most travelers, especially those who are staying with friends or relatives; visiting smaller cities, villages, or rural areas where exposure might occur through food or water; or prone to "adventurous eating"
- **Hepatitis B** – Not recommended for U.S. region **unless** traveling to Mexico side of SWB. Recommended for travelers planning prolonged stays or frequent short stays in this or other high-risk countries; adventure travelers; all health care workers; those who may find a new sexual partner during stay; and travelers with high potential to seek medical care in local facilities. Travelers planning short stays and desire maximum pre-travel preparation may also consider getting this immunization. Increased awareness of safe sex practices and body fluid/blood precautions is also recommended.

- **Hepatitis A**- Recommended for all travelers. Hep A is a liver disease caused by the hepatitis A virus (HAV). HAV can affect anyone. Vaccines are available for long-term prevention of HAV infection in persons 1 year of age and older. Good personal hygiene and proper sanitation can also help prevent the spread of hepatitis A.
 - The hepatitis A vaccine is given in 2 doses, 6 months apart. The vaccine is nearly 100% effective and has been a routine childhood vaccine in the United States since 2005.
- **Rabies** – Rabies is rare, however high-risk animals that may transmit rabies along SWB are bats, skunks, raccoons, foxes, and coyotes. Domestic animals such as dogs, cats, cattle may be infected but these cases are rare. Vaccination is recommended for the following groups:
 - Travelers involved in outdoor and other activities that might bring them into direct contact with bats, skunks, and other wild mammals
 - Those with occupational risk factors (veterinarians, wildlife professionals, researchers)
 - Short-term travelers at locations more than 24 hours travel from a reliable source of human rabies immune globulin and rabies vaccine for post-exposure treatment

Use soap and safe water to wash any scratch or bite immediately. All animal bites or scratches should be taken seriously, and post-exposure prophylaxis sought even in those already immunized. Notify your Supervisor and doctor if you were bitten or scratched by an animal while traveling.

RECOMMENDED VACCINES

- **COVID-19** - The most important goal with combating COVID-19 is preventing serious illness and hospitalizations, which the vaccines have shown to do in clinical studies. We strongly recommend you get vaccinated as soon as you are eligible. Regardless of which vaccine you get, remember no vaccine is 100% effective, so while experts learn more about the protection that COVID-19 vaccines provide under real-life conditions, it will be important for everyone to continue using all the tools available to help stop this pandemic
- **Tetanus/Diphtheria/Pertussis** – Adequate primary series plus booster within the last 10 years (Tdap or Td)
 - Those who have not received a previous dose of acellular pertussis containing vaccine in adulthood should receive a one-time dose of Tdap vaccine, regardless of interval since last tetanus/diphtheria-containing vaccine
- **Measles** - As of March 1, 2021, there have been no measles cases reported in the U.S.
 - Measles can be prevented with the measles, mumps, and rubella (MMR) vaccine, which is safe and effective. One dose of MMR vaccine will protect 93% and two doses will protect 97% of persons exposed to the virus. The Centers for Disease Control and Prevention (CDC) notes employees who have received 2 doses of the MMR vaccine, have had

measles as documented by a physician, have had a blood test showing that they are immune to measles, or were born in the United States before 1957 are considered immune and are at VERY LOW risk of getting measles.

- Employees without documentation of vaccination, or otherwise unsure of their immunity to measles, are urged to contact their healthcare provider. For some individuals, revaccination may be indicated
- **Volunteers are at risk of contracting and spreading vaccine preventable infectious diseases. It is highly recommended that personnel deploying ensure their immunizations are up to date (particularly Measles, Mumps, and Rubella (MMR))**
- Employees who do not have evidence of measles immunity are at risk of getting measles. If unimmunized employees are exposed to known infected travelers, they should:
 - monitor themselves for 3 weeks and watch for early symptoms of measles
 - see their doctor as soon as possible to get the MMR vaccine
 - stay at home if they develop a cough, runny nose, red watery eyes, fever (these symptoms usually precede the rash by 3–5 days) or rash, and call their doctor
 - inform the health care facility about their exposure to measles before visiting the doctor, so precautions can be taken to avoid exposing others to measles
- **Pneumococcal** – Recommended for all adults over 65 and those with chronic disease compromising conditions
- **Polio** – Adequate primary series and 1 adult dose recommended
- **Varicella/Chicken Pox** – Indicated for all persons born outside the U.S. or born in the U.S. after 1979, except not indicated for persons with an adequate vaccination history (2-lifetime doses), reliable evidence of previous infection, or laboratory confirmation of immunity

COVID-19 TRAVEL CONCERNS

If personnel are eligible, they should be [vaccinated for COVID-19](#). Personnel should be tested with a [viral test](#) 1-3 days before travel and must maintain a copy of test results during travel in case they are required to show proof of a negative test. Anyone with a positive test result may NOT travel and should [isolate](#), and follow [public health recommendations](#). Regardless of vaccination status, travelers and deploying personnel should carry at least two washable cloth face covers to protect others and themselves, as well as alcohol-based hand sanitizer.

Air Travel -Social distancing is difficult in terminals (security lines, aircraft onboarding and seating, etc.), and travelers will encounter frequently touched surfaces. Travelers should adhere to preventive measures, such as hand washing/sanitizing and wearing face coverings. Aircraft ventilation and filtration help to reduce the spread of airborne viruses and bacteria but wearing a face mask during flight adds another level of protection.

After Returning Home - You may have been exposed to COVID-19 on your travels. You may feel well and not have any symptoms, but you can still spread the virus to others. Personnel should also be tested with a viral test 3-5 days after travel, stay home and self-quarantine for a full 7 days, **even if test is negative**. If they are not tested, they should stay home and self-quarantine for 10 days after travel.

Component travel teams are encouraged to check CDC [travel restrictions](#) prior to scheduling departure. The situation with COVID-19 continues to evolve in other countries. Before traveling internationally, it is strongly encouraged for all DHS personnel and their families to monitor travel alerts on the CDC travel advisory sites and make sound personal decisions prior to embarking on international travel.

OTHER TRAVEL HEALTH CONCERNS

American Trypanosomiasis (Chagas Disease) is endemic to Mexico, Central, and South America and has been reported in Texas. In Texas, approximately 45% of the collected triatomine bugs have tested positive for *T. cruzi*, and Chagas is considered an endemic disease in dogs. American Trypanosomiasis is a parasite infection caused by the feces of the reduviid bug which may occur when a bug bite is scratched or by consuming contaminated food or beverages. Localized inflammation and a skin lesion at the bite site are signs of infection. Romana's sign, a swelling of the eyelid due to accidentally rubbing bug feces into the eye is an acute sign of this disease. Untreated, this disease may lead to life-threatening medical problems related to heart and brain inflammation. Travelers to remote and rural areas are at risk for exposure. See BASIC PREVENTIVE MEASURES in this document for more info. Seek medical attention immediately if symptoms appear.

Scabies and Lice can spread rapidly under crowded conditions where close body contact is frequent. Shelters, schools, extended-care facilities and such institutions are often sites of these types of outbreaks.

Use Contact Precautions for Prevention of Scabies and Lice Infestations

Wear gloves if handling personal items of shelter or detainee residents, hold them at arm's length (i.e. not against your body), and avoid skin-to-skin contact with shelter residents. Do not store personal items near or on shelter residents' berthing spaces (e.g. beds, couches, etc.). If you are concerned that you have contracted any of these parasites, seek medical attention for evaluation and possible treatment.

Murine Typhus has been reported in Texas in the RGV area. People get murine typhus from an infected flea. Most fleas defecate while biting; the feces of infected fleas contain the rickettsial organism/bacteria. The bacteria enter the body through the bite wound or from a person scratching the bite area. Treatment is required with antibiotics otherwise people can be ill for several months. Symptoms manifest 6-14 days after flea bites and include fever, headache, nausea, and body aches. Five to six days after initial symptoms a rash may start on the trunk of the body and spread to the arms and legs. There is no vaccine to prevent

infection. See BASIC PREVENTIVE MEASURES in this document for more info. Seek medical care immediately for symptoms

Plague is a disease caused by a bacterium usually passed between rabbits and rodents such as rats, mice, prairie dogs and squirrels by the bite of an infected flea. Plague has been reported in Western Texas and in parts of New Mexico. Avoid wild and feral animals that may carry fleas. Symptoms of the plague manifest 2-6 days after bitten by infected fleas and include fever, restlessness, confusion, extreme tiredness and other flu-like symptoms. Treatment is required with antibiotics otherwise the plague can be fatal. There is no vaccine to prevent infection. See BASIC PREVENTIVE MEASURES in this document for more info. Seek medical attention immediately if symptoms appear.

Tick-borne Diseases Of the many different species of ticks worldwide and in the United States, only a select few bite and transmit disease to humans; however, serious health problems may result if a tick bite is left untreated. Additional information is available from the Centers for Disease Control and Prevention (CDC) at <http://www.cdc.gov/ticks/index.html>

Prior Occupational Health and Safety Advisory on Tick-borne Disease Information and Prevention is available here <http://dhsconnect.dhs.gov/org/comp/mgmt/dhshr/Health-Safety/Pages/Health-Medical-Readiness.aspx>

Use tick bite precautions.

St. Louis encephalitis is a rare mosquito-borne disease. People become infected with St. Louis encephalitis from the bite of an infected mosquito. Mosquitoes become infected with St. Louis encephalitis virus when they feed on birds that are infected with the virus. Year-round mosquito-bite precautions are recommended; see BASIC PREVENTIVE MEASURES in this document for more info.

Tuberculosis is rare in the United States among the general public. Higher risk population includes international travelers from developing countries. Avoid persons who are coughing in crowded public places whenever possible. If exposure to tuberculosis is anticipated, consider a pre-deployment tuberculosis skin test prior to deployment and then another tuberculosis skin test 8-10 weeks after returning from deployment. There is no vaccine to prevent infection. An ear-loop (surgical) mask may be worn for additional protection in a closed environment. N95 respirators may be worn by those who are medically cleared and trained to use them.

West Nile Virus is a mosquito-borne viral disease. In most cases, persons infected with WNV either show no symptoms or have mild flu-like symptoms such as headache, fatigue, fever, body aches, skin rash, swollen lymph nodes and eye pain. There is no vaccine or medicine to prevent this infection. Year-round mosquito-bite precautions are recommended; see BASIC PREVENTIVE MEASURES in this document for more info. Seek medical care immediately for symptoms such as high fever, confusion, muscle weakness, and severe headaches.

MEDICAL CARE IN SWB

For medical emergencies, call 911 and go to the nearest emergency room. In austere conditions along the SWB emergency services may experience delay response times. Consider carrying Individual First Aid Kits (IFAKs) and ensure employees have first-aid training to provide lifesaving first aid until help arrives. Below are local health care facilities with emergency services. This is not an exhaustive list of healthcare facilities and another hospital may be closer; using 911 is strongly encouraged for medical/life-threatening emergencies.

Consider needed prescription and over-the-counter medicines prior to deployment and ensure you pack adequate quantities to cover the length of your deployment.

<p>HOSPITAL ER TRAUMA CENTER LEVELS</p> <p>A trauma center is a type of hospital that has resources and equipment needed to help care for severely injured patients. The American College of Surgeons Committee is the national governing body and classifies trauma centers as Level I to Level V.</p> <p>LEVEL I Level I trauma centers provide the highest level of surgical care, have a full range of specialists and equipment available 24 hours a day, and admit a minimum required annual volume of severely injured patients. Being treated at a Level I increases a seriously injured patient's chances of survival by an estimated 20 to 25 percent.</p> <p>LEVEL II Level II trauma centers work in collaboration with a Level I center and provide 24-hour availability of all essential specialties, personnel, and equipment. They are not required to have an ongoing program of research or a surgical residency program.</p> <p>LEVEL III Level III trauma centers do not have the full availability of specialists, but have resources for emergency resuscitation, surgery, and intensive care of most trauma patients. A Level III center has transfer agreements with Level I or Level II trauma centers that provide back-up resources for the care of exceptionally severe injuries such as rural or community hospitals.</p> <p>LEVEL IV Level IV trauma centers exist in some states where the resources do not exist for a Level III trauma center and provide initial evaluation, stabilization, diagnostic capabilities, and transfer to a higher level of care.</p> <p>LEVEL V Level V trauma centers provide initial evaluation, stabilization, diagnostic capabilities, and transfer to a higher level of care. May provide surgical and critical-care services. If not open 24 hours daily, the facility must have an after-hours trauma response protocol.</p> <p><small>SOURCE: American College of Surgeons THE BLADE</small></p>	<p><u>TEXAS</u></p> <p>McAllen Medical Center Hidalgo County's Advanced Level III Trauma Center 301 W. Expressway 83 McAllen, TX 78503 Information Tel: (956)632-4000 Emergencies: 911 Website: https://www.mcallenmedicalcenter.com/</p> <p>Starr County Memorial Hospital Emergency Services Trauma Level IV 128 N. FM 3167 Rio Grande City, TX 78582 Info: (956)487-5561 Emergencies: 911 Website: http://www.starrcountyhospital.com/getpage.php?name=index</p> <p>University Medical Center El Paso 4815 Alameda Ave. El Paso, TX 79905 Info: (915) 544-1200 Emergencies: 911 Website: https://www.umcel Paso.org/</p>
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Harlingen Medical Center

5501 South Expressway 77
 Harlingen, TX 78550
 Info: (956) 365-1000
 Emergencies: 911
 Website:
<https://www.harlingenmedicalcenter.com/>

CALIFORNIA**UC San Diego Health**

200 San Diego Health
 San Diego, CA 92103
 Info: (858)657-7000
 Emergencies: 911
 Website:
<https://health.ucsd.edu/Pages/default.aspx>

NEW MEXICO**Hidalgo Medical Services****Emergency Services Trauma Level IV**

530 E. DeMoss St.
 Lordsburg, NM 88045
 Info: (888)271-3596
 Emergencies: 911
 Website: <https://www.hms-nm.org/>

ARIZONA**Yuma Regional Medical Center****Trauma Level IV**

2400 S. Avenue A
 Yuma, AZ 85364
 Info: (928)344-2000
 Emergencies: 911
 Website:
<https://www.yumaregional.org/Home>

BASIC PREVENTIVE MEASURES FOR TRAVELERS

Most travel-related health problems can be significantly reduced through appropriate behavior by the traveler. Risk can be minimized by adherence to the following measures:

- Employees are encouraged to practice good hand hygiene and wash hands frequently with soap and water or use a hand sanitizer on a regular and routine basis
- When wearing gloves, avoid touching your face, personal items, or common surfaces like telephones, doorknobs, etc. to avoid contaminating yourself and the work area
- Practicing good coughing and sneezing etiquette by coughing/sneezing into the crook of your elbow further decreases the spread of potentially infectious pathogens
- Follow other good infection prevention practices established by your Occupational Safety and Health representative to ensure a safe and healthy workplace
- Avoid food that has been kept at room or ambient temperature for several hours (e.g. uncovered buffet and street vendor food)
- Avoid uncooked food, apart from fruit and vegetables that can be peeled or shelled, and avoid fruits with damaged skins
- Avoid dishes containing raw or undercooked meats, eggs, and seafood
- Avoid high-risk foods (i.e. shellfish, mayonnaise, undercooked meats and poultry, dairy products, salads, etc.)
- Avoid dairy products from unreliable sources, including street vendors
- Wash hands thoroughly with soap and water before preparing or consuming food

- Use alcohol-based hand sanitizer containing at least 60% alcohol or antibacterial hand wipes if clean water is not available
- Clothe yourself to reduce as much exposed skin as possible (cover full arm and legs, especially during early morning and late afternoon)
- Apply repellent containing **DEET** (preferred), concentration 30 to 35% or **picaridin** to exposed skin and **permethrin** (concentration 20% or greater) to clothing, bedding, and mosquito netting
- Sleep under an insecticide-treated netting when at risk for mosquito-borne illnesses
- Use an aerosol insecticide before going to bed and a vaporizer, or coil device throughout the night (if possible)
- Avoid contact with domesticated, feral, and wild animals (e.g. dogs, cats, deer, rodents, etc.
- Prevent injury by wearing your seat belt and driving cautiously

BLOOD-BORNE & SEXUALLY TRANSMITTED DISEASES (STDs)

- STDs, hepatitis B, and HIV are generally more prevalent in developing countries. Unprotected casual sex whether with the local population or with fellow travelers should always be considered a high-risk activity
- Inhibitions are diminished when traveling away from the social constraints of home. In addition, excess alcohol and other recreational drugs can influence behavior and encourage unintentional risk exposure
- HIV and hepatitis B may be transmitted through blood, blood products, and contaminated surgical or dental instruments. These may be required following accidents or trauma. Consider carrying a needle and suture kit for high risk areas. If possible, defer medical treatment and travel to a facility where safety can be assured. Tattooing and body piercing carry similar risks.

SKIN AND WOUND CARE

- Broken skin may become infected and lead to serious problems. Any bite, cut, or broken skin should be cleaned with safe water. Apply an antiseptic as a solution or spray. Avoid creams since they can trap dirt.
- Increasing pain, redness, or discharge from a cut suggests a spreading infection and may require antibiotic treatment. Seek medical help.

PRE-TRAVEL CHECKLIST

- Before departure, if you are using medication or have a medical condition, ensure adequate supplies of medication for the full journey and that they are securely packaged in their original containers and carried in more than one place. It is recommended that travelers have a letter from their physician, stating condition(s) and the medications and/or medical supplies needed by the traveler (i.e. CPAP machines, or other durable medical equipment).
- Always arrange adequate medical and evacuation insurance when traveling. Ensure all pre-existing medical issues are declared to the insurer so that non-covered conditions are ascertained in advance. Always have the contact details recorded and accessible during travel

- Pre-departure medical and dental exams and treatment are advised
- Pack a spare pair of eyeglasses or contact lenses, and adequate cleansing solution if applicable
- If you have concerns about jet lag, altitude illness, or motion sickness ask your travel health provider about medications that may be suitable for you
- Pack sunglasses, hats, sunscreen lotions, and lip protection to avoid sun exposure problems during travel

NOTE: Deploying personnel should establish an emergency communications plan back to OCHCO/DHS Volunteer Force Coordination Cell and their Component Safety and Health Office for any injuries/illness/concerns.

REFERENCES:

<https://www.cdc.gov/vaccines/adults/index.html>
<https://www.cdc.gov/measles/cases-outbreaks.html>

<http://dshs.texas.gov/>
<https://wwwnc.cdc.gov/travel/yellowbook/2018/infectious-diseases-related-to-travel/hepatitis-a>

For More Information, Contact OCHCO's Health & Medical Readiness Branch or a Local Travel Clinic:

Maggie Flynn, MPP, BSN, RN at, Margarita.Flynn@hq.dhs.gov; (202) 695-5294
Linda Holifield-Kennedy, MD, MPH at Linda.Holifield-Kennedy@hq.dhs.gov;
(202) 400-0184 or
Ingrid Hope, MSN-CS, RN at, Ingrid.Hope@hq.dhs.gov; (202) 503-5084

Depression and Anxiety Survey

These questions concern how you have been feeling over the past 30 days. Select a response for each question that best represents how you have been.

	None of the time	A little of the time	Some of the time	Most of the time	All of the time
Points:	1	2	3	4	5

During the last 30 days:

1. About how often did you feel tired out for no good reason?
2. About how often did you feel nervous?
3. About how often did you feel so nervous that nothing could calm you down?
4. About how often did you feel hopeless?
5. About how often did you feel restless or fidgety?
6. About how often did you feel so restless you could not sit still?
7. About how often did you feel depressed?
8. About how often did you feel that everything was an effort?
9. About how often did you feel so sad that nothing could cheer you up?
10. About how often did you feel worthless?

SCORE

Total all of the points for the 10 questions.

- **20 points or lower – Deploy**
- **Over 20 points – Deployment Not Recommended** [consider speaking with your healthcare provider]

Resilience Survey

Please indicate how much you agree with the following statements as they apply to you over the last month. If a particular situation has not occurred recently, answer according to how you think you would have felt.

	Not true at all	Rarely true	Sometimes true	Often true	True nearly all of the time
Points:	1	2	3	4	5

1. I am able to adapt when changes occur.
2. I can deal with whatever comes my way.
3. I try to see the humorous side of things when I am faced with problems.
4. Having to cope with stress can make me stronger.
5. I tend to bounce back after illness, injury, or other hardship.
6. I believe I can achieve my goals, even if there are obstacles.
7. Under pressure, I stay focused and think clearly.
8. I am not easily discouraged by failure.
9. I think of myself as a strong person when dealing with life's challenges and difficulties.
10. I am able to handle unpleasant or painful feelings like sadness, fear, and anger.

SCORE

Total all of the points for the 10 questions.

- **40 points or higher – Deploy**
- **Under 40 points – Deployment Not Recommended** [consider practicing strategies to strengthen your resilience]

DHS VOLUNTEER FORCE REGISTRATION FORM

PLEASE READ: DHS Volunteer Force participants will be required to have a current background investigation with their Component that meets the requirements of the position for which they are volunteering. DHS will conduct updated vetting checks as a part of participation in this effort to ensure compliance with the Prison Rape Elimination Act. DHS will also verify professional licenses, as applicable. DHS may share the results of the vetting checks with the volunteer's home Component when the results may impact employment eligibility.

Personal Information

Last Name * First Name * MI Suffix

Address (Street #/Name) *

Address (Apt. #)

City * State * Zip Code * Country USA

Personal Home Phone * Use as primary contact

Personal Cell Phone * Use as primary contact

Gender *

Work Information

Component * Sub Component

Job Series (e.g., 0343) * Grade * Are you a supervisor? *

Fair Labor Standards Act (FLSA) Status *

Work Email *

Work Desk Phone * Work Cell *

(TSA: don't use Coordination Center number)

Supervisor's Name * Supervisor's Phone *

Supervisor's Email *

Additional Information

Are you a Law Enforcement Officer? *

I speak (conversationally) or am certified in a language other than English. *

Registration Authorization

5/6/2021

DVF - New Form

Upload completed and signed [Deployment Authorization Form](#)

I have a government travel card

Upload completed and signed [PREA Form](#)

I have read the [Health Threat Assessment](#)

I have read the [Mental Health Pre-Assessment](#)

I have read the [Resilience Pre-Assessment](#)

I am willing to travel in support of the volunteer force

I request a Washington, DC assignment (*must live/work in Washington, DC metropolitan area*)

Select your preferred deployment length

Earliest date available to deploy

COVID vaccination status

By clicking "Register," you certify that the information provided is accurate to the best of your knowledge.

If you experience any problems with this form, or need additional information, please email dhsvolunteerforce@hq.dhs.gov.

PRIVACY NOTICE

AUTHORITY: 5 U.S.C. § 3341 and 31 U.S.C. § 1535 authorize the collection of this information.

PRINCIPAL PURPOSE(S): DHS will use personal information provided by DHS Volunteer Force applicants to evaluate their ability to participate in the program. This may include conducting vetting checks to ensure applicants meet minimum security requirements for the positions to which they apply. DHS will also use a subset of the information provided by selected applicants to track them during their deployments to better ensure their safety and accountability

ROUTINE USE(S): This information will be used by and disclosed to DHS personnel and/or the applicant's home agency that need the information to process volunteers into the program, including conducting vetting checks of applicants and tracking volunteers during deployment. DHS will only share this information externally in accordance with the routine uses published in OPM/GOVT-1 General Personnel Records; DHS/ALL-014 Department of Homeland Security Personnel Contact Information; and DHS/ALL-023 Department of Homeland Security Personnel Security Management.

DISCLOSURE: Furnishing this information is voluntary; however, failure to provide accurate, complete information may result in delayed action or preclusion from volunteering.

Rev: 3/2021

Department of Homeland Security
DHS Directives System
Directive Number: 125-02
Revision Number: 00
Issue Date: 08/15/2008

INTERAGENCY AGREEMENTS

I. Purpose

This Directive establishes the Department of Homeland Security (DHS) policy for Interagency Agreements. This includes agreements between DHS Components and other Federal agencies, as well as agreements between two or more DHS Components (known as Intra-agency Agreements).

II. Scope

- A. All Interagency Agreements involving payments between DHS Components or between DHS Components and other Federal agencies that result in direct effort by the Servicing Agency and/or the award of a contract, grant, cooperative agreement or other transaction for financial assistance or procurement are subject to this Directive.
- B. All Interagency Agreements with other Federal agencies that result when a DHS Servicing Component procures shared services, such as transit subsidy and sedan or shuttle bus services, on behalf of one or more DHS Requesting Components are subject to this Directive.
- C. This Directive does not cover the following transactions:
 - 1. Interagency Agreements by the Transportation Security Administration (TSA) issued prior to June 23, 2008;
 - 2. Interagency Agreements entered into by the DHS Office of Inspector General;
 - 3. Agreements authorized by Title 5, United States Code, Section 3341, Details: within Executive or military departments;
 - 4. Agreements authorized by Title 5, United States Code, Subchapter VI, Assignments to and from states (Intergovernmental Personnel Act (IPA)); and

5. Direct acquisitions, such as orders placed directly by DHS or DHS Components against: the General Services Administration's (GSA's) Federal Supply Schedule program (also known as the Multiple Award Schedule program), Government-wide Acquisition Contracts (GWACs), Enterprise Acquisition Gateway for Leading Edge (EAGLE)/First Source, etc.

D. For shared services within DHS, such as transit subsidy and sedan or shuttle bus services, requesting DHS Components may make contributory payments via a financial document (i.e., without the use of a formal Intra-agency Agreement document) under the authority of the Economy Act; however, a Determination & Findings (D&F) is required.

E. DHS Management Directive 0710.1, Reimbursable Agreements, is hereby cancelled.

III. Authorities

A. Title 31, United States Code, Section 1535, Agency Agreements ("The Economy Act"), as implemented by Federal Acquisition Regulation (FAR) Subpart 17.5, "Interagency Acquisitions under the Economy Act" and Homeland Security Acquisition Manual (HSAM) Subchapter 3017.5, "Interagency Acquisitions under the Economy Act."

B. Other Authorities (DHS Offices and Components are responsible for citing the applicable legal authority for any interagency or intra-agency agreements).

IV. Definitions

A. **Assisted Acquisition(s)**: Interagency acquisitions for which a Requesting Agency, at its discretion, has determined that it is in the best interest of the government to seek the acquisition services of a Servicing Agency in the procurement of supplies or services from the private sector and where the Servicing Agency awards a contract or order on behalf of the Requesting Agency.

B. **Intra-governmental Payment and Collection (IPAC)**: The Treasury Department system used by most Federal agencies for interagency payments.

C. **Interagency Agreement**: A written agreement between Federal agencies or Components of Federal agencies to acquire supplies or services as authorized by statute. The term Intra-agency Agreement may be used when referring to such agreements between DHS Components.

D. **Requesting Agency**: A Federal agency that has a requirement and desires to obtain goods or services from a Servicing Agency.

E. **Servicing Agency**: A Federal agency that is willing and able to provide goods or services to a Requesting Agency.

V. Responsibilities

A. The **Chief Procurement Officer** is responsible for setting policy and conducting DHS-wide oversight on the procurement, assistance and business aspects of Interagency Agreements. This includes arranging for timely Office of Chief Procurement Officer (OCPO) review of Acquisition Plans when required.

B. The **Chief Financial Officer** provides guidance and oversight of financial management personnel, activities and operations relevant to Interagency Agreements.

C. The **Program Manager** is a Federal employee assigned responsibility for accomplishing a specific, defined task in support of the DHS mission, including an acquisition program or an operational function.

D. The **Contracting Officer** is a Federal employee with the authority to enter into, administer, and/or terminate contracts and orders and is responsible for the execution of all Interagency Agreements and Economy Act-required Determinations and Findings which include Assisted Acquisitions.

E. The **Authorized Official**: When statutory authority exists and in accordance with Component procedures, other Authorized Officials (i.e. other than a warranted DHS Contracting Officer) are Federal employees that may carry out certain individual functions.

VI. Policy and Requirements

A. All Interagency Agreements must cite the statute upon which the agreement is based. Each Interagency Agreement may rely upon only one statute. The Economy Act should be used as the statutory authority for an Interagency Agreement only when a more specific authority is not available.

B. The Program Manager is ultimately responsible for ensuring that program funds are spent in a manner that results in planned outcomes (i.e., that all Interagency Agreements contain clearly defined requirements, and performance measures and monitoring plans to the maximum extent practicable). Further, DHS Program Offices must ensure that adequate documentation is maintained with respect to the results achieved under each Interagency Agreement.

C. The period of availability of the Requesting Agency's funds that are obligated under an Interagency Agreement does not change except as specifically authorized by law. Under the Economy Act, 31 U.S.C. Section 1535, a Requesting Agency de-obligates any fixed year funds at the end of their period of availability to the extent that the Servicing Agency did not perform or incur valid obligations under an Interagency Agreement. When a Requesting Agency validly obligates its funds through an Interagency Agreement not governed by the Economy Act, the Requesting Agency does not have to de-obligate its funds at the end of their period of availability.

D. An Interagency Agreement is prepared and signed in advance by an Authorized Official of each of the Requesting and the Servicing Agencies concerned. Within DHS, a warranted Contracting Officer signs Interagency Agreements for all Assisted Acquisitions. For other types of Interagency Agreements, a Head of Contracting Activity (HCA) may delegate to the senior financial officer within that Component the responsibility for signing the agreement.

E. Each Interagency Agreement identifies the supplies and services to be provided and indicates the fee charged by the Servicing Agency. The description of supplies or services must be specific, definite, and clear in order to support a binding agreement that will be recorded as an obligation. Further, the Interagency Agreement must establish a ceiling amount limiting the Requesting Agency's financial obligation.

F. Supplies or services are not provided or accepted until the completed Interagency Agreement is executed by both the Requesting Agency and Servicing Agency. The funded amount of each executed Interagency Agreement must be recorded as an obligation in the Requesting Agency's financial system.

G. For reviews and approvals, signature levels are at the lowest levels possible in the organization, commensurate with complexity, importance, Congressional interest, dollar value, or statutory requirements.

H. Regarding payments, Intra-Governmental Payment and Collection (IPAC) is the preferred payment system (see Treasury Financial Manual Volume I, Part 6, Chapter 4000).

I. For Assisted Acquisitions, the Program Manager and Contracting Officer must include in the Interagency Agreement's terms and conditions: (1) a requirement for the Servicing Agency to enter the DHS Funding Agency and Funding Office Identification Codes in the Federal Procurement Data System (FPDS) when reporting any contract or order which results from the agreement; and, (2) a requirement to delay any contract award(s) in excess of \$1,000,000 and/or any public announcement(s) of such pending award(s), as needed to ensure that DHS complies with its requirement to notify the Committees on Appropriations in the House and Senate at least 3 full business days in advance of any such contract award(s) or public announcement(s) (also, see HSAM 3005.303).

J. For all Assisted Acquisitions conducted pursuant to the Economy Act, a warranted DHS Contracting Officer must sign the Economy Act D&F.

K. For other than Assisted Acquisitions, the Interagency Agreement document must include a statement as follows: "No funds provided through this agreement may be used by the Servicing Agency to award a contract or order for the exclusive use and benefit of the Department of Homeland Security."

VII. Questions

Any questions or concerns regarding this Directive should be addressed to the Office of the Chief Procurement Officer: Strategic Initiatives: Acquisition Policy and Legislation.



Elaine C. Duke
Under Secretary for Management

15 Aug 2008
Date

for "Each individual appointed hereafter as a civil officer of the United States by the President, by and with the advice and consent of the Senate, or by the President alone, or by a court of law, or by the head of a department" in view of the definition of "officer" in section 2104.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

§ 3333. Employee affidavit; loyalty and striking against the Government

(a) Except as provided by subsection (b) of this section, an individual who accepts office or employment in the Government of the United States or in the government of the District of Columbia shall execute an affidavit within 60 days after accepting the office or employment that his acceptance and holding of the office or employment does not or will not violate section 7311 of this title. The affidavit is prima facie evidence that the acceptance and holding of office or employment by the affiant does not or will not violate section 7311 of this title.

(b) An affidavit is not required from an individual employed by the Government of the United States or the government of the District of Columbia for less than 60 days for sudden emergency work involving the loss of human life or the destruction of property. This subsection does not relieve an individual from liability for violation of section 7311 of this title.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 118q.	Aug. 9, 1955, ch. 690, § 2, 69 Stat. 624.
.....	[Uncodified].	June 29, 1956, ch. 479, § 3 (as applicable to the Act of Aug. 9, 1955, ch. 690, § 2, 69 Stat. 624), 70 Stat. 453.

The section is restated for clarity and to conform to the style of section 3332.

In subsection (a), the words "after August 9, 1955" are omitted as executed. The words "if the affidavit is executed prior to acceptance of such office or employment" are omitted as unnecessary. The words "From and after July 1, 1956", appearing in the Act of June 29, 1956, are omitted as executed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

SUBCHAPTER III—DETAILS, VACANCIES, AND APPOINTMENTS

AMENDMENTS

1998—Pub. L. 105-277, div. C, title I, § 151(c)(2), Oct. 21, 1998, 112 Stat. 2681-616, substituted "DETAILS, VACANCIES, AND APPOINTMENTS" for "DETAILS" as subchapter heading.

ANNUAL REPORT TO CONGRESS ON EMPLOYEES OR MEMBERS OF ARMED SERVICES DETAILED TO EXECUTIVE AGENCIES; EXEMPTIONS

Pub. L. 103-329, title VI, § 619, Sept. 30, 1993, 108 Stat. 2420, which directed each Executive agency detailing personnel submit an annual report to Senate and House Committees on Appropriations on all employees or members of armed services detailed to Executive agencies, listing grade, position, and offices of each person detailed and location to which each such person was de-

talled, with exemptions for certain intelligence agencies, terminated, effective May 15, 2000, see section 3003 of Pub. L. 104-66, as amended, set out as a note under section 1113 of Title 31, Money and Finance, and page 151 of House Document No. 103-7. Similar provisions were contained in the following prior appropriations acts:

Pub. L. 103-123, title VI, § 617, Oct. 28, 1993, 107 Stat. 1263.

Pub. L. 102-393, title VI, § 619, Oct. 6, 1992, 106 Stat. 1769; repealed by Pub. L. 104-66, title III, § 3001(h), Dec. 21, 1995, 109 Stat. 734.

Pub. L. 102-141, title VI, § 619, Oct. 28, 1991, 105 Stat. 871.

Pub. L. 101-509, title VI, § 616, Nov. 5, 1990, 104 Stat. 1474.

Pub. L. 101-136, title VI, § 616, Nov. 3, 1989, 103 Stat. 819.

Pub. L. 100-440, title VI, § 616, Sept. 22, 1988, 102 Stat. 1754.

Pub. L. 100-202, § 101(m) [title VI, § 621], Dec. 22, 1987, 101 Stat. 1329-390, 1329-427.

§ 3341. Details; within Executive or military departments

(a) The head of an Executive department or military department may detail employees among the bureaus and offices of his department, except employees who are required by law to be exclusively engaged on some specific work.

(b)(1) Details under subsection (a) of this section may be made only by written order of the head of the department, and may be for not more than 120 days. These details may be renewed by written order of the head of the department, in each particular case, for periods not exceeding 120 days.

(2) The 120-day limitation in paragraph (1) for details and renewals of details does not apply to the Department of Defense in the case of a detail—

(A) made in connection with the closure or realignment of a military installation pursuant to a base closure law or an organizational restructuring of the Department as part of a reduction in the size of the armed forces or the civilian workforce of the Department; and

(B) in which the position to which the employee is detailed is eliminated on or before the date of the closure, realignment, or restructuring.

(c) For purposes of this section, the term "base closure law" has the meaning given such term in section 101(a)(17) of title 10.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 424; Pub. L. 104-106, div. A, title X, § 1033(a), Feb. 10, 1996, 110 Stat. 429; Pub. L. 109-163, div. A, title X, § 1056(a)(4), Jan. 6, 2006, 119 Stat. 3439.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
.....	5 U.S.C. 38.	R.S. § 166. May 28, 1896, ch. 252, § 3, 29 Stat. 179.

The words "Executive department" are substituted for "department" as the definition of "department" applicable to this section is coextensive with the definition of "Executive department" in section 101.

The words "or military department" are inserted to preserve the application of the source law. Before enactment of the National Security Act Amendments of

1949 (63 Stat. 578), the Department of the Army, the Department of the Navy, and the Department of the Air Force were Executive departments. The National Security Act Amendments of 1949 established the Department of Defense as an Executive Department including the Department of the Army, the Department of the Navy, and the Department of the Air Force as military departments, not as Executive departments. However, the source law for this section, which was in effect in 1949, remained applicable to the Secretaries of the military departments by virtue of section 12(g) of the National Security Act Amendments of 1949 (63 Stat. 591), which is set out in the reviser's note for section 301.

The word "detail" is coextensive with and is substituted for "alter the distribution". The word "clerk" is omitted as included in "employees". The words "as he may find it necessary and proper to do" and "from time to time" are omitted as surplusage.

This section was part of title IV of the Revised Statutes. The Act of July 26, 1947, ch. 343, §201(d), as added Aug. 10, 1949, ch. 412, §4, 63 Stat. 579 (former 5 U.S.C. 171-1), which provides "Except to the extent inconsistent with the provisions of this Act [National Security Act of 1947], the provisions of title IV of the Revised Statutes as now or hereafter amended shall be applicable to the Department of Defense" is omitted from this title but is not repealed.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

2006—Subsec. (c). Pub. L. 109-163 amended subsec. (c) generally. Prior to amendment, subsec. (c) defined the terms "base closure law" and "military installation" for purposes of this section.

1996—Subsec. (b). Pub. L. 104-106 designated existing provisions as par. (1) and added par. (2).

Subsec. (c). Pub. L. 104-106, §1033(a)(2), added subsec. (c).

EFFECTIVE DATE OF 1996 AMENDMENT

Section 1033(b) of Pub. L. 104-106 provided that: "The amendments made by subsection (a) [amending this section] apply to details made before the date of the enactment of this Act [Feb. 10, 1996] but still in effect on that date and details made on or after that date."

TRANSFER OF APPROPRIATED FUNDS; FUNDING OF DETAILED EMPLOYEES

For restriction on availability of funds for salaries of employees reassigned on temporary detail basis to another position without independent approval by head of employing department or agency, see section 515(3) of Pub. L. 103-333, set out as a note under section 1301 of Title 31, Money and Finance.

[§ 3342. Repealed. Pub. L. 102-378, § 2(13)(A), Oct. 2, 1992, 106 Stat. 1347]

Section, added Pub. L. 101-416, §2(a)(1), Oct. 12, 1990, 104 Stat. 902, related to Federal participants in executive exchange programs.

A prior section 3342, Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425, which prohibited details of employees from field service to Executive department in District of Columbia except for temporary duty, details specifically provided for by law, or detailing of one employee from Bureau of Customs for duty in District of Columbia, was repealed by Pub. L. 89-762, §1(a), Nov. 5, 1966, 80 Stat. 1312.

EFFECTIVE DATE OF REPEAL

Section repealed effective Oct. 1, 1991, see section 9(b)(3) of Pub. L. 102-378, set out as an Effective Date of 1992 Amendment note under section 6303 of this title.

§ 3343. Details; to international organizations

(a) For the purpose of this section—

(1) "agency", "employee", and "international organization" have the meanings given them by section 3581 of this title; and

(2) "detail" means the assignment or loan of an employee to an international organization without a change of position from the agency by which he is employed to an international organization.

(b) The head of an agency may detail, for a period of not more than 5 years, an employee of his agency to an international organization which requests services, except that under special circumstances, where the President determines it to be in the national interest, he may extend the 5-year period for up to an additional 3 years.

(c) An employee detailed under subsection (b) of this section is deemed, for the purpose of preserving his allowances, privileges, rights, seniority, and other benefits, an employee of the agency from which detailed, and he is entitled to pay, allowances, and benefits from funds available to that agency. The authorization and payment of these allowances and other benefits from appropriations available therefor is deemed to comply with section 5536 of this title.

(d) Details may be made under subsection (b) of this section—

(1) without reimbursement to the United States by the international organization; or

(2) with agreement by the international organization to reimburse the United States for all or part of the pay, travel expenses, and allowances payable during the detail, and the reimbursement shall be credited to the appropriation, fund, or account used for paying the amounts reimbursed.

(e) An employee detailed under subsection (b) of this section may be paid or reimbursed by an international organization for allowances or expenses incurred in the performance of duties required by the detail, without regard to section 209 of title 18.

(Pub. L. 89-554, Sept. 6, 1966, 80 Stat. 425; Pub. L. 91-175, pt. V, §502(a), Dec. 30, 1969, 83 Stat. 825.)

HISTORICAL AND REVISION NOTES

Derivation	U.S. Code	Revised Statutes and Statutes at Large
(a)	5 U.S.C. 2331.	Aug. 28, 1958, Pub. L. 85-795, §2, 72 Stat. 959.
(b)-(e)	5 U.S.C. 2332.	Aug. 28, 1958, Pub. L. 85-795, §§, 72 Stat. 959.

In subsection (a)(2), the words "without a change of position from the agency by which he is employed to an international organization" are substituted for "without the employee's transfer from the Federal agency by which he is employed" to eliminate the necessity of carrying into this section the definition of "transfer" appearing in former section 2331(5).

In subsection (e), the words "section 209 of title 18" are substituted for "section 1914 of title 18" on authority of the Act of Oct. 23, 1962, Pub. L. 87-849, §2, 76 Stat. 1126.

Other definitions appearing in former section 2331 are omitted from this section as inappropriate but are carried into section 3581.

Standard changes are made to conform with the definitions applicable and the style of this title as outlined in the preface to the report.

AMENDMENTS

1969—Subsec. (b). Pub. L. 91-175 substituted "5" for "3" and inserted provision enabling President, regard-

PROHIBITION ON TRANSFER OF FUNDS TO OTHER
DEPARTMENTS AND AGENCIES

Pub. L. 101-189, div. A, title XVI, §1604, Nov. 29, 1989, 103 Stat. 1598, provided that funds available for military functions of Department of Defense could not be made available to any other department or agency of Federal Government pursuant to a provision of law enacted after Nov. 29, 1989, unless, not less than 30 days before such funds were made available to such other department or agency, Secretary of Defense submitted to congressional defense committees a report describing effect on military preparedness of making such funds available to such department or agency, prior to repeal and restatement in section 2215 of Title 10, Armed Forces, by Pub. L. 103-160, div. A, title XI, §1106(a)(1), (b), Nov. 30, 1993, 107 Stat. 1750.

§ 1532. Withdrawal and credit

An amount available under law may be withdrawn from one appropriation account and credited to another or to a working fund only when authorized by law. Except as specifically provided by law, an amount authorized to be withdrawn and credited is available for the same purpose and subject to the same limitations provided by the law appropriating the amount. A withdrawal and credit is made by check and without a warrant.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 933.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1532	31:628-1.	Sept. 6, 1950, ch. 896, §1210 (less last proviso), 64 Stat. 765.

The word "limitations" is substituted for "limitations, conditions, and restrictions" to eliminate unnecessary words.

§ 1533. Transfers of appropriations for salaries and expenses to carry out national defense responsibilities

An appropriation of an executive agency for salaries and expenses is available to carry out national defense responsibilities assigned to the agency under law. A transfer necessary to carry out this section may be made between appropriations or allocations within the executive agency. An allocation may not be made to an executive agency that can carry out with its regular personnel a defense activity assigned to it by using the authority of this section to realign its regular programs.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 933.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1533	31:697.	June 2, 1951, ch. 121, ch. XI (proviso immediately before heading "Independent Offices"), 65 Stat. 61.

The words "executive agency" are substituted for "department, agency, or corporation, in the executive branch of the Government" because of section 102 of the revised title. The words "authority of this section" are substituted for "foregoing authority" for clarity.

§ 1534. Adjustments between appropriations

(a) An appropriation available to an agency may be charged at any time during a fiscal year

for the benefit of another appropriation available to the agency to pay costs—

(1) when amounts are available in both the appropriation to be charged and the appropriation to be benefited; and

(2) subject to limitations applicable to the appropriations.

(b) Amounts paid under this section are charged on a final basis during, or as of the close of, the fiscal year to the appropriation benefited. The appropriation charged under subsection (a) of this section shall be appropriately credited.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 933.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1534(a)	31:628a(1st sentence).	June 29, 1966, Pub. L. 89-473, §1, 80 Stat. 221.
1534(b)	31:628a(last sentence).	

In subsection (a), the words "Subject to limitations applicable with respect to each appropriation concerned" are omitted as surplus. The words "or any bureau or office thereof" are omitted as being included in "agency". The words "to pay costs" are substituted for "for the purpose of financing the procurement of materials and services, or financing other costs" to eliminate unnecessary words.

In subsection (b), the words "amounts paid under this section" are substituted for "such expenses so financed", and the words "appropriations charged under subsection (a) of this section" are substituted for "financing appropriation", for clarity.

§ 1535. Agency agreements

(a) The head of an agency or major organizational unit within an agency may place an order with a major organizational unit within the same agency or another agency for goods or services if—

(1) amounts are available;

(2) the head of the ordering agency or unit decides the order is in the best interest of the United States Government;

(3) the agency or unit to fill the order is able to provide or get by contract the ordered goods or services; and

(4) the head of the agency decides ordered goods or services cannot be provided by contract as conveniently or cheaply by a commercial enterprise.

(b) Payment shall be made promptly by check on the written request of the agency or unit filling the order. Payment may be in advance or on providing the goods or services ordered and shall be for any part of the estimated or actual cost as determined by the agency or unit filling the order. A bill submitted or a request for payment is not subject to audit or certification in advance of payment. Proper adjustment of amounts paid in advance shall be made as agreed to by the heads of the agencies or units on the basis of the actual cost of goods or services provided.

(c) A condition or limitation applicable to amounts for procurement of an agency or unit placing an order or making a contract under this section applies to the placing of the order or the making of the contract.

(d) An order placed or agreement made under this section obligates an appropriation of the ordering agency or unit. The amount obligated is debilitated to the extent that the agency or unit filling the order has not incurred obligations, before the end of the period of availability of the appropriation, in—

- (1) providing goods or services; or
- (2) making an authorized contract with another person to provide the requested goods or services.

(e) This section does not—

- (1) authorize orders to be placed for goods or services to be provided by convict labor; or
- (2) affect other laws about working funds.

(Pub. L. 97-258, Sept. 13, 1982, 96 Stat. 933; Pub. L. 98-216, §1(2), Feb. 14, 1984, 98 Stat. 3.)

HISTORICAL AND REVISION NOTES
1982 ACT

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1535(a)	31:686(a)(1st sentence words before 15th comma, last proviso).	Mar. 4, 1915, ch. 143, §1(3d proviso on p. 1084), 38 Stat. 1084; May 21, 1920, ch. 194, §7(a), 41 Stat. 613; June 30, 1932, ch. 314, §601, 47 Stat. 417; re-stated July 20, 1942, ch. 507, 56 Stat. 661; Aug. 23, 1958, Pub. L. 85-726, §1407, 72 Stat. 808; Aug. 6, 1981, Pub. L. 97-31, §12(11), 96 Stat. 154; Dec. 29, 1981, Pub. L. 97-136, §11, 96 Stat. 1707.
1535(b)	31:686(a)(1st sentence 1st proviso).	
1535(c)	31:686(a)(1st sentence words between 15th comma and 1st proviso, last sentence).	
1535(d)	31:686(c).	May 21, 1920, ch. 194, §7(c), 41 Stat. 613; June 30, 1932, ch. 314, §601, 47 Stat. 417; re-stated June 26, 1943, ch. 150, §1, 57 Stat. 219.
	31:686-1.	Sept. 6, 1950, ch. 896, §1210(last proviso), 64 Stat. 765.
1535(e)(1)	31:686b(a), (b).	June 30, 1932, ch. 314, §602(a), (b), (c)(related to §602), 47 Stat. 418.
1535(e)(2)	31:686b(c)(related to 31:686, 686b).	

In the section, the word "agency" is substituted for "executive department or independent establishment of the Government" for clarity. See 12 Comp. Gen. 442 (1932) and *United States v. Mitchell*, 425 F. Supp. 917 (D.D.C. 1976). The words "major organizational unit" or "unit" are substituted for "bureau or office" for consistency in the revised title. The words "to fill the order" or "filling the order" are substituted for "such requisitioned" and "as may be requisitioned" for clarity and because of the restatement. The words "goods or services" are substituted for "materials, supplies, equipment, work, or services" to eliminate unnecessary words.

In subsection (a)(4), the words "the head of the agency decides" are added, and the words "commercial enterprise" are substituted for "private agencies", for clarity. The words "by competitive bids" are omitted as surplus because of various procurement laws.

In subsection (b), the words "The Secretary of Defense" are added for clarity because of Comptroller General decision B-20179 (Apr. 1, 1981). The words "a military department of the Department of Defense" are substituted for "the Department of the Army, Navy Department" for consistency with title 10 and to apply the source provisions to the Department of the Air Force because of sections 205(a) and 207(a) and (f) of the Act of July 26, 1947 (ch. 343, 61 Stat. 501, 502), and section 1 of the Act of August 10, 1956 (ch. 1041, 70A Stat. 488). The words "Secretary of Transportation in carry-

ing out duties and powers related to aviation and the Coast Guard" are substituted for "Federal Aviation Agency, Coast Guard" to reflect the transfer of those functions to the Secretary of Transportation. The words "the Administrator of General Services" are added to reflect the transfer of the functions of the Bureau of Federal Supply of the Treasury Department to the Administrator by section 102(a) of the Act of June 30, 1949 (40:752(a)). The words "the Administrator of" are added before "Maritime Administration" for clarity and consistency in the revised title and with other titles of the United States Code.

In subsection (c), the words "pursuant to such order" are omitted as unnecessary.

Subsection (d) is substituted for the source provisions being restated to reflect decisions of the Comptroller General, including 31 Comp. Gen. 83 (1951), 34 Comp. Gen. 418 (1955), 39 Comp. Gen. 317 (1959), and 55 Comp. Gen. 1497 (1976).

In subsection (e), the words "any Government department or independent establishment, or any bureau or office thereof" and "except as otherwise provided by law" are omitted as unnecessary because of the restatement. The text of 31:686b(a) is omitted as executed.

1984 ACT

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1535(a)	31 App. 688(a) (1st sentence words before 15th comma, proviso)	May 21, 1920, ch. 194, §7(a) (1st, 2d sentences), 41 Stat. 613; June 30, 1932, ch. 314, §601, 47 Stat. 417; re-stated July 20, 1942, ch. 507, 56 Stat. 661; Aug. 23, 1958, Pub. L. 85-726, §1407, 72 Stat. 808; Aug. 6, 1981, Pub. L. 97-136, §11, 96 Stat. 1707; Oct. 15, 1982, Pub. L. 97-332, §1(1)-(3), 96 Stat. 1622.
1535(b)	31 App. 686(a) (1st sentence words between 15th comma and proviso, 2d sentence)	
1535(c)	31 App. 688(a) (last sentence)	May 21, 1920, ch. 194, 41 Stat. 607, §7(a) (last sentence); added Oct. 15, 1982, Pub. L. 97-332, §1(4), 96 Stat. 1622.

AMENDMENTS

1984—Subsec. (a)(3). Pub. L. 98-216, §1(2)(A), inserted "or get by contract" after "provide".

Subsec. (a)(4). Pub. L. 98-216, §1(2)(B), inserted "by contract" after "provided".

Subsecs. (b), (c). Pub. L. 98-216, §1(2)(C)-(E), redesignated subsec. (c) as (b). Former subsec. (b), which provided that the Secretary of Defense, the Secretary of a military department of the Department of Defense, the Secretary of Transportation in carrying out duties and powers related to aviation and the Coast Guard, the Secretary of the Treasury, the Administrator of General Services, and the Administrator of the Maritime Administration could place orders under this section for goods and services that an agency or unit filling the order might be able to provide or procure by contract, was struck out.

PREVENTING ABUSE OF INTERAGENCY CONTRACTS

Pub. L. 110-417, [div. A], title VIII, §865, Oct. 14, 2008, 122 Stat. 4550, as amended by Pub. L. 115-232, div. A, title VIII, §875, Aug. 13, 2018, 132 Stat. 1906, provided that:

"(a) OFFICE OF MANAGEMENT AND BUDGET POLICY GUIDANCE.—

"(1) REPORT AND GUIDELINES.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], the Director of the Office of Management and Budget shall—

"(A) submit to Congress a comprehensive report on interagency acquisitions, including their frequency of use, management controls, cost-effectiveness, and savings generated; and

"(B) issue guidelines to assist the heads of executive agencies in improving the management of interagency acquisitions.

“(2) MATTERS COVERED BY GUIDELINES.—For purposes of paragraph (1)(B), the Director shall include guidelines on the following matters:

“(A) Procedures for the use of interagency acquisitions to maximize competition, deliver best value to executive agencies, and minimize waste, fraud, and abuse.

“(B) Categories of contracting inappropriate for interagency acquisition.

“(C) Requirements for training acquisition workforce personnel in the proper use of interagency acquisitions.

“(3) REGULATIONS REQUIRED.—

“(1) IN GENERAL.—Not later than one year after the date of the enactment of this Act [Oct. 14, 2008], the Federal Acquisition Regulation shall be revised to require that—

“(A) all interagency assisted acquisitions include a written agreement between the requesting agency and the servicing agency assigning responsibility for the administration and management of the contract; and

“(B) all interagency assisted acquisitions include sufficient documentation to ensure an adequate audit.

“(2) MULTI-AGENCY CONTRACTS.—Not later than one year after the date of the enactment of this Act, the Federal Acquisition Regulation shall be revised to require any multi-agency contract entered into by an executive agency after the effective date of such regulations to be supported by a business case analysis detailing the administration of such contract, including an analysis of all direct and indirect costs to the Federal Government of awarding and administering such contract and the impact such contract will have on the ability of the Federal Government to leverage its purchasing power.

“(c) AGENCY REPORTING REQUIREMENT.—The senior procurement executive for each executive agency shall, as directed by the Director of the Office of Management and Budget, submit to the Director annual reports on the actions taken by the executive agency pursuant to the guidelines issued under subsection (a).

“(d) DEFINITIONS.—In this section:

“(1) The term ‘executive agency’ has the meaning given such term in section 4(1) of the Office of Federal Procurement Policy Act [former] 41 U.S.C. 403(1) [see 41 U.S.C. 133], except that, in the case of a military department, it means the Department of Defense.

“(2) The term ‘head of executive agency’ means the head of an executive agency except that, in the case of a military department, the term means the Secretary of Defense.

“(3) The term ‘interagency acquisition’ means a procedure by which an executive agency needing supplies or services (the requesting agency) obtains them from another executive agency (the servicing agency). The term includes acquisitions under section 1535 of title 31, United States Code (commonly referred to as the ‘Economy Act’), Federal Supply Schedules above \$500,000, and Governmentwide acquisition contracts.

“(4) The term ‘multi-agency contract’ means a task or delivery order contract established for use by more than one executive agency to obtain supplies and services, consistent with section 1535 of title 31, United States Code (commonly referred to as the ‘Economy Act’).”

REVIEW AND ENHANCEMENT OF EXISTING AUTHORITIES FOR USING AIR FORCE AND AIR NATIONAL GUARD MODULAR AIRBORNE FIRE-FIGHTING SYSTEMS AND OTHER DEPARTMENT OF DEFENSE ASSETS TO FIGHT WILDFIRES

Pub. L. 108-136, div. A, title X, § 1058, Nov. 24, 2003, 117 Stat. 1619, provided that:

“(a) REVIEW REQUIRED.—The Director of the Office of Management and Budget shall conduct a review of existing authorities regarding the use of Air Force and

Air National Guard Modular Airborne Fire-Fighting Systems units and other Department of Defense assets to fight wildfires to ensure that, in accordance with applicable legal requirements, such assets are available in the most expeditious manner to fight wildfires on Federal lands or non-Federal lands at the request of a Federal agency or State government. In conducting the review, the Director shall specifically consider—

“(1) any adverse impact caused by the restrictions contained in section 1535(a)(4) of title 31, United States Code, or caused by the interpretation of such restrictions, on the ability of the Forest Service and other Federal agencies to procure such firefighting services; and

“(2) whether the authorities under the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), including section 493(c) of such Act (42 U.S.C. 5170b), are being properly utilized to facilitate an expeditious Department of Defense response to State requests under, and consistent with, such Act for firefighting services.

“(b) DETERMINATION REQUIRED.—On the basis of the review, the Director shall make a determination regarding whether existing authorities are being used in a manner consistent with using the available capabilities of Department of Defense assets to fight wildfires in the most expeditious and efficacious way to minimize the risk to public safety.

“(c) EXPEDITED ECONOMY ACT REVIEW PROCESS.—If the Director determines under subsection (b) that existing authorities are adequate for the deployment of Department of Defense assets to fight wildfires, the Director shall develop and implement, subject to subsection (f), such modifications to the process for conducting the cost comparison required by section 1535(a)(4) of title 31, United States Code, as the Director considers appropriate to further expedite the procurement of such firefighting services.

“(d) DEVELOPMENT AND IMPLEMENTATION OF REVISED POLICIES.—If the Director determines under subsection (b) that the existing authorities or their use is inadequate or can be improved, the Director shall develop and implement, subject to subsection (f), such regulations, policies, and interagency procedures as may be necessary to improve the ability of the Department of Defense to respond to a request by a Federal agency or State government to assist in fighting wildfires on Federal lands or non-Federal lands under section 1535(a) of title 31, United States Code, or the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.), or both.

“(e) REPORTING REQUIREMENT.—Not later than 120 days after the date of the enactment of this Act [Nov. 24, 2003], the Director shall transmit to Congress a report—

“(1) containing the results of the review conducted under subsection (a) and the determination made under subsection (b); and

“(2) based on such determination, describing the modifications proposed to be made to existing authorities under subsection (c) or (d), including whether there is a need for legislative changes to further improve the procedures for using Department of Defense assets to fight wildfires.

“(f) DELAYED IMPLEMENTATION.—The modifications described in the report prepared under subsection (e) to be made to existing authorities under subsection (c) or (d) shall not take effect until the end of the 30-day period beginning on the date on which the report is transmitted to Congress.”

PLACEMENT OF ORDERS BY CHIEF ADMINISTRATIVE OFFICER OF THE HOUSE OF REPRESENTATIVES

Pub. L. 107-206, title I, § 904, Aug. 2, 2002, 116 Stat. 876, provided that: “Nothing in section 1535 of title 31, U.S.C. (commonly referred to as the ‘Economy Act’), or any other provision of such title may be construed to prevent or restrict the Chief Administrative Officer of the House of Representatives from placing orders under such section during any fiscal year in the same manner

and to the same extent as the head of any other major organizational unit with an agency may place orders under such section during a fiscal year."

ECONOMY ACT PURCHASES

Pub. L. 103-355, title I, § 1074, Oct. 13, 1994, 108 Stat. 3271, provided that the Federal Acquisition Regulation was to be revised to include regulations governing the exercise of authority under this section for Federal agencies to purchase goods and services under contracts entered into or administered by other agencies, and further provided for content of regulations, establishment of system to monitor procurements under regulations, and that section would cease to be effective one year after date on which final regulations took effect. Final regulations were published in the Federal Register Sept. 26, 1995, effective Oct. 1, 1995. See 60 F.R. 49720.

DEPARTMENT OF DEFENSE PURCHASES THROUGH OTHER AGENCIES

Pub. L. 105-261, div. A, title VIII, § 814, Oct. 17, 1998, 112 Stat. 2087, which directed Secretary of Defense, not later than 90 days after Oct. 17, 1998, to revise regulations issued pursuant to section 844 of the National Defense Authorization Act for Fiscal Year 1994 (Pub. L. 103-160, see below) to cover certain purchases greater than the micro-purchase threshold and to provide for a streamlined method of compliance for any such purchase that is not greater than the simplified acquisition threshold, ceased to be effective 1 year after date on which final regulations took effect. Final regulations were published in the Federal Register Mar. 25, 1999, effective on that date. See 64 F.R. 14399.

Pub. L. 103-160, div. A, title VIII, § 844, Nov. 30, 1993, 107 Stat. 1720, directed Secretary of Defense, not later than six months after Nov. 30, 1993, to prescribe regulations governing exercise by Department of Defense of authority under this section to purchase goods and services under contracts entered into or administered by another agency, and provided for content of regulations, establishment of system to monitor procurements under regulations, and that section would cease to be effective one year after date on which final regulations took effect. Final regulations were published in the Federal Register Sept. 26, 1995, effective Oct. 1, 1995. See 60 F.R. 49720.

ACQUISITION OF GOODS, SERVICES, OR SPACE BY SECRETARY OF SENATE AND SERGEANT AT ARMS AND DOORKEEPER OF SENATE

Pub. L. 101-163, title I, § 8, Nov. 21, 1989, 103 Stat. 1046, as amended by Pub. L. 112-10, div. B, title IX, § 1904, Apr. 15, 2011, 125 Stat. 170, provided that:

"(1) The Secretary of the Senate and the Sergeant at Arms and Doorkeeper of the Senate are authorized to acquire goods, services, or space from government agencies and units by agreement under the provisions of the Economy Act, 31 U.S.C. 1535, and to make advance payments in conjunction therewith, if required by the providing agency or establishment.

"(2) No advance payment may be made under paragraph (1) unless specifically provided for in the agreement. No agreement providing for advance payment may be entered into unless it contains a provision requiring the refund of any unobligated balance of the advance.

"(3) Agreement under paragraph (1) shall be in accordance with regulations prescribed by the Committee on Rules and Administration of the Senate."

§ 1536. Crediting payments from purchases between executive agencies

(a) An advance payment made on an order under section 1535 of this title is credited to a special working fund that the Secretary of the Treasury considers necessary to be established. Except as provided in this section, any other

payment is credited to the appropriation or fund against which charges were made to fill the order.

(b) An amount paid under section 1535 of this title may be expended in providing goods or services or for a purpose specified for the appropriation or fund credited. Where goods are provided from stocks on hand, the amount received in payment is credited so as to be available to replace the goods unless—

(1) another law authorizes the amount to be credited to some other appropriation or fund; or

(2) the head of the executive agency filling the order decides that replacement is not necessary, in which case, the amount received is deposited in the Treasury as miscellaneous receipts.

(c) This section does not affect other laws about working funds.

(Pub. L. 97-258, Section 13, 1982, 96 Stat. 934.)

HISTORICAL AND REVISION NOTES

Revised Section	Source (U.S. Code)	Source (Statutes at Large)
1536(a)	31:686(b)(1st, 2d sentences).	May 21, 1920, ch. 194, § 7(b), 41 Stat. 613; restated June 30, 1932, ch. 314, § 601, 47 Stat. 418.
1536(b)	31:686(b)(3d, last sentences).	
1536(c)	31:686(c)(related to 31:686).	June 30, 1932, ch. 314, § 602(c)(related to § 601), 47 Stat. 418.

In subsection (b), the words "providing goods or services" are substituted for "furnishing the materials, supplies, or equipment, or in performing the work or services" to eliminate unnecessary words.

§ 1537. Services between the United States Government and the District of Columbia government

(a) To prevent duplication and to promote efficiency and economy, an officer or employee of—

(1) the United States Government may provide services to the District of Columbia government; and

(2) the District of Columbia government may provide services to the United States Government.

(b)(1) Services under this section shall be provided under an agreement—

(A) negotiated by officers and employees of the 2 governments; and

(B) approved by the Director of the Office of Management and Budget and the Mayor of the District of Columbia.

(2) Each agreement shall provide that the cost of providing the services shall be borne in the way provided in subsection (c) of this section by the government to which the services are provided at rates or charges based on the actual cost of providing the services.

(3) To carry out an agreement made under this subsection, the agreement may provide for the delegation of duties and powers of officers and employees of—

(A) the District of Columbia government to officers and employees of the United States Government; and

(B) the United States Government to officers and employees of the District of Columbia government.

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inservice use unless the materials were developed specifically for an agency through a reimbursable contractual agreement. These testing and examination materials include, and are subject to the same controls as, those described in paragraphs (a)(1) and (a)(2) of this section.

(c) Each employee entrusted with test material has a positive duty to protect the confidentiality of that material and to assure release only as required to conduct an examination authorized by the Office.

(d) An applicant may review his or her own answers in a written test, but only in the presence of an employee of the Office or, for the convenience of the Office and requester, in the presence of an employee of another agency designated by OPM. The applicant may not review a test booklet in connection with this review.

(e) The Office will release information concerning the results of examinations only to the individual concerned, or to parties explicitly designated by the individual.

(f) The Office will not reveal the names of applicants for civil service positions or eligibles on civil service registers, certificates, employment lists, or other lists of eligibles, or their ratings or relative standings.

[50 FR 3312, Jan. 24, 1985, as amended at 60 FR 3057, Jan. 13, 1995]

Subpart C—Details of Employees**§ 300.301 Authority.**

(a) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the competitive service to a position in either the competitive or excepted service.

(b) In accordance with 5 U.S.C. 3341, an agency may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, or a Veterans Recruitment Appointment, to a position in the competitive service.

(c) Any other detail of an employee in the excepted service to a position in the competitive service may be made only with the prior approval of the Office of Personnel Management or under

a delegated agreement between the agency and OPM.

[60 FR 3057, Jan. 13, 1995, as amended at 70 FR 72066, Dec. 1, 2005]

Subpart D—Use of Commercial Recruiting Firms and Nonprofit Employment Services

SOURCE: 53 FR 51222, Dec. 21, 1988, unless otherwise noted.

§ 300.401 Definitions.

For purposes of this subpart:

(a) A *commercial recruiting firm* is a profit-making entity which, by contract, supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

(b) A *nonprofit employment service* is one legally established as nonprofit under State law. It may be operated, for example, by professional societies, organizations of college graduates, social agencies, or a State or local government. Federal agencies may not, however, use a nonprofit employment service sponsored by a partisan political organization. By contract, a nonprofit employment service supplies individual candidates for consideration for specific Federal vacancies, in accordance with the requirements set by the Federal agency.

§ 300.402 Coverage.

This part applies to filling positions in the competitive service; positions in the excepted service under Schedules A, B, and C; and positions in the Senior Executive Service.

[57 FR 10124, Mar. 24, 1992]

§ 300.403 When commercial recruiting firms and nonprofit employment services may be used.

An agency may use a commercial recruiting firm and/or a nonprofit employment service in recruiting for vacancies when:

(a) The agency head or designee determines that such use is likely to provide well-qualified candidates who would otherwise not be available or that well-qualified candidates are in short supply;

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the appointee a written notice, including the reasons for the reassignment, at least 60 days before the effective date of the reassignment. This notice requirement may be waived only when the appointee consents in writing.

(c) A career appointee may not be involuntarily reassigned within 120 days after the appointment of the head of an agency, or within 120 days after the appointment of the career appointee's most immediate supervisor who is a noncareer appointee and who has the authority to make an initial appraisal of the career appointee's performance under subpart C of part 430 of this chapter.

(1) In this paragraph—

(i) *Head of an agency* means the head of an executive or military department or the head of an independent establishment.

(ii) *Noncareer appointee* includes an SES noncareer or limited appointee, an appointee in a position filled by Schedule C, or an appointee in an Executive Schedule or equivalent position that is not required to be filled competitively.

(2) These restrictions do not apply to the involuntary reassignment of a career appointee under 5 U.S.C. 4314(b)(3) based on a final performance rating of "Unsatisfactory" that was issued before the appointment of a new agency head or a new noncareer supervisor as defined in paragraph (c)(1) of this section. If a moratorium is already underway at the time the final rating is issued, then that moratorium must be completed before the reassignment action can be effected.

(3) A voluntary reassignment during the 120-day period is permitted, but the appointee must agree in writing before the reassignment.

(4) For the purpose of calculating the 120-day period, any days, not to exceed a total of 60, during which the career appointee is serving on a detail or other temporary assignment apart from the appointee's regular position shall not be counted. Any days in excess of 60 days on one or more details or other temporary assignments shall be counted.

(5) The prohibition in this paragraph on involuntary reassignments may be applied by an agency, at its discretion, in the case of a detail of an individual

as the head of an agency or of a non-career appointee as a supervisor, or when a noncareer appointee in a deputy position is acting as the agency head or in a vacant supervisory position. If the individual later receives a permanent appointment to the position without a break in service, the 120-day moratorium initiated by the permanent appointment shall include any days spent in the position on an acting basis.

(d) A 15 or 60-day advance notice described in paragraph (b) of this section may be issued during the 120-day moratorium on the involuntary reassignment of a career appointee described in paragraph (c) of this section, but an involuntary reassignment may not be effected until the moratorium has ended.

[54 FR 9760, Mar. 8, 1989, as amended at 57 FR 10124, Mar. 24, 1992; 58 FR 58261, Nov. 1, 1993; 60 FR 6387, Feb. 2, 1995; 63 FR 34258, June 24, 1998]

§ 317.902 Transfers.

(a) *Definition.* In this section, *transfer* means a permanent assignment or appointment to another SES position in a different executive agency or military department.

(b) *Requirements.* Transfers are voluntary and cannot occur without the consent of the appointee and the gaining agency, except transfers connected with a transfer of functions to another agency.

§ 317.903 Details.

(a) *Definition.* In this section, *detail* means the temporary assignment of an SES member to another position (within or outside of the SES) or the temporary assignment of a non-SES member to an SES position, with the expectation that the employee will return to the official position of record upon expiration of the detail. For purposes of pay and benefits, the employee continues to encumber the position from which detailed. The provisions of this section cover details within or outside of the employing agency.

(b) *Time limits.* (1) Details within an executive agency or military department must be made in no more than 120-day increments.

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(2) An agency may not detail an SES employee to unclassified duties for more than 240 days.

(3) An agency must use competitive procedures when detailing a non-SES employee to an SES position for more than 240 days unless the employee is eligible for a noncompetitive career SES appointment.

(4) An agency must obtain OPM approval for a detail of more than 240 days if the detail is of:

(i) A non-SES employee to an SES position that supervises other SES positions; or

(ii) An SES employee to a position at the GS-15 or equivalent level or below.

(c) *SES career reserved positions*. Only a career SES appointee or a career-type non-SES appointee may be detailed to a career reserved position.

(d) *SES general positions*. Any SES appointee or non-SES appointee may be detailed to a general position.

[54 FR 9760, Mar. 8, 1989, as amended at 60 FR 6387, Feb. 2, 1995]

§ 317.904 Change in type of SES appointment.

An agency may not require a career SES appointee to accept a noncareer or limited SES appointment as a condition of appointment to another SES position. If a career appointee elects to accept a noncareer or limited appointment, the voluntary nature of the action must be documented in writing before the effective date of the new appointment. A copy of such documentation must be retained permanently in the appointee's Official Personnel Folder.

Subpart J—Corrective Action**§ 317.1001 OPM authority for corrective action.**

If OPM finds that an agency has taken an action contrary to law or regulation under this part, it may require the agency to take appropriate corrective action.

[54 FR 9761, Mar. 8, 1989]

5 CFR Ch. I (1-1-20 Edition)**PART 319—EMPLOYMENT IN SENIOR-LEVEL AND SCIENTIFIC AND PROFESSIONAL POSITIONS****Subpart A—General**

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319.401	Senior-level positions.
319.402	Scientific and professional positions.

AUTHORITY: 5 U.S.C. 1104, 3104, 3324, 3325, 5108, and 5376.

SOURCE: 60 FR 6387, Feb. 2, 1995, unless otherwise noted.

Subpart A—General**§ 319.101 Coverage.**

(a) This part covers senior-level (SL) and scientific and professional (ST) positions that are classified above GS-15 and are paid under 5 U.S.C. 5376. See 5 CFR part 534, subpart E, for pay provisions.

(b) Positions that meet the criteria for placement in the Senior Executive Service (SES) under 5 U.S.C. 3132(a) may not be placed in the SL or ST system and are not covered by this part.

§ 319.102 Senior-level positions.

(a) SL positions are positions classified above GS-15 pursuant to 5 U.S.C. 5108 that are not covered by other pay systems (e.g. the SES and ST systems).

(b) Positions in agencies that are excluded from 5 U.S.C. chapter 51 (Classification) under section 5102(a), or positions that meet one of the exclusions in section 5102(c), are excluded from the SL system.