

SECURING AND ENSURING ORDER ON THE SOUTHWEST BORDER

HEARING

BEFORE THE

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

SECOND SESSION

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SECURING AND ENSURING ORDER ON THE SOUTHWEST BORDER

THURSDAY, MAY 5, 2022

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

The Committee met, pursuant to notice, at 10:15 a.m., via Webex and in room SD-106, Dirksen Senate Office Building, Hon. Gary Peters, Chairman of the Committee, presiding.

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

OPENING STATEMENT OF CHAIRMAN PETERS¹

Chairman PETERS. The Committee will come to order.

I would certainly like to thank each of our witnesses for joining us here today. Thank you for your dedicated service to the American people, and for your work to address humanitarian and security challenges at our Southern Border over the past two years. Over the next few months, we know that these challenges will persist, especially as the Administration moves forward with its plans to end Title 42.

While ongoing litigation and shifting Coronavirus Disease 2019 (COVID-19) circumstances may impact the exact timing of when the public health order is lifted, the Administration must have a detailed, well-thought-out, and well-resourced plan to secure our borders and address expected changes in migration once this policy change goes into effect.

Yesterday, this Committee had an opportunity to hear directly from Secretary Mayorkas on this, and other critical issues. Today, we will have another opportunity to hear from senior Administration officials and go into further detail about how the Federal Government will secure our borders and manage the proposed termination of this policy.

Title 42 is a temporary public health order, and it is not a long-term solution to our border security needs. Today's hearing is an important opportunity for the Administration to detail both their short-term plans for addressing this expected policy change as well as the long-term solutions that Congress and the Administration must work on together to ensure that we have secure borders.

In fact, since Title 42 was initiated to prevent the spread of COVID-19 in March 2020, it has severely restricted the use of

¹ The prepared statement of Senator Peters appears in the Appendix on page 59.

proven enforcement mechanisms that prevent illegal border crossings, and in turn has contributed to an increase in repeat illegal crossings. Soon after this policy was implemented, the number of single adults trying to illegally cross the Southern Border doubled, and now, repeated attempts by individuals to unlawfully enter the United States has reached a nearly 15-year high, and that certainly is unsustainable and places significant burdens on our border security professionals.

I look forward to discussing the Administration's plans to reinstate proven border security enforcement methods, such as escalating consequences for repeat offenders, that have been shown to significantly reduce illegal crossings between ports of entry (POE), and ensure Border Patrol agents can stay focused on their border security mission.

Reinstating these kinds of consequences will hold individuals who break the law accountable, while ensuring that children, families, and other migrants fleeing persecution are able to present themselves at ports of entry for a timely review of their asylum claims.

In addition to addressing the humanitarian situation at the Southern Border, the Administration must ensure they have the personnel and resources needed to ensure the safe, secure, and efficient facilitation of lawful trade and travel at our ports of entry, and combat the flow of deadly illicit drugs like fentanyl that continue to wreak havoc on communities in Michigan and across the Nation.

I have long pressed for robust resources to ensure we have enough personnel, as well as technology like nonintrusive screening equipment, that improves Customs and Border Protection (CBP) officers' ability to examine vehicles and large amounts of cargo efficiently, and stop illegal drugs from being smuggled across our borders. I look forward to discussing what more the Administration needs to ensure that we can prevent fentanyl and other illegal substances from harming our communities.

Finally, this hearing is also an opportunity to discuss the policies that Congress and the Administration must work together on to address the long-term challenges at our borders, and especially the southern border.

Over the past decade, we have seen a surge in the number of migrants arriving at the Southern Border nearly every year, and under both Republican and Democratic administrations. It is clear that without bipartisan action to pass comprehensive immigration reform and reforms to our asylum system, these challenges will persist for years and for decades to come.

I look forward to hearing from today's panel about what long-term solutions the Administration is proposing to address the root causes of migration, increase regional cooperation with our partners in South and Central America, and ensure migrants receive humane treatment while streamlining the asylum process.

Challenges at our Southern Border are not new, but they are significant. Today's discussion will provide this Committee with the opportunity to ensure our nation has sufficient tools, resources, and personnel to take these issues head-on.

Ranking Member Portman, you are recognized for your opening comments.

OPENING STATEMENT OF SENATOR PORTMAN¹

Senator PORTMAN. Great. Thank you, Mr. Chairman. I appreciate your holding this hearing on the Southwest Border, which clearly is in a crisis situation now, and I think everybody agrees with that. It is hard not to when you look at the facts. We discussed this issue at length yesterday with Secretary Mayorkas, and today we are going to discuss it further with our witnesses who I appreciate coming from the Department of Homeland Security (DHS), Department of State (DOS), and the Department of Health and Human Services (HHS). I appreciate your service to each of you, and thank you for, even though you are at a distance, I can see you and we look forward to having you.

I will say that I requested for the Committee today to hear from the Commissioner of Customs and Border Protection, as well as the Chief of Border Patrol. We have not heard from these individuals in the 117th Congress, and I think that is wrong. I think we have an oversight responsibility. With all due respect to our witnesses here, we like having you, but we hope that your bosses would have come, at least some of your bosses, to be able to ensure that we are getting the Administration's view on what is happening on the border and how it's going to be fixed.

Last year, about a million people came to the border unlawfully and were allowed into the United States. Let me repeat that. About a million people came to the border unlawfully and were admitted into the United States. As you know, we are talking a lot about whether these numbers are 10-year high, 15-year high, or whatever they are. This year so far, 2022, it is unprecedented. It is not a 15-year high. It is an historic high. We will see what happens this summer because typically we would expect more people to come. Also because of Title 42 possibly ending, we are expecting a lot more people to come. That is one of the big issues we talked about yesterday.

I mentioned that about a million people come to the border unlawfully are allowed into the United States. Most of those are asylees or applicants for asylum, about 85 percent of them from Mexico or Central America—we do not have good numbers for the other countries—are eventually turned down for that asylum, but only a very small numbers, we heard yesterday, are ever deported. So that is that part.

But with regard to Title 42, another roughly one million people were turned away at the border under Title 42, meaning they were processed, about 40 hours of processing, and then they were sent back to their home country if they came from other than Mexico or sent back to Mexico. That is two million when you think about it, unlawfully coming to the border, a million coming in, being released, a million being turned away. If Title 42 no longer applies, math will tell you it looks like that number may double in terms of those admitted into the country, even though they came to the border without proper documentation.

¹The prepared statement of Senator Portman appears in the Appendix on page 61.

Some say it will be more because traffickers all over the world are already telling people when Title 42 is gone, just come on in because it will be relatively easy as long as you say you have credible fear, you can then come in under our asylum system. That is our challenge we have got. On top of that, of course, we allow in about 750,000 people a year under our legal immigration system, people who wait in line, patiently go through the right channels.

I strongly support legal immigration. In fact, I believe we could actually increase legal immigration to be able to address our workforce challenges in this country and the need for us to have people who come to the United States legally with skills. But that makes us, in America, at least for a legal immigration system, probably the most generous country in the world. There are 750,000 people who come in through the legal system.

On top of that, we have people who evade the Border Patrol at the border. We do not know how many that is, and we are going to talk today to the Border Patrol about this number. But what Rodney Scott says, who is the former Chief of the Border Patrol, who I know is well-known by many of us, is that he thinks that is about 400,000 people a year who evade the Border Patrol, evade being apprehended, and are added to the one million people who show up without papers and are allowed into the country, typically under asylum, on top of that, around 400,000 people a year.

We will get some better numbers on that. But that gives us some context of why there is such a deep concern, when we are down there on the border and I think every one of us have been there, on this panel, probably many times, and our staffs have been down there many times, including very recently. This is why the Border Patrol tells us that they believe that they will lose, as they say, operational control—we can talk about what that means today—over the border unless something is done.

This is a huge issue. On top of it, of course, we have an unprecedented amount of illegal drugs coming into the country, particularly this synthetic opioid called fentanyl, and it is streaming in. We will talk about that today, why that is coming in.

The Mexican transnational crime organizations (TCOs) are now specializing in this. It used to come from China, as you know, mostly through our U.S. mail system. Now it is mostly coming in through Mexico, being produced in Mexico, often with precursors from China, and often pressed into pills. Our citizens that we represent are dying of overdoses, partly because they do not know what these pills are. They may say Xanax, they may say Percocet, something else, but in fact, they are fentanyl. This is leading to a record number, again, not a 15-year high, but a record number, of overdose deaths in my home State of Ohio and around the country. This is another border crisis that we have to address, and we will talk more about how we might do that.

This again is a situation where policymakers make a huge difference. President Obama deported or removed over 315,000 unlawful migrants in 2014 alone. In context, the Obama Administration removed 65 percent of the migrants that entered unlawfully that year. In contrast, President Biden has deported or removed about 56,000, we heard yesterday, about five percent, so 65 percent versus five percent. Of course, we have many more people who are

in the queue right now. The backlog is about 1.6 million people for asylum, as an example.

Unfortunately, we have a situation where not only are we allowing more people in, but we are not having people leave once they are deemed not to be qualified to be asylees or otherwise are here illegally. That is just a reality and people know that and the traffickers know that. That is why they have such success in getting people to come to our border, charging them outrageous fees, often treating them very poorly, as we know.

The Administration's response to all this is to say we will have a plan in case the surge gets worse. In fact, the plan states that the first pillar of border security is, "We have doubled our ability to transport noncitizens on a daily basis with flexibility to increase further." So much of the plan is about making it easier to get people into the interior, that that is the response. The response is not to put deterrence in place to deter people coming illegally. Rather it is to facilitate the flow to make it easier, including processing people as an example, on buses heading toward the interior of the country rather than doing it at the border because the facilities would be overwhelmed.

Again, I appreciate, Mr. Chairman, you allowing me to speak a little bit today about this to sort of set the context. I think it is important to understand what the numbers are, and I really look forward to the opportunity of speaking with all of you today and talking about solutions, not just what the crisis is. I think we all recognize that. I hope so. But what do we do going forward?

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Ranking Member Portman.

It is the practice to the Homeland Security and Governmental Affairs Committee (HSGAC) to swear in witnesses, so if each of our witnesses would please stand and raise your right hand.

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

Ms. CONTRERAS. I do.

Ms. TIERNEY. I do.

Mr. HUFFMAN. I do.

Mr. NUÑEZ-NETO. I do.

Ms. MENDRALA. I do.

Chairman PETERS. Thank you. You may be seated.

Our first witness is January Contreras. Ms. Contreras currently serves as the Assistant Secretary for the Department of Health and Human Services Administration of Children and Families (ACF), which is responsible for the care of unaccompanied minors. Assistant Secretary Contreras, a native of Arizona, previously served in the Department of Homeland Security as an Ombudsman for citizenship and immigration services and most recently served as the Chief Executive Officer (CEO) and managing attorney for Arizona Legal Women and Youth Services. Welcome, Ms. Contreras, to the Committee. You may proceed with your opening remarks.

TESTIMONY OF THE HONORABLE JANUARY CONTRERAS,¹ ASSISTANT SECRETARY, ADMINISTRATION FOR CHILDREN AND FAMILIES, U.S. DEPARTMENT OF HEALTH AND HUMAN SERVICES

Ms. CONTRERAS. Chair Peters, Ranking Member Portman, and Members of the Committee, it is my privilege to appear on behalf of the Department of Health and Human Services. I am January Contreras, the Assistant Secretary at the Administration for Children and Families.

At ACF we are responsible for the care of unaccompanied children and for uniting them with family or a vetted sponsor. We carry out this duty through our Office of Refugee Resettlement (ORR), which administers our Unaccompanied Children Program.

I was sworn in on March 31st, and while I have only been on the job for one month, I am firmly committed to effectively managing the Unaccompanied Children Program and prioritizing the safety of each child who comes into our care.

During my first week on the job I visited Fort Bliss. I wanted to see the children and our work up close. It was important to me to also meet with frontline staff.

What I have witnessed in my role is the tireless work of the dedicated and skilled team at ORR and the many partners who have contributed to our mission. As I meet with you today I believe we are prepared to continue safely serving all unaccompanied children referred to us.

We currently have 8,392 children in our care, and we have an overall capacity of 15,500 across our network. ORR is able to promptly accept referrals and limit the amount of time children spend in CBP facilities to an average of 23 hours.

Unaccompanied children have generally not been subject to Title 42 since November 2020. However, we are planning and preparing for any potential increase in referrals that might result from the termination of Title 42 for adults and family units. We have developed contingency plans that allow us to build capacity as needed and deploy additional case management supports should referrals significantly increase.

Today we have cooperative agreements for 13,613 beds in our standard network for children. This is the highest number of standard beds in the history of the Unaccompanied Children Program. We have and continue to build greater capacity for more standard beds for kids, including adding to existing grants and funding new grants, authorizing hazard and incentive pay to retain and recruit staff, and working closely with the Center for Diseases Control and Prevention (CDC) on COVID mitigation measures to keep children and staff safe.

In addition to our standard beds, ORR has also utilized influx care facilities and emergency intake sites (EIS). Out of the 14 emergency intake sites that were utilized last year only two remain active: Pecos EIS and the ORR EIS at Fort Bliss. Although emergency intake sites are temporary, they do allow us to quickly add beds for children when we need them.

¹The prepared statement of Ms. Contreras appears in the Appendix on page 64.

We also continuously work with our contractors to ensure that emergency intake sites are safe and appropriate placements for children, and that they provide key services, including robust case management and mental health supports. We are in the process of transitioning both of the remaining emergency intake sites to influx care facilities, which are required to provide the same services and supports as our standard shelters.

Finally, we are conducting regular outreach to explore potential use of public and private properties that could be utilized as temporary influx care facilities, as needed, to accommodate increased referrals.

As a child welfare agency we know that the best place for children is with their family. Over the past year, ORR has implemented policy and process changes to expedite the safe placement of children and with vetted sponsors. Examples of this work are in my written testimony.

ORR continues to focus on strengthening our work to carry out our duty to unaccompanied children, and to ensure that ORR can adapt its capacity for their care. The Unaccompanied Children Contingency Fund included in the President's fiscal year (FY) 2023 budget would help address this by providing a reliable source of funding when referral require ORR to add new capacity.

While I am new to this role, fulfilling our legal and moral obligation to care for unaccompanied children will be my highest priority. I know that many of you have been key partners in supporting ORR's mission, and I look forward to working with all of you.

I would be happy to answer any questions.

Chairman PETERS. Thank you, Ms. Contreras.

Our next witness is Blas Nuñez-Neto. Mr. Nuñez-Neto serves as the Acting Assistant Secretary for Border and Immigration Policy at the Department of Homeland Security's Office of Strategy, Policy, and Plans. Mr. Nuñez-Neto, a former staffer on this Committee, previously served as a senior advisor to the U.S. Customs and Border Protection Commissioner and was most recently a senior policy researcher at the RAND Corporation.

Welcome to the Committee. You may begin with your statement.

TESTIMONY OF BLAS NUÑEZ-NETO,¹ ACTING ASSISTANT SECRETARY FOR BORDER AND IMMIGRATION POLICY, OFFICE OF STRATEGY, POLICY, AND PLANS, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. NUÑEZ-NETO. Thank you very much, Chairman Peters, Ranking Member Portman, distinguished Members of the Committee. I want to thank you for the opportunity to come back home to HSGAC to discuss these critical issues.

Migratory surges along the Southwest Border have, unfortunately, become a regular occurrence over the past decade under Presidents of both parties. Over this period we have seen, as well, fundamental changes to the nature, scope, and demographics of irregular migration, even as our counters along the border have increased to unprecedented levels this year.

¹ The prepared statement of Mr. Nuñez-Neto appears in the Appendix on page 73.

There are currently more people displaced from their homes in the world than at any time since World War II, and in our hemisphere alone there are significant diasporas of Venezuelans and Haitians, and a growing number of Nicaraguans being displaced to neighboring countries as well.

There is little doubt that a number of factors, including endemic violence, dictatorships, food insecurity, the COVID-19 pandemic, and dire economic conditions are pushing people to leave their countries, and this Administration is committed to addressing the root causes of this migration.

At the same time, though, we must acknowledge that our immigration system, and particularly our asylum system, are outdated and were not built to contend with the populations and volumes that we are now seeing at our border. For decades, the vast majority of individuals encountered at the Southwest Border were single adults from Mexico, Guatemala, El Salvador, and Honduras.

Over the past two years, though, we have seen an unprecedented increase in migration from countries we have not traditionally encountered along our Southwest Border, which accounted for more than half of our unique encounters thus far this year when recidivism is factored in. In fact, roughly 25 percent, a full quarter of our encounters, are from Venezuela, Nicaragua, and Cuba this year, countries that we generally cannot return people to in large numbers due to the dictatorships that are in power.

Over the past decade, as the Committee knows, we have also seen a sharp increase in children and families encountered at the border, more vulnerable populations that require additional care.

These changes dramatically affect our ability to efficiently and humanely apprehend, process, and remove migrants encountered at the border. Our system was simply not designed, historically, to handle these flows.

Despite these challenges, DHS has taken concrete steps since last fall to prepare for the eventual lifting of the CDC's Title 42 order. These preparations will help us to address the challenges at our border more effectively while protecting the safety and security of our communities.

The plan that was developed after many months of work has six principal pillars, which I address in-depth in my written testimony.

The first is surging resources to support our border operations, and this includes deploying more than 1,000 additional law enforcement personnel to the border, constructing additional soft-sided facilities, and implementing robust public health protocols at the border, including our new vaccination program for migrants processed under Title 8.

The second pillar is increasing the processing efficiency within our border management and immigration systems. This includes really innovative work to create digital A-files and electronic notices to appear (NTA), which will realize substantial savings and time at the border as well as enroute processing in our Enhanced Central Processing Center (ECPC) model.

The third pillar is our ongoing work to administer consequences for unlawful entry. We will, and are committed to, firmly but fairly enforcing our immigration laws, and this includes applying an expedited removal to all non-citizens who are, in fact, removable. It

includes focusing prosecutions on non-citizens whose conduct warrants it, including those who are seeking to evade capture at the border, and it includes our efforts to speed up the asylum system through executive action for those who are not detained through the asylum officer rule and through the dedicated docket.

The fourth pillar is our ongoing work to bolster non-governmental organizations (NGO) capacity and support border communities by working closely with and providing support for NGO's and community stakeholders, efforts that Congress has supported with funding, and for which we are deeply grateful.

The fifth pillar involves our efforts to target and disrupt the transnational criminal organizations and the human smugglers who spread misinformation and put migrants in harm's way for profit.

The six pillar involves our efforts to work regionally and collaborate with our partners in Mexico as well as throughout the hemisphere to enhance legal avenues for protection and opportunity throughout the hemisphere but also to ensure that partner governments are, in fact, enforcing their borders and not just letting people pass through on their way north.

As we prepare for the end of Title 42 on May 23rd, DHS is working night and day to address the irregular migration challenges at our Southwest Border. However, we recognize that executive action will never be an adequate stand-in for congressional action in this space, and we urge Congress to work with us on a bipartisan basis to enact legislation that can help this country modernize its immigration system, streamline asylum processing, better secure its border, and provide hope to migrants in the region that they will have legal opportunities to come to the United States.

Thank you, and I look forward to your questions.

Chairman PETERS. Thank you, Mr. Nuñez-Neto.

Our next witness is MaryAnn Tierney. Ms. Tierney is currently serving as the Senior Coordinating Official for the Department of Homeland Security's Southwest Border Coordination Center (SBCC), leading efforts to establish operational plans and secure resources.

Ms. Tierney comes from the Federal Emergency Management Agency (FEMA), where she served as the Regional Administrator for FEMA Region III since 2010.

Ms. Tierney, welcome to the Committee. You may proceed with your opening remarks.

TESTIMONY OF MARYANN E. TIERNEY,¹ SENIOR COORDINATING OFFICIAL, SOUTHWEST BORDER COORDINATION CENTER, U.S. DEPARTMENT OF HOMELAND SECURITY

Ms. TIERNEY. Thank you. Good morning. Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee, thank you for the opportunity to testify today. My full written testimony has been submitted into the record.

I would like to start by recognizing the thousands of men and women of the Department of Homeland Security who work tirelessly around the clock, often at significant peril and personal sac-

¹ The prepared statement of Ms. Tierney appears in the Appendix on page 85.

rifice, to secure our borders, enforce our laws, and ensure the fair and humane treatment of all, consistent with our values as a department and as a Nation. I thank these and the many thousands of other dedicated public servants of DHS who serve and protect our country and the American people, no matter the challenge.

I appear before you today having just completed my assignment as the Senior Coordinating Official with the Southwest Border Coordination Center on April 29th.

On April 1st, as we all know, the Center for Disease Control and Prevention announced that as of May 23, 2022, Title 42 public health order will be terminated. Title 42 is not an immigration authority but rather a public health authority used by the CDC to protect against the spread of communicable disease. I would like to discuss and share some of the steps the SBCC has taken to prepare for the termination of Title 42.

First, the SBCC has implemented measures to secure additional resources via agreements with other Federal agencies and contracts across three lines of effort—transportation, facilities, and personnel. This includes expanding holding, ground, and airport capacity, increasing utilization of law enforcement officers from across the Federal Government, adding contract security guards, and processing support staff, and expanding medical services. These efforts allow CBP officers and agents to perform their vital national security mission, as opposed to processing and other administrative work.

Second, the SBCC and Customs and Border Protection field leadership have established recurring and operationally focused engagements with State, local, tribal, and law enforcement officials to share information, understand challenges, and coordinate actions on the ground. Additionally, in April, FEMA awarded \$150 million in humanitarian funding to the National Board for the Emergency Food and Shelter Program (EFSP). The National Board will award these funds to eligible State and local governments and nonprofit organizations that have aided or will aid individuals and families encountered by DHS at the Southern Border. These funds can be used for food, lodging, and transportation costs. Organizations will have the opportunity to request reimbursement on a quarterly basis as well as to request advanced funding. Organizations can apply for reimbursement of expenses back to January 1, 2022.

Third, DHS launched the Southwest Border Technology Integration Program to digitize and automate non-citizen processing. Today over 70 percent of Title 8 cases are reviewed and signed digitally by Customs and Border Protection, which saves up to 14 minutes per case. We project this has saved over 20,000 hours of agent time already.

Additional efficiencies are being implemented, specifically targeted at expedited removal so non-citizens encountered at the border can be quickly removed. Everything possible is being done to enable officers and agents to spend less time processing arrests and more time in the field.

Fourth, the SBCC is rapidly developing and testing innovative models that will co-locate Customs and Border Protection, U.S. Immigration and Customs Enforcement (ICE), HHS, and non-governmental organizations at enhanced centralized processing centers to

eliminate inefficiencies and process non-citizens. This model will allow CBP to swiftly triage non-citizens and encounters based on risk, ensuring that higher-risk individuals are held in secured, hardened facilities until they are placed in detention, pending expedited removal.

Fifth, the SBCC is working to alleviate overcrowding at CBP facilities by employing mobile, en route processing. Border Patrol is outfitting busses with necessary technology to support processing non-citizens while in transit. CBP can move non-citizens out of their facilities faster while retaining the integrity of biometric and biographic screening processes and ensuring non-citizens apprehended at the border are placed expeditiously into removal proceedings, ultimately, the goal of these steps and other efforts focused on longer-term strategies to create lasting, scalable, repeatable structures to respond to irregular migration events.

Thank you for the opportunity to testify. I look forward to your questions.

Chairman PETERS. Thank you, Ms. Tierney.

Our next witness is Chief Carry Huffman. Chief Huffman currently serves as the Acting Chief Operating Officer (COO) for the U.S. Customs and Border Protection, ensuring that CBP is equipped with the personnel and resources necessary to carry out their frontline duties at and between ports of entry.

Chief Huffman, who has served in the U.S. Border Patrol for over three decades previously served as CBP's Acting Deputy Commissioner and Executive Assistant Commissioner of Enterprise Services.

Chief Huffman, welcome to our Committee. You may proceed with your opening remarks.

TESTIMONY OF BENJAMINE "CARRY" HUFFMAN,¹ ACTING CHIEF OPERATING OFFICER, U.S. CUSTOMS AND BORDER PROTECTION, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. HUFFMAN. Thank you. Good morning, Chairman Peters, Ranking Member Portman, and Members of the Committee. It is an honor to testify on behalf of U.S. Customs and Border Protection and discuss CBP's efforts to secure our borders and promote safe and efficient flow of lawful trade and travel.

I currently serve as CBP's Acting Chief Operating Officer. However, my career in border security has spanned 37 years in the entire Western Hemisphere. While the border has always been a dynamic environment, there is one constant I am reminded of every day. The men and women of CBP have a complex, important, and frequently dangerous mission, one we are called to perform within the spirit of vigilance, service, integrity, and honor.

It is in this spirit that CBP, while conducting our border security mission, remains the most humanitarian law enforcement agency in the country. Our border protection mission and ethos necessitates that we provide lifesaving rescues, shelter, medical treatment, nourishment, and clothing to those we encounter. We regularly conduct rescue missions, deliver babies, feed children, and work with childcare providers to ensure proper medical care.

¹ The prepared statement of Mr. Huffman appears in the Appendix on page 90.

Notably, through extensive DHS and CBP efforts, we have created an unprecedented medical support and health care system inside a law enforcement agency. That is an unprecedented feat.

Simultaneously, we remain vigilant and responsive to other border challenges and responsibility. Last year, CBP conducted more than 13,000 lifesaving rescues in often extremely dangerous conditions and terrain. We continue to interdict hundreds of thousands of pounds of illicit narcotics, prevent dangerous people and goods from crossing our borders, enforce our nation's laws, and ensure the efficient flow of lawful trade and travel that is vital to our economy.

These critical functions will continue when and if the CDC, what we generally refer to as Title 42, comes to an end. CBP's operational response will be, as it is now, grounded in three key principles: first, enforce the law and implement administrative policies; second, ensure individuals in our custody are provided care and afforded rights; and third, work collaboratively with our interagency and private sector partners.

First, CBS is a law enforcement organization. We are committed to enforcing our nation's laws and implementing the policies of the Executive Branch. To that end, CBP will continue to utilize our immigration authorities under Title 8 as we have done throughout our agency's history. These authorities include a range of enforcement options to hold individuals accountable for entering the United States illegally, including placing individuals into appropriate removal proceedings. They also allow non-citizens appropriate access to make asylum claims and provide for urgent port of entry humanitarian parole on a case-by-case basis.

Which brings me to our second principle, the commitment to provide care and affording right to individuals in our temporary custody. From the moment of initial contact with an individual, CBP procedures are designed to identify the correct processing pathway for that person, including appropriate options for those in vulnerable populations. Thanks to the support provided by Congress with fiscal year 2022 funding, CBP is expanding temporary holding capacity, increasing the transportation of migrants away from overcrowded sectors for processing, and providing additional medical resources to protect the health and safety of migrants, and by extension, our personnel and our communities.

Third, it is important to recognize the interagency efforts in this area. CBP is one of many organizations involved in addressing border security mission. Working together with our partners, CBP is making numerous preparations to ensure we can scale our operations as necessary to respond to the areas of greatest need.

While I am here today representing one agency, I cannot stress enough the importance of Congress' continued support to the missions of not only CBP but also ICE, U.S. Citizenship and Immigration Services (USCIS), FEMA, HHS, the Department of State, the Department of Justice, and others. We are all part of a great number of efforts collaborating across the immigration spectrum. As evidenced by all the witnesses present, collaboration is key, and support from Congress is vital.

The border has always been a dynamic and complex environment. For CBP, we will continue to do our part in enforcing the

law, ensuring individuals are properly cared for, and being a trusted partner to all other entities working on this effort.

Thank you for the opportunity to appear here today, and I look forward to your questions.

Chairman PETERS. Thank you, Chief Huffman.

Our final witness is Emily Mendrala. Ms. Mendrala serves as the Deputy Assistant Secretary in the Department of State's Bureau of Western Hemisphere Affairs, covering Cuba and regional migration.

Ms. Mendrala previously served as Director of Legislative Affairs for the National Security Council (NSC), and most recently served as Executive Director for the Center for Democracy in the Americas.

Ms. Mendrala, welcome to the Committee. You may proceed with your opening remarks.

TESTIMONY OF EMILY MENDRALA,¹ DEPUTY ASSISTANT SECRETARY, BUREAU OF WESTERN HEMISPHERE AFFAIRS, U.S. DEPARTMENT OF STATE

Ms. MENDRALA. Thank you, Chairman Peters, Ranking Member Portman, distinguished Members of the Committee. I welcome the opportunity to testify regarding the Biden-Harris administration's priorities on regional migration.

This is a pivotal moment for our hemisphere as we broaden the shared responsibility on human migration management across the region. The Department of State is actively working with governments, the private sector, civil society, and international organization partners throughout the region to increase cooperation and address our shared responsibility to humanely manage migration and to provide protection for those fleeing persecution or torture.

Regional leaders recently concluded a Hemispheric Ministerial meeting on Migration and Protection, co-hosted by Secretary Blinken in Panama, April 19th and 20th. Secretary Blinken urged collaboration on stabilization of migrant and refugee-receiving communities. The ministerial shined a light on the need to work together with international organizations and multilateral development banks to stabilize those host communities.

President Biden will host the Ninth Summit of the Americas, June 8–10, in Los Angeles. As the only meeting of leaders from across the Americas, the summit serves as the most important forum to address our region's shared challenges and opportunities. The Ninth Summit marks the first time the United States will host the event since the inaugural gathering in Miami in 1994.

The theme of the Ninth Summit, "Building a Sustainable, Resilient, and Equitable Future," represented a shared vision developed with the region's governments, civil society, and private sector. The Summit will produce concrete outcomes, including and responding to the pandemic, building strong and inclusive democracies, addressing irregular migration, and increasing equity and inclusion. The President announced our intent to adopt the Los Angeles Declaration on Migration and Protection as an expression of leaders'

¹ The prepared statement of Ms. Mendrala appears in the Appendix on page 97.

commitments to addressing irregular migration and forced displacement.

The Department of State has worked diligently to implement the Administration's comprehensive approach to migration, which includes, in addition to elements managed by my colleagues on the dais, the U.S. Strategy for Addressing Root Causes of Migration in Central America and the Collaboration Migration Management Strategy. The Biden-Harris administration's comprehensive approach builds on both significant U.S. Government resources and substantial private sector investments to support the long-term development of Central America.

To advance the Root Causes strategy, the Vice President brought together private sector leaders through the U.S. government's Call to Action initiative, that has generated more than \$1.2 billion in commitments to create new jobs and opportunities for people in the region.

As part of the Vice President's Call to Action, Microsoft is connecting 4 million people to broadband access across the region, with nearly 1 million already connected to date. Nespresso will invest \$150 million to double the number of farmers it works with in the region, and Mastercard is bringing 5 million people into the formal financial economy while digitizing 1 million micro and small businesses.

Parkdale Mills is investing \$150 million to support a new yarn-spinning facility in Honduras and an existing facility in Virginia, supporting 500 jobs in each location, demonstrating the effect that these efforts can bring benefits to the U.S. economy as well.

Through these long-term efforts, the Biden-Harris administration continues to make significant progress toward creating hope for people in El Salvador, Guatemala, and Honduras that a better life can be found at home. Highlights to date include the U.S. government's \$300 million Centroamerica Local initiative, empowering local organizations to address the drivers of irregular migration in their own communities, and also delivery of more than 15 million COVID-19 vaccines to northern Central America.

We also continue helping to hold migrant smugglers accountable and conduct programs to support victims of gender-based violence, survivors of human trafficking, and unaccompanied migrant children. New U.S. Government programs and scholarships improve access to education for nearly 18,000 returning or potential migrants and at-risk youth.

The Administration is doing its due diligence to prepare for potential challenges at the border. We have alerted countries to the upcoming changes in processing and requested flexibility and cooperation with regional partners as regional migration flows change, including repatriating individuals without a legal basis to remain in the United States.

The Department actively seeks to identify and respond to disinformation about migration. We work with interagency partners to track and combat disinformation, especially that circulated by smugglers about U.S. migration and border policy.

I will conclude again by underscoring the growing sense of shared responsibility across the region to work together with partners on a new approach to regional migration.

Chairman Peters, Ranking Member Portman, and Members of the Committee, thanks for the opportunity to testify, and I look forward to your questions.

Chairman PETERS. Thank you, Ms. Mendrala, and thank you to each of our witnesses for your opening comments.

I am going to start the questioning with discussion of Title 42, which I am sure will be discussed quite extensively during this Committee, and we will have some other issues.

We know that Title 42 has severely limited border security enforcement strategies like the Consequence Delivery System (CDS). The Consequence Delivery System started back in 2008, and was designed to impose escalating consequences on individuals who are crossing the border illegally. Quite frankly, it worked, and I have this chart¹ to show how Consequence Delivery System worked.

As you can see here, from 2008, when it went into effect, these are folks that are coming cross the border on a repeated basis, but it significantly decreased the number of folks coming across the border until, you can see there, in 2019, where we have a huge increase. That is when the Trump administration suspended the Consequence Delivery System to implement Title 42. So you can see once that happens, with Title 42, a major spike, once again, going up, of folks that are coming repeatedly over the border.

Under Title 42, migrants are pushed back to Mexico, with no consequences, and they have no reason not to keep trying, and they keep trying. They come back many times, as you can see that increase, and then it levels off. That flattening is with the Biden administration. It then flattened at that point.

But you see this huge increase, going back to the days before Consequence was put in place. Now we have incredible strain because of folks coming over constantly. In fact, since the start of fiscal year 2021, the Border Patrol has encountered more than 900,000 migrants that they have seen at least once before, but they have probably seen them many times, as they keep trying, over and over again. There are no consequences. That has been eliminated with Title 42. So they keep trying until they get through.

When Title 42 is terminated it is my sense that consequences need to be in place, like expedited removal and prosecution, to decrease these illegal crossings and these repeat offenders, which are skewing the numbers we see over here. Just because people are coming over so many times the numbers are up, and that is a consequence. Because the Consequence system is gone, with Title 42 you start seeing a big increase there because of repeat offenders.

My question for Mr. Nuñez-Neto, does the Department plan to reinstate consequences to reduce the rate of repeat crossers who have taken advantage of Title 42 public health order?

Mr. NUÑEZ-NETO. Thank you for that question, Chairman, and you are exactly right that under Title 42 any real consequences leads to roughly half of individuals being re-encountered subsequently. We are committed to imposing consequences as part of the Administration's plan that, again, is in my written testimony. Part of those consequences is really ramping up our use of expedited removal for those who are removable and also doing a focused pros-

¹ The chart referenced by Senator Peters appears in the Appendix on page 101.

ecution campaign on individuals whose conduct warrants it, and that includes individuals who are recidivists, who cross multiple times. It also includes individuals who may seek to evade capture.

I would note one thing, Chairman, which is we have actually already begun implementing consequences for recidivists. Starting about two months ago we began an effort to identify Title 42 recidivists and start imposing expedited removal on them to levy a consequence. We plan to continue to increase that in the coming weeks.

Chairman PETERS. If I can paraphrase, without these consequences we are putting a real strain on our folks at the border because we have people just coming over, sent back to Mexico, they come back later that day, they come back the next week, and for two weeks constantly. Huge strain. Once consequences are in place we can reinstate that. Title 42 is allowing people to keep coming over and over again, constantly inflating these numbers. Once consequence is put into place you would expect to start seeing a decrease again, like we saw in the past, which seemed to be pretty successful prior to Title 42?

Mr. NUÑEZ-NETO. I think that is absolutely correct, sir.

Chairman PETERS. Great. Title 42 has also eliminated the safest and most orderly pathway for asylum seekers to apply for protections. When asylum seekers are turned away at the ports of entry, which they are with the situation right now, then they are forced to cross between the ports, instead of coming in the ports of entry. This clearly endangers themselves but is also strains our border security folks because we are pushing folks away from the ports of entry to try other ways to get in.

My question for you, Chief Huffman, could you please describe the specific steps that the Administration is undertaking to increase our capacity at ports of entry so we can safely process asylum seekers, ensure efficient processing of trade and travel, and then allow the Border Patrol agents to carry out their law enforcement duties in between ports of entry?

Mr. HUFFMAN. Thank you for that question. I would be glad to address that. Yes, it is part of the process to encourage asylum seekers to go back through the ports of entry if possible to do that. But in order to do that we have to have the capacity to be able to process them as much as we can.

To that end we are doing a number of things to get ready of that and do that. We have actually processed, over the last few months, several exceptions to the Title 42 already in preparation of this also. But we have detailed so far up to 255 additional personnel to the ports of entry on the Southwest Border to do that. We are working also to establish, leverage better technology to do that with, using the CBP One app, to encourage people to apply, to get as much advanced processing information as possible as they arrive to the port of entry, to increase the efficiency.

Because in order to increase efficiency there are really two ways: you either increase your footprint or you improves your processes, and the footprint is what it is at a port of entry. We are going to have to work on improving our processes to improve our efficiencies. The Office of Field Operations (OFO) is working diligently to do that in preparation for that.

But it is not without some concerns when the volumes arrive. There is a good likelihood there will be longer lines. There could be some delays, slow things down. But the port directors have the authority to make the decisions, to form the lines as they need to, and do the process to move as efficiently as they can. We are going to build on a lot of the past lessons we learned when this was going on previously and continue to process them through that way.

Chairman PETERS. Thank you. Ranking Member Portman, you are recognized for your questions.

Senator PORTMAN. Thank you, Mr. Chairman. Look, I think we need to be straight with the American people as to what is happening here, and let me just comment, if I could, on your suggestion that there be consequences for people who enter multiple times and how that would address the problem.

I think it is fine to have consequences, but that is not the issue. Agent, you just told us that you are preparing, post-Title 42, not for people to have consequences for multiple entries but for more asylum seekers, did you not? That is what you just told us, right?

Mr. HUFFMAN. For those that come to the port of entry and make an application for asylum, yes, sir.

Senator PORTMAN. You are expanding your capacity to deal with asylum. That is what is going to happen. The alternative to Title 42 is not that people are going to stay home. The alternative to Title 42 is that they are going to do what they cannot do now, because of Title 42, which is apply for asylum. Do you disagree with that, Agent?

Mr. HUFFMAN. Sir, I do not think I understood your question.

Senator PORTMAN. What is the alternative to Title 42? It was suggested by Mr. Nuñez-Neto a second ago that the alternative to Title 42 is that repeat offenders, in particular, are not going to come over because they will have consequences. The alternative that you stated is that you are going to have more people coming and applying for asylum. That is what you are preparing for, right?

Mr. HUFFMAN. Sir, we are prepared to allow whoever comes to the country, they can afford access to our asylum system if they have a right to do so.

Senator PORTMAN. Right.

Mr. HUFFMAN. That is what we are required by law to do.

Senator PORTMAN. You are going to increase your capacity for it. That is what is going to happen, right?

Mr. HUFFMAN. Yes, sir. We intend to increase our capacity to process—

Senator PORTMAN. No, but answer my question, and let us be honest here with the American people. Right now Title 42 is the ability for you to say, to about a million people a year, we are going to turn you back. By the way, they are not turned back to Mexico, in cases where they are not from Mexico. You actually process them for roughly 40 hours and then you send them back to their country of origin. It may be Ecuador. It is not what was described, and those people, obviously, are less likely to be repeat offenders because they are thousands of miles away.

But what you are saying is that without Title 42 you are going to have a lot more people who comes to the border and say, "I have

a credible fear,” and, like others, they will be allowed to come into the correct. Is that correct?

Mr. HUFFMAN. Yes, sir. That is correct.

Senator PORTMAN. OK. Guys, we can talk about this and try to play politics with it and say the Administration has all these plans and consequences matter. But the reality is we have an asylum system that is broken, and until we fix that it is not going to be solvable post-Title 42. That Title 42 is not sustainable. I get that. It is a public health authority. It is not meant to be an immigration law. But it is all we have right now to keep the system from being totally overwhelmed and to keep not just a million people being released into the country every year, who come unlawfully, claim asylum.

Remember, 85 percent at the end, at least, of Mexicans and Central Americans that we know of are not given asylum, and yet they are not deported. The numbers that we have are that there are 1.2 million migrants who have received a final order of removal, and we are removing 56,000 a year right now. That was the number in 2021, and that is less than five percent.

That is the issue, is it not? I do not know. I wish it were easier, but it is hard because we have to deal with the asylum issue.

Mr. Nuñez-Neto, you were on this Committee. You know this issue well. Do you disagree with anything that I have said?

Mr. NUÑEZ-NETO. Sir, I think it is clear that under current law migrants who arrive at the border have the opportunity to claim asylum, and as a department and as a country we enforce those laws.

Senator PORTMAN. Let us back up for a second, if you could, please, and I apologize. But we do not enforce the laws in the sense that what the laws say is that we are supposed to detain people pending the process of asylum, and we do not do that. We do not have the beds to do that. The expedited removals, in fact, in the budget for this year are reduced even further, specifically with regard to detention, which is mandated by law.

We do not do that and we cannot do that. You know you cannot do that. We do not have the space, right? We have 24,000 beds. We are talking 1.2 million people who have been put into expedited removal. Is that correct?

Mr. NUÑEZ-NETO. I do not think we have ever had enough beds to put everybody through the process, sir.

Senator PORTMAN. Maybe we have not ever had enough beds but is that not the reality?

Mr. NUÑEZ-NETO. Yes, sir.

Senator PORTMAN. According to Secretary Mayorkas, not even close. We have 7,000 or 8,000 people a day coming to the border right now, unlawfully, and we have 24,000 beds. Because of social distancing, because of COVID, we have fewer beds even than that, I am told, even though Title 42 is about to expire. With regard to COVID we are still applying it to the beds, but that is another issue.

The problem, I guess, that I am trying to get at is that unless we fix the asylum system there is no way to allow you, Agent Huffman, to do your job, and your men and women who I have talked to, and they are the ones that tell me they are scared to

death of what is going to happen when Title 42 goes away, because there is no alternative.

The six pillars that were just talked about, again, we can go through this. But 1,000 new Border Patrol agents, my understanding is the budget asked for 300, something like that, so I guess you are going to take them from other places, including the border with Canada, and making processing work faster, enhanced processing on buses while people go into the interior, working with non-governmental organizations to process people faster.

All that is fine but it does not deal with the problem. It just puts more people into the system. Secretary Mayorkas tells us there is a six-to eight-year wait right now. In other words, the backlog is 1.6 million people waiting for their asylum claims to be adjudicated, and they are in the United States for six to eight years before their case is resolved. Is that correct?

Mr. NUÑEZ-NETO. Sir, it is correct that people who are not detained, on average, take five or six years to go through the process.

I would note sir, if I may, that we have tried to tackle the asylum process through the asylum officer rules by executive action, but we would welcome a bipartisan effort on the Hill to work on this important issue.

Senator PORTMAN. I would too, and there are ideas out there that are, I think, very promising. One would be to have an expedited adjudication process at the border. Senator Sinema was here earlier. She and Senator Cornyn have a proposal along those lines with processing centers. I think that makes a lot of sense. It is going to be expensive but it absolutely crucial to me that the last people coming in are the first people who are told, we understand that your country has issues and that the economics are a real problem.

You look at the Migration Policy Institute here indicates that between 75 percent and 91 percent of migrants who are coming to the border are coming for economic reasons. We get that. That is why the asylum policy is leading to adjudications of only 15 percent being accepted from the majority of these countries.

We have to make that decision early, send people back home if they do not qualify, allow them in if they do, and that is what will send a message to the traffickers and to these families that it does not make sense to make this arduous and dangerous journey north.

I would love to work on that, but that is not what is being proposed here.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Ranking Member Portman.

I want to, if I could, to clarify, maybe to simplify this a little bit as we discuss some solutions here, is when we talked about the consequence system, that really deals with the single adults that are coming across, who are not going to apply for asylum. They are trying to get across the border. Under 42 they just get sent back, no consequences. They keep coming back. It drives those numbers up for those individuals.

Senator PORTMAN. They can apply for asylum.

Chairman PETERS. Most of them do not. They are just coming across from Mexico and they are not going to be able to go through that process. It is going to be very difficult.

Then there are the asylum seekers. You are absolutely right about that, that we have to deal with that process. That is something Congress has to deal with. We have to come together and fix this, and I am committed to working with you and others on that. I think we are reviewing some legislation together right now related to that so that we can deal with that, and I look forward to working with you to deal with that aspect of the problem.

We have to deal with both of these problems together. I totally agree with you in that respect.

I need to go to an Senate Armed Services Committee (SASC) to ask some questions, so I am going to turn the gavel over to Senator Carper and recognize Senator Carper for his questions.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER [presiding.] Thanks so much. If you give me the gavel I may not want to give it back to you.

I want to welcome back to this Committee a number of folks who are here as witnesses and staff and the witnesses. Welcome back and thank you again for the great work you did here with our Committee and for the work that you are doing today.

My first question, actually two questions, are going to Secretary Mendrala.

Everyone on this committee, ma'am, just about everybody knows I am a pretty big root cause guy. I always focus on what is the root cause, not just the symptoms of problems. It is a topic I bring up frequently when talking about migration at our Southern Border, and that is because until we address the root causes of migration, like crime, like corruption, like lack of economic opportunity, we are going to continue to see folks arriving at our border for the next 10 years, 20 years, 30 years to come.

I believe that building strong diplomatic relations with countries in the Western Hemisphere is a critical part to stemming the flow of migration. I just ran into Ken Salazar, former Secretary of Interior. He is in town, and he is now an ambassador to Mexico. He was in the Dirksen Building, in the cafeteria, having breakfast. I had a chance to talk with him a little bit yesterday, and I said, "I want to come down to Mexico and the Northern Triangle sometime later this year and maybe bring some of our colleagues with me."

But anyway, we talked a bit about root causes. I am still a big root cause guy.

I think building strong diplomatic relations with countries in the Western Hemisphere is a critical part to stemming the flow of migration in the long term—not just the short term but the long term. We have to work in lockstep with countries in the region to ensure that we are doing all we can to address the pull factors that force so many of them to flee.

With that in mind, Secretary Mendrala, could you please take a moment to update us on the State Department's diplomatic efforts to tackle some of the root causes, and engage with countries in the region? Go right ahead.

Ms. MENDRALA. Thank you, Senator, and thank you for your leadership on this issue.

President Biden, through an Executive Order (EO) in February of last year, directed the Department of State to work across the

interagency to draft a strategy to address root causes of migration. Recognizing that we have engaged in efforts to address root causes in Central America before, he directed us to learn lessons, apply those lessons, and to put in place a strategy to do it better.

He directed that alongside several other aspects of a comprehensive approach to regional migration, including reforms at the border and another line of effort that we call the Collaborative Migration Management Strategy. This is a strategy to manage migration along with regional partners, to strengthen border enforcement in the region, promote a sense of shared responsibility, strengthen protection systems in countries throughout the region as well.

On the root causes strategy we drafted and published a strategy last summer to address root causes of migration such as insecurity, lack of economic opportunity, and governance issues. We have been working in partnership with governments in the region, civil society, private sector actors, as well, to implement that.

I will share with you a few highlights of the first year of our work. I mentioned in my testimony the Vice President announced, and is working with private sector leaders on the Call to Action, promoting investment from private sector entities in Central America that can create jobs and improve standards of governance as well.

The Call to Action has secured \$1.2 billion in commitments from private sector actors to invest in Central America. Those commitments will generate 70,000 jobs in Guatemala, El Salvador, and Honduras.

Additionally, two other highlights I will share is that we have allowed for access to education for 18,000 young people in Central America through scholarship opportunities, and 70,000 business owners access to credit. This is in addition to efforts that we are conducting through the Bureau of International Narcotics and Law Enforcement to train police on better and more humane security tactics, more efficient security tactics as well.

It is a commitment of the Biden-Harris administration, as we are working to address root causes of migration, to make sure that our efforts to promote strong governance is a through-line, underpinning everything that we do, recognizing that without gains in governance, without governments that can provide for their people, gains in the security realm and the economic realm will not be sustained.

Senator CARPER. Other than that, though? That is a pretty good list, really.

Ms. MENDRALA. Thank you.

Senator CARPER. Other than that, very briefly, are there any additional pathways available to expand in-country processing to other migrants groups, especially those that would inevitably end up at our border? that would be for Mr. Nuñez-Neto and again for you, Madam Secretary. That question, please. Go ahead. Any additional pathways to expand in-country processing to other migrant groups, especially those that might end up at our border. Please, go ahead.

Mr. NUÑEZ-NETO. Thank you, Senator. We have been working to expand our ability to issue H-2A and B visas in the region. I think also enhancing refugee processing in the region.

That said, I do think we do have, under current law, limited legal pathways, and one of the things that I think we would really want to work with Congress on is the ability to better match workers in the region with the badly needed jobs that we have in the United States.

Senator CARPER. All right. Thank you. Secretary Mendrala, anything else you would add? Additional pathways to expanding in-country processing to other migrant groups?

Ms. MENDRALA. We recognize that legal pathways is a critical component of the strategy to effectively manage migration throughout the region, and these are pathways to the United States as well as to elsewhere, other countries, that are standing up legal pathways, temporary work opportunities, et cetera.

I will mention a program run by my colleagues in the Bureau of Population, Refugees, and Migration, and it is the Central America Minors (CAM) Program. In September 2021, the State Department and Department of Homeland Security expanded the eligibility categories for U.S.-based relatives who can apply for their children in northern Central America to access the Central America Minors Program. This is a legal pathway for individuals to apply from their home country to access the United States.

Then as Assistant Secretary Nuñez-Neto mentioned, we are also working to expand temporary work visas to the United States and encouraging countries around the world to also stand up and augment their own temporary work opportunities for individuals from northern Central America.

Senator CARPER. My thanks to both of you for those responses. I think the next person in line is from Oklahoma, James Lankford. Senator Lankford, you are next, and if she returns I think Senator Sinema would follow you. Go ahead, please.

OPENING STATEMENT OF SENATOR LANKFORD

Senator LANKFORD. Thank, Senator Carper. Thanks to all of you for being here. I have a bunch of questions and so if I could ask everyone to be brief in your responses. Let me try to go through several things on this. Let me start with Assistant Secretary Mendrala.

There are ads that are up, radio ads and such, encouraging folks not to do migration in the United States. Did the State Department actually run those? Yes or no.

Ms. MENDRALA. Encouraging individuals not to migrate to the United States?

Senator LANKFORD. Yes.

Ms. MENDRALA. The State Department does have robust messaging efforts throughout the region. It depends on where you are talking about, but some of them, yes.

Senator LANKFORD. The Northern Triangle, as far as Guatemala, Honduras, El Salvador. Could we get the budget for those and also the copy, the text for those? That would be very helpful for us to be able to see what is actually being used.

Ms. MENDRALA. I would be happy to follow up.¹

¹ Ms. Mendrala follow up response to Senator Lankford appears in the Appendix on page 239.

Senator LANKFORD. Thank you. I talked to Secretary Mayorkas recently and we were talking his six-point plan that he has put out, which I have some significant questions on. There is a section of it, in the six-point plan, that says they are going to work with countries in Central America for them to be able to enforce their borders as well and also have asylum seekers there. I asked him the question of what leverage are you using on those countries to encourage them to actually enforce their borders. His response to me was State Department actually is in charge of that.

So let me ask State Department, what leverage are you using to encourage countries in Central America for them to enforce their borders? What are you doing there for them to stop regular migration that is just passing through their country and heading north?

Ms. MENDRALA. We have strong partnerships with countries in Central America, and many of them are enforcing their borders for their own reasons and to protect their own national interests. During COVID-19, the height of the pandemic, many of the countries imposed public health requirements, additional document checks, and additional public health requirements that prevented transit through their borders for public health reasons, for example.

We are supporting, through our foreign assistance, training of border personnel, for example, to train them on more effective and more humane enforcement tactics. But I would say that most of the countries in the region are conducting those enforcement actions out of their own national self-interest.

Senator LANKFORD. There is no increased engagement with them to be able to put leverage on them? Because obviously we had two million people “encountered,” quote/unquote, coming across our border last year, many of those from literally all over the world, many of them coming through Central America. Is there an additional effort that is coming to be able to slow down that quantity? The six-point plan implies there is something new.

Ms. MENDRALA. Oh, absolutely. We are engaging with them on a regular basis out of Washington, trips down to the region through our embassies on a range of priorities, including border enforcement, including accepting back repatriations of their nationals who have no legal basis to remain in the United States, and also to identify emerging trends and identify needs associated with those emerging trends.

Senator LANKFORD. But that is not additional border enforcement. That is repatriation and others. I am asking specifically what is in the plan, what State Department is doing to put leverage on countries to enforce their own borders. You talked about training that you have done in the past, things that they did during COVID, years ago. We still had two million people last year, many of those crossing through those borders. What are we doing now to encourage those countries to enforce their borders?

Ms. MENDRALA. For example, when we noticed a trend, working with interagency partners, of a certain nationality that is arriving in larger numbers at our border we will carry that information, including the routes that those individuals are transition, to countries throughout the region and look for areas of partnership. If they are arriving by air, countries may decide, through their own sovereign decisionmaking process, to impose visas on those nation-

alities that are arriving by air and that have been proven to be conduits to large flows of irregular migration, to impose visas on those nationalities to make sure that those who are arriving by air are not intending migrants to the United States.

And we also know that if one country imposes a visa requirement it is very easy for those routes to be diverted elsewhere, so we make sure that we are alerting and working in partnership with countries throughout the region so that that route is not diverted.

Senator LANKFORD. Great. Could you get us that plan, because again, I go back to that is helpful, by the way, on the visa piece, and people flying in, but people that are walking across borders, and we are seeing that border to border to border to border at times—we have all talked about this for years. If they would only enforce their borders, it is much harder to enforce ours.

What I am trying to get to is what is State Department doing to provide leverage to countries to say “Stop. Actually enforce your border.” It is different than training. It is different than visas and all that. If we could just get that in writing that would be very helpful to me.

Ms. MENDRALA. Happy to follow up.¹

Senator LANKFORD. We will follow up with that.

Assistant Secretary Nuñez-Neto, it is good to see you again. When you and I visited in February, I believe, when you were in my office, we had talked back and forth about the guidance that you provided to Border Patrol agents, USCIS asylum officers, to evaluate claimed vulnerabilities during the screenings to determine whether a migrant should be placed in Migrant Protection Protocols (MPP). I asked for that and you said, “No problem.” Just as a heads up, it is May. I do not have that yet.

If I could get that. My office will follow up with you on that request again, but that would be very helpful to be able to get that. We are trying to be able to figure out the usefulness of the MPP and the way that screening is actually done. The officers, when I was there in February, getting a chance, in January, to be able to visit with the officers on the ground, they were fuzzy about it. I came back to ask what is being handed and you said, “Yes, there is guidance.” I just have not seen it yet.

So can I get that?

Mr. NUÑEZ-NETO. We will certainly follow up with your office on that, sir, and I am happy to provide a briefing and the documents we are able to.

Senator LANKFORD. The documents would be great, to be able to get on that.

You had mentioned earlier, to Senator Portman, in your conversation, that we do not have enough bed space. It is interesting to me, in the budget proposal that DHS has put out they actually request 5,000 fewer beds for single adults and 2,500 fewer beds for family units. Your testimony is we do not have enough beds, the budget request is we need even fewer, and I am trying to figure out, still, when there is the ongoing discussion about May 23rd, that on May 23rd the plan is to end Title 42 at the border because there is no COVID at the border, but we still have restrictions on

¹ Ms. Mendrala follow up response to Senator Lankford appears in the Appendix on page 241.

our detention facilities that we cannot use every bed because there is still COVID in the detention facilities but not COVID at the border. Title 42 is going away at the border but we cannot hold them. We have to just wave them through to be able to come through, and cannot do detention.

It is a double hit here. You are still limiting the number of people that can be held in detention and you are asking for fewer beds while you are saying, "We need more bed space." I am just trying to figure this out.

Mr. NUÑEZ-NETO. To be clear, Senator Portman asked whether we had the ability to detain everybody we encountered, and my response was that the Department has actually never had enough beds to do that.

We are focused right now on reviewing every step of the expedited removal process to try to compress the timeline. It takes, historically, six to eight weeks to remove people in expedited removal who either are found not to have a fear or who appeal that decision and have the no-fear finding upheld by an immigration judge. That is just too long, frankly, and it has been the historical average. We are really working to maximize the beds we have by getting people through the process much faster.

But, one of the challenges we have, frankly, is that a quarter of our encounters right now are from countries we really cannot remove people to, and we do not have good options for individuals from Venezuela, from Cuba, and from Nicaragua, where we do not have the agreements in place with those governments to remove people, even if an immigration judge does find that they do not merit asylum.

Senator CARPER. Senator Lankford, I am going to ask you to hold it at that point. There will be a second round, I understand, and you may want to take advantage of that.

All right, Senator Sinema has joined us, and you are recognized for seven minutes.

OPENING STATEMENT OF SENATOR SINEMA

Senator SINEMA. Thank you, Mr. Chairman, and thank you to the witnesses for being here today.

Yesterday this committee heard from Secretary Mayorkas regarding the DHS plan for handling the expected influx of migrants. I have not heard the detail I need to be confident in the government's plan. In order to meet this moment, DHS needs to be able to share operational details regarding how they plan to move migrants through the processing system in a manner that will keep Arizona communities safe and treat migrants fairly and humanely.

Ms. Tierney, Arizona communities, NGO's, and local and Federal law enforcement officers have been struggling to keep up with the flow of migrants for years. Yesterday Secretary Mayorkas indicated that work to get resources on the ground in Arizona are well underway. I have not yet received specific details that allow me to be confident the government will be prepared.

On which date will Arizona border sectors have all the necessary resources, including sufficient infrastructure, transportation, and staffing to implement the Administration's plan and avoid further burdening Arizona's local communities?

Ms. TIERNEY. Thank you for that question, Senator. What I want to do is talk a little bit about the three lines of effort that you referenced. The first thing I want to discuss is personnel. We are in the process of moving additional Federal law enforcement officers across the Southwest Border, to include Arizona, in particular, the Yuma and Tucson sectors, which, as you know, have seen substantial increases in migration flows.

There is also an effort to provide civilian contract processing staff, in particular to Yuma. That will allow Border Patrol agents to then go back out on the line. Then the third piece is the medical piece, to plus-up the medical resources in Arizona as well.

That is a mix of interagency support and contracting support that is online and coming online with the goal of having things in place prior to May 23rd. So that is for personnel.

The second piece is transportation. Customs and Border Protection has undertaken several efforts to address transportation, in particular air and ground transport. This again is a mix of interagency agreements and contracts. One of the biggest pieces of air transport is an interagency agreement with ICE to use their air transport to move migrants either laterally or to decompress those stations in particular, again, I will focus on Yuma because that is a consistently over-capacity sector in the Border Patrol, Southwest Border system.

Also ground transport. Currently CBP has the capacity to move about 4,900 people a day. That is being plussed-up to be almost 9,000 people per day, again through a mix of interagency agreements and contracts. The one I will particularly note is a blanket purchase agreement that was awarded on April 29th, and task orders are already being issued against that, based on sector requirements.

I also want to note a part of that blanket purchase agreement includes contract security guard services. This is important because a lot of the things that Border Patrol agents do while people are in holding do not have to be done by Border Patrol agents, and so swapping out contract security services for a Border Patrol agent will allow those agents to go back out on the line. That is another part of that blanket purchase agreement. Again, task orders are being issued against that right now.

Then the last thing is facilities. There has been a plus-up in holding capacity across the Southwest Border. Previously it was about 13,000. Now, as of today, it is 17,161, and on May 23rd there will be an additional 500 soft-sided facility holding spaces available in Del Rio, Texas—I know not specifically to Yuma or Tucson, Arizona, but you have to think about this kind of a system where there is an opportunity to do lateral movements to decompress overcrowded stations.

In closing, again, things are in place now. Things are coming online with the goal of having more resources available on May 23rd, but additional capability to scale up after May 23rd, based on actual flows.

Senator SINEMA. I appreciate what you just said, but to be clear we have read all of this in your report. What I am asking for are specific details regarding Arizona. Telling me what is happening in Texas and saying that you can move people from Arizona to Texas

does not actually solve the problem. Do you have specific Arizona details?

Ms. TIERNEY. I have topline details here. I do not have specific Arizona details but we can certainly get you that offline. I do want to note again it is a system, and so Yuma and Tucson are a part of a network of sectors on the Southwest Border, and I do encourage you to look at the whole system, not just specifically what is in Arizona, and particularly with holding capacity, because that is where the air and ground transport contracts and plussing-up those contracts will help with the lateral decompression.

Senator SINEMA. I appreciate that. As you are aware, we have had significant problems with transport in Arizona already, with continuing concerns around migrants showing up at the Sky Harbor Airport, for instance, without appropriate travel plans, and airport personnel have been taken away from their duties of helping passengers get safely from one destination to another to provide assistance to migrants.

As you mentioned before the hearing, some of that has been alleviated. It has not been solved. It does not sound like there is a very specific plan with actionable items to address this prior to May 23rd.

Ms. TIERNEY. Senator, thank you for that comment and question. I do want to highlight some of the things that have happened, and specifically around the Sky Harbor Airport, which I know is a particular pain point for the airport, and the county, and something that you have raised multiple times.

Our lead field coordination, which is the senior CBP official on the ground in Arizona, has convened detailed operational discussions with both the jurisdiction in which Sky Harbor Airport is as well as the airport to discuss how they can better coordinate their actions. From that a few things have happened. The first one is the identification of a site for drop-offs that is not specific to the airport, working with the primary NGO that provides the drop-off services there.

There is also then work with Transportation Security Administration (TSA) to discuss security clearance processes, to ensure that people who do arrive have the right documentation and that TSA has access to the right system so that they can properly screen people without delay, avoiding people missing their flight and then having to be stuck at the airport for several hours or a day or two.

Another issue is ticketing. The lead field coordinator has convened discussions with both Southwest Airlines and I believe it was United Airlines to discuss how to better coordinate ticketing as well as moving people through the airport to their gate.

There are things that have been done tactically to address these issues, and as we discussed before the hearing, and as I will highlight here, is it completely solved? No, it is not. But there are a lot of things in process and also completed to have alleviated some of the issues.

I do want to note, though, there is, as we discussed before the hearing, a limit to what we can do because once people are processed out of CBP custody the Federal Government has few levers to actually provide support. There is a lot of coordination that will have to happen between CBP, the non-governmental organizations,

the local officials and entities like the Sky Harbor Airport, to ensure that we can move people through the system and avoid some of the pain points that you have highlighted previously.

Senator SINEMA. Mr. Chair, I know that my time has expired. Might I be able to ask one additional question?

Chairman PETERS [presiding.] Absolutely. Go ahead.

Senator SINEMA. Thank you. My next question is for Mr. Nuñez-Neto. Street releases are not new to Arizona communities. For years I have been working with Arizona's local mayors and our counties to help relieve the burden caused by these street releases. The DHS plan indicates that there is defined criteria in place which our local CBP officers will use to determine whether and now to perform street releases in particular communities.

What is the criteria that DHS is utilizing to make these decisions about street releases, and what steps will be taken to minimize the burden that is placed on Arizona communities in the case of street releases?

Mr. NUÑEZ-NETO. Thank you, Senator. I welcome also Chief Huffman's views on this. We are working hard to minimize the potential for street releases. We acknowledge that they have happened really consistently over the years when particular parts of the border become overstretched. We have put guidelines in place. We would be happy to share with you more detailed information on that.

I think, in general, the safety of the community and public safety is kind of the north star in this space and we try to ensure if there is a need to release migrants that we do so, as MaryAnn noted, in direct coordination with local NGO's and local authorities in order to make sure that they have somewhere to go and a place to sleep.

Chief Huffman, I do not know if you want to add anything to that.

Mr. HUFFMAN. I concur with what Mr. Neto answered. Local CBP officials they work closely with the local officials. They understand the stress of this burden. But as we all know, CBP is the first step when you counter somebody, and once the system just gets so strained sometimes you have to make the choices of those releases. When you have to do so, you do so in coordination with the NGO's, if they are available, in general, and make sure you are in coordination with your State and locals. But obviously, we would like to not have any street releases if we could avoid it at all.

Senator SINEMA. Mr. Chairman, I know my time has expired. I will note that there have been repeated stories in Arizona, including the mayor of a small town in Arizona called Gila Bend, in which there are no shelters and no bus stop. That mayor was actually transporting migrants himself to the Phoenix area because of street releases that were unplanned and unannounced.

I have grave concern that this will continue to be a burden on local Arizona communities. Additionally, leaving migrants without any place to go without safe harbor, particularly as summer temperatures rise over 110 in Southern Arizona.

Mr. Chairman, I have an additional 12 questions that I will submit for the record, and I am interested in hearing a lot more about these plans. As of this moment, I do not feel confident that the sys-

tem is ready for this mass migration that could occur as early as May 23rd.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Sinema.

Senator Scott, you are recognized for your questions.

OPENING STATEMENT OF SENATOR SCOTT

Senator SCOTT. Thank you, Chair.

I am from the State of Florida. We have quite a few people who have moved to our State from foreign countries, and we like immigration. But what is going on in Florida right now, people have no belief that our Federal Government has secured our border. They have no belief that there is a plan to secure our border. They are seeing friends and some families lose their lives because of the unbelievable increase in drug overdose with the fentanyl that is coming across the border. They read the stories about the number of terrorists that have been caught and they know that there are so many people that have not been caught, so they assume there are a lot of terrorists that have come into the country since Joe Biden got elected, and none of this seems to get any better.

CBP encountered 221,000 illegal immigrants along the Southwest Border in March, a 33 percent increase compared to February and the highest number in 22 years. Most concerning is the encounters of a historic number of illegal aliens from countries beyond Mexico, in the Northern Triangle now represent nearly 40 percent of all border encounters in March. In contrast to fiscal year 2012, encounters of foreign nationals originating from outside Mexico in the Northern Triangle were two percent of encounters. In fiscal year 2021, the figure had increased to 22 percent.

First off, Mr. Nuñez-Neto, how many countries are there and how many countries are represented in people that are coming across our border illegally now?

Mr. NUÑEZ-NETO. Thank you, Senator. It is common each year to see individuals from dozens of nationalities at our border. I think what has changed is the sheer volume from countries we do not traditionally receive people from, and predominantly that has been this year Cuba, Venezuela, and Nicaragua, which account for about a quarter of our encounters.

Senator SCOTT. How many countries are represented? How many countries are there in the world and how many countries are represented in people that have come across illegally that Border Patrol has picked up?

Mr. NUÑEZ-NETO. I do not have the specific number in front of me but it is normally in the high dozens.

Senator SCOTT. There are about 200 countries in the world, depending on who you asked, and the Del Rio Sector reported that last fall migrants from 106 countries crossed their sector in fiscal year 2021. That is one of nine Southern Border sectors. Ranking Member Portman said, in March, that there were people coming over the border this year from 150 countries.

The numbers are staggering and reveal a fact that cannot be ignored. This is not a regional problem. Apprehensions of illegal aliens from distant countries like Syria, Lebanon, Romania, India, Turkey prove that the Biden administration's radical border poli-

cies have sent a clear message to the world—come across our Southern Border; it is wide open. The rest of the world clearly believes that if you can get to the Southern Border, you can come across.

Mr. Nuñez-Neto, do you believe our Southern Border is closed?

Mr. NUÑEZ-NETO. As the Secretary noted yesterday, Senator, there is no doubt that we are facing severe challenges on our border. I would note that it is in line with historical trends to see large numbers of countries encountered at the border, but again, the key difference that we are currently seeing are the large numbers of individuals from countries like Venezuela, Cuba, Nicaragua, Colombia, Peru, Ecuador, Brazil, and Haiti, that we are not accustomed to seeing on the border.

Senator SCOTT. Is the border closed?

Mr. NUÑEZ-NETO. The border has and continues to present a challenge for us.

Senator SCOTT. Do you think our country has a right to have a secure border? Secretary Mayorkas has come and testified. I do not see anything happening. I am a business guy. If I went into business and you saw a 33 percent increase in something bad happening, somebody would do something.

I was down on the Arizona border a few months ago, and what the Border Patrol told me is this is the first administration that they cannot say that they see anything happening. It is just fascinating mean. We have people dying. About one out of every 3,000 people in this country died of a drug overdose last year. It is staggering.

Let me go to Ms. Mendrala. The Biden administration is supposedly having talks with Cuba now. I am from Florida. We have a lot of people that are of Cuban descent. They know the atrocities of the Castro regime for decades. They were furious when the Obama Administration had their appeasement, which did not work. I can tell you story after story. I can tell you one story of a lady I know that after Obama's appeasement the Castro regime cutoff her hand, stuck it in the mud so she would die of infection. Do you know what her atrocity was? She complained that somebody closed a school in her area.

My understanding is we are back talking to them again. We are talking about the same appeasement stuff that is going to do nothing. We have 1,300 people in Cuban prisons right now that peacefully protested on July 11th. Some of these are kids. They are being tortured. They are going to die. I have not seen one thing the Biden administration has done. I have called the White House. The White House has not done one thing to call this out.

Now my understanding is you are having conversations with Cuba. Are you going to take them off the State-sponsored terrorism list? Are you going to take away the sanctions? It just does not make any sense to anybody I know, that has watched all the atrocities and has had their family members put in prison for doing nothing.

Ms. MENDRALA. Thank you, Senator, for the question, and I will say that we absolutely share your concerns about the human rights situation on the island. President Biden himself, Secretary Blinken, and several other officials from the State Department and else-

where in the Administration have publicly condemned human rights violations.

Senator SCOTT. No, no, no, no, no. Joe Biden has not said one word. I called Joe Biden. I called the White House and they hung up on me. Joe Biden has not said one word about the atrocities. He has not said one word about these 1,300 protesters. I asked him to do it. He will not do it. By the way, when this was going to happen I said, "You have to get the internet back on," and they said, "Oh yes, we are going to work on that." There has been nothing done. Or is there anything being done to get the internet back on, so these peaceful protesters, so the other protesters can talk to each other? Nothing. They said, "Oh yes, we are going to work on it." That was last July. Not one thing has happened.

Ms. MENDRALA. Senator, I would be happy to follow up¹ with you to share some of the statements that have been made publicly by Administration officials.

Senator SCOTT. Not Joe Biden.

Ms. MENDRALA. I will share that we absolutely share your concerns about the human rights situation on the island, the political prisoners, those that were protesting peacefully July 11th, and desired to, in days following and before that were arrested, remained in prison, many of them with harsh sentences, as you rightly point out, some of them minors. We have made those concerns publicly and we share those directly with them as well.

Senator SCOTT. I would like to see where it is because I have not seen it. The President has not said a word. Are you going to take away the sanctions or are you going to take them off the terror watch list?

Ms. MENDRALA. With respect to the migration accords or the migration talks that occurred a couple of weeks ago, the United States and Cuba, over several years, over several decades, brokered migration accords, 1984, 1994, 1995, and 2017, to commit both sides to several measures that would promote safe, legal, and orderly migration.

Administrations for decades now have met on a biannual basis, at a technical level, to discuss the implementation of the accords. The meeting that occurred a couple of weeks ago was a resumption of those migration talks to discuss compliance with the migration accords on both sides, to promote safe, legal, and orderly migration.

As you know, the challenges of Cuban outflow of migration is tremendous at this moment. Individuals spending their life savings, risking their lives in many respects, subjected to mistreatment by smugglers and traffickers as they make their way overland to arrive in an irregular fashion at our border. It is imperative that we work together with partners throughout the region and speak directly with the Cubans.

Senator SCOTT. That is a yes that it is on the table, that you are going to take away the sanctions.

Ms. MENDRALA. Oh, no, sir. I am responding specifically to your question about migration.

¹ Ms. Mendrala follow up response to Senator Scott appears in the Appendix on page 243.

Senator SCOTT. My question is, are you going to take them off the terrorist watch list, State-sponsored terrorism, and are you going to eliminate the sanctions?

Ms. MENDRALA. Oh, sir, I have no comment on either of those.

Senator SCOTT. But if you have no comment that is a yes. Thank you.

Chairman PETERS. Thank you, Senator Scott.

Senator Rosen, you are recognized for your questions.

OPENING STATEMENT OF SENATOR ROSEN

Senator ROSEN. Thank you, Mr. Chairman. Thank you to all the witnesses for being here.

Of course, we had Secretary Mayorkas yesterday, and as I said to the Secretary, it really was disappointing that only after the Administration announced that Title 42 restrictions would be lifted at the border did DHS release a plan to Congress for dealing with the change in policy and, of course, the expected surge at our border.

It is also concerning that the plan seems to lack important details about how the Administration is going to make sure that our border is secured. Moreover, things like surging resources to the border and improving coordination between NGO's and government, solutions that DHS, frankly, that they have just offered in the past.

What I want to know from all of you here today is what the Department has learned since the two-plus years since Title 42 took effect, and how this plan differs from DHS past policies and practices?

Ms. Tierney, I will start with you, then Mr. Nuñez-Neto and Mr. Huffman, please.

Ms. TIERNEY. Senator, thank you for that question. Again, I work at FEMA so my involvement in immigration day to day is limited, although the past year I have had some involvement. I think a key thing that I will note is that the Southwest Border Coordination Center has brought together departmental components as well as the interagency to coordinate their actions in a way that perhaps may not have been done before. Through that we have better aligned our priorities. We have identified specific objectives and tasks, and every day a team of dozens is working vigorously to execute against those tasks.

That is why, in the past, I would say, 45 to 60 days there has been a substantial plus-up in both the acquisition of resources as well as the deployment of resources. There has also been significant movement in several policy areas, which Assistant Secretary Mr. Nuñez-Neto could go into.

That is one key thing that I think is different and has improved outcomes come May 23rd.

Senator ROSEN. Thank you.

Mr. NUÑEZ-NETO. Yes, thank you for your question, Senator. I think there are a number of lessons that have been learned over the last two years, starting with the fact that because of the lack of consequences under Title 42 the number of people who just keep trying to come back is really extraordinarily high, and that puts a lot of strain on the system. The need to have consequences for

those who do not have a legal basis to stay in the country I think is a key lesson learned.

I think additionally, as the senior coordinating official, MaryAnn Tierney, just noted, there are a number of initiatives underway to really kind of look at the system from beginning to end and find efficiencies at every step of the process, from encounter to referral between CBP and ICE, to how ICE manages expedited removal in its facilities.

One of the things that has been a historical issue for not just DHS but also DOJ is the fact that all of our immigration processes are paper-based, and the printing out and scanning of documents takes an extraordinary amount of time and pulls our frontline law enforcement personnel away from their law enforcement duties.

We are working to digitize the notices to appear and to create an electronic A-file that will, I think, really kind of revolutionize the way we process at the border. We hope to have a lot of this done by the end of the year, and I think we will see huge gains across the entire immigration continuum as part of that.

Senator ROSEN. Thank you. Ms. Tierney, do you have anything to add?

Ms. TIERNEY. [Shakes head.]

Mr. HUFFMAN. Again, thank you for the question. As you know, CBP is just one agency in the overall continuum that works border security issues, and we are usually the first ones to encounter people, and then we are kind of in the process of having to deal with them first. But the ultimately pathway, where they go, is dependent upon other parts of the program.

I think one of the key lessons we have learned, and this started back in 2019, when we first saw a big push, is that the shifting demographics of who we deal with, going from single adults to family units back to single adults, is very challenging to have the right type of facilities to do the processing, to do the temporary custody, those kinds of things.

That turned out to be a big challenge across the board because historically we were built to deal with single adults. That is how our system has worked and it is how facilities have worked. We learned how to quickly scale up and change that. We started using these soft-sided facilities a lot, and we are able to configure those soft-sided facilities in order to work better for us, to be able to detain and process and then move on to the next stage for those things. That was key to us, as Mr. Nuñez-Neto mentioned, improving our processes in between, to move them from the technology issues, to get away from paper, and switch to digital. Those are important.

This is kind of one of the first times where CBP has not felt in the fight alone for this situation. Seem to have a better, whole-of-government approach this time, so that is really helpful. It helped us last spring and summer, when we were dealing with an extremely large number of unaccompanied children, to finally get fully coordinated and a unified team to process this thing.

That same process we are using now as we get ready for Title 42 to go away because we are dealing with unprecedented numbers. There is no question about that. I am probably the only guy that was on the job here in 1986, when we set the first record of

1.6 million encounters that year, which was very difficult to do, and we have gone through several like that.

But over time we have learned how to take better care of those in our custody, how to process faster, but also to make sure we have all the team players involved in it, from within Homeland Security plus DOJ, Department of State, all involved to help us deal with the situation.

Senator ROSEN. Thank you, because I do think we have to take these lessons learned into a coordinated, whole-of-government approach, turn it into an action plan, like digitizing, so you can share better across agencies, being able to modernize our facilities. But we have to have a plan that is robust, coordinated, and humane and dignified.

I look forward to working with you on that. I am going to submit my next question for the record because all of this really begs the need for comprehensive immigration reform that really does take these lessons learned and turn them into humane, dignified, robust action plan, not only at our border but for our immigration as a whole.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Rosen.

Senator Johnson, you are recognized for your questions.

OPENING STATEMENT OF SENATOR JOHNSON

Senator JOHNSON. Thank you, Mr. Chairman. We have dueling charts here. I do not expect you to be able to read all the detail here, but a picture does paint 1,000 words.

Just so you know, the gold is single adults, blue are family units, red are unaccompanied children. What we have here is 10 years' worth of monthly apprehensions. I kind of told the story yesterday with Secretary Mayorkas, but let me tell a slightly different story.

Over the last eight and a half years, on average, we had about 30,000 single adults being apprehended at the Southwest Border monthly, about 30,000. Very steady. What we had in 2014 was the humanitarian crisis of unaccompanied children and family units exploiting our asylum laws. The same thing happened in 2019. Something different is happening now.

The first thing you will see is an explosion in single adults. Now we are hearing this yesterday and again today that they want to explain this away as from repeat offenders. The Chairman's chart¹ showed 25 percent of the apprehensions were repeat offenders. This is from 30,000 to well over 150,000. Chief Huffman, do repeat offenders account for going from an average 30,000 to over 150,000 single adults being apprehended on a monthly basis?

Mr. HUFFMAN. Thank you for the question, Senator. I believe you are correct. The math does not add up. I mean, there is a significant amount of recidivism, folks involved in the Title 42. We know that.

Senator JOHNSON. We had recidivism back here too, right?

Mr. HUFFMAN. Yes, sir, and going all the way back to when we were counting, in 1986. Recidivisms are in all those numbers. There is no question about that.

¹ The chart referenced by Senator Johnson appears in the Appendix on page 101.

Senator JOHNSON. There is something else going on here. Let me suggest where you really started seeing single adults increase was during the 2020 Presidential debates, when every Democratic Presidential candidate said they were not going to deport anybody and they were going to offer people free health care.

Now again, if you look at the chart,¹ there are some pretty remarkable break points. For example, the number of apprehensions dropped precipitously right after President Trump was elected. People thought our laws were going to change, we were going to tighten up the border, so they stopped coming. They found out, no, nothing really changed and they started surging.

Then President Trump did real consequences. Return to Mexico was a real consequence, and it worked. It pretty well stopped the flow of unaccompanied children and family units exploiting our asylum laws, and all we were left with were single adults, until the Biden administration, and once again family units and unaccompanied children exploiting our asylum laws took off.

We have been nibbling around the edges. This is surreal, the last two days, what we have been talking about here. Nothing is going to fix the problem until we actually talk about the root cause, and the root cause is the credible fear standard. It is so low in comparison to what the asylum standard is. Getting asylum is actually quite difficult, is it not, Mr. Nuñez-Neto? You have to be persecuted or fear being persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion. That is the asylum standard. Correct? Economic migration does not count. Correct?

Mr. NUÑEZ-NETO. Sir, you are right that there is a wide difference between the statutorily mandated credible fear interview at the beginning of the process—

Senator JOHNSON. That was the root cause of the problem, right, because the vast majority of people that come in here, they are coached to say that you are afraid to go home, credible fear, and they get waved in, never to have their claim adjudicated, and now we have somewhere between 20 and 30 million people in this country undocumented because of that fact.

The credible fear bar is so low in comparison to what the actual asylum standard is, and until we fix that we are going to continue to have this kind of flow, particularly with an Administration that is not willing to do what the previous administration did and offer a real consequence.

Real quick, what are those consequences we stopped talking about? The main consequence is expedited removal. We are still doing that. Correct?

Mr. NUÑEZ-NETO. Yes, sir, we are still using expedited removal.

Senator JOHNSON. The only other consequence we are talking about is we are not writing down their name. I do not know. We used to actually remove them like 100 miles or quite a few miles away from the entry point. That was a consequence. Do we do that anymore, Chief Huffman.

¹ Senator Johnson's chart appears in the Appendix on page 103.

Mr. HUFFMAN. Yes, sir. We are still having some interior repatriation flights. When the flights are available we do can do that. Yes, sir.

Senator JOHNSON. So that is still a consequence. Again, so we are still doing some consequences. Expedited removal, we are still doing that, and we still have that flow.

I guess my question, first of all, for Ms. Mendrala, you talked about disinformation in South America. What is that disinformation?

Ms. MENDRALA. Sir, thank you for the question, Senator. We have seen smugglers and other bad actors use information, twist information, craft disinformation about U.S. border policies in such a way to—

Senator JOHNSON. Specifically, what do they tell them?

Ms. MENDRALA. We have seen information that would suggest that certain nationalities would be granted entry without consequence—

Senator JOHNSON. OK. Let me stop you right there. Isn't that exactly what is happening here? People are granted entry without consequence. Last year, close to one million processed and dispersed. Another few hundred thousand known got-aways because we are so overwhelming Customs and Border Patrol. We are not going to fix this unless we are honest.

The reality is, what the people are being told in Central America is largely true. You come to America, you cross the border, you say, "I am afraid to go home," and you are home free. Isn't that the reality, Chief Huffman? Isn't that exactly what the agents on the border are having to grapple with? There is nothing they can do because that is the policy of this Administration, process and disperse.

Mr. HUFFMAN. I will speak to what I think the agents up front, without regard to the policy. I will defer that to DHS policy. But there is a level of frustration because they believe that many people are, "gaming the system" or making fears they may not really have because it is possible to do that.

Ideally, though, those are single adults that we do have a clear path for removal, that we can put into expedited removal, and they can have those claims assessed. The biggest challenge, as you know, comes when we are dealing with the other populations, such as family units that seem to exploit that. As we go to applying consequences further up—and we intend to, and we have been somewhat and hopefully we will be able to increase our consequences of the criminal prosecution aspect, as the counts start opening up, and we are able to prosecute more cases there—the next concern would be, of course, that single adults will start becoming family units again, as we have seen in the past.

Senator JOHNSON. They will sell children to make a family unit. When I was Chairman, we had testimony that a child was sold for \$84 to form a family unit.

There are no consequences being applied here. There was with Return to Mexico but that was dismantled, the first day of this Administration. Again, we have to actually understand what the root cause is. Sure, there are push factors, but the main root cause is the pull factor, the reality that you can come to America, say you

are afraid to go home, and you are home free and you get to stay. That is the pull factor. That is why you have this problem.

Until this Administration is willing to recognize that root cause we are going to have an enormous problem, even though the Secretary will not admit it is a problem.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Johnson.

Senator Hassan, you are recognized for your questions.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Chairman Peters. I want to thank you and Ranking Member Portman for this hearing. I want to thank all of the Members of this very distinguished panel before the Committee today to discuss ongoing efforts to secure the Southern Border.

Chief Huffman, I am going to start with a question to you. I recently visited the Southern Border for a third time and was there in early April. I am concerned after that visit that DHS is not more widely deploying the technologies that you are using to help secure the border in some locations. Greater deployment of integrated and autonomous cameras, radar, sensors, and additional technology to detect and deter the unauthorized aerial vehicles (UAVs), that smugglers use would expand CBP's capabilities, address existing security gaps, and be a force multiplier.

Congress has previously appropriated millions of dollars for these technologies, some of which CBP has not spent. Chief Huffman, what is holding up CBP's deployment of small border technologies, particularly to strategic locations? Does the Department need additional funding for any equipment or to surge resources in order to complete required reviews or plans before the technology can be deployed?

Mr. HUFFMAN. Thank you for that question and, obviously, thank you for the funding. That is extremely important. The technology provides CBP as a whole, and Border Patrol in particular, the level of situational awareness that is critical to their success, and for your recognition of that it is important to do that.

The main reason between the lag between the obligation of the funds and the deployment, generally it is real estate issues and environmental issues. It is not a lack-of-resource issue. It is the process where you are acquiring property or you are acquiring those things. It is regulatory issues that we work through. We are working through those as quickly as we can and intend to be deploying all of the technology we have as quickly as we can.

Senator HASSAN. Would it be helpful to you, I mean, when you work through regulatory issues like that it takes personnel to do that. Would it be helpful to you to surge personnel who do these regulatory processes?

Mr. HUFFMAN. It could very well be, on the particular cases. It all depends on where it is and what you are trying to accomplish to do that. Our office that does that works real closely with the different programs to do that. If they need personnel they ask for additional personnel and try to meet the timelines necessary. But certainly if we have an opportunity to speed it along with that we

would certainly be happy to do that and look into how that could help.

Senator HASSAN. I would look forward to working on that with you because we have to get that done. Strategic deployment of that technology is really critical.

Mr. HUFFMAN. Yes, ma'am. I could not agree more.

Senator HASSAN. OK. Let me ask you another question, Chief. In your testimony you noted that CBP is shifting Border Patrol agents and CBP officers from other locations to assist at the Southern Border. When I visited the border last month, personnel there said that while these temporary duty assignments certainly help address increased migrant flow they are taxing for the agents, officers, and their families and they are not a long-term solution.

I am also concerned that the continual and likely increased shifting of personnel to the Southern Border will have a detrimental impact on travel, trade, and security along the Northern Border. How will CBP work to increase personnel at the Southern Border and continually and reliably meet these staffing needs?

Mr. HUFFMAN. Again, thank you for that for two reasons. One, anyone that takes care and concern about our front force, our workplace, that is important to us so I appreciate your care and concern about that.

It is a very challenging time. There is no question about that. People have detailed to those areas, to the problem areas, and we try to minimize that as much as we can. Some of the things we are working on is, one, for the first time ever we are establishing these contract processors to get agents back to the field, which may relieve the need to bring more down. We are increasing our use of the remote processing to allow people to stay. Using technology to stay on the Northern Border, we process those ways as well, it is another process to do that.

As we increase the hiring of our Border Patrol processing coordinators, also those things are all efforts that we are planning to affect the personnel issue, that deal with those issues, to increase more people on the front line organically or with contractors, or with resources in there to do that, so we will have less likely to do that.

Those all take a while to evolve, as we get to those places, to where they function like we would like to. We rely upon our leadership and our Northern Border ports and our Northern Border sectors to balance their resources as well as they can to address those and minimize that, leaning heavily on our Stonegarden partners in those areas as well to help us address all those things across the enterprise.

It is a big case of risk management is what it is, and that is what we are trying to do the best we can in those situations.

Senator HASSAN. I understand you are trying to do the best you can. I am also obviously concerned that as we stand up more resources at the Southern Border we attend to the security and trade and travel at the Northern Border as well. Again, I look forward to working with you to make sure that that happens.

Ms. Tierney, the first pillar of the DHS plan for Southern Border security focuses on surging additional resources to support border operations, including medical support resources. The plan indicates

that DHS is expanding medical support and COVID-19 mitigation protocols and was preparing to be able to provide medical care for up to 18,000 people per day by the end of April.

Ms. Tierney, did DHS make its deadline, and how can DHS ensure that frontline operations have the necessary medical resources and support if 18,000 people were apprehended tomorrow?

Ms. TIERNEY. Senator, thank you for that question. I appreciate the opportunity to talk about the medical support plan.

Currently CBP has over 800 contract medical personnel capable of providing 24/7 medical support. They are also authorizing travel and pay for the current personnel to again move around the Southwest Border, based on requirements. There has also been work with the Federal interagency to identify and secure Federal medical teams from across a variety of departments. That is underway, and those requests for assistance are in process.

There is also work to plus-up the contract that exists currently, and that is also underway with task orders against that, as well, as I mentioned, the interagency agreements.

There is medical personnel onsite now. There will be Federal interagency support between now and May 23rd teed up and employed, and then the expansion of the existing contracts.

Senator HASSAN. Does that mean that in your assessment, with those resources in place, that if there were 18,000 people at the border tomorrow you would be prepared to meet the medical needs? That is what the plan said, you would be ready by the end of April.

Ms. TIERNEY. Senator, I think what I would say is, being a prudent and practical person that we will have resources in place and we will have an ability to expand based on requirements.

I think, again, as the Secretary and others have mentioned, if CBP were to encounter up to 18,000 people per day, that will place enormous strain on the system. I think it is unclear whether the medical services that are currently in place or that are in the process of being in place could flex to that level. That is almost three times the number of people that are currently encountered at the border, on average.

Senator HASSAN. I think one of my concerns, and Mr. Chair, I want to do one follow-up on this—I know I am running over time—but one of my concerns about this plan, the discussion we have been having about getting ready for the eventual lifting of Title 42 is that people keep telling me, but we have a plan, and it is not clear that having the plan and actually having the resources on the ground to meet the goals of that plan are the same thing.

I appreciate this dialog, but what I am going to continue to follow up with all of you on is what does that mean in operational terms for the frontline personnel who will, in all likelihood, be seeing a significant increase in attempted migrant crossing when Title 42 is lifted.

Now I want to follow up with one other issue, Ms. Tierney. The DHS plan also indicated that the Department is planning to expand its COVID-19 vaccine program to 24 CBP sites by May 23rd, so that all age-eligible, non-citizens who had not already been vaccinated would receive their first dose before they traveled beyond a processing center.

Ms. Tierney, is the Department's 100 percent vaccination plan based upon current apprehension levels or does it account for 18,000 possible daily apprehensions? Would the 24 sites noted in the plan be sufficient to accommodate all unvaccinated individuals or would additional sites and resources be necessary?

Ms. TIERNEY. Senator, thank you for that question. I believe you kind of had a two-part question. I would like to address the first part because I think it is a very important point that is worth discussing in this forum.

I think we would all agree that officer safety and the safety of the non-citizens crossing the border—is a priority. The plan lays out the resources that we will need to have in place by May 23rd, and have the ability to flex up to, based on increases in encounters at the 12,000 and 18,000 encounter-per-day planning assumptions.

The plan lays out what we need to do, and what the Southwest Border Coordination Center, the people working in it, the inter-agency, is doing is actioning those planning items to actually resource the things that we need, whether it is additional Federal law enforcement personnel, contract civilian processors to free up Border Patrol agents, contract security guards, buses, airlift, medical personnel, additional facilities. That is what we have been doing and what we will continue to do in order to be ready for May 23rd and be positioned for additional encounters.

Senator HASSAN. The Chairman is indicating that it is time to move on because we are well over time. That is not the question I asked. I understand what you are saying to me now. I will look forward to following up with you. I would like, in writing, a response on the vaccination capacity. Thank you.

Ms. TIERNEY. Certainly.

Chairman PETERS. Thank you, Senator Hassan.

Senator Padilla, you are recognized for your questions.

OPENING STATEMENT OF SENATOR PADILLA

Senator PADILLA. Thank you, Mr. Chairman. There has been a lot of talk for several weeks now about Title 42, and what it means if and when it is lifted on May 23rd or another date. To remind us, on the Committee, and to remind the public that what Title 42 is and what it is not.

Title 42 is not an immigration law. It is a public health regulation. The other thing that is important to remind folks is we are engaging in important conversations about immigration policy and the asylum process, and it is absolutely legal for people who come from around the world to the United States to request asylum. It does not mean that it is automatically guaranteed but it is lawful to request asylum based on conditions that one or a family is fleeing.

I personally was happy to see the Administration announce an end to Title 42 and the resumption of asylum processing at the border. I know some of my colleagues would like the American public to think that taking down Title 42 is a major shift in policy, but lifting a public health order, which is what Title 42 is, actually would only return us to our existing immigration laws, where people seeking asylum in the country are allowed to exercise that legal right.

Now this legal right has been on the books for decades. My first question is for Ms. Mendrala. What obligations exist under United States and international law to allow people to exercise their legal right to ask for asylum and what impact did Title 42 have on that right?

Ms. MENDRALA. Thank you, Senator, for the question. With respect to U.S. immigration law I will defer to my colleagues on the panel. With respect to international law, there are laws in countries throughout the region. Each country's protection, the legal framework for protection and asylum is unique. One of the priorities of the State Department is to work with partner countries, select countries, to strengthen their protection mechanisms and to strengthen their asylum systems so that individuals seeking refuge in those countries can find meaningful access in an efficient way, protection in the countries where they seek it, and not be forced to take the journey to the United States in order to do so.

Senator PADILLA. The second part of the question is how did Title 42 help or hurt that process?

Ms. MENDRALA. Sir, it is unique on every country context. I think as the United States put in place a public health order at our border, many countries throughout the region enacted similar public health measure as well, to require additional public health documentation upon entering a country or to enact movement restrictions that we saw globally, the number of people on the move, migrating, be it regularly or irregularly, during the pandemic dropped dramatically because of generalized movement restrictions and quarantine, be those imposed by the State or self-imposed.

Senator PADILLA. I think from a layman's point of view it certainly did not make things better. I know we are living in unique times, given the once-in-a-century global health pandemic. But one would be hard-pressed to suggest that the absence of the ability for someone to seek asylum, a lawful opportunity when you limit or constrain law opportunities to migrate, that only serves to add pressures and demands for unlawful methods of migration. I do not think it has been a success by that measure.

Let me change topics here for a second. I want to focus on DHS's plans for the wind-down of Title 42. Again, I was glad to see that one of the six pillars of the plan for the end of Title 42 is focused on coordination and communication with NGO's at the border as well as with State and local governments. I think this coordination is going to be key to ensuring that groups have time to prepare and local communities do not become overburdened as they receive and support individuals who have been screened, and only those properly released to continue with their immigration cases.

I am proud of the work that the State of California has done with groups in my State, including the California Welcoming Task Force, who have been working to support people coming to our country to seek safety. But they cannot effectively continue to do that without adequate communication and coordination from DHS, let alone financial assistance, but that is another conversation.

I want to urge that the people working tirelessly at the Department to prepare to return to a safer, more orderly, and more humane process at the border, particularly the SBCC, closely coordi-

nate and communicate with NGO's and State and local governments, and not just in California but across the border.

A question for Mr. Nuñez-Neto. Can you walk us through the steps that you are taking as part of this plan to bolster the capacities and the preparedness of NGO's to receive non-citizens after they have been processed by CBP?

Mr. NUÑEZ-NETO. Yes. Thank you for that question, sir, and I am happy to start the answer but will hand it off to the senior coordinating official, MaryAnn Tierney, because the SBCC is really where the rubber meets the road.

We have been working through FEMA's Emergency Food and Shelter Grant Program to provide resources to NGO's to help really with all the back-end things that they do to move migrants and non-citizens along to their final destinations. We are deeply thankful of Congress enacting additional funds for that program this year.

I will say, as MaryAnn often notes, that there continues to be a gap between what the U.S. Government can do and what the need is, and I will maybe hand the baton over to her to describe how the SBCC is trying to fill that gap.

Ms. TIERNEY. Great. Thank you, and thank you, Senator, for that question. I will agree with you that I think California has a very robust system for addressing the migrant surge in that State, in particular the California Office of Emergency Services, the City and County of San Diego, as well as the two primary NGO's servicing those areas.

A lot of work has been done by the CBP lead field coordinator, again, the senior official on the ground responsible for coordinating all of this, to establish regularized and robust interaction with the State and with locals. For example, at the CBP Emergency Operations Center for Region Nine, which covers California, Cal Office of Emergency Services (OES) and Cal Health have representatives in that location. I believe that is kind of the gold standard and the ideal that I would personally like to see across the southwest border in terms of complete physical integration of those operations.

In addition, a lot of work has been done with the NGO's. I will use California as an example because one of the first things I did when I got this assignment was go visit the border. In each of my locations I did meet with NGO's and toured their operations and discussed with them their challenges. That ongoing interaction and operational coordination was a key thing that I heard, a well, as something that was not as robust as it needed to be. That is something at the SBCC, with the lead field coordinators we have worked, I would say relentlessly, to improve through regularized and recurring meetings, both with NGO's and with State and local officials that have an operational role. That has occurred in California, as I mentioned, which I believe is the gold standard—

Senator PADILLA. Thank you. I hate to interrupt. I do not want to be the only member who did not go over his time and I want to ask one more quick question, but before I do underscore what you just said, that California is the model through that interagency coordination and collaboration. I invite all my colleagues on this Committee and across the Senate to support replicating that model throughout the Southwest Border, not just on the California side.

But my final item, just quickly. DHS has indicated also that in preparation for a potential increase in migration the agency will focus on targeting people who attempt to cross the border more than once for criminal prosecution, as part of the agency's initiative to escalate consequences and conserve processing resources. The agency has also indicated that it will refer for prosecution, "those whose conduct warrants it." While that may sound good at the surface level I am concerned about the plan to use prosecution as a deterrent without being clear-eyed and focused on how it is applied. In the past, such deterrent policies have not always worked, and instead were just used to punish asylum seekers, which we have already established is lawful. It is a potential huge violation of U.S. obligations under the Refugee Convention.

A question for Mr. Huffman. Does CBP have plans to refer asylum seekers for prosecution, and if not, how are you going to safeguard that?

Mr. HUFFMAN. Sir, thank you for the question. As you know, the United States government secures this border by proper application of administration and criminal law. That is the method we use for securing our borders and that is what we do.

The plan to increase prosecutions for those that warrant it will be primarily someone who has been referred for expedited removal, they have been removed, and they have returned. They have already gone through that process already to do that. I can tell you that no one will be referred to prosecution simply because they are an asylum seeker. That would be well outside our guidelines.

In addition to that, we refer cases for criminal prosecution if we feel they should be prosecuted. The U.S. attorney is the ultimate determination if they would go forward with that case. But where circumstances would warrant it would be people that may try to harm a Border Patrol agent, may try to put somebody else in danger, those kinds of circumstances that increase the likelihood that they are a dangerous person. It could be their criminal record, that they have some sort of record also that warrants it that may lead them to be more likely a candidate for criminal prosecution. There are a number of factors that can do that.

Senator PADILLA. Thank you for your response. In closing I want to underscore we will be following up to ensure proper communication of that understanding, change in policies, training folks on the ground and close to the ground to make sure that what you are suggesting here is followed through in practice.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Padilla.

Senator Ossoff, you are recognized for your questions.

OPENING STATEMENT OF SENATOR OSSOFF

Senator OSSOFF. Thank you, Mr. Chairman. Thank you to our witnesses.

Ms. Tierney, the United States must know and control who enters and exits our territory. That is a basic condition of sovereignty. The Department expects, does it not, a significant increase in attempted unauthorized entry along the Southern Border this summer?

Ms. TIERNEY. Sir, the DHS Office of Immigration Statistics has published projections that show an increase in irregular migration post-Title 42.

Senator OSSOFF. Is the Administration prepared for this anticipated surge in attempted crossings?

Ms. TIERNEY. Senator, thank you for that question. We have identified the needed requirements to meet the different levels of our planning assumptions and we are actively working to both resource physical assets as well as policies and improvements to processing to meet those increased surges.

Senator OSSOFF. Thank you, Ms. Tierney, but my question is a simpler one. It is, is the Administration prepared?

Ms. TIERNEY. Sir, I think since some of these projections are higher than what CBP has seen previously, I think we are doing prudent planning. We are using the planning to identify the resources requirements that would be needed based on what experts like Chief Huffman and others identify as the need. We are working to improve policies. I think we are readying ourselves and we are going to be as ready as we can be, come May 23rd.

Senator OSSOFF. If you are not able to confidently state that the Administration is prepared, what are the requirements that are unmet? Have you sent, for example, a request for a supplemental to Congress? If you are not prepared, what is it going to take to get prepared? Because my constituents lack confidence that sufficient preparation is ongoing and that the Administration is prepared. If you are not prepared, what do you need?

Ms. TIERNEY. Sir, I would not say that we are not prepared. What I would say is that we are preparing, based on projections, based on requirements identified by experts. We are resourcing against those requirements, and we will have the necessary items in place for May 23rd.

Now, again, I have been an emergency manager for quite some time. I never feel like we are prepared enough. I always want to be more prepared than we need to be. We are doing everything we can to be ready. We have been working furiously, since the fall of 2021, to get ready. We are more ready now than we were yesterday, and we will certainly be more ready on May 23rd than we are now.

Senator OSSOFF. Thank you, Ms. Tierney. How will you measure success?

Ms. TIERNEY. We have identified, for each of our major agencies, items that would indicate stability. For example, with Customs and Border Protection, the Southwest Border Coordination Center has identified a stability goal for Border Patrol that is having twice as much holding as we have encounters over a 48-hour period. For example, if the Border Patrol is seeing about 6,000 to 7,000 encounters a day, which is what they are generally seeing right about now, then you would want to have about 13,000 to 14,000 holding spaces available. I think that is an indicator of what the system can absorb and process through in about a 48-hour period.

Senator OSSOFF. Thank you, Ms. Tierney. My time is limited, but I would like you to walk me through several of the other metrics or qualitative assessments that you will use to measure success. You say you are preparing, and I know that work is ongoing.

How will you measure whether that preparation has been effective? You mentioned holding capacity relative to encounters. What are the other measures of success?

Ms. TIERNEY. So time in custody would be another measure of success. Also the ability to decompress Border Patrol stations through lateral movement and some of the other options that we have identified, like mobile en route processing. So monitoring the capacity of the individual sectors, identifying sectors that are over capacity, and then being able to flex to address that over-capacity.

Senator OSSOFF. Thank you, Ms. Tierney.

Ms. Contreras, I want to discuss with you the welfare of unaccompanied minors in Federal custody. First of all, has ORR mistreated or previously subjected minors in U.S. immigration detention to abusive conditions, to risk of abuse, to sexual misconduct? Has that occurred in U.S. custody?

Ms. CONTRERAS. Senator, thank you for that question. As background, I want you to know that during my first week on the job I visited Fort Bliss. I wanted to see what the care was like for the children, as you are speaking to, and I thank you for asking about it.

What we saw is ORR, we have the responsibility, at HHS, for legal and moral obligation, and that is always and first about the safety of kids. We have had situations when we had to move very quickly to meet a greater capacity in a short amount of time, where we needed to improve conditions, and that has been the focus over the last year, so that now what you see are, a lot of emergency intake sites were, of course, now demobilized. Mental health supports for kids, case management so they have access to someone, recreation, health, safety needs, those have all been the priority.

Senator OSSOFF. Ms. Contreras—and I do want to get into the steps that are being taken now, and I recognize that this Government Accountability Office (GAO) report refers to misconduct and incidents principally or even entirely prior to your tenure. I recognize that. But this is an HHS Office of Inspector General (OIG) report.¹ It talks about inadequate supervision, sexual misconduct, the abuse of children in U.S. Federal custody. It is completely unacceptable that this has taken place.

I want to ask you two questions, Ms. Contreras, with my time remaining, and these will be my final questions. I thank you in advance for your response.

The first is, can you give this Committee and the Congress and the American people and my constituents assurances that preparations have been made, safeguards are in place to ensure that minor children in U.S. immigration detention are never subjected to this abuse again? That is the first question. The second question is, what specific steps are you taking to ensure that, and will you grant the Red Cross unrestricted access to ORR facilities that house migrant children?

I will give you the time, with the Chairman's indulgence, to answer, and that will be my final question. Thank you.

Ms. CONTRERAS. Thank you, Senator. On the question of access to the Red Cross, that is something that I would have to ask our

¹The HHS OIG Report referenced by Senator Ossoff appears in the Appendix on page 106

team about, but I would be happy to do that and get back to you. We welcome the oversight that comes from Members of this Committee, from our nonprofit partners, from the Flores monitor. That is an important part of accountability and transparency as we carry out this very important mission.

Senator OSSOFF. I am sorry. I know I said I was done and the Chairman is going to tap me out with the gavel soon. I do have here, this is a Red Cross press release¹ saying HHS, ORR, and FEMA have requested that the Red Cross provide support to ensure unaccompanied children have safe, clean, comfortable conditions in detention. So you are seeking this from the Red Cross. Is that correct? Will you grant them access to facilities, even when you do not ask for it, so they can inspect these facilities and ensure that children are not being mistreated?

Ms. CONTRERAS. Senator, that is something I will follow up with. I have not seen the letter, but again, we welcome oversight and we certainly value our partners.

I do not want to end without addressing your first question about what is the commitment. You absolutely have the commitment of the ORR staff, of HHS, and certainly myself of one month into my tenure as Assistant Secretary. I have represented many kids as their lawyer who have been abused, in many ways. While we always have that possibility of predators being in existence, what we are doing at HHS—we are the child welfare agency—is to make sure that we are taking every precaution, that we are staffed adequately so that there are eyes on our children, that we are using safeguards to make sure that we are keeping kids safe.

So you have my absolute assurance that that is the No. 1 priority for us at HHS.

Senator OSSOFF. Thank you. I look forward to the follow-up on the Red Cross.

Chairman PETERS. Thank you, Senator Ossoff.

Senator Hawley, you are recognized for your questions.

OPENING STATEMENT OF SENATOR HAWLEY

Senator HAWLEY. Thank you very much, Mr. Chairman. Thanks to all of the witnesses for being here.

Mr. Nuñez-Neto, if I could start with you. You are the Acting Assistant Secretary for Border and Immigration Policy at DHS. Is that right?

Mr. NUÑEZ-NETO. That is right, Senator.

Senator HAWLEY. So it is your role, then, to help formulate and drive policy and implement those policies at the Department. Have I got that right?

Mr. NUÑEZ-NETO. Correct.

Senator HAWLEY. Help me understand the Administration's policy. Are you trying to stop illegal immigration anymore or have you given up on that?

Mr. NUÑEZ-NETO. Sir, we are committed to enforcing the laws that Congress has enacted at the border, and as I noted in my testimony we are expanding our use of expedited removal as we pre-

¹ The Red Cross letter referenced by Senator Ossoff appears in the Appendix on page 150

pare for the end of Title 42, particularly for recidivist border crossers.

Senator HAWLEY. OK. So that sounds like a yes. That is a yes, you are still trying to stop illegal immigration? It is hard to tell but you are telling me yes?

Mr. NUÑEZ-NETO. That is correct, sir.

Senator HAWLEY. OK. Let us talk about a few of your policies, since you are in charge of policy, and you can tell me which of these has been effective in stopping illegal immigration.

OK. Ending construction of the border wall. Has that been effective in stopping illegal immigration?

Mr. NUÑEZ-NETO. I would defer to my colleague from Customs and Border Protection, but my understanding is that barriers on the border serve to slow irregular migration, not stop irregular migration.

Senator HAWLEY. OK. You are saying that the border wall is not effective. So maybe we should just tear the whole thing down.

Mr. NUÑEZ-NETO. The border wall is effective in rerouting migration, and it is effective in slowing the pace at which migrants can cross the border, which is particularly important in urban and suburban settings. In rural area, what we have found is it is still fairly easy for migrants to make holes in the wall—

Senator HAWLEY. OK. Interesting. So stopping construction of it, though, has not slowed illegal immigration.

How about terminating the Remain in Mexico policy, which you have tried to do? Has that stopped illegal immigration, or slowed it?

Mr. NUÑEZ-NETO. Sir, as you know, we are in the process of re-implementing the MPP program as part of—

Senator HAWLEY. Yes, because you are under court order to do so. But you have tried, as a matter of policy, to end it. So was that successful in slowing illegal immigration?

Mr. NUÑEZ-NETO. Sir, as our Secretary noted in his prior testimony, his view is that the MPP program poses unjustifiable costs on migrants and illegally restricts their access to the asylum system.

Senator HAWLEY. Yes. OK. How about ending our “safe third” agreements with Northern Triangle countries? Has that been successful in stopping or slowing illegal immigration?

Mr. NUÑEZ-NETO. I would defer to my colleague from the State Department in terms of these international agreements. But, only one of those agreements was even starting to be implemented prior to Title 42, and Title 42—

Senator HAWLEY. Have we seen a decrease in illegal immigration since you eliminated them?

Mr. NUÑEZ-NETO. I think what you have seen, sir, is the impact of Title 42 on our border crossings.

Senator HAWLEY. Oh, OK. Since you mentioned Title 42, has the attempt to rescind Title 42, has that been successful in slowing illegal immigration?

Mr. NUÑEZ-NETO. Title 42, I think, has had a really interesting effect on migration in that, because of the number of repeat border crossers we see it has actually inflated our numbers at the border. I think what you have also seen—

Senator HAWLEY. Are you saying that Title 42 have increased—

Mr. NUÑEZ-NETO. Is an increase in Mexican migration—

Senator HAWLEY [continuing]. Illegal immigration? Are you saying that the Title 42 restrictions have increased illegal immigration?

Mr. NUÑEZ-NETO. I think that the data is clear, that Senator Johnson showed earlier, that once Title 42 restrictions were put in place we have seen an actual increase in migration from Mexico, in particular, and that is because of the lack of consequences—

Senator HAWLEY. Oh, wow. So eliminating it will then you think, decrease the amount of illegal immigration?

Mr. NUÑEZ-NETO. I think over time, once we start reimposing significant immigration consequences on people at the border through our use of expedited removal, particularly for single adults—

Senator HAWLEY. Oh, wow.

Mr. NUÑEZ-NETO. And particularly for those from Mexico, you are going to see a decrease.

Senator HAWLEY. Wow. That is news. That is news, ladies and gentlemen, that this Administration's position, you still clearly want to rescind Title 42, and you think that rescinding it will decrease illegal immigration at the border.

Let us talk about the facts here. Last year alone—DHS experienced a record 1.7 million border crossings, more than 2 million unauthorized migrants crossed the Southern Border during the last calendar year, and in fiscal year 2022, to date, there have been 245,390 illegal crossings in just the Rio Grande Valley, and 195,289 in Del Rio. The number of single adults crossing in these areas is up 75 percent. Why is it up? Because of all of the policies that we have just talked about. Your policies are single-handedly leading to an explosion of illegal immigration at the border, and yet you are sitting here and telling me that border walls have nothing to do with it, that Title 42 will lead to a decrease in illegal immigration, that eliminating the “safe third” agreements have nothing to do with the surge.

Good heavens. This is just remarkable.

All right. Let me ask you something else. Last week DHS released a memorandum that lays out your six-part plan to address the current—by the way, what would you call what is happening at the border? Is it a crisis?

Mr. NUÑEZ-NETO. I believe we are facing significant challenges at the border, sir.

Senator HAWLEY. Challenges. Is it a problem?

Mr. NUÑEZ-NETO. I think there are parts of the border where we have seen particularly problematic flows.

Senator HAWLEY. Problematic flows. Parts of the border. But it is not a crisis.

Mr. NUÑEZ-NETO. It is a challenge, sir.

Senator HAWLEY. OK. Let the record reflect that the witness does not think that this is a crisis. I would hate to see what a crisis would be. I mean, who could possibly imagine?

All right. I assume you played a role in drafting this plan. Let us look at some of the prongs of this plan. You want to bolster the

capacity of non-governmental organizations to receive non-citizens after they have been processed by CBP and are awaiting the results of their immigration removal proceedings. You want to increase CBP processing efficiency in order to address overcrowding at Border Patrol stations.

I have to be honest with you. As I look at this it looks like an attempt to memorialize your efforts to help as many illegal immigrants get into the country as possible.

Mr. NUÑEZ-NETO. Sir, the third pillar of the plan is our efforts to impose consequences on those who try to enter the country illegally.

Senator HAWLEY. Of which you have a demonstrated track record of doing precisely nothing of any consequence. You have presided over the most unbelievable explosion of illegality at the border in American history. Now what you are proposing looks like ways to turn this mass immigration into mass amnesty.

Mr. NUÑEZ-NETO. Sir, with all due respect, I think that Title 42 is not an immigration measure. It is a public health authority, and it—

Senator HAWLEY. You just told us a minute ago that withdrawing it would decrease illegal immigration.

Look, with all due respect, nothing you have said here is remotely credible. If you think that withdrawing Title 42 will decrease illegal immigration, I invite you to have that discussion with the Members of this Committee, maybe particularly on the Democrat side. I think they would be fascinated to hear that. And believe me, I will help them. I am happy to talk about your testimony today. I will be telling everybody about it.

But you have single-handedly forced on this country a mass crisis that is endangering children, that is leading to an avalanche of drugs in my State, that is increasing criminality. For you to sit here and tell me that eliminating Title 42 is a solution, and that nothing you have done has had any consequence, and that border walls are not effective, and that “safe third” agreements are not effective, and Remain in Mexico is not effective—frankly, sir, you have no credibility whatsoever, and neither does the Administration that you work for. What you do have, though, is responsibility, for everything that is happening at the border.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Hawley.

Witnesses, you have been here a long time, and we appreciate your testimony, but we are going to start a second round for individuals who have a few more questions. The second round we are going to attempt to limit to five minutes. We will try to be more effective than limiting the initial round to seven minutes. But we will have a few more questions here.

First, Ms. Contreras, my question is for you. CBP facilities are clearly not an acceptable location to house unaccompanied minors, and you mentioned that in your testimony, but how is HHS cooperating across departments to ensure sufficient resources are in place to prevent vulnerable children from spending extended amounts of time in these CBP facilities?

Ms. CONTRERAS. Thank you for that question, Senator. I think we would all agree that all of my colleagues on this panel, that

HHS is a child welfare agency. It is our job, when children are referred to us, to be able to take them as quickly as we can into our care.

What we see now is that the average length of stay in CBP is less than 24 hours, and that is an accomplishment everyone has worked very hard on.

We have had a lot of coordination between our teams, of ORR, CBP, and throughout DHS, in order to make sure that we are coordinating and that we are taking care of children as soon as we can. What you see is there has been some co-location of staff. That is a big part of being able to make that happen.

This remains a priority. We are glad that the number is down to less than a day in the custody of CBP, and that is something that will remain a priority in our work.

Chairman PETERS. Thank you.

Fentanyl and other illicit narcotics are harming our communities, and we certainly need to do everything we can to stop them from entering in the country. In February of this year I led my colleagues in requesting additional funding for nonintrusive inspection (NII) systems that will improve CBP officers' ability to interdict these illegal drugs.

Chief Huffman, could you please discuss for the Committee the impact of nonintrusive inspection systems on CBP's rate of narcotics interdictions?

Mr. HUFFMAN. Thank you for that question, Senator, and I would be happy to discuss that a little bit. As you know, as you mentioned, fentanyl is a key threat to our nation right now, and we are seeing a lot of it, and the amount we are seeing seems to increase every year. Most of the fentanyl now is coming across the Southern Border, being encountered at the ports of entry, primarily in San Diego and Otay Mesa, two main areas where we are seeing most of the fentanyl coming across.

One of the main tools we used to use, in Canada, is the NI equipment that we are grateful to have. It helps us to be very successful in identifying that stuff, because fentanyl is a unique narcotic as opposed to big bundles of marijuana. It can be easily stored.

What we have seen recently, though, is we have seen an increasing number of packages caught but it is smaller quantities, indicating they are adjusting their tactics as well, maybe trying to beat our NI capabilities, smaller packets but more cross increases their chances to get across.

But currently CBP is utilizing over 350 large-scale and over 4,500 small-scale nonintrusive inspection systems across the Southwest Border to inspect cargo containers, commercial trucks, rail cars, privately owned vehicles. We use those not just at the ports of entry but at some of our interior checkpoints as well.

By fiscal year 2023, CBP expects to increase the NI scans to these vehicles by up to 40 percent more with the equipment we have coming. So as we are able to increase the scans we obviously see an increase in encounters of narcotics, but also the more we increase, the better we are able to deter future actions.

It is a very important tool, we are very appreciative we have that, and we will continue to use that greatly across all of our borders.

Chairman PETERS. So given it is an effective tool, and you would like to spread it, how many additional nonintrusive inspection systems do you think are needed to fully equip all of our nation's ports of entry?

Mr. HUFFMAN. I am not sure of the right number, that I have that with me, Senator, but I would be glad to get that back to you if I consult more with my OFO colleagues to get you the exact number.

Chairman PETERS. We would like that so I would appreciate that.

Another question for you, sir. What efforts is CBP undertaking to ensure that the information gathered related to drug smuggling is shared among our partner agencies in order to better combat the transnational criminal organizations that are operating these operations?

Mr. HUFFMAN. Thank you, sir. I appreciate that question as well. Our ability to share information with our partners in this is key in order to be successful. We participate extensively in different task forces, and we partner with different agencies at the Federal level, State level, and local level, depending on what we are doing. We work closely with ICE and Homeland Security Investigations (HSI) on cases collaboratively. The information that we gather of our encounters is shared with them all the time. We never cease to do that. The same with the Drug Enforcement Administration (DEA). We facilitate the information across the whole range, whether it is on our Southern Border, Northern Border, interior. We participate in a number of joint operations with our State and locals and also our Stonegarden partners, and we share that information across in different meetings and things that we have in order to assure that we do that.

I think our ability to work together with all of our partner and all of the agencies makes us a better place, a better organization, and much more effective, and we continue to do that on a regular basis. I have been doing this for many years, and we participate at all levels, at all times, and it is just invaluable to be able to share that information with those partners.

Chairman PETERS. I appreciate that. Thank you.

Ranking Member Portman, you are recognized for questions.

Senator PORTMAN. Thank you, Mr. Chairman, and I thank the witnesses for their patience with us today. There is just so much to go over.

Let me just quickly about what I think we have learned today. One is a deep concern expressed by just about every member of this panel, Democrat and Republican, about the lack of a plan in place to properly address the surge of migrants who will certainly be coming over the border when Title 42 ends. That is, I think, a consensus point.

Second, an acknowledgment that the asylum process is totally broken and it acts as a magnet to draw people to the border and over the border. Here are the numbers. Secretary Mayorkas tells us the average asylum case processing time is six to eight years. We heard today it is five to six years, but that is not what your boss says. But let us say it is five to six years. It is a long time when people are in the community, living in the community, work-

ing, kids going to school, having children, becoming part of the community.

There is a 1.6-million-person backlog now on asylum claims being considered by the courts; 1.2 million people have gone through the process and received a final order of removal, meaning they should be deported because they were not successful in their asylum claim. Yet the Administration has reduced the number of people being deported. It is now 56,000 a year. That is about four percent. In the Obama-Biden years it was 350,000 a year.

Incidentally, under law, Section 235 of the Immigration and Nationality Act (INA), there is a requirement of detention of unlawful migrants seeking asylum, crossing our border without authorization, and yet, of course, we do not have the capacity to do that. This Administration has reduced the number of ICE beds. We are now at 24,000 beds, much of which are already full.

So that is where we are, and that is why it is true, I think, that there is a consensus here on this panel that this is broken and we have to fix it.

On the illegal narcotics coming over, Agent, I appreciate the work your folks do. I was at Mariposa, the port of entry in Nogales earlier this year, and I saw the desperate need for more of these scanning devices you talked about to try to stop the fentanyl. The fentanyl is streaming into our communities. It is coming in at such high volumes now that it is reducing the price, because of supply and demand. A huge supply, very inexpensive, and it is causing more deaths as a result.

I am a big fan of looking at the demand side. I have asked legislation, and it is working now, on treatment and recovery and prevention. But it is possible to deal with this flood and not have many more people dying of overdoses. We are at record levels right now.

Here are the numbers that we have. Only two percent of passenger vehicles are being scanned. Only 17 percent of commercial vehicles are being scanned. That is it. Yet that is where 90 percent of the seizures attributed to nonintrusive inspections are resulting from. This is where we are finding most of these narcotics. It is a huge increase in March, a huge increase from the previous March, a 300 percent increase from the previous March. It is levels we have never seen before. And yet think of all those cars and trucks that we are not scanning.

The question, Agent Huffman, is how can we do better? There is a plan to increase that by the end of next year, and yet I look at the President's budget this year and there is zero in the budget for new scanning machines.

I guess my question for you is, are we on track at least to reach this number of 40 percent of passenger vehicles, instead of two percent, and 70 percent of commercial vehicles instead of 17 percent by the end of next year?

Mr. HUFFMAN. Yes, sir, we are on track by the end of fiscal year 2023 to increase the scans to scan 40 percent of the vehicles and 72 percent of the commercial vehicles, respectively. As you know, we would certainly like to do more, and as we increase our ability to do so we will do that. Obviously, we would like to look at every single thing that comes into the country if we have the ability to

do that, because it is important to do that. There is no question that fentanyl is a significant threat to us.

Senator PORTMAN. We provided the funding for you back in 2019 to get to that number of 40 percent, at least, of cars, 70 percent of trucks, and we should provide more. But again, in the budget there is nothing.

Unaccompanied kids, Senator Ossoff talked about this. Kids have been mistreated in the past, as we know. There are lots of stories about it, unfortunately. I got involved in this because of a bunch of kids from Guatemala, six of them, were brought up by their trafficker, went into HHS custody, and then HHS gave them to sponsors. Those sponsors were the traffickers, the very traffickers who had treated them so poorly coming up from the border, lied to their parents, and they took them to an egg farm in Ohio where six kids, as young as 14, lived in deplorable situations, underpaid, working six, seven days a week, not in school, and luckily a local authority found it.

This is one thing that got the interest of the Permanent Subcommittee on Investigations (PSI) with this Committee. Senator Carper and I did an intensive investigation. We published three reports about it, and basically about the failure of the Federal agencies to be responsible for the care of our unaccompanied kids.

Ms. Contreras, I do not have time to get into this in the detail I would like to, but as you know we have done a lot of work in this area. We think it is totally unacceptable for the U.S. Government to release unaccompanied kids, who are, by definition, much more vulnerable to trafficking, to unrelated sponsors and not to do more follow-up.

Right now we are told that there is no follow-up after three phone calls and that we do not know where 19,000 unaccompanied kids are. We cannot determine their safety and well-being. Is that correct?

Ms. CONTRERAS. Senator, thank you for that question and thank you for your leadership on making sure that we keep our duty to children, and that includes post-release.

What I would like to share is that the work that has been done to strengthen the post-release work, some of which you referred to which are well-being follow-up calls, there are home visits in place now if there are concerns raised. The background checks and vetting that happens for sponsors is designed specifically to avoid the kinds of problems that have happened.

We take the safety of kids very seriously. It is the No. 1 priority, and we keep building on what our duties are, how do we carry out those duties to buildup that post-release support as well, to make sure that they are in safe hands.

Senator PORTMAN. There is a continuing issue, as you know, as to who has responsibility, and my hope is that HHS, under your leadership, takes additional responsibility for these kids. Someone has to be responsible for their care.

Let me ask you a very specific question, as my final question, Mr. Chairman. HHS has cooperated with some of our requests for information. We continue to do oversight on this issue, as you know, but we have yet to receive documents that we have re-

quested, and these were requested in January in a letter to HHS Secretary Xavier Becerra.

Can you commit to ensuring that HHS sends the remaining documents by the end of next week?

Ms. CONTRERAS. Senator, you do have my commitment that we will go back and get the attention of who I need to, to figure out what it is that we owe you and how we can make sure that we follow up as promptly as we can.

Senator PORTMAN. I will tell you what it is. It is very simple. It is the number of sponsors out there, the number of sponsors who have been denied. It is information that you would have, and it is not information that is difficult, I would not think, to find, and very necessary for us to do the proper oversight. I really would appreciate you getting those to us by next week so that we can continue our oversight work.

Again, to each of you thank you for your service and particularly to those of you representing people on the border itself, you have an impossible task. Thank you for what you do every day. The American people are asking a lot of you, and I know it is very stressful, and I know there has been difficulty in retention and recruitment. We need to do everything we can to hold, Agent, your people up right now, because it is hard already and it is about to get a whole lot harder, and we owe them not better policy in the Administration but better legislating, and we will continue to work on that.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Portman.

Senator SINEMA, you are recognized for your questions.

Senator SINEMA. Thank you, Mr. Chairman. I want to echo what Senator Portman just said about the respect for the men and women who serve in blue and green on the front lines of our border. I think that we can safely say it is a bipartisan agreement that we admire and strongly support their efforts. I want to pass along my thanks as well, particularly to those who are serving throughout Southern Arizona.

Chief Huffman, robust migrant processing at ports of entry is a key part of the DHS plan for the Southern Border. However, Arizona's ports of entry were not designed to manage large-scale asylum processing. This has the potential to create a volatile situation that is unsafe for our CBP officers and our migrants when bottlenecks occur and frustration rises.

While the funding I secured for ports of entry modernization, with my colleague, Senator Portman, in the Infrastructure, Investment, and Jobs Act, will be very helpful in the long term, these modernization projects are still years from completion.

What capacity requirements for infrastructure, transportation, and related staffing will be in place for Arizona ports to prevent overcrowding and disruptions to trade and travel? How many individuals will CBP have capacity to process in Arizona on a daily basis, and on what date will all those deployments be complete?

Mr. HUFFMAN. Thank you for your question, and again, thank you for your support for the men and women on the front line of CBP. As was mentioned, they are facing an enormous challenge, and it is going to get tougher.

As far as Arizona specifically, I do not have specific numbers with me but I can get those numbers to you to exactly what is in place, unless you have them.

Ms. TIERNEY. I do not, Chief.

Mr. HUFFMAN. OK. I will get those to you, what they are. But I do know that there are concerns about the volume at all of our ports of entry. Arizona's, in particular, you asked for. The safety and security of our folks are top and in front of our minds at all times.

At each port they will take appropriate steps, if they need to, including temporary halting processing if they have to. They will re-order the lines. They have our Mobile Field Force teams trained up and ready to go in case it does get to be a volatile situation, to help control crowds. If necessary, if they have to, they may even close down lanes or close down the ports until they can regain order. Those are the standard steps we have taken historically in the past when we have had challenge at our ports of entry, and they are well-versed in understanding how to do those and execute those if we get to those cases.

We are, as mentioned, detailing people to those areas. We are building up the capacity to process throughputs. Arizona, as you know, is kind of a unique challenge. They do not have the same NGO support for follow-on afterwards that you do in other areas, so as Ms. Tierney mentioned earlier, we are addressing those as well to try to move through those things.

I know you mentioned earlier about the other States, and although you were concerned about them that was not top on your list. But those are key, as she mentioned, about having the system that allows us to decompress laterally and move those people. When those people are processing through they would be released in some area besides in the Arizona area, in the Yuma area.

All those things have been taken into consideration as we try to work specifically on these difficult areas. The Yuma sector, the Border Patrol is one of the most challenging ones to deal with. It is the one that is always the first one to be over capacity because the infrastructure is so small there, when we start getting traffic flows in there. That is the No. 1 focus that we are working on, trying to continue to find ways to decompress that, move people out of there, and minimize the impact as much as possible on the local community.

Senator SINEMA. Thank you. Mr. Nuñez-Neto, I am pleased to hear that DHS has based part of their plan on the Regional Processing Plan's model that I proposed with Senator Cornyn in our Bipartisan Border Solutions Act. I know Senator Portman spoke about that earlier. These enhanced, centralized processing centers will co-locate DHS components, nonprofits, and other relevant entities to help reduce systemic inefficiencies.

I understand the pilot location became operational on April 29th, in Laredo, Texas, and that this pilot will be used to work out the logistics for future centers. What factors are being used to determine future locations for these processing centers, and how long do you anticipate it will take to operationalize additional centers?

Mr. NUÑEZ-NETO. Thank you for that question, Senator. This is something I think we are all very excited about, bringing innova-

tion to the process at the border. I think these Enhanced Central Processing Centers have a lot of potential to allow us to better triage the flow and focus, consequences on higher-risk individuals but then for low-risk individuals who are going to be referred into immigration proceedings and released have facilities that allow us to co-locate with ICE, with potentially HHS, and with NGO's in order to have kind of a much more seamless handoff at every stage of the process, within the same facility.

I think what we are looking to see, really, is whether we realize those gains in terms of the handoffs between each stop of the process and the time in custody they are spending actually being held in CBP custody. We are also hoping that this process will allow us to, by minimizing the law enforcement footprint in the facility have more of our law enforcement officers on the line, doing their primary law enforcement function rather than doing processing. A big part of that effort is going to be looking at ways to contract out the processing support.

I believe that there is an expansion plan in place. I do not know, Chief Huffman, if you know the next locations. If not, we will get back to you.

Mr. HUFFMAN. I do not have the exact next locations now but the thing is, when you stand these up you have the ability, when you see how traffic flows you want to try to anticipate where you are going to need them the most. We can make some estimates of where we need them the most, but I think as we see the traffic flows we want to be as nimble as we can to be there, to the right spot.

Senator SINEMA. Thank you. We intend to follow up on that. We want to hear follow-up information, and in particular, whether or not Arizona can expect to get an Enhanced Centralized Processing Center. We will want to hear more about that and, of course, when we can expect it to be fully operational.

Thank you, Mr. Chairman.

Chairman PETERS. Thank you, Senator Sinema.

I would like to take this opportunity to thank each of our witnesses. Thank you for joining us today. I think I speak for all Members of the Committee. We want to thank you for your commitment to addressing both the humanitarian and security challenges that we face on our Southern Border.

I certainly appreciate the very thorough discussion that we had today about the Administration's efforts to secure our Southern Border, preparations in advance of the termination of Title 42 public health order, and certainly the expected challenges that we are likely to face in managing migration changes that will occur when this order is repealed.

These challenges are certainly not unique to this Administration. We have seen surges in the number of migrants for the past decade, under both Republican as well as Democratic administrations. I think from hearing testimony here today it is clear that until Congress and the Administration enact some common-sense, bipartisan solutions to fix our immigration systems these circumstances are going to continue to prevail.

There are certainly many issues where we disagree. We heard some of those here today. But I think there have been some areas

of agreement, as well, that we should rally around—increasing consequences for illegal entry, addressing the root causes of migration, increasing regional cooperation on these issues, and the need for bipartisan reform passed by Congress.

I look forward to working with my colleagues in the Administration on some of these common-sense efforts. We will be working diligent and hopefully can accomplish what we need to accomplish.

The hearing record will remain open for 15 days, until May 20th at 5 p.m., for the submission of statements and questions for the record.

This hearing is now adjourned.

[Whereupon, at 1:08 p.m., the hearing was adjourned.]

A P P E N D I X

**Chairman Peters Opening Statement As Prepared for Delivery
Full Committee Hearing: Securing and Ensuring Order on the Southwest Border
May 5, 2022**

I'd like to thank each of our witnesses for joining us today, for your dedicated service to the American people, and for your work to address humanitarian and security challenges at our Southern Border over the past two years.

Over the next few months, we know that these challenges will persist, especially as the Administration moves forward with its plans to end Title 42.

While ongoing litigation and shifting COVID-19 circumstances may impact the exact timing of when the public health order is lifted, the Administration must have a detailed, well-thought-out, and well-resourced plan to secure our borders and address expected changes in migration once this policy change goes into effect.

Yesterday, this Committee had an opportunity to hear directly from Secretary Mayorkas on this, and other critical issues. Today, we will have another opportunity to hear from senior Administration officials and go into further detail about how the federal government will secure our borders and manage the proposed termination of this policy.

Title 42 is a temporary public health order, and it is not a long term solution to our border security needs.

Today's hearing is an important opportunity for the Administration to detail both their short-term plans for addressing this expected policy change, as well as the long term solutions that Congress and the Administration must work on together to ensure our borders are secure.

In fact, since Title 42 was initiated to prevent the spread of COVID-19 in March 2020, it has severely restricted the use of proven enforcement mechanisms that prevent illegal border crossings, and in turn has contributed to an increase in repeat illegal crossings.

Soon after this policy was implemented, the number of single adults trying to illegally cross the Southern Border doubled. And now, repeated attempts by individuals to unlawfully enter the United States has reached a nearly fifteen-year high. That is unsustainable and places significant burdens on our border security professionals.

I look forward to discussing the Administration's plans to reinstate proven border security enforcement methods, such as escalating consequences for repeat offenders, that have been shown to significantly reduce illegal crossings between ports of entry, and ensure Border Patrol agents can stay focused on their border security mission.

Reinstating these kinds of consequences will hold individuals who break the law accountable, while ensuring that children, families, and other migrants fleeing persecution are able to present themselves at ports of entry for a timely review of their asylum claims.

In addition to addressing the humanitarian situation at the Southern Border, the Administration must ensure they have the personnel and resources needed to ensure the safe, secure, and efficient facilitation of lawful trade and travel at our ports of entry, and combat the flow of deadly illicit drugs like fentanyl that continue to wreak havoc on communities in Michigan and across the nation.

I have long pressed for robust resources to ensure we have enough personnel, as well as technology like non-intrusive screening equipment, that improves Customs and Border Protection Officers ability to examine vehicles and large amounts of cargo efficiently, and stop illegal drugs from being smuggled across our borders. I look forward to discussing what more the Administration needs to ensure that we can prevent fentanyl and other illegal substances from harming our communities.

Finally, this hearing is also an opportunity to discuss the policies that Congress and the Administration must work together on to address the long-term challenges at our borders, and especially the Southern Border.

Over the past decade, we have seen a surge in the number of migrants arriving at the Southern Border nearly every year, and under both Republican and Democratic administrations. It's clear that without bipartisan action to pass comprehensive immigration reform and reforms to our asylum system, these same challenges will persist for years and decades to come.

I look forward to hearing from today's panel about what long-term solutions the Administration is proposing to address the root causes of migration, increase regional cooperation with our partners in South and Central America, and ensure migrants receive humane treatment while streamlining the asylum process.

Challenges at our Southern Border are not new, but they are significant. Today's discussion will provide this Committee with the opportunity to ensure our nation has sufficient tools, resources, and personnel to take these issues head-on.

Opening Statement of Senator Rob Portman
“Securing and Ensuring Order on the Southwest Border”
May 5, 2022

Thank you, Mr. Chairman, I appreciate your holding this hearing on the southwest border, which clearly is in a crisis situation now, and I think everybody agrees with that. It's hard not to when you look at the facts. We discussed this issue at length yesterday with Secretary Mayorkas, and today we are going to discuss it further with our witnesses who I appreciate coming from Homeland Security, State, and Health and Human Services. I appreciate your service to each of you, and thank you for even though you're at a distance, I can see you and we look forward to having you.

I will say that I requested for the Committee today to hear from the Commissioner of Customs and Border Protection, as well as the Chief of Border Patrol. We have not heard from these individuals in the 117th Congress, and I think that's wrong. I think we have an oversight responsibility. So with all due respect to our witnesses here, we like having you, but we hope that your bosses would have come, at least some of your bosses, to be able to ensure that we are getting the administration's view on what's happening on the border and how it's going to be fixed.

Last year, about a million people came to the border unlawfully and were allowed into the United States. So let me repeat that. About a million people came to the border unlawfully and were admitted into the United States. As you know, we are talking a lot about whether these numbers are ten year high, 15 year high, or whatever they are. This year so far, 2022, it's unprecedented. So it's not a 15 year high. It's an historic high. We'll see what happens this summer because typically we would expect more people to come. Also because of Title 42 possibly ending, we are expecting a lot more people to come. And that's one of the big issues we talked about yesterday.

I mentioned that about a million people come to the border unlawfully are allowed into the United States. Most of those are asylees or applicants for asylum, about 85 percent of them from Mexico or Central America, we don't have good numbers for the other countries, are eventually turned down for that asylum, but only a very small numbers we heard yesterday are ever deported. So that's that part. But with regard to Title 42, another roughly one million people were turned away at the border under Title 42, meaning they were processed about 40 hours of processing, and then they were sent back to their home country if they came from other than Mexico or sent back to Mexico. And so that's two million when you think about it, unlawfully coming to the border, a million coming in, being released, a million being turned away. If Title 42 no longer applies, math will tell you it looks like that number may double in terms of those admitted into the country, even though they came to the border without proper documentation.

Some say it will be more because traffickers all over the world are already telling people when Title 42 is gone, just come on in because it'll be relatively easy as long as you say you have credible fear, you can then come in under our asylum system. So that's our challenge we've got. On top of that, of course, we allow in about 750,000 people a year under our legal immigration system, people who wait in line, patiently go through the right channels. I strongly support legal

immigration. In fact, I believe we could actually increase legal immigration to be able to address our workforce challenges in this country and the need for us to have people who come to the United States legally with skills. But that makes us in America, at least for a legal immigration system, probably the most generous country in the world.

There's 750,000 people who come in through the legal system. On top of that, we have people who evade the Border Patrol at the border. So we don't know how many that is. And we're going to talk today to the Border Patrol, about this number. But what Rodney Scott says, who's the former Chief of the Border Patrol, who I know is well known by many of us, is that he thinks that's about 400,000 people a year who evade the Border Patrol, evade being apprehended and are added to the one million people who show up without papers and are allowed into the country, typically under asylum. On top of that, around 400,000 people a year. So we'll get some better numbers on that. But that just gives us some context of why there's such a deep concern when we're down there on the border and I think every one of us have been there, on this panel, probably many times. And our staffs have been down there many times, including very recently.

This is why the Border Patrol tells us that they believe that they will lose, as they say, operational control. We can talk about what that means today over the border unless something is done. So this is a huge issue on top of it, of course, we have an unprecedented amount of illegal drugs coming into the country, particularly this synthetic opioid called fentanyl. And it is streaming in. We'll talk about that today. Why that's coming in?

The Mexican transnational crime organizations are now specializing in this. It used to come from China, as you know, mostly through our U.S. mail system. Now it's mostly coming in through Mexico, being produced in Mexico, often with precursors from China and often pressed into pills. And our citizens that we represent are dying of overdoses, partly because they don't know what these pills are. They may say Xanax, they may say Percocet, something else, but in fact, they're fentanyl. This is leading to a record number, again, not a 15 year high, but a record number of overdose deaths in my home state of Ohio and around the country. So this is another border crisis that we have to address. We'll talk more about how we might do that.

This again is a situation where policy makes a huge difference. President Obama deported or removed over 315,000 unlawful migrants in 2014 alone. In context, the Obama administration removed 65 percent of the migrants that entered unlawfully that year. In contrast, President Biden has deported or removed about 56,000, we heard yesterday about five percent, so 65 percent versus five percent. And of course, we have many more people who are in the queue right now. The backlog is about 1.6 million people for asylum as an example. So unfortunately, we have a situation where not only are we allowing more people in, but we're not having people leave once they're deemed not to be qualified to be asylees or otherwise are here illegally. And that's just a reality and people know that and the traffickers know that. And that's why they have such success in getting people to come to our border, charging them outrageous fees, often treating them very poorly, as we know.

The administration's response to all this is to say we'll have a plan in case the surge gets worse. In fact, the plan states that the first pillar of border security is, 'We have doubled our ability to transport noncitizens on a daily basis with flexibility to increase further.' So much of the plan is

about making it easier to get people into the interior that that's the response. The response is not to put deterrence in place to deter people coming illegally. Rather it's to facilitate the flow to make it easier, including processing people as an example, on buses heading toward the interior of the country rather than doing it at the border because the facilities would be overwhelmed.

So again, I appreciate, Mr. Chairman, you allowing me to speak a little bit today about this to sort of set the context. I think it's important to understand what the numbers are and I really look forward to the opportunity of speaking with all of you today and talking about solutions, not just what the crisis is. I think we all recognize that. I hope so. But what do we do going forward? Thank you, Mr. Chairman.



Statement by

**January Contreras
Assistant Secretary
of the
Administration for Children and Families
U.S. Department of Health and Human Services**

Before the

**Committee on Homeland Security and
Governmental Affairs
United States Senate**

May 5, 2022

Chair Peters, Ranking Member Portman, and members of the committee, it is my honor to appear on behalf of the Department of Health and Human Services (HHS). I am January Contreras, the Assistant Secretary at the Administration for Children and Families or ACF. ACF, through our Office of Refugee Resettlement or ORR, administers the Unaccompanied Children program and we are responsible for the care of unaccompanied children and uniting them with family or a vetted sponsor. I appreciate the opportunity to share with you updates on our ongoing efforts to care for every child referred to us, safely and aligned with child welfare principles, which includes our continuous work to ensure we have adequate capacity to meet any increase in referrals.

I was sworn in on March 31st and while I have only been on the job for a month, I am firmly committed to effectively managing the Unaccompanied Children program and prioritizing the safety of each child whose care we are entrusted with. During my first week on the job, I visited the Emergency Intake Site at Fort Bliss to see our work up close and meet with front-line staff. I have also witnessed the tireless work of the dedicated and skilled team at ORR, who despite tremendous challenges, always place the best interests of children first and continually rise to meet the moment. As I meet with you today, I believe we are prepared to continue safely serving all unaccompanied children referred to us.

Current State of the Program

By statute, HHS is required to provide care to all unaccompanied children referred to ORR by another federal agency, usually the Department of Homeland Security (DHS). Once a child is referred to ORR, ORR works to place the child safely and quickly with a vetted sponsor, usually a parent or a close relative.

As of May 2, we had 8,376 children in care and an overall capacity of 15,513 beds across our network. ORR is able to promptly accept referrals and generally keep the amount of time children spend in U.S. Customs and Border Protection (CBP) facilities well under 72 hours, with the current average being about 23 hours.

As of May 2, ORR has received 72,609 referrals of unaccompanied children from DHS for this fiscal year. In FY 2021, we received 122,247 referrals and placed 108,246 children with vetted sponsors. It is important to note that the Title 42 Public Health Order only applied to unaccompanied children for a very limited time—from March 20, 2020 to November 19, 2020, and then briefly from January 29, 2021 until on or about January 30, 2021. Unaccompanied children have generally not been subject to the Title 42 Order since November 2020; however, we are planning and preparing for any changes in referrals of unaccompanied children, including the possibility of increased referrals that might result from the termination of Title 42 for adults and family units.

Capacity

The team at ACF works each day to ensure that we have adequate capacity to quickly and safely accept all children referred by DHS despite ongoing challenges posed by the

COVID-19 pandemic and high number of referrals. The pandemic significantly reduced the number of beds in our network of standard beds (i.e., beds not in influx care facilities or emergency intake sites). This was mainly due to health and safety protocols around quarantine, isolation, and social distancing as well as difficulties care providers continue to experience in hiring staff. Today, we have cooperative agreements for 13,613 beds in our standard network, the highest number of standard beds we have had on record in the history of the program. We are focused on building greater capacity for more standard beds for children that best meet child welfare principles, including adding beds to existing grants and funding new grants. At the end of last year, ORR issued a Notice of Funding Opportunity (NOFO) for shelter and transitional foster care beds and anticipates awarding grants to approved applicants later this year.

Staffing issues with our grantees and quarantine needs due to COVID-19 continue to be the primary driver of bed unavailability. ORR has authorized hazard pay and incentive pay for grantees to retain and recruit staff in order to keep beds available for children referred to us. ORR has also worked closely with the Centers for Disease Control and Prevention (CDC) to safely adapt CDC guidance and initiate policy changes around quarantining, social distancing, and COVID-19 mitigation measures, which allowed programs to safely once again make more beds available for the children in our care.

EIS State of Play: Mobilization

To ensure adequate capacity, ORR activated an influx care facility (ICF) and emergency intake sites (EIS) in 2021 to ensure the prompt placement of children into ORR care and

custody. EIS provide temporary emergency shelter for unaccompanied children who are referred to HHS from DHS. Our goal is to ensure we have capacity for all children referred to us so that children do not have long stays in border facilities, which are neither designed nor equipped to care for children. We do not consider EIS to be longer-term placement options and continue to review capacity needs to determine timelines for conversion of EIS to even higher care standards. Out of the 14 EIS that were brought online last year, only two remain active: Pecos EIS in Pecos, Texas, and the ORR EIS at Fort Bliss in El Paso, Texas. Although EIS facilities are temporary, we continuously work with our contractors to ensure they are safe and appropriate placements for children and provide key services, including robust case management and mental health supports. We are in the process of transitioning both of the remaining EIS facilities to influx care facilities, which provide the same services and supports as our standard shelters. Finally, we are conducting regular outreach to explore potential use of public and private properties that could be utilized as temporary influx care facilities as needed to accommodate increased referrals.

Policy and Process Improvements

As a child welfare agency, we know that the best place for children is with their family. Over the past year, ORR implemented multiple policy and process changes to expedite the safe placement of children with their vetted sponsors.

For example, ORR initiated new mechanisms for digital fingerprinting which dramatically shortened the timeline for sponsor fingerprint background checks, and

expedited unification processes were implemented for children being placed with parents and close relatives when there were no safety concerns. Case managers and case aides were increased to ensure evening and weekend coverage and to facilitate sponsor assessments. ORR invested in transportation of vetted sponsors and unaccompanied children to avoid unnecessary delays in unification. We also improved various processes and provided technical assistance to grantees to decrease the time it takes to receive necessary paperwork from sponsors. A help desk was also established with the Honduran consulate and a similar arrangement will soon be in place with the Guatemalan consulate so that we can more quickly verify child and sponsor information. We also have a strong working relationship with DHS to closely coordinate the safe and timely transfer of children to our care and have worked to improve data sharing related to new referrals so that ORR receives information that may help with identifying potential sponsors in the United States.

While many of these improvements pre-dated my arrival at ACF, I am committed to constant review of our processes to make them as efficient and safe as possible for the children we serve.

Discharge and Post-Release Services

Though ORR's custody ends when a child is placed with their vetted sponsor, ORR values post-release services (PRS) to promote the safety and well-being of children who have been unified.

This year, ORR is planning to implement an expansion of post release services and work to increase the rate of referrals to these services. Over the longer term, we are committed to a goal of eventually being able to serve all children who are released from ORR care, as resources allow.

In addition, all children released to a sponsor receive a Safety and Well-being Follow-Up Call. ORR also ensures that all children have access to the ORR National Call Center (ORRNCC), where children and their sponsors can call in with their concerns or to receive assistance with enrolling in school, finding medical care or accessing other services. This call center is available 24 hours a day, seven days a week.

Operation Allies Welcome (OAW) and Ukrainian Response

ORR continues to participate in Operation Allies Welcome (OAW), the federal government's unified effort to support the resettlement of vulnerable Afghans to the United States. As part of that effort, ORR has led efforts to facilitate family unifications or refer eligible unaccompanied children to ORR care. ORR unified 1,042 children directly from ports of entry and safe havens.

Unaccompanied Afghan Minors (UAM) not unified at a port of entry are cared for within ORR's shelter network and are quickly put in contact with their parents, guardians, or relatives, if contact information is available. If parents or suitable sponsors cannot be identified, UAM are referred to long-term foster care (LTFC) and the Unaccompanied Refugee Minors Program (URM), as needed. Family and sponsor unification efforts continue for all minors who enter the LTFC and URM programs. As of May 2, 2021, 158

UAM remain in ORR custody. In addition, 73 Ukrainian unaccompanied children have been referred to ORR and 42 have been united with a sponsor with the remainder being cared for in our standard shelter network.

Future of the Program

ORR continues to focus on strengthening how we meet our obligations to unaccompanied children and ensure that ORR can adapt its capacity and service delivery to the fluctuating needs of the program. ORR continues to explore avenues that will enhance our ability to independently manage emergency response efforts by expanding bed capacity, minimizing the amount of time children stay in congregate care settings, and safely placing children with vetted sponsors. ORR will continue to enhance its data and technology systems to support integrated systems, advanced analytics, and efficient communication.

At the same time, it is clear that there are numerous areas of uncertainty in this program that can inhibit ORR's ability to respond effectively to emerging trends. We continue to advocate for the Unaccompanied Children contingency fund included in the President's Fiscal Year 2023 Budget. The contingency fund is designed to address the inherent uncertainty in this program by providing a reliable source of funding when referrals require ORR to activate new capacity. Specifically, the fund would provide additional resources if referrals exceed 7,500 per month allowing us to account for seasonal and yearly fluctuations in referrals and to ensure sufficient capacity.

Closing Remarks

While I am new to this role, fulfilling our legal and moral obligation to care for unaccompanied children will be my highest priority. I recognize the critical importance of oversight, and I know that many of you have been key partners in supporting ORR's capacity to carry out our humanitarian duty to Unaccompanied Children. I look forward to working with all of you. Thank you for this opportunity to update you on ACF's efforts, and for your commitment to the safety and well-being of unaccompanied children. I would be happy to answer any questions.

*Securing and Ensuring Order on the Southwest Border – HSGAC Hearing
Thursday, May 5, 2022 at 10:15am*



TESTIMONY OF

Acting Assistant Secretary Blas Nuñez-Neto
U.S. Department of Homeland Security

For a Hearing

BEFORE

U.S. Senate
Committee on Homeland Security and Governmental Affairs

ON

“Securing and Ensuring Order on the Southwest Border”

May 5, 2022
Washington, DC

*Securing and Ensuring Order on the Southwest Border – HSGAC Hearing
Thursday, May 5, 2022 at 10:15am*

Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee, thank you for the opportunity to appear before you today.

I have been serving as the Acting Assistant Secretary for Border and Immigration Policy since October 1, 2021. My permanent role is the Chief Operating Officer at U.S. Customs and Border Protection (CBP) within the Department of Homeland Security (DHS), which I began on March 5, 2021. Since August 24, 2021, I have been concurrently serving as the Vice Chair for the Secretary of Homeland Security's Southwest Border Taskforce. I also previously served at DHS as an Advisor to CBP Commissioner Gil Kerlikowske from January 12, 2015 to January 16, 2017.

Framing the Challenges at the Southwest Border

Migratory surges along the Southwest Border have become a regular occurrence over the past decade under Presidents of both parties. Over this period, we have seen fundamental changes to the nature, scope, and demographics of irregular migration, even as encounters along the border have increased to unprecedented levels.

There are currently more people in the world displaced from their homes than at any time since World War II, including in the Western Hemisphere, where there are significant diasporas of Venezuelans and Haitians throughout the region. These changes present new challenges that affect our ability to apprehend and process and complicate our ability to effectuate removals. There is little doubt that violence, food insecurity, severe poverty, corruption, climate change, the COVID-19 pandemic, and dire economic conditions throughout our hemisphere are pushing people to leave their countries, and the Administration is committed to addressing these root causes of migration. At the same time, our immigration system is outdated and is not built to contend with the populations and volumes we are now seeing.

This Administration is committed to working with Congress to establish lasting and sustainable solutions to this recurring challenge, most importantly by enacting comprehensive immigration legislation like the bill President Biden proposed on his first day in office. In the absence of congressional action, DHS has worked within its existing authorities to effectively manage an unprecedented number of noncitizens seeking to enter the United States, quickly remove individuals without a legal basis to remain in country, and interdict the transnational criminal organizations (TCOs) putting migrants' lives in harm's way for profit.

Over the past few years, irregular migration along the Southwest Border has not only increased to unprecedented levels and but also changed demographically, presenting new challenges that affect our ability to apprehend and process migrants and effectuate removals.

Before I discuss the efforts we are currently leading, I would like to briefly provide some more detail on the changing nature of migration at the Southwest Border and how it is challenging our immigration system.

First, CBP is encountering a significantly larger number of individuals, including a proportionally much larger percentage of unaccompanied children (UCs) and family units, which

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has strained our legacy infrastructure built decades ago for the purpose of processing single adults. In April, CBP encountered¹ an average of approximately 7,800 migrants per day across the Southwest Border. This is compared to a historical average of approximately 1,600 per day in the pre-pandemic years (2014-2019). While these numbers pose a significant challenge, this challenge has been compounded by a pronounced shift in the demographics and nationalities of noncitizens encountered at and between land ports of entry. We have seen the number of UCs encountered at the border increase dramatically since 2013. In Fiscal Year (FY) 2013, there were approximately 41,000 UC encounters; in FY 2021, there were approximately 147,000 UC encounters – a more than three-fold increase. During FY 2014, we experienced our first surge in unaccompanied children at the border. This was followed by a significant and lasting increase in the number of family units encountered at the border, which increased from 3 percent of encounters in FY 2013 to 28 percent of encounters in FY 2021.

Second, over the past two years, we have seen an unprecedented increase in migration by nationals of countries we have not traditionally encountered in significant numbers along our Southwest Border. For decades, the vast majority of individuals encountered at the Southwest Border came from Mexico, Guatemala, El Salvador, and Honduras. The proportion of Mexican nationals encountered at the Southwest Border has gone from being over 50 percent of unique encounters² in FY 2013 to less than 30 percent in FY 2021. At the same time, the proportion of Honduran, Salvadoran, and Guatemalan nationals increased from approximately 35 percent to 43 percent of unique encounters from FY 2013 to FY 2021. Other nationalities -- including Ecuadorians, Brazilians, Nicaraguans, Haitians, and Cubans -- have come to represent over 20 percent of unique encounters, up from 5 percent in FY 2013. These trends have only accelerated in FY 2022, with countries other than Mexico, Guatemala, El Salvador, and Honduras accounting for more than half (51 percent) of unique encounters thus far this fiscal year.

The growing number of nationalities being encountered in significant numbers at the border has posed new challenges. Under Title 8 authorities, non-Mexican nationals must be issued a final order of removal to be repatriated to their country of origin. To effectuate these removals, we must negotiate agreements with each country that specify multiple required steps, including how the countries will confirm the citizenship of migrants suspected to be their nationals; issue travel documents; provide advance notice of the travel; and accept the physical return of their nationals by scheduled commercial flights or special charter flights.

While DHS can expeditiously remove nationals of Mexico, Guatemala, El Salvador, and Honduras who do not have a legal basis to remain in the United States, other governments often impose additional requirements related to flight manifests, health screening, arrival protocols, nationality verification, document issuance, etc. that can substantially increase the amount of time it can take to remove an individual who does not have a legal basis to remain in the United

¹ A CBP encounter is an engagement between a noncitizen and border law enforcement agent or officer resulting in a U.S. Border Patrol (USBP) Title 8 apprehension, an Office of Field Operations (OFO) Title 8 determination of inadmissibility, or a USBP or OFO Title 42 expulsion.

² Unique encounters are defined as encounters involving a person who was not previously encountered within the previous 12 months. Unique encounter data are limited to enforcement encounters, which exclude OFO parolees, withdrawals of application for admission, and crew members detained on board vessels, collectively known as administrative encounters.

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States. DHS has been working closely with the Department of State (DOS) to work with these countries to ease or streamline requirements associated with removing their citizens.

Additionally, social media and other online platforms have increased smugglers' access to potential migrants, creating an environment ripe for manipulation of information with respect to migration policies at the border. These platforms allow misinformation about our immigration to spread quickly, often with unpredictable consequences.

Lastly, DHS has been implementing the Centers for Disease Control and Prevention's (CDC) *Order Suspending the Right to Introduce Certain Persons from Countries Where a Quarantinable Communicable Disease Exists* under Title 42 of the United States Code since March 2020. On April 1, 2022, the CDC determined that it would terminate this Order effective May 23, 2022. After this date, DHS will once again return to processing noncitizens encountered at the land border according to existing Title 8 immigration authorities.

The end of Title 42 does not mean that individuals entering the country unlawfully will enter and get to stay; instead, it means that we will once again impose meaningful immigration consequences on individuals who violate our immigration laws. These consequences do not apply when individuals are expelled under Title 42, which has led to extraordinarily high recidivism rates, as individuals expelled to Mexico attempt to re-enter shortly after their expulsions. For example, since April 2020, 94 percent of single adults encountered from Mexico and the Northern Triangle have been expelled under Title 42 authority, and during that time, these two groups have had repeat encounter rates of 52 percent and 51 percent, up from 25 percent and 15 percent, respectively, between October 2013 and February 2020.

As Secretary Mayorkas has emphasized repeatedly, DHS has strongly discouraged, and will continue to discourage, any attempt to migrate irregularly into the United States. Anyone who attempts to enter the United States without authorization and is unable to establish a legal basis to remain in the United States will be subject to removal and may face additional consequences, including bars to future immigration benefits.

DHS Efforts to Respond to Irregular Migration

DHS has been preparing for the termination of the CDC's Title 42 public health order for many months. DHS operational agencies and partners have planned for multiple scenarios to ensure that we are prepared for any potential increase in migration that may occur. We will respond to irregular migration by strictly but fairly enforcing our immigration laws to process individuals in a safe, orderly, and humane manner, consistent with our laws. We will quickly remove individuals who do not establish the legal ability to remain in the United States, while continuing to be a global leader in providing protection for those who are fleeing or fear persecution and torture in their home countries.

As part of these efforts, DHS commenced planning exercises in Fall 2021 and held multiple tabletop exercises with representatives from across the government. The lessons learned over this period were incorporated into the DHS Mass Irregular Migration Contingency Plan, which

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was published in February 2022. At that time, in recognition that migratory flows have been and continue to be elevated at our border and throughout our hemisphere, DHS formally launched the Southwest Border Coordination Center (SBCC), which is coordinating a whole-of-government response to the anticipated increase in border encounters and designated a Senior Coordinating Official to oversee these efforts. The SBCC has centralized coordination among key government agencies within a single structure to ensure effective, holistic planning and execution.

The DHS Border Security Plan has six pillars: 1) surge resources to the border to support border operations; 2) increase the efficiency of immigration processes to reduce strain on the border; 3) impose consequences for unlawful actions and quickly remove individuals without a legal basis to stay in the United States; 4) bolster the capacity of non-governmental organizations (NGOs) and collaborate with state and local partners; 5) go after the vicious cartels and smugglers that profit from putting migrants' lives at risk; and 6) work with our regional partners to impact migratory flows before they reach our border. This comprehensive plan leverages a whole-of-government approach to prepare for and manage the current and anticipated increases in encounters of noncitizens at our Southwest Border.

Surging Resources to Support Border Operations

Over the past several months, DHS has deployed more than 1,000 personnel to the Southwest Border to prepare for, and respond to, an increase in migration. Secretary Mayorkas has directed DHS to take a wide range of measures intended to maximize the number of CBP Agents and Officers deployed to the field to do frontline work. Many Agents and Officers spend hours performing tasks, such as administrative processing, facility security, and hospital watch, that take them away from the principal duties on the border. DHS is working quickly to provide support that enables law officers and agents to focus on front-line work. As part of these efforts, we have accelerated the hiring, training, and deployment of Border Patrol Processing Coordinators, issued contracts for facility security and administrative processing support, and deployed DHS volunteers from across the Department to five sectors (Yuma, El Paso, Del Rio, Laredo and Rio Grande Valley) along the Southwest Border.

We have also significantly increased CBP's holding capacity, constructing nine soft-sided facilities that will ultimately expand our holding capacity from 13,000 in January 2021 to almost 18,000 by May 23. This includes three soft-sided facility expansions totaling approximately 1,300 in holding capacity that were initiated in the past two months and another one that will be completed in mid-May.

Finally, it is among DHS's top priorities to ensure the health, safety, and well-being of those in DHS care and custody, the DHS workforce, and surrounding communities. To this end, we have invested in ensuring that we have appropriate and accessible medical care, including for those with unique vulnerabilities, medical conditions, and for tender-aged children. The SBCC has developed a medical support plan, which has been reviewed by interagency medical experts, and is currently determining which federal agencies can provide support.

In 2021, DHS began implementing a phased approach to provide COVID-19 vaccines, starting with a program for noncitizens in U.S. Immigration and Customs Enforcement (ICE) custody.

The provision of vaccines, coupled with the testing of noncitizens on intake and rigorous isolation and quarantine protocols, has led to low morbidity in ICE facilities. On March 28, 2022, DHS expanded its COVID-19 vaccine program to include noncitizens in CBP custody. By May 23, all age-eligible noncitizens processed under Title 8 immigration authorities will be eligible to receive their first dose of a COVID-19 vaccine in CBP custody prior to onward travel. Additionally, at the highest-volume CBP sectors, unaccompanied children are tested on intake for COVID-19 and, if positive, are triaged for immediate movement to facilities run by the Department of Health and Human Services (HHS). These mitigation measures at CBP and ICE have kept COVID-19 rates among noncitizens similar to those of surrounding communities during most of 2021 and 2022.

Increasing Processing Efficiency

DHS's goal is to hold noncitizens in a safe, orderly, and humane environment, ensure appropriate security screening and vetting procedures, and quickly process and transfer screened noncitizens out of CBP custody to ensure that facilities do not become overcrowded. CBP facilities are not designed to hold individuals for over 72 hours, although this has unfortunately happened all too often in recent years. DHS is working on several efforts designed to help streamline immigration processing for noncitizens in CBP custody, in order to minimize time spent in congregate settings.

First, DHS is testing and rapidly developing a model that will co-locate CBP, ICE, and non-governmental organizations (NGOs) at Enhanced Central Processing Centers that will eliminate processing inefficiencies and allow some several processing steps to be completed concurrently by different agencies. This innovative model will allow CBP to quickly triage noncitizens it encounters based on risk, ensuring that higher-risk individuals are held in secure facilities until they are placed in detention, while lower-risk individuals are processed quickly and humanely at facilities that do not require as significant a law enforcement presence. ICE personnel will be on-site to minimize processing delays associated with CBP referrals to ICE, and the goal is for NGOs to eventually be present in facilities to provide legal orientation services and onward transportation for those low-risk individuals who are ultimately released on alternatives to detention (ATD). The overall objective of this initiative is to efficiently process for removal proceedings low-risk families and single adults while allowing Border Patrol to focus more of its agents on its priority mission to secure our border rather than on administrative duties. The first Enhanced Central Processing Center is operational in Laredo, Texas effective April 29 and is used primarily for family units placed on ATD pending their removal proceedings. DHS will closely monitor the results of this effort and is prepared to expand to other facilities if the projected processing efficiencies materialize.

Second, CBP and ICE are testing and refining operational plans to complete processing of noncitizens while in transit between DHS facilities. This will allow DHS to move noncitizens out of CBP facilities faster while retaining the integrity of biometric and biographic screening processes and ensuring noncitizens apprehended at the border are expeditiously placed into removal proceedings.

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Third, DHS is working to digitize and automate immigration processes at the border through the Southwest Border Technology Integration Program, which launched late last year. As part of this effort, over 70 percent of Title 8 cases are now reviewed and signed digitally by CBP—saving frontline personnel over 20,000 hours of processing time to date. DHS is identifying and implementing further technological and administrative improvements to reduce overall processing time of noncitizens, while also maintaining security. For example, the SBCC is focused on expanding digital processing towards a fully digital A-File, which is shared across CBP, ICE, U.S. Citizenship and Immigration Services (USCIS), and DOJ throughout a noncitizen's removal proceedings. In addition, DHS is working to eliminate administrative redundancy by identifying and removing certain forms in the document exchange between CBP and ICE.

DHS efforts to innovate and transform border processes extend to our ports of entry (POEs) as well. We have enhanced Title 8 processing at our POEs through the development of the CBP One mobile application, which allows certain individuals presenting at POEs to provide advanced information and schedule an appointment to be processed. Returning to robust POE processing is an essential part of DHS border security efforts. Beginning in the summer of 2021, DHS restarted processing vulnerable noncitizens through POEs under Title 8, on a case-by-case basis for humanitarian reasons, pursuant to the exception criteria laid out in the CDC Title 42 Order. These efforts, which we have recently expanded, offer individuals in vulnerable situations a safe and orderly method to submit their information in advance and present at POEs for inspection and subsequent immigration processing under Title 8.

Administering Consequences for Unlawful Entry

DHS is committed to enforcing our immigration laws fairly and to quickly removing individuals who do not have a legal basis to remain in the United States. A key part of this are efforts to prepare to maximize the use of Expedited Removal and make the process more efficient, with the goal of reducing the time it takes to remove noncitizens who receive a negative credible fear determination while in ICE custody.

This increased use of Expedited Removal serves key law enforcement and operational goals. It is a fair and effective means of efficiently removing those with no lawful basis to remain in the United States, consistent with due process. Those subject to Expedited Removal also face a five-year bar on admission from the date of removal and potential criminal prosecution if they seek to unlawfully re-enter, thus deterring potential future irregular crossing attempts.

However, just as DHS was beginning to increase our use of Expedited Removal at the border as we prepare for the end of Title 42, the Western District of Louisiana issued a Temporary Restraining Order to stop these preparations. It is illogical that a court considering a lawsuit about whether DHS is prepared for the end of Title 42 would stop this key effort to prepare for the end of Title 42.

DHS is also committed to significantly reducing the amount of time the immigration court process takes for noncitizens who are not detained. Effective May 31, DHS will begin implementing the new Asylum Officer rule by referring some Expedited Removal cases to

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USCIS for significantly more expeditious adjudication. The new rule will allow DHS and DOJ to conclude certain asylum cases in months instead of years, meaning that those deemed ineligible for asylum or other relief from removal can be removed much more quickly while those who are eligible for asylum or relief from removal can obtain the protection they merit in a timely manner. While full implementation will take time, the rule will have a transformative impact on the asylum system.

For family units not processed through Expedited Removal and who are instead placed in removal proceedings, DOJ and DHS have jointly established a Dedicated Docket to conduct speedier immigration court proceedings that comport with due process. DHS is utilizing the Dedicated Docket for certain family units who arrive between POEs at the Southwest Border and are traveling to one of 11 destination cities. Family units placed on the Dedicated Docket are prioritized for adjudication and are generally expected to receive final decisions in their cases within 300 days of initiation, as opposed to several years.

We have issued new guidelines regarding immigration enforcement priorities that focus the Department's resources on the apprehension and removal of noncitizens who pose a threat to our national security, border security, or public safety. These guidelines mark a new approach to enforcement as they focus our resources on dangerous criminals and recent border crossers while acknowledging the reality that DHS does not have the resources to apprehend and remove every single one of the estimated 11 million noncitizens removable from the United States. This approach is working. Since implementation of the revised enforcement guidance, ICE has removed more people convicted of aggravated felonies. In FY 2021, 46 percent of removals were for people with felony or aggravated felony convictions, marking a significant increase compared to 18 percent in the previous four calendar years. Also, in FY 2021, 26 percent of ICE removals were aggravated felons compared to 3 percent in the previous four years – about 937 per month in FY 2021 compared to 633 per month in previous years.

Finally, DHS will continue to refer border-related criminal activity to DOJ for prosecution where warranted, including that of smugglers, recidivists, and other noncitizens whose conduct warrants such law enforcement action. We continue to enforce CBP's Repeat Offender Initiative to target recidivists (or noncitizens who are encountered more than once), which has improved DHS's ability to leverage legal consequences to deter irregular migration while conserving limited processing resources. And Secretary Mayorkas sent a memo to CBP that makes clear does not tolerate acts of violence committed against frontline personnel at the border and that all such cases should be referred to DOJ for prosecution.

Bolstering NGO Capacity and Supporting Border Communities

Increased migration levels put additional pressure not only on DHS personnel and resources, but also on border communities and NGO partners. NGOs play a critical role in providing care and support with onward travel to noncitizens who are placed into removal proceedings, not subject to detention, and released from CBP custody.

Once a noncitizen is released from custody by DHS, the Department is no longer operationally engaged in their transportation, medical care, or shelter. Nonetheless, our goal is to help

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communities alleviate the pressures they experience by expanding NGO capacity through communication, coordination, and grants from the Emergency Food and Shelter Program (EFSP). We are also exploring other ways to provide assistance to communities and welcome the ongoing dialogue we have with local leaders on this subject.

Administered by DHS through the Federal Emergency Management Agency (FEMA), EFSP supplements and expands ongoing work of local NGOs to meet the urgent needs of local agencies assisting the unique and vulnerable migration population encountered by DHS. In FY 2022, Congress authorized \$150 million for EFSP Southwest Border support, and FEMA has taken necessary steps to ensure these funds can be accessed by eligible partners in short order.

DHS works to track NGO capacity and share information about border processes. The SBCC has designated points of contact for state, local, and community stakeholders that work in tandem with CBP personnel. Consequently, the SBCC has stood up recurring engagements with state, local, and tribal officials and non-governmental organizations that are led by local CBP leadership from the Southwest Border and staffed by a SBCC representative. This type of collaboration provides real-time information sharing to/from headquarters and the field, as well as visibility on regional needs and adequate responses.

Targeting and Disrupting Transnational Criminal Organizations (TCOs) and Migrant Smugglers

DHS works at home and abroad to identify, investigate, and interdict the TCOs that smuggle migrants and drugs into our country, turning a profit from human misery and often putting migrants in harm's way. Migrant smuggling organizations peddle misinformation in order to take advantage of the transient and precarious situation migrants are in. DHS is targeting these organizations, in close collaboration with other federal agencies, state and local law enforcement, and international partners. While this has been a consistent priority for the past year, our efforts have intensified in recent months as we prepare for the end of Title 42.

In April 2022, DHS surged disruption efforts in partnership with other federal agencies along six coordinated and interconnected lines of effort. One of these is the Office of the Director of National Intelligence's (ODNI) Migration Intelligence Cell whose goal is to provide advanced geographic and time-based warning of large migrant smuggling movements in the region and analysis and targeting information for disruption activities. The Migration Intelligence Cell has highlighted to the entire Intelligence Community the priority of migrant smuggling to prompt additional focus. The intelligence generated by these efforts will be used to identify and disrupt criminals and to inform border security deployments.

Operation Expanded Impact, led by ICE Homeland Security Investigations (HSI), is focusing investigative efforts along the Southwest Border to detect, disrupt, and dismantle TCOs involved in narcotics, migrant smuggling, and human trafficking. HSI has assigned approximately 250 special agents and criminal analysts to carry out investigations in the United States.

Operation Sentinel, which is an interagency counter-network operation targeting TCOs affiliated with migrant smuggling; Joint Task Force Alpha, a DOJ-led effort to target smuggling and

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trafficking groups; and Blue Indigo, led by DOJ and DHS to disrupt cartel operations and illicit networks in South Texas are all lines of effort that we have been pursuing as part of the largest surge of resources and disruptive activities against migrant smuggling networks in recent memory.

In April, these lines of effort produced 2,583 total combined disruption actions, 1,437 arrests, 228 investigations, 639 investigatory leads and interviews, and 279 disruptions of migrant smuggling infrastructure, such as buses and safe houses.

Partnerships with Mexican and Central American counterparts have resulted in multiple significant enforcement actions against migrant smuggling and trafficking groups operating in Mexico, Guatemala, El Salvador, and Honduras. A few weeks ago, the Salvadoran National Police disbanded a migrant smuggling network focused on Cuban migrants, revealing a connection to an active migrant smuggling investigation in El Paso, Texas, and the identification of another suspected smuggler in Austin, Texas. In Honduras, DHS has provided robust support to Operation Scorpion, a border surge initiative of the Honduran National Police that targets migrant smugglers and human traffickers. Currently, two cases involving six Honduran migrant smugglers are being prosecuted related to attempted smuggling of Cuban migrants. Officers seized vehicles, cell phones, and currency. The migrant smugglers were also enrolled in HSI's Biometric Identification Transnational Migrant Alert Program (BITMAP) to stave off future smuggling.

In order to counter the disruptive messaging employed by TCOs, DHS has been engaging technology companies to address migration-related misinformation and similar concerning content on social media platforms. Discussions have focused on operationalizing public-private partnerships between DHS and technology companies, as well as informing social media and other tech executives about departmental initiatives on misinformation, disinformation and malinformation (MDM). Through these engagements, we are providing tech companies URL links to content that has been identified by CBP, through its border security and law enforcement operations, as violative of their terms of service and being used to facilitate migrant smuggling at the Southwest Border.

Regional Collaboration

There is growing consensus across the Western Hemisphere that migration is a shared challenge and responsibility. This is key because the dynamics at our border are part of a hemispheric challenge; by the time migratory flows reach our border, our options are limited.

Last year, President Biden laid out his Root Causes and Collaborative Migration Management Strategies as a roadmap for the ways in which this Administration is working with regional partners to disincentivize irregular migration from Central America and create a more secure and orderly migration system in the Western Hemisphere. In coordination with the Department of State (DOS), DHS will continue to work in partnership with countries in the Western Hemisphere to offer safe and legal pathways for migrants seeking protection, employment, and family unification while increasing targeted enforcement efforts to hold accountable the

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smugglers and traffickers that exploit migrants into taking the dangerous journey to our land borders. DHS leadership continues to meet with our counterparts throughout the region to encourage increased coordination, information sharing, and the proper resourcing of migration- and security-related efforts to stem the flow of irregular migration.

The Biden-Harris Administration continues to maintain a close partnership with the Government of Mexico to stem irregular migration, which includes creating viable legal pathways, facilitating lawful trade and travel, and combating the shared dangers of transnational organized crime. Last month, Secretary Mayorkas made his fourth official visit to Mexico City where he met with President López Obrador to intensify our shared commitment to promoting lawful trade and travel and developing a regional approach to migration management. He and I met with Secretary Ebrard in person this week in Washington DC to continue these discussions.

On March 15, 2022, Secretary Mayorkas traveled to Costa Rica and joined President Alvarado in announcing a bilateral Migration Arrangement, which outlines our shared commitment to both manage migrant flows and promote economic growth in the region. On April 19, the U.S. government signed a Bilateral Arrangement on Migration and Protection with the Government of Panama, similarly detailing our collaborative commitments to improve migration management, expand stabilization efforts, and increase access to legal pathways and protection for those in the region. DHS and DOS are actively engaged with other countries in the region to advance similar bilateral arrangements, as well as a Hemispheric Declaration on Migration and Protection to be completed at the upcoming Summit of the Americas in June 2022.

Conclusion

DHS and its federal and community partners have been taking steps for months to prepare for the lifting of the CDC's Title 42 Order, while operating within a system that is not designed to handle the current volume of migrants nor any potential increase over the coming months. These preparations and deliberate planning will enable us to manage and mitigate known and unanticipated challenges more effectively, while protecting the safety and security of our communities. Notwithstanding these efforts, a significant increase will substantially strain our system even further.

Over the past 15 months, the Department of Homeland Security has demonstrated time and time again our ability to tackle significant challenges, while operating consistent with our laws and our values. From responding to unprecedented levels of migration and ensuring the safety of individuals in our care to vetting and processing tens of thousands of evacuees from Afghanistan and Ukraine, we have consistently risen to the challenge in extremely difficult circumstances.

With the CDC's decision to end its Title 42 order as of May 23, 2022, DHS is focused on implementing sustainable solutions to the irregular migration challenges at our Southwest Border, including through executive action, if needed. But we recognize that executive action will never be an adequate stand-in for congressional action, and we urge Congress to work with us to enact legislation that can help this country modernize its immigration system, better secure its borders, and provide hope to migrants in the region that they will have legal opportunities to come to the United States without having to put their lives in the hands of ruthless smugglers.

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Thank you again for the opportunity to testify today, and I look forward to your questions.



TESTIMONY OF

MaryAnn Tierney
Senior Coordinating Official (March 18-April 29, 2022)
Southwest Border Coordination Center
U. S. Department of Homeland Security

For a Hearing

BEFORE

U.S. Senate
Committee on Homeland Security and Governmental Affairs

ON

“Securing and Ensuring Order on the Southwest Border”

May 5, 2022
Washington, DC

Chairman Peters, Ranking Member Portman, and distinguished Members of the Committee, thank you for the opportunity to testify today.

I would like to start by recognizing the thousands of men and women of the Department of Homeland Security (DHS) who work tirelessly around the clock, often at significant peril and personal sacrifice, to secure our borders, enforce our laws, and ensure fair and humane treatment for all, consistent with our values as a Department, and as a nation. I thank these and the many thousands of other dedicated public servants of DHS who serve and protect our country and the American people no matter the challenge.

I appear before you today having just completed my assignment as Senior Coordinating Official with the Southwest Border Coordination Center (SBCC), on April 29. Secretary Mayorkas designated a Senior Coordinating Official and established the SBCC in February 2022, to coordinate planning, operations, engagement, and interagency support. I came to this role having served for the past 12 years as regional administrator for the Federal Emergency Management Agency (FEMA) Region III, based in Philadelphia, PA, where I am responsible for delivering FEMA's vital mission of helping people before, during, and after disasters. In addition to my permanent assignment, I also lead one of FEMA's four National Incident Management Assistance Teams. Before joining FEMA, I served in leadership roles in emergency management for the cities of Philadelphia and New York.

DHS initiated a southwest border contingency planning effort last fall. The Department established the SBCC in Washington, DC, to prepare for and eventually oversee operations related to irregular migration along the border. In mid-March of 2022, leveraging National Incident Management System organizational concepts, the SBCC was co-located, and subsequently integrated with, existing U.S. Customs and Border Protection (CBP) coordination efforts related to the migration surge. This co-location and integration fosters and facilitates interagency collaboration and preparedness.

On April 1, 2022, the Centers for Disease Control and Prevention (CDC) announced that, as of May 23, 2022, its Title 42 public health Order will be terminated. Title 42 is not an immigration authority, but rather a public health authority used by the CDC to protect against the spread of communicable disease. I would like to share some of the steps the SBCC has taken to prepare for the termination of Title 42.

First, the SBCC developed planning scenarios based on DHS Office of Immigration Statistics (OIS) projections for low, medium, and high levels of post-Title 42 encounters. The SBCC is planning against scenarios developed for 12,000 and 18,000 encounters per day. These encounter scenarios underpin planning assumptions that generate requirements, which in turn drive operational execution.

Second, the SBCC has developed three lines of effort to prepare for and respond to increases in migration at the Southwest Border. These lines of effort are designed to enable a secure, orderly, and humane process at the border that prioritizes life safety, national security, and process efficiency, and is inclusive of state, local, and tribal governments, and nongovernmental organizations (NGOs) that play critical roles in border communities. They include: (1) expanding processing throughput and capacity to ensure that noncitizens are expeditiously placed into the

appropriate immigration pathway; (2) coordinating with state, local, tribal, and nongovernmental partners; (3) and increasing available resources for migration response overall.

Processing Efforts

As part of our strategy to expand processing throughput and capacity, the SBCC, in partnership with CBP, is launching three new initiatives to rapidly process noncitizens while ensuring the continued integrity of our security screening processes.

- **Enhanced Central Processing Centers:** The SBCC is testing and rapidly developing a model that will co-locate CBP, Immigration and Customs Enforcement (ICE), Department of Health and Human Services (HHS), and NGOs at enhanced centralized processing (ECPC) to eliminate inefficiencies and more rapidly process noncitizens. This innovative model will allow CBP to quickly triage noncitizens it encounters based on risk, ensuring that higher risk individuals are held humanely in secure, hardened facilities until they are placed in detention, while lower risk individuals are processed quickly and humanely at facilities with a smaller law enforcement presence. This will allow CBP to focus more of its agents and officers on its priority mission to secure our border rather than processing and administrative duties. Other agencies will also be on-site in order to minimize delays associated with referrals, and NGOs will be accessible as well to provide onward movement for those low-risk individuals who are ultimately released on alternatives to detention.
- **Mobile En-route processing:**
The SBCC is actively engaging with cities that are located within a six-hour drive of the border where DHS will employ en-route processing to relieve pressure on Border Patrol facilities and border communities. Border Patrol is outfitting buses with necessary technology to support processing requirements while in transit. When noncitizens are transported to alleviate overcrowding, the time in transit is an opportunity to process those being transported. CBP can move noncitizens out of its facilities faster, while retaining the integrity of biometric and biographic screening processes and ensuring noncitizens apprehended at the border are placed expeditiously into removal proceedings. This approach will also be used to return Mexican nationals encountered at the border and returned through a Port of Entry without having to go to a Border Patrol station, thereby alleviating overcrowding.
- **Streamlined processing:**
DHS launched the Southwest Border Technology Integration Program to digitize and automate noncitizen processing. Today, over 70% of Title 8 cases are reviewed and signed digitally by CBP, which saves up to 14 minutes per case. We project this has saved over 20,000 hours of agent time already. The SBCC is identifying and implementing further technological and administrative improvements to reduce overall processing time of noncitizens, while also maintaining security. We are focused on expanding digital processing towards a fully digital A-File, which is shared across CBP, ICE, U.S. Citizenship and Immigration Services, and Department of Justice (DOJ)

throughout the immigration lifecycle and eliminating administrative redundancy by identifying and removing certain forms in the document exchange between CBP and ICE.

The SBCC is also working with ICE and CBP to identify outdated or unneeded forms – to standardize processes and cut bureaucratic red tape. Lastly, the SBCC is identifying areas where CBP officers and Border Patrol agents can improve their effectiveness through training, particularly in interviewing skills and reducing common errors on forms. The goal is to do everything possible to enable officers and agents to spend less time processing arrests and more time in the field.

CBP is also working to increase processing efficiency at Ports of Entry to further facilitate safe and orderly inspection of noncitizens.

Coordination with State, Local, Tribal and Nongovernmental Partners

Different sectors and border communities require different resources, and there must be coordination between government operations and the humanitarian missions of NGOs across the southwest border to streamline the transfer process out of CBP custody and build capacity for potential future migration increases. NGOs provide important skillsets, resources, and operational experience. State, local, and tribal government leaders are also critically important partners. The SBCC supports tactical implementation that provides for ongoing consultation with federal, state, local, and tribal government leaders, and NGOs.

In early April, I traveled to the southwest border and got a first-hand look at coordination efforts between DHS, CBP, and state and local partners. Following best practices for emergency response, DHS is integrating partners at the state level into its field operations. For example, the California Governor's Office of Emergency Services (CalOES) is embedded within CBP's Region IX Emergency Operations Center. Having CalOES embedded in the Emergency Operations Center provides access to numerous state resources and speeds up communication and coordination between federal and state officials. In the coming weeks, the plan is to further integrate operations by including an additional CalOES representative at the El Centro Incident Command Post. DHS will continue working with CalOES to identify additional resources and support from NGOs in the state to leverage the role they play in transportation and shelter services.

The SBCC and Lead Federal Coordinators are meeting regularly with state, local, tribal, and law enforcement officials to ensure coordination and communication, keeping them updated on what the federal government is doing and identifying resource needs.

For instance, the Lead Federal Coordinator in San Antonio, a major transportation hub, has held meetings with the mayor and included subject matter experts from FEMA to explore mechanisms for funding stakeholder needs in that city, such as through the Emergency Food and Shelter Program. This is a federally funded program administered by FEMA.

The Consolidated Appropriations Act of 2022 provided \$150 million in funding to this program for distribution to organizations assisting migrants at the southern border. In April, FEMA

awarded \$150 million in humanitarian funding to the National Board for the Emergency Food and Shelter Program. The National Board will award these funds to eligible local nonprofit and governmental organizations, and state governmental facilities, that have aided, or will aid, individuals and families encountered by DHS at the southern border. These funds can be used for food, lodging, and transportation costs. Organizations will have the opportunity to request reimbursements on a quarterly basis, as well as to request advance or prospective funding. Organizations can apply for reimbursement of expenses back to January 1, 2022.

Increasing Available Resources

The SBCC continues to develop additional resource capabilities across three lines of effort: transportation, facilities, and personnel. This includes items such as securing additional bus drivers, expanding bus leases, increasing bed capacity, building additional soft-sided facility capacity, contracting additional security guards, and hiring data entry support personnel. We are also expanding civilian processing capacity and identifying additional needed resources through the DHS Volunteer Force and contractors, freeing up CBP officers and Border Patrol agents to do their vital national security mission.

The SBCC is also developing interagency agreements and memorandums of understanding with DOJ for additional law enforcement officers, buses, security, and drivers to augment and enhance CBP operations. The SBCC has developed a medical support plan, which has been reviewed by interagency medical experts, and is currently determining which federal agencies can provide support through an interagency agreement signed with the Department of Defense, HHS, Coast Guard, and FEMA.

The SBCC implements strategies in partnership with NGOs and federal, state, local, and tribal stakeholders. Ultimately the goal of these steps and other efforts focused on longer-term strategies is to create a lasting, scalable, and repeatable structure to respond to irregular migration events.

Thank you for the opportunity to testify today. I look forward to your questions.



TESTIMONY OF

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U.S. Department of Homeland Security

For a Hearing

BEFORE

U.S. Senate
Committee on Homeland Security and Governmental Affairs

ON

"Securing and Ensuring Order on the Southwest Border"

May 5, 2022
Washington, DC

Introduction

Chairman Peters, Ranking Member Portman, and Members of the Committee, thank you for the opportunity to discuss the conditions along the Southwest Border and U.S. Customs and Border Protection's (CBP) efforts to secure our borders and facilitate lawful trade and travel. I am honored to represent the dedicated men and women of CBP who operate on the frontlines to ensure our national security and the security of our borders.

Global and regional events over the last few years have produced challenging conditions along the Southwest Border that directly affect CBP's border operations. Most notably, we have been experiencing a significant increase in the number of migrant encounters, addressing a shift in illegal drug production and trafficking, and responding to the global coronavirus (COVID-19) pandemic. While CBP has experienced many challenges over the last few years it is important to note we remain dedicated to the humanitarian aspects of our mission. CBP performs thousands of lifesaving rescues and provides life-sustaining medical treatment, food, clothing, and shelter to those in need every single day.

The emergence of COVID-19 and the implementation of the Centers for Disease Control and Prevention's (CDC) public health order, commonly referred to as Title 42, have significantly altered the Southwest Border environment and CBP's operations. Since March 2020, CBP has assisted in enforcing CDC's Title 42 public health order, which suspends the right to introduce into the United States certain noncitizens arriving at the land borders to protect against the spread of COVID-19.

Throughout the pandemic, CBP has continued to respond to high levels of migrant encounters as we work to ensure the safety and security of our borders and protect civil and human rights. We also continue to work with partners across the federal government to prioritize the health and safety of surrounding communities, our personnel, and noncitizens.

Irregular migration and the resumption of pre-pandemic immigration processes are a primary focus for CBP. We remain vigilant and responsive to other challenges and responsibilities including interdicting illicit drugs crossing into the United States, preventing dangerous people and goods from crossing our borders, enforcing hundreds of trade laws, and ensuring the efficient flow of lawful trade and travel that is so important to our economy.

Resuming Pre-Pandemic Migrant Processing

Once CDC's Title 42 order is terminated on May 23, CBP anticipates an increase in the number of noncitizens encountered, above the already high levels we currently experience. Leveraging experience and expertise gained during previous migration surges, CBP is making numerous preparations to help ensure we can continue to scale our operations and effectively respond to areas of the greatest need, impose consequences on those who break the law, and process noncitizens safely and humanely.

Utilizing Immigration Authorities

Following the termination of the CDC's Title 42 public health order, CBP will utilize its full range of immigration authorities under Title 8 of the U.S. Code to process migrants encountered at the border as we have done throughout our agency's history. These authorities include a range

of enforcement options to hold individuals accountable for entering the United States illegally, including placing individuals into expedited removal, immigration proceedings, or providing for urgent port of entry (POE) humanitarian parole on a case-by-case basis, while permitting those who are eligible to make claims for asylum.

Providing Safety and Protection for those in our Custody

Higher numbers of migrant encounters require deliberate and coordinated actions to ensure individuals in CBP custody are held in safe and sanitary conditions. CBP will continue to coordinate with the Movement Coordination Cell (MCC), a standing interagency group charged with overseeing expedited processing and transfer of unaccompanied children and other vulnerable individuals out of CBP custody. The MCC, comprised of personnel from CBP, the Department of Homeland Security (DHS), the Department of Health and Human Services (HHS), Federal Emergency Management Agency (FEMA), U.S. Immigration and Customs Enforcement (ICE), and the Department of Defense, was formed to facilitate communication and problem-solving among U.S. government agencies to specifically address the flow of vulnerable populations.

CBP continues to work with our partners to help ensure efficient processing of all noncitizens in our custody, even as encounter rates remain elevated. In April of 2022, CBP's daily rate often exceeded 13,000 noncitizens in custody, which has led to a tremendous logistical and operational challenge. However, we have ensured, and continue to ensure, that any individual released from CBP custody is vetted and screened to ensure that they do not pose a public safety or national security risk.

Furthermore, CBP is expanding efforts to vaccinate noncitizens found inadmissible under Title 8 and in DHS custody, in accordance with public health considerations. DHS has provided COVID-19 vaccines to noncitizens in ICE custody since summer 2021. Acting to further safeguard public health and ensure the safety of border communities, the workforce, and migrants in anticipation of Title 42 ending, DHS has expanded those efforts to provide a first dose of a COVID-19 vaccine to age-appropriate noncitizens found inadmissible and taken into CBP custody at the Southwest Border.

Expanding Facilities and Transportation

With Fiscal Year (FY) 2022 funding from Congress, we are increasing facility capacity and adding new short-term facilities at key border locations to reduce over-crowding and accommodate varying demographics of noncitizens encountered crossing the Southwest Border. In March 2022, CBP reopened the Rio Grande Valley Centralized Processing Center (CPC) in McAllen, Texas, after extensive renovations that dramatically improved CBP's ability to process noncitizens encountered at the border in a safe, orderly, and humane manner. Additionally, we have worked to increase our holding capacity, currently at over 17,000 compared to less than 13,000 in January 2021. We are also opening three new soft-sided facilities in Del Rio and Laredo, Texas, to expeditiously manage migration flows in those sectors.

The renovation of the CPC and opening of new facilities are part of CBP's broader goal to safely process individuals CBP encounters, as well as increase capacity and ensure appropriate conditions for noncitizens, agents, officers, and processing coordinators. We are also

maximizing the use of air and ground transportation to move noncitizens from U.S. Border Patrol Sectors that are over capacity to other less impacted CBP locations.

Surging and Shifting Personnel

CBP is shifting Border Patrol agents and CBP officers from other locations to assist at the Southwest Border, providing resources to areas with the most need. Hundreds of officers, agents, and DHS Volunteer Force members are already deployed. This ensures agents and officers can perform other critical mission functions. Thanks to the support of Congress, CBP will increase the number of Border Patrol processing coordinators and contractors available to assist with immigration processing activities.

Coordinating with Partners

In addition to targeted efforts such as MCC to address specific populations, DHS stood up a Southwest Border Coordination Center (SBCC) to bring CBP together with other federal partners to plan and execute a whole-of-government response to migration increases at the Southwest Border. Working with our DHS partners and communicating with our other governmental partners, CBP is mobilizing and shifting resources in anticipation of potential migration surges. CBP is the Primary Supported Component of the SBCC and is also utilizing our operational coordination capability to provide expertise and resources to the response to irregular migration flows across the Southwest Border. We are also increasing collaboration with DHS Components and other governmental partners, including ICE, FEMA, HHS, USCIS, the DHS Office of the Immigration Ombudsman, the Department of Justice (DOJ), the Department of State, and other federal entities to address potential increases in the number of noncitizens entering the United States. This enhanced collaboration spans the entire scope of border security activities, including resources and capabilities related to infrastructure, facilities, transportation, medical care, and joint processing.

CBP will also increase access to and promote utilization of the Unified Immigration Portal (UIP), a technical solution serving as a centralized location where relevant immigration-related data from multiple agencies across the immigration lifecycle can be accessed. The platform delivers mission critical dashboards, services and data integration capabilities to users that facilitate expeditious processing of subjects and increase visibility for interagency operations during surges.

Furthermore, CBP is also communicating with various non-governmental agencies, including a range of non-profit organizations, faith-based entities, and others — both at and away from the border area — regarding appropriate care and transportation of migrants released from custody. Furthermore, we continue to work closely with foreign governments to conduct joint enforcement operations and increase repatriations under Title 8.

Migrant smugglers put vulnerable individuals and families in danger every single day. Migrants are often guided by smugglers to cross vast stretches of desert, unforgiving mountain terrain, or the swift and unpredictable Rio Grande. The Southwest Border region experiences dramatic and unpredictable temperature changes year-round, meaning individuals lost or left behind in desolate areas are at risk of drowning, dehydration, heat stroke, injuries, or death. During FY 2021, CBP officers and agents rescued more than 13,000 individuals in a wide variety of

circumstances, an increase of more than 150 percent from FY 2020. CBP increased the number of rescue beacons used on the Southwest Border and our CBP officers and agents continue to stand ready to provide lifesaving assistance to all who need it.

Strengthening Border Enforcement and Facilitation Efforts

In anticipation of increased noncitizen processing, CBP is focused on ensuring other security measures and enforcement programs are not circumvented or compromised.

Combating Human Smuggling

CBP's posture and response to migration events are informed by comprehensive analyses of information and intelligence on operations of smugglers and the movement of noncitizens. We are more effectively tracking movements of various migrant groups who may be headed towards the U.S. border and increasing investigation and prosecution of human smuggling networks responsible for illegal border crossings.

In April 2021, CBP launched Operation Sentinel, a new counter-network targeting operation focused directly on transnational criminal organizations (TCOs) affiliated with smuggling migrants into the United States. More than 356 nonimmigrant visas and more than 265 Global Entry and SENTRI cards were revoked since the launch of Operation Sentinel, and more than 24 businesses and associated entities were targeted for suspension or debarment, two of which were disbarred. Lookouts are placed on more than 2,412 individuals associated with transnational criminal organizations' illicit activity. More than 2,093 individuals involved in illicit money transactions were identified and referred to interagency partners for law enforcement actions. Operation Sentinel refers all cases with potential prosecutorial interest to investigative partners for review and prosecution.

Additionally, CBP is supporting the DOJ-established Joint Task Force Alpha initiative, which counters transnational criminal organizations affiliated with migrant smuggling by targeting their members and associates. DHS and DOJ are working together to leverage joint investigative, prosecutorial, and capacity-building efforts to investigate and prosecute the most prolific and dangerous human smuggling and human trafficking groups operating in Mexico and the Northern Triangle.

Interdicting Illicit Drugs

CBP remains focused on the TCOs that continue to expand across and beyond the Southwest Border, and increasingly demonstrate their ability to produce synthetic drugs, including methamphetamine, fentanyl, and fentanyl analogues. TCOs also continually adjust operations to circumvent law enforcement detection and interdiction by shifting to drugs that can be transported in small quantities and improving fabrication and concealment techniques.

Fentanyl and its analogs are synthetic opioids that continue to be some of the most dangerous illegal drug flowing through, and damaging, communities across the nation and are involved in more overdose deaths than any other illicit drug trafficked into the United States. Like most illicit drugs, fentanyl enters the United States through our Southwest Border in privately owned vehicles, commercial vehicles, and individual pedestrians. Fentanyl and fentanyl analogue

shipments largely originate, and are synthesized, in Mexico and are often concealed within larger shipments of other commodities.

Over the past several years, the weight of CBP seizures of fentanyl increased sharply. In FY 2021, CBP seized 11,201 pounds of fentanyl, more than double the 4,791 pounds seized in FY 2020 and approximately four times as much as FY 2019 (2,804 pounds). In FY 2022, since October 1, 2021, CBP seized 5,310 pounds of fentanyl nationwide.¹

CBP continues to combat the flow of illicit drugs by collaborating and sharing information with other agencies and foreign partners; obtaining advance electronic information to identify and target suspect shipments; leveraging advanced scientific, laboratory, and canine capabilities; and deploying nonintrusive inspection technology (NII).

CBP works with our Federal, state, local, tribal, and international partners daily by sharing information and collaborating on joint enforcement actions to identify and disrupt TCOs and stem the flow of illegal narcotics. At CBP's National Targeting Center, CBP and its partners utilize advance electronic shipping information and other law enforcement and intelligence records to facilitate targeting of shipments and cargo that pose the highest risk and prevent them from entering the country.

Both at and between POEs, canine operations are an invaluable component of counternarcotic operations. CBP's Office of Field Operation Concealed Human and Narcotic Detection canine teams completed training, to include the odor of fentanyl and fentanyl analogues. CBP utilizes over 350 large-scale and 4,500 small-scale NII x-ray and gamma-ray imaging systems to detect the presence of illicit substances, including synthetic drugs, hidden within passenger belongings, cargo containers, commercial trucks, rail cars, privately owned vehicles, as well as Express Consignment Carrier (ECC) and international mail parcels. In FY 2021, CBP performed approximately 7.8 million NII examinations, which resulted in the interdiction of more than 189,000 pounds of narcotics.

For suspect substances encountered at the international mail facilities (IMF) and at ECC facilities, CBP officers use various field-testing devices to rapidly screen suspected controlled substances and obtain presumptive results. CBP officers can transmit sample data to the LSS Teleforensic Center's 24/7 Narcotics Reachback for scientific interpretation and identification. Building on the success of the Reachback program, CBP increased its ability to swiftly identify suspected drugs by positioning agency laboratory scientists on-site at IMFs, ECCs and POEs in forward operating labs.

CBP's operational posture enables the agency to nimbly shift resources and swiftly adapt processes to changing situations along the border. This approach also ensures CBP's response to emerging events does not compromise its border security, trade, and travel mandates.

¹ As of March 31, 2022. <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>

Limiting Disruptions to Travel and Trade

The nation's POEs are vital gateways for cross-border commerce and travel — critical sectors that drive economic growth and opportunities for American businesses and consumers.

Commercial vehicle traffic at both the Northern and Southwest Border land ports of entry (LPOE) fully rebounded to levels experienced before the COVID-19 pandemic, and since COVID-19 travel restrictions were eased on November 8, 2021, CBP processed increased numbers of arriving travelers without any significant delays.

Individuals who are not U.S. citizens or lawful permanent residents may now enter the United States for non-essential travel via LPOEs and ferry terminals, provided they are fully vaccinated and have appropriate documentation.² Updated guidelines allow most noncitizen, nonimmigrants who are fully vaccinated to travel by air to the United States, regardless of the reason for travel.

CBP strongly encourages nonimmigrant visa passport holders seeking to travel to the U.S. to apply and pay for an electronic I-94 online through the CBP One mobile application³ to better facilitate international travel into the United States.

When the CDC's Title 42 order ends, CBP will continue to track POE traffic and wait times and adjust resources as needed to ensure travelers and goods move safely and efficiently across the Southwest Border.

Conclusion

As with previous migration surges, planning and preparedness efforts are critical. CBP remains committed to maintaining border security, properly caring for those in our custody, and keeping the American people and our workforce safe.

Thank you for the opportunity to testify today. I look forward to your questions.

² <https://www.cdc.gov/coronavirus/2019-ncov/travelers/proof-of-vaccination.html>

³ <https://www.cbp.gov/about/mobile-apps-directory/cbpone>

**Statement of Deputy Assistant Secretary of State for
Western Hemisphere Affairs Emily Mendrala Before the
Committee on Homeland Security and Governmental Affairs
“Securing and Ensuring Order on the Southwest Border”
May 5, 2022**

Chairman Peters, Ranking Member Portman, Distinguished Members of the Committee, I welcome the opportunity to testify regarding the Biden-Harris Administration’s priorities on regional migration.

This is a pivotal moment for our Hemisphere as we broaden the shared responsibility on humane migration management. The Department of State is actively working with governments, the private sector, civil society, and international organization partners throughout the region to increase cooperation and address our shared responsibility to humanely manage migration and to provide protection for those fleeing persecution or torture.

We recently concluded the second Hemispheric Ministerial meeting on Migration and Protection, co-hosted by Secretary Blinken in Panama April 19-20. Secretary Blinken urged collaboration on stabilization of migrant and refugee receiving communities and sought expansion of security efforts. The ministerial served as an action forcing event to conclude the bilateral migration arrangement with Panama, laid the groundwork for negotiations on the Los Angeles Declaration for Migration and Protection, and shined a spotlight on the need to work together with international organizations and multilateral development banks to stabilize host communities.

President Biden will host the Ninth Summit of the Americas June 8 to 10 in Los Angeles. As the only meeting of leaders from across the Americas, the Summit serves as the most important forum to address our region’s shared challenges and opportunities. The Ninth Summit marks the first time the United States will host the event since the inaugural gathering in Miami in 1994.

The theme of the Ninth Summit -- “Building a Sustainable, Resilient, and Equitable Future” -- represents a shared vision developed with the region’s governments, civil society, and private sector.

The Summit will produce concrete outcomes, including in responding to the pandemic, building strong and inclusive democracies, addressing irregular migration, and increasing equity and inclusion. The President has announced our

intention to adopt the Los Angeles Declaration on Migration and Protection as an expression of leaders' commitment to addressing irregular migration and forced displacement.

The Department of State has worked diligently to implement the Administration's Comprehensive Approach to Migration, which includes the U.S. Strategy for Addressing the Root Causes of Migration in Central America and the Collaborative Migration Management Strategy. The Biden-Harris Administration's comprehensive approach builds on both significant U.S. government resources and substantial private sector investments to support the long-term development of Central America. To advance the Root Causes Strategy, the Vice President met with regional leaders and traveled to Guatemala, Mexico, and Honduras to launch new initiatives and strengthen relationships to sustainably address the root causes of irregular migration in Central America. The Vice President also brought together private sector leaders through the U.S. government's *Call to Action* initiative that has generated more than \$1.2 billion in commitments to create new jobs and opportunities for people in the region. In addition, she has engaged partners around the world to generate new commitments.

As part of the Vice President's *Call to Action*: Microsoft is connecting four million people to broadband across the region, with nearly one million already connected to date. Nespresso will invest \$150 million to double the number of farmers it works with in the region and begin to source coffee from El Salvador and Honduras, and Mastercard is bringing five million people into the formal financial economy while digitizing one million micro and small businesses. Parkdale Mills is investing \$150 million to support a new yarn spinning facility in Honduras and an existing facility in Virginia, supporting 500 jobs in each location demonstrating these efforts can bring benefits to the U.S. economy, as well. PepsiCo is investing at least \$190 million in northern Central America through 2025 to improve its plants and expand distribution routes. CARE International is establishing a \$50 million Center for Gender Equity in Central America.

Through these long-term efforts, the Biden-Harris Administration continues to make significant progress toward creating hope for people in El Salvador, Guatemala, and Honduras that a better life can be found at home. Highlights to date include U.S. initiatives providing micro and small businesses access to \$100 million in financing to support economic recovery in the region, the U.S. Government's \$300 million *Centroamérica Local* initiative empowering local organizations to address the drivers of irregular migration, and delivery of more than 15 million COVID-19 vaccines to northern Central America.

We also continue helping to hold migrant smugglers accountable. The State Department's Bureau for International Narcotics and Law Enforcement (INL) partners with DHS and DOJ to provide foreign law enforcement with the skills and resources necessary to become reliable, trusted partners for U.S. law enforcement. Since its creation in June 2021, Joint Task Force Alpha and its partners collaborated on over 40 investigations and cases involving migrant smuggling, resulting in dozens of arrests, indictments, and convictions both in the United States and with regional law enforcement partners. Through an INL assistance program with the DOJ, Embassy Bogota assisted Colombian prosecutors to break up a large criminal organization engaged in smuggling over 1,300 migrants from Haiti and Venezuela bound for the United States. INL programs also enhance criminal intelligence sharing on migrant smuggling networks. One such effort facilitated the identification of nearly 1,200 members of transnational criminal organizations in 2021.

U.S. programs also support victims of gender-based violence, survivors of human trafficking, and unaccompanied migrant children. New U.S. government programs and scholarships improve access to education for nearly 18,000 returning/potential migrants and at-risk youth.

While the CDC Order under Title 42 suspending the right to introduce certain non-citizens into the United States to protect public health from the introduction, transmission, and spread of COVID-19 remains in effect until May 23, the Administration is doing its due diligence to prepare for potential changes at the border. The Department of State works closely within the interagency and with partner governments in the region to improve humane migration management throughout the Western Hemisphere. We have alerted countries to the upcoming changes in processing at U.S. borders and requested flexibility in cooperation with regional partners as regional migration flows change, including repatriating individuals without a legal basis to remain in the United States.

Governments throughout the hemisphere have closed routes used for irregular migration, including implementing visa requirements for populations arriving in large numbers at the U.S. southern border. For some nationalities, these requirements have already reduced the numbers of encounters at the U.S. southern border. The State Department will continue to work with governments throughout the region to ensure these positive trends and cooperation continue.

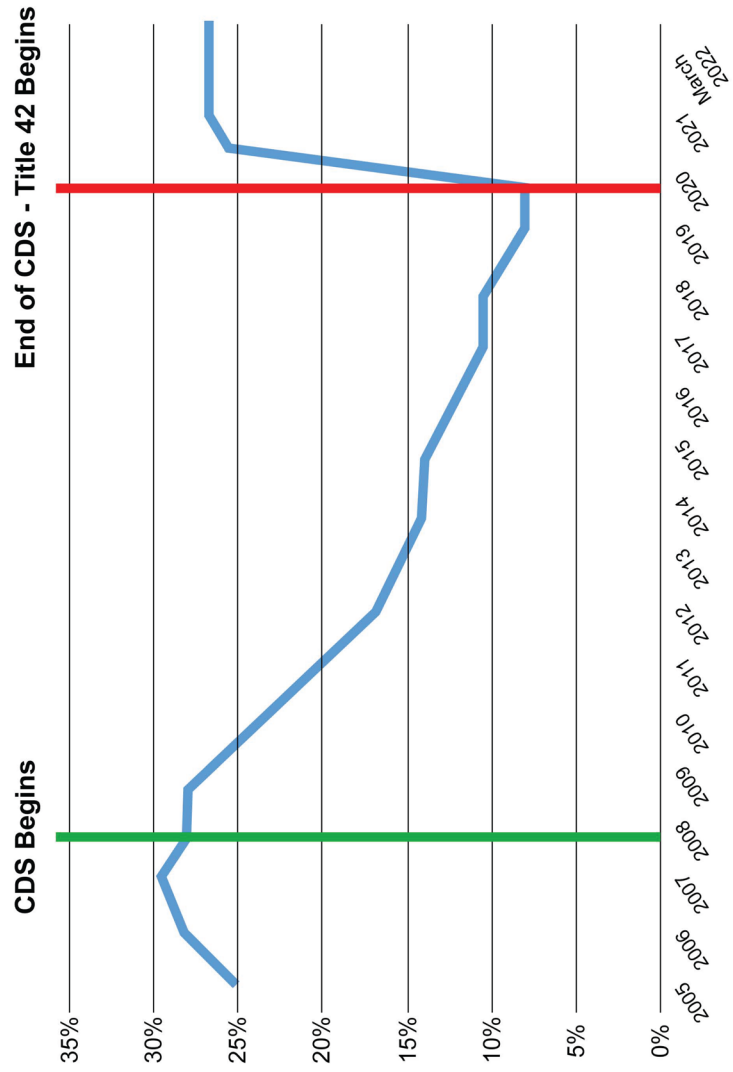
The Department actively seeks to identify and respond to disinformation about migration. We work with the interagency to track disinformation – especially that circulated by smugglers – about U.S. migration and border policy.

In the immediate term, we are countering mis- and disinformation by broadcasting accurate information about U.S. policy via Department representatives—including the Secretary of State and our Ambassadors in the region—speaking via the media and social media to audiences in high-emigration communities across the Western Hemisphere. We also broadcast accurate policy information on the radio, through popular social media platforms, and in google-search advertising, specifically targeting demographic groups at highest risk for irregular migration.

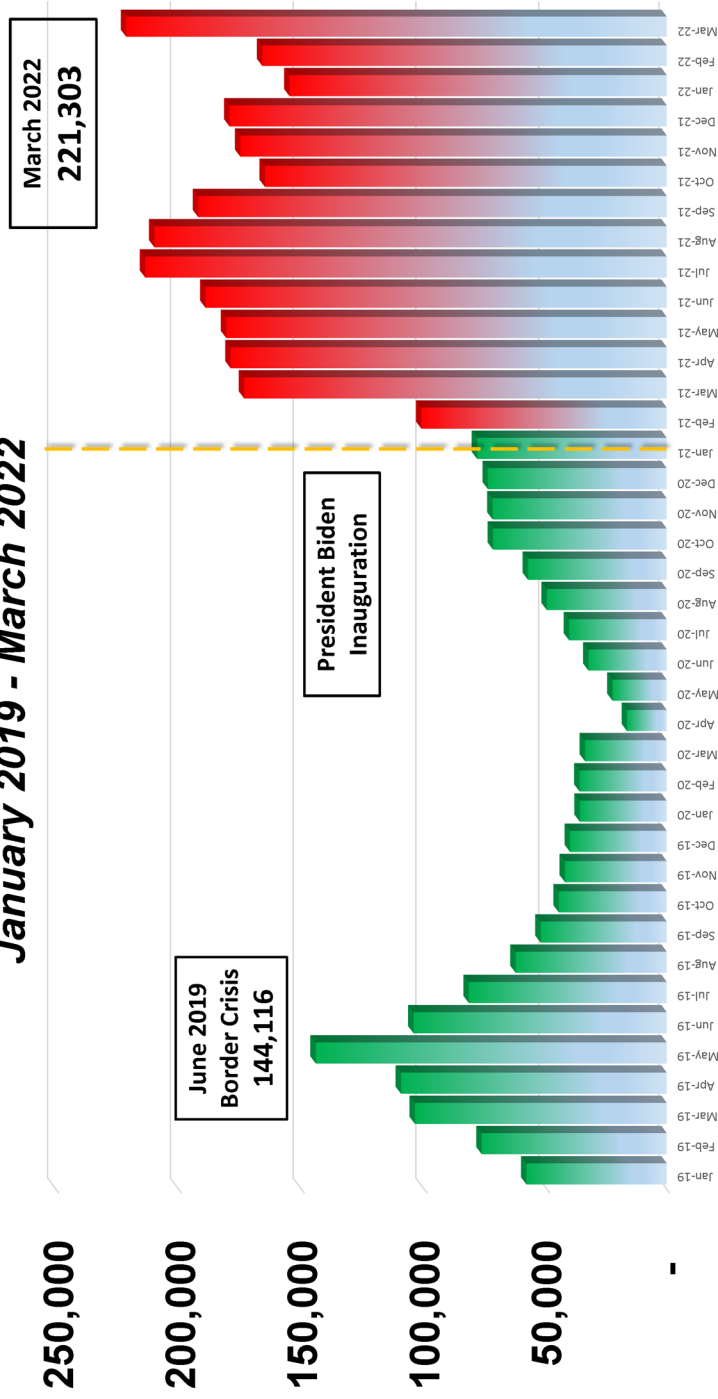
To build longer term resilience to disinformation in the region, the Department has a number of programs that train journalists and citizens on digital literacy and tools to identify and avoid disinformation. To cite just one example, in the last year we invited a number of journalists from Mexico, El Salvador, Guatemala, and Honduras to virtual visits of the U.S.-Mexico border, where they learned about border policy and the dangers of irregular migration through direct dialogue with representatives from U.S. Customs and Border Protection and non-governmental organizations working with migrants.

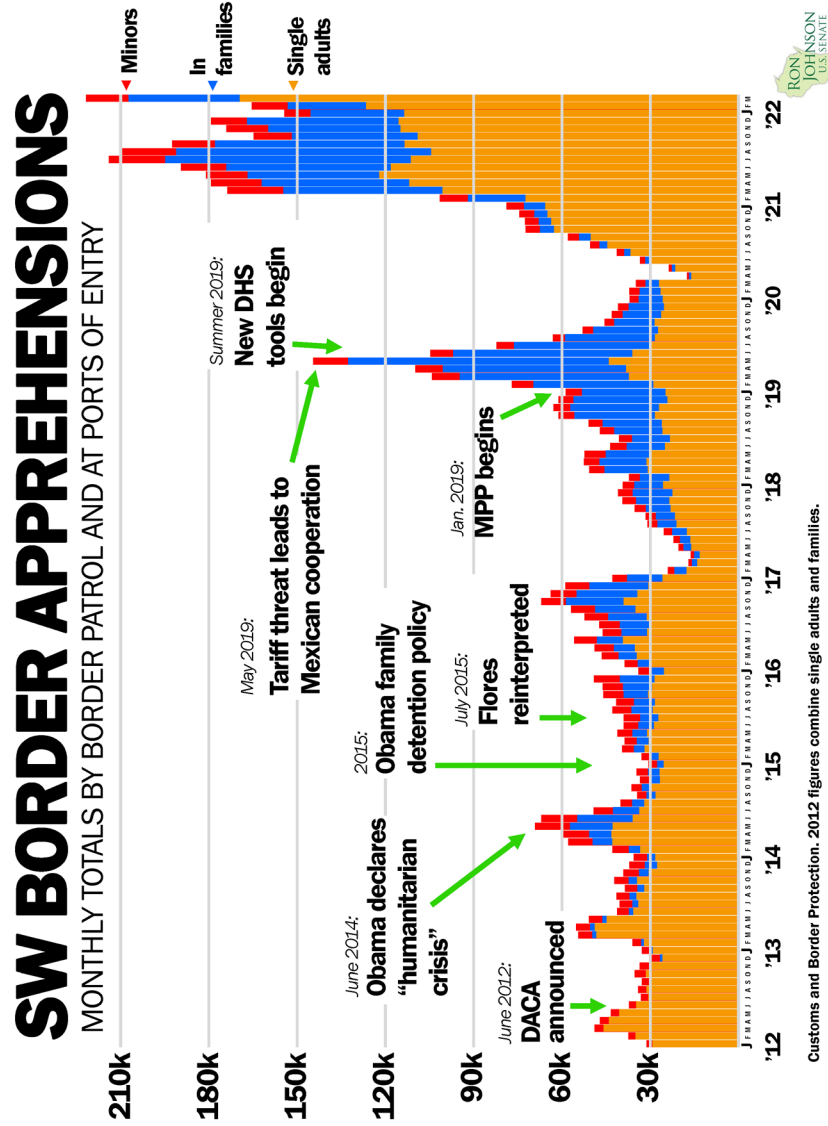
Chairman Peters and Ranking Member Portman, Members of the Committee, thank you for the opportunity to testify. I look forward to your questions.

**Rate of Repeat Illegal Border Crossings at U.S.-Mexico
Border, FY 2005-March 2022**



Encounters at the Southwest Border January 2019 - March 2022





“
THE BORDER IS
CLOSED.
THE BORDER IS
SECURE.

”
SECRETARY MAYORKAS ON ABC NEWS
MARCH 21, 2021

PEOPLE WHO DON'T WANT A BORDER WALL



DRUG SMUGGLERS



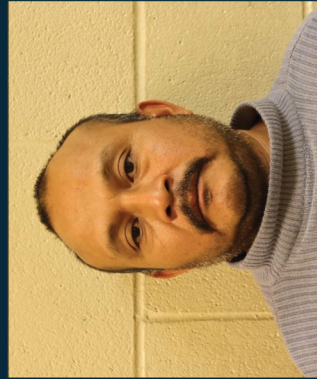
HUMAN TRAFFICKERS



TERRORISTS



GANGS



SEX OFFENDERS



DEMOCRATS

U.S. Department of Health and Human Services
Office of Inspector General



The Office of Refugee Resettlement's Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody

Christi A. Grimm
Principal Deputy Inspector General
June 2020, OEI-09-18-00430



U.S. Department of Health and Human Services

Office of Inspector General**Report in Brief**

June 2020, OEI-09-18-00430

**Why OIG Did This Review**

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), Office of Refugee Resettlement (ORR), has custody of and must provide care to minors (children younger than 18 years of age) in the Unaccompanied Alien Children (UAC) Program. ORR is responsible for providing a safe environment for all minors in the program.

In recent years, ORR-funded facilities have reported allegations of sexual and physical abuse of minors in their care, some resulting in criminal convictions.

How OIG Did This Review

OIG analyzed Significant Incident Reports (SIRs) submitted to ORR by 45 ORR-funded facilities between January 1, 2018, and July 31, 2018, to identify any challenges for the oversight of facilities to ensure the safety of children. In addition, we conducted an in-depth review of incident reports that described conduct of a sexual nature. This allowed us to provide information about potentially egregious incidents and ORR's response to them. We could not determine whether the incidents were officially investigated or substantiated by an external agency, on the basis of the information in the reports.

We also identified challenges in the SIR reporting process for oversight of facilities to ensure the safety of children. This assessment is based on our review of the SIRs and information gathered during OIG's site visits at the 45 facilities in August and September 2018. At each facility, we conducted interviews with key staff responsible for ensuring the safety of minors. We also interviewed the 28 ORR Federal field specialists assigned to the facilities and reviewed relevant policies and procedures.

The Office of Refugee Resettlement's Incident Reporting System Is Not Effectively Capturing Data To Assist Its Efforts To Ensure the Safety of Minors in HHS Custody

Key Takeaway

ORR needs to improve its incident reporting system and address care provider facilities' challenges preventing, detecting and reporting incidents, so it can more efficiently and effectively ensure that facilities address incidents and protect minors from harm.

What OIG Found

The Office of Refugee Resettlement (ORR) policy guide, *Children Entering the United States Unaccompanied*, states that it "will make every effort to prevent, detect, and respond to" all forms of inappropriate sexual conduct involving children in its custody. ORR directs facilities to report all incidents of a sexual nature involving minors in its custody. We reviewed incident reports that 45 care provider facilities submitted to ORR between January 1, 2018, and July 31, 2018. Among these reports, 761 unique incidents described conduct of a sexual nature. Reports for most (704) of these incidents involved conduct between minors, fewer (48) involved conduct by an adult against a minor, and the remaining (9) incidents had an unknown perpetrator. The incidents varied widely in type and severity. For example, the conduct described in these incidents included a minor opening a bathroom door while another minor was inside as well as a staff member kissing a minor.

ORR's incident reporting system lacks designated fields to capture information that ORR can use to oversee facilities and to protect the minors in ORR care. Important information about facilities' actions are not systematically collected to help ORR determine whether facilities responded appropriately to incidents. In addition, the system does not effectively capture information in a way that allows for efficient identification of issues that require immediate attention and analysis to detect concerning trends. Further, facilities described challenges with staffing youth care workers—who are essential to preventing, detecting, and reporting incidents—and difficulties determining which incidents should be reported to ORR.

What OIG Recommends and How the Agency Responded

Our recommendations aim to improve the incident reporting system and reduce the challenges that facilities face. ACF should work with ORR to (1) systematically collect key information about incidents that allows for efficient and effective oversight, (2) track and trend incident report information to identify opportunities to better safeguard minors, (3) work with facilities to address staffing shortages of youth care workers, and (4) improve its guidance to help facilities consistently identify and report significant incidents. ACF concurred with all four of our recommendations.

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BACKGROUND

Objectives

1. To provide information on incidents reported to the Office of Refugee Resettlement (ORR) by care provider facilities that describe conduct of a sexual nature involving minors in their care.
2. To identify challenges in ORR's incident reporting process for oversight of care provider facilities.
3. To identify challenges that care provider facilities faced in preventing, detecting, and reporting incidents.

The Department of Health and Human Services (HHS), Administration for Children and Families (ACF), ORR, is the legal custodian of children younger than 18 years of age in the Unaccompanied Alien Children (UAC) Program. In this role, ORR is responsible for providing a safe environment. To address the needs of minors in its custody, ORR enters into grants or contracts with care provider facilities to house and care for minors.¹ These facilities are responsible for ensuring the safety of minors while in their care and are required to report to ORR incidents that affect a minor's health, well-being, and safety.

In recent years, facilities have faced criticism for alleged failures in their efforts to protect minors in their care. Some investigations resulted in criminal convictions of facility employees. For example, in one case a facility employee was convicted of sexually abusing seven minors between August 2016 and July 2017.² In another case, a facility employee was convicted of attempting to coerce a minor to engage in illicit sexual activity and exchanging explicit videos and images with other minors.³ These incidents have highlighted the need to review the safety of minors in ORR custody.

Unaccompanied Alien Children Program

ORR, a program office of ACF within HHS, manages the UAC Program. The UAC Program serves minors who have no lawful immigration status in the United States and do not have a parent or legal guardian available to provide care and physical custody.⁴ The UAC Program serves minors who arrive in the United States unaccompanied, as well as minors who, after entering the country, are separated from their parents or legal guardians by immigration authorities within the Department of Homeland Security (DHS). A minor remains in ORR custody until an appropriate sponsor, usually a parent or close relative, is located who can assume custody.⁵ Minors also leave ORR custody when they turn 18 and "age out" of the UAC Program, or when their immigration status is resolved.⁶ In Federal fiscal year 2018, the UAC

Program received appropriations of \$1.6 billion and cared for at least 49,100 minors.⁷ About 12,400 minors were in the UAC Program at the time of our review.⁸

Care Provider Facilities

ORR funds a network of facilities that care for minors until they are released to a sponsor or otherwise leave ORR custody. The number of facilities that ORR funds has varied over time; in September 2019, ORR's network consisted of approximately 170 facilities.⁹ These facilities, generally, are State licensed and must meet ORR requirements. Facilities provide housing, food, medical care, mental health services, educational services, and recreational activities.

Federal law requires the safe and timely placement of minors in the least restrictive setting that is in the best interest of the minor.¹⁰ To that end, ORR has several different types of facilities in its network that provide different levels of care. Transitional foster care represents the least restrictive setting for minors, followed by shelter facilities, which comprise the majority of ORR's network. ORR's network also includes two residential treatment centers (RTCs) that provide therapeutic care and services that can be customized to individual needs through a structured, 24-hour-a-day program. RTC placements are intended for minors with mental health needs that cannot be addressed in an outpatient setting.¹¹ Additionally, ORR's network includes nine staff secure facilities, including one that provides therapeutic care in combination with a higher level of security. ORR also funds two secure facilities that operate within existing juvenile detention facilities.¹² See Appendix A for a description of the facility types in ORR's network. See Appendix B for descriptions of selected facility staff personnel.

Reporting Significant Incidents

ORR requires that all facilities report to ORR any "significant incidents" that affect a child's health, well-being, or safety.¹³ Significant incidents represent a wide range of events, including medical emergencies, physical or verbal aggression between minors, self-harm (e.g., suicidal ideation), runaway attempts, and incidents of a sexual nature. These can include incidents that occur while a child is in ORR custody or events that are reported while a child is in ORR custody, but occurred before the child was referred to ORR, such as incidents in DHS border facilities, along the journey, or in their home country. Incidents are generally detected by facility staff, including youth care workers, clinicians, and case managers who interact closely with minors and may witness or hear about incidents from minors. Facility staff use ORR's Significant Incident Report process to report these incidents to ORR. According to ORR policy, the process is intended to "ensure that serious issues are immediately elevated to ORR and that all incidents are resolved quickly to protect children in ORR care."¹⁴

Facility staff are required to complete and submit a Significant Incident Report (SIR) within 4 hours of the incident or, for past events, within 4 hours of becoming aware of

an incident. Facilities document details of the incident in an SIR, which is a series of electronic forms in the UAC Portal, ORR's case management system. The electronic forms contain fields for facilities to document information such as a description of the incident and actions taken to respond to the incident and protect minors. An incident of a sexual nature is documented separately in a Sexual Abuse SIR (discussed further below).

A single incident can have multiple SIRs. Facility staff must complete an SIR for each minor involved in the incident. For example, one facility completed 31 SIRs for a medical emergency—an influenza outbreak that involved 31 minors. In addition, facility staff will add information to an existing SIR when new information about the incident comes to light or they determine the original SIR was incorrect or incomplete. This added information is submitted in a separate report and referred to as an "addendum." All information related to a specific incident is linked by a unique identifier. All SIRs and addenda must be sent to ORR for review.¹⁵

ORR has an internal review process for all SIRs, which is conducted by ORR staff, including Federal field specialists—who serve as local ORR liaisons to one or more facilities within a geographic region.¹⁶ The review process involves reading the reports and following up with the facility about incidents as appropriate. Additionally, Federal field specialists can discuss a facility's aggregate incidents with facility staff as needed.

Beyond internal reporting, ORR's policy also requires facilities to report appropriate incidents to State child protective services (CPS) agencies, State licensing agencies, and/or local law enforcement in accordance with mandatory reporting laws, State licensing requirements, Federal laws and regulations, and ORR policies and procedures.¹⁷

Reporting Incidents of a Sexual Nature

As part of the incident reporting process, ORR's policy requires facilities to report any form of inappropriate behavior that is sexual in nature that occurs in ORR custody. This includes reporting all incidents of a sexual nature, any retaliatory actions resulting from the reporting, and any staff neglect or violation of responsibilities that contributed to incidents.¹⁸

ORR policy directs facilities to report any knowledge, suspicion, or information regarding an incident of a sexual nature that occurs in ORR custody using a specific form—Sexual Abuse Significant Incident Report (SA/SIR). When completing an SA/SIR, facilities are directed to categorize the incident into one of three categories:

- Sexual Abuse
- Sexual Harassment, or
- Inappropriate Sexual Behavior.

These three categories group incidents by the severity of the described behavior, with Sexual Abuse as the category capturing the most egregious allegations of misconduct. See Exhibit 1 for definitions of the three categories.

Exhibit 1: ORR Categories for Incident Reports Describing Conduct of a Sexual Nature

Sexual Abuse is the category used for the most egregious incidents which includes actual or simulated sexual intercourse, intentional touching, lascivious exposure of the genitals, etc.

Sexual Harassment includes repeated and unwelcome sexual advances and actions of a derogatory or offensive sexual nature.

Inappropriate Sexual Behavior is behavior that does not meet the definition of sexual abuse or sexual harassment but is sexual in nature.

Source: ORR Policy Manual, Section 4.1 Definitions.

Facility staff must report an SA/SIR to ORR immediately but no later than 4 hours after learning of the incident.¹⁹ Facility staff complete an SA/SIR for each individual involved in the incident, plus addenda as needed after the initial report. The SA/SIR and any addenda must be sent to ORR for review. ORR has an Abuse Review Team that reviews allegations of a sexual nature that are considered “particularly serious or egregious in nature.”²⁰ The team consists of members from ORR’s Monitoring Team, the Division of Health for Unaccompanied Children, and ORR’s Prevention of Sexual Abuse Coordinator.

In addition, ORR requires facilities to report incidents categorized as Sexual Abuse occurring in ORR custody to a variety of external agencies for further review and potential action. These include State CPS and/or licensing agencies, the Federal Bureau of Investigation (FBI), and OIG. Facilities must also report these incidents to local law enforcement if the alleged perpetrator is an adult or if required by the State licensing agency. Facilities must report incidents occurring in ORR custody and categorized as Sexual Harassment or Inappropriate Sexual Behavior to the State licensing agency according to State licensing requirements.²¹

In 2019, ORR implemented a requirement for facilities to conduct incident reviews of all incidents categorized as allegations of Sexual Abuse or Sexual Harassment and all allegations of Inappropriate Sexual Behavior involving an adult that occur in ORR custody within 30 days of the conclusion of an investigation by an external entity and provide written reports to ORR for certain types of incidents.²² Incident reviews must include information about what happened, where it occurred, and what actions the facility took with regard to the individual against whom allegations were made, as well as recommendations for changes in policy, procedures, or practices. Incident reviews

are intended to ensure that care provider facilities and ORR develop best practices to better prevent, detect, and respond to sexual abuse and sexual harassment.²³

ORR is required to publish an annual report of aggregated information about the number of incidents facilities reported to ORR as Sexual Abuse, Sexual Harassment, and Inappropriate Sexual Behavior.²⁴ For the 2017 data collection (most recently published), ORR requested information from facilities about substantiated incidents they categorized as Sexual Abuse, Sexual Harassment, or Inappropriate Sexual Behavior for incidents that occurred between January 1, 2017, and December 31, 2017.²⁵ Facilities reported that 27 incidents were determined to be substantiated out of a total of 1,069 incidents reported to ORR.²⁶ A “substantiated” incident is one that was officially investigated by CPS, State licensing entity, or local law enforcement and determined to have occurred. According to ORR policy, incidents considered “unsubstantiated” are those that were formally investigated by an external agency and the investigation produced insufficient evidence to make a final determination as to whether the event occurred.²⁷ These categories relate only to those incidents reported to external entities and how those entities handled the report.

OIG Oversight Efforts

Since responsibility for the UAC Program was transferred to HHS by the Homeland Security Act of 2002, OIG has provided ongoing oversight of the Program. OIG has examined various aspects of the Program, including whether ORR grantees met safety standards for the care and release of minors in their custody, and the efforts of ORR to ensure the safety and well-being of minors after their release to sponsors. OIG issued several reports that made recommendations to address issues we identified.

In 2018, OIG intensified its oversight of the UAC Program related to child health and safety in care provider facilities. Given the seriousness of the concerns about the treatment of minors in ORR custody, including those who had been separated from their parents, OIG completed a large, multifaceted review of the UAC Program focused on the health and safety of minors in ORR’s care. The review gathered data from facilities across the country, including perspectives from facility management, staff responsible for caring for minors, and ORR Federal field specialists who help to oversee individual facilities. See Appendix C for a complete list of reports issued by OIG related to this topic.

This report examines how information is captured by ORR’s incident reporting system, the system’s role for oversight of facilities, and the challenges that facilities face in their efforts to prevent, detect, and report incidents.

Methodology

OIG analyzed SIRs and SA/SIRs submitted to ORR by 45 ORR-funded facilities between January 1, 2018, and July 31, 2018. We examined how the information was collected within the incident reporting system to identify any challenges for the oversight of facilities to ensure the safety of children.

The 45 facilities were purposively selected to achieve wide coverage of facilities participating in the UAC Program. The facilities cared for 72 percent of the minors in ORR custody at the time we conducted the site visits. See Appendix A for a complete list of the facility types and aggregate information about the 45 facilities.

We conducted an in-depth review of SA/SIRs that described conduct of a sexual nature. This allowed us to provide information about potentially egregious incidents and ORR's response to them. We also reviewed SA/SIRs due to heightened public concern about incidents of a sexual nature. We were not able to determine for all incidents, from the information in the reports, whether they were reported to and officially substantiated by an external agency such as a State licensing entity, child protective services, or local law enforcement. As described in the report findings, many SA/SIRs did not contain definitive information to identify an ultimate outcome regarding a reported incident.

To identify any challenges with how ORR's incident reporting system captures information about incidents that impacted the oversight of facilities' efforts to ensure the safety of children, we reviewed the information documented in SIRs and SA/SIRs. Our review of the information documented in all SA/SIRs for each incident was particularly illuminating in identifying challenges. We also used the information collected from site visits OIG conducted at the 45 facilities (that reported the SIRs and SA/SIRs we analyzed) to identify challenges that facilities faced in preventing, detecting, and reporting incidents. OIG conducted these site visits in August and September 2018. At each facility, we interviewed key facility staff who are responsible for ensuring the overall safety of children. We interviewed the program director, who is responsible for ensuring policies and procedures for incident reporting are followed by facility staff. We interviewed the human resource manager, who is responsible for staffing the facility appropriately—particularly with youth care workers who are essential for preventing, detecting, and reporting incidents. We also interviewed youth care worker shift supervisors, who oversee youth care workers throughout the day. See Appendix B for descriptions of selected facility staff positions.

After the site visits, we also interviewed the 28 ORR Federal field specialists assigned to the 45 facilities and reviewed ORR policies and procedures relevant to reporting incidents and ensuring the safety of minors.

See the Detailed Methodology section on page 23 for additional information about information about our selection of care provider facilities, data collection, and analysis.

Limitations

The facilities that we visited were purposively selected and may not represent the experiences of staff in other facilities. We did not independently verify information provided by facility staff during interviews. We analyzed the data contained in SIRs and SA/SIRs to determine what information facilities provided to ORR through the incident reporting process. This analysis does not provide visibility into incidents that occurred but were not reported or whether the events and actions documented in SIRs and SA/SIRs actually occurred.

Standards

We conducted this study in accordance with the *Quality Standards for Inspection and Evaluation* issued by the Council of the Inspectors General on Integrity and Efficiency.

FINDINGS

ORR received incident reports describing conduct of a sexual nature ranging in type and severity

ORR's policy guide, *Children Entering the United States Unaccompanied*, states that it "will make every effort to prevent, detect, and respond to" all forms of inappropriate sexual conduct involving children in its custody.²⁸ As part of that policy, ORR directs facilities to report all incidents involving conduct of a sexual nature and minors in its custody.²⁹ Facilities send ORR incident reports that describe conduct of a sexual nature, along with other forms of conduct that may pose risks to children, in ORR's significant incident reporting system.

The 45 care provider facilities that we visited submitted reports to ORR for 761 unique incidents involving conduct of a sexual nature during the 7 months between January 1, 2018, and July 31, 2018.^{30, 31} This represents a relatively small proportion (3.5 percent) of the total number of 21,858 incidents that facilities reported to ORR during this time period, which includes all types of incidents occurring before and while in ORR custody. We were unable to determine whether the incidents were substantiated because of the limited information in SA/SIRs. Further, ORR's most recent annual report with aggregate data on the number of incidents that are officially substantiated by investigations conducted by CPS, State licensing entity, or local law enforcement is based on data from 2017, before our review period.³²

Incident reports described conduct of a sexual nature ranging in type and severity

Facilities reported to ORR incidents of a sexual nature in all three ORR-defined categories—Sexual Abuse, Sexual Harassment, and Inappropriate Sexual Behavior. As shown in Exhibit 2, facilities categorized half of the 761 incidents as Inappropriate Sexual Behavior, which includes conduct that does not meet the definition of the more severe categories of Sexual Abuse and Sexual Harassment.

Exhibit 2: Facilities categorized incident reports describing conduct of a sexual nature in all three ORR-defined categories.



Note: Percentages do not add up to 100 due to rounding.

Source: OIG analysis of SA SIRs reported to ORR between January 1, 2018, and July 31, 2018.

Incidents categorized as Inappropriate Sexual Behavior included blowing a kiss to someone, drawing a woman in a bikini, and making sexual comments or gestures to another minor. Facilities categorized almost one-third of the incidents as Sexual Abuse, the category for the most egregious incidents.

Our review of the reports for the 761 incidents describing conduct of a sexual nature found that the incidents within each of the three ORR-defined categories ranged in severity. For example, as defined by ORR, an incident is categorized as Sexual Abuse when the incident involves intentional touching, either directly or through clothing, of specific body parts involved in sexual arousal (e.g., genitalia, buttocks, and inner thigh). In our review, we found an incident of a minor grabbing the buttocks of another minor while standing in line and an incident of a staff member touching a minor's genitalia both categorized as Sexual Abuse. Exhibit 3 provides selected examples of conduct described in incident reports of a sexual nature to show the range of severity facilities reported within each ORR-defined category.

Exhibit 3: Examples of conduct described in incident reports of a sexual nature show a range of severity.

SA/SIR Category	Conduct Described in Incident Reports
Inappropriate Sexual Behavior	- Minor was found with a drawing of a sexual nature - Minor opened the bathroom door while another minor was inside - Staff member viewed minor unclothed in shower when telling minor to get out of the shower
Sexual Harassment	- Minor repeatedly made sexual comments to another minor - Minor repeatedly made sexual gestures to another minor - Staff member seemed to repeatedly flirt with a minor at the facility
Sexual Abuse	- Minor leaned over a table and touched the buttocks of another minor with a spoon - Minor repeatedly grabbed the buttocks of another minor - Staff member fondled minor's genitals on multiple occasions

Note: These examples of conduct come from summaries in incident reports. We did not determine whether these incidents were correctly categorized or substantiated.

Source: OIG analysis of SA/SIRs reported to ORR between January 1, 2018, and July 31, 2018.

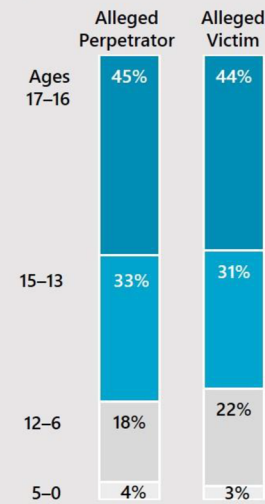
Incident reports of a sexual nature largely described conduct between minors, most often older minors

Of the 761 reported incidents describing conduct of a sexual nature, 704 (93 percent) described conduct between minors. Reports for 48 incidents described conduct of a sexual nature by an adult against a minor, and reports for 9 incidents did not indicate an alleged perpetrator (e.g., the SA/SIR described discovery of a letter, sexual in nature, but the author of the letter was unknown).

Incident reports describing conduct of a sexual nature between minors most often indicated that alleged perpetrators and alleged victims were between ages 13 and 17. Seventy-eight percent of incidents indicated that the alleged perpetrator was between ages 13 and 17 and 75 percent indicated that the alleged victim was between ages 13 and 17 at the time the incident was reported to ORR.³³ Almost half of the reported incidents involving conduct of a sexual nature between minors indicated that the alleged perpetrator or the alleged victim were age 16 or 17.³⁴ Incidents can include consensual activity between similarly-aged teenagers that may be considered common (e.g., kissing). Facilities must report incidents regardless of whether the described conduct of a sexual nature was consensual or nonconsensual.³⁵ See Exhibit 4 for the ages of minors involved in reported incidents describing conduct of a sexual nature.

Nine reported incidents (9 of 704) described conduct of a sexual nature by alleged minor perpetrators age 16 or 17 against alleged minor victims age 12 or younger. All nine incidents were categorized by facilities as Inappropriate Sexual Behavior, the category intended to capture the least egregious incidents. Three of the nine incidents involved the older minor viewing the younger minor naked. Other examples included an older minor kissing a peer's infant son without parental consent and an older minor pulling down the pants of a younger minor while waiting in line.

Exhibit 4: Incident reports describing conduct of a sexual nature between minors most often involved minors between ages 13 and 17.



Source: OIG analysis of SA SIRs reported to ORR between January 1, 2018, and July 31, 2018.

Reports for 48 incidents described conduct of a sexual nature by an adult, most commonly a staff member of a care provider facility, against a minor

Most of these incidents (43 of the 48) had reports that alleged conduct of a sexual nature by a facility staff member against a minor. Youth care workers were most commonly involved in these incidents (25 of the 43). Other facility staff positions involved in the incidents include youth care worker shift supervisor, case manager, clinician, teacher, and detention officer at a secure facility. The remainder of these incidents (5 of the 48) involved adults who were not facility staff members, such as a child advocate or foster parent.

Incident reports described conduct of a sexual nature involving an adult that varied in type and severity. For example, the incident reports included descriptions of a youth care worker accidentally opening a bathroom door while a minor was inside, as well as an incident involving a staff member kissing a teenaged minor. As shown in Exhibit 5, facilities most commonly categorized the incidents involving adults as Sexual Abuse—the most serious of the three categories. Most of these incidents (41 of 48) involved alleged victims who were age 16 or 17.

Exhibit 5: Facilities categorized 48 incidents involving conduct of a sexual nature by an adult in all three ORR-defined categories, most commonly Sexual Abuse.



Source: OIG analysis of SA SIRs reported to ORR between January 1, 2018, and July 31, 2018.

ORR's incident reporting system lacks designated fields to capture information about the actions that care provider facilities took to protect minors in response to reported incidents of a sexual nature

In response to incidents of a sexual nature that facilities report to ORR as Sexual Abuse and Sexual Harassment, ORR policy requires that facilities take certain immediate steps to protect minors in their care. However, ORR's incident reporting system lacks designated fields for facilities to indicate whether they took all required steps or to explain why they did not. This limits ORR's oversight capacity because ORR staff cannot quickly and easily access this information to elevate incidents that

require immediate attention and ensure that facilities are taking required steps to address serious incidents. Further, ORR cannot track or trend these data across facilities to oversee compliance with requirements.

Suspending facility staff members alleged to have committed sexual conduct against a minor. ORR policy states that facilities must immediately suspend any staff member involved in an incident categorized as Sexual Abuse or Sexual Harassment from all duties involving contact with minors until the investigation is completed.³⁶

However, ORR's incident reporting system does not include a designated field for facilities to indicate whether they have suspended staff members as required. Thirty-three incidents involving facility staff members were categorized as Sexual Abuse or Sexual Harassment. Nineteen of these 33 incidents had documentation in the SA/SIR indicating that the staff member was immediately suspended as required. For each of the remaining 14 incidents, we did not find documentation in the SA/SIR indicating that the staff member was suspended as required. The facilities could have reasons for not suspending a staff member or it is possible that the facility did suspend the staff member but failed to document it in the SA/SIR. Regardless, ORR staff cannot always determine from the information in the SA/SIR whether the facility took the appropriate and required action and would have to contact the facility separately to make that determination.

Reporting incidents categorized as Sexual Abuse to law enforcement and State agencies. ORR requires facilities to report incidents categorized as Sexual Abuse occurring in ORR custody to a variety of external agencies for further review and potential action. These include State CPS and/or licensing agencies, the FBI, and OIG. Facilities must also report these incidents to local law enforcement if the alleged perpetrator is an adult or if required by the State licensing agency. Facilities categorized 23 of the 48 reported incidents involving an adult as Sexual Abuse, requiring reporting to local law enforcement.

Although ORR's incident reporting system includes designated fields for facilities to indicate whether they reported incidents categorized as Sexual Abuse to external agencies, it does not include designated fields for facilities to explain when they do not report the incident as required. Without a designated field to explain non-reporting, facilities may or may not provide this information elsewhere in the report. For example, reports for seven of the 23 incidents categorized as Sexual Abuse with an adult as the alleged perpetrator indicated that the facility did not report the incident to the local law enforcement agency, as required by ORR policy. Reports for four of these seven incidents included statements about the lack of reporting to law enforcement, such as the facility's determination that law enforcement reporting was not required or necessary. Reports for the other three incidents, however, provided no information about the lack of reporting to law enforcement.

To perform appropriate oversight of facilities, ORR must determine whether a facility complied with the requirement for reporting to external agencies or its reason for not

complying. A designated field for facilities to explain their rationale for not reporting to external agencies would help ensure that this information is consistently documented and easily available to ORR staff.

Implementing a safety plan for alleged minor perpetrators. For Sexual Abuse and Sexual Harassment incidents involving alleged minor perpetrators, ORR policy states that the facility must develop and implement a safety plan for that minor.³⁷ This safety plan is designed for the alleged minor perpetrator to prevent harm to self and others. However, ORR's incident reporting system does not include a designated field for facilities to indicate whether a safety plan was implemented for the alleged minor perpetrator.

In our review of incidents categorized as Sexual Abuse or Sexual Harassment and involving minor perpetrators, for over half of all incidents, the SA/SIRs did not document implementing a safety plan for the alleged minor perpetrator as required. Although it is possible that the facilities did implement a safety plan and did not document it, ORR staff cannot make that determination from the information in the SA/SIR.

ORR's incident reporting system does not effectively capture information to assist ORR's oversight of care provider facilities' efforts to ensure the safety of minors

In addition to the incident reporting system lacking needed designated fields for reported incidents of a sexual nature, the reporting system may not capture pertinent information about incidents more broadly, including those that are not of a sexual nature.

ORR's incident reporting system captures information in a manner that requires extensive manual review

In general, the incident reporting system uses numerous open-text fields to capture a wide range of information that require Federal field specialists and other ORR staff to review narrative summaries to access key information. Manual reviews with key information entered in different ways in open-text fields raises the potential that key information may be missed. Federal field specialists need to be able to access key information quickly to elevate incidents that require attention and for timely followup with facilities to ensure appropriate response to incidents.

Manual reviews can be inefficient for Federal field specialists who must review, for each incident, all SIRs or SA/SIRs and addenda to identify any key information that is captured by open-text fields. For example, one report describing conduct of a sexual nature included five SA/SIRs. The SA/SIRs all had a "Description of Incident" that contained about 1,200 words each to describe the incident, which involved sexual

comments and exposure of genitalia. Additional addenda can also add more time to the Federal field specialist's review. Identifying and differentiating new information in addenda can be time-consuming because information from the initial SIR or SA/SIR is often copied into the addendum obscuring the new information. Among the 761 reported incidents of a sexual nature, 482 (63 percent) had addenda.

ORR's incident reporting system lacks fields to capture key information

Although facilities provide a wealth of information about incidents in SIRs and SA/SIRs, which can be helpful for ORR's oversight, several important pieces of information are not systematically collected to allow for effective oversight. As mentioned earlier, the incident reporting system does not have designated fields in SA/SIRs to collect information about required actions for incidents reported to ORR as Sexual Abuse or Sexual Harassment (i.e., suspending facility staff members alleged of sexual conduct against a minor, reporting incidents categorized as Sexual Abuse to law enforcement and State agencies, and implementing a safety plan for alleged minor perpetrators). Likewise, there is key information in SIRs and SA/SIRs that is not being captured effectively in a manner that allows for efficient analysis to identify issues requiring elevation and attention or to detect concerning trends with safety issues at particular facilities.

Whether the incident captured in an SIR occurred while a minor was in ORR custody. ORR's incident reporting system does not have a designated field for facilities to clearly indicate whether the incident occurred while the minor is in ORR custody. Efficiently identifying which incidents occurred while the minor is in ORR custody is crucial to ORR's ability to oversee facilities' responses to incidents and ensure the safety of minors in its care.

The absence of a field clearly indicating whether the incident took place while the minor was in ORR custody is more problematic for SIRs than SA/SIRs. Generally, SA/SIRs are to be used for reporting incidents of a sexual nature that are alleged to have occurred in ORR custody. However, facilities use SIRs to report incidents of a sexual nature outside of ORR custody, as well as incidents affecting a minor's health, well-being, and safety that occurred either within or outside of ORR custody.

In many cases, traumatic experiences that happened to a minor before he or she is referred to ORR meet ORR's criteria for incident reporting, prompting facilities to submit SIRs. Facility managers and mental health clinicians reported that many minors who entered facilities in 2018 had experienced intense trauma from a variety of events before and upon their arrival in the United States. According to mental health clinicians and program directors, some minors had experienced physical or sexual abuse and other forms of violence while in their country of origin. Mental health clinicians and program directors also reported that some minors experienced or witnessed violence during the trip to the U.S. border.³⁸

In the absence of a designated field indicating whether an incident occurred in ORR custody, manual review of an SIR is required to determine whether the incident occurred in ORR custody. Currently, to determine whether an incident reported in an SIR occurred in ORR custody, staff have to rely on a field that provides several types of close-ended options to indicate the location of the incident: (1) within the facility (i.e., “Housing Area,” “School Area,” “Medical Facility On-site,” and “Recreational Area On-site”), (2) “DHS facility/custody,” and (3) “Other.” If a facility selects “Other,” it can specify the location in an open-text field.

More than half (58 percent) of all incidents, reported with SIRs, indicated “Other” as the location of the incident. Facilities selecting “Other” sometimes documented in the open-text field that the incident occurred outside of ORR custody (e.g., “home country”) and in ORR custody (e.g., “dorm area”). Thus, a manual review of the open-text field is needed to accurately identify and track which incidents occurred while children were in ORR custody.

Whether video footage is available and reviewed. ORR policy requires facilities to have video monitoring technology when allowed under applicable State and local licensing standards.³⁹ However, ORR’s incident reporting system does not have a designated field to systematically capture whether video footage was available or reviewed for incidents that occurred in areas where it would be expected to be available (e.g., in a public setting like a recreation area). Systematic collection of this information could alert ORR staff that the facility may not have appropriately placed, functioning cameras or may not be reviewing video footage when available.

Our review of reports for incidents of a sexual nature showed that only 11 percent (81 of 761) indicated that video footage of the conduct described in the incident report had been reviewed. Notably, for over half of these 81 incidents, facilities indicated that video footage helped to substantiate 33 incidents and refute or call into question 10 incidents.

Care provider facilities described challenges preventing, detecting, and reporting incidents

Care provider facilities reported staff shortages of youth care workers who are essential to detecting incidents

Staff shortages of youth care workers can affect facilities’ ability to prevent and detect incidents because they provide around-the-clock supervision of minors. ORR’s minimum staff-to-children ratios for youth care workers is 1:8 during waking hours and 1:16 during sleeping hours.⁴⁰ Most of their time is spent with minors—more than any other facility staff member. They prevent, de-escalate, and report incidents that could result in harm to minors. If there is a shortage of youth care workers, the

facilities lose eyes and ears to detect incidents between minors or between other staff members and minors.

Twenty-eight of the 45 facilities that OIG visited reported being understaffed with youth care workers at the time of our visits in August and September 2018. Almost all of those facilities also reported being understaffed with youth care workers in the previous year. Facilities reported that maintaining adequate youth care worker staffing levels was further strained during shifts when youth care workers were assigned to provide individual monitoring of a minor, also referred to as “one-on-one supervision.” One-on-one supervision moves youth care workers who could be watching up to 8 minors during waking hours and 16 minors during sleeping hours to monitoring one minor. Individual supervision is used when a minor is at-risk of self-harm or harming others. Although it can be necessary for safety, one facility reported that one-on-one supervision utilizes a huge part of the staff, which often leaves the facility short-staffed to monitor minors. Another facility, already understaffed with youth care workers, reported that one-on-one supervision exacerbated the problems with providing monitoring.

When facilities faced staff shortages of youth care workers, they reported using 12-hour shifts, 6-day work weeks, or mandatory overtime for youth care workers, which placed burdens on them that could affect their ability to carry out their role of preventing and detecting incidents. Human resource managers and youth care worker shift supervisors reported that longer shifts, extra workdays, and overtime led to exhaustion and burnout of youth care workers. The shift supervisors described the youth care worker position as “fast-paced” and “stressful.” One shift supervisor described how it is challenging to meet the needs of minors while knowing what they have gone through. Human resource managers and shift supervisors also described youth care workers as “exhausted,” “overworked,” and “burnt out.” These challenges may affect youth care workers’ ability to prevent, detect, and report incidents. Furthermore, facility staff reported that these conditions lead to a high turnover of youth care workers, which in turn exacerbates understaffing of this essential position.

“It is especially difficult to retain youth care workers. They suffer compassion fatigue and physical fatigue.”

– Human resource manager

Facilities experienced challenges with determining which incidents should be reported to ORR

Facility program directors, Federal field specialists, clinicians, and direct care staff reported that it is sometimes difficult for facility staff to interpret ORR policy regarding whether incidents fall under the definition of a significant incident and, therefore, should be reported to ORR. Language in the ORR policy about reporting incidents is not restrictive, and includes phrasing such as:

“Significant incidents include, but are not limited to...”;

“Any type of non-emergency incident that endangers the safety or well-being of the minor”; and

“Any knowledge, suspicion, or information regarding...inappropriate sexual behavior.”⁴¹

Such non-restrictive policy language allows for flexibility to account for the reporting of different types of incidents to ORR, but this also makes it open to interpretation—within ORR and across facilities—and creates challenges for reporting incidents.

Program directors, other facility management, and direct care staff reported that ORR staff sometimes interpreted the policies differently, which can lead to inconsistent reporting of incidents. One program director said, “With ORR, when we seek help, we get different answers. We talk to other programs and have learned that for the same type of situation, a [Federal field specialist] for one program gives one answer but a [Federal field specialist] for another program will give a different answer.” Others described similar situations with Federal field specialists, as well as incidents where they felt ORR staff provided inconsistent information during meetings and where they felt oral guidance made definitions more confusing.

Although the non-restrictive language in ORR policy allows ORR to capture many types of incidents varying in type and severity, program directors, clinicians, youth care worker shift supervisors, and direct care staff expressed discomfort with reporting certain types of incidents. They pointed out that, as written in policy, the definition of a significant incident can be interpreted to include behaviors that are often common for the age of the minors involved in an incident. They described incidents of teenagers verbally teasing each other about their masculinity or “slapping butts” on the soccer field. Other staff members expressed frustration about having to report an incident of children “roughhousing” when the type of “horseplay” felt common for minors their age and had no indication of malicious intent. Nonetheless, in all these instances the facilities reported the incidents to ORR as they believed it was required.

Program directors and facility staff identified several reasons why this concerned them. One staff member described needing to label someone a “perpetrator” in the initial report without any investigation. Others expressed concerns that over-reporting could harm trust and relationships between the minors and staff, as well as between the minors themselves, as the minors blamed one another for potentially “mess[ing] up [each other’s] case[s].” Given these factors, they felt that reporting incidents required a balance that is not accounted for in ORR’s policy of directing facilities to report all incidents of a sexual nature involving minors in its custody.

“Sometimes [reporting an incident] is like criminalizing normal child behaviors.”

-Program director

RECOMMENDATIONS

ORR is responsible for providing for the needs of minors in the UAC Program. This includes being committed to protecting the minors in its custody.⁴² To ensure that the care provider facilities that directly care for minors are appropriately preventing and addressing harmful incidents, ORR requires that they report incidents to ORR staff for review. We found that facilities reported a range of incidents to ORR that varied widely in the type and severity of behavior. ORR must be able to efficiently use this information to help oversee facilities and improve policies and procedures. Insufficient information can hamper ORR's oversight of the UAC Program, including its ability to protect minors by using data to identify threats and prevent future incidents. This ability is critical because even a single individual can cause immeasurable harm if he or she poses a threat to the well-being of minors in ORR's care.

To understand the types of incidents that facilities reported and to examine how the information was collected with the UAC Portal, we reviewed SIRs and SA/SIRs. Our findings indicate that improvements can be made in ORR's incident reporting system to make it a more efficient and effective oversight tool that will better allow ORR to ensure that facilities appropriately report and respond to incidents.

We offer recommendations to help improve the efficiency and effectiveness of the incident reporting system for oversight of facilities, as well as to reduce the challenges that care provider facilities face in their efforts to prevent, detect, and report incidents.

We recommend that ACF should work with ORR to:

Systematically collect key information about incidents that allows for efficient and effective oversight to ensure that facilities are taking appropriate actions to protect minors

ORR should fully assess its incident reporting system to determine what key information it needs to capture systematically to support its oversight of individual facilities and identify potential programmatic vulnerabilities. This should include assessing current fields for usefulness and determining whether to create new fields to strengthen its oversight. Altogether, the incident reporting system should be improved for efficiency and to facilitate the analysis of information (e.g., automating tasks for tracking and trends analysis).

ORR should assess the fields currently used in the incident reporting system to ensure that it collects consistent, accurate, and comprehensive data that ORR can use to

oversee facilities in an efficient and effective manner. ORR should learn from its assessment how to optimize field characteristics (e.g., field completion requirements and formatting as open text, singular options, multiple options) for data collection and usability.

ORR should assess whether to create new fields to collect additional information that can support its oversight of facilities and identification of program vulnerabilities. At a minimum, the incident reporting system should be designed so ORR can quickly and easily identify whether facilities have taken appropriate and required actions for an incident, including whether they have suspended facility staff members involved in a Sexual Abuse incident. ORR should also be able to quickly and easily identify whether facilities implemented safety plans for alleged minor perpetrators accused of Sexual Abuse and Sexual Harassment.

In its assessment of the incident reporting system, we encourage ORR to gather information from facility staff and Federal field specialists who use the system. This will help ensure that any changes account for the realities that they experience working at and with facilities.

Track and trend incident report information to better safeguard minors in ORR care

After ORR improves its system for capturing information about incidents, ORR should use its data to ensure that care provider facilities are taking effective actions to address incidents when they occur and to systematically examine facilities to improve the program. ORR should track and trend information that can be used to inform policy changes and target future guidance for better prevention, detection, and reporting of incidents. The ability to follow key information and use it to identify patterns within facilities and across the UAC Program enables ORR to develop better practices and policies to improve prevention, detection, and response to incidents.

Work with care provider facilities to address staffing shortages of youth care workers that impact the ability to prevent, detect, and report incidents

ORR should develop strategies to help facilities recruit and retain enough youth care workers to ably prevent, detect, and report incidents.

ORR should also work with facilities that have overworked youth care workers—perhaps due to one-on-one supervision, 12-hour shifts, mandatory overtime, or high turnover—to find ways to reduce the strain on youth care workers, as this potentially impacts their ability to prevent and detect incidents. ORR could provide facilities with technical assistance on best practices for recruiting and retaining staff, stress management, and other identified factors.

Improve ORR's guidance to facilities to help them consistently identify and report significant incidents

ORR should clarify its guidance to help facilities understand what incidents fall under the definition of a significant incident. Although a broad definition provides flexibility, it can also lead to inconsistent reporting and potential over-reporting, which may detrimentally distract ORR staff and facilities from serious incidents that need immediate attention. ORR should gather facility input on areas where it feels the guidance lacks clarity, including when and how to best complete SIRs, and how to accurately categorize incidents of a sexual nature. Gathering facility input would help ensure that revised definitions and other changes are clear and helpful to facility staff. Engaging facility staff may also help increase compliance.

ORR should also consider integrating definitions and guidance into the incident reporting system's user interface to provide facility staff with accessible, ongoing support. ORR should analyze the information in SIRs and SA/SIRs to identify areas of inconsistent reporting that could be addressed by improving policies, procedures, and guidance.

ORR regularly provides trainings to facility and ORR staff on the incident reporting process. However, inconsistency in the interpretation of policy remains an issue. ORR should update its trainings to reflect the new guidance and ensure consistent application across facility and ORR staff.

AGENCY COMMENTS AND OIG RESPONSE

ACF concurred with all of our recommendations for ORR.

In concurring with our first and second recommendations that address the systematic collection of key information about significant incidents reported by facilities and its review and use, ACF described current efforts underway that address these recommendations. ACF reported that ORR is in the early development stages of a replacement system for the UAC Portal that will be called "UAC Path" with an expected deployment in late 2021. As part of the development of this system, ACF reports that ORR's Prevention of Sexual Abuse (PSA) team has provided recommendations for significant changes to the SA/SIR reporting function, including the changes recommended by OIG to allow for efficient and effective oversight by ORR of care provider facilities. ACF also reported that ORR has expanded the PSA team by adding a data analyst who tracks and trends information related to reports of alleged sexual abuse. ACF anticipates that ORR's ability to identify potentially problematic trends across its network of facilities will be even further enhanced after ORR deploys UAC Path with its upgraded ability to capture additional information about SA/SIRs. We commend ORR's ongoing efforts to improve the reporting system. As ORR continues its development of this system, we reiterate our suggestion that it gather information from facility staff and Federal field specialists who use the system to better assess the utility of current fields and determine the necessity of new fields. We also recommend that these efforts encompass reporting for all types of significant incidents, not just incidents of a sexual nature.

ACF concurred with our third recommendation and described its current methods for addressing staff shortages of youth care workers. ACF reported that ORR Project Officers help facilities address staff shortages of youth care workers via monthly meetings with assigned facilities to check on their operational status. ACF also mentioned that ORR uses site visits and other regular monitoring activities to identify and troubleshoot issues related to staffing levels and turnover. In addition, ACF described its commitment to supporting staff with resiliency training to help with the psychological strain associated with working with a vulnerable population. We acknowledge and appreciate these efforts; however, our recommendation is for ORR to identify new and innovative ways to support and maintain adequate youth care worker staffing levels, in addition to the support it has offered to facilities.

ACF concurred with our fourth recommendation. It acknowledged that ORR's policies employ broad language that requires careful judgment by facilities regarding what conduct should be reported. It agreed that ORR can provide better guidance to assist facilities in interpreting the policy in a consistent manner. To address this issue related to the identification and reporting of Sexual Abuse, Sexual Harassment, and Inappropriate Sexual Behavior SIRs, ACF reported that ORR has updated its training

materials, provided more and regular trainings on the SA/SIR reporting process, and expanded its PSA team, who provide guidance to facilities and ensure compliance with SA/SIR reporting requirements. As ORR works to clarify guidance in response to this recommendation, we reiterate our suggestion that ORR gather facility input to ensure that revised definitions are helpful to facility staff. In addition, we encourage ORR to gather facility input on areas where guidance lacks clarity for other types of significant incidents that are not sexual in nature. We also encourage ORR to integrate efforts to improve consistent reporting for all significant incidents into its development of the new UAC Path system.

For the full text of ACF's comments, see Appendix D.

DETAILED METHODOLOGY

Selection of Care Provider Facilities

We used a purposive selection process to achieve wide coverage of facilities participating in the UAC Program. To ensure a diverse set of facilities, our selection included facilities that:

- varied in size,
- operated in different geographic locations,
- operated as shelters or as specialty facilities,
- cared for minors of varying ages, and
- cared for separated children.

The 45 visited sites included facilities that cared for 72 percent of the minors in ORR custody at the time of our review. We visited 19 of the largest facilities in ORR's network. Of the facilities that we visited, about two-thirds (28) were shelter facilities, the most common type of facility in ORR's network. We also visited every RTC (2), staff secure (9), secure (2), and influx (2) facility in ORR's network at the time. Most facilities (29 of the 45) cared for teenagers, but we also visited 16 facilities that cared for younger minors. Additionally, 37 facilities that we visited cared for at least one child who had been separated from a parent after entering the United States. See Appendix A for more information about the facilities that we visited.

Data Collection

Significant Incident Reports. We obtained from ORR all SIRs and SA/SIRs submitted between January 1, 2018, and July 31, 2018, by the 45 selected facilities. For one of the 45 selected facilities, the SIRs we obtained from ORR were submitted by its shelter, while our site visit took place at its residential treatment center.

Facility site visits. Multidisciplinary teams of OIG staff conducted each site visit. Each team consisted of at least one evaluator, auditor, investigator, and attorney. These teams were trained in advance regarding their responsibilities specific to this fieldwork. Onsite activities included, among other things, interviewing key facility personnel, examining facility employee records, and conducting structured assessments of facility premises.

Key personnel interviews. We interviewed key personnel in private using standardized interview protocols. Each protocol included a variety of questions intended to help us learn more about how facilities protect minors from harmful incidents and any challenges they face in doing so.

- Program directors responded to a series of questions about assessments for identifying safety concerns, methods for minors and staff to report safety concerns, and challenges faced in preventing, responding to, reporting, and documenting safety incidents. Program directors also discussed their facilities' recruiting and staffing.
- Human resource managers responded to a series of questions about staffing levels for several staff positions—including youth care workers, mental health clinicians, and case managers—about challenges faced in hiring and retaining these positions.
- Youth care worker shift supervisors responded to a series of questions about what their experience and responsibilities were, how they respond to safety incidents—including inappropriate behavior by other staff members—and what challenges they faced in keeping minors safe.

ORR Federal field specialist interviews. In the weeks following the site visits, OIG staff interviewed the 28 ORR Federal field specialists who worked directly with each of the 45 selected facilities. During these interviews, we gathered information and insights from ORR Federal field specialists about challenges and concerns with how facilities ensured the safety of minors in their care.

Policies and procedures. We reviewed policies and procedures relevant to supervising minors and ensuring their safety.

Analysis

Significant Incident Reports. We performed the following quantitative analyses on incident reports submitted to ORR by the 45 care provider facilities between January 1, 2018, and July 31, 2018, to determine:

- A count of all unique incidents reported with SIRs and SA/SIRs represented in the dataset.
- The number of unique events reported with SIRs that occurred: (1) in ORR custody, (2) outside of ORR custody, and (3) for which we could not make this determination. We performed this analysis using a closed-ended field designated for facilities to indicate an incident's location.
- The age of minors involved in each unique incident of a sexual nature. We performed this analysis by comparing children's dates of birth to the date of the first SA/SIR submission for each event.

Manual Review of SA/SIRs. We manually reviewed SA/SIRs to identify and categorize the nature of each incident, facilities' responses to the incidents, the involvement of local law enforcement and State regulatory agencies, and other relevant characteristics of the incidents (e.g., whether video footage was reviewed for the incident). We combined the results of this manual review with information contained within structured fields in the SA/SIRs and performed quantitative analyses to provide descriptive statistics about the incidents, the individuals involved, actions

taken by the facility in response to the incident, and volume of SIRs processed through the ORR incident reporting system.

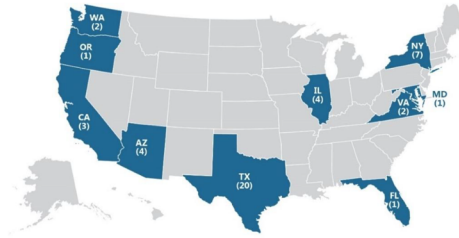
Interviews. We performed qualitative analysis of the interviews conducted during the site visits. The analysis identified themes related to challenges ensuring the safety of minors in ORR's custody. We aimed to identify significant challenges impacting safety, as reported by facility staff and ORR Federal field specialists. A challenge was considered significant if it was identified by multiple ORR Federal field specialists or care facility program directors. The report does not reflect every challenge that facility staff mentioned during interviews.

Qualitative analysis involved multiple steps carried out by OIG staff. The analysis team used qualitative analysis software to organize interview responses related to protecting minors from harmful incidents and the effectiveness of the incident reporting process and categorize themes that emerged. Results were examined to identify significant challenges reported by facility personnel and ORR Federal field specialists.

APPENDIX A

Care Provider Facilities Visited by OIG

During August and September 2018, OIG staff conducted site visits to 45 facilities across 10 States.



Number and Type of Facilities Visited

28	Shelter	Most common type of residential care facility; provides housing, food, medical care, mental health and educational services, and recreational activities.
9	Staff Secure	Provides close supervision to children who exhibit disruptive behavior, are a flight risk, or display gang affiliation. This includes the only therapeutic staff secure facility that ORR funded at the time of our site visit, which provides a combination of close supervision and intensive support and clinical services (e.g., in-depth counseling).
2	Secure	Provides care for children who pose a danger to self or others, or who have been charged with a crime.
2	Residential Treatment Center	Provides children who need more intensive mental health treatment with sub-acute therapeutic care through a structured 24-hour-a-day program and services that are highly customized to individual needs.
2	Influx	Provides children with temporary emergency shelter and services; used when ORR experiences an influx of children.
2	Transitional Foster Care	Provides short-term foster care for children younger than 13 years of age, siblings, pregnant and parenting teens, or those with special needs; services provided in the community.

Source: OIG analysis of ORR and facility data, 2019.

Facilities Visited

The table below lists and describes the 45 facilities that OIG visited.

Facility Name	Facility Type	Number of Children in Care*	Licensed to Care for Younger Children**	Cared for Separated Children***
Arizona (4)				
SWK Campbell	Shelter	126	•	•
SWK Casa Phoenix	Shelter	385		•
SWK Estrella	Shelter	295	•	•
SWK Hacienda del Sol	Shelter	139	•	•
California (3)				
BCFS Fairfield	Staff Secure	11		
SWK Pleasant Hill	Shelter	26		•
Yolo County	Secure	19		
Florida (1)				
Homestead	Influx	1,347		•
Illinois (4)				
Heartland CRC IRC	Shelter	193	•	•
Heartland Casa Guadalupe	Shelter	47	•	•
Heartland IYC	Staff Secure	6		
Heartland SCIV	Shelter	5		•
Maryland (1)				
Board of Child Care	Shelter	42	•	•
New York (7)				
Abbott House	Shelter	51	•	•
Cayuga Centers	Transitional Foster Care	609	•	•
Children's Village	Shelter	167		•
Children's Village	Staff Secure	26		
MercyFirst	Residential Treatment Center	9		•
Leake and Watts/Rising Ground	Shelter	47		•
Lincoln Hall	Shelter	184		•
Oregon (1)				
Morrison Paso	Staff Secure	11		

(Continued on next page)

Facility Name	Facility Type	Number of Children in Care*	Licensed to Care for Younger Children**	Cared for Separated Children***
Texas (20)				
BCFS Baytown	Shelter	216	•	•
BCFS Harlingen	Shelter	576	•	•
BCFS Raymondville	Shelter	50	•	•
BCFS San Antonio	Shelter	110	•	•
BCFS San Antonio	Staff Secure	26		
BCFS San Antonio	Transitional Foster Care	119	•	•
BCFS Tornillo	Influx	665		•
Shiloh Treatment Center	Residential Treatment Center	23		•
SWK Antigua	Shelter	276		•
SWK Casa Houston	Shelter	71		•
SWK Montezuma	Shelter	209		•
SWK Casa Padre	Shelter	1,398		•
SWK Casa Quetzal	Shelter	246		•
SWK Casita del Valle	Shelter	84	•	•
SWK Combes	Shelter	73	•	•
SWK Mesa	Staff Secure	7		
SWK El Presidente	Shelter	372	•	•
SWK Nueva Esperanza	Shelter	290		•
SWK Processing Center	Staff Secure	16		
SWK Rio Grande	Shelter	225		•
Virginia (2)				
Shenandoah Valley Juvenile Center	Secure	20		•
Youth for Tomorrow	Shelter	111		•
Washington (2)				
Friends of Youth	Staff Secure	11		•
Selma Carson	Staff Secure	14		•

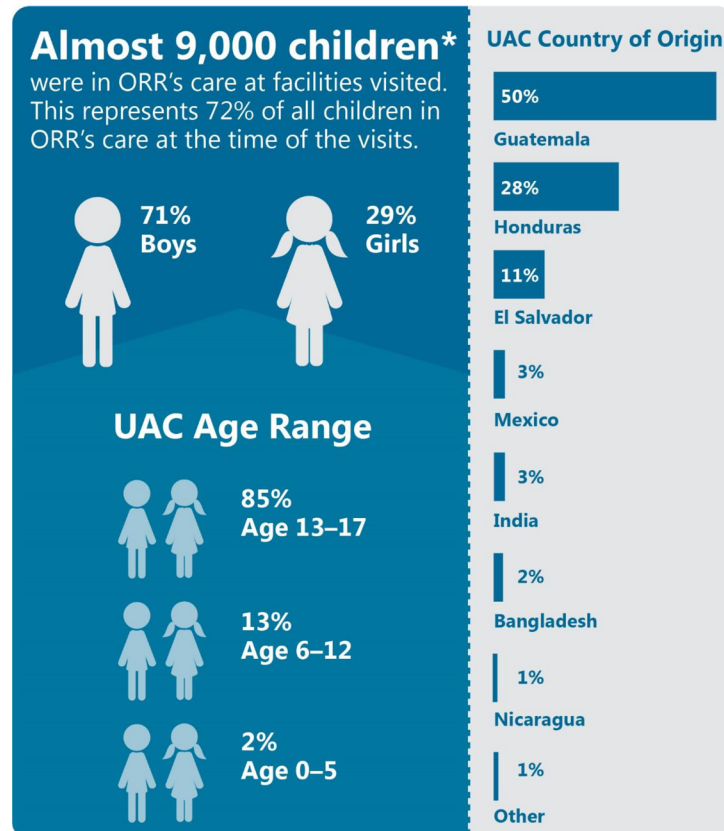
Source: OIG analysis of ORR and HHS Office of the Assistant Secretary for Preparedness and Response (ASPR) data, 2019.

* Data on the number of children in care was as of August 30, 2018.

** Younger children include those who were 9 years old and under.

*** We obtained from ORR and ASPR data on separated children that were part of the *Ms. L v. ICE* lawsuit. Our analysis identified that 37 of the 45 facilities had children covered by the lawsuit.

Children's Demographics at Facilities Visited



Source: OIG analysis of ORR and facility data, 2019.

*According to ORR data, on August 30, 2018, a total of 12,409 children were in ORR custody. Of those, 8,953 children were at the facilities that OIG visited; the percentages of boys and girls are based on this number. The percentages on age range and country of origin are based on data collected directly from the facilities that we visited. We reviewed age and country of origin data that facilities provided to OIG. Because some facilities provided data for a point-in-time (i.e., specific date) while other facilities provided data over a specific timeframe (i.e., 3-month period), the total number of children between these two data points differs. Age range is based on data from 5,835 children; country of origin is based on data from 7,081 children. Because of rounding, the total percentage for country of origin does not add up to 100 percent.

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APPENDIX B

Job Descriptions of Key Personnel

Below are job descriptions of individuals involved in the care and placement of children in facilities.⁴³

Program Directors. Program directors are senior facility staff who manage facility staff and oversee facility operations.

Medical Coordinators. Medical coordinators arrange care from external providers, coordinate other services related to children's medical and mental health care, and manage medication.

Mental Health Clinicians. Mental health clinicians are employed at every facility and are responsible for providing in-house mental health care for children in the facility. They conduct mental health assessments, provide counseling services, provide crisis intervention services, and recommend care from external providers. Lead mental health clinicians coordinate clinical services, train new mental health clinicians, and supervise staff.

Case Managers. Case managers coordinate assessments of children, individual service plans, and efforts to release children to sponsors. They also ensure that all services are documented in children's case files.

Youth Care Workers. Youth care workers provide around-the-clock monitoring of children. Youth care workers have direct and frequent contact with children and are the staff primarily responsible for their supervision.

ORR Federal Field Specialists. Federal field specialists are ORR employees who serve as local ORR liaisons to one or more facilities within a region. They are responsible for providing guidance and technical assistance to facilities and approving or denying children's transfer and release.

APPENDIX C

OIG Related Work

Information on OIG's work on this topic can be found on our [Unaccompanied Children webpage](#). Below is a list of OIG reports on unaccompanied children.

Title	Report Number	Date Issued
<i>Unaccompanied Alien Children Program Care Provider Facilities Do Not Include All Required Security Measures in Checklists</i>	OEI-05-19-00210	June 2019
<i>Communication and Management Challenges Impeded HHS's Response to the Zero-Tolerance Policy</i>	OEI-BL-00510	March 2020
<i>Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody</i>	OEI-09-18-00431	September 2019
<i>Unaccompanied Alien Children Care Provider Facilities Generally Conducted Required Background Checks but Faced Challenges Hiring, Screening, and Retaining Employees</i>	A-12-19-20001	September 2019
<i>Southwest Key Programs Did Not Always Comply With Health and Safety Requirements for the Unaccompanied Alien Children Program</i>	A-06-17-07005	August 2019
<i>Southwest Key Did Not Have Adequate Controls in Place To Secure Personally Identifiable Information Under the Unaccompanied Alien Children Program</i>	A-18-18-06001	August 2019
<i>The Children's Village, Inc., an Administration for Children and Families Grantee, Did Not Always Comply With Applicable Federal and State Policies and Requirements</i>	A-02-16-02013	April 2019
<i>Lincoln Hall Boys' Haven, an Administration for Children and Families Grantee, Did Not Always Comply With Applicable Federal and State Policies and Requirements</i>	A-02-16-02007	February 2019
<i>Separated Children Placed in Office of Refugee Resettlement Care</i>	OEI-BL-18-00511	January 2019
<i>BCFS Health and Human Services Did Not Always Comply With Federal and State Requirements Related to the Health and Safety of Unaccompanied Alien Children</i>	A-06-17-07007	December 2018
<i>The Tornillo Influx Care Facility: Concerns About Staff Background Checks and Number of Clinicians on Staff</i>	A-12-19-20000	November 2018
<i>Florence Crittenton Services of Orange County, Inc., Did Not Always Claim Expenditures in Accordance With Federal Requirements</i>	A-09-17-01002	October 2018
<i>Heartland Human Care Services, Inc., Generally Met Safety Standards, but Claimed Unallowable Rental Costs</i>	A-05-16-00038	September 2018
<i>Florence Crittenton Services of Orange County, Inc., Did Not Always Meet Applicable Safety Standards Related to Unaccompanied Alien Children</i>	A-09-16-01005	June 2018
<i>BCFS Health and Human Services Did Not Always Comply With Federal Requirements Related to Less-Than-Arm's-Length Leases</i>	A-06-16-07007	February 2018
<i>Office of Refugee Resettlement Unaccompanied Alien Children Grantee Review—His House</i>	A-04-16-03566	December 2017
<i>HHS's Office of Refugee Resettlement Improved Coordination and Outreach To Promote the Safety and Well-Being of Unaccompanied Alien Children</i>	OEI-09-16-00260	July 2017
<i>Division of Unaccompanied Children's Services: Efforts To Serve Children</i>	OEI-07-06-00290	March 2008

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APPENDIX D

Agency Comments



ADMINISTRATION FOR
CHILDREN & FAMILIES
Office of the Assistant Secretary | 330 C Street, S.W., Suite 4034
Washington, D.C. 20201 | www.acf.hhs.gov

June 1, 2020

Christi A. Grimm
Principal Deputy Inspector General
Office of Inspector General
U.S. Department of Health and Human Services
200 Independence Avenue, SW
Washington, D.C. 20201

Dear Ms. Grimm:

The Administration for Children and Families (ACF) thanks the Office of Inspector General (OIG) for the opportunity to respond to the OIG report entitled, *The Office of Refugee Resettlement's Incident Reporting System Is Not Effectively Capturing Data to Assist Its Efforts To Ensure the Safety of Minors in HHS Custody* (OEI-09-18-00430). ACF also thanks OIG for the opportunity for members of the Office of Refugee Resettlement's (ORR) Prevention of Sexual Abuse (PSA) team to address OIG's questions regarding the reporting process, as well as the challenges in ensuring consistent and meaningful application of reporting policies across ORR's network of care provider facilities.

ORR's mission is to unify unaccompanied alien children (UAC) with their parents, family members, or other suitable sponsors as swiftly and safely as possible. As the agency entrusted with the care and custody of UAC, ORR takes allegations of sexual abuse extremely seriously, and considers even a single incident at any care provider facility to be one too many. To that end, ORR has developed and implemented robust reporting policies and procedures in an effort to ensure that all possible incidents of sexual abuse are identified, investigated, and appropriately addressed by ORR, including, if necessary, referral to local law enforcement and child protective services (CPS) agencies for further action.

Although even a single incident of sexual abuse is serious and unacceptable, it should be noted that ORR compares favorably to state child welfare systems in terms of the rate of incidents of sexual abuse involving minors in care,¹ which can be used to benchmark the performance of ORR procedures. Within ORR, particularly serious or egregious allegations of a sexual nature represent only a small percentage of all significant incidents reported to ORR. More importantly, ORR responded appropriately, in coordination as necessary with law enforcement and child welfare authorities, to all serious or egregious allegations of a sexual nature, notwithstanding the shortcomings identified by OIG regarding the details captured by the sexual abuse significant incident reporting (SA/SIR) process.

¹ See, e.g., 2017 Child Maltreatment Report from Children's Bureau, at 22, 48, available at <https://www.acf.hhs.gov/sites/default/files/cb/cm2017.pdf> (presenting national data about child abuse and neglect known to CPS agencies in the United States during federal fiscal year 2017).

ACF understands the crux of this report to focus on the need for ORR to streamline how alleged incidents of sexual abuse are reported so that ORR can better identify trends across its network of care provider facilities, and develop improvements to better protect UAC in ORR care from sexual abuse. ACF understands OIG's findings pertain largely to the volume of information and level of detail collected, not whether ORR's SA/SIR reporting process is effectively identifying alleged incidents of sexual abuse. To be clear, ACF believes that ORR has developed a robust mechanism to detect possible incidents of sexual abuse that has enhanced the safety of UAC in ORR care. Improvements made to ORR's reporting requirements for incidents of sexual abuse within the last five years have allowed greater oversight by not only ORR but also outside entities, such as the Federal Bureau of Investigation and OIG, along with more accountability for care providers.

ACF also appreciates that the report acknowledges the fact that a large percentage of alleged incidents involve conduct typical of adolescents (e.g., roughhousing, jocular behavior during sporting events, etc.), that is documented out of an abundance of caution by care providers. ACF recognizes that strict adherence to ORR's SA/SIR policies and procedures can result in numerous, detailed reports being filed about conduct that may ultimately be found to be innocuous. ACF also understands that this amount of information can make it difficult to analyze the available data and identify meaningful trends. As a general matter, ACF believes that a cautious interpretation of ORR's SA/SIR policies that results in the over-reporting of alleged incidents is preferable from a child welfare perspective. Nevertheless, ACF is committed to continually improving all aspects of the UAC Program, including its incident reporting system. Accordingly, ACF concurs with OIG's recommendations and, as described below, is already working toward implementing many of the recommended changes.

The following are ACF's specific responses to each of OIG's recommendations:

Recommendation 1: Systematically collect key information about incidents that allow for efficient and effective oversight to ensure that facilities are taking appropriate actions to protect minors

Response: ACF concurs with this recommendation.

ORR is currently working with a developer to design and prototype a replacement for the current UAC case management system, commonly referred to as the "UAC Portal," which contains the incident reporting function addressed in this report. The replacement will be called "UAC Path." ORR's PSA team has provided recommendations for significant changes to the SA/SIR reporting function in UAC Path, which include the recommendations made by OIG in this report. For example, ORR has requested additional fields to more clearly document actions taken with respect to alleged staff perpetrators, and outcomes of investigations conducted by law enforcement and state CPS agencies, to the extent such information is available. It should be noted that ORR's ability to record, and ultimately track, the outcomes of investigations conducted by third parties will continue to be limited by the willingness or ability of law enforcement and state CPS agencies to share information with ORR.

Development of UAC Path is currently in the initial design and prototyping stages, and a deployable finished product with all planned enhancements is not expected until late 2021. Once UAC Path is deployed, the updated SA/SIR reporting fields will allow ORR to better ensure the

safety of UAC by quickly identifying whether required steps have been taken in response to allegations of sexual misconduct that occur within ORR care provider facilities, such as whether facility staff members involved in an SA/SIR have been suspended, and whether facilities implemented safety plans for alleged minor perpetrators of sexual abuse and harassment.

Recommendation 2: Track and trend incident report information to better safeguard minors in ORR care

Response: ACF concurs with this recommendation.

ORR has expanded the PSA team by adding a data analyst whose duties include tracking and trending information related to reports of alleged sexual abuse. The PSA team data analyst also liaises with ORR's Data team to ensure the timely and efficient communication of data related to incidents of sexual abuse, sexual harassment, and inappropriate sexual behavior. By increasing the data-handling capabilities of the PSA team, ORR has been able to collect, analyze, and report data with greater consistency and precision, which will be further enhanced after ORR deploys UAC Path with its upgraded ability to capture additional information about SA/SIRs.

Increasing the precision and consistency of SA/SIR data collection will allow ORR to identify potentially problematic trends across its network of care provider facilities faster and with greater specificity. By analyzing these trends ORR will be able to identify factors, such as the times and locations of alleged incidents or characteristics of those involved. This information can then be used to develop additional safeguards to better protect UAC from abuse.

Recommendation 3: Work with care provider facilities to address staffing shortages of youth care workers that affect the ability to prevent, detect, and report incidents

Response: ACF concurs with this recommendation.

ACF and ORR recognize the demands and stresses experienced by care providers and are committed to supporting the talented child welfare professionals working across the ORR network. ORR Project Officers (POs) are available at all times to help grantee care provider facilities address programmatic issues, including staffing shortages of youth care workers. POs conduct monthly meetings with each of their assigned grantees to check the status of operations, including challenges faced by grantees in maintaining required staffing levels. ORR will continue to use these interactions, as well as site visits and other regular monitoring activities, to identify and troubleshoot issues related to staffing levels and turnover. Although ORR is committed to ensuring care provider facilities are adequately staffed and that care providers are trained in resiliency techniques, it is impossible to eliminate the psychological strain associated with working with a vulnerable population like UAC.

ORR continues to work with its partners to identify new and innovative ways to support the ORR program. For example, in May 2020, ORR held a series of webinars for the ORR care provider network about managing stress related to COVID-19. The most recent session was held on May 26, 2020 and was titled, "Tools for Promoting Wellness and Relieving COVID-19-related Stress Among Staff and Children." ORR will continue to work with its partners at the National Child Traumatic Stress Network to deploy similar resources with its providers.

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Recommendation 4: Improve ORR's guidance to facilities to help them consistently identify and report significant incidents

Response: ACF concurs with this recommendation.

As stated in the report, ORR's policies employ broad language intended to capture a wide range of conduct. ACF recognizes that categorizing certain conduct, particularly typical adolescent behaviors, requires care provider staff to exercise careful judgment regarding what conduct should be reported. Although ACF believes that some degree of interpretation will always be required by SA/SIR reporting, ACF agrees that ORR can provide better guidance regarding policy interpretation that would assist care providers and result in more consistent application across the ORR network.

To address this issue, ORR has updated its training materials related to the identification and reporting of incidents of sexual abuse, sexual harassment, and inappropriate sexual behavior, and expanded the PSA team so that additional personnel are available to provide guidance to care provider facilities. The expansion of the PSA team also will allow ORR to work more closely with each care provider's PSA Compliance Manager to ensure continued compliance with SA/SIR reporting requirements. In addition, the PSA team has increased the number of in-person trainings on the SA/SIR reporting process offered at care provider facilities, and now provides monthly online trainings that are available to all care provider staff across the ORR network. The PSA team continues to maintain a mailbox where care providers can direct questions regarding SA/SIR reporting policies; such questions also may be directed to the inbox maintained by the ORR Policy team. The PSA team will continue working to clarify guidance related to the reporting of incidents of sexual abuse, sexual harassment, and inappropriate sexual behavior, and will continue to work with the ORR Policy team to implement improvements to the SA/SIR reporting process.

Again, thank you for the opportunity to review this report. ACF takes its responsibilities to ensure the safety and well-being of the UAC in ORR care seriously. We look forward to continuing to improve all aspects of the UAC Program, including the significant incident reporting system. Please direct any follow-up inquiries on this response to Scott Logan, Office of Legislative Affairs and Budget, at (202) 401-4529.

Sincerely,



Lynn A. Johnson,
Assistant Secretary
for Children and Families

ACKNOWLEDGMENTS AND CONTACT

Acknowledgments

China Tantameng served as the team leader for this study. Other Office of Inspector General staff who conducted the study and were primary contributors include Adam Freeman, Christina Lester, and Michael Novello. Key advisors included Laura Canfield, Lonie Kim, and Carla Lewis, with support from Lyndsay Patty and Seta Hovagimian.

We would also like to acknowledge other significant contributors without whom this effort would not have been successful. Staff from each Office of Inspector General component contributed, including the Office of Audit Services, the Office of Counsel, the Office of Evaluation and Inspections, the Office of Investigations, and the Office of Management and Policy. Contributions included planning and conducting fieldwork, data and administrative support, and report production and distribution.

This report was prepared under the direction of Blaine Collins, Regional Inspector General for Evaluation and Inspections.

Contact

To obtain additional information concerning this report, contact the Office of Public Affairs at Public.Affairs@oig.hhs.gov. OIG reports and other information can be found on the OIG website at oig.hhs.gov.

Office of Inspector General
U.S. Department of Health and Human Services
330 Independence Avenue, SW
Washington, DC 20201

ABOUT THE OFFICE OF INSPECTOR GENERAL

The mission of the Office of Inspector General (OIG), as mandated by Public Law 95-452, as amended, is to protect the integrity of the Department of Health and Human Services (HHS) programs, as well as the health and welfare of beneficiaries served by those programs. This statutory mission is carried out through a nationwide network of audits, investigations, and inspections conducted by the following operating components:

The Office of Audit Services (OAS) provides auditing services for HHS, either by conducting audits with its own audit resources or by overseeing audit work done by others. Audits examine the performance of HHS programs and/or its grantees and contractors in carrying out their respective responsibilities and are intended to provide independent assessments of HHS programs and operations. These audits help reduce waste, abuse, and mismanagement and promote economy and efficiency throughout HHS.

The Office of Evaluation and Inspections (OEI) conducts national evaluations to provide HHS, Congress, and the public with timely, useful, and reliable information on significant issues. These evaluations focus on preventing fraud, waste, or abuse and promoting economy, efficiency, and effectiveness of departmental programs. To promote impact, OEI reports also present practical recommendations for improving program operations.

The Office of Investigations (OI) conducts criminal, civil, and administrative investigations of fraud and misconduct related to HHS programs, operations, and beneficiaries. With investigators working in all 50 States and the District of Columbia, OI utilizes its resources by actively coordinating with the Department of Justice and other Federal, State, and local law enforcement authorities. The investigative efforts of OI often lead to criminal convictions, administrative sanctions, and/or civil monetary penalties.

The Office of Counsel to the Inspector General (OCIG) provides general legal services to OIG, rendering advice and opinions on HHS programs and operations and providing all legal support for OIG's internal operations. OCIG represents OIG in all civil and administrative fraud and abuse cases involving HHS programs, including False Claims Act, program exclusion, and civil monetary penalty cases. In connection with these cases, OCIG also negotiates and monitors corporate integrity agreements. OCIG renders advisory opinions, issues compliance program guidance, publishes fraud alerts, and provides other guidance to the health care industry concerning the anti-kickback statute and other OIG enforcement authorities.

ENDNOTES

¹ Throughout this report, unless otherwise noted, we collectively refer to children younger than 18 years of age as “minors.”

² Department of Justice, U.S. Attorney’s Office, District of Arizona. Youth Care Worker Sentenced to 19 Years in Prison for Sexually Abusing Unaccompanied Minors in Southwest Key Facility. February 1, 2019.

³ Department of Justice, U.S. Attorney’s Office, Southern District of Florida. Former Shelter Worker Sentenced to 10 Years of Imprisonment for Attempting To Coerce and Entice an Unaccompanied Alien Minor To Engage in Illicit Sexual Activity. November 1, 2017.

⁴ 6 U.S.C. § 279(g)(2).

⁵ *Flores v. Reno*, No. 85-4544 (C.D. Cal. Jan. 17, 1997). This Stipulated Settlement Agreement sets out an order of priority for sponsors with whom children should be placed. The first preference is for placement with a parent, followed by a child’s legal guardian, then other adult relatives. In fiscal year 2018, 42 percent of children released to sponsors were released to a parent. *Ms. L v. ICE*, No. 18-0428. (S.D. Cal. Feb. 1, 2019) (Declaration of Jonathan White).

⁶ 6 U.S.C. § 279(g)(2), in part, defines UAC as a child who “has not attained 18 years of age.” Also see, Office of Refugee Resettlement, *ORR Guide: Children Entering the United States Unaccompanied* (ORR Guide), Introduction. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-0>. Accessed on December 16, 2019.

⁷ HHS, ACF, *Justification of Estimates for Appropriations Committees*, Fiscal Year 2020, pp. 38. Available online at https://www.acf.hhs.gov/sites/default/files/olab/acf_congressional_budget_justification_2020.pdf. Accessed on December 16, 2019. DHS referred 49,100 children to ORR in 2018.

⁸ Based on OIG analysis of ORR data, as of August 30, 2018.

⁹ The number of facilities ORR funds varies each year. FACT SHEET UAC Program September 30, 2019. Available online at <https://www.hhs.gov/sites/default/files/Unaccompanied-Alien-Children-Program-Fact-Sheet.pdf>. Accessed on December 12, 2019.

¹⁰ 8 U.S.C. § 1232(c)(2)(A).

¹¹ ORR Guide, § 1.4.6, Residential Treatment Center Placements. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1>. Accessed on December 16, 2019.

¹² The significant incident reporting process is the same for every type of care provider facility, including shelter, RTC, staff secure, and secure. ORR Guide, 5.8 Significant Incident Reports and Notification Requirements. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.8>. Accessed on December 16, 2019.

¹³ ORR Guide, § 5.8 Significant Incident Reports and Notification Requirements. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.8>. Accessed on December 16, 2019. The requirements in the ORR Guide related to preventing, detecting, and responding to sexual abuse and sexual harassment implement 45 CFR part 411.

¹⁴ ORR Guide, § 5.8.2 Significant Incidents. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.8>. Accessed on December 16, 2019.

¹⁵ ORR Guide, § 4.10.2 Care Provider Reporting Requirements. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.10.2>. Accessed on December 16, 2019.

¹⁶ ORR Guide, § 5.5 ORR Monitoring and Compliance. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.5>. Accessed on March 19, 2020. ORR Guide: Guide to Terms. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms>. Accessed on March 19, 2020.

¹⁷ ORR Guide, § 5.8.2 Significant Incidents. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.8>. Accessed on December 16, 2019.

¹⁸ ORR Guide, § 4.10 Reporting and Follow-up. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.10>. Accessed on December 16, 2019.

¹⁹ ORR Guide, § 4.10.2 Care Provider Reporting Requirements. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.10.2>. Accessed on December 16, 2019.

²⁰ ORR Guide, § 5.5.4 Abuse Review Team. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-5#5.5>. Accessed on January 15, 2020.

²¹ ORR Guide, § 4.10.2 Quick Reference Chart. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.10.2>. Accessed on December 17, 2019. We note for ORR's review that the corresponding text in the policy includes slightly different reporting obligations.

²² During our data collection period, January 1, 2018, through July 31, 2018, ORR did not conduct incident reviews. ORR implemented incident reviews in 2019. Types of incidents that must have a written incident report include minor-on-minor Sexual Abuse or Sexual Harassment incidents that were substantiated or unsubstantiated, Sexual Abuse and Sexual Harassment incidents involving an adult, and Inappropriate Sexual Behavior incidents involving an adult where the incident was substantiated or unsubstantiated. Only external investigating agencies determine whether an incident is substantiated or unsubstantiated. The ORR Guide contains definitions for substantiated allegations, unsubstantiated allegations, unfounded allegations, and allegations that are administratively closed. ORR Guide, § 4.11.1 Written Incident Reviews. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.11.1>. Accessed on April 10, 2020.

²³ ORR Guide, § 4.11 Incident Reviews and Data Collection. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.11.1>. Accessed on January 15, 2020.

²⁴ This annual report is required by 45 CFR § 411.103. By 2019, each care provider facility will be audited by ORR at least once and then once in the following 3 years to demonstrate compliance with standards to protect, detect, and respond to sexual abuse and sexual harassment. 45 CFR § 411.111.

²⁵ For the 2017 data collection period, ORR received information from 131 care provider facilities. However, 30 out of the 131 facilities are located in States that don't provide information on minor-on-minor incidents. ORR received only information about substantiated incidents of staff-on-minor incidents from facilities in four states (Arizona, Florida, Georgia, and Michigan), all influx facilities, and shelter facilities in New York. Fourteen facilities, which are no longer funded by ORR, did not provide information or were unable to be contacted due to out-of-date information. Report on Sexual Abuse and Sexual Harassment

Involving Unaccompanied Alien Children: 2017. Available online at <https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/uac-sexual-abuse-report-2017/index.html>. Accessed on March 3, 2020.

²⁶ According to the 2017 ORR report, care provider facilities relied on dispositions or findings from their State child protective services (CPS), State licensing agency, or local law enforcement to determine which incidents were substantiated (i.e., investigated and determined to have occurred). In four states (Arizona, Florida, Georgia, and Michigan), CPS or State licensing does not formally investigate or provide care provider facilities with a disposition for each allegation. Care provider facilities in these States are provided with information regarding whether sexual abuse allegations involving staff were substantiated. Similarly, influx facilities and shelters in New York also only reported substantiated staff-on-minor allegations. Report on Sexual Abuse and Sexual Harassment Involving Unaccompanied Alien Children: 2017. Available online at <https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/uac-sexual-abuse-report-2017/index.html>. Accessed on March 3, 2020.

²⁷ ORR Guide, § 4.11.1 Incident Reviews: Definitions. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.11.1>. Accessed on March 5, 2020.

²⁸ ORR Guide, § 4.2 Zero Tolerance Policy. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.2>. Accessed on December 16, 2019.

²⁹ ORR Guide, § 4.10.2. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.10.2>. Accessed on December 16, 2019.

³⁰ Unless otherwise noted, all counts of incidents reported to ORR that describe conduct of a sexual nature in this report reflect unique events. Care provider facilities often submit multiple SIRs or SA/SIRs for a single event. For example, if multiple children are involved in an event, the facility submits a separate SIR or SA/SIR for each child. In some cases, SIRs or SA/SIRs related to a single event may be mistakenly reported as multiple unique events; we have accounted for these cases where possible.

³¹ We excluded from our count of incidents of a sexual nature two events that occurred while the minors involved were outside of HHS custody, as well as three events that we determined to be duplicate records of other incidents in our analysis.

³² The data collection period for the most recent ORR annual report included aggregate information about substantiated incidents that occurred between January 1, 2017, and December 31, 2017. Additionally, ORR officials reported that ORR did not receive dispositions for all allegations that occurred during this period. Thirty care provider facilities are located in four states (Arizona, Florida, Georgia, and Michigan) where CPS or State licensing does not formally investigate or provide facilities with a disposition for each allegation, except those involving facility staff. Similarly, influx facilities and shelters in New York also only reported substantiated staff-on-minor allegations. In addition, 14 facilities did not provide information because they are no longer funded by ORR or were unable to be contacted due to out-of-date information. Available online at <https://www.hhs.gov/programs/social-services/unaccompanied-alien-children/uac-sexual-abuse-report-2017/index.html>. Accessed on March 3, 2020.

³³ This analysis is limited to the subset of the 704 incidents that had at least one SA/SIR for an alleged perpetrator or at least one SA/SIR for an alleged victim.

³⁴ Ibid.

³⁵ ORR Guide, § 4.1.5 Questions and Answers about the Definitions. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.1.5>. Accessed on January 28, 2020.

³⁶ ORR Guide, § 4.6.3 Protecting Children and Youth. Care provider facility staff, as well as contractors and volunteers, must be immediately suspended from all duties that would involve or allow any contact or access to minors until an investigation is completed. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.1>. Accessed on January 16, 2020.

³⁷ ORR Guide, § 4.6.3 Protecting Children and Youth. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.1>. Accessed on February 13, 2020.

³⁸ HHS, *Care Provider Facilities Described Challenges Addressing Mental Health Needs of Children in HHS Custody*, OEI-09-18-00431, September 2019. Available on line at <https://oig.hhs.gov/oei/reports/oei-09-18-00431.pdf>. Accessed on June 15, 2020.

³⁹ ORR Guide, § 4.4.2 Staffing Plans and Video Monitoring Restrictions. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.4.2>. Accessed on January 20, 2020.

⁴⁰ ORR Guide, § 4.4.1 Staffing Levels. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-4#4.4.1>. Accessed on March 3, 2020.

⁴¹ ORR Guide, § 4.10.2 and 5.8. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied>. Accessed on December 16, 2019.

⁴² Health and Safety, About UAC Program, Office of Refugee Resettlement, Administration for Children and Families. Available online at <https://www.acf.hhs.gov/orr/about/ucs/health-and-safety>. Accessed on March 18, 2020.

⁴³ Position descriptions are summarized from the ORR Guide: Guide to Terms. Available online at <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-guide-to-terms>. Accessed on December 16, 2019; and the Cooperative Agreement between HHS and [Grantee Facility] § IV. C.7.



Menu

Red Cross Aid to Asylum Seekers and Migrants at the U.S.-Mexico Border



Red Cross Aid to Asylum Seekers and Migrants at the U.S.-Mexico Border

April 13, 2021

WASHINGTON, DC, April 13, 2021 — Migrant children and families on the U.S.-Mexico border are facing uncertainty as they wait for their asylum claims to be processed.

Today, thousands of migrants are on the Mexican side of the border, where the Mexican Red Cross is providing aid and helping migrants speak with their loved ones back home. Many asylum seekers have been recently admitted to the U.S., where local organizations are working to safely house them as their cases make their way through the courts, which can be a lengthy process. It's important to note that those at risk of being persecuted in their own country have the right to seek asylum under international law.

A Safe Place to Stay for Unaccompanied Children

In response to the continued surge of young people arriving at the U.S.-Mexico border without parents or guardians, the American Red Cross has been asked to provide temporary support to the Federal Emergency Management Agency (FEMA), the U.S. Department of Health and Human Services (HHS) and the Office of Refugee Resettlement (ORR), to ensure these unaccompanied children have a safe, clean and comfortable place to stay after their difficult journeys north. Currently, we are onsite at Fort Bliss in El Paso, Texas, to help provide comfort in addition to meeting the basic needs of unaccompanied children until they can connect with a relative or sponsor in the United States. We previously provided similar temporary support at emergency shelters in Midland and Dallas, Texas.

The Red Cross is fully committed to working with our government partners to help ensure appropriate humanitarian care is in place to support these vulnerable children as FEMA and HHS create additional infrastructure and operations capacity. When requested, our support may include providing small teams of highly experienced volunteers to help advise and train contracted staff at new facilities, or providing larger numbers of volunteers to support shelter operations.

Supporting Nonprofits at the U.S.-Mexico Border

In addition to providing support to our government partners, the Red Cross has provided relief supplies — such as cots, blankets, hygiene items, masks and hand sanitizer — for use by local nonprofits caring for migrants in Texas, Arizona, New Mexico and California. The Red Cross has also provided phones to some organizations, which migrants can use to reconnect with family members back home to let them know they're safe.

Humanitarian Commitment to Helping All People in Need

<https://www.redcross.org/about-us/news-and-events/press-release/2021/migrants-at-the-us-mexico-border.html>

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help people when and where it is needed most.

The American Red Cross is guided by seven [Fundamental Principles](#) of humanity, impartiality, neutrality, independence, voluntary service, unity and universality. As a humanitarian organization, these principles guide our actions every day, and compel us to alleviate human suffering in the U.S. and around the world. For more information about our work with refugees, migrants and asylum seekers, please visit: <https://www.redcross.org/about-us/news-and-events/news/how-does-the-american-red-cross-help-migrants.html>.

About the American Red Cross:

The American Red Cross shelters, feeds and provides comfort to victims of disasters; supplies about 40% of the nation's blood; teaches skills that save lives; distributes international humanitarian aid; and supports veterans, military members and their families. The Red Cross is a nonprofit organization that depends on volunteers and the generosity of the American public to deliver its mission. For more information, please visit [redcross.org](https://www.redcross.org) or [cruzrojaamericana.org](https://www.cruzrojaamericana.org), or visit us on Twitter at [@RedCross](https://twitter.com/RedCross).





Statement for the Record by Kids in Need of Defense (KIND)
“Securing and Ensuring Order on the Southwest Border”
U.S. Senate Committee on Homeland Security and Governmental
Affairs
May 5, 2022

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 57,000 attendees in pro bono representation of these children, and formed pro bono partnerships with over 700 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. KIND’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.

In recent years, increasing numbers of unaccompanied children globally have fled their countries of origin in search of protection from threats to their lives and wellbeing. These dangers include war, conflict, and political unrest, gender-based violence and violence by gangs and criminal organizations, abuse, neglect, and human trafficking. The COVID-19 pandemic, coupled with natural disasters in several regions of the world, have deepened economic security, strained government systems and other supports, and compounded the dangers facing children and other protection seekers throughout the world. These converging factors make it even more critical that countries ensure the safe and appropriate reception of all who arrive at their borders and that they ensure that protection seekers are provided a full and fair opportunity to request humanitarian relief.

For more than two years, however, successive administrations have misused public health authority through the Title 42 policy to deny—rather than ensure—meaningful access to protection for unaccompanied children and other asylum seekers at the United States’ Southwest border. Under this policy there have been more than 1.7 million expulsions of individuals from the U.S. without required safeguards and screenings to ensure they will not be returned to harm. Although the Biden Administration exempted unaccompanied children from the Title 42 policy in February 2021, this policy and other pandemic-related restrictions at U.S. ports of entry continue to pose broad ramifications for families and other protection seekers—forcing many children to remain in harm’s way or to separate from loved ones to seek protection alone as unaccompanied children.

KIND welcomes the Biden Administration’s efforts to ensure safe, humane, and orderly processing at the Southwest border, including through plans to fully terminate the Title 42 policy. As the U.S. works to unwind this harmful measure it faces an important opportunity to not only restore compliance with fundamental due process and humanitarian protections but to implement systemic reforms that can improve border management, treatment of children and other vulnerable populations, and the federal government’s preparedness for current and future challenges. Opportunities exist across the processes and agencies with which unaccompanied children interact—from children’s initial reception at the border to their care by the Office of Refugee Resettlement (ORR) and reunification with family in the U.S. as they adjust to new communities and navigate their immigration cases.

This statement highlights several actions that can be taken immediately to ensure safe and appropriate treatment of unaccompanied children and uphold children’s rights and protection while maximizing processing efficiencies and government resources. These recommendations include the hiring of child welfare professionals to oversee care and screening of children at the border; the co-location of HHS professionals in CBP facilities to expedite safe reunifications of children with family members; and the provision of legal counsel and post-release services for unaccompanied children in immigration proceedings. We offer additional recommendations for addressing

the root causes that force children to flee to the U.S., among them investing in strategies to prevent and respond to gender-based violence and to strengthen child protection systems in the region. We look forward to working across the federal government and with Congress on each of these efforts.

We are encouraged by many actions already undertaken by the Department of Homeland Security (DHS), Department of Health and Human Services (HHS), and the Department of State to ensure the safety and wellbeing of unaccompanied children, including during periods of high arrivals of unaccompanied children in early 2021. These efforts include marshaling federal staffing and resources from the whole of government to facilitate DHS' reception and processing of unaccompanied children; the opening of new licensed care facilities to better serve historic numbers of children; strong interagency collaboration to prevent the spread of COVID-19; and concerted action to serve children fleeing emergencies and conflict in Afghanistan and Ukraine.

Lessons learned from these experiences can inform the federal government's response to anticipated increases in children and other protection seekers arriving at the border following termination of the Title 42 policy, and demonstrate that border management and protection of the most vulnerable are not mutually exclusive but interwoven, essential, and achievable.

I. Unaccompanied Children Seeking Protection at the Southwest Border

For nearly a decade tens of thousands of unaccompanied children have sought protection each year at the U.S.' Southwest border. To date this fiscal year, CBP has encountered more than 73,495 unaccompanied children.¹ Many of these children come from Guatemala, Honduras, and El Salvador in search of protection from violence and direct threats by gangs and criminal organizations, which frequently target youth for forced recruitment or forced relationships and inflict extreme harm or even death upon those who do not comply with their demands. Many children are also fleeing abuse, neglect, or abandonment, having been unable to secure safety from the child protection systems in their countries. Natural disasters in the region, including back-to-back hurricanes in late 2020, and the COVID-19 pandemic have created additional barriers to accessing needed supports and protection, and exacerbated economic and food insecurity impacting many children and families. Children are also fleeing to the U.S. from other parts of the world, including Haiti, Venezuela, Afghanistan, and Ukraine—part of a global displacement crisis in which more than 82 million people have been forced to flee, including more than 26 million refugees.² Approximately half of these refugees are children.³

Children traveling without a parent or legal guardian are particularly vulnerable to harm and exploitation in their search for protection. Historically, children arriving at the U.S.' Southwest border faced summary return to Mexico without any screening to ensure they would be safe if returned or other efforts to verify their identity or connect them with a safe caregiver. As a result, children were increasingly targeted for human trafficking and other harm. Conditions in U.S. immigration custody similarly failed to take into account the unique needs of children and allowed for children to be detained indefinitely with unrelated adults and without provisions for their basic needs, from education and recreation to medical care.

Over decades, a series of protections have been created to integrate basic child welfare considerations within a system largely designed for adults. These include the *Flores* Settlement Agreement (FSA), which was signed in 1997 and sets forth national minimum standards for the care, detention, and release of children in U.S. immigration custody, as well as the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA)—critical anti-trafficking legislation that provides specific procedural and substantive protections for unaccompanied children. These foundational protections, which help to ensure safe, fair, and appropriate treatment of children in the U.S. immigration system, only grow in importance during times in which high numbers of children and families are arriving to the U.S.

The FSA requires the government to treat children with due regard for their particular vulnerability as minors. Among other requirements, the federal government must ensure that border facilities in which children are held after apprehension are safe and sanitary and provide for basic needs such as food and water, bathroom needs,

¹ CBP, Southwest Land Border Encounters, <https://www.cbp.gov/newsroom/stats/southwest-land-border-encounters> (conducted search selecting "UC/Single Minors" under Demographic).

² UNHCR, Figures at a Glance, <https://www.unhcr.org/en-us/figures-at-a-glance.html>.

³ *Id.*

medical assistance, and contact with family. The FSA establishes a general policy favoring release of children from detention “without unnecessary delay” to caregivers, with a preference for parents, legal guardians and other relatives. While family reunification assessments are taking place, children are to be cared for in the “least restrictive setting” appropriate to the child’s age and needs, and generally, in facilities state-licensed for care of dependent children. In addition to state licensing requirements, the FSA requires licensed programs to provide children with basic services such as routine medical care, educational services, recreation, counseling, visitation, family reunification services, and legal services information. Under the FSA, *Flores* attorneys may meet with children in detention to monitor compliance with the Settlement.

Following implementation of the FSA significant concerns remained that the immigration system lacked sufficient safeguards to ensure that migrant and refugee children arriving to the U.S. would not be sent back to harm. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) was passed by Congress with broad, bipartisan support in an effort to create procedural and substantive protections to protect children from trafficking or other harm. Critical among the TVPRA’s protections is a requirement that the federal government screen unaccompanied children for fear of persecution, trafficking, or other harm before a child may be returned or repatriated. The TVPRA builds upon the Homeland Security Act of 2002 and codifies certain provisions of the FSA regarding care of unaccompanied children. It includes requirements that unaccompanied children be promptly transferred to the care of the Department of Health and Human Services (HHS), which must identify the least restrictive placement appropriate for the child while the agency conducts suitability assessments of safe sponsors, most often parents or other family members, to whom the child may be released.

The TVPRA also provides vital safeguards to improve the procedural fairness of children’s immigration proceedings and to help them navigate processes largely designed for adults. These include provisions providing for unaccompanied children’s asylum claims to be first considered in a non-adversarial interview before U.S. Citizenship and Immigration Services, rather than in immigration court and exempting unaccompanied children from expedited removal procedures, the one-year filing deadline for asylum applications, and the “safe third country” bar to asylum. The TVPRA also requires HHS to provide unaccompanied children with attorneys for their immigration proceedings “to the greatest extent practicable” and provides for child advocates to advance the best interests of child trafficking survivors and other vulnerable children. Unaccompanied children must meet the same legal standards as other children and adults in their immigration proceedings and claims for humanitarian protection.

The fundamental protections of the FSA and TVPRA help to ensure that children are treated in accordance with basic child welfare safeguards while in the U.S. immigration system. Importantly, however, compliance with these protections has been incomplete and inconsistent, including most recently during implementation of the Title 42 policy, under which thousands of children were summarily expelled without being afforded the TVPRA’s critical protections or other humanitarian protections established under U.S. and international law.

While reception and processing of unaccompanied children in accordance with the TVPRA has since improved, KIND remains concerned that unaccompanied children may continue to face barriers to accessing protection due to related restrictions at U.S. ports of entry or differing applications of the Title 42 policy. Together with the termination of the Title 42 policy, KIND urges the full termination of restrictions at ports of entry that may block asylum seekers, including unaccompanied children, from requesting protection. KIND similarly urges DHS to redouble its efforts to ensure compliance with the TVPRA by appropriately screening unaccompanied children traveling with non-parental relatives and Mexican unaccompanied children to ensure they are not returned to harm and that they are afforded all protections provided for them under U.S. law. The Administration must also work to end related policies such as the “Remain in Mexico” policy that deny protection seekers access to the U.S. during their immigration proceedings and force them to remain in dangerous conditions.⁴

Ensuring the safety and wellbeing of unaccompanied children amid current challenges and in the future will require not simply returning to the status quo, but also undertaking concerted efforts to improve care and protection of children beyond basic minimums to truly align with children’s best interests. This must include

⁴ See KIND, “Forced Apart: How the “Remain in Mexico” Policy Places Children in Danger and Separates Families (February 24, 2020); https://supportkind.org/wp-content/uploads/2020/02/MPP-KIND-2_24updated-003.pdf.

ensuring that migrant and refugee children are treated as children first and foremost upon their arrival at the border and while in government custody. While the federal government has made important strides in responding to periods of high arrivals of children systemic reforms remain necessary to ensure that appropriate and high-quality care for children is the standard at all times—and that rights, services, and protections are not sidelined during influxes and emergencies.

II. Reception of Children at the Border and CBP Custody

The Biden Administration has worked diligently to ensure appropriate reception and care of unaccompanied children amid historically high arrivals of children over the past year. These efforts have included a recognition that border facilities were not initially designed for children and are not suitable for children's housing or care. KIND strongly supports efforts to address decades-long concerns about the adequacy, safety, and appropriateness of border facilities receiving migrant and refugee children, and we urge both Congress and the Administration to prioritize immediate actions that can advance a more trauma-informed, humanitarian approach to the reception of unaccompanied children and other protection seekers.

It is widely established that children have distinct needs from adults on account of their age and developmental stage. Yet for too long the immigration system has relied on facilities and approaches designed for adults and grounded in law enforcement priorities rather than tailored to the welfare and wellbeing of children. Thus, children arriving at the border frequently interact primarily with law enforcement personnel and officers, rather than professionals trained in the care and best interests of children. They are held in short-term facilities that remain substandard and wholly inappropriate to deliver care and services consistent with children's welfare, and that frequently fail to provide for children's most basic needs. In addition to risking further trauma and harm to children, this model diverts CBP personnel from law enforcement responsibilities for which they have been specially trained and creates challenges for ensuring that unaccompanied children are fully and appropriately screened for protection needs.

KIND applauds DHS' recent efforts to reduce the time that unaccompanied children spend in CBP custody and to ensure their timely transfer to ORR custody. We also support DHS's efforts to onboard medical professionals with pediatric expertise. It is imperative, however, that the agency take additional steps to ensure compliance with Congress' directive to hire licensed child welfare professionals at CBP facilities. These professionals, who are distinct from caregivers and medical professionals, were envisioned as professionals licensed in social work who would have specialized training in the welfare of children, their best interests, and screening for protection needs—critical functions that can dramatically improve care and treatment of children in CBP custody. Their hiring is long overdue and can play an important role in ensuring DHS's preparedness and capacity to safely receive children following termination of the Title 42 policy and in transitioning to a humanitarian reception model.

In tandem with these improvements, we recommend that DHS undertake and that Congress support child-sensitive improvements to border facilities that can improve reception of children in the near-term while making progress toward systemic reforms of reception facilities. As part of these efforts, DHS and HHS can engage nongovernmental humanitarian organizations to support care, screening, and reception at the border. DHS successfully embraced this approach through its collaboration with the American Red Cross in 2021, and such engagement should again be explored to meet current and future challenges and to help formalize humanitarian reception and best practices. Additional improvements can enhance the physical spaces in which children are temporarily processed to ensure they are child-friendly, allow for confidential screenings by child welfare professionals, meet basic hygiene and other needs, and allow for children's access to legal services information and providers. These efforts should be complemented by continuous and robust monitoring to ensure compliance with legal protections for children and internal agency standards and policies, including through access to facilities and monitoring by independent third parties, such as nongovernment organizations.

KIND also urges DHS to collaborate with ORR to prevent the separation of children from extended family members through the co-location of HHS professionals in CBP facilities. Under this arrangement, HHS staff could begin the sponsor vetting process for unaccompanied children who arrive to the U.S. with trusted caregivers other than parents or legal guardians while they are still together at the border—preventing the need for separation or unnecessary transfer to government custody. HHS professionals could also ensure appropriate initial

placements for any children who require temporary transfer to ORR's custody, including children with particular vulnerabilities. In addition to preventing trauma to children from unnecessary separations, this approach can reduce strain on ORR facilities, including during times of high arrivals of children, without compromising the safe evaluation of sponsors. DHS and ORR successfully employed this approach to assist the safe release of unaccompanied Afghan children to the care of nonparent family members and other caregivers with whom they were evacuated. KIND strongly urges DHS and HHS to redeploy these efforts in the near term and to identify improvements that can be made to formalize and scale this approach in the future.

III. Office of Refugee Resettlement Custody

Through collaboration with DHS and other federal agencies, ORR has worked in the past year to care for historic numbers of unaccompanied children. As part of these efforts, ORR created new temporary facilities, including influx and "emergency intake facilities," to ensure that children would not face prolonged periods in CBP custody beyond the 72-hour limit provided for by the TVPRA, *Flores*, and federal standards. ORR has worked to navigate the unprecedented challenges presented by the COVID-19 pandemic by collaborating regularly with the Centers for Disease Control on safeguards to ensure COVID prevention and safe care of children in ORR custody. As part of these efforts, ORR has worked to expand its licensed bed capacity amid reductions in available placements to allow for isolation and quarantine capacity. ORR has also undertaken reforms to ensure the safe release of unaccompanied children from its care without unnecessary delay by pursuing modifications to select sponsor requirements to reduce unnecessary barriers and inefficiencies in ways that do not compromise the safety of children. KIND strongly supports ORR's efforts during these challenging times.

Despite these efforts, KIND remains concerned about ORR's continued use of large-scale congregate care settings that are ill-suited to children's needs. Several of these facilities have held thousands of children and lacked the services required of licensed programs or ORR's own influx standards. Recently, ORR indicated that it will be transitioning existing emergency intake sites to meet influx standards and that it will not be using emergency intake facilities in the future. KIND is encouraged by this announcement, and we urge ORR to continue to make its best efforts to prioritize and expand licensed placements for children in family-based and small-scale placements in the near term and to at the earliest point possible discontinue the use of any and all facilities for care of children that are not state licensed.

ORR's use of emergency intake facilities in recent years has only underscored the importance of providing all unaccompanied children released from care with post-release services and attorneys to assist them in healing from trauma, adapting to new living arrangements, and navigating their immigration proceedings. These services include social services, family reunification support, mental health services, and legal services. We strongly urge ORR and Congress to prioritize these critical needs. Currently, ORR provides financial support to a network of nonprofit legal services organizations to provide representation to unaccompanied children for their immigration proceedings. Yet significant gaps remain and will only expand without additional support. Presently, many if not most unaccompanied children lack an attorney to represent them in immigration proceedings with potentially grave impacts on their lives and safety—a due process crisis that undermines the fairness of the immigration system and risks the return of children to harm.

IV. 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. Too often U.S. immigration policy has looked to ineffective and harsh deterrence measures that only heighten the risks to unaccompanied children and force them to remain in or return to danger. We strongly support the Biden Administration's efforts to restore safe, orderly processing at the border and to expand refugee processing through the restoration and expansion of the Central American Minors (CAM) program.

We urge that these efforts be complemented by the provision of development assistance to help prevent and respond to gender-based violence and other dangers confronting children, including during transit, and to support capacity building for protection systems in countries of origin so that children will be able to obtain safety and not be forced to migrate.

It is similarly critical that the U.S. dedicate efforts and assistance to ensure the safe return and successful reintegration of any children who are voluntarily returning home or who are ordered deported. This includes not only ensuring that children are safely received in reception centers, but also that they are provided with community-based services that can support their needs over the longer term. Such services should include education, job training and placement assistance, physical and mental health care, and case management. Return and reintegration programming, which is authorized by the TVPRA, can not only help in ensuring that children returning to their countries of origin can do so safely, but can also support their wellbeing and mitigate the need for them to remigrate in the future.

Conclusion

We strongly support the Biden Administration's efforts to ensure the safe reception, processing, and care of unaccompanied children seeking protection in the U.S. and its work to provide for safe, orderly, and humane processing of all protection seekers following the termination of the Title 42 policy. Through interagency coordination and collaboration, the Administration can ensure compliance with basic child welfare safeguards for children in the TVPRA and *Flores* while embracing practical reforms that deliver new efficiencies and that improve humanitarian reception in the near- and long terms. We look forward to working with Congress, ORR, DHS, and the Department of State on these efforts.

**Post-Hearing Questions for the Record
Submitted to Hon. January Contreras
From Senator Ossoff**

**“Securing and Ensuring Order on the Southwest Border”
May 5, 2022**

1. Please provide to the Committee any requests received since January 1, 2017 from the American Red Cross or the International Committee of the Red Cross requesting access to or offering services related to any DHHS facility where DHHS houses or has custody of immigration detainees, including unaccompanied minor migrants. In the interest of time, please prioritize provision to the Committee of any such requests, records, or documents received since January 1, 2021.
 - a. For each such request or offer of assistance, please indicate to the Committee its status and provide to the Committee the Department’s response to the relevant NGO.

Response: While ORR does not have a record of official requests from the American Red Cross or the International Committee of the Red Cross (Red Cross) to provide support to ORR’s mission, ORR recognizes the critical humanitarian work both non-profit organizations do throughout the world providing disaster relief, and health and safety services through an international coalition of volunteers. As a child welfare agency, ORR provides care and child-friendly services to unaccompanied children (UC) while working to locate, identify, interview, and vet potential sponsors who can provide care and custody of the child. In 2021, ORR faced an unprecedented influx of children entering the United States unaccompanied. Red Cross was a critical staffing and volunteer partner in assisting ORR to safely and effectively operationalize Emergency Intake Sites (EIS) that provided emergency services tailored for children in an emergency response setting. Red Cross’s partnership allowed ORR to ensure children were not spending more time in overpopulated border facilities operated by the Department of Homeland Security, which are not designed or equipped to care for children.

Additionally, to leverage Red Cross’s expertise in international support services, in October 2021 ORR began working with the Red Cross in establishing a Memorandum of Agreement (MOA) for the sharing of information between ORR and Red Cross for the specific purpose of family tracing outside the United States. As part of the interagency Operation Allies Welcome initiative, Red Cross is assisting ORR in locating the family members of UC from Afghanistan referred and placed in ORR care. Red Cross will utilize information related to UC to locate their family members and to aid in ORR’s efforts to unify the child with their family member. Though this collaborative effort has already begun, ORR and Red Cross anticipate finalization and signing of the MOA by end of calendar year 2022.

2. Yes or no: will DHHS grant the American Red Cross access to inspect any facility where DHHS has custody over unaccompanied minor migrants?
 - a. Please specify the form, conditions, limitations, terms, or other relevant details of such access and provide to the Committee internal guidelines or policies that govern the consideration of such requests.

Response: Non-governmental organizations, such as the Red Cross, are important partners and ORR consistently works with various NGOs to carry out the unaccompanied children's program. ORR's priority is to ensure that all children in ORR care are safe and secure, and access to facilities is prioritized with their security and safety in mind. Interested parties, including advocacy groups, faith-based organizations, and other relevant stakeholders who wish to visit a care provider facility must request a visit through ORR. ORR considers various factors when responding to these requests with the best interests of the child of paramount importance. ORR has evaluation criteria and protocols for tours outlined in ORR Policy Guide [Section 5.2 ORR Policies on Requests to Visit ORR Care Provider Facilities](#)

**Post-Hearing Questions for the Record
Submitted to Hon. January Contreras
From Ranking Member Portman**

**Senate Homeland Security and Governmental Affairs Committee
“Securing and Ensuring Order on the Southwest Border”**

May 5, 2022

- 1. In March 2021, I introduced a bipartisan piece of legislation titled, *Responsibility for Unaccompanied Minors Act*. This bill would ensure HHS keeps track of unaccompanied children in our country, it protects them from trafficking and abuse, and helps ensure they appear for their immigration court proceedings. Do you support this legislation? If not, why not?**

Response:

Ensuring the health and safety of unaccompanied children (UC) in the care of ACF is one of my top priorities. By statute HHS must provide care for UC until they are safely released to a sponsor or leave ORR custody following an immigration judge's order of removal, turn 18 years of age, or obtain legal immigration status in the United States. See 6 U.S.C. 279; 8 U.S.C. 1232(b). Most elements of *Responsibility for Unaccompanied Minors Act* are already addressed by ORR's policies, guidance and practices, such as background checks for sponsors, sponsor care agreements, and provision of post-release services.

The process of the safe and timely release of a UC from ORR custody involves several steps, including: the identification of sponsors; sponsor application; interviews; and the assessment (evaluation) of sponsor suitability, including verification of the sponsor's identity and relationship to the child. ORR requires a background check of all potential sponsors and their adult household members as appropriate. Specifically, ORR performs public records checks and sex offender registry checks on all potential sponsors and their household members. In addition, sponsors who are not parents/legal guardians or close relatives (i.e., grandparents, adult siblings, aunts/uncles/first cousins who were previously a primary caregivers) also require a fingerprint FBI National Criminal History Check. Although ORR's field guidance does not require fingerprint checks for parent/legal guardian sponsors who meet certain criteria, ORR still requires a fingerprint check on these sponsors where the public records check reveals potentially disqualifying sponsor criteria; there is a documented risk to the safety of the child; the child is especially vulnerable and/or the case is being referred for a home study.

While ORR's custodial responsibilities end when a child is released from ORR care, ORR provides post-release services (PRS) for children and sponsors who would benefit from ongoing assistance from a social welfare agency. Children and sponsors can receive PRS in the following areas: placement stability and safety; coordinating and ensuring attendance at immigration court proceedings as well as compliance with DHS requirements; legal services; education services;

medical services; individual mental health services; substance abuse; gang prevention; and any other services deemed appropriate for the specific child/ and or sponsor's needs. In addition to PRS, children who are released from ORR care have access to the following services: ORR National Call Center (ORRNCC), UC Sexual Abuse Hotline, National Human Trafficking Hotline, Trafficking Victim Assistance Program.

ORR also conducts follow-up by phone with both the sponsor and child after the child is released from ORR care to help continue and facilitate a child's successful transition into their community and encourage permanency. In the event the sponsor is unable to provide care and custody for the child, and if they are not the child's parent or legal guardian, the Sponsor Care Agreement provides instructions to contact ORRNCC for support. ORRNCC is a valuable resource where both sponsors and children can request assistance, report concerns, and be referred to essential community services to promote success and community permanence. Child Protective Services may also intervene if a sponsor is unable to provide care and custody for the child and in some instances the child can return to ORR care if referred by another federal agency.

To protect the privacy and ensure the safety of children, ORR does not share the location of where individual children are discharged. However, ORR publishes state-by-state and county level data of UC released to sponsors on its website.¹ ORR is also available to respond to general questions or concerns local or state officials may have regarding the placement of children.

ORR recognizes the critical role states and community stakeholders play in ensuring that children are cared for following their discharge from the UC program. ORR is also committed to engaging with local and state officials and other key stakeholders and continues to notify Congress and local officials of any developments related to the UC program.

2. Should HHS should play a larger role in ensuring unaccompanied children are not abused or trafficked until the conclusion of the child's immigration proceedings or until the child reaches 18 years of age, whichever occurs first?

Response: ACF is committed to preventing and responding to trafficking and abuse of any child in the United States. In regards to unaccompanied children, ORR's legal custody ends once a UC is released to the care and custody of a vetted sponsor, leaves ORR custody following an immigration judge's order of removal, obtains legal immigration status in the United States, or reaches 18 years of age.

Although ORR has no legal custody after a child is discharged, ORR does follow-up by phone with both the sponsor and child after the child is released from ORR care to help continue and facilitate a child's successful transition into their community and encourage permanency. The purpose of the call is to determine if the child is still residing with the sponsor, is enrolled or attending school, is aware of any upcoming court dates, and is safe. ORR care provider-designated staff attempt to contact both the sponsor and the child during these calls and determine if either would benefit from additional support services. If care providers identify or suspect any safety concerns with the child, they are required to issue a Notification of Concern to

¹ For an updated list of locations where children are released within the United States, please see <https://www.acf.hhs.gov/orr/grant-funding/unaccompanied-children-released-sponsors-state>

appropriate investigative agencies, including law enforcement, child protective services, and ORR. If the care providers identify or suspect that a child may have experienced trafficking, they are required to refer the child's case to the ACF Office on Trafficking in Persons (OTIP) within 24 hours for further assessment which could lead to additional case management services from OTIP anti-trafficking grant recipients. Additionally, those who may benefit from additional resources identified as part of this follow up call are referred to ORRNCC where the helpline can connect them with resources within their local community.

To ensure children are placed in a safe, efficient, and timely manner, ORR has policies and procedures to thoroughly vet sponsors. Throughout ORR's screening process, there are numerous risk assessments completed for both the sponsor and the child so that any red flags or derogatory information can be brought to light and considered during the release process. If an ORR-designated care provider suspects that a child may have experienced trafficking, the care provider must refer the child's case to OTIP within 24 hours for further assessment and eligibility determination for additional benefits for trafficking victims. Additionally, ORR must refer any trafficking concerns to the Immigration and Customs Enforcement (ICE) Homeland Security Investigations division (HSI) via the DHS Center for Countering Human Trafficking (CCHT). Referrals to OTIP, HSI, and CCHT may include supporting documentation relevant for investigative purposes. ORR may also request additional assistance from other federal agencies (e.g., Department of Labor) in assessing a child's case for potential trafficking concerns.

**Post-Hearing Questions for the Record
Submitted to The Honorable January Contreras
From Senator James Lankford**

“Securing and Ensuring Order on the Southwest Border”

Thursday, May 5, 2022

Unaccompanied minors in HHS Custody.

- 1) It’s my understanding that HHS has faced significant issues with its age verification procedures for unaccompanied minors that are referred to its care. At one point, ICE had been involved in providing this age verification. However, we currently aren’t sure what that process looks like. Please detail how HHS verifies the age of each minor in its custody.

Response: The Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) instructs HHS, in consultation with DHS, to develop procedures to make a prompt determination of the age of an alien, to be used by DHS and HHS for children in their respective custody. The TVPRA requires that the procedures, at a minimum, take into account multiple forms of evidence, including the non-exclusive use of radiographs. See 8 USC 1232(b)(4). Accordingly, HHS has developed age determination procedures, in consultation with DHS, which are described in the ORR Policy Guide, at [section 1.6](#). According to those procedures, HHS may make age determinations of unaccompanied children (UC) when they are in HHS custody based on a reasonable suspicion that a child is 18 years or older. UC are referred to HHS by DHS upon DHS determining that the individual is a UC. In the event there is conflicting evidence regarding the age of an unaccompanied child in HHS custody, the HHS-funded care provider case worker must immediately notify the ORR Federal Field Specialist (FFS) assigned to oversee that care provider. The FFS will make the age determination based on his/her review of the multiple forms of evidence collected by the care provider (official government-issued documents; other reliable records, such as baptismal certificates, school records, or medical records, that indicate the unaccompanied child’s date of birth; statements by individuals determined to have personal knowledge of the unaccompanied child’s age; and medical age assessments) If it is determined that the child is over 18 years of age, HHS immediately separates this young adult from children and alerts and coordinates with DHS for them to be transferred to DHS custody.

- 2) When HHS faces a surge in the number of unaccompanied minors, does it have capacity to provide this age verification function? Does ICE?

Response: Yes, HHS continues to perform age determinations during periods of influx. HHS follows the policy outlined in Policy Guide, section 1.6, regarding age determinations when there is a reasonable suspicion that a child in ORR custody is 18

years or older. The TVPRA instructs HHS to devise age determination procedures for individuals without lawful immigration status. This is an HHS-led process in consultation with DHS.

- 3) How do you make sure adults are not accidentally referred to and placed in ORR custody?

Response: ORR receives referrals of UC from other federal agencies, but the referring agency makes the initial determination that the person being referred is a UC. If a child's age is questioned at the time of admission to an HHS-funded care provider facility, the care provider case manager does not complete the intake process and instead consults with the FFS to make the age determination. HHS' authority to provide care only applies to individuals who meet the statutory definition of an unaccompanied alien child, which includes having not attained 18 years of age.

- 4) Has HHS ever studied the prevalence of adults who claim to be a UC and are referred to and enter into ORR's custody? If so, please share a copy of any report or study pertaining to this matter.

Response: ORR does not have a study or report pertaining to this information. UC are referred to HHS by DHS upon DHS determining that the individual is a UC. HHS maintains age determination policies and procedures if the age of a UC comes into question.

- 5) What screenings does ORR perform on UCs who enter its care? Has ORR found that individuals convicted of sex crimes have entered its custody? If so, how many?

Response: ORR recognizes that UC making the journey to the United States, primarily from Guatemala, Honduras, and El Salvador, are at high risk of experiencing abuse in their home country and/or during their journey. ORR may receive potential abuse information from the referring agency that helps in determining the appropriate placement for the UC, such as any human trafficking or abuse indicators, including sexual abuse. When a child enters ORR care, they immediately receive assessments that help identify any special needs the child may have. For example, within 24 hours of admissions a UC receives an Initial Intake Assessment where the staff member conducting the interview must review the UC's responses and screen for abuse indicators, such as trafficking and sexual abuse, and within 5 days each child receives a UC assessment, that delves into more details of the UC's journey in order to determine if they experienced any abuse during the journey.

Care providers also conduct an Assessment for Risk for each child within 72 hours of a child's admission into ORR care, which informs the child's housing and service assignments. This assessment helps identify risk factors for potential victims or perpetrators of sexual abuse that help inform ORR on the most appropriate individual

placement decision or housing decision for every child in an individual facility. Additionally, each child also receives an initial medical examination (IME) by a licensed primary care provider within two business days of arrival to an ORR care provider. The purposes of the IMEs are to assess general health; administer vaccinations in keeping with United States standards, including an influenza vaccine; identify health conditions that require further attention; and detect contagious diseases, such as influenza or tuberculosis. Any child who is identified through intakes screening or the IME as having a unique medical or mental health need, including abuse indicators, is referred to a specialist for further evaluation.

ORR has a Zero Tolerance Policy for all forms of sexual abuse, sexual harassment, and inappropriate sexual behavior at all care provider facilities that house UC. All allegations of sexual abuse that occurred prior to entering or in ORR custody are reported through a Significant Incident Report (SIR), as required under ORR Policy Guide, section 5.8.2, Significant Incidents and all allegations of sexual abuse and sexual harassment are reported per ORR policy section 4.10 Sexual Abuse Reporting and Follow-Up. Care providers are required to report SIRs alleging sexual abuse to ORR, CPS, state licensing, and law enforcement. If a child reports an incident where they experienced abuse, including in home country, during their journey to the United States, or in ORR care, care providers are required to immediately complete a SIR to document the incident(s) and notify appropriate stakeholders of the child abuse. Additionally, following information collected from the various assessments and any SIRs, care providers complete an Individual Service Plan (ISP) for each child to ensure they receive the services tailored according to their individual needs while in ORR care, such as increased mental health services.

Children who have experienced abuse or human trafficking during their journey that indicates their health and welfare is significantly harmed or threatened, such as physical and sexual abuse, receive a home study under the TVPRA. Home studies help ensure vulnerable children are released to a home that can meet the unique individualized needs of the child. ORR may also appoint Child Advocates for victims of trafficking and other vulnerable children, who make independent recommendations regarding the best interests of the child throughout their length of care and, in some cases, post-release. ORR provides Post-Release Services (PRS) for children who would benefit from ongoing assistance from a social service agency. This includes assistance in connecting children and sponsors to services within their community. All children who received a home study, such as TVPRA-required home studies, are referred to PRS.

- 6) I've been waiting on data since at least last August over the outcomes of HHS's safety and well-being calls, which HHS performs 90-days after an unaccompanied minor is released from custody. Why hasn't HHS shared this data with me? Will you commit to providing us with this data on a monthly basis moving forward?

Response: ORR is committed to providing the safety and well-being call summary data on a monthly basis moving forward. To help continue and facilitate a child's successful transition into their community and encourage permanency, ORR does follow-up by

phone with both the sponsor and child 30 days after the child is released from ORR care. The purpose of the call is to determine if the child is still residing with the sponsor, is enrolled or attending school, is aware of any upcoming court dates, and is safe. ORR care provider-designated staff attempt to contact both the sponsor and the child during these calls and determine if either the sponsor or child would benefit from additional support or services.

- 7) The most recent data I saw, which ran until August 2021 last year, showed that HHS lost track of roughly 1 out of every 3 unaccompanied minors that were released from their care to a sponsor. Furthermore, *Reuters* profiled an unaccompanied minor who had been trafficked to a poultry processing facility. It's my understanding that DOJ and the HHS IG are also looking into this issue. What steps have you implemented to ensure that the current flow of unaccompanied minors are not placed into trafficking situations and are released to appropriately vetted sponsors? How many active investigations regarding unaccompanied minors who have been placed in trafficking situations is HHS aware of?

Response: ORR is dedicated to ensuring the safety of children entering ORR care to when they are safely placed with a vetted sponsor who has undergone a robust screening process. ORR takes its responsibility to screen sponsors seriously and works diligently to make sure every placement decision is made in the best interest of the child. ORR understands the importance of providing children and sponsors with the tools and resources necessary to help a child succeed post-release. While ORR's custodial responsibilities end when a child is released from ORR care, ORR provides post-release services for children and sponsors who would benefit from ongoing connections to community services.

Although ORR has no legal custody after a child is discharged, ORR does follow-up by phone with both the sponsor and child after the child is released from ORR care to help continue and facilitate a child's successful transition into their community and encourage permanency. The purpose of the call is to determine if the child is still residing with the sponsor, is enrolled or attending school, is aware of any upcoming court dates, and is safe. ORR care provider-designated staff attempt to contact both the sponsor and the child during these calls and determine if either the sponsor or child would benefit from additional support or services.

When ORR care providers begin conducting the follow-up calls, they are required to make a minimum of three attempts to reach and speak with the sponsor and the child individually through any contact numbers provided. Each attempt is documented. Following numerous attempts to contact everyone at any available contact numbers, it is possible that within a household ORR may only contact and speak with either the sponsor or the child but may not successfully contact both. In these circumstances, if care providers identify or suspect any safety concerns with the child, they are required to issue a Notification of Concern to appropriate investigative agencies, including local law enforcement, child protective services, and ORR. If the care providers identify or suspect that a child may have experienced trafficking, they are required to refer the child's case to the ACF Office on Trafficking in Persons (OTIP) within 24 hours for further assessment.

which could lead to additional case management services from OTIP anti-trafficking grant recipients. Between FY16 and FY21, OTIP received 7,255 requests for assistance (RFA) on behalf of foreign national children who may have experienced human trafficking. While not all children were UC, approximately 75% of the requests originated from ORR UC providers. Of the RFAs received between FY16 and FY21, OTIP issued 4,015 Eligibility Letters for children who have experienced human trafficking in home country, on their journey, and/or in the U.S. The majority of Eligibility Letter recipients experienced human trafficking outside the U.S.

Among recipients of Eligibility Letters in FY21, 53% were male and 47% were female; 69% experienced labor trafficking, 25% experienced sex trafficking, and 6% experienced both labor and sex trafficking; and the majority age at time of request for assistance was between 13-17 years (92%) while eight percent were age 12 and younger.

	FY16	FY17	FY18	FY19	FY20	FY21
Requests for Assistance	805	939	1008	1418	907	2178
Eligibility Letters	335	506	466	892	673	1143

Additionally, those who may benefit from additional resources identified as part of this follow up call are referred to ORR's National Call Center (NCC) where the helpline can connect them with resources within their local community appropriate for their needs. All children released from ORR care are given the number to the NCC, which is available 24 hours a day and provides a mechanism to report any concern a child has about their placement.

ORR has policies and procedures in place to make sure UC in care are released in a safe, efficient, and timely manner. Throughout ORR's sponsor screening process there are numerous risk-assessments completed for both the UC and the potential sponsor so that any red flags or derogatory information can be brought to light in terms of release determinations.

If a care provider suspects that a child may have experienced trafficking, the care provider must refer the child's case to the Office of Trafficking in Persons (OTIP) within 24 hours for further assessment and eligibility determination for additional benefits for trafficking victims. This referral is appropriate if the care provider suspects the child may have experienced forced labor or commercial sex at any point in the child's life and in any country, including on the journey to the United States. This referral is also appropriate if the care provider has concerns that the child was brought to the United States for the purpose of engaging in forced labor or commercial sex, including concerns that may arise during the sponsor assessment process. In addition, ORR must refer any trafficking concerns to the Homeland Security Investigations division (HSI) and the DHS Center for Countering Human Trafficking (CCHT) at the Department of Homeland Security. Referrals to OTIP, HSI, and CCHT may include supporting documents relevant

to investigative purposes. ORR may also request assistance from other federal agencies (e.g., Department of Labor) in assessing a child's case for potential trafficking concerns.

ORR's post-release services include assistance in connecting children and their sponsors to community-based resources suitable to their needs, including support to prevent a child from becoming a victim of trafficking. For children who are released from ORR care, the following services are available for children and others to communicate concerns to HHS during custody and after a child is released:

- **ORR National Call Center (ORRNCC):** This is a helpline that fields calls from released children and families and links them to the appropriate resources in the community. In addition, all legal services providers, child advocates, and other members of the community can report concerns to the ORRNCC.
- **UC Sexual Abuse Hotline:** Although primarily designed as a hotline for children in ORR custody, released children, including their families, sponsor or legal service providers continue to have access to this line, and can report any suspected incidents of sexual abuse or sexual harassment that occurred at an ORR care provider facility that may not have been previously reported while the unaccompanied child was in ORR care. Incidents are reported to law enforcements and child protective services (CPS) as appropriate.
- **Notification of Concern:** This is a line that ORR grantees and contractors use to notify ORR of any perceived or actual danger to a released child's safety and well-being. This may include the child becoming a victim of human trafficking, being involved with a gang, running away, or suffering abuse. ORR reviews the matter to determine what, if any, additional action should be taken, including but not limited to: reporting the matter to local law enforcement; CPS, or state or child welfare licensing authorities. ORR may also consider at that time to provide post-release services to the released child and his or her sponsor.
- **National Human Trafficking Hotline:** An OTIP grant recipient runs this 24-hour helpline that coordinates with the ORRNCC and provides information, emergency assistance, and service referrals for individuals experiencing human trafficking.
- **HHS Child Eligibility and Interim Assistance Letters:** While federal, state, and local officials are required to refer cases of any foreign national minor who may have experienced human trafficking to OTIP within 24 hours, anyone can reach out to OTIP on behalf of a minor through the Request for Assistance process. After case review, OTIP issues Eligibility and Interim Assistance Letters for foreign national children who have or may have experienced trafficking, respectively. These letters enable eligibility for the recipient to apply for benefits and services to the same extent as refugees and connects children to comprehensive case management services through OTIP anti-trafficking grant recipients.
- **Trafficking Victim Assistance Program (TVAP):** OTIP funds TVAP, a national comprehensive case management grant program to assist foreign national victims of human trafficking. OTIP coordinates with ORR to provide direct referrals for TVAP services for unaccompanied children who may have or have experienced human trafficking after discharge from ORR care (up to 12 months with possibility for extension). Beginning in FY 2023, the services that were available to foreign national

children under TVAP will be provided through the new child-specific “Aspire: Child Trafficking Victim Assistance Demonstration Program.”

ORR understands the value of post-release services in promoting the safety and well-being of children who have been unified with a sponsor and is in the early phases of implementing a plan to expand provision of PRS, as well as to enhance the services provided.

- 8) When Title 42 is terminated, what are HHS’s projections for UCs that will cross the border in the post-Title 42 surge?

Response: UC have been exempted from Title 42 since December 2020 and so ORR anticipates no operational changes when Title 42 is terminated; ORR will continue to provide care for every child that is referred by DHS. ORR reviews capacity needs throughout the year, based in part on historic data and utilizing DHS estimates.

HHS/ORR participates in planning processes for appropriate responses to any increase in migration. ORR is prepared to address influx capacity needs by continuing to expand its standard bed capacity, adding more beds through entering into cooperative agreements with existing grantees, adding new grantees to ORR’s network of facilities, and developing influx capacity to deploy as needed.

- 9) If HHS can’t keep track of where these children are placed now, how will it do so during this surge?

Response: ORR tracks every child throughout the child’s stay in an ORR-funded care provider facility until they are safely released to a vetted sponsor or leave ORR custody following an immigration judge’s order of removal, turn 18 years of age, or obtain legal immigration status in the United States. As previously mentioned, ORR has policies and procedures in place to ensure UC in care are released in a safe, efficient, and timely manner. ORR continuously evaluates its sponsor screening and placement policies and procedures to ensure that ORR is always pursuing the best interest of each child in every release decision made.

Upholding Federal Law.

- 10) Our country has continued to see gender ideology progress and even promoted, particularly among children. Children are assuming a gender that differs from their biological sexes of either male or female. As you know, beyond changing pronouns or dressing differently, some children undergo medical procedures in an attempt to suppress or change genders, in some instances at the expense of taxpayers. Is HHS ORR providing or funding the provision of any medical procedures such as hormone therapy, puberty blockers or surgical procedures intended to suppress or alter the child’s biological sex to children in ORR care? If so, to how many children?

Response: HHS ORR is not aware of any UC who are currently being provided or funded for gender affirming interventions, such as hormone therapy, puberty blockers, or surgical procedures.

- 11) What are the potential side effects of puberty blockers?

Response: For a summary of potential side effects of puberty blockers, please refer to the American Academy of Pediatrics' Policy Statement on "Ensuring Comprehensive Care & Support for Transgender & Gender-Diverse Children and Adolescents".
<https://publications.aap.org/pediatrics/article/142/4/e20182162/37381/Ensuring-Comprehensive-Care-and-Support-for>

- 12) At what age does HHS ORR allow a child to give consent to receive medical treatments that involve hormone therapy, puberty blockers, or surgical procedures?

Response: As previously mentioned, ORR is not aware of any UC who are currently being provided or funded for any gender affirming interventions.

- 13) Is it HHS ORR policy or the policy of any entity that contracts with HHS ORR to house boys and girls according to their biological sex in custody for the safety of all the children who are in custody?

Response: To provide the least restrictive placement suitable for each child and ensure the safety of wellbeing of children in care, ORR considers all available information when making placement decisions, including the child's self-identification of his or her gender and safety needs when determining the child's housing and service allocation.

Per [ORR's Policy Guide section 4.8.2](#), care providers must use information gathered in the Assessment for Risk to inform a child or youth's housing, education, recreation, and other activity or service assignments by making an individual determination on how to ensure the safety and health of each child.

- 14) Does HHS ORR or any contractors affiliated with HHS ORR have policies related to providing services, including housing, on the basis of gender identity as opposed to on the basis of their biological sex? Does this differ with age?

Response: ORR-funded grantees do not make housing and other service assignments based solely on identity documents or the child's physical anatomy. To ensure the least restrictive placement suitable for each child, ORR considers all available information when making these decisions, including the child's self-identification of his or her gender and safety needs when determining the child's housing and service allocation.

Additionally, per [ORR's Policy Guide section 3.5.4](#), when making housing assignments for a transgender or intersex youth, ORR care providers must consider the youth's gender self-identification, the effects of housing assignment on the youth's health and safety, and the safety and security of the care provider facility.

HHS ORR Funding.

- 15) As of April last year, ORR had a policy in effect that stated that HHS under “no circumstances will pay for the sponsor’s airfare.” Your testimony discusses ORR’s investment in the transportation of sponsors and UACs to avoid unnecessary delays in unification. When did ORR change its policy on this matter, and where is it receiving the funding to provide this transportation? Please provide copies of the policy prior to its being changed and after it was modified. Please also provide a breakdown of the costs HHS has incurred by paying for transportation for sponsors.

Response: On February 24, 2021, ORR authorized care providers to pay for transportation fees for UC in order to facilitate the timely placement of children with their vetted sponsors. Under the guidance, care providers are authorized to use program funds to purchase airline tickets for children, sponsors, and escorts in the event a sponsor was not able to pay fees associated with commercial airfare, to prevent the delay of a child’s transfer of physical custody to the sponsor. Additionally, on May 22, 2021, ORR expanded the guidance to allow ORR grantees to cover all travel and escort costs associated with the release of the placement of the child to their vetted sponsor. By facilitating transportation logistics to prevent unnecessary delays in unification, the time children are spending in ORR care is significantly reduced. A reduction of UC length of care is a reduction in the cost of providing care and services for children, offsetting transportation costs and in many cases resulting in savings. Additionally, preventing unnecessary delays in discharging UC to sponsors allows ORR’s bed capacity to be available to accept new DHS referrals in a timely manner, as required by law, ensuring children are not spending more time in DHS custody in facilities not designed, equipped, or staffed to care for children.

- 16) It was reported in *Politico* last year that HHS has transferred over \$2 billion from COVID-related funds to address the surge of unaccompanied minors at the border. My staff have asked your office for this number on multiple occasions. Can you share with the Committee how much money has been transferred to ORR from other HHS accounts, what in ORR those transferred funds support, and what personnel have been transferred from other HHS agencies to support ORR’s duties?

Response: ORR required additional funding and received four fund transfers totaling approximately \$2.2 billion in FY 2021 to address the increase in operational costs associated with the COVID-19 pandemic and serve the needs of the increase in unaccompanied children apprehended by the Department of Homeland Security and referred to ORR. Additionally, the Public Health Service Act allows the Secretary to assess up to 2.5 percent of funds appropriated for any PHS Act authorized program for the implementation of Health and Human Service programs. Using this authority, \$2.1 billion was used to support the Unaccompanied Children’s program. HHS provided notification about these uses of FY 2021 funding to the Appropriations Committees.

Funding was assessed from across HHS and used for the UC program under several authorities.

- Transfer One (\$287 million): Annual FY 2021 funds were transferred from across HHS under authority provided in that Act. Reductions averaged 0.3 percent and in no case exceeded one percent.
- Transfers Two through Four: Funds provided by the Coronavirus Response and Relief Supplemental Appropriations Act, 2021 (Division M of P.L. 116-260) were transferred to the UC program to cover additional costs resulting from COVID-19. Section 304 of Title III of that Act authorized transfer of initial appropriations to other HHS agencies if used for COVID. Under section 304, \$850 million was transferred from the Public Health and Social Services Emergency Fund and \$1.1 billion was transferred from NIH; these funds were backfilled.
- Assessments: Under PHS Act authority, ARP appropriations to HRSA, CDC, SAMHSA, and the Public Health and Social Services Emergency Fund were reduced by 2.5 percent to provide a total of \$2.1 billion for the UC program. Authority to assess these funds exists in section 241 of the PHS Act and section 204 of Division H of P.L. 116-260, the Consolidated Appropriations Act, 2021.
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17) We have also pressed HHS for numbers on how much it costs to support an unaccompanied minor's care when they are in ORR custody, but HHS has referred us to statements in the media rather than providing us with this number. How much does it cost to provide care to an unaccompanied minor on a per-person, per-day basis, and what factors have gone into your calculation of that number?

Response: ORR continues to evaluate capacity needs and resource demands by closely monitoring and reviewing several of the following variables: UC referral numbers, projections and trends, DHS referral and ORR initial placement timelines; COVID-19 infection rates and impact on staffing and bed capacity; and total operational bed capacity, including standard capacity. By activating and planning for additional influx care facilities (ICFs) as needed, ORR has the capacity to respond to ever-changing levels of referrals. Final costs depend on these numbers.

The average daily cost to care for a child in a standard HHS shelter which provides all services required under the *Flores* Settlement Agreement and statute is approximately \$370 per day (this also includes specialty beds such as long-term foster care or therapeutic placements) . . . However, generally the cost of ICF capacity is significantly higher because of the need to quickly develop facilities designed for children and hire significant staff over a short period of time. ICFs are activated to ensure children are not spending more time in DHS custody in border facilities that are not staffed, equipped, or designed for children and detain children with potentially unrelated adults. Currently, the average daily cost to care for a child at an ICF is approximately \$1,600.

Responses to Post-Hearing Questions for the Record from Blas Nuñez-Neto

Question#:	1
Topic:	Final Orders of Removal
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the current total number of persons present in the U.S. who have been issued a final order of removal and have not been removed?

Response:

Encounter Fiscal Year	Unexecuted removal orders
2013	29,186
2014	54,531
2015	33,258
2016	52,834
2017	41,620
2018	52,827
2019	98,493
2020	10,771
2021	9,683
2022Q1	2,552
Grand Total	385,755

Notes: Results based on source data as of December 31, 2021 and Office of Immigration Statistics (OIS) Enforcement Lifecycle methodology as of May 31, 2021. Each total with the fiscal year represents the total unexecuted removal orders for individuals encountered that fiscal year and remain unexecuted as of December 2021. Data are limited to persons encountered since FY 2013 and are not inclusive of all people who may be in the United States subject to a final order of removal.

Source: U.S. Department of Homeland Security (DHS) OIS Enforcement Lifecycle.

Question#:	2
Topic:	Non-Detained Docket
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Since FY 2018, how many persons on the ICE non-detained docket have absconded prior to the conclusion of their immigration case (i.e. when a final order of removal is issued, relief is granted, or the case is dismissed)?

How many persons on the ICE non-detained docket have complied completely with their immigration hearings from the beginning to the conclusion?

Response: Upon apprehension, a noncitizen may be issued a Notice to Appear (NTA), the charging document that commences removal proceedings under section 240 of the Immigration and Nationality Act. Immigration judges commonly issue an in-absentia removal order when a noncitizen served with an NTA fails to attend his or her scheduled immigration hearing.

U.S. Immigration and Customs Enforcement (ICE) is able to provide the number of noncitizens on ICE's non-detained docket issued in absentia orders by immigration judges from Fiscal Year (FY) 2018 to FY 2022 year-to-date (YTD)¹. In FY 2022, as of June 6, 2022, **179,649** noncitizens on ICE's non-detained docket were issued in-absentia orders from FY 2018 to FY 2022 YTD. Of those 179,649 active cases on ICE's non-detained docket issued in-absentia final orders, **105,521** are identified as an ICE fugitive² in ICE's systems of record. Additionally, 259 active in-absentia final removal order cases on ICE's non-detained docket were excluded due to data quality issues; these records are currently under review. The remaining 74,128 are defined as noncitizens issued administrative final orders in-absentia who remain in the United States for various reasons, including but not limited to ICE issuance of an Order of Supervision with conditions of release, Stay of Removal decisions issued by ICE or other jurisdictions (e.g. Circuit Court), or Motions to Reopen pending adjudication.

¹ ICE data reflect active cases on the ICE non-detained docket as of June 6, 2022 with in absentia final orders issued from FY 2018 to FY 2022 year-to-date. The data do not account for noncitizens issued in absentia final orders with inactive cases in ICE systems of records. The data reflect only the last instance of an active case as a snapshot in time and include noncitizens released from ICE detention with active cases.

² A fugitive is a noncitizen who has failed to depart the United States pursuant to a final order of removal, deportation, or exclusion, or who has failed to report to ICE after receiving notice to do so.

Question#:	3
Topic:	ISAP ATD
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Since FY 2018, what percentage of participants who were enrolled in the Intensive Supervision Appearance Program (ISAP)/Alternatives to Detention (ATD) for the entire lifecycle of their immigration or until its conclusion (i.e. when a final order of removal is issued, relief is granted, or the case is dismissed) absconded?

What percentage of former ISAP/ATD participants were compliant while in the program but absconded after they left the program?

Response: The Alternatives to Detention (ATD) Intensive Supervision Appearance (ISAP) program is a compliance program that provides technology and case management services to noncitizen participants. As participants of the ATD ISAP program show compliance with program objectives, participants may be de-escalated to lower reporting requirements or to different types of technology or transitioned from the program and placed on the non-detained docket without a form of ATD monitoring. Likewise, those participants who show continued risk of absconding may be subject to increased reporting requirements and monitoring via technological means to help ensure they continue to meet immigration obligations, including appearance in immigration court. As ATD is a condition of release from DHS custody, a participant's heightened risk of absconding could result in the participant being returned to ICE custody pending the outcome of their immigration proceedings and removal (if applicable).

Due to the length of traditional immigration proceedings, in some cases lasting several years, enrollment in the ATD ISAP program for the full duration of immigration proceedings is unlikely; this may be due to several factors, such as participants being removed from the program by ICE following ongoing compliance with program requirements. Therefore, program compliance information for only those who have remained on the ATD ISAP program for the duration of their immigration proceedings would likely not reflect the true outcomes of the ATD ISAP program. At this time, there is not a reporting model that displays the outcomes of immigration court adjudications compared to all active and non-active ATD participants.

Those in ATD who have already received a court decision only make up approximately 14 percent of all participants who were discontinued from the program during the same timeframe.

For context, the table below provides the overall program failure rates, in line with historic methodologies. Failure Rate includes, of those discontinued from the program, the percent of individuals who were not compliant with ATD terms and conditions at the time of discontinuation. Success Rate includes, of those discontinued from the program, the percent of individuals who were compliant with ATD terms and conditions at the time of discontinuation.

Question#:	3
Topic:	ISAP ATD
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

All ATD ISAP Program Compliance - October 1, 2017 through May 31, 2022

Success Rate	Counts	Percent
Absconder	68,791	20.78%
Non-Absconder	262,277	79.22%
Total	331,068	100.00%

*Data from ISAP Participants Reports

The ATD program is a condition of release from DHS custody. Once removed from the ATD program, contingent upon the case circumstances, ICE may continue to monitor noncitizens on the non-detained docket by requiring check-ins with ICE under an Order of Supervision but without ATD protocols. ICE does not currently track ongoing compliance with immigration obligations when participants are removed from the ATD program.

Question#:	4
Topic:	ISAP/ATD Purpose
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What's the purpose of enrolling someone in ISAP/ATD early in their immigration lifecycle instead of at the end or for their entire lifecycle when migrants may abscond when a final order of removal is imminent?

Response: The ICE ATD program facilitates noncitizen compliance with release conditions, court hearings, and final orders of removal, while allowing them to remain in their communities as they move through the immigration process or prepare for departure from the United States.

As a flight mitigation tool, enrolling individuals into the program early in the immigration lifecycle promotes noncitizen compliance with release conditions, court hearings, and final orders of removal, consistent with ICE's public safety mission. Additionally, early enrollment into the program allows ICE to offer support services available to participants, including community referrals for health services, transportation, substance use, food, clothing, and shelter, taking into account their specific needs and assisting them throughout their immigration process. These support services often encourage compliance with immigration obligations.

Question#:	5
Topic:	ISAP/ATD Consequences
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What are the consequences for someone who is non-compliant in the ISAP/ATD program? Are they transferred to the detained docket? And if so, how many were transferred for non-compliance in ISAP/ATD to the detained docket since FY 2018?

Response: If a noncitizen fails to comply with the conditions set through enrollment on the ATD program, ICE will review the circumstances surrounding the failure to comply. Depending on the totality of circumstances, and on an individualized basis, an ATD officer will review and adjust the case management levels and technology assigned, such as more frequent reporting, travel restrictions, or escalating the level of technology (such as assignment to a GPS ankle unit if not already assigned). A custody redetermination is also considered if appropriate. Please see below for the number of ICE initial book-ins of ATD participants discontinued from the program for noncompliance since fiscal year 2018.

ICE Initial Book Ins of ATD Non-Compliance Terminations between 10/01/2017 - 04/30/2022³

Fiscal Year	ICE Book-Ins
Total	1,817
2018	167
2019	527
2020	637
2021	274
2022	212

³ICE Initial Book Ins are filtered through 06/11/2022. ICE Detention data exclude ORR transfers/facilities and U.S. Marshals Service Prisoners. ATD defines non-compliance as an ATD participant with a Failure/Success rate according to ATD program policies.

Failure Rate: Of those discontinued from the program, the percent of individuals who were not compliant with ATD terms and conditions at the time of discontinuation.

Success Rate: Of those discontinued from the program, the percent of individuals who were compliant with ATD terms and conditions at the time of discontinuation.

Question#:	6
Topic:	Government Policy
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Since FY 2018, how many ISAP/ATD participants were criminally charged for destruction of government property if they destroyed any monitoring devices?

Response: Between FY 2018 and May 26, 2022, ICE criminally charged 49 noncitizens related to the destruction of government property. These included 20 noncitizens charged for 18 U.S.C. § 1361 (destruction of government property), 25 noncitizens for 8 U.S.C. § 1253(a)(1) (penalty for failure to depart), and 4 noncitizens for 8 U.S.C. § 1253(b) (willful failure to comply with terms of release under supervision).

Question#:	7
Topic:	ISAP/ATD Participants Overseen
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: What is the average amount of ISAP/ATD participants that one ICE officer or case manager oversees?

Response: ICE Enforcement and Removal Operations (ERO) notes that the number of ATD - ISAP participants assigned to one ICE officer varies on a daily basis due to several factors, including geographic location, agency staffing, and how long it takes to resolve a noncitizen's removal proceedings. For instance, an ICE officer in the interior is responsible for approximately 500 to 600 cases. An officer at the Southwest Border may be responsible for managing 3,000 to 5,000 cases until the noncitizen's case is transferred to the interior where the noncitizen will reside. ERO moves resources where needed to address varying caseloads.

Please note that there are approximately 560 Case Specialists that are actively employed and providing case management services as a part of the ISAP IV contract. Additionally, approximately 130 additional Case Specialists have been hired. This number would cover noncitizen's current supervision needs.

Question#:	8
Topic:	Releases Criteria
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Street releases are not new to Arizona communities. For years, I have worked with Arizona's mayors and counties to help relieve the burden caused by street releases. The DHS plan indicates there is defined criteria in place, which local DHS components will use to determine whether and how to perform street releases in particular communities.

What is the criteria DHS utilizing to make these decisions about street releases? Please list the criteria and provide as many details as possible.

Response: Due to the increased number of migrants encountered by the U.S. Border Patrol (USBP), CBP may facilitate the provisional release of noncitizens on a case-by-case basis.

Generally, after processing, migrants who are not detained for the duration of their removal proceedings are provisionally released. Such releases may be conducted in coordination with NGOs and other local stakeholders, as appropriate. If NGOs are over capacity, CBP coordinates with local governments and cities to identify locations where migrants can conveniently access transportation services or accommodations.

Facilitating releases of migrants while their immigration cases are being adjudicated is a longstanding practice. Individuals who are provisionally released or paroled from CBP continue with their removal proceedings.

CBP collects biometric and biographic information and runs a background check before any individual leaves CBP custody, and those who are found to pose a public safety risk continue to be detained. CBP and ICE make custody determinations on a case-by-case basis and have strict reporting requirements in place for any individual provisionally released from custody pending their removal proceedings.

USBP releases noncitizens based on the following criteria:

Locations of releases in order of priority:

- Releases in the vicinity of NGOs with shelter capacity;
- Releases in coordination with NGOs and local stakeholders where further services can be provided;
- Releases at transportation hubs where noncitizens have the access and means for onward travel; and
- Releases at alternate safe locations.

Question#:	8
Topic:	Releases Criteria
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Considerations prior to release:

- Time in custody;
- Capacity at USBP facilities;
- NGO capacity and capability;
- Feasibility of release to transportation hubs;
- Remoteness of the USBP facility; and
- Other operational requirements.

Question#:	9
Topic:	Minimizing Impact
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: What steps will be taken to minimize the burden placed on Arizona communities in the case of street releases? How is DHS ensuring local components are using the street release criteria before deciding to release migrants directly into communities?

Response: DHS remains committed to coordinating with and providing as much assistance as possible to elected officials, local leaders, and nongovernmental organizations in these communities.

DHS continues to expel single adults and migrants in family units who meet the criteria under the Centers for Disease Control and Prevention's Title 42 public health order. Those who cannot be expelled under Title 42 and do not have a legal basis to remain in the country generally are placed in expedited removal or section 240 removal proceedings.

USBP continues to leverage existing, leased, and contract transportation methods for moving undocumented noncitizens out of USBP custody, to include lateral transfers for decompression efforts. CBP, through an interagency agreement with ICE, schedules lateral decompression flights between CBP facilities. CBP has the capability to expand the number of flights or option to shift resources on an as needed basis within existing resources. For example, the Southwest Border Coordination Center (SBCC) Air Coordination Unit scheduled 60 lateral decompression flights with Arizona origins (Yuma and Tucson Sectors) between May 23 and June 5, 2022.

Question#:	10
Topic:	Coordination with Local Stakeholders
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: To effectively implement this plan and minimize the impact on local communities, DHS must consistently coordinate with local leaders to identify and fill gaps in operations. I have heard for months now that many Arizona stakeholders find it difficult to coordinate with local DHS components that decline to participate in stakeholder meetings.

What is DHS doing to ensure that local DHS officials meaningfully and consistently coordinate with community leaders in Arizona, including participating in regular stakeholder meetings?

Response: The Federal Emergency Management Administration (FEMA) Region IX Emergency Operations Center is planning a unified response in preparation for the SWB Mass Irregular Migration. DHS is working in collaboration with the California Governor's Office of Emergency Services, the Arizona Department of Emergency and Military Affairs (AZ DEMA), and various Arizona state, city, county, and tribal officials to minimize the impact of increased migration on local communities, while ensuring safe and humane processing, transporting, and release of vetted noncitizens. Just as DHS has enacted a whole-of-government approach, FEMA Region IX has enacted this same approach in regard to coordination with local stakeholders. These meetings are relayed to the SBCC and NGO liaisons for visibility, awareness, and transparency. As it relates specifically to Arizona:

- Region IX conducts a briefing with AZ DEMA, daily, on operational, planning, and logistical updates. While these updates focus on California and Arizona, attention is centered on Arizona as Yuma sector and Tucson sector see the most encounters and require the most coordination.
- Region IX meets with Arizona officials twice per week, on Tuesdays and Thursdays. In detail:
 - Tuesdays: This meeting is held with Arizona state, county, city, and tribal emergency managers, NGOs, and local stakeholders. This meeting is centered on providing updates specific to Region IX's planning in the Arizona region.
 - Thursdays: This meeting is held with a small group of emergency managers, focusing with an emphasis on transportation procurement. Region IX consistently shares its ongoing efforts to procure transportation with airlines, Amtrak, and Greyhound.
- Region IX engages in a Maricopa County Asylum Seekers Stakeholder meeting every Monday to provide operational updates. These groups are made up of the following: local shelters and organizations (Red Cross, Casa Alitas, faith-based organizations), Phoenix Sky Harbor International Airport (PHX) authorities, Mayor's

Question#:	10
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Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

office, Maricopa Public Health, Senator Kelly's staff, Senator Sinema's staff, AZ DEMA, Pima County, and the City of Phoenix.

- Region IX meets with PHX twice per week, as this airport welcomes noncitizens from various entities (CBP, ERO, NGOs). In detail:
 - Wednesdays: This meeting is held with PHX airport authorities and NGOs (International Rescue Committee and Regional Center for Border Health to enhance communication and coordination amongst all parties, ultimately to ensure that all noncitizens transported to PHX are travel-ready.
 - Fridays: This meeting is held between Region IX and PHX authorities to further refine communication and coordination.
- Region IX participates in a bi-weekly Arizona Welcoming Committee meeting with Arizona advocacy groups, answering questions and addressing concerns as appropriate.

All components within DHS have maintained active engagement with all parties. While attendance varies with each meeting, all questions or concerns that are raised are addressed by by Region IX Lead Field Coordinator and Deputy Lead Field Coordinator. These conversations and concerns are relayed to the SBCC, such as the National Incident Commander for awareness. The SBCC and Region IX have and will continue to ensure that participation from local components is sufficient, regular, and meaningful when engaging with local stakeholders.

Question#:	11
Topic:	Centralized Processing Centers
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: I am pleased to hear DHS has based part of their plan on the regional processing centers model I proposed with Senator Cornyn in our Bipartisan Border Solutions Act. These enhanced centralized processing centers will co-locate DHS components, non-profits, and other relevant entities to help reduce systemic inefficiencies. I understand the pilot location became operational on April 29 in Laredo, Texas, and that this pilot will be used to work out the logistics for additional future centers.

Please list the factors being used to determine future locations for these processing centers. How long do you anticipate it will take to operationalize additional centers? Can Arizona expect to get an enhanced centralized processing center? If yes, when can I expect it to be fully operational?

Response: USBP established Enhanced Central Processing Centers at locations where soft-sided facilities already exist. No new locations were added. DHS is building Joint Processing Centers (JPCs) for the purpose of replacing expensive soft-sided facilities. Criteria for selecting JPC locations are:

- proximity to the border;
- proximity to areas of high traffic crossings;
- proximity to existing USBP stations, to maximize the leveraging of organic resources;
- proximity to a large town or city that can provide the needed support for contractors, medical personnel, medical facilities, and will have an appropriate community for assigned staff and family, e.g. housing, schools, etc.;
- proximity to major highways;
- proximity to an airport.

Estimates suggest new JPCs will take 30 months to construct and put into operation once the funding is received. If USBP needs a soft-sided facility temporarily, construction takes up to 110 days once funding is received.

Yuma was identified as the second site for a JPC, and Congress provided funding to construct the facility in FY 2022.

Question#:	12
Topic:	Reimbursing Costs
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Due to Washington's failures on the border, Arizona communities are absorbing costs related to the migrant surge, including sanitation, emergency services for migrants in distress, and hospital visits, among others. Many of these costs are not reimbursed by the federal government, even though this is the federal government's problem.

At yesterday's hearing, Secretary Mayorkas told me that DHS is looking to find other grant programs that can be used to reimburse communities that are paying the price for Washington's immigration problems. What grant programs is DHS looking at, and what exactly does DHS need from Congress to make this happen?

Response: Within the existing preparedness grant programs, the Emergency Management Performance Grant Program and the Regional Catastrophic Preparedness Grant Program are focused on all-hazards emergency management and preparedness capabilities. As such, these programs have the potential to help fund activities for communities experiencing increased costs due to immigration. While Operation Stonegarden (OPSG) provides dedicated funding for border security activities, those activities must have a nexus to terrorism security and are not intended for humanitarian efforts such as immigration. Similarly, State Homeland Security Program (SHSP) and Urban Area Security Initiative (UASI) funded activities, by statute, must have a nexus to terrorism. In order for OPSG, SHSP, or UASI funds to be used for humanitarian efforts, Congress would need to expand the allowable use of funds to include those types of efforts, as it did for select funding under these programs in FY 2017.

The Emergency Food and Shelter Program (EFSP) is a FEMA funded program authorized by the McKinney-Vento Homeless Assistance Act of 1987. The program supplements and expands ongoing work of local nonprofit and governmental social service organizations to provide shelter, food, and supportive services to individuals and families experiencing, or at risk of experiencing, hunger and/or homelessness. The program also provides supplemental funding for humanitarian relief efforts by social service organizations to provide shelter and support services to families and individuals encountered by the Department of Homeland Security (DHS). The EFSP National Board is the sole recipient of EFSP grant funds from FEMA and establishes the program's policies, procedures, and guidelines. Under the FY 2022 appropriations, the EFSP received \$150M in supplemental funding to support the individuals encountered by DHS at the SWB. FEMA estimates this funding can support the program through September or October 2022. Additional appropriations would enable the program to continue supporting these organizations after that time.

Question#:	13
Topic:	Processing Coordinators
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Processing coordinators will play a vital role in managing the border once Title 42 ends. These individuals will free up Border Patrol Agents to perform their primary mission-securing the border.

In April, the Tucson Sector only had six processing coordinators, while they had space and funding for 168. How will DHS improve hiring and retention for processing coordinators, either full-time or contractors, to ensure appropriate staffing? Will DHS consider surging processing coordinators to locations that are unable to hire or contract locally?

Response: CBP made several improvements to Border Patrol Processing Coordinator (BPPC) hiring and retention efforts. In January 2022, CBP reallocated existing resources and re-engineered the hiring process to streamline the selection and placement of BPPCs, creating a pipeline of applicants to allow USBP to fill BPPC vacancies more efficiently. Starting in June 2022, BPPCs will be recruited as permanent positions, which should also aid in recruitment, hiring, and retention. CBP began FY 2022, with 227 BPPCs, and as of May 7, 2022, we have 284 BPPCs onboard. As of May 25, 2022, CBP has hired and/or scheduled entry on duty dates for 258 new BPPCs this calendar year and have a pipeline of 808 applicants in the pre-employment process to fill additional staffing needs. CBP expects to hire a total of 624 BPPCs in FY 2022, enabling CBP to achieve the FY 2022 funded level of 725 BPPCs, depending upon attrition. Building on the dramatic hiring improvements from FY21 to FY22, CBP is well positioned for FY 2023 hiring of BPPCs.

Question#:	14
Topic:	Border Security Technology Report
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: I consistently hear from Border Patrol that they lack sufficient technology on the Southwest Border.

My Southwest Border Security Technology Improvement Act, which required DHS to assess border security technology gaps along the Southwest Border, was passed into law in December 2020. The report required under the Act was due in December 2021, but is now expected to be released next month.

This report will contain vital information about resources necessary to secure our border. When will we see this report? And how will DHS use this report to ensure the gaps identified are filled in a timely manner?

Response: This report is undergoing final clearance with CBP and DHS. The estimated completion date should be December 2022. CBP will fulfill the milestone requirements for the program schedule through the FY 2021 enacted budget.

Question#:	15
Topic:	Haitian Asylum Claims
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Last year, when the 15,000 Haitians crossed the border in Del Rio and congregated under the bridge, the Associated Press and media reported that some of this population had been "firmly resettled" in Brazil and Chile before they crossed the southern border. How many of these Haitians were barred from having their asylum claims heard pursuant to the "firm resettlement" provision in the asylum law?

Response: DHS does not have data to address this question. Individuals who were expelled under the Title 42 public health order were not processed under Title 8 immigration authorities during which an asylum or fear claim might arise; however, individuals who were placed in expedited removal proceedings under Title 8 may have been referred to U.S. Citizenship and Immigration Services (USCIS) for a credible fear screening. If USCIS issued those individuals a positive credible fear determination, their cases would have been referred to the Executive Office for Immigration Review where an immigration would make a determination on the merits of their asylum claim. In some instances, noncitizens who have received a positive credible fear determination may receive an [asylum merits interview with an asylum officer](#). As applicable on a case-by-case basis, this could include adjudication as to whether the firm resettlement bar to asylum applies. A possible indication regarding firm resettlement in a third country would not have prevented individuals from having their full asylum claim decided by an immigration judge.

Question#:	16
Topic:	Firmly Resettled Definition
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: Your staff have stated that there are many migrants in Central and South America who have been living outside of their home countries and are waiting for Title 42 to be lifted. Would you consider those individuals to be "firmly resettled" as defined by asylum law? If not, why not?

Response: Whether any of these individuals is ineligible for asylum due to applicability of the firm resettlement bar requires a case-by-case determination based on the facts of each case. The firm resettlement framework for asylum is set forth by statute (Immigration and Nationality Act § 208(b)(2)(A)(vi)) and regulation (8 C.F.R. § 1208.15), and in the Board of Immigration Appeals' precedent decision *Matter of A-G-G-*, 25 I&N Dec. 486 (BIA 2011). A noncitizen is considered firmly resettled if, prior to arrival in the United States, they entered into another country and while in that country received an offer of permanent resettlement, such as permanent resident status or citizenship. An individual is considered firmly resettled if the applicant was offered some form of enduring lawful status in that country as demonstrated by direct or circumstantial evidence, of an offer of some type of permanent resettlement. If there is un rebutted evidence that the individual was offered or received a permanent status in a third country, USCIS considers that individual firmly resettled, unless: (1) conditions of residence in that country were so substantially and consciously restricted by the authority of that country that they were not in fact resettled; or (2) their entry into the country was a necessary consequence of their flight from persecution, they remained in the country only as long as necessary to arrange onward travel, and they did not establish significant ties to the country.

Question#:	17
Topic:	CBP Policy
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: I heard during my CODEL to the Rio Grande Valley in January that Border Patrol agents are unable to pursue individuals who seek to evade their checkpoints. It is my understanding that CBP by policy has historically allowed agents to pursue these individuals, but that you are reviewing and intend to modify and limit this policy. It seems like blowing through a Federal law enforcement checkpoint would constitute probable cause and should allow for engagement. Is it true CBP is walking back this policy? If so, why? Please share with the Committee any updated guidance related to Border Patrol checkpoints.

Response: There have been no recent updates to guidance or policies related to USBP checkpoints and violations of 18 U.S.C. 758, the federal law against fleeing or evading an immigration checkpoint.

Question#:	18
Topic:	MPP Role
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: What is DHS's target percentage for enrollments in MPP (enrollments in MPP to total encounters in a Border Patrol sector)? Please provide this number for each Border Patrol Sector.

Will MPP playing a role in the Department's response to the impending surge after Title 42 is terminated? If so, what role?

Response: Secretary Mayorkas explained the Migrant Protection Protocols (MPP) is endemically flawed and the costs of the program do not justify any perceived benefits. On August 8, 2022, the district court lifted its injunction requiring DHS to re-implement the program. At this time, DHS is no longer enrolling individuals in MPP.

Question#:	19
Topic:	Surge Length
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS has told us that they anticipate encountering roughly 18,000 migrants per day when Title 42 is terminated. How long do you anticipate CBP encountering this level of a surge? For days, weeks, months?

Response: During the lead up to the anticipated termination of the CDC's order under Title 42, CBP planned and prepared for multiple scenarios. The metric of 18,000 encounters per day was designed for planning purposes to describe a scenario in which termination of Title 42 on a target date would cause encounters of noncitizens from numerous countries to surge to levels beyond the highest ever observed. It does not reflect the number of encounters CBP anticipates seeing. Other post-Title 42 scenarios made different assumptions and yielded lower numbers of projected encounters. Scenarios are continually reassessed and adjusted as CBP continues to plan for the eventual termination of Title 42.

Question#:	20
Topic:	Detention Capacity Use
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: It's my understanding that, regardless of what happens with Title 42, the CDC has declared that ICE detention facilities are "congregate settings" and therefore subject to limitations on detention capacity. It's also my understanding that DHS is working to appeal the *Fraihat* litigation which controls COVID protocols in detention facilities. If you lose the appeal, what steps will you take to ensure that ICE can use all of its detention capacity?

Even if the Administration wins the appeal in *Fraihat* and can use all of ICE's detention capacity, do you believe that capacity is enough? If it isn't, what steps are you taking to ramp up that capacity?

Response: The *Fraihat* injunction was vacated on September 16, 2022. ICE is currently revising the ICE Pandemic Response Requirements in light of the vacated injunction. The guidance will conform with the latest CDC recommendations, and ICE will continue to take steps to protect detainees through various measures that may include reducing the population and restricting in-person social visitation to promote social distancing.

ICE is committed to safe, secure, and humane environments for all of those in ICE custody and will ensure that all those in custody reside under appropriate conditions for confinement.

ICE continues to evaluate bedspace and fill existing detention beds within the constraints of its pandemic precautionary.

Question#:	21
Topic:	Detention Capacity
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: You have briefed the Committee that CBP will have only 18,000 detention beds when Title 42 is lifted. You also have briefed that you anticipate that DHS will have 18,000 people crossing in a single day after Title 42 is terminated. Does DHS believe its detention capacity is enough to manage the surge?

Response: As of June 14, 2022, CBP SWB facilities have a short-term holding capacity of 17,291. Holding capacity is reduced once the detained population is segregated by gender, demographic, family make-up, and other contributing factors. CBP has established multiple temporary detention and processing facilities to accommodate an increasing detainee population. It must be noted, however, that facility additions require a significant amount of labor to secure and staff, including CBP agents and officers, contract personnel, and detailed staff from CBP and other government agencies.

CBP is dedicated to managing the population in its custody in a humane, legal, and responsible manner. During a period of irregular migration, CBP's ability to maintain these standards is contingent, in part, upon its partners' capacity to accept transfers at rate equal to CBP encounters. Assuming various pathways (such as ICE transfers, NGO releases, paroles, and repatriations) and decompression options remain accessible, CBP can manage an increase in irregular migration.

During the lead up to the anticipated termination of the CDC's order under Title 42, CBP planned and prepared for multiple scenarios. The metric of 18,000 encounters per day was designed for planning purposes to describe a scenario in which termination of Title 42 on a target date would cause encounters of noncitizens from numerous countries to surge to levels beyond the highest ever observed. It does not reflect the number of encounters CBP anticipates seeing. Other post-Title 42 scenarios made different assumptions and yielded lower numbers of projected encounters. Scenarios are continually reassessed and adjusted as CBP continues to plan for the eventual termination of Title 42.

Question#:	22
Topic:	Parole ATD Reliance
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable James Lankford
Committee:	HOMELAND SECURITY (SENATE)

Question: It is my understanding that ICE cannot detain individuals that CBP does not process. This means that individuals who are not processed by CBP and issued Notices to Report (NTRs) or released on parole with Alternatives to Detention (Parole/ATD) are unable to be detained by CBP. To what extent does DHS anticipate relying on NTRs or parole/ATD during the possible surge after Title 42 is terminated? Does DHS believe this will impact its detention capacity?

Response: CBP ceased the issuance of Notices to Report to noncitizens in October 2021. Upon reporting to the ICE field office as instructed when released by CBP, ICE may detain noncitizens. In certain cases, ICE is bound by mandatory detention requirements to detain certain noncitizens in accordance with U.S. immigration law. Moreover, CBP conducts security checks prior to release and does not release any individual who presents a public safety risk; such individuals are transferred to ICE custody. Once the CDC's order under Title 42 is no longer in effect, DHS will process all noncitizens according to existing Title 8 immigration authorities. Noncitizens who enter the United States without authorization and are unable to establish eligibility for relief or protection may be subject to removal, may face additional criminal or administrative consequences, or may be barred from receiving future immigration benefits. Those apprehended by CBP may be subsequently transferred to ICE custody for additional processing and, in cases where it is warranted, detention. In cases when a noncitizen is not subject to mandatory detention, ICE exercises its discretion in making custody decisions to release noncitizens with conditions. When custody determinations are made, ICE considers appropriate release conditions based on the individual circumstances of the case, including enrollment in ICE's ATD program for noncitizens who are eligible. These custody decisions are made on a case-by-case basis and after considering the totality of circumstances, primarily considering risk of flight, national security threat, and risk to public safety. ICE also takes other factors into consideration, including when a noncitizen has a serious medical condition, is the primary caregiver of minor children, or other humanitarian considerations.

ICE is working expeditiously to implement additional processing and throughput capacity to address heightened flows of single adults. However, as part of routine operational strategic planning, ICE continually considers migration trends at the border along with many other factors when assessing bedspace needs to house detained noncitizens safely and securely. ICE will ensure it has sufficient detention space to hold noncitizens who pose a public safety threat, risk of flight, or whose detention is mandated by law.

Responses to Post-Hearing Questions for the Record from Maryann Tierney

Question#:	1
Topic:	Vaccination Plan
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: The Department of Homeland Security (DHS) plan for Southwest Border Security and Preparedness, released on April 26, 2022, indicated that DHS is planning to expand its COVID-19 vaccine program to 24 U.S. Customs and Border Protection sites by May 23rd, so that all age-eligible, noncitizens who had not already been vaccinated would receive their first dose before they traveled beyond a processing center.

Is the Department's 100 percent vaccination plan based upon current apprehension levels, or does it account for 18,000 possible daily apprehensions? Would the 24 sites noted in the plan be sufficient to accommodate all unvaccinated individuals, or would addition sites and resources be necessary?

Response: The U.S. Department of Homeland Security (DHS)/U.S. Customs and Border Protection (CBP) Vaccination Program is based on actual and projected flows and needs across the Southwest Border (SWB). A team from CBP and DHS traveled to the SWB from May 23-27, 2022 to evaluate the Vaccination Program. DHS and CBP believe the current efforts will be sufficient for all unvaccinated age-eligible, noncitizens inadmissible under Title 8, and will continue to monitor results in real time and adjust as necessary to ensure the same.

Question#:	2
Topic:	Transportation Capacity
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Arizona communities, NGOs, and local and federal law enforcement officers have been struggling to keep up with the flow of migrants for years. Secretary Mayorkas indicated that work to get resources on the ground in Arizona are well underway. I have not yet received details that allow me to be confident that the government be prepared. For example, Yuma and Tucson Sectors still do not have sufficient transportation, staffing, or infrastructure capacity to handle the post-Title 42 influx.

On which date will Arizona's border sectors have sufficient transportation capacity to implement the Administration's plan for the worst case scenario (18,000 daily arrivals across the Southwest Border) and avoid further burdening Arizona communities? Please provide specific numbers, dates, and contractors as appropriate.

Response: The Southwest Border Coordination Center (SBCC) has established a Blanket Purchase Agreement (BPA) to award task orders for transportation capacity. The SBCC continues to pursue and evaluate vendors to provide ground transportation support to areas of operations in AZ thru the BPA. CBP competes for resource availability with local, state and federal organizations who are also seeking contracts for transportation services in the same geographic areas, ultimately, there are a limited number of vendors capable of supplying the detention grade transportation capacity.

The SBCC continues to seek Interagency Agreements with other governmental agencies to increase capacity for ground transportation requirements. For example, the U.S. Department of Justice (DOJ) Bureau of Prisons (BOP) has agreed to support CBP temporarily while it works to identify additional transportation capacity. The SBCC is also working with U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) to share DHS resources, in accordance with the Economy Act of 1932 (Economy Act), to increase transportation capacities across the SWB for both ground and air transportation.

Question#:	3
Topic:	Holding Capacity
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: On which date will Arizona's border sectors have sufficient holding capacity to implement the Administration's plan for the worst case scenario (18,000 daily arrivals across the Southwest Border)? Please provide specifics about additional temporary or permanent facilities, including expected completion dates and capacity by facility.

Response: Currently, Tucson and Yuma Border Patrol Sectors have a combined holding capacity of 2,482 (Yuma Sector: 1,291, Tucson Sector: 1,191). This includes the addition of three soft-sided facilities, one within Tucson Sector, operational as of April 28, 2021, with a capacity of 500, and two within Yuma Sector, operational on April 18, 2021 and expanded on April 8, 2022, with a combined additional capacity of 875. The construction of the Nogales Central Processing Center (CPC) is scheduled to begin in July 2022 with an estimated completion of December 2022. Upon completion, the Nogales CPC will increase holding capacity by approximately 500.

Question#:	4
Topic:	Staffing
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: On which date will Arizona's border sectors have sufficient staffing to implement the Administration's plan for the worst case scenario (18,000 daily arrivals across the Southwest Border)? Please provide specifics about the source of the additional staff, their roles, and whether they are full-time, TDYs, or contractors.

Response: As of May 7, 2022, the U.S. Border Patrol (USBP) permanent staffing in Arizona was 4,610. This includes a total of 4,233 USBP Agents and Border Patrol Processing Coordinators and 377 professional staff. Additionally, to support the operation of the soft-sided facilities, a CBP contractor, *Deployed Resources*, employs 350-400 contract employees. The Transportation Security Administration's (TSA) Law Enforcement/Federal Air Marshal Service (LE/FAMs) is supporting CBP operations in Arizona with 50 LE/FAMs for a period of 45-90 days, reimbursable per the Economy Act. CBP is working toward contracting additional processing coordinators and facility guards to support operations.

Question#:	5
Topic:	TDYs
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: The Yuma Sector currently relies on TDYs to have enough Border Patrol agents to process the influx migrants. How will the SBCC coordinate limited staffing resources across sectors once other sectors are overwhelmed after Title 42 ends, causing many of the TDYs in Yuma to be reassigned to other sectors?

Response: The SBCC has coordinated with the TSA LE/FAMS and other sources (Contracting entities) to receive additional support if Title 42 restrictions are lifted at the SWB or if there is a significant increase in flow within Yuma and other Sectors. Additionally, SBCC has coordinated with DOJ to receive support from BOP with transportation requirements within Yuma and other Sectors. The number of detailees in Yuma will remain consistent with operational requirements.

Question#:	6
Topic:	Assist Non-Profits
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Much of the DHS plan to increase capacity involves making the migrant processing system more efficient. I am worried that without downstream investments, increased processing throughput will just shift the crisis to local communities more quickly. For months, many Arizona non-profits have met or exceeded capacity. If the government's processing time is decreased, but non-profits do not have the ability to expand their capacity in a timely manner, stakeholders worry this will increase the likelihood of street releases in Arizona communities.

As you engage with non-profits across the Southwest Border, what additional authorities does the federal government need to adequately assist non-profits to quickly expand their capacity in order to manage increased numbers of migrants and avoid street releases?

Response: Nonprofits play a critical role in supporting the irregular influx of migrants. These entities provide noncitizens, who have been processed in accordance with applicable immigration laws, with food, shelter and other support for onward movement. The Emergency Food and Shelter Program (EFSP) is funded by the Federal Emergency Management Agency (FEMA) and is designed to provide a source of supplemental assistance to local agencies in assisting the migrant population encountered by DHS.

The EFSP has been vital in ensuring that nonprofits have the resources necessary to expand their capacity along the southern border and interior communities. Under the DHS Appropriations Act, 2022, Congress appropriated \$280 million to EFSP. This includes \$130 million for local social service organizations aiding our nation's hungry and homeless and \$150 million for organizations providing humanitarian assistance to migrant families and individuals encountered by DHS. More details on the Emergency Food and Shelter Program can be found online at: <https://www.fema.gov/grants/emergency-food-and-shelter-program>.

Question#:	7
Topic:	Transportation Hub Capacity
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Many of the migrants who enter the United States through Arizona are attempting to travel to a destination outside of my state. This creates a unique strain on Arizona transportation hubs. At the Phoenix Sky Harbor Airport, staff and volunteers are spending hours each day helping hundreds of migrants find onward transportation. These airport staff and volunteers are not trained or equipped for this monumental task. This is one of many examples of how this federal problem is straining local resources.

How is the SBCC taking community transportation hub capacity into account when deciding where to surge resources in advance of Title 42's end?

Response: Neither CBP nor ICE ERO have the legal authority to dictate to where undocumented noncitizens travel, or which transportation hubs are utilized once their process is completed. However, CBP and ICE ERO are in close communication with local authorities to minimize potential impacts related to border response, including at airports. The SBCC, in coordination with USBP, CBP Office of Field Operations, and ICE ERO communicates with non-governmental organizations (NGOs) and coordinates the provisional release of undocumented noncitizens taking into consideration local NGO capacity. The SBCC, CBP, and ICE ERO understand the limitations of transportation hubs and NGO capacities, and regularly communicate with local government and NGO leadership, including in Phoenix. Moreover, the lead field coordinator and sector chief participate in locally hosted calls. As detailed below, DHS is in weekly contact with Phoenix airport authorities to contemporaneously discuss and resolve issues of concern.

Question#:	8
Topic:	Coordination with Local Stakeholders
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: To effectively implement this plan and minimize the impact on local communities, DHS must consistently coordinate with local leaders to identify and fill gaps in operations. I have heard for months now that many Arizona stakeholders find it difficult to coordinate with DHS components who decline to participate in coordination meetings.

How is the SBCC ensuring sufficient, regular, and meaningful participation from local components that are less willing to engage with stakeholders?

Response: FEMA's Region IX Emergency Operations Center (EOC) is continually planning a unified response in preparation for mass irregular migration along the SWB. In collaboration with the Arizona Department of Emergency and Military Affairs (AZ DEMA), and various Arizona state, city, county, and tribal officials, Region IX coordinates its efforts to minimize the impact of the arrival of noncitizens into the United States while maintaining an efficient process that prioritizes the safe and humane processing, transporting, and release of vetted noncitizens. Just as DHS has enacted a whole of government approach to address elevated migrant encounters, Region IX has enacted this same approach regarding coordination with local stakeholders. Specifically for Arizona:

- Region IX conducts a daily briefing with AZ DEMA on operational, planning, and logistical updates. While these updates focus on California and Arizona, attention is centered on Arizona as Yuma and Tucson Sectors see the most encounters with migrants and require the most coordination.
- Region IX meets with Arizona officials every Tuesday and Thursday.
 - On Tuesdays, the meeting is held with Arizona state, county, city, and tribal emergency managers, NGOs, and local stakeholders to provide updates specific to Region IX's planning in the Arizona region.
 - On Thursdays, the meeting is held with a small group of emergency managers, with an emphasis on transportation procurement. Region IX consistently shares its ongoing efforts to procure transportation with airlines, Amtrak, and Greyhound.
- Region IX engages in a Maricopa County Asylum Seekers Stakeholder meeting every Monday to provide operational updates. The meetings include representatives from local shelters (IRC, Casa Alitas, Red Cross, faith-based churches, etc.), Phoenix Sky Harbor International Airport (PHX) authorities, Mayor Kate Gallego's office, Maricopa Public Health, AZ DEMA, Pima County, and the City of Phoenix. Staff from your office and Senator Kelly's office are also included in these calls.

Question#:	8
Topic:	Coordination with Local Stakeholders
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

- Region IX meets with PHX authorities twice per week, as noncitizens from various entities (CBP, ERO, NGOs) often transit this airport.
 - On Wednesdays, the meeting is held with PHX airport authorities and NGOs (International Rescue Committee & Regional Center for Border Health (RCBH)) to enhance communication and coordination, ultimately to ensure that all noncitizens transported to PHX are travel ready.
 - On Friday, the meeting is held between Region IX and PHX Authorities to further refine communication and coordination.
- Region IX participates in a bi-weekly Arizona Welcoming Committee meeting with Arizona advocacy groups, answering questions and addressing concerns as appropriate.

While attendance varies with each meeting, relevant questions or concerns that are raised are sufficiently answered and mitigated by the Region IX Lead Field Coordinator (LFC) John Modlin and Deputy Lead Field Coordinator (DLFC) Moises Castillo. These conversations and concerns are relayed to SBCC leadership for awareness. The SBCC and Region IX will continue to ensure that participation from local components is sufficient, regular, and meaningful when engaging with local stakeholders.

Question#:	9
Topic:	Prompt Responses
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Given that migrant flows to particular regions tend to ebb and flow, how will the SBCC ensure prompt response to these changes, and make sure resources are capable of quickly redeploying to regions in need?

Response: CBP, with the assistance of the SBCC, continuously analyzes current operational conditions and regularly communicates with the regional Lead Federal Coordinators to adjust resources as the operational environment evolves.

Additionally, SBCC coordinates the acquisition of supplemental resources (transportation and personnel) through procurement, contracting, and Requests for Assistance from governmental partners. Pending the availability of funding, these approaches allow CBP to quickly obtain additional resources to address increased irregular migratory flows into the United States.

Aside from resource acquisitions and reallocations, SBCC coordinates lateral movements of detained migrants from regions experiencing high in-custody levels to those regions with available processing and custody space.

**Post-Hearing Questions for the Record
Submitted to Benjamine “Carry” Huffman
From Ranking Member Portman**

**Senate Homeland Security and Governmental Affairs Committee
“Securing and Ensuring Order on the Southwest Border”**

May 5, 2022

Question#:	1
Topic:	Precursor Chemicals
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: We know that criminals are commingling illicit goods with legitimate trade to avoid additional detection. One such avenue for this commingling are the Transportation & Export (T&E) and Immediate Export (IE) in-bond shipments that enter the U.S. from other countries, such as China, and are transshipped into Mexico without inspection. This form of trade increased from \$4.29 billion in FY 2018 to \$84.80 billion in FY 2021.

How do we ensure dangerous chemical precursors used to produce synthetic drugs aren't utilizing this form of trade and if so, what do we need to do to interdict them before they reach Mexican cartels?

Response: U.S. Customs and Border Protection (CBP) receives import data to target incoming shipments prior to their arrival to the United States. This allows CBP to focus enforcement and examination on shipments such as transportation and exportation (T&E) and immediate exportation (IE) shipments to interdict illicit goods just like other types of shipments.

Additionally, from an Office of Field Operations (OFO) perspective, a controlled substance may be imported into the United States for an in-bond shipment only when written notice is submitted to the U.S. Drug Enforcement Administration (DEA). CBP can leverage its ability to check for mandated permits and ensure required notice was provided to the DEA. CBP can also increase controls on these substances as Congress adds them to the controlled-substance schedules.

Additionally, shipments of dangerous chemical precursors could be prohibited from traveling under T&E and IE in-bond shipments, but if such precursors have other legitimate uses, this prohibition could be over-inclusive and impact legitimate trade. To interdict synthetic drugs before they reach Mexican cartels, CBP would need to identify that dangerous chemical precursors are traveling *en route* to Mexico under T&E and IE in-bond shipments without proper authorization, and CBP or another law enforcement agency would need to seize such shipments before they depart the United States.

Question#:	1
Topic:	Precursor Chemicals
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Understanding these chemicals are not inherently illegal and the importance of legitimate trade, what additional authorities or regulations would assist CBP in tracking these chemical in-bond shipments that would increase the opportunity to uncover potential illicit activity? And what additional authorities or regulations would assist CBP to enact a seizure once probable cause is established?

Response: CBP suggests that any shipment notification be accompanied by an export license, permit or authorization, issued by a competent authority of the country of origin. If the notification is for a Schedule I controlled substance, a copy of the import permit issued by the competent authority of the country of destination must also accompany the notification.

Implementation of a system in which importations and exportations of chemical precursors are reported to CBP in advance and permitting only licensed or registered entities to participate in such transactions would be useful for tracking these goods and enhancing enforcement opportunities.

Question#:	2
Topic:	Border Security Metrics
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: As you may know, the Department of Homeland Security has failed to deliver the Border Security Metrics reports required by the National Defense Authorization Act for Fiscal Year 2017, Pub. L. No. 114-328, Section 1092. The annual Border Security Metrics Report include key information on the border such as the number of migrants who evaded apprehension. Given that this information is required by law, provide the number of migrants that are estimated to have evaded apprehension, also known as "gotaways" for FY2019, FY2020, and FY2021.

Response: U.S. Border Patrol (USBP) works diligently to secure our Nation's borders and is committed to quickly encountering and removing individuals who do not have a legal basis to remain in the United States. USBP estimates that there were 150,505 individuals who evaded encounter for Fiscal Year (FY) 2019, 136,808 in FY 2020, and 391,316 in FY 2021.

**Post-Hearing Questions for the Record
Submitted to Benjamin "Carry" Huffman
From Senator Kyrsten Sinema**

**Senate Homeland Security and Governmental Affairs Committee
"Securing and Ensuring Order on the Southwest Border"**

May 5, 2022

Question#:	3
Topic:	Short Term Capacity
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Robust migrant processing at ports of entry is a key part of the DHS plan for the Southern Border. However Arizona's ports of entry were not designed to manage large scale asylum processing. This has the potential to create a volatile situation that is unsafe for CBP officers and migrants when bottlenecks occur and frustration rises.

While the funding I secured for ports of entry modernization, in the Infrastructure Investments and Jobs Act, will be very helpful in the long term, these modernization projects are still years from completion.

What capacity requirements - for infrastructure, transportation and related staffing - will be in place for Arizona Ports to prevent overcrowding and disruptions to trade and travel?

Response: CBP continually works to increase processing efficiency at POEs to further facilitate safe and orderly inspection of noncitizens while limiting impacts to the facilitation of trade and travel, and reduce time in custody.

OFO is taking steps to increase processing capacity and throughput to expeditiously process as many undocumented noncitizens as operationally possible at POEs along the Southwest Border (SWB), while ensuring the port complies with all applicable laws and policies, paying particular attention to the safety of those in CBP custody.

As movement out of custody is a key factor that limits processing throughput at POEs, CBP is working with the U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations and non-governmental organizations (NGOs) to coordinate movement of noncitizens from POEs who have completed processing to reduce times in CBP custody. DHS is also working to bolster the capacity of NGOs to receive noncitizens awaiting their immigration hearing after they are processed and provisionally released by CBP to mitigate local community impacts.

Question#:	3
Topic:	Short Term Capacity
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: How many individuals will CBP have capacity to process in Arizona, daily? And on what date will all necessary additional resources be in place at Arizona ports of entry?

Response: OFO and USBP do not have set capacity numbers for processing each day because each day presents a different balance of mission sets (e.g., national security, counternarcotics, trade and travel facilitation, etc.) that impact the number of undocumented noncitizens they can process.

CBP is working to increase processing efficiency at POEs and Border Patrol Stations to further facilitate safe and orderly processing of noncitizens. CBP continues to explore and implement feasible steps to increase processing capacity and throughput to promptly process as many undocumented migrants as operationally possible at POEs and the Border Patrol Stations along the SWB, while always ensuring that the ports and stations comply with the requirements of all applicable laws and policies, paying particular attention to the safety of those in CBP custody.

For example, CBP is working to expedite the processing of noncitizens in custody through Virtual Processing and enhanced electronic processing capabilities.

CBP is prepared to surge additional resources when operationally necessary. Currently, OFO has deployed 20 additional CBP Officers to the Tucson Field Office.

Question#:	4
Topic:	Modernization Projects
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: We keep talking about surges at the border, and irregular migration. We need to move past this.

In Arizona, this has become normal, due to the continued failure in Washington. We need to recognize that what we are talking about today has been normalized. We need to modernize our ports with the understanding that in addition to regular trade and travel, our ports of entry will need to handle expanded processing responsibilities.

I secured \$3.85 billion to modernize land ports of entry in the Infrastructure Investments and Jobs Act. How is CBP taking future migrant processing capacity needs into account while developing these modernization projects?

Response: CBP's Office of Facilities and Asset Management will work with GSA, the field office and port during the design process to develop the current and future operational requirements for land POEs. During the process, the design team will review all necessities, including coordination with ICE, for future migrant processing requirements to meet the operational needs of the port.

To mitigate increased encounters at the southwest border POEs, CBP intends to implement expanded utilization of the CBP One application allowing undocumented noncitizens to voluntarily submit advance biographic and biometric information and schedule their arrival at POEs for processing. This use of CBP One will streamline and facilitate an orderly process for noncitizens upon their arrival at a POE.

Question#:	5
Topic:	Port Safety
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Arizona Port Directors tell me that they are worried about their capacity to secure the ports of entry, while simultaneously allowing regular trade and travel to continue in the event of an influx in migration.

I have been told that if officer safety is put at risk, or if migrants attempt to rush the port through vehicle entry or outbound lanes, the only possible action will be to shut down the entire port.

What steps is CBP taking to ensure officer safety and prevent situations that would require the ports of entry to shut down?

Response: CBP has taken numerous steps to ensure officer safety and to prevent, deter, and respond to incidents of mass groups attempting to enter the United States while still facilitating the flow of legitimate trade and travel. Some of these steps include reinforcing infrastructure and facilities at or near POEs to decrease the likelihood of noncitizens crossing at areas other than those that are legally authorized. Examples of this include deployment of moveable concrete barriers with tall fencing and concertina wire to critical locations, strengthening of fencing around POEs, and installation of gates that can be quickly closed or opened in the event of a threat. At times, a POE temporarily suspends traffic in response to mass groups of people threatening to rush through vehicle lanes, but once a threat is mitigated, vehicle lanes are quickly opened for traffic.

Another step CBP has taken is development of CBP's Mobile Field Force (MFF) Training Program and subsequent training of thousands of CBP officers and agents in tactics and techniques specifically designed to handle mass groups of people. These MFF trained officers and agents are used at various POEs to quickly respond to and prevent the incursion of mass groups of people through vehicle entry and outbound lanes. A POE can utilize properly trained and equipped MFF teams to prevent mass incursions of people and help move mass groups of people away from traffic lanes, allowing for the continued flow of legitimate trade and travel without shutting down the port.

CBP has also worked to establish and strengthen relationships with our international partners in Mexico to allow for information sharing and collaboration on both sides of the border to prevent mass incursions and dangerous group attempts to enter the United States.

Question#:	6
Topic:	TDYs
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: The Yuma Sector currently relies on TDYs to have enough Border Patrol agents to process the influx migrants. What will happen when other sectors are overwhelmed after Title 42 ends, causing many of the TDYs in Yuma to be reassigned to other sectors?

Response: USBP continually monitors the influx of migrants across the SWB. When sectors are overwhelmed, temporary duty (TDY) support is shifted to the overwhelmed sector and additional organic support may be requested from less impacted sectors. CBP will shift TDY support away from the Yuma Sector or any other sector when the need lessens. USBP is obtaining appropriate contracting support and continues to employ the DHS Volunteer Force, while onboarding additional Border Patrol Processing Coordinators. These initiatives allow USBP to re-deploy agents back to field duties while maintaining processing throughput efficiencies.

Yuma Sector also continues to receive virtual processing support from Northern Border Sectors to enhance processing throughput.

Question#:	7
Topic:	Soft-Sided Facility
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: I understand that the Yuma Sector has received another soft-sided facility, and that the Tucson Sector is expecting to expand their soft-sided facility in the coming months.

I have been told by Border Patrol that it takes about 200 staff members, including Border Patrol agents, processing coordinators, and other support staff, to manage each soft-sided facility. This will mean additional Border Patrol agents pulled from the field to work on migrant processing.

Given Border Patrol is already experiencing staffing shortages, how will CBP ensure these additional facilities are properly staffed while still securing our borders?

Response: The Tucson Sector currently has a 500-person capacity soft-sided facility, with no new facilities planned and no need for additional staffing at this time. In addition to enhancing electronic processing capabilities, USBP is seeking contracting support and support from the DHS Volunteer Force for processing. USBP is also onboarding additional Border Patrol Processing Coordinators to ensure that Border Patrol Agents are able to get back into the field. Yuma Sector continues to receive virtual processing support from Northern Border Sectors to enhance processing throughput.

Question: How long does it take operationalize a new soft-sided facility?

Response: Once requirements are gathered, it takes approximately 65-70 days to operationalize a soft-sided facility. This includes ~ 45 days for the procurement process and 20-25 days for mobilization following contract award. This timeline assumes land is already CBP-owned or leased. If land must be leased for soft-sided facility deployment, it could take ~ 110 days to operationalize the soft-sided facility.

Question: What steps is DHS taking to bridge the time between the expected influx and the completion of the additional Tucson facility? And what can be done to streamline this build-out timeline?

Response: There is currently no plan or need to add or expand the Tucson Sector soft-sided facility.

The soft-sided facility build-out timeline was streamlined/optimized to the maximum extent possible. A standard Statement of Work for the contract and standard layouts for the facilities was developed. The soft-sided facilities are leased off an indefinite delivery, indefinite quantity contract so the procurement time is minimal and the contractor's schedule to develop the site and install the soft-sided facility is compressed.

Question#:	8
Topic:	Prompt Responses
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Given that migrant flows to particular regions tend to ebb and flow, how will CBP ensure prompt response to these changes, and make sure resources are capable of quickly redeploying to regions in need?

Response: CBP continually monitors migrant flows in all sectors and regions. CBP ensures prompt responses by rapidly updating personnel wave deployments and working with the Southwest Border Coordination Center to quickly fulfill logistical requests and deployments to appropriate regions and sectors.

Question#:	9
Topic:	Processing Coordinators
Hearing:	Securing and Ensuring Order on the Southwest Border
Primary:	The Honorable Kyrsten Sinema
Committee:	HOMELAND SECURITY (SENATE)

Question: Processing coordinators will play a vital role in managing the border once Title 42 ends. These individuals will free up Border Patrol Agents to perform their primary mission-securing the border.

In April, the Tucson Sector only had six processing coordinators, while they had space and funding for 168. What resources does CBP need to improve hiring and retention for processing coordinators, either full-time or contractors, to ensure appropriate staffing?

Response: CBP made several improvements to the Border Patrol Processing Coordinator (BPPC) hiring and retention efforts. In January 2022, CBP reallocated existing resources and re-engineered the hiring process to streamline selection and placement of BPPCs, which created a pipeline of applicants that allows USBP to fill BPPC vacancies more efficiently. As of May 25, 2022, CBP hired and/or scheduled entry on duty dates for approximately 200 new BPPCs this calendar year and has a pipeline of more than 800 applicants in the pre-employment process to fill additional staffing needs. Additionally, starting in June 2022, the BPPC position will be recruited as a permanent position, which should aid in recruitment. CBP expects to fulfill the funded staffing level of BPPCs in FY 2022, positioning CBP well for hiring BPPCs in FY 2023.

**Question for the Record submitted to
Ms. Emily Mendrala,
Deputy Assistant Secretary of State for Western Hemisphere Affairs, by
Senator Krysten Sinema,
U. S. Senate Committee on Homeland Security & Government Affairs,
May 5, 2022**

Question:

As part of efforts to address regional migration and the root causes of irregular migration, you noted the Administration's support for the long-term development of Central America. How is the State Department working with the new government in Honduras to create and sustain conditions for U.S. investment and to promote respect for the rule of law so that U.S. companies can be confident their rights will continue to be recognized and protected?

Answer:

Our Embassy works with Honduras to identify ways to reduce trade and commercial barriers, to sustain conditions for U.S. investment, and to promote respect for the rule of law so that U.S. companies and investors can have confidence the government will recognize and respect their rights. We addressed some of these topics in the April 25 inaugural Strategic Dialogue and will continue to pursue them. We work with like-minded companies and organizations to advocate for needed reforms, including when Under Secretary Fernandez invited private sector representatives to join his meeting with President Castro to discuss barriers to investment.

**Questions for the Record Submitted to
Ms. Emily Mendrala,
Deputy Assistant Secretary of State for Western Hemisphere Affairs, by
Ranking Member Rob Portman (No. 1 to No. 3),
U. S. Senate Committee on Homeland Security & Government Affairs,
May 5, 2022**

Question 1:

In October 2021, the Biden Administration announced the signing of the new Bicentennial Framework for Security agreement between the U.S. and Mexico. Human smugglers who facilitate unlawful migration are often members of transnational criminal organizations in Mexico who are responsible for various criminal activity such as drug smuggling. It's been seven months since this agreement was signed.

What concrete progress under this new framework can you point to with regard to our cooperation with Mexico?

Answer 1:

Since the launch of the Framework, the United States and Mexico developed joint action plans to align our activities to achieve mutually determined goals and objectives, established bilateral working groups to coordinate our efforts under each goal of the Framework, committed to evaluate our success through the development of reliable metrics and joint indicators, and achieved law enforcement successes. Mexican authorities, supported by U.S. law enforcement information, arrested eight first- or second-tier cartel operatives in 2022 including, Juan "El Huevo" Gerardo Trevino, leader of Cartel del Noreste. On April 20, the Department of Justice obtained a 12-year prison sentence for Andrew Scott Pierson of Oklahoma for his role in trafficking firearms to Mexican cartels, and ATF produced a record number of criminal referrals for arms trafficking due to increased tracing by Mexican partners. U.S. law enforcement agencies continue to cooperate with the Mexican Attorney General's Office on several migrant smuggling and human trafficking cases. In April, the Government of Mexico's fentanyl and clandestine laboratory seizures rose to their highest levels in over a year. Mexico expanded to 69 its watchlist of dual-use chemicals of concern, including the increasingly common fentanyl precursors norfentanyl and 4-piperidone.

Question 2:

What is the administration asking them to do to deter unlawful migration and what specifically have they done? In regards to advertising against unlawful migration, please provide specific examples of messaging to include but not limited to; type of communication, location, duration, verbiage, and how are you gauging its success?

Answer 2:

Through frequent conversations with the Mexican government, we closely cooperate on migration matters; we regularly discuss issues to include aligning investments in regional

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May 5, 2022**

development programs; implementing humane migration management processes; respect for the human rights of migrants; and access to international protection for those in need.

Embassies throughout the region regularly message on U.S. policy, the dangers and risks of irregular migration, and the value of family and building a future at home. Depending on the country, platforms may include paid and organic search and social media, in-person outreach, billboards, and/or radio ads backed by audience and marketing research to ensure effectiveness. (Examples of paid advertisements attached.)

Question 3:

What progress have you made on securing greater commitment and action from Mexico to address their fentanyl production and trafficking that is killing record numbers of Americans?

Answer 3:

The Department sees the manufacturing and trafficking of fentanyl as a national security priority. The U.S.-Mexico Bicentennial Framework for Security, Public Health, and Safe Communities modernizes our security partnership to confront new challenges, including the rise of synthetic opioids like fentanyl. Goal two of the Framework focuses on preventing transborder crime to secure modes of travel and commerce, reduce arms trafficking, target illicit supply chains including drugs, and reduce migrant smuggling and human trafficking.

We established a bilateral interagency working group dedicated to identifying opportunities to more effectively disrupt the production and trafficking of synthetic drugs and precursor chemicals in Mexico, including targeting import companies suspected of diverting precursor chemicals shipped from the People's Republic of China, dismantling clandestine drug laboratories, and strengthening port control and management. In April, the Government of Mexico's fentanyl and clandestine laboratory seizures rose to their highest levels in over a year. Mexico also expanded its watchlist of dual-use chemicals of concern to 69 chemicals, including the increasingly common fentanyl precursors norfentanyl and 4-piperidone. The Department will continue to urge more action from Mexico to dramatically reduce the threat synthetic drugs pose to North America.

Sample script from our recent paid radio ad in El Salvador that was developed based on extensive market research and persuasion testing with the target population:

“Narrator: We are all experiencing economic hardship due to the slow economic recovery. Even if you are facing challenges at home, irregular migration is not the answer.

Despite what you hear by word of mouth, the journey is dangerous and costly – and there are no guarantees. It can leave you in debt, worse off than you are now.

The U.S. government is the only official source for information to travel legally and safely to the United States.

The border is, and always has been, closed to irregular migration.

A message from the U.S. Government.”

OOH Placements

Post-Holiday/Evergreen

El Salvador

El Salvador

Digital Billboard
Location: *Semafaro La Gloria,
San Salvador*



El Salvador

Digital Billboard
Location: *Alameda Juan
Pablo, San Salvador*



El Salvador

Digital Billboard
Location: *Blvd Arturo
Castellanos 1, San Salvador*



El Salvador

Digital Billboard
Location: *Bldv Arturo
Castellanos 2, San Salvador*



El Salvador

Digital Billboard
Location: *San Miguel 1*



El Salvador

Digital Billboard
Location: *San Miguel 2*



El Salvador

Digital Billboard
Location: Soyapango



El Salvador**Banners**

Location: series at Alta Vista Unicentro
Mall in San Salvador



El Salvador

Banners

Location: *Metropolis Unicentro
Mall, San Salvador*



El Salvador**Banners***Location: Metropolis Unicentro Mall, San Salvador*

**Questions for the Record submitted to
Ms. Emily Mendrala,
Deputy Assistant Secretary of State for Western Hemisphere Affairs, by
Senator James Lankford (No. 1 to No. 4),
U. S. Senate Committee on Homeland Security & Government Affairs,
May 5, 2022**

Question 1:

Is it a productive negotiation strategy in your opinion to call foreign governments corrupt while you are also working to get them to enforce their borders? Why or why not?

Answer 1:

We do not view holding government actors accountable and working with them to improve border enforcement as contradictory or mutually exclusive. Corruption is a significant factor in creating the conditions that drive irregular migration from Central America. To see sustained improvement to increase economic opportunity and improve security, we work with these countries to strengthen democratic governance in the region.

The United States employs a range of tools including diplomatic engagement, public communication, foreign assistance programming, and sanctions to address the governance challenges in northern Central America. These U.S. taxpayer resources are most effective when combined with actions by host governments that foster conditions conducive to security and economic growth. When necessary, we will continue to hold corrupt actors accountable by denying them entry into the United States via Section 7031(c), Section 353, and INA 212(a)(3)(C) visa restriction provisions.

**Questions for the Record submitted to
Ms. Emily Mendrala,
Deputy Assistant Secretary of State for Western Hemisphere Affairs, by
Senator James Lankford (No. 1 to No. 4),
U. S. Senate Committee on Homeland Security & Government Affairs,
May 5, 2022**

Question 2:

Are you concerned that characterizing Central American countries as corrupt will make it more difficult to attract foreign direct investment to the region, and ultimately undermining our efforts to address the root causes of migration through economic development?

Answer 2:

Disrespect for the rule of law leaves Central America at a competitive disadvantage for external investments, economic growth, and talent retention. U.S. companies want to invest in places where they can confidently operate above board, in environments with legal certainty and procedural transparency. If the rule of law environment does not improve in northern Central America, the countries will not effectively and sustainably create the conditions necessary for increased foreign direct investment.

The Department supports critically needed investment through its position as the lead U.S. government agency managing the *Call to Action*, a public-private partnership between State and the non-profit Partnership for Central America (PCA). Together, State and PCA work to connect businesses with relevant U.S. interagency partners, such as the U.S. Agency for International Development, U.S. International Development Finance Corporation, Department of Commerce, and Department of Labor, among others; non-governmental organizations (NGOs); multilateral development banks; UN agencies; and relevant government officials from the region to facilitate potential new partnerships and commitments. Since its launch in May 2021, the initiative has brought an additional \$1.2 billion in investment commitments to northern Central America.

**Questions for the Record submitted to
Ms. Emily Mendrala,
Deputy Assistant Secretary of State for Western Hemisphere Affairs, by
Senator James Lankford (No. 1 to No. 4),
U. S. Senate Committee on Homeland Security & Government Affairs,
May 5, 2022**

Question 3:

What leverage are you using to encourage countries in Central America to enforce their borders? What are you doing to encourage Central American countries to stop the irregular migration flowing through their country to our southern border? Please provide a detailed description of each initiative in each Central American country.

Answer 3:

State leads bilateral and multilateral engagements with key countries along the migration route to reinforce law enforcement and border security efforts to respond to possible increased flows. Mexico, El Salvador, Guatemala, and Honduras committed to increase enforcement along their borders, including key transit routes through the interior of each country. Additionally, the Bureau for International Narcotics and Law Enforcement Affairs supports efforts to professionalize and modernize border security. The State Department has long prioritized border security foreign assistance programming designed to identify and reduce threats before they reach the United States.

State provides technical assistance and equipment to improve border monitoring and control at and between designated land, air, and seaports. We also provided (1) technology upgrades to augment checkpoints and ports of entry in regions of high criminal activity and porous borders; (2) telecommunications projects in remote border regions to allow law enforcement to communicate and respond to illicit activities; (3) donations of vehicles, helicopters, canines, and safety equipment to partner nation law enforcement to support expanded and more effective border operations; and (4) biometric data sharing programs to help U.S. law enforcement and foreign partners detect criminals, wanted individuals, and potential security threats transiting the region. Countries in Central America, including Costa Rica, Panama, Honduras, Guatemala, and Belize imposed, secured improved, or expanded visa requirements to eliminate loopholes and significantly reduce the widespread abuse of commercial flights by irregular migrants.

**Questions for the Record submitted to
Ms. Emily Mendrala,
Deputy Assistant Secretary of State for Western Hemisphere Affairs, by
Senator James Lankford (No. 1 to No. 4),
U. S. Senate Committee on Homeland Security & Government Affairs,
May 5, 2022**

Question 4:

Shortly after taking office, Secretary Blinken terminated the asylum cooperative agreements that the prior Administration had signed with El Salvador, Guatemala, and Honduras. What policy planning went into this decision? Please share a copy of any analyses of this decision with the Committee, including any dissenting views that were submitted during the policy planning process.

Answer 4:

The Asylum Cooperative Agreements (ACAs) sought to shift the burden from the U.S. asylum system to El Salvador, Guatemala, and Honduras, thus placing undue pressure on the countries' nascent asylum systems without providing sufficient time or resources for them to build domestic capacity. The agreements also failed to consider the security conditions in these countries. The Biden-Harris Administration believes in other more suitable ways to confront regional protection and irregular migration challenges such as increased access to protection and other regularization options as well as expanded pathways for safe, legal, and humane migration.

Taken Question One

May 5, 2022

Senator Lankford
Page 56-57
Lines 5617-5711

Senator Lankford. Thank, Senator Carper. Thanks to all of you for being here. I have got a bunch of questions and so if I could ask everyone to be brief in your responses. Let me try to go through several things on this.

Let me start with Assistant Secretary Mendrala. There are ads that are up, radio ads and such, encouraging folks not to do migration in the United States.

Did the State Department actually run those? Yes or no.

Ms. Mendrala. Encouraging individuals not to migrate to the United States?

Senator Lankford. Yes.

Ms. Mendrala. The State Department does have robust messaging efforts throughout the region. It depends on where you are talking about, but some of them, yes.

Senator Lankford. The Northern Triangle, as far as Guatemala, Honduras, El Salvador. Could we get the budget for those and also the copy, the text for those? That would be very helpful for us to be able to see what is actually being used.

Ms. Mendrala. I would be happy to follow up.

Senator Lankford. Thank you.

[The information referred to follows:]

Answer:

Attached are examples of paid radio and billboard advertisements from El Salvador. The radio advertisement states:

“Narrator: We are all experiencing economic hardship due to the slow economic recovery. Even if you are facing challenges at home, irregular migration is not the answer.

Despite what you hear by word of mouth, the journey is dangerous and costly – and there are no guarantees. It can leave you in debt, worse off than you are now.

The U.S. government is the only official source for information to travel legally and safely to the United States.

The border is, and always has been, closed to irregular migration.

A message from the U.S. Government.”

Taken Question Two

May 5, 2022
Senator Lankford
Page 59-60
Lines 5908-6023

Senator Lankford. Thank, Senator Carper. Thanks to all of you for being here. I have got a bunch of questions and so if I could ask everyone to be brief in your responses. Let me try to go through several things on this.

Let me start with Assistant Secretary Mendrala. There are ads that are up, radio ads and such, encouraging folks not to do migration in the United States.

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Ms. Mendrala. I would be happy to follow up.

Senator Lankford. Thank you.

[The information referred to follows:]**[Answer:]**

The Department of State continues to lead hemispheric cooperation on humanely managing migration. Secretary Blinken co-hosted the Migration Ministerial in Bogota in October 2021, and the Ministerial Conference on Migration in Panama in April 2022. The Undersecretary for Civilian Security, Democracy, and Human Rights traveled to the region to make progress on humanely managing migration, increasing access to protection, and discussing legal pathways with our regional partners.

All our conversations and efforts with partners in the region address enforcement. We have signed two bilateral Arrangements on Migration and Protection, with Panama and Costa Rica, both of which contain provisions regarding enforcement and areas to improve border security. We continue to negotiate bilateral arrangements throughout the hemisphere, tailored to address the particular country context of each partner, but all arrangements contain provisions regarding enforcement, stabilization, and access to legal pathways which work together to reduce the pressure on the U.S. southern border.

The State Department's Bureau of International Narcotics and Law Enforcement Affairs (INL) further addresses these issues in three ways: professionalizing border security, modernizing border security, and enhancing coordination against shared threats.

Professionalize Border Security Officials: INL programs enhance partner countries' ability to identify, analyze, and operationally respond to border security threats. INL works with partner countries to establish basic and specialized training programs for immigration and customs officers. INL-funded CBP mentors in Mexico and Central America help counterparts target migrant smugglers, deter irregular migration, apply interviewing and passport verification techniques, and develop strategic plans to better monitor and control borders. Working with interagency partners, INL develops training programs on interdicting suspicious vessels at sea.

Modernize Border Security: INL provides technical assistance and equipment to improve border monitoring and control at and between designated land, air, and seaports. At airports with direct flights to the United States, infrastructure upgrades and passenger and cargo screening enhancements reduce the flow of illicit goods into the United States. Technology upgrades augment checkpoints and ports of entry in regions of high criminal activity and porous borders. Telecommunications projects in remote border regions allow law enforcement to communicate and respond to illicit activities. Donations of vehicles, helicopters, canines, and safety equipment to partner nation law enforcement supports expanded and more effective border operations. Biometric data sharing programs help U.S. law enforcement and foreign partners detect criminals, wanted individuals, and potential security threats transiting the region.

Enhance Coordination against Shared Threats: Through INL support, foreign law enforcement gains the skills and resources necessary to become reliable, trusted partners for U.S. law enforcement to enable coordinated efforts to disrupt the work of transnational criminal organizations (TCO). INL support to FBI, CBP, DEA, and HSI vetted and specialized units in the region facilitates intelligence-led efforts to disrupt TCOs. Multi-agency bilateral and regional task forces and fusion centers bring together analysts, investigators, and prosecutors to facilitate information sharing, enforcement actions, and case development. Along the U.S.-Mexico border, INL provides training, mentoring, and equipment to Mexican customs and migration officials to enable better coordination, tactical planning, and information sharing with CBP on drug, precursors, and weapon trafficking as well as cash and migrant smuggling activities.]

Taken Question Three

May 5, 2022
Senator Scott
Page 75-77
Lines 7514-7711

Senator Scott... So let me go to Ms. Mendrala. The Biden administration is supposedly having talks with Cuba now. I am from Florida. We have a lot of people that are of Cuban descent. They know the atrocities of the Castro regime for decades. They were furious when the Obama administration had their appeasement, which did not work. I can tell you story after story. I can tell you one story of a lady I know that after Obama's appeasement the Castro regime cut off her hand, stuck it in the mud so she would die of infection. And do you know what her atrocity was? She complained that somebody closed a school in her area.

And my understanding is we are back talking to them again. We are talking about the same appeasement stuff that is going to do nothing. We have 1,300 people in Cuban prisons right now that peacefully protested on July 11th. Some of these are kids. They are being tortured. They are going to die. I have not seen one thing the Biden administration has done. I have called the White House. The White House has not done one thing to call this out.

And now my understanding is you are having conversations with Cuba. So are you going to take them off the state-sponsored terrorism list? Are you going to take away the sanctions? I mean, it just does not make any sense to anybody I know, that has watched all the atrocities and has had their family members put in prison for doing nothing.

Ms. Mendrala. Thank you, Senator, for the question, and I will say that we absolutely share your concerns about the human rights situation on the island. President Biden himself, Secretary Blinken, and several other officials from the State Department and elsewhere in the Administration have publicly condemned human rights violations.

Senator Scott. No, no, no, no, no. Joe Biden has not said one word. I called Joe Biden. I called the White House and they hung up on me. Joe Biden has not said one word about the atrocities. He has not said one word about these 1,300 protesters. I asked him to do it. He will not do it. By the way, when this was going to happen I said, "You have got to get the internet back on," and they said, "Oh yeah, we are going to work on that." There has been nothing done. Or is there anything being done to get the internet back on, so these peaceful protesters, so the other protesters can talk to each other? Nothing. They said, "Oh yeah, we are going to work on it." That was last July. Not one thing has happened.

Ms. Mendrala. Senator, I would be happy to follow up with you to share some of the statements that have been made publicly by Administration officials.

[The information referred to follows:]

[Answer:

The Biden-Harris Administration consistently condemns human rights abuses in our diplomatic conversations with the Cuban government and in our public statements and messaging, and we urge the Cuban government to release political prisoners unconditionally and protect and respect the human rights and fundamental freedoms of individuals in Cuba. On January 6, 2022, the Secretary of State announced visa restrictions on eight Cuban officials implicated in attempts to silence the voices of the Cuban people through repression, unjust detentions, and harsh prison sentences.

On November 30, 2021, the Secretary of State announced visa restrictions imposed on nine Cuban officials implicated in attempts to silence the voices of the Cuban people through repression and unjust detentions as part of the Cuban government's actions targeting peaceful demonstrators on November 15, 2021. On November 27, 2021, the Secretary of States released a statement commemorating the one-year

anniversary of the nearly 300 artists and activists who gathered and demonstrated for freedom of expression at the gates of the Ministry of Culture in Havana. On November 16, 2021, State Department Spokesperson Ned Price denounced the Cuban government's stifling of peaceful protests on November 15, 2021.

On November 15, 2021, National Security Advisor Jake Sullivan urged the Cuban government to refrain from violence against peaceful protestors and to immediately release all those unjustly detained. On November 14, 2021, the Secretary of State condemned the government's intimidation tactics against organizers of peaceful protests and called on the Cuban government to respect Cubans' rights, by allowing them to peacefully assemble and use their voices without fear of government reprisal or violence, and by keeping Internet and telecommunication lines open for the free exchange of information.

On October 16, 2021, Spokesperson Ned Price strongly condemned the Cuban government's decision to deny permission for peaceful protests to take place on November 15. On September 24, 2021, the Secretary of State condemned the Cuban government's repression and mass arrests of peaceful protestors. On July 30, during a meeting with Cuban-American leaders, President Biden affirmed that the United States stands with the Cuban people, who have suffered for decades under a failed communist regime. On July 22, July 30, and August 19, 2021, the Secretary of State announced several rounds of sanctions under the Global Magnitsky Human Rights Accountability Act against Cuban officials and entities involved in human rights abuses following the protests of July 11, 2021. On July 26, 2021, the Secretary of State announced a joint statement by the United States joined by twenty democracies from around the world to support the Cuban people, calling on the Cuban government to respect demands for human rights.

On July 22, President Biden unequivocally condemned the mass detentions and sham trials that unjustly sentenced to prison those who dared to speak out in an effort to intimidate and threaten the Cuban people into silence. On July 12, President Biden affirmed support for the Cuban people and stated that "we stand with the Cuban people and their clarion call for freedom and relief from the tragic grip of the pandemic and from the decades of repression and economic suffering to which they have been subjected by Cuba's authoritarian regime."