

**AFTER APPREHENSION: TRACING DHS  
RESPONSIBILITIES AFTER TITLE 42**

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**HEARING**

BEFORE THE

SUBCOMMITTEE ON  
GOVERNMENT OPERATIONS AND  
BORDER MANAGEMENT

OF THE

COMMITTEE ON  
HOMELAND SECURITY AND  
GOVERNMENTAL AFFAIRS  
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# CONTENTS

Opening statements:	Page
Senator Sinema .....	1
Senator Lankford .....	2
Senator Blumenthal .....	17
Senator Carper .....	19
Senator Johnson .....	22
Senator Padilla .....	25
Prepared statements:	
Senator Sinema .....	39

## WITNESSES

WEDNESDAY, SEPTEMBER 6, 2023

Matthew Davies, Executive Director, Admissibility and Passenger Programs, Office of Field Operations, U.S. Customs and Border Protection .....	4
David S. BeMiller, Chief, Law Enforcement Operations Directorate, U.S. Border Patrol, U.S. Customs and Border Protection .....	6
Daniel A. Bible, Deputy Executive Associate Director, Enforcement and Re- moval Operations, U.S. Immigration and Customs Enforcement .....	8
Andrew Davidson, Acting Deputy Director, U.S. Citizenship and Immigration Services .....	10

## ALPHABETICAL LIST OF WITNESSES

BeMiller, David S.:	
Testimony .....	6
Joint prepared statement .....	41
Bible, Daniel A.:	
Testimony .....	8
Prepared statement .....	49
Davidson, Andrew:	
Testimony .....	10
Prepared statement .....	56
Davies, Matthew:	
Testimony .....	4
Joint prepared statement .....	41

## APPENDIX

Statements for the Record:	
Church World Service .....	62
Younhg Center for Immigrant Children's Rights .....	63
Women's Refuge Commission .....	66
Responses to post-hearing questions for the Record:	
Mr. Davies and Mr. BeMiller .....	70
Mr. Bible .....	88
Mr. Davidson .....	104



## **AFTER APPREHENSION: TRACING DHS RESPONSIBILITIES AFTER TITLE 42**

**WEDNESDAY, SEPTEMBER 6, 2023**

U.S. SENATE,  
SUBCOMMITTEE ON GOVERNMENT OPERATIONS  
AND BORDER MANAGEMENT  
OF THE COMMITTEE ON HOMELAND SECURITY  
AND GOVERNMENTAL AFFAIRS,  
*Washington, DC.*

The Subcommittee met, pursuant to notice, at 2:36 p.m., in room 562, Dirksen Senate Office Building, Hon. Kyrsten Sinema, chairman of the subcommittee, presiding.

Present: Senators Sinema [presiding], Carper, Padilla, Blumenthal, Lankford, and Johnson.

### **OPENING STATEMENT OF SENATOR SINEMA<sup>1</sup>**

Senator SINEMA. The Subcommittee will come to order. I welcome Ranking Member Lankford, Members of the Committee, and our witnesses. Today, we are examining the Department of Homeland Security's (DHS) process for managing migrant arrivals at the Southwest border, and how this process has changed after Title 42 ended.

From March 2020 to May 2023, DHS used Title 42 public health authorities to quickly expel more than 2.9 million migrants from the United States. When the Title 42 authorities ended on May 11, 2023, DHS started processing all migrants arriving at the Southwest border under regular immigration authorities.

This process is complex, and things like demographics and expression of fear all influence how a migrant is processed. Because the border is so dynamic, DHS's programs and protocols change frequently. Each of the components represented here today, Border Patrol, the Office of Field Operations (OFO), Enforcement and Removal Operations (ERO), and U.S. Citizenship and Immigration Services (USCIS) played pivotal roles in this complex process.

Border Patrol and OFO are on the front lines and are responsible for apprehension and initial processing along the Southwest border. ERO is responsible for tracking migrants during the pendency of their removal proceedings, including through detention and alternatives to detention programs.

USCIS manages credible fear interviews (CFI) and asylum applications. Bottleneck or delay at any point in this process can have serious impacts on our border management system. Delays can

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<sup>1</sup>The prepared statement of Senator Sinema appears in the Appendix on page 39.

cause overcrowding at the U.S. Customs and Border Protection (CBP) facilities, which can lead to unsheltered releases, also known as street releases in border communities.

The Tucson sector is currently one of the busiest centers in the country for migrant encounters, and the border communities in this sector are at high risk for street releases. As this Subcommittee has explored in previous hearings, street releases caused serious harm to migrants and border communities.

Congress needs to understand this process in order to modernize our border management system and keep Arizona families safe and secure. My border and immigration proposal with Senator Tom Tillis includes several important improvements to this process to ensure our border is secure and that migrants are treated fairly and humanely.

Today's hearing gives us an opportunity to learn how this process has changed since the end of Title 42 and how these changes affect our border management system. I hope the information we gather today will motivate others to join us in advocating for common sense solutions to our broken border policies.

I look forward to hearing from our witnesses today. Now I would like to recognize Ranking Member Lankford for his opening statement.

#### **OPENING STATEMENT OF SENATOR LANKFORD**

Senator LANKFORD. Senator Sinema, thank you. Thank you for holding this hearing. To our witnesses, thank you, not only for being here today, all your preparation for today, your written statements that are in, your oral statements that are coming, but thanks for your service to the country. It is incredibly important.

Everywhere I travel in Oklahoma, I have someone that stops me and asks me, whether it is urban or rural, how is it going on the border? What is happening with the system? People are concerned.

There are 6 million people that have been encountering coming across our border just in the last 2½ years, and people are exceptionally concerned about that, and they want to know what is happening and where things are going.

This Subcommittee has had several hearings dealing with immigration. We have dealt with the General Services Administration (GSA's) management of the ports. We have dealt with social media and some of the illegal, illicit activities that are happening to recruit individuals coming across the border. This one in particular I am pretty excited about, actually.

We have not had the opportunity to be able to sit down and talk about where is the process. Since the end of Title 42, there have been a lot of promises that have been made, but we really do not understand the full breadth of the process and what actually happens to each individual as they come across the border.

We know bits and pieces of it, but some of the terms are new, and some of the terms, quite frankly, there has been a lot of working out on. The term rebuttable presumption is a new term that is actually out there that everyone is trying to figure out, how does this actually work? There were promises that there would be a dramatic drop in the number of individuals crossing a border illegally. There were for about 6 weeks or so.

Then, as just was reported by The Washington Post, we had the highest numbers of family crossings in the history of the country in August. The numbers have shot back up and have shot back up dramatically.

All of these questions about what is happening, how it is happening, most of our questions will focus in on what is the process, what actually happens if an individual crosses at a port of entry (POE). They are treated one way between the port of entry. They are treated different way if at a port of entry and they have done CBP One app. They are treated different than a person who just shows up with that one.

There is now parole. There is also what is happening in separate with rebuttable presumptions. There is a lot of confusion in the process. At the tail end of that, cartels are using that confusion to be able to push additional people coming across the border. We have to be able to know what is happening, what is the process for each of those individuals, and what actually happens in a court setting in the days ahead for these individuals.

Today's hearing, we will have the opportunity to be able to walk through all of those different scenarios and to be able to determine where do things go. A recent report from the USCIS ombudsman highlighted some of the backlog issues and to be able to raise some questions about how these individuals can be vetted.

There has been different numbers that have come out of late, to be able to talk about the quantity of individuals. How many we can track and how many we cannot track, those that are actually detained, and those that are on the non-detained docket, and what happens to those individuals.

I appreciate everyone coming prepared because we have a lot to be able to talk through today and we will try to get to as many practical things as we possibly can as we walk through this.

I appreciate the input from every one of you and look forward to questions, but I am going to go ahead and promise you I am going to flood you with questions for the record as well to be able to follow up on it and to be able to gather data as well. I appreciate that very much. Thank you, Senator Sinema.

Senator SINEMA. Thank you, Ranking Member Lankford. It is the practice of this Committee to swear in witnesses, so if you would all please stand and raise your right hand. Do you swear that the testimony you will give before this Committee will be the truth, the whole truth, and nothing but the truth, so help you, God?

Mr. BEMILLER. I do.

Mr. DAVIES. I do.

Mr. BIBLE. I do.

Mr. DAVIDSON. I do.

Senator SINEMA. Thank you. We will now hear from our witnesses. I will ask each of our witnesses to keep their remarks to 7 minutes or less. Your full written statements will be entered into the hearing record.

I would like to first introduce our first two witnesses representing Customs and Border Protection components, Chief David BeMiller and Mr. Matthew Davies, who will be jointly delivering CBP's testimony. Chief BeMiller currently serves as the Chief of

Law Enforcement Operations for the U.S. Border Patrol in Washington, DC.

He is responsible for the oversight of day to day Border Patrol operations throughout the United States and in international engagements. He serves as the Principal Advisor to the Chief of the Border Patrol on Enforcement Operations, Personnel, Infrastructure and Technology Requirements.

Mr. Davies serves as the Executive Director for Admissibility and Passenger Programs within the Office of Field Operations. In this role, he oversees multiple national level programs related to admissibility enforcement and traveler facilitation, in addition to serving as a primary point of contact for engagement between the travel industry and the Office of Field Operations. Welcome, gentlemen. You are recognized for 7 minutes.

**TESTIMONY OF MATTHEW DAVIES,<sup>1</sup> EXECUTIVE DIRECTOR, ADMISSIBILITY AND PASSENGER PROGRAMS, OFFICE OF FIELD OPERATIONS, U.S. CUSTOMS AND BORDER PROTECTION**

Mr. DAVIES. Good afternoon, Chair Sinema, Ranking Member Lankford, and distinguished Members of the Subcommittee. It is an honor to testify today and discuss U.S. Customs and Border Protection's operations at our nation's ports of entry since the termination of the Title 42 public health order.

I am proud to represent the more than 30,000 dedicated personnel of CBP's Office of Field Operations, who remained on the front line through throughout the Coronavirus Disease 2019 (COVID-19) pandemic, and who work tirelessly every day across 328 ports of entry to protect our border, our homeland, and our communities.

OFO must balance multiple complex mission sets, including the processing of inadmissible persons, facilitating lawful trade and travel critical to our nation's economy, and protecting our communities from dangerous activities of transnational criminal organizations (TCOs).

Today, I will summarize OFO's current operations for processing inadmissible persons and highlight our ongoing enforcement and facilitation efforts. OFO's current processing procedures for inadmissible persons in the Southwest border ports of entry developed from an approach that the Department of Homeland Security began implementing last year to manage the continued increase in irregular migration, and for OFO to ensure performance of our primary security and facilitation mission objectives.

Starting in October 2022, DHS implemented a process allowing certain Venezuelan nationals to travel to the United States by air to seek parole, which is granted on a case by case basis for up to 2 years. This process was expanded in January for nationals of Cuba, Nicaragua, and Haiti, along with a CBP One application featuring a feature enabling applicants to request advance travel authorization (ATA) via the app.

To receive advance travel authorization, these nationals must meet specified criteria to include having a U.S. based financial

<sup>1</sup>The joint prepared statement of Mr. Davies appears in the Appendix on page 41.

sponsor and clearance CBP's rigorous biometric and biographic screening.

As of July 31st, more than 181,000 Cubans, Haitians, Nicaraguans, and Venezuelans have arrived through this process. Building on this approach, on May 11th, when the Title 42 order ended and CBP resumed applying its full range of immigration authorities under Title 8, DHS and the Department of Justice (DOJ) implemented a circumvention of lawful pathways (CLP) rule, establishing parameters and processes for asylum eligibility.

The rule was implemented in conjunction with a new CBP One feature that allows non-citizens seeking to enter the United States to submit advanced biographic and biometric information and schedule an appointment with a CBP officer at one of eight designated ports of entry for appropriate processing disposition under Title 8, as determined on a case by case basis, considering the totality of circumstances.

The CBP One app is just one example of how OFO is using innovative technologies to enhance the security and efficiency of processes at our ports of entry. OFO also continues to expand electronic e-file functionality across our operational footprint. This initiative allows CBP, U.S. Immigration and Customs Enforcement (ICE), and USCIS to share and maintain a single immigration case file in a digital environment, replacing a paper based process.

Prior to May 11th, OFO implemented electronic e-file processing for notice to appear (NTA) and certain other Title 8 dispositions throughout the Southwest border field offices, including at the eight ports of entry that inspect non-citizens with CBP One appointments. In August, 80 percent of the amenable, inadmissible population encountered by OFO at the Southwest border was processed using an electronic e-file.

The transition to integrated digital processing platforms as part of comprehensive border management operations enables OFO to create significant efficiencies for our officers, modernize our processes, manage our available operational resources, and pursue other mission priorities.

While OFO continues to address irregular migration challenges, we also maintain a persistent focus on national and economic security. For example, we continue to combat the increasing threat of illicit synthetic drugs, especially fentanyl, being trafficked into the United States.

To date, this fiscal year (FY), CBP has seized approximately 24,000 pounds of fentanyl nationwide, with most of it, 21,000 pounds, seized at our ports of entry. CBP is pursuing several strategic objectives to address this significant issue, including expanded partnerships and information management to deliver actionable intelligence, advancement of data integration and analytics to enhance targeting efforts, and focused law enforcement actions to disrupt and dismantle illicit synthetic drug networks.

At the same time, OFO is facilitating growing volumes of international travel across all operational environments. In July, the number of travelers arriving by air into the United States increased approximately 18 percent when compared to the same time last year, while pedestrian and passenger vehicle traffic at our

land, border ports of entry increased by 12 and 11 percent respectively.

We also continue to facilitate the flow of trillions of dollars in legitimate cargo every year through our ports of entry, while enforcing hundreds of trade laws that protect American businesses and consumers.

As part of our planning for the end of Title 42, OFO surged resources, technology, and personnel to safely and efficiently manage challenges at the ports of entry, while maintaining a persistent focus on our other missions, including but not limited to interdicting illicit drugs and facilitating the flow of legitimate trade and travel to ensure continued national and economic security.

I appreciate the Subcommittee's continued support of our mission and our workforce, and I look forward to your questions.

**TESTIMONY OF DAVID S. BEMILLER,<sup>1</sup> CHIEF, LAW ENFORCEMENT OPERATIONS DIRECTORATE, U.S. BORDER PATROL, U.S. CUSTOMS AND BORDER PROTECTION**

Mr. BEMILLER. Good afternoon, Chairwoman, Sinema, Ranking Member Lankford, and distinguished Members of this Subcommittee.

It is an honor to testify today on behalf of the U.S. Border Patrol to discuss the operations along the Southwest border, which—since the termination of Title 42 public health order. This past May, the U.S. Border Patrol celebrated its 99th anniversary.

As we approach 100 years to this country, much has changed in the agency and throughout the world. However, during my 25 years of service with the U.S. Border Patrol, at least two aspects have remained unchanged.

First, the Border Patrol mission has always been complex, demanding, and very dangerous. Second, the ability of our workforce to persevere even during the most challenging times, it is truly remarkable, and a reflection of the agents' can do attitude. There are three areas that I would like to focus on today. First, summarizing the Border Patrol's current immigration enforcement processes.

Second, discuss our ongoing border security operations and initiatives. Third, highlight how we are addressing anticipated operational challenges. First, our immigration enforcement processes. While Title 42 was in place, it was part of a national effort to prevent the spread of COVID-19. During that time, the Border Patrol expelled certain migrants encountered between the ports of entry.

While this aided in the streamlining the return of certain individuals, it also led to a higher level of repeat encounters. Since Title 42 ended, all migrants interdicted between the ports of entry are transported to Border Patrol facilities, processed in accordance with Title 8 authorities, and appropriate consequences are applied.

This may include expedited removal and transfer to Immigration and Customs Enforcement. As part of our processing and intake procedures, the Border Patrol is committed to ensuring the health and safety of those in our custody, including providing onsite medical care and referrals to local medical services when necessary.

<sup>1</sup>The joint prepared statement of Mr. BeMiller appears in the Appendix on page 41.

Each Border Patrol sector faces its own unique challenge. Regardless of the circumstance or environment in which encounters occur, agents will continue to adapt to the ever changing threats. Which brings me to my second point, ongoing security operations and initiatives.

In addition to our immigration enforcement duties, the Border Patrol maintains a persistent focus on our mission objectives aimed at countering sophisticated and ruthless transnational criminal organizations. When it comes to combating drug trafficking, such as the deadly flow of fentanyl, Border Patrol has amplified its efforts to target and seize illicit drugs between the ports of entry.

Recently, during a 2-month intelligence driven operation, the Border Patrol seized nearly 2,500 pounds of fentanyl, along with thousands of other pounds of dangerous narcotics and weapons. These efforts are directed to protect the citizens and the communities of the United States.

Additionally, coordination with our international partners information sharing on migration flows and drug trafficking activities. This increases our domain awareness and influences how the Border Patrol plans and leverages its resources. The Border Patrol also collaborates with our many local, State, and Federal law enforcement partners to counter illicit activities of TCOs that prey on vulnerable migrants.

All too often, smugglers abandon them in dangerous and life threatening situations. To that end, the Border Patrol agents regularly conduct rescues and provide emergency medical care to those in distress.

Our agents rescued over 37,000 migrants this fiscal year, including nearly 3,000 in August alone. This brings me to my third and final point. As we reflect on the past 99 years of the Border Patrol's history and as we rise to the current operational demands, there are several complexities and challenges that I must address as we look forward.

We must continue to invest in our workforce, provide them with the tools to face these extraordinary challenges head on. We also can not overlook the importance of our critical infrastructure and the significant role our facilities play in our law enforcement mission.

While quick solutions are unlikely, our facilities, including our checkpoints, must be modernized to face the evolving threats without impacting trade and travel. Last, the most significant operational challenge facing the Border Patrol is that our agency is increasingly performing detention and processing related duties that are outside the scope of Border Patrol's frontline mission.

While we should be focusing our efforts to combat the flow of illicit drugs and disruption of TCOs, much of the agent's time is spent transporting, processing, and detaining migrants. This substantially increases the risk of got away traffic, including narcotics, terrorists, and other contraband.

Border security is national security. In closing, the U.S. Border Patrol will not waver from our critical mission and will continue to serve and protect the Nation with honor. I am grateful for the continued support of Congress and appreciate the opportunity to appear today, and I look forward to your questions.

Senator SINEMA. Thank you. Our next witness is Mr. Daniel Bible. Mr. Bible is the Deputy Executive Associate Director for the U.S. Immigration and Customs Enforcement and Removal Operations.

Mr. Bible leads ERO in its mission to protect the homeland through the arrest and removal of non-citizens who undermine the safety of our communities and the integrity of our immigration laws.

Responsible for a budget of approximately \$4.4 billion, Mr. Bible directs operations of more than 8,600 employees assigned to 25 ERO field offices and headquarters in more than 200 domestic locations and 25 overseas locations. Welcome, Mr. Bible. You were recognized for 7 minutes.

**TESTIMONY OF DANIEL A. BIBLE,<sup>1</sup> DEPUTY EXECUTIVE ASSOCIATE DIRECTOR, ENFORCEMENT AND REMOVAL OPERATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**

Mr. BIBLE. Chairwoman Sinema, Ranking Member Lankford, and distinguished members of the subcommittee, thank you for your continued support for the dedicated and hardworking women and men of U.S. Immigration and Customs Enforcement and Removal Operations.

I am proud to serve beside them, and I am grateful for the opportunity to appear before you today. ERO's mission is to protect the homeland through the arrest and removal of non-citizens who undermine the safety of U.S. communities and the integrity of the immigration system. While ERO primarily focuses law enforcement activities within the interior of the United States, border enforcement efforts during recent years have stretched ERO's resources.

As a result, ERO must carefully balance its resources to continue to uphold its mission in the face of changing operational conditions and new demands, including significant shifts in the post Title 42 environment.

They are an implementation of the Title 42 public health order, ERO worked closely with U.S. Customs and Border Protection to support enforcement operations at the Southwest border. As CBP conducted Title 42 expulsions at the border, ERO conducted Title 42 expulsion flights, while continuing to remove amenable noncitizens under Title 8 immigration authority. From March 2020 until May 11, 2023, ICE assisted in more than 184,000 Title 42 expulsions.

ERO also provided direct and sustained support for DHS efforts to decompress border facilities. In fiscal year 2022, approximately 1,000 ERO employees were detailed to the Southwest border to process cases and offer transportation for non-citizens apprehended by CBP to alternative detention locations, ICE facilities, and—as appropriate.

ICE's bed space inventory is being constrained by the increase of detention facility closures, pending litigation, and court decisions, and State laws that hinder the use of contract facilities.

However, ICE has taken several steps to align its detention capacity with operational needs in the post Title 42 environment, in-

<sup>1</sup>The prepared statement of Mr. Bible appears in the Appendix on page 49.

cluding increasing resources to release non-citizens with positive, credible fear determinations in a safe, humane, and timely manner, leveraging alternatives to detention, and focusing detention resources on non-citizens who are subject to mandatory detention, pose risks to public safety or national security, and may be flight risks.

In the post Title 42 environment, DHS has increased use of expedited removal under its Title 8 authority. Once apprehended by CBP at the border, or arrested by ICE in the interior of the United States, non-citizens subject to expedited removal may be detained by ICE. If non-citizens subject to expedited removal indicate that they intend to seek asylum or claim fear, they are afforded a credible fear interview with USCIS officers while in ICE custody.

If USCIS determines the non-citizen has failed to establish credible fear, ICE continues to prepare for expedited removal. If USCIS determines that the credible fear has been established, the non-citizens are generally released from ICE custody.

Nevertheless, by expediting the review of asylum claims of non-citizens and expedited removal proceedings, no matter if positive, credible fear findings exist or not, DHS is able to provide relief more quickly to those non-citizens who are eligible, and to more quickly remove those non-citizens who are not.

Over the past fiscal year, ICE began to operate several programs geared toward the fair, humane, and expedited processing the family units. In May 2023, ICE announced the implementation of the Family Expedited Removal Management Initiative (FERM), for family units apprehended at the Southwest border who are processed for expedited removal and have expressed a fear of persecution or torture.

Through FERM, certain family unit heads of households are placed on alternatives to detention and are closely supervised, while the family awaits a credible fear interview. By the end of the month, FERM will be operational in 40 cities nationwide. Over the past 18 months, ERO has also increased its removal flight capacity.

The number of international charter flights conducted by ICE air operations has increased more than twofold in the latter half of fiscal year 2023, compared to the first half of the fiscal year. Removals via commercial airlines have also increased in the post Title 42 environment.

As of August 12, 2023, ICE has completed 4,282 commercial removals, an 85 percent increase from the same period in fiscal year 2022. ERO remains committed to protecting the United States through the arrest and removal of those non-citizens who undermine the safety of U.S. communities and the integrity of U.S. immigration laws.

In preparation for the termination of Title 42 and changes in migration trends, ERO took several steps to ensure the agency would continue managing all aspects of the immigration enforcement process, including providing CBP with logistical support at the Southwest border, increasing the agency's transportation capacities, developing and operating several family focused programs geared toward the fair, humane, and expedited processing of family units, increasing the use of expedited removal under ICE's Title 8

authority, and reinstating the civil immigration enforcement priorities.

ERO's efforts to allow agencies to ensure a fair and humane immigration systems, while fulfilling its critical national security and public safety mission as well. Thank you again for inviting me to testify today, and I look forward to your questions.

Senator SINEMA. Thank you. Our final witness is Mr. Andrew Davidson. Mr. Davidson is the Acting Deputy Director for the United States Citizenship and Immigration Services. In his permanent role, he serves as a Senior Counselor for Humanitarian Programs in the Office of the Director.

Previously, Mr. Davidson served as the Acting Deputy Associate Director of the Refugee Asylum and International Operations Directorate, and as the Chief of the Asylum Division of the Directorate. Welcome, Mr. Davidson. You are recognized for 7 minutes.

**TESTIMONY OF ANDREW DAVIDSON,<sup>1</sup> ACTING DEPUTY DIRECTOR, U.S. CITIZENSHIP AND IMMIGRATION SERVICES**

Mr. DAVIDSON. Chair Sinema, Ranking Member Lankford, Members of the Subcommittee, thank you for the opportunity to appear today together with my colleagues from U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement, to discuss how the Department of Homeland Security processes noncitizen encounters at the Southwest border.

My name is Andrew Davidson, and I am the Acting Deputy Director of U.S. Citizenship and Immigration Services. My testimony today will describe the role of USCIS at the Southwest border, and particularly how USCIS processes non-citizens in CBP and ICE custody, and as operationalized, the circumvention of lawful pathways rule.

USCIS administers the nation's lawful immigration system, including the adjudication of affirmative asylum claims and applications for refugee status. USCIS employees work shoulder to shoulder with their ICE and CBP colleagues, from conducting protection screening interviews at DHS facilities, to coordinating the national security and public safety issues.

The USCIS has a proud history of providing immigration benefits to eligible individuals from all over the world. These benefits support the fundamental values and needs of our Nation, be the economic, humanitarian, and otherwise in the public interest.

USCIS delivers these benefits while ever being vigilant for those who seek to undermine the integrity of our immigration system, or worse, those who seek to do us harm. USCIS is only able to accomplish this complex and vital mission through the efforts of its thousands of dedicated public servants who each day administer a complex immigration system fairly and professionally.

For more than a decade, the steadily rising influx of migrants across the Southwest border has resulted in significant increases in apprehensions and the numbers of noncitizens placed into expedited removal.

USCIS screens individuals for credible fear, in some situations, the part of the expedited removal process, and plays an important

<sup>1</sup>The prepared statement of Mr. Davidson appears in the Appendix on page 56.

role in ensuring that potential asylees or victims of torture are not improperly returned to their home countries in contravention of our laws, while those who are found ineligible are expeditiously removed.

Our specially trained asylum officers conduct screening interviews for non-citizens who express a fear of return or otherwise express a fear of persecution or torture or indicate intention to apply for asylum during the expedited removal process.

The screening interview is conducted to determine whether the non-citizen has a credible fear of persecution or torture. Non-citizens who meet the credible fear threshold may be retained by USCIS for an asylum interview to adjudicate the asylum application or may be placed in removal proceedings in immigration court where they can apply for asylum or other relief or protection. Individuals found not to have a credible fear of persecution or torture may request a review of the finding by an immigration judge.

Over the last 10 years, as irregular migration to the Southwest border has increased, the number of credible fear referrals to USCIS has sharply increased as well. Approximately 35,000 detained credible fear cases were referred to USCIS in fiscal year 2013. USCIS has seen that number more than tripled to approximately 107,000 so far in fiscal year 2023, as of August 11th.

About 51,000 of these cases have been received since May 12, 2023, after the expiration of the Centers for Disease Control and Prevention (CDC) Title 42 public health order and the return to processing of all non-citizens under long standing Title 8 immigration authorities.

USCIS has pursued a number of strategies to address the increased caseload, including significantly expanding authorized asylum officer positions, deploying employees who have been previously protection trained from across USCIS to assist in the credible fear caseload, and maintaining remote interview capabilities.

Our ability to process credible cases timely saves valuable DHS detention resources. It enables the entire expedited removal process to operate more efficiently. USCIS remains strongly committed to supporting the government wide response to the migration flows on the Southwest border, including ensuring those who seek protection are provided the opportunity to have those protection claims heard.

At the same time, USCIS remains committed to detecting and deterring immigration fraud, including within the asylum and humanitarian benefits. The Fraud Detection and National Security Directorate within USCIS has embedded teams at each of the 11 asylum offices.

These local teams conduct free interview screening, provide on-site consultation to asylum officers interviewing applicants, analyze trends and large scale fraud schemes, and serve as local liaisons to interagency law enforcement partners.

USCIS continues to lead an asylum fraud working group within the interagency, and in recent years, USCIS has supported multiple successful criminal prosecutions and convictions involving asylum fraud, further demonstrating the Department's commitment to ensuring the overall integrity of the immigration system.

Over the last few months, DHS has implemented new measures of humanely managing the Southwest border by enforcing our immigration laws, while expanding safe, orderly, lawful immigration pathways. The comprehensive approach is outlined in the DHS six pillar plan. One of the enforcement measures implemented is the use of expedited removal.

To ensure the expedited removal, including the credible fear process, is carried out fairly, efficiently, and quickly, USCIS work with ICE and CBP to digitize part of the credible fear process and reallocated staffing resources so that hundreds of additional personnel were available to process credible fear interviews.

Additionally, certain noncitizen populations are now processed for exploitative removal while they are at CBP and ICE facilities within days or weeks after they are encountered. Through these measures, DHS provides relief more quickly to those who are eligible and remove those who are not.

On May 11, 2023, of the circumvention of lawful pathways rule took effect. This rule encourages migrants to use lawful, safe, and orderly pathways to enter the United States and imposes the rebuttal presumption of ineligibility for asylum for certain non-citizens who failed to do so.

The CLP rule provides exemptions for non-citizens from the presumption of asylum ineligibility and allows non-citizens to rebut the presumption of asylum ineligibility by demonstrating exceptionally compelling circumstances.

When a non-citizen attends a credible fear interview with USCIS, an asylum officer will assess whether the non-citizen citizen is subject to the CLP rule, and if so, whether an exception applies, or the presumption of ineligibility can be rebutted.

USCIS will continue to respond to its rising numbers of credible fear referrals by ensuring DHS follows the laws written by Congress, swiftly processing non-citizens so they may either seek relief before an immigration judge or be expeditiously removed. Thank you for the opportunity to testify, and I look forward to answering your questions.

Senator SINEMA. Thank you, Mr. Davidson. We will now begin the question part of the hearing. Each Member of the committee will have 7 minutes, and I recognize myself for 7 minutes.

My first question is for Chief BeMiller. Now that Title 42 has ended, Border Patrol is back to regular processing. Can you walk us through what happens after a migrant has been apprehended, and what elements are covered in the initial processing?

Mr. BEMILLER. Yes, thank you for the question. From the time of apprehension, the group is identified to be in a variety of different categories. One, of single adults, two, of unaccompanied children, and three, family units.

Their initial intake from the field is identified and then they are taken to the appropriate locations to be processed. Once they are at the facilities, they receive an initial intake medical screening, and if they require additional medical attention, they are referred to a local hospital for further care.

Their materials and items that they have with them are inventoried and put into safekeeping until they are transferred out of the facility. Then they enter the processing portion where they are

screened and records are checked, and then a determination of what their immigration pathway will be from there.

They are asked if they claim fear. If they do, they will go through one of the credible fear screening processes and turned over to ERO for further review. Then anybody that withdraws will be returned back to one of the contiguous nations that we have, Mexico or Canada.

Senator SINEMA. Thank you. My second question is for Mr. Davies. While OFO was operating under Title 42 authorities from March 2020 to May 11, 2023, very few migrants were processed at ports of entry. Now, ports across the Southwest border process over 1,500 migrants a day.

Most of the migrants processed at ports of entry make an appointment on the CBP One app, while others wait in line for the chance to be accepted for a walk in appointment. Does the advance information received through the app help speed up processing time?

What is the average amount of time it takes to process a migrant who schedules an appointment through the CBP One appointment app, compared to the average amount of time it takes to process a migrant who gets a walk in appointment?

Mr. DAVIES. Thank you for the question. As you pointed out, CBP One is used as a scheduling tool. We do intake from the international boundary line a variety of different individuals.

For OFO, its legitimate travel in addition to the migrants. The use of CBP One with an appointment helps us to identify individuals at that limit line who are scheduled and ready to be processed.

The process itself varies at some of our ports. In some, the CBP One appointments are sent to our primary inspection location, where the use of CBP One actually helps to pre-populate some of the data that has been submitted as part of the app in the primary inspection, and from there they are referred into secondary.

In other ports of entry, we have established a process where they are directly put to secondary from the limit line. The benefits of using CBP One in terms of time savings and free population of data are fairly minimal in the second circumstance.

Where we really see the savings on our time is the use of the electronic e-file, where on average we are saving up to 30 minutes per case by using the electronic e-file. The total average processing time is about 4 hours for us to process a notice to appear case. If there are different case dispositions, they may take slightly different amounts of time.

Senator SINEMA. Thank you. To follow up, to what extent does OFO coordinate with local non-government organizations (NGOs) to prioritize walk in appointments for vulnerable migrants?

Mr. DAVIES. Yes, we have the ability to coordinate locally with NGO's and with governments, as was pointed out earlier, especially when we talk about releases of individuals into the communities. We have that ability. We prefer to recognize individuals who have been registered with the CBP One.

What we really focus on are the individuals that are clear to us to being vulnerable. We focus on urgent humanitarian concerns, urgent medical emergencies to prioritize, in addition to those individ-

uals who are clearly recognizable as unaccompanied children to bring in from the line for processing and prioritization.

Senator SINEMA. Thank you. Mr. Bible, given the limited number of ERO detention beds, most migrants are released on alternative detention programs (ATD) rather than held in detention. However, migrants with known criminal records or affiliations are generally detained. Could you describe the process between ERO and other Federal agencies to determine whether a migrant should be held in detention or released?

Mr. BIBLE. Thank you for the question. Typically, all of our detention cases are—people referred to detention are determined on a case by case basis. We look at risk of flight, potential for being a public safety threat or national security threat.

We also look at mitigating factors out of longevity of time within the United States, advanced age, medical conditions that might militate toward releasing an individual ATD rather than keeping them in detention.

But primarily, we look at everything on a case by case basis and look for those public safety and national security threats.

Senator SINEMA. To follow up on that, what happens when there are no open beds and ICE must decide how to handle a situation with a migrant who has a known criminal history?

Mr. BIBLE. If the criminal history rises to the level of being a public safety threat, I have not seen in my 25 years where we could not find a bed for an individual that has that kind of criminality. We will make room.

Senator SINEMA. Thank you. Mr. Davidson, in certain Border Patrol sectors, including the Yuma sector, USCIS is conducting credible fear interviews inside Border Patrol facilities. As a result, migrants are ending up staying in Border Patrol custody longer to await those interviews.

On average, how long do migrants wait for USCIS to conduct a credible fear interview in Border Patrol custody after a migrant has expressed fear? How does this compare to the average wait time for migrants who are released on the alternative detention programs?

Mr. DAVIDSON. Thank you, Senator. It is 2 days from referral to interview, and an additional 2 days from the interview to service of the decisions. It is 4 days overall in CBP custody, which is a record time for USCIS.

The second question would be related to our FERM program, and then through the FERM, which is for families, and they referred to us between 6 to 12 days after CBP sends them to the destination cities.

That is the only comparison I have through the FERM process. But certainly what—we are processing and prioritizing, and CBP custody, it is record times in terms of us being able to turn around our decisions. It is 4 days on average.

Senator SINEMA. Thank you. I now recognize Ranking Member Lankford for his questions.

Senator LANKFORD. Thank you. Again, I appreciate all of you. This group are not the policymakers. We understand that you are the ones that are actually carrying the policy out, and so we appre-

ciate the help of knowing what is actually happening on the ground, what is the process on this.

The concern that I have, as well as a lot of other folks have, is if I take the previous 12 years, both terms of the Obama Administration, all 4 years of the Trump Administration, the number of people that illegally crossed the border during that previous 12 years equals the number of people that have illegally crossed the border in less than 3 years under the Biden Administration.

When people feel this is structurally different, it is structurally different. There is something that is really changing, that is happening on the policy, that is happening on the movement of people.

Now, this is not me laying blame on all of you. We are trying to figure out the, now what? How do we actually figure out the process and what actually happens from here? I do know there are some folks in DHS that are probably watching and monitoring this. Thank you very much for doing that, by the way, and for the engagement, and for all of you actually being here.

But I would bring up a couple of things just to the DHS folks that are actually tracking all this hearing as well. We have made some very specific requests within the numbers in the past, to be able to turn those over.

We have yet to get those in a timely manner. Senator Sinema and I have made a request for a special interest alien briefing, to be able to get details on that. We have yet to be able to get that briefing. Senator Murphy and I have asked for additional information about the notice to appear delegation of authority that we have asked about.

We have yet to be able to get that. We have asked for a specific briefing on circumvention of lawful pathways, to just spend more time with that, because that is entirely new as a process. We have yet to get that.

Again, none of you are responsible for that, but I do want to be able to put out, this has been an ongoing frustration that we have literally seen as many people cross in less than 3 years than we have in 12, yet when we ask questions about process that are, how is this working, what is happening, how do we get numbers, we are not getting those.

That is why I am really grateful that all of you are here to be able to walk through some of the process and what is actually happening at this point. I do want to skip to one of the questions that we have for Senator Sinema and I, and that is in the special interest aliens.

For individuals that are crossing the border right now, and it is by the thousands from Mauritania, what criminal history, background information, data do we have on those individuals from Mauritania coming into the country? Do we have any background information on those individuals?

Do we have a cooperative agreement with Mauritania to be able to get background criminal information? Do we have any of that data? I do not know of any. I am asking you all if you all know of any. I am seeing the same expression I have. Do you know of any criminal history that we are getting on these individuals from Mauritania?

Mr. DAVIES. No.

Senator LANKFORD. No. I do not know of any either on that. Currently, this year, so far, just through earlier this year, we have had 10,000 individuals that have come from Mauritania. The vast majority of those, my understanding is, are released somewhere in the country and we do not know hardly anything about those individuals.

We also have a pretty dramatic increase, about 63 percent increase of Syrians that are coming in the country. We have had almost 15,000 people from China that have come across the border that I understand we do not have a criminal history exchange with China. With Pakistan, we have 1,000 folks.

We have over 2,000 folks from Somalia that have come. These special interest aliens, we are trying to figure out the details of them, and as far as we can tell, they are being processed and released in the country, awaiting a hearing in the future and we do not have a day to day supervision of those individuals. Is that accurate or not accurate? Mr. Bible.

Mr. BIBLE. It is accurate that we are not tracking them on a day to day basis. Not the totality of them. Some are probably on alternative detention where we have more tracking.

Senator LANKFORD. For those individuals that are in alternatives to detention, how long are they on the alternative to detention program for? Is that months? Days? Is that all the way up until their hearing? How long are we tracking those individuals?

Mr. BIBLE. We escalate and de-escalate depending on several factors, criminality, compliance with the ATD program, and other factors. Our average length of stay on alternative detention is approximately 547 days.

Senator LANKFORD. OK. Is that 547 days until they are hearing time, or what is that trigger at that point?

Mr. BIBLE. It depends on, again, the compliance rate and community ties. We can de-escalate them off the alternatives detention program if those conditions are met. But we can also scale it up if they are not complying with the conditions of their release.

Senator LANKFORD. It is our understanding the vast majority of individuals that are in alternatives to detention, it is 3 or 4 months or less that they are on an alternatives to detention program. Is that accurate or not accurate? You are saying it is a year and a half, basically, that they are on.

Mr. BIBLE. I mean, we did have an increase of individuals put on alternatives to detention as they were leaving the Southwest border until they reached their destination city where they would be enrolled, but where they actually checked in and we were starting to monitor them on the non-detained docket.

Senator LANKFORD. Right. The last numbers that we had in that came in from DHS was tracking about 130 days, that people were in alternative to detention, and after that, they are not.

They are significantly longer than that before their actual hearing day, if they are doing an asylum request. It is our understanding that if they are requesting for instance, New York, the next open dates are somewhere in 2033 for that hearing time.

We have a pretty big gap of individuals that have claimed credible fear, have gone through the initial screening, have an alter-

native to detention for, let us say, a year and a half for the maximum that.

Most likely, more like 130 days was the last numbers that we had. Then the next 8 years, if they are awaiting that hearing time in New York. It is shorter in other areas, but in New York, and Florida, and multiple areas, it could be 7, 8, 9, 10 years before they get to that hearing. Is that accurate or not accurate?

Mr. BIBLE. Right now, we are scheduled out approximately 10 years, at least in New York City. However, we are working on technological solutions to where a non-citizen can update their address on our website, request mail out NTA, which will allow us to spread out the workload throughout the country and throughout our workforce, where we won't have to just rely on check-ins directly into the New York city office, which doesn't have a fiscal plan to handle that volume.

Senator LANKFORD. What I would like to do is I am going to come back for a second round of questions here a little bit once everybody has gone through, and I want to walk through the process. What I want to talk through is the difference between an individual at a port of entry that has a CBP One app time scheduled, somebody that does not have that, somebody that comes between ports of entry, what actually happens to them in the process.

Then once they actually leave the border, they are released from the country, what is actually occurring at that point. I want to be able to walk through that process and so we can get the differences for that individual because there are pretty serious concerns.

It was not that long ago I was at the border, and I was at one of the times of gathering the muster for Border Patrol. In the muster they were going through standard things, and one of the Border Patrol agents asked the question of leadership at that point, just this muster, hey, last night or two nights ago, we picked up three guys from Nicaragua in camo, in their 20's, looked like they were military, what happened to them?

The response was, they were cut loose. We do not have them anymore. That kind of dialog that is happening makes a lot of questions happen in the whole process to try to figure out, but we are trying to figure out how decisions are made when there are three guys in camo, clearly military or military age, and trying to figure out what happens next to them.

Obviously, it is a case by case basis, but everybody is trying to figure out what that actually looks like from there. Senator Blumenthal, you are next for questions.

#### **OPENING STATEMENT OF SENATOR BLUMENTHAL**

Senator BLUMENTHAL. Thanks a lot, Senator. Thank you all for being here and thank you all for your service. Chief BeMiller and Executive Director Davies, I was very interested in your testimony about fentanyl and Operation Blue Lotus, which seems to have been successful in increasing fairly drastically the interdiction of fentanyl at the border.

As I read the numbers here, the rate of interdiction is roughly double or more, with 4,781 pounds of fentanyl in just 2 months, as compared to the 14,700 pounds in fiscal year 2022. You talk here about non-intrusive inspection (NII) technology, about the sharing

and collaboration on information, because the vast majority of fentanyl coming into this country is at ports of entry where this technology can be employed.

Could you talk a little bit about the potentials for greater use of technology, information sharing? I know you are in the middle of Operation Artemis right now. In relation to that operation, how these new forms of interdiction can be potentially important.

Mr. DAVIES. Yes. Thank you for the question, Senator. You are right, Operation Blue Lotus, from our perspective, was a huge success in terms of increasing the amount of interdiction of fentanyl that we saw over just a short period of time.

I think to your point about NII technology, we know that where we are scanning, or I think somewhere around 90 percent of the interdictions we receive from our narcotics perspective come from non-intrusive inspection scans of a small percentage of the vehicles that are actually crossing our border.

We do not have the existing infrastructure to scan much higher rates. We are appreciative that we have received funding from Congress. We are working on a plan to actually deploy more of our both large scale and small scale non-intrusive inspection technologies throughout the Southwest border to focus on that.

But as you pointed out also, Operation Artemis now is kind of the next level of the fentanyl fight for us and really focusing on not just the interdiction of fentanyl itself, but the precursor chemicals, the pill presses, working with our international partners on sharing that information, and addressing the criminal organizations that are working far beyond our borders to start the trans-shipment and movement of fentanyl into the United States.

Senator BLUMENTHAL. How good is the information sharing with other law enforcement?

Mr. DAVIES. With other law enforcement in the United States, I think, is very good. We have a very robust process. We are certainly working to increase information sharing across our international partners and our international networks. As you would expect, there are some international partners that we have far better information sharing capabilities with than others, but we are continuing working to improve those.

Senator BLUMENTHAL. Who are the good and who are the bad?

Mr. DAVIES. I would rather not divulge that here.

Senator BLUMENTHAL. OK. I understand fully. Mr. Davidson, how important is counsel, that is some kind of legal advice, in the interviews that are conducted for the credible fear interviews that are conducted?

Mr. DAVIDSON. It provides due process, Senator. For the credible fear process, it is just not an attorney. The statute 203.30 allows for a non-citizen to choose anyone that person wants to consult with, be an attorney, or a religious person, or anything.

Senator BLUMENTHAL. Maybe I was not clear in my question. In your experience, and I open this question to others as well, a person arriving at the border claiming a credible fear, may not speak English, may have no idea what this credible fear thing is, the interview, the standard—no experience with any sort of objective, impartial justice system before. How important is an advocate in

explaining the process to that individual asylum seeker and in implementing the standard to elicit the important facts?

Mr. DAVIDSON. It is reasonably important, Senator. The caveat to that is certainly that my colleagues at CBP and ICE also have an orientation process where they orient an individual seeking asylum to the credible fear interview itself through Form M-444. I think that an attorney can help supplement that too as well.

Certainly, that if an individual wants to seek counsel, then we provide access to counsel and ensure that individual has counsel, and if he so desires, and so it is an integral part of the process.

Senator BLUMENTHAL. Do you think the numbers in your testimony—and I am not sure I understand all of them, but you go through some numbers at the end of your testimony about different percentages. Do you think those percentages would change if more of those asylum seekers had counsel?

Mr. DAVIDSON. I think that is a fair point to make. I think that there is certainly a tendency to have different outcomes when there is counsel in certain instances.

Not in every instance, but certain instances, yes. I think that an individual or a non-citizen who had sought counsel for a particular case has seen a positive like outcome based on their counsel's representation.

Senator BLUMENTHAL. The general consensus seems to be that we do not have enough of the counsel, we do not have enough judges. In effect, our justice system, our immigration justice system is lacking resources to fairly and effectively process those asylum seekers. Am I wrong?

Mr. DAVIDSON. I do not think that is a wrong statement as a generality in terms of our immigration courts being under-resourced, DHS, this panel being under-resourced, certainly.

DHS has painstakingly worked with our advocacy communities to ensure that there are groups that are sponsoring their attorneys none—for, pro bono work, certainly. We continue to advocate with our stakeholders to ensure that there is like low cost attorneys provided. If somebody chooses to take that option.

Senator BLUMENTHAL. Thank you. My time has expired. Thank you, Madam Chair.

Senator SINEMA. Thank you. Senator Carper, you are recognized.

#### **OPENING STATEMENT OF SENATOR CARPER**

Senator CARPER. Thank you, Senator. Thanks so much. I had a chance to, Madam Chair, to say hello to these gentlemen a bit earlier before I went to another meeting. We are in and out.

We are voting on the floor. We have other committees to make, so apologize for being not a constant presence in your life for these 2 hours. A couple of you have served in the military. Anybody in the Navy? Navy salutes Navy. Good to see you, welcome.

Anybody who ever served in the Army? Yes, there you go. I think maybe both of you saw a time overseas, and as one who actually spent a lot of time in the military, in the Navy, I very much value your service, in that role, those of us in uniform, and also these roles in uniform.

I have a couple questions. I hope these have not been answered. I do not think they have, but the first one I want to ask deals with

U.S. Border Patrol agents in the field. U.S. Border Patrol agents in the field.

Again, thanks so much for being here today. The insight you shared with us is critical to the communities. It is valuable to me, and I think to others as we work to support the Department of Homeland Security, and its mission is to maintain a safe and secure Southwest border. I have been privileged to serve in the Committee.

Been in the Senate for 22 years. I have been on this Committee since it was first founded, created out of, this Committee on dealing with government operations. But so, anyway, I have a great affection for the department and the men and women who serve.

I think it was that 2 years ago, in 2021, Department of Homeland Security announced a new position with U.S. Customs, within U.S. Customs and Border Protection, and that is the Border Patrol processing coordinators. I do not know if this has already been discussed, but it has, forgive me, but I want to drill down on it again, if we could.

These coordinators, as I understand it, assist the CBP agents with the care and processing of migrants and allow Border Patrol agents to focus on their law enforcement duties in the field. Chief BeMiller, can you just expand for us, if you will, on the effectiveness of these new processing coordinators.

Presently, is there a sufficient number of processing coordinators to allow Border Patrol agents to better resume their duties in the field? Go ahead.

Mr. BEMILLER. Thank you, Senator.

Senator CARPER. Welcome.

Mr. BEMILLER. Thank you. Appreciate it. Thank you for the question. Absolutely necessary, as are many of our partnerships that we work with. The Border Patrol processing coordinators, we have almost 1,200 of them to date. Every support we get to return a Border Patrol agent back to the line is well received.

While we have those 1,200 Border Patrol processing coordinators, we are still far from returning all of our Border Patrol agents back to the line. They are conducting duties, as I mentioned in my opening statement, far beyond the scope of their responsibilities. We need to get them back to the line. They have an important mission, an important role.

Senator CARPER. All right. Thank you. Let me follow it up with the question, again of you, Chief BeMiller, also Director Davis, if you would.

Throughout the time I have been in the Senate, I have really focused on root causes in this Committee, and frankly, in other Committees as well. I guess the symptoms of challenges, the problems, but what are the root causes? What are we doing about it? What can and should we do about them?

But we have seen time and time again that there is a correlation between the rule of law, corruption, and economic opportunity in Central and South American countries, and in the migration flows at the U.S. border.

Chief BeMiller and Director Davies, given the migration flow in recent years and the number of migrants crossing at different ports

of entry along the border, can both of you briefly speak as to how your components respond to these changes?

Next, how do you strategically manage resources to ensure that efficiency and efficacy are maintained at various ports of entry? Chief, would you go first, and then Director Davies.

Mr. BEMILLER. Yes. Thank you again for the question. We work with our foreign operation branch and our intelligence branch, and with Department of Homeland Security policy, to coordinate with our strategic international partners and monitor the flow through the Western Hemisphere and around the world.

This information gives us the opportunity to, as I mentioned, leverage our resources and deploy them to the optimal locations where we predict the traffic would be coming between the ports of entry. It is an extremely important partnership, and it is just beneficial for our mission.

Senator CARPER. Director Davies, please.

Mr. DAVIES. Yes, it is very similar to Chief BeMiller. We coordinate with our international partners. Within the Office of Field Operations, we actually have several programs, not just in the Western Hemisphere but across the globe, with our immigration advisory program, our joint security program, and our police liaison program that are focused on working with our international partners to identify flows, reasons, and to come up with solutions that can be implemented to limit the ability for people to move through other countries, solely for the purpose of exploiting lives, while maintaining the ability for people who are seeking protection to be able to come to the United States lawfully, to do so.

Senator CARPER. Last question, if I could. In your testimony, Chief BeMiller—I am not picking on you, Chief, but—and Director Davies. But you both highlight the importance of coordination and collaboration within DHS and other Federal partners. Chief and Director Davies, as we see highs and lows in migration flows along our Southwestern border, to what extent do each of you receive regular updates on the primary reasons behind influxes in migration? How does this information get shared amongst DHS components and help agents do their work on the ground? Director Davies.

Mr. DAVIES. Yes. Thank you for the question. We do receive regular updates. Yes, I would say maybe not quite daily, but certainly every week about the flows and some of the reasons.

I think we share a lot of that information with our officers on the front line. Just to be very candid, that the reasons do not always make a difference in terms of what kind of processing is going to happen or, at the point where they are at the ports of entry or in CBP processing, it is too late to effect any change in terms of the reasons that people are leaving.

I know that at a broader level, we are trying to work with our foreign partners to address some of those root causes, as you said. We are tracking those reasons. But from an operational perspective, the reasons that people are coming in has little impact on what we do operationally.

Senator CARPER. Go ahead, Chief. Same question.

Mr. BEMILLER. Same question, same answer—very similar. We do monitor some of the push factors. But again, the intention of migrating to the United States does not have an effect on the way

that we respond. Regardless of their intentions for coming here, reasons for fleeing their countries, economic or otherwise, we still plan our operations based on the movement of individuals crossing through the hemisphere.

Senator CARPER. Good. Madam Chair, could I ask another one minute, if I could, just to say a closing thought. The several of us on this Committee have been up and down the Central America, Latin America for quite a number of times, for quite a few years. There is a reason why they want to come up here and it is because their lives are, in many cases, miserable.

One of the things that is making life tough for them is the weather, droughts. A lot of folks who used to be able to dry and grow coffee and other commodities that are not able to do that anymore and make a living. The other one, one of the other things that I have noted is, we have gone through two long periods of time, like one—Honduras, I remember for a number of years, maybe 2 or 3 years, we did not have any Ambassadors, Senate confirmed Ambassador in Honduras.

Right now, we do not have a Senate confirmed Ambassador in Colombia and we need Senate confirmed Ambassadors in all those countries to help right—and make sure that the folks that are leading those countries are behaving and that we are being a good partner to them.

Two points. One, when we have good folks, good candidates have been nominated serving these Ambassador positions, we need to seriously take them up and get them done and put them to work.

The second thing is the source of drought. I think we have a pretty good idea of what is causing it. It is climate change, and we are doing a lot about it. We need to continue to do that. Thank you, ma'am.

Senator SINEMA. Thank you, Senator Carper. I now recognize Senator Johnson.

#### **OPENING STATEMENT OF SENATOR JOHNSON**

Senator JOHNSON. Thank you, Madam Chair. Chief BeMiller, you said you were with the U.S. Border Patrol for 25 years?

Mr. BEMILLER. Yes, sir, that is right.

Senator JOHNSON. You were with Border Patrol when they used to call it apprehensions then, correct? What you do when you have encountered—

Mr. BEMILLER. Arrest, apprehension, yes.

Senator JOHNSON. You call them apprehensions. You were also there probably in 2014, that time period when I know DHS Secretary Jeh Johnson said, 1,000 apprehensions a day was a really bad day for Border Patrol. Is that true?

Mr. BEMILLER. It is true that he said that, yes.

Senator JOHNSON. I think President Obama actually called that, when we topped off about 2,000 apprehensions, he called that humanitarian crisis. You were there. Did that kind of feel like a humanitarian crisis back there, 2,000 people apprehended a day?

Mr. BEMILLER. It definitely was a challenge.

Senator JOHNSON. When did we shift from calling apprehensions to encounters?

Mr. BEMILLER. Thank you for that question and the opportunity to clarify it. The difference between an apprehension and an encounter particularly came up during Title 42, because the individuals were not formally brought into Border Patrol custody, they were screened and returned immediately. That is the difference between—

Senator JOHNSON. The last time I was at the border, yes, there were some screened and returned, and quite a few—I think over 1 million, the figures I saw. But an awful lot were processed and dispersed.

Last time I was at the border, I was told by Border Patrol agents that the goal that was given to them was to encounter, process, and disperse in 8 hours. Is that basically the goal now? Is that what we are doing?

Mr. BEMILLER. As the Chief of Law Enforcement for Border Patrol, that is not the guidance or purpose that I direct.

Senator JOHNSON. How long are you holding people when you encounter them, before they are processed, and dispersed, and sent on a plane or a bus to their final destination? What was the time-frame there?

Mr. BEMILLER. That is part of the complexity of the environment that we are operating in right now. We have people, as I mentioned in my opening statement, in our custody for far too long. The processing, depending on the pathway that is appropriate for them, we have a number of bottlenecks. Definitely the bottleneck occurs after processing, waiting—

Senator JOHNSON. Do you know the average number of encounters during the Biden Administration per day? Do you know what the average is?

Mr. BEMILLER. I do not have that number.

Senator JOHNSON. Really?

Mr. BEMILLER. Oh, the average per day?

Senator JOHNSON. Yes.

Mr. BEMILLER. Right now, it is about 6,500.

Senator JOHNSON. It is about 6,000 a day since the beginning of the Biden Administration, 6,000 a day. Again, it was a humanitarian crisis we were apprehending 2,000 a day. It was a bad day, according to Jeh Johnson, when 1,000 people were apprehended.

Now we are averaging for almost the last 2½ years, over 6,000 people today. We cannot get Secretary Mayorkas to say that is a crisis. When do you say it is a problem? He calls it a challenge. I know that in a number of your testimonies, you kept talking about efficiency.

Just sitting here in this sedate hearing setting, it almost seems like we have this under control. This is completely out of control, is it not? What data do you have, do you keep, because they do not share it very readily with us, in terms of the number of people who have been encountered, processed, dispersed?

How many people do you know are known got aways? What is the estimate of unknown got aways? Do you have that for the first 2½ years of the Biden Administration? Do you have an estimate of that? Because I do.

Mr. BEMILLER. I do not have that broken down right now.

Senator JOHNSON. Would it surprise you to say about 5 million people have either been encountered, processed, and dispersed, or are known or unknown got aways—5 million people. Just put that in perspective, by the way. The population of half the States is 5 million or less. Chief BeMiller, do you believe that is a crisis? Do you believe that is under control?

Mr. BEMILLER. Not getting too tied up into the semantics of the situation, we are in a situation that is pressing our resources.

Senator JOHNSON. You talked about most of your Border Patrol agents are spending most of the time in detention and processing, which means we have wide open gaps, for known and unknown got aways, for drug trafficking.

When I was Chairman of this Committee, I went down to Southern Command and talked about, we interdicted at most 10 percent of the drugs. We talk about, yes, we have all these fentanyl apprehensions, or confiscation of fentanyl, but we are getting a mere fraction of it.

In manufacturing, 10 percent is called scrap. This is completely out of control, and we need to say it is out of control. We need to recognize reality here. Senator Blumenthal asked, I mean, do you lack resources in terms of processing these claims? The reason you lack resources because illegal immigration is completely out of control—5 million people.

Chief BeMiller, what problems are you having recruiting people? How many people are retiring even before they are eligible for full retirement? I go down to the border. I see morale incredibly low levels. Members of the Border Patrol want to enforce that law.

They are not being able to really enforce our law. They are processing. They are dispersing. It is not particularly satisfying. Can you speak to the level of morale now within Border Patrol.

Mr. BEMILLER. Thank you for that again, sir. Yes, absolutely. I have been around the country and spoken to thousands of Border Patrol agents. The pride that they have in the work that they do, they ask only for the tools to be able to go out and do that job. They ask for the freedom to go out and do their job as well.

As I mentioned, they are processing far too much. Recently we attending a muster with the agents. They need better vehicles to get out to the remote areas.

Senator JOHNSON. They need control of the border. They need Administration who is dedicated to controlling the border. Very famous movie, the Sound of Freedom. Talked about the sex trafficking of children. I have written letters from Chairman of Senate Committees to hold hearings on that depredation. This open border policy is facilitating, and you know this, the multibillion dollar business model of the human traffickers, of the sex traffickers, the drug traffickers. Correct?

Mr. BEMILLER. Absolutely. It is a dangerous and complex environment.

Senator JOHNSON. Your Border Patrol agents have to, as Senator Lankford is talking about, encounter some individuals in camouflage, of military age, and they process to disperse them, because that is what you are being directed to do by this Administration. It is not your fault.

This is a travesty that is happening in this country. What is frustrating for me, having chaired this Committee, held probably three dozen hearings on the border, understanding the problem, to not be holding hearings—I appreciate this hearing. But then to be speaking in such sedate terms. Leading people believe that, oh, we have this under control.

Only 10 years, only—you did not even say only. 10 years till the first hearing immigration hearing in New York City—10 years. It is a completely open border, it is out of control, and we need to call it what it is—it is an open border. This has to stop. This is not this not what a sovereign country can sustain. Thank you, Madam Chair.

Senator SINEMA. Thank you, Senator Johnson. Senator Padilla.

#### **OPENING STATEMENT OF SENATOR PADILLA**

Senator PADILLA. Thank you, Chair Sinema, Ranking Member Lankford, for bringing us together today to better understand how the immigration enforcement system is functioning post Title 42.

I do want to state that I am glad to have the opportunity to speak with witnesses from ICE, CBP, and USCIS yesterday, but I think I am not the only Member of this Committee expressing a little disappointment that we do not have a chance to speak with somebody from DHS headquarters to ask about some of the outstanding policy questions, including concerns regarding the funding allocations under CBP shelter and services program, a concern that I know the chairwoman shares.

Also note the absence of a representative from DOJ's Executive Office of Immigration Review (EOIR), the immigration courts, without which we do not have the complete picture of how immigrants are processed at the border.

While I applaud the work of the Biden Administration to attempt to rebuild our broken immigration system, I will continue to express my serious concerns about some of the more recent policy initiatives it has undertaken, particularly that of the credible fear interviews while migrants are in CBP custody.

My concern is only compounded by a lack of responsiveness to oversight requests that we have made. While I understand that the focus of today's hearing is large on operations and implementation, I do want to note for the record this concerning lack of responsiveness, and I want to reiterate my expectation that DHS provide all the requested information and answer outstanding questions in a timely manner.

I believe I speak for all Members of the Committee in that regard, particularly as we are being asked to consider additional border funding in the supplemental in the very near future. But as far as questions for today, let me begin by noting CBP and DHS's proactive engagement in operational planning with NGO's that provide shelter and services to migrants and asylum seekers in Southern California.

I think this type of coordination is vital to ensure that NGO's can efficiently and safely provide services for migrant families and adults who are released by CBP to continue with their immigration cases. I actually think this model of coordination and cooperation

should be considered a best practice and an expectation moving forward.

However, I do consider to hear—that coordination and information sharing practices between CBP, and NGO's could still be improved somewhat, particularly in terms of sharing demographic information and linguistic needs information of individuals being transferred to NGO's.

Mr. Davies, can you please explain how CBP coordinates with NGO's and local jurisdictions on individuals released from custody?

Mr. DAVIES. Yes. Thank you for the question, Senator. We do engage with local NGO's. I think you are right that we have a very good relationship in Southern California. I wish that the level of engagement from some of our other locations would be as good and robust.

We are kind of, I do not want to say stuck with the hand or dealt sometimes in terms of the partners that we have to rely on, because from an OFO perspective, when we are done processing, it is our intention to move individuals out of the ports of entry so as not to create a safety or security issue at the port of entry.

We do coordinate with them. We do not always have the ability to share individual information on the non-citizens who are coming through and being moved forward to the NGO's. Some of that is from a privacy perspective, as I understand it.

But I think your point about sharing demographic and linguistic, we know that those are challenges for us that we face when we talk about having translators available for some of the nationalities that we process. I can understand why that is important for the NGO's to have as well.

Senator PADILLA. That is why I specified those two examples, because that is not personal, identifiable information (PII). That just seems to me, unless there is legal restrictions that suggests otherwise, helpful information for the NGO's trying to assist here and play that supportive role for you all.

Now, you use the terms, working with the hand that we are dealt. Is it a policy restriction? Is it equality of NGO challenge? Why can't this model of cooperation be expanded and replicated in other areas?

Mr. DAVIES. Yes. Thank you. Again, I do think that some of it has to do with capacity of the NGO's. We have attempted in all of our locations across the Southwest border to engage with our NGO partners. We understand that there under a large strain too, because of the volume coming across. As what we see, is that their capacity is strained usually far before CBP's capacity is strained. That creates those logistical challenges for them and for us.

Senator PADILLA. I understand. Look, getting it on the record here is helpful because we have tried to advocate for additional funding for them from the Federal Government, because at the end what they are doing is playing a supportive role to your function in a much more cost effective way than if we try to do all this with Federal employees from one agency, or department, or another.

To be specific here, I know my time is running out, the impact of shelter providers on CBP's ability to process individuals, can you take 30 seconds on that? The NGO's that are receiving some of these folks—

Mr. DAVIES. Yes, if——

Senator PADILLA. Their capacity to shelter——

Mr. DAVIES. If they are not able to receive, if they do not have capacity at their shelters, then it means that ultimately the individuals that we are releasing from the ports of entry may not have somewhere to go. They may not have a bus to get on to. They may not have transportation or services available, which creates a strain on the local border communities in proximity to the ports of entry.

Senator PADILLA. Great. Thank you. The other area I wanted to make sure to raise is in the area of criminal prosecution of asylum seekers. As we all know, under our existing immigration laws, people do have a right to seek asylum in our country irrespective of their manner of entry.

Doesn't mean it is guaranteed, but they can at least seek it. Put simply, someone who crosses the border in the desert and turns themselves into Border Patrol to seek asylum has just as much of a right to do so as someone who walks up to the port of entry to present themselves to claim fear.

I know we are working on incentives to do that at port of entry and not in between. But at the same time, this Administration has been clear that it intends to impose consequences for unlawful entry, including potential prosecutions for unlawful entry and re-entry. We have been trying for a while now to get a clear answer on where the Administration stands on referring migrants for prosecution who have claimed fear.

I will address this question to Mr. BeMiller. What is the Border Patrol's policy regarding referral of asylum seekers for prosecution under USC 1325 or 1326?

Mr. BEMILLER. I would like to actually reverse that just a bit, Senator. Anybody can claim asylum, even if they are being prosecuted. I think that is an important note to make, that regardless of whether they are being pursued for a criminal charge, they still have the right and retain the right to claim asylum.

Senator PADILLA. OK. Walk me through that process. Among the clarity that I am seeking is, is the referral for prosecution before or after CBP determines whether someone is an asylum seeker, or both.

Mr. BEMILLER. The determination is made at the time of interview when they make the claim. So that is determined——

Senator PADILLA. And the criteria for referral?

Mr. BEMILLER. The same as any other asylum claim, which is a fear of returning to their country, fear of being injured.

Senator PADILLA. The referrals for prosecution. What is the criteria to refer somebody for prosecution?

Mr. BEMILLER. The crime that they committed. Whether they have a past criminal record that they are being reinstated for. It just depends on the circumstances. If you are trying to get at, are individuals targeted for claiming asylum, that is absolutely not accurate.

Senator PADILLA. I am just wondering again, what guidance field agents have for making that determination of referring for prosecution or not.

Mr. BEMILLER. In certain locations for targeted efforts, depending on the circumstances, to try to again apply, as you mentioned, a consequence to a location that is being exploited by the transnational criminal organizations and alien smugglers. We may apply a targeted prosecution effort in a specific location in order to try to minimize the risk to the migrants crossing through that area and try to push back the TCOs taking advantage of the vulnerable populations crossing in a specific area.

Now, one additional thing, and again, gets back to the beginning of it, is regardless of that, when we take them into custody, they still have the same right as anybody else to claim asylum.

Senator PADILLA. OK. I will have some follow up questions after. Thank you very much. Thank you both.

Senator SINEMA. Thank you, Senator Padilla. We will now start a second round of questions. I will grant myself time for questions. I am going to pick up where I left off. My next question is for the entire panel.

As we have heard, this is an extremely complex process, and a small breakdown can have large effects on the overall operation. Where do bottlenecks typically occur in the process for each of your organizations? We will start with Mr. Davies and then move across the panel.

Mr. DAVIES. Thank you. I think for OFO at the ports of entry, the biggest bottleneck that we encounter is when it comes to release. That is whether the individual is being referred for detention with ERO or being released, as was just mentioned with the NGO's.

Making sure that there is a smooth transition and minimal amount of time, once we have completed case processing, to move those individuals out of our port of entry is imperative for us. That is the biggest bottleneck.

Mr. BEMILLER. As far as Border Patrol is concerned, there are a number of bottlenecks that occur throughout the entire immigration enforcement continuum, starting with—at encounter. When large groups enter, 400 or 500, sometimes even 1,000, it can create a significant drain on our resources and our personnel to extract those individuals out of the field.

That is probably the first. To the back end of that, our turning over to other agencies. Also post processing, waiting for available space, waiting for available acceptance is probably our biggest bottlenecks.

Mr. BIBLE. Thank you for the question. For ERO, our biggest bottleneck is obtaining travel documents and actually affecting the removal for countries other than Northern Triangle countries.

Mr. DAVIDSON. For USCIS, I think one of our biggest bottlenecks is that the—removal process remains a very paper based process, and each of the three components have their own parts of the credible fear process. We have made great strides in being able to digitize parts of that process and make an electronic environment end to end. I think we have overcome a lot of those bottlenecks to that end, and that is a major and significant accomplishment.

Senator SINEMA. Thank you. Chief BeMiller, I would like to continue with the discussion on credible fear interviews in Border Patrol custody. How many sectors are currently participating in the

program, and are there plans to expand it to other sectors? How does the policy affect operations in the sectors that do currently conduct those interviews?

Mr. BEMILLER. Thank you. We have five sectors that are currently conducting credible fear interviews. We have tried to sample those in Del Rio as well.

I would say that there is a significant backlog in the time of custody (TIC), in our TIC times, raising the overall TIC times for Border Patrol in custody. It averages between 9 and 16 days in custody to completely process them all the way through the credible fear interviews process while in Border Patrol custody.

Senator SINEMA. Thank you. Mr. Davies, now that OFO has increased the number of CBP One appointments at ports across the Southwest border, it can take even longer for migrants to get a walk in appointment.

Of course, that can counter-productively incentivize migrants to cross between ports. What is the current total number of daily CBP One appointments across the Southwest border, and how many walk-in appointments are you able to accommodate each day?

Mr. DAVIES. Across the eight ports of entry where we are processing CBP One appointments, we intake—or schedule on a daily basis 1,450 appointments. In addition to those, both at those same eight locations and at the other locations that do not accept CBP One appointments, we generally, on average take about 200 other individuals in a day.

The way that that happens will vary from port to port. In some cases, when they have completed all of their appointments for the day, they will bring others in from the line. In some in some places it will be throughout the day as capacity allows, they will bring in individuals who do not have appointments.

Senator SINEMA. Thank you. Mr. Davies, most migrants that are being processed at ports of entry are making appointments through this app, but there are issues with the app. There are limited number of languages, which makes it difficult for some groups to access the scheduling system.

When processing walk in appointments, does OFO ask migrants why they didn't or weren't able to make a CBP One appointment? If so, what are the responses that you most commonly are hearing?

Mr. DAVIES. We do not, in a systematic way, require our officers to ask that information or record it in our system of record. We do know anecdotally, because some of our officers do ask that question, that typically the answers we get back are that they either did not have access to the phone, they may say that they were unaware of the process, or as you pointed out, they will say that there were issues with a language availability in the app itself.

We are aware of some of those shortcomings. To the ones that we have the ability to address, we are working to address with constant updates to the app. Thank you.

Senator SINEMA. Thank you. Mr. Davidson, from an operational perspective, how has the circumvention of lawful pathways rule affected USCIS's work with migrants apprehended at the Southwest border? Has it had any significant reduction in the number of credible fear interviews the agency is conducting?

Mr. DAVIDSON. Thank you, Senator. It has not have had a reduction. It has had an increase in the amount of interviews referred to USCIS since May 12. Certainly, the process to analyze a credible fear case under the CLP, there is more complexities involved. Having to analyze exceptions and then the presumption rebuttal. That part has added more time to the credible fear process, certainly.

Senator SINEMA. My last question is for the panel. With the end of the fiscal year rapidly approaching, we are hearing more conversations about what happens if Congress cannot complete its work of keeping the government funded.

How would a government shutdown affect each of your components' abilities to make sure that the management border systems are functioning? We will start with Mr. Davies and move across the panel.

Mr. DAVIES. Thank you. I think the biggest impact that a government shutdown would have on the Office of Field Operations would be the morale of our workforce, because as we know, through previous government shutdowns, we would continue coming to work and securing our border at our ports of entry, but for officers, especially over for a long period of time, not having a paycheck to go home to is extremely demoralizing and debilitating for our officers many of them may live paycheck to paycheck and in places where there are high costs of living.

That to me would be the biggest concern. We had during the last government shutdown to go through this process of allowing many of our officers to seek outside employment.

I think that is a dangerous precedent to set, having officers working a second job somewhere else just to try to make money while they should be focused on our primary law enforcement missions. Thank you.

Senator SINEMA. Thank you. I now recognize Senator Lankford for continued questions.

Senator LANKFORD. Thank you. I want to walk through the process, what we have talked about a little bit before, trying to just be able to get a handle on it, because the complexities are definitely there.

What we have tried to pursue is, how were the decisions made, and what are the documents that DHS has provided to each entity on what the criteria is to be able to make a decision on this. I am going to kind of run through this briefly here. They CBP One app. They say, fill out the app there. They enter the port. They are screened for parole or an asylum claim.

We are trying to figure out some of that process on the screening for parole and the asylum claim. Then they find out they are screened for parole, they are vetting, they get an appointment. They could be turned around and could be paroled into the United States. Then eligible for work authorization.

We understand that if they come through the CBP One app, they get parole, they could get the work authorization within one month. Let me start there on the initial one. Somebody that came in through the port of entry, filled out the CBP One app. Is it most common for that individual to get parole at that point?

Mr. DAVIES. Just to clarify, approximately 90 percent of the individuals who show up with the CBP One appointment are given a

case processing disposition of NTA. They are served a notice to appear before an immigration judge, but ultimately as a custody disposition, they are paroled out of custody. So, yes.

Senator LANKFORD. They are paroled out of custody about 90 percent, you are saying on that. Best we can tell, those individuals also seeking an asylum claim, because my understanding is they got a one year time period to also seek an asylum claim, or they just in parole?

Mr. DAVIES. If they applied with CBP One, they are generally given a 2-year parole at the port of entry as a custody determination while they are in removal proceedings.

You are correct, they do have the ability to pursue asylum while they are in the pendency of those removal proceedings. We are not accepting their claim, per se, at the port of entry as part of the process.

Senator LANKFORD. Where would they make that asylum claim? Because the clock is ticking for them to be able to make their asylum claim. How would they do that?

Mr. DAVIES. I would defer to my colleague from USCIS, but there is an ability for them to make that claim eventually in front of the immigration judge, if they do not do anything with USCIS.

Senator LANKFORD. Mr. Davidson.

Mr. DAVIDSON. If they are in defense of asylum proceedings, under Section 240, they would make their claim with the immigration judge. If they were in the affirmative asylum process with USCIS, and they would make that claim with USCIS. Depends on the pathway. But if they are under immigration proceedings, they would certainly make it with the courts.

Senator LANKFORD. They have a 2-year parole that they are given, 90 percent of the folks that fill out the CBP One app. At that point, you get a 2-year parole. At what point are they having a decision made on their parole and what happens next?

Or they transition to other visas, or they transition to their status? What is happening next? We have had this process in place for about 4 months now. We are just trying to figure out how it is operating.

Mr. DAVIDSON. I can state if there were any parole status, that they were paroled in but not in immigration proceedings, then they would have the ability to file for asylum with USCIS.

Senator LANKFORD. But what happens to them? They are in parole. They have been given documentation at the border that they are in a for parole proceeding. What is happening?

Mr. DAVIES. Again, to clarify, the parole document at that point is to document the custody determination that they have been released. Their actual status is that they are in removal proceedings.

Until there is an outcome with respect to the removal proceedings, before you—the fact that their parole has run out, at least from an OFO perspective, is largely irrelevant because their status in the United States is still that they are pending removal proceedings.

Senator LANKFORD. But those removal proceeding hearing would be when?

Mr. DAVIES. They could be several years down the road.

Mr. DAVIDSON. If determined by the courts, EOIR sets the calendar for the removal hearing.

Senator LANKFORD. We have an individual that has a 2-year parole, but it could be 6 years before they actually get a hearing. Those last 4 years, what is their status, other than they are in removal? Does anybody know? I don't—so this is helpful for us because we are asking the same questions, just trying to be able to figure out what the status is for this individual.

It is our understanding as well that if they do CBP One app, regardless of where they are from anywhere in the world, about 90 percent are actually being paroled. Our understanding is within a month that they are getting a work authorization. Is that correct or not correct?

Mr. DAVIDSON. They are eligible for work authorization immediately after they are paroled into the United States.

Senator LANKFORD. It would not necessarily take a month at that point. It could be days.

Mr. DAVIDSON. We aspire to have them complete certainly in 30 days. We are working steadfast to make sure that happens. It would just require us to be able to analyze that application that has been filed and issue them the employment authorization document.

Senator LANKFORD. OK. Let me ask this question as well. If they come to the port without going through the app, they just arrive at the port and say, hey, I did not understand the language, or I just got in line, or I did not know, but they are at the port. They did not do the app at all. What is different about their process?

Mr. DAVIES. Largely the process is very similar. They have to wait until there is capacity, right.

Senator LANKFORD. Maybe a couple of days, right?

Mr. DAVIES. Once they come in, the numbers for us look a bit different, too, in that only roughly about half of the people who come in without an appointment are actually given an NTA and paroled as a result.

Senator LANKFORD. What is the difference there? Why?

Mr. DAVIES. We did not have the right information. Sometimes it is about the individual circumstances that they have presenting. There may be a reason why they did not want to submit this CBP One app, but as a result of the case by case determination, the officers have determined that they may be still put in removal proceedings, but they may be referred for detention.

Senator LANKFORD. How many of those are actually turned around and told, hey, go fill out the app and come back another day? Is that happening?

Mr. DAVIES. I do not think that that is a significant portion of the individuals that we are processing without appointments, no.

Senator LANKFORD. OK. Of the half that are turned around, they are turned around and said, hey, you are you are not eligible to be able to come through at all, and they are literally turned around and head back to Mexico. Correct?

Mr. DAVIES. That could be a subpopulation, yes.

Senator LANKFORD. OK. Then the other half that are accepted through, they would go through the same process. They would get a work authorization immediately within 30 days or less. They

would be sent for parole for 2 years, or it could be years before they get their actual hearing, correct?

Mr. DAVIES. Our policy states that if someone without a CBP One appointment is processed for removal proceedings, rather than having a 2-year parole issued, their parole is issued for a period of only one year.

Senator LANKFORD. Right. But they are still awaiting—they are still going to have a gap, because even the person who was given 2 years, may have several years of gap between when their parole expires and when their actual hearing occurs. There is just a bigger gap. Is there a consequence? Is ICE pursuing these individuals that their parole has expired, for instance?

Mr. BIBLE. Once the individual shows up at immigration offices, they should have reporting requirements. They could be placed on alternative detention or just monitored on the non-detained docket at that point—on an order of recognizance.

Senator LANKFORD. But that would be starting on the first days that they are there, that would not be something later a year down the road to go pursue those individuals and then put them on alternative detention?

Mr. BIBLE. The change in their position could be at any point when they are checking in to our offices.

Senator LANKFORD. OK. The rebuttable presumption kick in on this? If they have not filled out the CBP One app, they arrive at a port of entry, is there a rebuttable presumption? Where does that apply, or does that apply?

Mr. DAVIDSON. It applies during the asylum interview itself, the credible fear interview.

Senator LANKFORD. OK. But that would only be if they actually request asylum at that point. For 50 percent, they are getting paroled. They are not necessarily requesting asylum, or they could request it later at their hearing.

Mr. DAVIDSON. The rebuttable presumption would affect those who file or make a credible fear claim, correct. Yes, sir.

Senator LANKFORD. But that would be possible, I am going to say 3 years from now, when they actually have their hearing, let us say. The rebuttable presumption would apply then.

Mr. DAVIDSON. No, Senator. The rebuttable presumption is analyzed during the credible fear process itself. Once CBP arrives, refers a case for the credible fear screening, along with analyzing the exceptions to—

Senator LANKFORD. I am taking this case. They arrive at a port of entry. They did not fill out the CBP One app. They are in that 50 percent that was given parole. They did not ask for asylum at that point. They are released in the country.

They are just awaiting their hearing at that point. There is no challenge. They may challenge for asylum at their hearing then and they are going to bring it up then. Would a rebuttable presumption then apply at that point?

Mr. DAVIDSON. That is correct. The rebuttal presumption would not apply before the immigration court. The immigration judge would be analyzing their asylum claim and then withholding of removal and then cap during that claim.

Senator LANKFORD. OK. Let me keep going on this because I do not want to run us out of time. They are coming between the ports of entry. They are out in the open desert area. They actually enter at that point.

Border Patrol is able to encounter them, take them to one of the stations to begin the processing. They process and then do the fingerprint, do the medical checks, everything else they have to be able to do. What happens at that individual then, at that point?

Mr. BEMILLER. So, very similar. Again, they would be referred to USCIS once processed, and if space is available, they might be turned over to ERO.

Senator LANKFORD. OK. But that is if they request asylum, that USCIS would engage? Is that correct? Or they are, basically all of them requesting asylum?

Mr. BEMILLER. USCIS would engage on every case of an asylum claim.

Senator LANKFORD. OK. But are all of them requesting asylum that you are encountering between the ports of entry now? OK, of those that are not requesting asylum, what is their disposition?

Mr. BEMILLER. They are either withdrawn or provided—some of them are prosecuted. It just depends on the circumstances.

Senator LANKFORD. When you say withdrawn, help me understand what that means.

Mr. BEMILLER. They would actually be processed to return back to Mexico from the country that they came. A voluntary departure.

Senator LANKFORD. A voluntary departure at that point. Our understanding is, and this is something Senator Sinema and I have tried to track for a while, and it is expedited removal.

Expedited removal sounds like you are actually removed quickly. Our understanding is expedited removal does not actually mean you are removed quickly. What is the current expedited removal percentage of people that are actually removed from that country? Does anyone know?

Mr. BEMILLER. I do not have that information.

Senator LANKFORD. I understand it is a pretty small number, actually, of those that are declared expedited removal that are actually removed from the country. We have been trying to get that data and every number that we have had has been a pretty low percentage.

The vast majority of people under expedited removal are actually still currently in the country and some have been for years, still in the country under “expedited removal.” But they are not actually removed.

If that person requests asylum between ports of entry, they have been processed in the Border Patrol stations of the side, or hard side of the facility, or whatever it may be. They requested asylum. USCIS then does the interview at that point, is that correct? You are doing that in the stations now?

Mr. DAVIDSON. We do those interviews virtually, Senator, with the assistance of our colleagues at CBP. But you are correct, there would be done in those five locations.

Senator LANKFORD. If those individuals are deemed to have credible fear at that point, then what happens to them?

Mr. DAVIDSON. If they are deemed to have credible fear, then they are issued a notice to appear and put under Section 240 for removal proceedings. They appear before the immigration court.

Senator LANKFORD. That is the notice to appear. Then they are released in the country. They have a notice to appear. That is with ICE, right, at some location, and then a setting—then a date has been set after that for a court hearing. Right or not right on that?

Mr. DAVIDSON. ICE would assess the release ability of that information. But that is correct, Senator. Then they would have a date set by the court for them to appear before their hearing.

Senator LANKFORD. After they have gotten the check in with ICE at that point for the notice to appear. Is that correct or not, because I am trying to be able to track just dates and what happens here.

Mr. DAVIDSON. That I defer to ICE—

Mr. BIBLE. Yes, typically, when our notice to appear is issued, we go into Executive Office of Immigration Review Courts and Appeals System (ECAS) and get a court date and a time for those individuals, if they are leaving custody.

Senator LANKFORD. How long is that typically, before they would get that hearing? Currently, where are we on a notice to appear?

Mr. DAVIDSON. The hearings could take years, sir, with EOIR.

Senator LANKFORD. Question on that. When do they get a work authorization? They have requested an asylum request that came between ports of entry, requested asylum, been given a notice to appear, released into the country. When can they get a work authorization?

Mr. DAVIDSON. They are eligible for a work authorization under—if they filed the defense of asylum claim and they are before the courts, then they are eligible for a work authorization.

Senator LANKFORD. How quickly?

Mr. DAVIDSON. As quickly as they file the application, we can process it. Certainly we are averaging around less than 60 days for defense of asylum employment authorization documents.

Senator LANKFORD. OK. What I am trying to figure out is, if somebody fills out the CBP One app, goes through that process, comes to the port of entry, they are processed through into the country, and within 30 days they are going to have a work authorization.

Or they can come between ports of entry, request asylum, and within 60 days they will have a work authorization. Either one of them, it will be years before they actually have a hearing. Am I correct or not correct on that?

Mr. BIBLE. In the non-detained setting?

Senator LANKFORD. Yes, sir.

Mr. BIBLE. That is correct.

Senator LANKFORD. Yes, sir. Your non-detainment docket at this point. If I am remembering correctly, USCIS has about a 40,000 person backlog in just the interview process for the non-detained docket. Is that correct?

Mr. DAVIDSON. That is correct, Senator.

Senator LANKFORD. My understanding is as well, there is another group of folks in the non-detained docket that are not in that 40,000 number. That is an unknown number because their paper-

work has not been processed yet to be able to get into that backlog of 40,000.

Mr. DAVIDSON. I think at this point we are relatively caught up in terms of processing cases into the system. I think those numbers are pretty static, the 40,000.

Senator LANKFORD. 40,000 is the number at this point. How long will it take to be able to do the interviews? Because those are individuals that typically, I would assume, came between ports of entry at some point.

It was, as Mr. BeMiller talked about before, and wait times, when there is 500 people came at once. There is not space to be able to actually hold these folks. They were released out. There was not an opportunity to be able to do the interviews at that point. We have 40,000-ish people in that group. How long will it take to be able to identify, find them, and be able to do those interviews?

Mr. DAVIDSON. We know where they are at, because we coordinate that with our colleagues at ICE. We coordinate the interviews with our colleagues at ICE too for the non-detained docket.

That is a matter of resources, of us being able to divert resources that are also interviewing credible fear claims on the border, to be able to address the non-detained workload, along with their affirmative asylum work.

We prioritize that work along with our credible fear work, which has certainly increased. It is a matter of prioritization when we get to those cases.

Senator LANKFORD. Give me a guess, how long will that take?

Mr. DAVIDSON. I cannot give you an answer on that, Senator. I would have to get back to you on an average on time to process our non-detained docket.

Senator LANKFORD. Great. I would make a request just from our Committee as well, that any guidance documents that you have received on how to make decisions on who to parole, what that decision is, if it is 90 percent of folks at some point that are paroled, the 10 percent are not paroled.

There has to be some document that is a guidance to be able to make that decision and to be able to know. We have asked for those documents over and over again. How were those decisions made? Most often we get an answer back from DHS that says the officer on the field will make the decision. I would say, I know our structure in the Federal Government enough.

There is some guidance there. It is not just, what did the officer have for breakfast that morning and are they feeling it today? There is some guidance, but we have received nothing as far as guidance and information on how decisions are made. That would be really helpful to us to be able to see that process.

The same thing for USCIS, as you are going through that process, it would be helpful for us to be able to see how those decisions are actually made and what the criteria is for making a decision. I really appreciate all four of you being here, the time that you put into preparing for this.

We have had the opportunity be able to scratch the surface, but this is something we have asked for, for a long time. Just tell us how decisions are made and what the process is, because this is a very new process and we are seeing record numbers of people.

The numbers dropped off dramatically right after Title 42 change, and then they accelerated again to numbers, as Washington Post listed, that literally our country has never seen the numbers that were coming in for family units in August.

We have seen this skyrocket. We are trying to understand how decisions have been made and what that looks like on the ground. Thanks again for your service and we will follow up.

Senator SINEMA. Thank you, Senator Lankford. I neglected to have the other three members of the panel answer my question around the government shutdown. Before we conclude today, I would like to pick up where we left off. Thank you, Mr. Davies, for your answer. Chief BeMiller, if you could answer.

Then Mr. Bible and Mr. Davidson. To refresh you on the question, how would a government shutdown affect each of your components' abilities to make sure that the border management system continues to function?

Mr. BEMILLER. Yes. Thank you again for the question. I would have to echo almost everything that Ex. D. Davies mentioned. Morale certainly is a problem and we have faced this for many years, over and over again.

There is a weariness with the workforce. Our operators are committed to the mission, and they will report to duty. I would say, one of the biggest, aside from the morale and the unknown of when the next paycheck is coming, our partnerships are affected, both, anybody that has, Federal contracts and those are all points of concern for us.

When we are already stretched thin and we are at risk of compromised contracts and other things, it is definitely an issue for us. Thank you.

Senator SINEMA. Thank you.

Mr. BIBLE. Thanks for the question. I too would like to echo both of their statements, but to add one more part to that. One of the—loss of our support staff during that time. They are instrumental in us processing individuals through the immigration pathways and doing our job. Typically, those folks are not reporting to work if the government shuts down, which will impact us greatly. Thank you.

Mr. DAVIDSON. Recognizing that USCIS is a fee funded agency, 96 percent of our agency is funded by fee funds, and it still has an impact for us, Senator, because our E-Verify program is appropriated. But also, it is the still—the same consensus from my colleagues. It has a morale issue on our staff of being able to experience a government shutdown or having to experience that. Same factor.

Senator SINEMA. Thank you and thank you all. With that, we have reached the conclusion of today's hearing. I appreciate each of our witnesses for your time and for your testimony. I want to thank all my colleagues on the panel for their participation. This was a very important and a timely hearing.

I know there were a lot of questions we did not have an opportunity to ask, so, I will submit questions for the record so we can continue to examine this critical need, and I know my colleagues will as well.

The hearing record will remain open for 15 days until 5.00 p.m. on Thursday, September the 21st for the submission of statements and questions for the record. With that, our hearing is adjourned. [Whereupon, at 4:30 p.m., the hearing was adjourned.]

# A P P E N D I X

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## **Opening Statement as Prepared for Delivery by Chair Kyrsten Sinema**

### **Government Operations and Border Management Subcommittee Hearing: After Apprehension: Tracing DHS Responsibilities after Title 42**

**September 6, 2023**

The Subcommittee will come to order. I welcome Ranking Member Lankford, members of the Committee, and our witnesses.

Today, we are examining the Department of Homeland Security's process for managing migrant arrivals at the Southwest border, and how this process has changed after Title 42 ended.

From March 2020 to May 2023, DHS used Title 42 public health authorities to quickly expel more than 2.9 million migrants from the United States. When the Title 42 authorities ended on May 11, 2023, DHS started processing all migrants arriving at the Southwest border under regular immigration authorities.

This process is complex and things like demographics and expressions of fear all influence how a migrant is processed. And, because the border is so dynamic, DHS's programs and protocols change frequently.

Each of the components represented here today—Border Patrol, the Office of Field Operations, Enforcement and Removal Operations, and Citizenship and Immigration Services—play pivotal roles in this complex process.

Border Patrol and OFO are on the front lines, and are responsible for apprehension and initial processing along the Southwest border. ERO is responsible for tracking migrants during the pendency of their removal proceedings, including through detention and alternatives to detention programs. And USCIS manages credible fear interviews and asylum applications.

Any bottleneck or delay at any point in this process can have serious impacts on our border management system. Delays can cause overcrowding at CBP facilities, which can lead to unsheltered releases, also known as "street releases", in border communities. The Tucson Sector is currently one of the busiest sectors in the country for migrant encounters, and the border communities in this sector are at high risk for street releases. As this subcommittee has explored in previous hearings, street releases cause serious harm to migrants and border communities.

Congress needs to understand this process in order to modernize our border management system and keep Arizona families safe and secure. My border and immigration proposal with Senator Tillis includes several important improvements to this process to ensure our border is secure and that migrants are treated fairly and humanely.

Today's hearing gives us an opportunity to learn how this process has changed since the end of Title 42, and how these changes affect our border management system. I hope that the

information we gather today will motivate others to join us in advocating for commonsense solutions to our broken border policies.

I look forward to hearing from our witnesses.



TESTIMONY OF

David S. BeMiller  
Chief  
Law Enforcement Operations Directorate  
U.S. Border Patrol

Matthew S. Davies  
Executive Director  
Admissibility and Passenger Programs  
Office of Field Operations

U.S. Customs and Border Protection  
U.S. Department of Homeland Security

For a Hearing

BEFORE

United States Senate  
Committee on Homeland Security and Governmental Affairs  
Subcommittee on Government Operations and Border Management

ON

“After Apprehension: Tracing DHS Responsibilities after Title 42”

September 6, 2023  
Washington, DC

## Introduction

Chair Sinema, Ranking Member Lankford, and Members of the Subcommittee, thank you for the opportunity to discuss U.S. Customs and Border Protection's (CBP) role in processing migrants along the Southwest Border (SWB) as part of our critical mission to secure our borders and facilitate lawful trade and travel. We are honored to represent the dedicated men and women of CBP who operate on the frontlines to ensure our national and economic security.

The emergence of the COVID-19 pandemic and the March 2020 implementation of the Centers for Disease Control and Prevention's (CDC) public health Order,<sup>1</sup> commonly referred to as the Title 42 Order, transformed the SWB environment and significantly altered CBP's operations. From March 2020, until the order ended at 11:59 p.m. ET on May 11, 2023, with the expiration of the COVID-19 public health emergency, CBP carried out expulsions and other enforcement measures, required by the Title 42 Order, which suspended entry into United States of certain noncitizens arriving at land and adjacent coastal borders, to protect against the spread of COVID-19.

Throughout the pandemic, CBP and our partners responded to high numbers of migrant encounters while simultaneously upholding civil and human rights, securing our borders, and protecting the health and safety of surrounding communities, our personnel, and the noncitizens we encountered. The COVID-19 pandemic was particularly hard on the CBP workforce. CBP remained on the frontline carrying out our border security mission, keeping the nation's economic engine running and viable. This was at extreme cost to the agency with tens of thousands of CBP employees contracting the virus — resulting tragically in 55 line of duty deaths, directly attributed to COVID-19.

The Title 42 Order required CBP to quickly expel certain noncitizens as part of our national efforts to prevent spreading the virus. However, unlike Title 8 immigration authorities, the public health authorities under which the Title 42 Order was issued did not permit imposition of legal consequences on those attempting to unlawfully cross the United States border and, as a result, repeat encounters increased significantly.<sup>2</sup>

As a critical component of the whole-of-government planning effort led by the Department of Homeland Security (DHS) over 18 months, CBP made numerous preparations for the end of the Title 42 Order. These measures included, but were not limited to, a return to use of longstanding Title 8 immigration authorities; deployment and development of new technology and infrastructure; increased levels of personnel, including volunteers from across DHS; improved processing efficiencies and security; and coordination with our federal, state, local, international, and non-governmental partners. This comprehensive approach was outlined in the DHS Plan for Southwest Border Security and Preparedness issued in April 2022 and updated in December 2022.<sup>3</sup>

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<sup>1</sup> March 20, 2020, CDC Order under Sections 362 & 365 of the Public Health Service Act (42 U.S.C. §§ 265, 268): Order Suspending Introduction of Certain Persons from Countries Where a Communicable Disease Exists. [https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons\\_Final\\_3-20-20\\_3-p.pdf](https://www.cdc.gov/quarantine/pdf/CDC-Order-Prohibiting-Introduction-of-Persons_Final_3-20-20_3-p.pdf).

<sup>2</sup> See U.S. Border Patrol Recidivism Rates, <https://www.cbp.gov/newsroom/stats/cbp-enforcement-statistics>.

<sup>3</sup> See Fact Sheet: Update on DHS Planning for Southwest Border Security Measures as the Title 42 Public Health Order Ends. <https://www.dhs.gov/news/2023/05/01/fact-sheet-update-dhs-planning-southwest-border-security-measures-title-42-public>

Leveraging expertise gained during previous migration surges as part of these preparations, CBP scaled its operations responding effectively to the areas with greatest need, imposing consequences on those who break the law, and processing noncitizens safely and humanely.

### **Current Processing and Security Operations**

Since the Title 42 Order ended on May 11, CBP has resumed applying its full range of immigration authorities under Title 8 of the U.S. Code to process all noncitizens encountered at the border, as we have done throughout our agency's history. These authorities provide for meaningful consequences for noncitizens without documentation for lawful admission, to include placing individuals in expedited removal or other immigration removal proceedings. Under Title 8, a noncitizen who is removed is subject to at least a five-year bar to reentry and can face criminal prosecution for any subsequent attempts to cross the border illegally.

#### ***Migrant Processing Operations***

Well in advance of the end of the Title 42 Order, DHS implemented an approach to provide certain migrants with lawful, safe, orderly options for presenting themselves for inspection at a port of entry (POE), while imposing consequences on those who do not avail themselves to lawful processes. For example, in October 2022, DHS implemented a process to allow certain Venezuelan nationals and their qualifying family members to request advance authorization to travel to the United States to seek a discretionary grant of parole. Based on the successful process for Venezuelans, in January 2023, DHS established new parole processes for nationals of Cuba, Nicaragua, and Haiti.

To be eligible, Cuban, Haitian, Nicaraguan, and Venezuelan nationals and their immediate family members must have a supporter in the United States who can provide financial support; pass rigorous biometric and biographic screening; clear security vetting conducted by CBP; and comply with all additional requirements, including vaccination requirements and other public health guidelines. Only those who meet all specified criteria are eligible to receive advance authorization to travel to the United States by air, to be considered for parole, on a case-by-case basis, for a period of up to two years.

Building on this approach, in May 2023, DHS and the Department of Justice (DOJ) implemented a final rule,<sup>4</sup> "Circumvention of Lawful Pathways," establishing a rebuttable presumption of asylum ineligibility for certain noncitizens who fail to seek asylum or other protection in one of the countries through which they traveled on their way to the United States, and who fail to take advantage of the existing and expanded lawful, safe, and orderly pathways and processes created by this administration, including the opportunity to schedule a time and place to present at a POE via the CBP One mobile application.

Since January 12, 2023, the CBP One mobile application includes an appointment feature that provides noncitizens located in Central and Northern Mexico the ability to schedule an

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<sup>4</sup> 88 FR 31314 (published May 16, 2023).

appointment, to be processed at one of eight designated SWB POEs.<sup>5</sup> During processing at the POE, noncitizens will undergo additional screening and vetting, to include additional biometric vetting. Noncitizens who are determined to pose a national security or public safety threat, or who otherwise do not warrant parole as a matter of officer discretion at the POE, may be denied a grant of parole and placed in the appropriate processing disposition, as determined on a case-by-case basis.

The CBP One scheduling feature cuts out smugglers, decreases migrant exploitation, and makes processing more efficient upon arrival. Since CBP One's scheduling feature was introduced in January 2023, more than 260,000 noncitizens have successfully scheduled appointments to present themselves at a SWB POE.<sup>6</sup>

Noncitizens who present at a SWB POE without utilizing the existing and expanded lawful pathways and processes are, with some exceptions, subject to the rebuttable presumption of asylum ineligibility in the "Circumvention of Lawful Pathways" rule. Noncitizens who cross the border between POEs are also subject to the rebuttable presumption of asylum ineligibility. All noncitizens encountered between the POEs by U.S. Border Patrol (USBP) are transported to CBP facilities, processed in accordance with Title 8 authorities, and subjected to consequences, as appropriate, including expedited removal and transfer to U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) for detention. CBP coordinates closely with ERO on such transfers, which are contingent on available ERO capacity, and can include holding noncitizens in a custodial setting or enrollment in an alternative detention. If, at any time during processing for expedited removal, a noncitizen expresses a fear of return to their country, CBP arranges for U.S. Citizenship and Immigration Services (USCIS) to conduct a credible fear interview. In some cases, these interviews are conducted while the noncitizen is in CBP custody. In other cases, noncitizens may be transferred to ICE detention through the pendency of their credible fear decision if they are determined to be a national security or public safety threat.

Whether a noncitizen is encountered at or between POEs, CBP collects biometric and biographic information and vets all noncitizens against multiple national security and public safety databases. Noncitizens who may pose a threat to national security or public safety are referred for detention and removal, as appropriate, in coordination with ICE ERO. Noncitizens must abide by the requirements of their processing disposition, such as a Notice to Appear. Depending on the disposition, contact with ICE for further processing once they reach their destination may be required. Non-governmental organizations and local governments identify locations, where noncitizens who have been released from CBP custody can safely access services, transportation, or accommodations.

The health and safety of individuals in CBP custody, our workforce, and our communities is paramount. CBP has comprehensive policies and procedures in place to ensure that all individuals in custody receive appropriate medical support and care and continues to expand medical services contracts to improve care, especially for the most at-risk individuals. Since the

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<sup>5</sup> The eight POEs are Brownsville, Paso Del Norte in El Paso, Eagle Pass, Hidalgo, and Laredo in Texas; Calexico and San Ysidro in California; and Nogales in Arizona.

<sup>6</sup> As of August 31, 2023.

tragic in-custody death of a child this summer, CBP implemented multiple measures to address deficiencies identified by the ongoing investigation. These actions include reiterating the need to prioritize medically vulnerable individuals and family units to minimize time spent in CBP custody; mandating a medical contractor practice review and correction of deficiencies; partnering with the DHS Office of Health Security to provide medical oversight capability and also the U.S. Department of Health and Human Services, United States Public Health Service Commissioned Corps, one of the eight uniformed services, to provide medical services and guidance at multiple CBP sites; reviewing and repairing closed-circuit television systems in CBP processing facilities; and mandating frontline personnel review the National Standards on Transport, Escort, Detention, and Search. CBP continues to review our procedures, practices, and equipment to ensure we are protecting those in our care, especially those most vulnerable.

While encounters between POEs at the SWB remain below levels seen leading up to the end of the Title 42 Order, certain areas, such as USBP's Tucson Sector in Arizona, have not experienced a decrease. CBP remains vigilant and expects to see fluctuations, knowing that smugglers continue to deceive and prey on vulnerable individuals. As CBP continues to execute our plans – including delivering strengthened consequences for those who cross unlawfully while expanding access to lawful pathways and processes – we will continue to monitor changes in encounter trends and adjust our response as necessary.

To maintain our border security posture and ensure CBP's immigration processes are conducted fairly, efficiently, and safely, CBP, among other actions, deployed technology, increased personnel, expanded facilities, care, and medical services, improved processing efficiencies, and strengthened coordination with our partners.

#### ***Deployed Technology, Infrastructure, and Personnel***

Maintaining situational awareness of what or who may be approaching our borders is paramount to CBP implementing an effective response to border activity. CBP continues to make substantial investments in advanced technologies that improve our agent and officer efficacy and safety, including improved communications, body-worn cameras, and autonomous surveillance towers. Additionally, CBP's large-and small-scale non-intrusive inspection (NII) systems are critical tools used at and between POEs to provide officers and agents with deeper insight into what is entering or traveling through the United States. The NII systems alert officers and agents to the presence of anomalies in shipments, traveler belongings, cargo containers, commercial trucks, railcars, and privately owned vehicles, signaling to officers and agents where further inspection is needed.

As of July 1, 2023, CBP has closed 68 gates and gaps in border barrier. We are working to close an additional 61 gates and gaps along with completing life, safety, environmental, and other remediation activities at incomplete border barrier construction sites.

Infrastructure and technology are critical to our border security operations but serves only limited purposes without our greatest asset: our skilled and professional workforce. CBP has approximately 24,000 agents and officers along the SWB. We are hiring more personnel, especially non-uniformed support personnel and contract personnel to assist in data entry and facility operations. These personnel investments allow our law enforcement agents and officers

to stay in the field and focus on their critical security mission. The Fiscal Year (FY) 24 Presidential Budget funds an additional 350 Border Patrol Agents, \$535 million for border security technology at and between POEs, and an additional 460 processing coordinators and assistants at CBP and ICE to ensure DHS can conduct essential border security missions.

#### ***Expanded Facilities and Transportation and Improved Safety***

Higher numbers of migrant encounters require deliberate and coordinated actions to ensure individuals in CBP custody, are held in safe and sanitary conditions and unaccompanied children or other vulnerable populations are appropriately cared for while in CBP custody. To accommodate increases of noncitizens in CBP custody, we renovated and reopened the Rio Grande Valley Central Processing Center (CPC) in McAllen, Texas in March 2022; opened two new soft-sided facilities in the El Paso and San Diego Sectors in January 2023; recently expanded Yuma and El Paso facilities; and maintained additional soft-sided facilities located in priority locations. These facilities include wraparound service contracts that provide sanitation, food, and medical services necessary to ensure appropriate conditions for migrants in custody, frontline personnel, and contractors. We are also maximizing use of air and ground transportation contracts to transport noncitizens from USBP Sectors that are over capacity to less impacted CBP locations to prevent sustained overcrowding in our facilities.

Deployed in conjunction with expanded facilities, non-uniformed personnel, and contracted services, CBP's investments in virtual and mobile processing provided operational flexibility and streamlined operations to ensure safe and humane processing of migrants and relieve agents of non-enforcement duties.

#### ***Coordination with Partners***

In February 2022, DHS stood up a Southwest Border Coordination Center (SBCC) to bring CBP together with other DHS and federal partners to coordinate planning, operations, engagement, and interagency support to prepare for anticipated migration increases at the SWB in light of the end of the Title 42 public health order. CBP is the primary supporting component of the SBCC and utilizes our operational coordination capability to provide expertise and resources in response to irregular migration flows across the SWB. 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.

#### **Maintaining Border Enforcement and Facilitation Efforts**

As part of our planning for the termination of the Title 42 Order, we surged resources, technology, and personnel to manage challenges safely and orderly along the SWB – while maintaining a persistent focus on our other missions, including, but not limited to combating human smuggling, countering illicit drugs, and facilitating the lawful flow of trade and travel, to ensure national and economic security.

#### ***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 movement of noncitizens. We are more effectively tracking movements of various migrant groups moving towards the U.S. border,

and more aggressively pursuing investigation and prosecution of transnational criminal organizations (TCOs) and human smuggling networks responsible for illegal border crossings.

CBP's collaborative efforts with our partners help stop human smugglers and save lives at the border and beyond. For example, launched in 2016 as a joint effort between CBP and the Government of Mexico (GOM), "Se Busca Información" ("Information Wanted") identifies individuals associated with TCOs wanted for crimes associated with human and drug smuggling on both sides of the border. The "Se Busca Información" initiative encourages the public to anonymously report information about known smugglers. CBP also took the lead on Operation Sentinel, a major U.S. interagency effort supported by ICE Homeland Security Investigations (HSI) and the GOM that aims to cut off access to TCO profits from human smuggling by denying these criminals the ability to engage in travel, trade, and finance in the United States.

Migrant smugglers put vulnerable individuals and families in danger every single day. Smuggling organizations are abandoning migrants in remote and dangerous areas, and this summer's stretch of record-breaking heat compounded the dangers. For example, in southern Arizona, Tucson Sector agents responded to 151 calls for help between July 1 and July 2023, rescuing more than 1,100 border crossers. Nationwide, as of July 31, 2023, CBP conducted 28,537 rescues, exceeding in just the first 10 months of FY 2023 the 22,500 total rescues conducted in FY 2022. These humanitarian lifesaving acts are often lost in the border debate, but they are clear examples of the bravery, selflessness, and humanity our CBP agents and officers display each day.

#### ***Interdicting Illicit Drugs***

Illicit drug smuggling is another major source of revenue for TCOs, but an activity that requires a much different CBP enforcement approach. While addressing the complexities of irregular migration, CBP continues to balance competing demands and remains focused on our efforts to combat the flow of illicit drugs and disrupt TCO activity.

For example, while CBP continues to address irregular migration, it also continues to combat the increasing threat of illicit synthetic drugs, especially fentanyl, being trafficked into the United States. CBP seizures of fentanyl have been escalating for several years.<sup>7</sup> In FY 2022, CBP seized approximately 14,700 pounds of fentanyl nationwide, with most of it — 12,500 pounds — seized at POEs. CBP combats TCO drug smuggling activities 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 NII technology. CBP has also expanded and enhanced our outbound operations to stop the south-bound flow of weapons and cash that fuel these criminal networks. In FY 2022, CBP's outbound inspection operations at the SWB resulted in the seizure of more than \$7 million in undeclared currency and 415 weapons.

Our partnerships are also invaluable to our enforcement efforts. For example, through Operation Blue Lotus, CBP and our ICE-HSI partners surged intelligence, analysis, and enforcement capabilities to not only target and seize illicit fentanyl, but also pursue investigations and take

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<sup>7</sup> <https://www.cbp.gov/newsroom/stats/drug-seizure-statistics>.

down criminal networks. In just two months, the operation resulted in CBP making 109 arrests and seizing 4,781 pounds of fentanyl. Through a concurrent operation between the POEs, USBP seized an additional 1,063 pounds of fentanyl.<sup>8</sup>

Following the success of these enforcement efforts, on June 5, 2023, CBP launched Operation Artemis, the next phase in CBP's counter-synthetics strategy, leveraging intelligence derived from Operation Blue Lotus for targeted operations to counter the emerging fentanyl epidemic. The focus of Operation Artemis is to further disrupt and degrade the flow and supply chains that feed production of fentanyl and other synthetic drugs through coordinated enforcement, investigative, interdiction and scientific identification efforts. The operation's end goal is to stem the flow of fentanyl, its precursors, and enabling paraphernalia such as pill presses and dies through strategic enforcement actions not only at the SWB, but with expansion to express consignment, International Mail Facilities, and the air and sea cargo environments.

#### ***Limiting Disruptions to Travel and Trade***

In addition to its border security mandate, CBP remains focused on its mission to enhance the nation's economic prosperity through facilitation of 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. The scope and importance of CBP's role in protecting the economic security of the United States cannot be understated. Collecting almost \$112 billion in duties, taxes, and fees in FY 2022, CBP remains the second largest collector of revenue in the federal government.

The resources, technology, and processes put in place to manage anticipated challenges along the SWB associated with the termination of the Title 42 public health Order were also established to limit disruption to critical and lawful traffic that flows through our POEs and support our economic security responsibilities.

#### **Conclusion**

Planning and preparedness efforts are critical to managing irregular migration. As we approached the end of the Title 42 Order, CBP was prepared to continue fulfilling our border security mission by deploying resources, streamlining processes, and putting measures in place to prevent disruptions to our critical border security and facilitation operations.

CBP remains committed to maintaining border security, properly caring for those in our custody, and keeping our communities and our workforce safe. We remain vigilant and responsive to the full range of our responsibilities including interdicting illicit drugs, preventing dangerous people and goods from crossing into our borders, enforcing hundreds of trade laws, and ensuring the efficient flow of lawful trade and travel that is so important to our economy.

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

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<sup>8</sup> Operation Blue Lotus ran from March 13, 2023, to May 8, 2023. U.S. Border Patrol's Operation Four Horsemen ran from March 6, 2023, to May 6, 2023. <https://www.cbp.gov/newsroom/speeches-and-statements/statement-acting-commissioner-troy-miller-cbp-s-successful>.



TESTIMONY OF

Daniel Bible  
Deputy Executive Associate Director  
Enforcement and Removal Operations  
U.S. Immigration and Customs Enforcement  
U.S. Department of Homeland Security

For a Hearing

BEFORE

United States Senate  
Committee on Homeland Security and Governmental Affairs  
Subcommittee on Government Operations and Border Management

ON

*“After Apprehension: Tracing DHS Responsibilities after Title 42”*

September 6, 2023  
Washington, DC

## Introduction

Chair Sinema, Ranking Member Lankford, and distinguished members of the Subcommittee, thank you for your continued support for the dedicated and hardworking women and men of U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO). I am proud to serve beside them and I am grateful for the opportunity to appear before you today.

As one of ICE's three operational directorates, ERO's mission is to protect the homeland through the arrest and removal of noncitizens who undermine the safety of U.S. communities and the integrity of U.S. immigration laws. ERO primarily focuses its law enforcement activities within the interior of the United States, including conducting interior immigration enforcement operations, managing the agency's detained and non-detained populations, and repatriating noncitizens with final orders of removal. In recent years, increased focus on border enforcement efforts has stretched ERO's resources, including interior enforcement, detained and non-detained docket case management, available bedspace, and removal operations. As a result, ERO must carefully balance its resources, to continue to uphold its mission in the face of changing operational conditions and new demands, including the significant shifts the agency has experienced in the post-Title 42 environment.

## The Impact of Title 42 on ICE Operations

During implementation of the Title 42 public health Order, ERO worked closely with U.S. Customs and Border Protection (CBP) at the Southwest Border to support border operations. For example, while CBP determined which noncitizens were subject to expulsion under the Title 42 public health Order and conducted expulsions at the border, ERO conducted Title 42 expulsion flights while continuing to remove amenable noncitizens under longstanding Title 8 immigration authority. From March 2020 – when the Centers for Disease Control and Prevention (CDC) implemented the Title 42 public health order– until May 11, 2023, ERO has assisted in more than 184,000 Title 42 expulsions.

ICE resources and operations shifted to expulsions of noncitizens under Title 42, resulting in a marked decrease in traditional removals<sup>1</sup> between Fiscal Year (FY) 2020 and FY 2021. However, the number of ICE removals increased in FY 2022, and continues to rise during FY 2023. For example, ICE removed 185,884 noncitizens in FY 2020 and 59,011 noncitizens in FY 2021. However, ICE removed 72,177 noncitizens in FY 2022, a 22% increase compared to FY 2021. Moreover, ICE has removed over 110,000 noncitizens thus far in FY 2023 as of August 19<sup>th</sup>, already higher than the total removed in the previous fiscal year.

Additionally, this trend has continued with the number of removal flights being conducted: the number of international flights conducted by ICE Air Operations has increased

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<sup>1</sup> ICE Removals include Returns. Returns include Voluntary Returns, Voluntary Departures and Withdrawals Under Docket Control. ICE Removals include noncitizens processed for Expedited Removal (ER) or Voluntary Return (VR) that are turned over to ERO for detention. Noncitizens processed for ER and not detained by ERO or VR after June 1st, 2013, and not detained by ERO are primarily processed by Border Patrol. CBP should be contacted for those statistics.

more than two-fold in the latter half of FY 2023 as compared to the first half of the fiscal year. Removals via commercial airlines have increased in the post-Title 42 environment as well. As of August 12, 2023, ICE Air Operations had completed 4,282 commercial airline removals, an 85% increase from the same period in FY 2022. Additionally, the number of family units removed by ICE has been increasing, compared to 2,123 family unit members removed in FY 2021. For example, in FY 2022, ICE removed 7,094 family unit members, a 234% increase, based on historic ICE data. Similarly, in FY 2023, as of August 30, ICE had removed over 11,000 family unit members.

Throughout the implementation of Title 42, ICE provided sustained and direct support for Department of Homeland Security (DHS) efforts to decompress border facilities. In FY 2022, approximately 1,000 ERO employees were detailed to the Southwest Border to process cases and offer air and ground transportation for noncitizens apprehended by CBP at the border to Alternatives to Detention (ATD) locations, along the Southwest Border and ICE facilities, as appropriate. Additionally, ICE personnel now serve alongside other DHS staff in the Southwest Border Coordination Center (SBCC), which leads planning and coordination for managing the safe and orderly processing of noncitizens, encountered along the Southwest Border. As ERO's support for DHS border management activities has increased, its resource challenges have grown, particularly as the agency faces limited resources, static staffing levels, and a growing national docket.

#### **The Post-Title 42 Environment**

On May 11, 2023, the CDC's Title 42 public health Order officially ended, resulting in all noncitizens being processed once again under Title 8 immigration authorities. As part of our whole-of-government approach to address any anticipated surge in migration as a result, ICE collaborated with DHS and Department of Justice (DOJ) partners, as well as foreign governments, to prepare for the lifting of Title 42 in an efficient and effective manner. This comprehensive approach was outlined in the DHS Plan for Southwest Border Security and Preparedness issued in April 2022 and updated in December 2022.<sup>2</sup> ERO continues to work with its DHS and DOJ partners to deliver swift immigration consequences, including removals, in a safe, orderly, and humane manner, and ICE continues to improve on its efforts to fulfill its interior and border missions in the post-Title 42 environment.

#### *Detention Beds*

ICE's bedspace inventory is constrained by several factors, including an increase in detention facility closures, transportation challenges, pending litigation and court decisions, ongoing staffing shortages, newly enacted state laws that hinder ICE's use of contract detention facilities, and limitations related to detained noncitizen gender or risk classifications. ICE has taken several steps to align its detention capacity with operational needs in the post-Title 42 environment. These efforts – which continue today – include increasing resources to release noncitizens who receive positive credible fear determinations in a safe, humane, and timely manner; leveraging ATDs for appropriate populations; and focusing detention resources on

<sup>2</sup> See Fact Sheet: Update on DHS Planning for Southwest Border Security Measures as the Title 42 Public Health Order Ends. <https://www.dhs.gov/news/2023/05/01/fact-sheet-update-dhs-planning-southwest-border-security-measures-title-42-public>

noncitizens who are subject to mandatory detention, who pose risks to public safety or national security, or who may be flight risks. ERO continues to align its bedspace with operational needs at the Southwest Border while balancing the operational need to provide needed bedspace for noncitizens currently in ICE custody.

#### *Decompression Flights*

As part of the agency's routine transportation efforts, ERO operates several transportation mechanisms. Consistent with longstanding practice and judicial agreements, ERO's Juvenile and Family Management Division (JFMD), is responsible for escorting unaccompanied children and family units from CBP custody to HHS facilities using commercial air, charter air, and ground-based transportation. Additionally, ICE Air Operations, facilitates the transfer and removal of noncitizens via commercial airlines and chartered flights in support of ICE field offices and DHS initiatives. Moreover, ICE provides ground transportation for certain noncitizens, including transfers to or between detention facilities; medical transportation; staging for removal; or transporting noncitizens to a release point near the detention facility as ICE standards specify released noncitizens will be transported to the closest public transportation if there is no bus stop within one mile of a detention facility.

Specifically, as part of its support for DHS decompression efforts at the Southwest Border, ICE operates additional transportation mechanisms. In FY 2021, through an Inter-Agency Agreement (IAA) with ICE Air Operations, CBP began requesting lateral transfers of unprocessed single adults and family units between CBP stations to alleviate overcrowding. Through this IAA, ICE Air Operations has assisted CBP with 145 domestic movement flights as of August 12, 2023. Similarly, in FY 2022, through an IAA with CBP, ERO's JFMD began supporting CBP operations by conducting lateral transfer flights of unprocessed family units. Since then, ERO has been conducting lateral transfers in accordance with both IAAs, furthering the use of ERO's transportation resources to assist DHS efforts at the Southwest Border.

#### *Family-Focused Programs*

Over the past fiscal year, ICE began to operate several programs geared toward the fair, humane, and expedited processing of family units. For example, in May 2023, ICE announced the implementation of the Family Expedited Removal Management (FERM) initiative, for family units apprehended at the Southwest Border, who are processed for expedited removal in a non-detained setting, and who indicate an intent to apply for asylum or have expressed fear of persecution or torture if returned to their country of nationality. FERM is designed to ensure family units in the credible fear process participate in a timely credible fear interview with U.S. Citizenship and Immigration Services (USCIS) and any requested review by an immigration judge without being detained. Through FERM, certain family unit heads of household are placed on ATD technology – a GPS ankle monitor – and, as a condition of their parole, are closely supervised while the family awaits an interview to assess their credible fear of persecution or torture claim. By the end of the month, FERM will be operational in forty cities nationwide. Families who receive final negative credible fear determinations while enrolled in the FERM program, will generally be removed from the United States within 30 days or less.

*Removal Efforts*

In accordance with U.S. immigration law, the United States removes noncitizens who cannot establish a lawful basis to remain in the country. If noncitizens have final orders of removal issued by an immigration judge within the Department of Justice's Executive Office for Immigration Review or through other administrative means, ICE may remove those noncitizens to their countries of citizenship or alternative countries of removal via charter and commercial air transportation.

To more efficiently and effectively process the removal of noncitizens under Title 8, ICE is readily utilizing its Electronic Nationality Verification (ENV) program. In July 2019, ICE initiated ENV with the Central American countries of El Salvador, Honduras, and Guatemala to expedite the return of nationals from these countries by verifying nationality electronically instead of waiting for consular officers to issue the travel documents required for removal. ICE is in the process of expanding this program to other participating countries. Within 72 hours of these noncitizens receiving final orders of removal, ICE can manifest ENV-eligible noncitizens helping to ensure expeditious Title 8 removals in the post-Title 42 environment.

Over the past 18 months, as a result of a whole-of-DHS planning effort that included robust international engagement, ERO increased its removal flight capacity in the post-Title 42 environment. ICE Air Operations facilitates the transfer and removal of noncitizens via commercial airlines and chartered flights in support of ICE field offices and DHS initiatives. The number of international flights conducted by ICE Air Operations has increased more than two-fold in the latter half of FY 2023, as compared to the first half of the fiscal year. Additionally, removals via commercial airlines have increased in the post-Title 42 environment. In FY 2023<sup>3</sup>, ICE Air Operations has completed 4,282 commercial airline removals. This is an 85 % increase from the same period in FY 2022.

Since ERO removes foreign nationals to more than 150 countries each year, removal management is a complex process that requires careful planning and coordination with a wide range of domestic and foreign partners, such as local government authorities, contract commercial air and charter service providers, and foreign embassies. As of August 12, 2023, ERO's Removal Division has conducted over 2,400 diplomatic engagements with domestic and foreign partners to augment the increased number of removal flights. These increased efforts in removal management have allowed ICE to implement and conduct efficient removal operations in the post-Title 42 environment.

In recent years, DHS has seen increased encounters of nationals from countries that we have not traditionally seen in such volumes, including noncitizens from Cuba, Venezuela, Haiti, and Nicaragua crossing the Southwest Border. These numbers have decreased following the introduction of parole processes focused on these populations. In the post-Title 42 environment, ICE has expanded its capacity to remove noncitizens to these countries and decreased the timeframes needed to coordinate removal flights to accommodate these populations, while also increasing efficiency of removal flights to other countries. For example, in April 2023, Cuba

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<sup>3</sup> ICE removal data for FY 2023 is current as of August 12, 2023.

accepted the first charter flight since 2020, and has regularly accepted charter flights in the following months. Further, ICE negotiated with Venezuelan representatives to resume the issuance of travel documents to facilitate the repatriations for those nationals who otherwise could not be removed, while also partnering with a commercial airline to expand its capacity to remove Venezuelan nationals.

Recently, El Salvador agreed to waive the pre-removal COVID-19 testing requirements for all incoming repatriation flights. Similarly, Guatemala agreed to accept ad-hoc flights on Saturdays should ERO exhaust its current weekly allowance of 18 flights and identify the operation need. Lastly, Honduras expanded the ENV program to include two high-volume areas of responsibility and rescinded the COVID-19 vaccination and testing requirements. These efforts have allowed ICE to increase removal flights of noncitizens from these countries and reduce the time it traditionally takes to coordinate removal flights.

#### *The Increased Use of Expedited Removal*

DHS has increased use of expedited removal under its Title 8 authority. Section 235(b)(1) of the Immigration and Nationality Act (INA) allows DHS immigration officers to place noncitizens in expedited removal proceedings. Generally, CBP officers apprehend noncitizens at or between ports of entry and determine if these noncitizens are subject to expedited removal, while ICE officers may arrest noncitizens unlawfully present in the interior of the United States and determine they are subject to expedited removal as well. Overall, DHS officers may apply expedited removal, without a hearing before an immigration judge, to any noncitizens who are inadmissible under Section 212(a)(6)(C) – fraud of willful misrepresentation – or Section 212(a)(7) – lack of valid immigration documents. Once apprehended by CBP at the border or arrested by ICE in the interior of the United States, noncitizens subject to expedited removal – in accordance with the INA – may be detained by ICE.

If noncitizens who are subject to expedited removal indicate the intent to seek asylum or claim fear of persecution or torture if removed, these noncitizens are afforded credible fear interviews with USCIS asylum officers while in ICE custody. If USCIS determines that the noncitizen has failed to establish credible fear, ICE continues to prepare the noncitizen for expedited removal proceedings. On the other hand, if USCIS determines that the noncitizen has established a credible fear, the noncitizens are generally released from ICE custody. Noncitizens with positive credible fear determinations, may remain in ICE custody if serious criminal histories or other noted derogatory information render the noncitizens to be threats to public safety or national security. Nevertheless, by expediting the review of the asylum claims of noncitizens in expedited removal proceedings – no matter if positive credible fear findings exist or not – DHS is able to provide relief more quickly to those noncitizens who are eligible and to more quickly remove those noncitizens who are not.

In FY 2023, ICE realigned nine detention facilities across the United States to dedicate those facilities exclusively for housing noncitizens subject to expedited removal, who also have pending credible fear interviews with USCIS. This realignment was necessary to accommodate the increased case volume and has allowed for more streamlined expedited removal procedures.

*Enforcement Priorities*

ICE is refocusing its resources in the post-Title 42 environment by incorporating civil immigration enforcement priorities in a manner that allows ICE to prioritize the apprehension and removal of noncitizens who pose the greatest threats to the homeland. In September 2021, DHS issued the *Guidelines for the Enforcement of Civil Immigration Law* memorandum. This memorandum, which went into effect in November 2021, instructed DHS immigration officers to prioritize enforcement actions against noncitizens considered to be national security, public safety, and border security threats. Subsequently, on June 10, 2022, the U.S. District Court for the Southern District of Texas vacated the memorandum, and all ICE personnel ceased implementation of and reliance on the guidance it contained, while continuing to exercise prosecutorial discretion on a case-by-case basis, informed by their experience as law enforcement officers.

On June 23, 2023, the Supreme Court reversed the U.S. District Court for the Southern District of Texas's decision, paving the way for ICE to reinstitute the September 2021 memorandum. Following this decision, on July 28, 2023, ICE Acting Director Lechleitner and ERO Acting Executive Associate Director Price, directed ICE personnel to reinstitute the application of the September 2021 memorandum, ensuring that aggravating and mitigating factors for enforcement actions may be fully considered and assessed. As a result, ICE personnel once again, have the authority to exercise prosecutorial discretion in their enforcement actions, while prioritizing the apprehension and removal of noncitizens who pose threats to national security, public safety, and border security in line with this guidance. The reinstatement of the enforcement priorities allows ICE to focus on the apprehension and removal of noncitizens in a manner, that complements, both its critical interior and border security missions and best utilizes the agency's limited resources to secure the removal of noncitizens who pose the greatest threats to the homeland.

**Conclusion**

ERO remains committed to the protection of the United States through the arrest and removal of those noncitizens who undermine the safety of U.S. communities and the integrity of U.S. immigration laws. In preparation for the termination of Title 42 and changes in migration trends, ERO took several steps to ensure the agency could continue managing all aspects of the immigration enforcement process, including providing CBP with logistical support at the Southwest Border; increasing the agency's transportation capacities; developing and operating several family-focused programs geared toward the fair, humane, and expedited processing of family units; increasing the use of expedited removal under ICE's Title 8 authority; and re-instituting the civil immigration enforcement priorities. ERO's efforts allow the agency to ensure a fair and humane immigration system, while fulfilling its critical national security and public safety mission as well.

Thank you again for inviting me to testify today and I look forward to your questions.



TESTIMONY OF

Andrew Davidson  
Acting Deputy Director  
U.S. Citizenship and Immigration Services  
U.S. Department of Homeland Security

For a Hearing

BEFORE

United States Senate  
Committee on Homeland Security and Governmental Affairs  
Subcommittee on Government Operations and Border Management

ON

*“After Apprehension: Tracing DHS Responsibilities after Title 42”*

September 6, 2023  
Washington, DC

**Introduction**

Chair Sinema, Ranking Member Lankford, Members of the Subcommittee, thank you for the opportunity to appear before you today, together with my colleagues from U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE), to discuss how the Department of Homeland Security (DHS) processes noncitizen encounters at the Southwest Border (SWB). My name is Andrew Davidson, and I am the Acting Deputy Director of U.S. Citizenship and Immigration Services (USCIS). My testimony will describe the role of USCIS at the Southwest Border, and particularly how USCIS processes noncitizens in CBP and ICE custody and has operationalized the Circumvention of Lawful Pathways (CLP) rule.

**Background**

USCIS administers the nation's lawful immigration system, including the adjudication of affirmative asylum claims and applications for refugee status. USCIS employees work shoulder-to-shoulder with their ICE and CBP colleagues—from conducting protection screening interviews at DHS facilities to coordinating on national security and public safety issues. USCIS has a proud history of providing immigration benefits to eligible individuals from all over the world. These benefits support the fundamental values and needs of our nation, be they economic, humanitarian, or otherwise in the public interest. USCIS delivers these benefits while being ever vigilant for those who seek to undermine the integrity of our immigration system—or worse, those who seek to do us harm. USCIS is only able to accomplish its complex and vital mission through the efforts of its thousands of dedicated public servants who each day administer a complex immigration system fairly and professionally.

**Asylum and Credible Fear Claims**

For more than a decade, the steadily rising influx of migrants across the Southwest Border has resulted in significant increases in apprehensions and the number of noncitizens placed into the expedited removal process. USCIS screens individuals for credible fear in some situations as part of the expedited removal process and plays an important role in ensuring that potential asylees or victims of torture are not improperly returned to their home countries in contravention of our laws and those who are found ineligible are expeditiously removed. Our specially trained asylum officers conduct screening interviews for noncitizens who express a fear of return or otherwise express a fear of persecution or torture or indicate an intention to apply for asylum during the expedited removal process. The screening interview is conducted in order to determine whether the noncitizen has a credible fear of persecution or torture. Noncitizens who meet the credible fear threshold may either have their asylum applications retained by USCIS for an Asylum Merits Interview or may be placed in removal proceedings in immigration court, where they can apply for asylum or other relief or protection. Individuals found not to have a credible fear of persecution or torture may request review of that finding by an immigration judge.

Over the last 10 years, as irregular migration to the Southwest Border has increased, the number of credible fear referrals to USCIS has climbed sharply as well. Approximately 35,000 detained credible fear cases were referred to USCIS in Fiscal Year (FY) 2013; USCIS has seen the number of detained credible fear cases referred more than triple to approximately 107,000 so far in FY 2023 as of August 11, 2023. About 51,000 of those cases have been received since May 12, 2023, after the expiration of the Centers for Disease Control and Prevention's Title 42 public

health order and the return to processing all noncitizens under longstanding Title 8 immigration authorities. USCIS has pursued a number of strategies to address this increased caseload, including:

- Significantly expanding asylum officer staffing from 283 authorized positions in FY 2013 to 1,128 authorized positions in FY 2023;
- Maintaining remote interview and adjudication capability that enables asylum officers to process credible fear cases from any location;
- Bolstering credible fear staffing this fiscal year by providing refresher training on credible fear processing to several hundred USCIS employees who had been previously protection trained, thereby increasing the pool of credible fear-trained personnel;
- Deploying over 340 of these employees from other parts of USCIS to interview the credible fear caseload to supplement our permanent asylum officer corps ; and
- Most recently, cultivating a new volunteer pool of current USCIS employees interested in conducting credible fear screening, 275 of whom are currently engaged in specialized training scheduled to conclude on September 6, 2023, at which time they will join the force of credible fear-trained personnel.

Our ability to process credible fear claims in a timely manner saves valuable DHS detention resources and enables the entire expedited removal process to operate more efficiently. USCIS remains strongly committed to supporting the government-wide response to the migration flows on the Southwest Border, including ensuring those who seek protection are provided the opportunity to have those protection claims heard.

At the same time, USCIS remains committed to detecting and deterring immigration fraud, including within asylum and humanitarian benefits. The Fraud Detection and National Security Directorate (FDNS) has embedded teams at each of the 11 asylum offices. These local teams conduct pre-interview screening, provide onsite consultation to asylum officers interviewing applicants, analyze trends and large-scale fraud schemes, and serve as local liaisons to interagency law enforcement partners. Many local FDNS teams also include an intelligence research professional to monitor trends and conduct specialized analysis. USCIS continues to lead an interagency asylum fraud working group with partners from ICE's Homeland Security Investigations, CBP, Department of Justice, and Department of State. In recent years, USCIS has supported multiple successful criminal prosecutions and convictions involving asylum fraud, further demonstrating the Department's commitment to ensuring the overall integrity of the immigration system.

#### **Post-Title 42 Order Processing**

Over the past few months, DHS has implemented new measures to humanely manage the Southwest Border by enforcing our immigration laws while expanding safe, orderly, and lawful immigration pathways. This comprehensive approach was outlined in the DHS six pillar plan issued in [April 2022](#), and updated in [December 2022](#) and most recently in [May 2023](#). One of the enforcement measures implemented to support these pillars is the enhanced use of expedited removal. To ensure that expedited removal – including the credible fear process – is carried out fairly, efficiently, and quickly, USCIS worked with ICE and CBP to digitize parts of the credible fear processes and reallocated staffing resources so that hundreds of additional personnel were

available to process credible fear interviews. Additionally, certain noncitizen populations are now processed for expedited removal while they are in CBP or ICE facilities within days or just a few weeks after they were encountered. Through these measures, DHS is able to provide relief more quickly to those who are eligible and remove those who are not. Through these measures, DHS is able to provide relief more quickly to those who are eligible and remove those who are not.

The credible fear screening interview and standard is the same whether the noncitizen is in CBP or ICE custody. If the noncitizen receives a positive credible fear determination, they are issued a Notice to Appear (NTA) in immigration court for removal proceedings. Alternatively, under the Credible Fear and Asylum Processing Interim Final Rule, USCIS also has the option of retaining certain noncitizens' application for asylum and scheduling the noncitizen for a second interview, known as an Asylum Merits Interview, to determine whether the noncitizen is eligible for asylum. If the credible fear determination is negative, the noncitizen may request review of the decision by an immigration judge. If the noncitizen does not elect to have their determination reviewed or if the immigration judge affirms the asylum officer's decision, the noncitizen is subject to expedited removal and ultimately removed. If the immigration judge vacates the asylum officer's decision, the noncitizen may proceed either before USCIS or in removal proceedings before an immigration judge with their asylum application. If an NTA is issued and the noncitizen is placed in removal proceedings, the immigration court will make the final determination on the noncitizen's eligibility for asylum, withholding of removal, or other relief.

Certain nationalities, in this case nationals from Cuba, Haiti, Nicaragua, and Venezuela (CHNV), who are referred to USCIS for a credible fear interview while in Border Patrol custody are informed of legal pathways available to nationals of CHNV countries who are outside of the United States and meet certain eligibility requirements. These potentially eligible noncitizens are then asked if they would like to voluntarily withdraw their application for admission and return to Mexico in order to retain their ability to apply for these parole processes. If the noncitizen states they would like to withdraw their application for admission, the asylum officer stops the interview, administratively closes the case, and informs CBP of the noncitizen's request. If the noncitizen decides to not withdraw their application for admission, the asylum officer continues with the credible fear screening.

#### **Processing under the Circumvention of Lawful Pathways Rule**

On May 12, 2023, the Circumvention of Lawful Pathways (CLP) rule took effect. This rule encourages migrants to use lawful, safe, and orderly processes and pathways to enter the United States and imposes a rebuttable presumption of ineligibility for asylum on certain noncitizens who fail to do so. The presumption applies to noncitizens who arrive at the Southwest land border and adjacent coastal borders, meaning any coastal border at or near the U.S.-Mexico border reached by an individual after traveling from Mexico and circumventing the U.S.-Mexico land border. Noncitizens who entered the United States on or before 11:59 p.m. Eastern Time on May 11, 2023, are not subject to the CLP rule. Mexican citizens and nationals as well as stateless habitual residents of Mexico also are not subject to the CLP rule, as the rule requires travel through a third country for the presumption of ineligibility to apply.

The CLP rule provides exceptions for a noncitizen from the presumption of asylum ineligibility and allows the noncitizen to rebut the presumption of asylum ineligibility by demonstrating

exceptionally compelling circumstances. The rule specifically excepts unaccompanied children from the presumption of ineligibility for asylum. When a noncitizen attends their credible fear interview with USCIS, the asylum officer will assess whether the noncitizen is subject to the CLP rule and, if so, whether an exception applies, or the presumption of asylum ineligibility can be rebutted.

Specifically, if the noncitizen is not subject to the rule or if an exception applies, USCIS will continue with a credible fear screening, applying the significant possibility standard. If a noncitizen is subject to the rule and an exception does not apply, they are presumed ineligible for asylum. The noncitizen then has an opportunity to rebut this presumption of asylum ineligibility, based on exceptionally compelling circumstances. If they rebut the presumption of ineligibility for asylum under the CLP rule, the asylum officer will conduct the credible fear interview using the significant possibility standard, which includes an exploration of whether the applicant has a credible fear of persecution or torture for all countries of nationality and all designated countries of removal prior to the issuance of a credible fear determination.

If the noncitizen is unable to establish an exception or rebut the presumption of ineligibility for asylum, their fear claim is assessed using the reasonable possibility standard, which requires a higher standard of proof. The reasonable possibility standard includes screening the noncitizen for fear of persecution or torture in the designated country or countries of removal, if any are listed, to determine whether they would be eligible for statutory withholding of removal or protection under the regulations implementing U.S. obligations under Article 3 of the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. If no designated countries of removal are listed, then the noncitizen is screened for their country of citizenship or nationality. The designation of a country of removal is made by our DHS colleagues in CBP or ICE and provided to USCIS at the time of the referral.

The Circumvention of Lawful Pathways rule applies to noncitizens who arrive at the Southwest land border and adjacent coastal borders, meaning any coastal border at or near the U.S.-Mexico border reached by an individual after traveling from Mexico and circumventing the U.S.-Mexico land border. As noted above, noncitizens are not subject to the CLP rule if the noncitizen 1) entered the United States on or before May 11, 2023, 11:59 P.M. Eastern Time; 2) did not enter the United States from Mexico across the Southwest land border or adjacent coastal border; or 3) is a Mexican citizen, national, or stateless individual who last habitually resided in Mexico, because the rule requires travel through a third country. During implementation of the CLP rule, 37,075 of the 51,224 credible fear cases USCIS completed between May 12, 2023, and August 11, 2023, have been subject to the rule. Of those subject to the rule:

- In 1,071 cases an exception to the CLP rule was established, resulting in 815 cases (76.1%) receiving a positive determination at the significant possibility standard, 248 cases (23.2%) receiving a negative determination at the significant possibility standard, and 8 cases (0.8%) were administratively closed.
- In 4,292 cases the presumption of ineligibility for asylum was rebutted, resulting in 3,698 cases (86.2%) receiving a positive determination at the significant possibility standard, 577 cases (13.4%) receiving a negative determination at the significant possibility standard, and 17 cases (0.4%) were administratively closed.
- In 31,712 cases the presumption of ineligibility for asylum under the CLP rule was applied, resulting in 16,635 cases (52.5%) receiving a positive determination at the

reasonable possibility standard, 14,937 (47.1%) receiving a negative determination at the reasonable possibility standard, and 140 (0.4%) were administratively closed.

On August 3, 2023, the U.S. Court of Appeals for the Ninth Circuit issued a stay of the U.S. District Court for the Northern District of California's order in *East Bay Sanctuary Covenant v. Biden*, No. 18-cv-06810 (N.D. Cal.), vacating the CLP rule. At this time, while the stay remains in place, DHS continues to apply the CLP rule.

**Conclusion**

USCIS will continue to respond to the rising number of credible fear referrals by ensuring DHS follows the laws written by Congress – swiftly processing noncitizens so they may either seek relief before an immigration judge or be expeditiously removed. Thank you for the opportunity to testify. I look forward to answering your questions.



**CWS Statement to the Senate Homeland Security and Government Affairs (HSGAC) Subcommittee on Government Operations and Border Management Pertaining to its [Hearing](#), “Tracing DHS Responsibilities After Title 42”**

Church World Service (CWS) is a 77-year old humanitarian organization representing 37 Protestant, Anglican, and Orthodox communions, as well as resettlement offices and affiliates, home study and post release services, and asylum seeker case management services across the country. CWS urges the Homeland Security and Government Affairs Committee (HSGAC) to use this investigation into DHS operations after Title 42 to reject harmful – and ineffective – deterrence-based policies at the border and to catalyze support for solutions that affirm the dignity of arriving migrants and allow them and the communities that welcome them to thrive.

**CWS urges Congress to reject the harmful and dehumanizing rhetoric and policies that underlies a deterrence-based approach at the border.** The end of the use of Title 42 – used to rapidly expel arriving migrants by abrogating their right to seek asylum – in May 2023 marked an opportunity for the administration to turn toward more welcoming policies. Instead, asylum seekers encountered by Border Patrol have been met with additional harsh [restrictions](#) and [bans](#), forced into [expedited removal procedures](#) with life-or-death consequences and without meaningful access to due process.

As we saw under Title 42, these policies unlawfully return migrants into danger and persecution. As we saw under Title 42, these deterrence-based policies fail on their own terms: they never sustainably reduce the number arriving migrants seeking protection. Increasing border encounters in July and August – particularly of [asylum seeking children and families](#) – have come in the context of [unprecedented investment in border enforcement](#), sustained and intense asylum restrictions, and [record numbers](#) of migrant deaths.

Meanwhile, programs that support an infrastructure of welcome and establish more effective and humane asylum processing remain nascent and underfunded. Rather than attempting to deter those fleeing danger from entering the U.S., **CWS urges Congress to promote programs and policies to ensure that the communities who welcome newcomers are adequately equipped to support them.** Congress should:

- Adequately fund the [Shelter and Services Program](#) (SSP) in a manner that is responsive to the needs of service providers and establish other, longer-term programs to support communities welcoming asylum seekers and provide community-based case management services.
- Enact legislation like the ASPIRE Act ([S. 2175](#)) that promotes economic stability and self-sufficiency by ending lengthy wait times for asylum seekers to access work authorization.
- Redirect ever-growing border enforcement and surveillance spending to U.S. Citizenship and Immigration Services (USCIS) to more efficiently process employment authorization documents and hire and train more asylum officers.
- Support [measures](#) that are necessary to adequately protect unaccompanied children, including by holding DHS accountable for providing licensed child welfare professionals, pediatric medical staff, and legal representation to arriving unaccompanied children.

Our nation’s diverse faith traditions compel us to love our neighbor, accompany the vulnerable, and welcome the sojourner. As a faith-based organization, we affirm the worth and dignity of all people – including and especially those forced to flee their homes. CWS urges Congress to reject inflammatory rhetoric and punitive border policies, and instead support measures to ensure that all who come to the U.S. seeking safety can thrive in the communities that welcome them.



[www.theyoungcenter.org](http://www.theyoungcenter.org)  
 Chicago, IL | Harlingen, TX | Houston, TX | Los Angeles, CA  
 New York, NY | Phoenix, AZ | San Antonio, TX | Washington, DC

**Young Center for Immigrant Children's Rights Statement for the Senate Committee on Homeland Security & Governmental Affairs, Subcommittee on Government Operations and Border Management**

**"After Apprehension: Tracing DHS Responsibilities after Title 42"  
 September 06, 2023**

Urgent reforms are needed to improve Customs and Border Protection (CBP) custody for children. Since 2003, the [Young Center for Immigrant Children's Rights](http://www.theyoungcenter.org) has been advocating on behalf of unaccompanied and separated immigrant children in federal custody. The Young Center has been appointed as the independent Child Advocate (best interests guardian ad litem) for thousands of children, providing best interests recommendations to federal agencies to ensure that every decision made about a child considers the child's expressed wishes, safety and right to family integrity, liberty, development, and identity. These best interest factors are well-established in federal and international law, including in the Convention on the Rights of the Child. From our experience working with immigrant children, we understand the risks children face when detained in CBP custody.

**CBP custody is dangerous for children.**

Since its establishment, [conditions of custody in U.S. Customs and Border Patrol \(CBP\) stations have been poor](#), often in violation of its own standards. [Facilities are often dangerously overcrowded](#), temperatures are notoriously cold, medical care is inadequate, the quality of food is poor, and people are often forced to wear the same clothes for days on end without opportunities to bathe. Conditions of custody are made worse by allegations of verbal and physical abuse and the lack of oversight and accountability for violations. These realities became all too clear in the recent death of Anadith "Ana" Danay Reyes Álvarez, an 8-year-old child who contracted the flu in custody and who [did not receive proper medical treatment despite obvious signs of severe illness](#) and her mother's repeated attempts to obtain emergency care.

Last year, Dr. Paul Wise, a pediatrician, was appointed by a federal court to monitor CBP's compliance with the Flores Settlement Agreement regarding conditions of custody for migrant children in two of the busiest ports of entry in Texas, the Rio Grand Valley and El Paso sectors. [In a report following Anadith's death, Dr. Wise concluded that the child's death was a "preventable tragedy"](#) that resulted from a series of failures in the CBP medical and custodial systems for children. He further noted, "These failures occurred at multiple levels and should not be viewed as rare anomalies but rather as systemic weaknesses that if not remedied, are likely to result in future harm to children in CBP custody."<sup>1</sup>

**CBP must make immediate changes to improve conditions for children in its custody:**

**Children should not be held in CBP custody for more than 72 hours.**

CBP regularly detains children beyond the 72-hour limit, which can lead to abuse. This is a direct violation of the Flores Settlement Agreement and the Trafficking Victims Protection Reauthorization Act which mandates that unaccompanied children cannot be held in CBP custody for longer than 72 hours. CBP holding centers are not designed to hold children, let alone for a prolonged period. Children have reported an inability to shower regularly, not having enough food, and receiving inadequate medical care. Their prolonged detention leads to their continued exposure to poor and abusive conditions.

**CBP must prioritize the best interests of children in its care.**

CBP standards should meet or exceed standards of care recommended by pediatric health and child wellbeing experts, including access to clean bathroom and shower facilities that allow for individual



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privacy; clean, age-appropriate clothing; adequate bedding, food, water, and personal hygiene products; adequate medical care; telephone access to contact family; and the ability to remain with trusted family caregivers but separated from unknown adults. Facilities should be temperature-controlled, have adequate lighting, and lighting should be adjusted to facilitate nighttime sleep. [CBP's National Standards on Transport, Escort Detention, and Search \(TEDS\)](#) governs the minimum standards of care at its facilities, yet they are not being implemented or enforced. Independent oversight by outside entities is urgently needed to ensure that the TEDS standards are implemented and violations corrected. These standards should be regularly reviewed for improvements.

**Children must have access to attorneys and legal service providers while in CBP custody.**

Children should have the opportunity to meet with an attorney or legal service provider in confidential spaces (both in person and telephonically) from the moment of detention. Legal service providers should have access to rosters of children in CBP custody.

**CBP must document whenever a child claims a relationship to another migrant.**

CBP should maintain records reflecting when an adult or child in its custody claims relation to another migrant. This should include any extended family members including siblings, grandparents, and other relations and should be documented in the I-213 for each member of the family. This should also include documentation of US citizen children or family members who are encountered or apprehended at the same time. This documentation should be included in both the child's and the family member's files and in such a manner that both ORR and ICE receive the information.

**CBP must identify unaccompanied children arriving at the border with adult relatives and provide ORR access to adults and children to verify relationships and keep families together whenever possible.**

CBP must quickly adapt existing facilities to provide space for the Department of Health and Human Services' (HHS) Office of Refugee Resettlement (ORR) staff to work with families—allowing conversations with children and family members so that, instead of separating these families, [ORR can expedite its evaluation of accompanying family members as a sponsor for the child's care for joint release at the border](#). The agencies must demarcate CBP functions from those of ORR; this could be as simple as separate rooms in which ORR can have confidential conversations with children and family outside of an enforcement context. In the longer term, the two agencies could share a building or campus, allowing CBP to process families on arrival and providing a place for them to stay while ORR verifies family relationships and vets sponsors.

**Ultimately, HHS must have immediate access and authority to care for people in CBP custody.**

With reform efforts leading to so few results, Congress must ensure that HHS, with its humanitarian mandate, can provide humanitarian relief to families and individuals encountered by DHS. At a minimum HHS should have a separate designated space wherever any person could be detained longer than 72 hours in CBP custody so that staff can conduct medical and mental health screenings, ensure opportunities for general hygiene, provide adequate food and hydration, offer nursing and diapering supplies, and appropriate space for children. At the same time, HHS staff can immediately begin efforts to reunify unaccompanied children with sponsors in the U.S. and verify family relationships so that unaccompanied children who arrive with a non-parent relative can remain in that relative's care. These changes would at least ensure that people are treated with dignity and care by an agency that has a humanitarian – rather than law enforcement – mandate.

**Congress must fund humanitarian reception centers at the border to support an immigration system that aligns with the 21<sup>st</sup> century.** Congress can make policy choices today that build a better



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humanitarian protection system for the future. Safe processing does not require militarization and force. Congress should fund reception centers at the border, ideally run by NGOs, where people seeking protection can receive humanitarian support such as basic medical care, legal orientation, referrals to community-based case management services at destination cities, and facilitation of onward travel.

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### Statement of the Women's Refugee Commission

Submitted to the U.S. Senate Homeland Security and Governmental Affairs  
Subcommittee on Government Operations and Border Management  
Hearing, "After Apprehension: Tracing DHS Responsibilities After Title 42"

September 6, 2023

The Women's Refugee Commission ("WRC") submits this statement to the Senate Homeland Security Subcommittee on Government Operations and Border Management for the September 6, 2023 hearing, "After Apprehension: Tracing DHS Responsibilities After Title 42."

WRC is a non-profit organization that advocates for the rights of women, children, and families fleeing violence and persecution. The Migrant Rights and Justice ("MRJ") Program focuses on the right to seek asylum in the United States and strives to ensure that migrants and refugees, including women and children, are provided with humane reception in transit to and in the United States, given meaningful access to legal protection, and are protected from exposure to gender discrimination or gender-based violence.

Since 1996, MRJ staff have made numerous visits to the southwest border region, including along Mexico's northern border, as well as to immigration detention centers for adult women and families and to shelters housing unaccompanied children throughout the country. WRC has interviewed hundreds of detained women, families, and children seeking asylum in the United States, as well as other critical and relevant stakeholders, including service providers and government officials.<sup>1</sup> Based on the information that we collect on these visits and our analysis

<sup>1</sup> Reports of our findings include: Women's Refugee Commission, *Decreasing ORR's Dependence on Congregate Care: Four Recommendations for Progress* (2023); Women's Refugee Commission, *New Asylum Ban Leaves Migrants Stranded: Recommendations to Increase Access to Protection at the US-Mexico Border* (2023); Women's Refugee Commission, *Creating Accessible Regional Pathways for Migrant Women and Families: Lessons from the Parole Processes for Cubans, Haitians, Nicaraguans, and Venezuelans* (2023); Women's Refugee Commission, National Immigrant Justice Center, and Young Center for Immigrant Children's Rights, *ICE's New Young Adult Case Management Program: Why It Falls Short of Case Management Best Practices and Puts Youth at Risk* (2023); Women's Refugee Commission, Border Servant Corps, International Rescue Committee, Jewish Family Service of San Diego, Mission: Border Hope, Refugees International, and Save the Children, *Sustainable, Orderly, and Safe Reception at the US-Mexico Border: Recommendations for the Shelter and Services Program* (2023); Women's Refugee Commission, *Inequity at the US-Mexico Border: Ukrainians Seeking Safety and Implications for US Asylum Processing* (2023); Women's Refugee Commission and Instituto para las Mujeres en la Migración A.C., *Stuck in Uncertainty and Exposed to Violence: The Impact of U.S. and Mexican Migration Policies on Women Seeking Protection in 2021* (2022); Women's Refugee Commission, *Prison For Survivors: The Detention of Women Seeking Asylum in the United States*

of the laws and policies relating to these issues, we advocate for improvements and make recommendations for changes to U.S. policy and practice. Below we highlight three critical issues facing people seeking asylum and provide recommendations.

**The Biden administration’s new rule blocks access to asylum and forces vulnerable people to wait in danger in Mexico**

This hearing comes several months after the Biden administration began implementing its new rule, “Circumvention of Lawful Pathways,” at the US-Mexico border and in courtrooms across the country.<sup>2</sup> Since the lifting of Title 42<sup>3</sup> and with this rule now in effect, WRC has found that people are illegally blocked from being able to seek asylum—other than for narrow exceptions—despite their guaranteed right under US law to do so regardless of place of entry. A federal court has already found the rule unlawful, but it remains in effect while the Biden administration appeals.<sup>4</sup> A class action lawsuit is challenging Customs and Border Protection’s (“CBP”) practice of turning away individuals seeking protection at US ports of entry at the southern border without CBP One appointments.<sup>5</sup> Due to these routine turnbacks, CBP One appointments have essentially become the exclusive way to seek asylum at the US-Mexico border, despite the rule’s supposed exceptions for unaccompanied children and others.

Since the lifting of Title 42 on May 11, 2023, migrants continue to face challenges to entering the US and seeking safety. Many vulnerable people wait weeks or months in Mexico to secure a CBP One appointment, at risk of violent attacks and living in squalid and dangerous conditions.<sup>6</sup> During a recent visit to northern Mexico, WRC spoke with dozens of people seeking asylum and

(2017); Women’s Refugee Commission, Lutheran Immigration and Refugee Service, and Kids in Need of Defense, *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families* (2017); Women’s Refugee Commission and Lutheran Immigration and Refugee Service, *Locking Up Family Values, Again: A Report on the Renewed Practice of Family Immigration Detention* (2014); Women’s Refugee Commission, *Migrant Women and Children at Risk: In Custody in Arizona* (2010); Women’s Refugee Commission, *Torn Apart by Immigration Enforcement: Parental Rights and Immigration Detention* (2010); Women’s Refugee Commission, *Innocents in Jail: INS Moves Refugee Women From Krome to Turner Guilford Knight Correctional Center* (2001); Women’s Refugee Commission, *Behind Locked Doors: Abuse of Refugee Women at the Krome Detention Center* (2000); and Women’s Refugee Commission, *Liberty Denied: Women Seeking Asylum Imprisoned in the U.S.* (1997).

<sup>2</sup> Circumvention of Legal Pathways, 88 Fed. Reg. 31,314 (May 11, 2023) (codified at 8 C.F.R. pt. 208, 10003, and 1208).

<sup>3</sup> For over three years, the Title 42 Order was used to deprive individuals of the chance to seek asylum in the United States and summarily expelled them back to Mexico or to the country they had fled from—contrary to US and international refugee law. The Order, which had been dubiously justified as a COVID-19 mitigation measure, came to an end with the expiration of the national COVID-19 public health emergency on May 11, 2023.

<sup>4</sup> *East Bay Sanctuary Covenant v. Biden* - Summary Judgment Order (July 25, 2023),

<https://www.aclu.org/documents/east-bay-sanctuary-covenant-v-biden-summary-judgment-order>.

<sup>5</sup> *Al Otro Lado and Haitian Bridge Alliance v. Mayorkas* Class Action Complaint (July 27, 2023),

<https://cgrs.uclawsf.edu/legal-document/complaint-2>.

<sup>6</sup> Human Rights First, *Refugee Protection Travesty: Biden Asylum Ban Endangers and Punishes At-Risk Asylum Seekers* (July 2023), <https://humanrightsfirst.org/library/refugee-protection-travesty/>; Women’s Refugee Commission, *New Asylum Ban Leaves Migrants Stranded: Recommendations to Increase Access to Protection at the US-Mexico Border* (August 2023),

<https://www.womensrefugeecommission.org/research-resources/new-asylum-ban-leaves-migrants-stranded-recommendations-to-increase-access-to-protection-at-the-us-mexico-border/>.

humanitarian service providers who confirmed that kidnappings, extortion, and sexual violence against women is common.

### **Fear screenings in CBP facilities fail to comply with due process obligations**

Since April, the Department of Homeland Security (“DHS”) and the Department of Justice (“DOJ”) have required some individuals to undergo credible fear interviews while in custody in CBP facilities at the border. The rushed process has caused credible fear positive rates to drop dramatically.<sup>7</sup> Few people have time to consult with counsel, and USCIS has failed to notify attorneys of their clients’ scheduled fear interviews.<sup>8</sup> Legal consultation and representation providers found that individuals asked for or accepted deportation due to medical neglect in custody.<sup>9</sup> There have also been several individuals enrolled in the program whose primary language was not Spanish and should not have been enrolled in the first place. This program harms people’s ability to meaningfully access legal counsel and pursue an asylum claim. Indeed, more than 65 Members of Congress have called for DHS and DOJ to halt fear screenings in CBP facilities.<sup>10</sup>

### **Humanitarian service providers need federal support**

During times of low and high arrivals, nonprofit organizations and local governments have received newly arrived migrants and provided shelter and respite. Rather than rely on costly and inhumane Immigration and Customs Enforcement (“ICE”) immigration detention, which Women’s Refugee Commission has documented for years is harmful, traumatizing, and impedes due process, communities every day coordinate release of individuals and families from CBP custody to their care.<sup>11</sup> At shelters and respite sites, individuals and families provide food, clothing, medical aid, legal information, and transportation support. Without this critical assistance, CBP facilities would experience overcrowding and migrants would be stranded

<sup>7</sup> Hamed Aleaziz, “U.S. is rejecting asylum seekers at much higher rates under new Biden policy,” *Los Angeles Times* (June 20, 2023), <https://www.latimes.com/politics/story/2023-06-20/biden-asylum-seekers-turned-down-rates>.

<sup>8</sup> “Obstructed Legal Access,” *National Immigrant Justice Center* (June 20, 2023), <https://immigrantjustice.org/staff/blog/obstructed-legal-access-june-2023-update>.

<sup>9</sup> “Government Obstruction Forces NIJC to Discontinue Legal Consultations for People Facing Asylum Screenings in CBP Detention,” *National Immigrant Justice Center* (August 1, 2023), <https://immigrantjustice.org/press-releases/government-obstruction-forces-nijc-discontinue-legal-consultations-people-facing>.

<sup>10</sup> “Padilla, Menendez, Barragán, Espaillat Call on Biden Administration to Immediately Halt Credible Fear Interviews at CBP Facilities Given Due Process Concerns” (August 1, 2023), <https://www.padilla.senate.gov/newsroom/press-releases/padilla-menendez-barragan-espaillat-call-on-biden-administration-to-immediately-halt-credible-fear-interviews-at-cbp-facilities-given-due-process-concerns/>.

<sup>11</sup> Department of Homeland Security, “U.S. Immigration and Customs Enforcement Budget Overview Fiscal Year 2022 Congressional Justification,”

[https://www.dhs.gov/sites/default/files/publications/u.s.\\_immigration\\_and\\_customs\\_enforcement.pdf](https://www.dhs.gov/sites/default/files/publications/u.s._immigration_and_customs_enforcement.pdf); Tom Dreisbach, “Government’s own experts found ‘barbaric’ and ‘negligent’ conditions in ICE detention,” *NPR* (August 16, 2023),

<https://www.npr.org/2023/08/16/1190767610/ice-detention-immigration-government-inspectors-barbaric-negligent-conditions>; Women’s Refugee Commission, *Prisons for Survivors: The Detention of Women Seeking Asylum in the U.S.* (October 1, 2017), <https://www.womensrefugeecommission.org/research-resources/prison-for-survivors-women-in-us-detention-oct2017/>.

without their basic humanitarian needs met.<sup>12</sup> In fiscal year 2023, Congress provided CBP \$800 million for the Shelter and Services Program (“SSP”) to help ensure the efficient, humane, and sustainable reception of newly arrived migrants. Although the initial disbursement lacked transparency and failed to support some service providers, WRC is hopeful that SSP, if funded by Congress again, will improve and better meet the needs of shelter networks to provide critical services.<sup>13</sup>

Beyond meeting initial basic humanitarian needs, service providers and local governments are trying to provide migrants longer-term assistance, including transitional housing away from shelter, immigration case support, and community integration. Congress is behind in supporting this assistance and ensuring that community-based case management and longer-term support can be provided while people seeking asylum wait for much-needed work authorization.<sup>14</sup>

### Recommendations

- Members of Congress should conduct regular oversight over the agencies responsible for implementing the “Circumvention of Lawful Pathways” rule and encourage the Biden administration to rescind it, and investigate border management policies and practices that block people seeking protection in the United States or force them to wait in Mexico.
- Members of Congress should call on DHS and DOJ to halt credible fear interviews at CBP facilities.
- Members of Congress should robustly fund the Shelter and Services Program to support local nonprofit, governmental social service organizations, and states/localities in providing humanitarian support to migrants arriving at the border, and conduct oversight to ensure that the funding is being transparently and appropriately administered.
- Instead of ICE immigration detention or electronic surveillance programs, Members of Congress should robustly fund longer-term services outside of ICE for people seeking asylum to help meet their humanitarian needs, assist them in successfully navigating the immigration process, and support them in accessing services and finding stability in their new communities.

<sup>12</sup> “Sustainable, Orderly, and Safe Reception at the US-Mexico Border: Recommendations for the Shelter and Services Program,” *Women’s Refugee Commission, Border Servant Corps, International Rescue Committee, Jewish Family Service of San Diego, Mission: Border Hope, Refugees International, and Save the Children* (April 19, 2023), <https://www.womensrefugeecommission.org/research-resources/sustainable-orderly-and-safe-reception-at-the-us-mexico-border-recommendations-for-the-shelter-and-services-program/>.

<sup>13</sup> “WRC Joins 70+ Organizations Expressing Concern Over Disregard for Key Shelter Needs in Initial Distribution of Shelter and Services Program Funding,” (July 12, 2023), <https://www.womensrefugeecommission.org/research-resources/wrc-joins-70-organizations-expressing-concern-over-disregard-for-key-shelter-needs-in-initial-distribution-of-shelter-and-services-program-funding/>.

<sup>14</sup> “Congresswoman Pingree Renews Push to Speed Up Asylum Seeker Work Authorization Process,” (March 1, 2023), <https://pingree.house.gov/news/documentsingle.aspx?DocumentID=4501>.

<b>Question#:</b>	1
<b>Topic:</b>	CBP One Changes
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable Kyrsten Sinema
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** As stated during the hearing, CBP One appointments do not significant expedite migrant processing. What changes, if any, could be made to the CBP One application to help provide more advance information about these migrants to CBP and expedite migrant processing?

**Response:** The CBP One scheduling feature cuts out smugglers, decreases migrant exploitation, and makes processing more efficient upon arrival. U.S. Customs and Border Protection (CBP) is continuously evaluating how to further improve the process, including through expanding access to appointments and streamlining processing.

At this time, CBP does not require further advance information from CBP One, as it is used as a scheduling tool. The use of CBP One with an appointment helps CBP to identify individuals at that limit line who are scheduled and ready to be processed.

The process itself varies at our ports. At some ports of entry, noncitizens with CBP One appointments are sent to our primary inspection location where their use of CBP One helps prepopulate some of the data that has been submitted as part of the app in the primary inspection, after which they are referred to secondary inspection.

In other ports of entry, we have established a process where noncitizens are directly put to secondary inspection from the limit line. In these instances, the time-savings provided by pre-population of data is not as significant.

We do, however, see significant time savings with use of the Electronic A-File, where on average agents save up to 30 minutes per case.

<b>Question#:</b>	2
<b>Topic:</b>	Safe Community Releases
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable Kyrsten Sinema
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** The Tucson Sector is one of the busiest sectors for migrant encounters in the country. In May 2023 and again in September 2023, local Border Patrol stations were forced to release migrants into small, remote communities in Arizona, many of which do not have any onward transportation or shelter options, leaving the migrants stranded in the Arizona heat. Despite the lack of transportation and shelter, Border Patrol considers these "safe community releases". To what extent does the availability of onward transportation, shelter, food, water, medical services, or other factors affect Border Patrol's determination that a particular community is "safe" for the purposes of migrant releases?

**Response:** The U.S. Border Patrol (USBP) conducts safe community releases at pre-identified locations to ensure all noncitizens released from custody are provided essential support upon release, and may access food, restrooms, and transportation to continue to their destinations. Prior to executing safe community releases, USBP notifies mayors' offices, police departments, sheriffs' departments, and local emergency management offices in locations where safe community releases are being conducted.

<b>Question#:</b>	3
<b>Topic:</b>	Changing Flows
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable Kyrsten Sinema
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** Migrant flows often quickly shift geographic areas along the border. How does CBP logistically quickly shift resources to different locations in order to address the changing flows?

**Response:** USBP works to identify traffic patterns and adjusts resources such as transportation assets and personnel to address those patterns to the extent possible. Irregular border crossings across multiple geographic locations present operational and logistical challenges across much of the Southwest Border. USBP has found that it is more expedient and better for the workforce to base as many agents as possible in their permanent sectors, while transporting migrants to sectors that have capacity for lateral decompression when needed. USBP does have the ability to detail agents, and shift resources such as buses, across sectors, when necessary.

<b>Question#:</b>	4
<b>Topic:</b>	Contacting Clients
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable Kyrsten Sinema
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** To follow up on the discussion related to credible fear interviews in Border Patrol custody. Some legal service providers have expressed difficulty when it comes to contacting their clients while they are in Border Patrol facilities. It appears that not all facilities have mechanisms to allow these legal service providers to call their clients-they reportedly have to wait for their clients to contact them. Are these reports accurate? And what is Border Patrol doing to improve communication options between legal service providers and their clients?

**Response:** USBP has taken various measures to provide noncitizens in Border Patrol custody with the ability to consult with legal services providers prior to their interviews. USBP provides a list of pro bono legal service providers and has set up private phone booths for attorney phone calls. To maximize use of limited legal support resources, USBP helps arrange calls with legal service providers who assist specifically with legal counseling prior to the credible fear interview to ensure that as many noncitizens as possible are able to reach legal services providers prior to their interview. Additionally, each sector has established e-mail mailing lists that legal service providers can use to communicate with the sectors to help establish contact with their client/noncitizen. CBP HQ is also in regular contact with legal services providers to determine how to improve legal access in USBP custody.

<b>Question#:</b>	5
<b>Topic:</b>	IFT and RVSS Maintenance
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable Kyrsten Sinema
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** The Federal Aviation Administration (FAA) and Customs and Border Protection (CBP) have an interagency agreement for maintaining CBP's border surveillance systems, including Integrated Fixed Tower (IFT) and Remote Video Surveillance Systems (RVSS) installations. Reportedly, the FAA's Logistics Center (FAALC) stopped funding the existing contract for maintenance and sustainment services on IFT and RVSS installations on June 30, 2023. How are these IFTs and RVSS being maintained and fixed now that this program does not have funding? I understand that some of the IFT and RVSS installations in the Tucson Sector are not working and there is no planned maintenance to fix them-why have they not been fixed, and when will this be remedied?

**Response:** The Integrated Fixed Tower (IFT) and Remote Video Surveillance Systems (RVSS-U) Systems are currently funded and supported under multiple Service Order Agreements (SOAs) between CBP and the FAA's Logistics Center (FAALC). These SOAs authorize and fund the FAALC to provide corrective and preventative maintenance with all levels of sustainment and program support. The scope of work is defined in the Inter-Agency Agreement for total program and sustainment support.

Based on the current SOAs, the IFT and RVSS-U systems in Tucson Sector, although funded, have not received adequate corrective and preventive maintenance ever since the FAALC stopped funding the primary maintenance and sustainment service contractor for each respective system at the end of June 2023. The FAALC is using its own government resources to perform both corrective and preventative maintenance. CBP continues to work with the FAALC to define the plan of action and milestones required to quickly remediate and fix these tower outages and improve the long-term operational performance in Tucson Sector. Longer term, CBP will continue to work with the FAALC to better maintain these systems.

<b>Question#:</b>	6
<b>Topic:</b>	Accurate Information
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable Kyrsten Sinema
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** Some NGOs report that some of the information migrants receive from Border Patrol agents are incorrect. How does Border Patrol ensure that agents are kept up to date on the shifting policies surrounding asylum access, as it relates to Border Patrol's role in the process? How does Border Patrol ensure agents are imparting accurate information to migrants about their ability to claim fear or seek asylum?

**Response:** USBP is sensitive to the importance of relaying accurate information to noncitizens about the immigration process and is investigating these reports. Generally, USBP relays any new and applicable asylum processing guidance from USBP headquarters (HQ) to the field commanders/Chiefs to be disseminated locally. Guidance is reviewed by CBP's Office of the Chief Counsel. Station command staff relays any applicable guidance to agents through emails and musters.

<b>Question#:</b>	7
<b>Topic:</b>	Transition from Soft-Sided Facilities
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** Has CBP examined how to transition its facility needs from soft-sided to hard-sided facilities? If so, please share any assessment or examination with my staff. If not, why not?

**Response:** The current Soft-Sided Facilities (SSFs) are deployed to help meet the needs for short-term migrant processing and holding stemming from the sustained influx of migrants encountered at the Southwest Border. Funding was appropriated to the Department of Homeland Security in Fiscal Year (FY) 2022 for the construction of two permanent hard-sided Joint Processing Centers (JPCs) in Laredo, Texas, and Yuma, Arizona, which will enable a whole-of-government approach to process noncitizens. The JPCs are projected to be operational in FY 2026. While some SSFs will likely continue to be in operation given the need for flexibility in short-term holding capacity, JPCs are intended to supplant some temporary SSFs with a cost-efficient, sustainable solution.

<b>Question#:</b>	8
<b>Topic:</b>	Image Technician Position
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** I recently introduced a bill with Sen. Kelly to create a new "Image Technician" position within the CBP Office of Field Operations to review the images generated by NII machines. It's my understanding that process is currently being handled by CBP Officers. As CBP is working to balance the resumption of migrant processing at the ports with its trade and travel facilitation and border security missions, I'm very concerned that CBP does not have enough flexibility in its staffing. Do you believe that this bill, which would build on the successful Brownsville image scanning pilot, would help you better accomplish your mission? If so, how?

**Response:** CBP has previously provided informal comments on the bill referenced above and would appreciate the opportunity to further engage with your staff on the bill. CBP is also exploring possibilities in leveraging artificial intelligence/machine learning to automate and streamline the non-intrusive inspection image review process. CBP is engaging with industry leaders in algorithm development for anomaly detection capabilities with the goal to advance the adjudication of images while increasing the scanning capability along the southwest border.

<b>Question#:</b>	9
<b>Topic:</b>	Southbound Inspection Rates
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** I understand that CBP does not currently have any set program and an inconsistent administration of its southbound inspection efforts. This issue has been one of bilateral importance with our relationship with Mexico. What percentage of outbound cargo or vehicles are currently scanned?

What resources, authorities, or other capabilities do you need to increase your southbound inspection rates?

Would my and Senator Kelly's BEST Facilitation Act, which allows for CBP to create a new position to review the images generated from NII scans, give you additional personnel flexibilities that would help you conduct more outbound cargo scans?

**Response:** Outbound operations are generally conducted via “pulse and surge” based on intelligence and information received/collected. Due to infrastructure limitations, it is challenging to utilize non-intrusive inspection (NII) equipment in the outbound environment although where the infrastructure allows it, CBP uses mobile scanning technology to support the “pulse and surge” operations. NII does not track data for outbound scans. NII systems are used for outbound scanning in support of surge operations and at the discretion of each port of entry (POE) based on operational tempo and resource availability.

The Consolidated Appropriations Act, 2023 provided funding for the procurement and utilization of NII equipment for use in the outbound environment. CBP will use the NII equipment as a proof of concept to increase scanning and determine the effectiveness of the technology to support southbound inspection efforts into Mexico.

In September 2023, CBP used FY 2023 appropriations to procure seven mobile large-scale systems to deploy them to enhance NII scanning at seven border land ports of entry (LPOEs). The locations are: San Ysidro, Calexico, San Luis, Nogales, El Paso, Eagle Pass, and Roma. The systems will be deployed by Q2 FY 2024 and are intended to increase southbound inspection rates to interdict contraband, narcotics, and unreported U.S. currency.

CBP would welcome the opportunity to discuss outbound inspection operations and protocols and the results of the outbound pilot project.

<b>Question#:</b>	10
<b>Topic:</b>	Facilities Issues
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** As you are working to balance the resumption of processing migrants at the ports with your normal trade and travel facilitation and border security missions, what facilities issues are you encountering? Do you believe that having more control over the space at the ports rather than having to work through GSA would help you better accomplish that mission? Why or why not?

**Response:** Having CBP control space at the ports, rather than having to work through the General Services Administration (GSA), may increase CBP's flexibility to modify the facilities to meet the dynamic environment. However, it would also create additional requirements and responsibilities for CBP. We are working with GSA to ensure that any identified facilities issues at ports of entry are addressed as soon as possible.

<b>Question#:</b>	11
<b>Topic:</b>	GSA Prospectus Threshold
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** What impact, if any, does the GSA prospectus threshold have on its management of land ports of entry (LPOEs) along the southern and northern borders? Would increasing the GSA prospectus threshold positively impact CBP operations at LPOEs? If so, why? If not, why not?

**Response:** For projects that exceed established prospectus thresholds, GSA must develop prospectuses that describe these projects, then submit them to GSA's Central Office and the Office of Management and Budget for review/approval prior to submittal to the Congressional authorizing committees. Congressional approval is required before appropriated project funds can be obligated. The prospectus development and approval process can add significant time to the project timeline, thus delaying project starts with corresponding delays to the delivery of LPOE modernizations/improvements that are critical to safe and effective CBP operations. An increase to the prospectus thresholds would provide greater flexibility for agencies to execute much-needed projects.

<b>Question#:</b>	12
<b>Topic:</b>	CBP One Security Risks
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** I'm aware of two separate reports involving security risks with CBPOne. One report suggested that the cartels have been advertising a VPN service to defeat the geographical limitations CBP has placed on CBPOne. The other report noted that the cartels have started to take control of the corridors to the ports where CBPOne is being used. Are these reports true? If so, what is CBP doing to address these issues?

**Response:** Regarding the first report, the CBP One™ application uses the Global Positioning System (GPS) address of a mobile device to determine whether a user is within Central or Northern Mexico. Virtual private networks (VPNs) are used to mask the Internet Protocol (IP) address to change the appearance of an individual's location. However, the CBP One™ application does not utilize IPs to validate location and instead relies on GPS data, which are more secure and are not affected by the use of VPNs.

CBP One™ requires individuals to submit full biographic information, pass a geolocation check, and complete a live facial photo submission to schedule appointments. The geolocation check and live photo are key security measures and combat fraud by ensuring the person scheduling an appointment matches their registration, is a real person, and is located in Central or Northern Mexico. In addition to the geolocation check and the live photo, CBP One™ has incorporated multiple security features such as CAPTCHA technology to authenticate human users, improved back-end system changes to combat bots and automation, and action against accounts flagged for fraudulent activity. CBP continues to monitor CBP One™ appointment requests and pursue additional security capabilities to combat against fraud.

Regarding the second report, while CBP is unaware of the specific report referenced, CBP continually evaluates the application to guard against bad actors and consistently observes daily request levels that are generally consistent with the migrant populations known to be in Central and Northern Mexico. CBP made updates to the application in early May which took action to cut out smugglers who prey on noncitizens, including by allocating a percentage of daily available appointments to the earliest registered CBP One™ profiles, so noncitizens who have been trying to obtain appointments for the longest time will be prioritized.

<b>Question#:</b>	13
<b>Topic:</b>	Deciding Which Pathway
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** Can you walk in me through in detail how you decide which processing pathway to place a migrant in? Is there any written guidance, memoranda, email correspondence, or any other document outlining how CBP decides which processing pathway to place a migrant in? If so, please share with the Subcommittee.

**Response:** At ports of entry, CBP officers inspect each traveler presenting for inspection and applying for admission. Officers must verify the identity of each traveler, and then identify the nationality/citizenship of each traveler, which can be established through questioning and/or presentation of the individual's travel documents.

At the primary inspection booth, each traveler must state their intended purpose and intent for entry. Officers will then verify that the documentation presented by the traveler meets the documentary requirements for their stated purpose. The traveler is queried against law enforcement databases at the primary inspection booth. If the inspection of the traveler cannot be completed at the primary inspection booth, the traveler is referred for secondary inspection. During the secondary inspection, further research may be conducted to include a review of law enforcement systems for prior immigration or in some cases, criminal history of the traveler, and further questioning may be needed to determine if the traveler is admissible or should be referred for a secondary inspection to evaluate a possible inadmissibility.

If CBP officers conclude a traveler is inadmissible, the traveler will undergo an administrative immigration process to process the individual for appropriate immigration removal proceedings, or, in the case of individuals arriving under the Visa Waiver Program, refusal of admission. CBP officers, pursuant to Section 235(b)(1) of the Immigration and Nationality Act (INA), are authorized to remove, without hearing or review, certain individuals who are determined inadmissible under Section 212(a)(6)(C) and 212(a)(7)(A). Officers may also refer an inadmissible noncitizen to an immigration judge for removal proceedings under Section 240 of the INA, when appropriate. Where appropriate, as a matter of discretion, CBP officers may also permit a noncitizen to withdraw the noncitizen's application for admission and immediately depart the United States.

OFO retains all existing discretion to determine the appropriate processing disposition for a particular individual, on a case-by-case basis, considering the totality of the circumstances. If a noncitizen makes a claim for asylum, OFO does not adjudicate asylum claims. Noncitizens processed for expedited removal proceedings who express a fear of persecution or torture are referred to U.S. Citizenship and Immigration Services for a credible fear interview. Noncitizens issued a Notice to Appear (NTA) and placed in removal proceedings will have the opportunity to

<b>Question#:</b>	13
<b>Topic:</b>	Deciding Which Pathway
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

seek relief, including asylum, or other protection before an immigration judge. Noncitizens who are placed into proceedings at POEs may be paroled, if appropriate, on a case-by-case basis, for urgent humanitarian reasons or significant public benefit.

OFO follows regulations found in 8 CFR Part 235 when inspecting persons applying for admission into the United States and while processing inadmissible noncitizens. However, OFO also utilizes discretion on a case-by-case basis while also considering the totality of circumstances. Our use of discretion is discussed in the attached “Guidelines for the Enforcement of Civil Immigration Law” memorandum and CBP Directive 3340-043, “Exercise of Discretionary Authority.”

For individuals who are encountered between POEs, USBP agents transport individuals to stations for processing. This includes verifying their identities through a review of their documents and biographic information, as well as the collection of biometric records. Each individual processed by CBP is screened against numerous records systems, including the Terrorist Screening Center’s Terrorist Screening Dataset, to determine whether or not they pose a national security or public safety threat. After initial identity verification and records checks, USBP agents determine the appropriate processing pathway from the available options., which are determined based on an individual’s nationality, age, family status, and results of security screening and vetting. To the extent possible, noncitizens apprehended between POEs are processed for expedited removal (families are processed for expedited removal under the Family Expedited Removal Management process). Noncitizens who are not processed for expedited removal may be placed into removal proceedings under Section 240.

<b>Question#:</b>	14
<b>Topic:</b>	Decision Making
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** During the hearing, I raised that I have engaged DHS previously to obtain guidance regarding how DHS and CBP make decisions "on a case-by-case basis" based upon "the totality of the circumstances." To date, DHS has not provided this information to us. CBP in its public statements continues to maintain that it will make decisions regarding parole on a "case-by-cases after reviewing the totality of the circumstances." Has CBP or DHS developed and provided to CBP or USCIS any guidance, trainings, or other written materials regarding how to evaluate such noncitizens "on a case-by-case basis" or how to evaluate the "totality of the circumstances"?

If so, please share these materials with my staff.

If not, please describe in exacting detail how CBP ensures its officers exercise their discretion in a uniform manner.

**Response:** CBP makes discretionary decisions, including determining the appropriate processing pathway for noncitizens and whether to grant parole, on a case-by-case basis while considering the totality of circumstances.

Section 212(d)(5)(A) of the INA allows CBP to "parole into the United States temporarily under such conditions as [OFO] may prescribe only on a case-by-case basis for urgent humanitarian reasons or significant public benefit any [noncitizen] applying for admission into the United States."

CBP Directive 3340-043, "Exercise of Discretionary Authority," describes how CBP officers should weigh relative factors when determining if a grant of parole is appropriate. Such factors include, but are not limited to, the nature of the traveler's inadmissibility, previous immigration violations, prior grants of parole, family ties to the United States, economic ties to a traveler's country of residence, advance opportunity to acquire the appropriate visa, good faith efforts to comply with immigration law, and misrepresentations made during the inspection process.

Additionally, DHS has issued "Guidelines for the Enforcement of Civil Immigration Law." The memorandum informs DHS personnel regarding use of discretion to prioritize enforcement actions. The memorandum notes that those individuals who entered the United States unlawfully on or after November 1, 2020, are considered priorities for enforcement. It also provides examples of both aggravating factors and mitigating factors to be considered in conducting enforcement actions.

<b>Question#:</b>	15
<b>Topic:</b>	Parole
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** How many individuals who have scheduled an appointment through CBPOne and presented at a LPOE along the southern border have received parole? How many have been denied parole? Of those who were approved or denied for parole, how many had a scheduled CBPOne appointment and how many did not have such an appointment?

Will you commit to sharing these numbers with the Subcommittee on a monthly basis moving forward? If not, why not?

**Response:** The use of CBP One™ at the land border is a tool for noncitizens to schedule an appointment at a land POE to be inspected and processed under Title 8. As of September 30, 2023, 266,958 noncitizens processed with CBP One™ information were released with an NTA and/or parole disposition. Of these 266,958 noncitizens, 55,179 did not have an appointment (i.e., family members accompanying the appointment-holder).

As of September 30, 2023, 8,572 noncitizens processed with CBP One information were either returned to foreign countries or turned over to other agencies with Expedited Removal with Credible Fear, Expedited Removal, or Withdrawal of Application for Admission dispositions. Of these 8,572 noncitizens, 2,568 did not have an appointment.

The use of CBP One™ for scheduling an appointment at a land border POE is separate from its use as part of the established Department of Homeland Security parole processes such as the Cuban, Haitian, Nicaraguan or Venezuelan (CHNV) process. CHNV travelers use CBP One™ to submit certain biographic and biometric information to CBP, for purposes of applying for an advance travel authorization. If authorization is provided to them, they can then travel to an interior POE.

Regarding your request for monthly information on CBP One processing, CBP respectfully refers the Subcommittee to the CBP Monthly Update, which contains operational statistics each month, including the year-to-date and monthly CBP One appointments scheduled.

<b>Question#:</b>	16
<b>Topic:</b>	Parole Terms
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** What are the terms and conditions placed on a migrant who receives urgent humanitarian or significant public benefit parole who is released at the border? Please share with the Subcommittee a copy of the parole documents that would be received by a migrant under the following processing pathways:

Parole during or subsequent to a CBPOne appointment;

Parole under the Cuba, Haiti, Nicaragua, or Venezuela Programs;

Parole the Central American family reunification parole programs;

Parole under the Central American Minors program;

Release from Border Patrol custody under any pathway under which Border Patrol may release a migrant on parole;

Release from Office of Field Operations custody under any pathway under which a CBP Officer may release a migrant on parole.

**Response:** Individuals granted parole under by OFO are provided an I-94 Arrival/Departure Record, usually electronically, and can obtain a copy of this record via CBP's public I-94 website found at [i94.cbp.dhs.gov](https://i94.cbp.dhs.gov). It should be highlighted that CBP One is a scheduling tool, not a parole process.

USBP may parole individuals on a case-by-case basis where there is an urgent humanitarian reason or significant public benefit to doing so. USBP issues a paper I-94 in these circumstances, which is copied below.

<b>Question#:</b>	17
<b>Topic:</b>	Special Interest Aliens
<b>Hearing:</b>	After Apprehension: Tracing DHS Responsibilities After Title 42
<b>Primary:</b>	The Honorable James Lankford
<b>Committee:</b>	HOMELAND SECURITY (SENATE)

**Question:** What information, if any, do you know about a Mauritanian who crosses the border prior to his arrival at the border? Do you have any capabilities or are there any capabilities that would help you better capture information prior to their arrival at the border?

Please share with the Committee a copy of the current CBP guidance regarding "special interest aliens" or any successor term.

What information, if any, does CBP know about a special interest alien (or a foreign national who would fall under a different, successor term) prior to his or her arrival at the southern border?

**Response:** CBP officers and USBP agents specializing in counterterrorism response are responsible for the examination of persons arriving at and between POEs who are suspected to be identified within the Terrorist Screening Data Set or via CBP targeting, or other subjects suspected of having a nexus to terrorism and their associates who arrive at or between the POEs. DHS personnel, including from CBP and U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI), are assigned to the Federal Bureau of Investigation's (FBI) Joint Terrorism Task Forces (JTTFs), coordinating counterterrorism activities with DHS components, the FBI, and Intelligence Community partners. CBP works closely with the FBI in coordinating vetting and sharing information to prevent known and suspected terrorists from entering the US. CBP has greater visibility into and within the Western Hemisphere than ever before, and we continue to increase that visibility through new and enhanced bilateral partnerships with governments in the region.

HSI and CBP have expanded cooperation with foreign partners to disrupt transnational criminal organizations, facilitation networks, through Transnational Criminal Investigative Units, Special Tactics Operations Groups, and the Joint Security Program. USBP and HSI have partnered via a Memorandum of Understanding on the Biometric Identification Transnational Migration Alert Program for the identification of illicit pathways and targeted enhanced vetting of migrants en route to the United States.

As members of the FBI's JTTFs, HSI Special Agents coordinate HSI's engagement in counterterrorism activities with intra-departmental components, the FBI, and intelligence community partners, and provide comprehensive operational support in JTTF investigations to ensure that ICE's unique authorities and capabilities are considered and employed to disrupt and dismantle terrorist networks.

**Post-Hearing Questions for the Record  
Submitted to Daniel Bible  
From Senator Kyrsten Sinema**

**“After Apprehension: Tracing DHS’s Responsibilities after Title 42.”  
September 6, 2023**

1. In the Fiscal Year 2022 appropriations package, Congress gave ERO the authority to help with interior transportation of migrants. This authority allows ERO to transport migrants to a transportation hub or shelter in order to help avoid so-called “street releases” in small rural communities. How is ERO currently using this authority to help ensure migrants are not released by Border Patrol into rural communities?

**Response:** U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) provides noncitizen transportation between detention facilities for medical purposes; to relieve overcrowding at the Southwest Border (SWB) by transferring noncitizens in its custody to interior locations if detention space is not available at an ICE facility along the SWB; and for staging those noncitizens who have received final orders of removal from the United States. These noncitizens remain in ICE custody throughout the transfer.

ERO also coordinates with non-governmental organizations, where operationally feasible, to transport noncitizens to nearby transportation hubs for safe release. ICE may also provide transportation to a point of release near the detention facility (e.g., if there is a bus stop within one mile of a detention facility). ICE does not transport noncitizens to their choice of destination in the United States and does not determine where released noncitizens ultimately settle.

2. During the hearing, you stated that the average length of stay on alternatives to detention programs is approximately 547 days. Do the migrants generally start out in a more restrictive ATD program, and then move to a less strict system as time goes on? Does ERO ever enroll migrants into an ATD program when they are approaching their individual merits hearing?

**Response:** The level of supervision and technology to which an Alternatives to Detention (ATD) participant is assigned is based upon criteria that include, but are not limited to: current immigration status, criminal history, compliance history, community or family ties, status as a caregiver or provider, and other humanitarian or medical considerations. Officers make these decisions based upon the information they have available at the time of the review. Upon initial enrollment, a participant can typically expect to be assigned higher levels of case management and technology. Over time, ICE officers conduct recurring, individualized case reviews to ensure the most appropriate levels of case management and technology are assigned to improve compliance with release conditions. As a noncitizen demonstrates compliance over time, they are typically assigned reduced reporting requirements. 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, ICE may determine an increase in reporting requirements is appropriate—such as more frequent reporting or assignment to a body-worn Global Positioning System (GPS) unit, if not already assigned—or ICE may take the noncitizen into custody. Whether or not a noncitizen has an upcoming individual merits hearing is not always a factor, however, it is common for those noncitizens who have received a final order of removal and exhausted their legal options to be assigned higher levels of case management and technology as they work with their case specialist and settle their affairs in the United States prior to departure.

3. What percentage of migrants who are subject to expedited removal, and who either do not claim fear or do not receive a positive determination for their credible fear interview, are actually removed from the United States?

**Response:** Between FY 2014 and April 2024, an average of 91 percent of migrants who were subject to expedited removal, and who either did not claim fear or did not receive a positive determination for their credible fear interview, were removed from the United States.

4. At what stage do migrants in ERO custody receive legal orientation, and what components are included in the legal orientation?

**Response:** Upon entry into ICE custody, all facilities housing noncitizens in ICE custody are required, pursuant to detention standards, to permit authorized persons to make presentations to groups of detained noncitizens for the purpose of informing them of U.S. immigration law and procedures, consistent with the security and orderly operation of each facility. ICE provides access to legal orientation information in several ways: 1) through in-person services provided by the U.S. Department of Justice’s (DOJ) Executive Office for Immigration Review’s (EOIR) Legal Orientation Program (LOP); 2) via EOIR’s LOP information hotline; 3) by pro bono legal service providers who provide legal rights group presentations consistent with ICE detention standards; and 4) through videos and other LOP materials available in multiple languages to all detained noncitizens.

Firstly, EOIR’s LOP has an in-person presence in 35 ICE detention facilities (serving approximately 78 percent of the average daily population) and, contingent on funding, may expand to additional detention facilities. Detained noncitizens receive several legal orientation services from EOIR’s LOP, usually in the same week as their book-in to a facility. The frequency of group orientations is dependent on the funding and capacity of the LOP service provider. ICE detention standards allow for any detained noncitizens to sign-up for group orientations, permitting a noncitizen to sign-up more than once, consistent with ICE detention standards.

The LOP is comprised of four components, which include Group Orientations, Individual Orientations, Self-Help Workshops, and Referrals to Pro Bono Legal Services, where available. LOP group presentations provide comprehensive information about immigration court procedures and other basic information to groups of detained noncitizens. LOP providers can also provide legal advice and, depending on capacity, can provide some limited translation

assistance. Additional information on the LOP can be found on EOIR's website:  
<https://www.justice.gov/eoir/legal-orientation-program>.

ICE also expanded access to LOP service providers via facility tablets by creating a LOP request form (available in multiple languages) wherein detained noncitizens can sign up for LOP services, message directly with LOP service providers, and be directed to LOP resources. ICE is also looking to expand the technological capability at ICE facilities to simulcast live LOP presentations to numerous locations within a detention facility to facilitate more expeditious access to presentations.

Secondly, EOIR provides the American Bar Association (ABA) LOP Information Line, which is available via the ICE pro bono platform to all detained noncitizens in every detention facility Monday through Friday from 9 am to 5 pm (EST). The LOP Information Line is a free hotline that provides abridged LOP services nationwide and provides access to information about LOP services and materials. The LOP Information Line is staffed by bilingual English-Spanish speakers who have access to professional language line interpreters for other languages from the ABA, who subcontracts with EOIR to provide language services and follows the approved LOP curriculum, procedures, and materials.

Thirdly, ICE detention standards allow for other legal orientations by pro bono legal rights providers, who are not subcontractors under EOIR's LOP. The specific contents of these legal presentations vary based on the legal service provider and location of the facility. There are approximately 22 detention facilities that do not have access to EOIR's LOP but do have access to some in-person group orientations. Such legal service providers who seek to provide pro bono orientations must submit a request first to ICE ERO along with program materials. The frequency of such orientations is dependent on each legal service provider. All non-citizens are permitted to sign-up for an orientation consistent with ICE detention standards.

Finally, ICE makes the "ABA Know Your Rights" video available in all detention facilities, which is usually streamed in either processing and/or housing units. ICE also provides access to LOP materials in 13 different languages, available through the electronic law library. Additional LOP language materials, including indigenous languages, are also made available to ERO Field Offices.

To what extent does the legal orientation include explanations about potential consequences for giving false statements in the course of their immigration proceedings?

**Response:** For legal rights group presentations submitted to ERO outside of the EOIR official programming, the contents and format of the presentations vary according to the attorney or legal representative submitting the request. The written request must include a general description of the intended audience, a syllabus or outline of the presentation, as well as a list of written materials intended to be distributed during the presentation, among other requirements. For legal rights group presentations managed by LOP, ICE respectfully defers to DOJ to provide specifics about this program since LOP is not an ICE program.

**Senator James Lankford Post-Hearing Questions for the Record**

**Submitted to Mr. Daniel A. Bible**

**After Apprehension: Tracing DHS Responsibilities After Title 42**

**Wednesday, September 6, 2023**

*Travel Documents and Removal.*

1. When I was in El Paso and Yuma earlier this year, I heard from ICE that migrants are relying on pictures of their passports in order to frustrate our government's ability to deport them. How prevalent is this issue? Does ICE collect data on this issue? What steps have you taken to address this problem? Are there any resources or authorities we in Congress can provide that would help you better address this issue?

**Response:** Copies of passports or identity documents streamline citizenship verification and the travel document (TD) acquisition process. Having a valid passport or TD expedites the removal process from the United States. ICE notes that to remove a foreign national from the United States who has been ordered removed, ICE generally needs a valid unexpired passport or other TD, and this TD must be issued by the noncitizen's embassy or consulate of nationality to facilitate the noncitizen's departure from the United States. Per ERO Directive 11311: *Confiscation and Return of Original Documents* (January 13, 2023), ERO officers will generally confiscate and retain all documents of noncitizens in removal proceedings and those of noncitizens with final order of removal released from ERO custody. However, ERO provides the noncitizen with a certified copy of the confiscated document with a notation that the original is in ERO's possession.

The level of cooperation from other countries in the issuance of TDs varies by country; however, ICE regularly works both directly with foreign governments and through the Department of State (DOS) to improve cooperation. Furthermore, ICE does not systematically track incidents with TD requests; any qualification or quantification regarding prevalence would remain conjecture, and any documented attempt by ICE to address the issue would be case-specific.

*Alternatives to Detention.*

2. As of the drafting of these questions for the record, the ICE Southwest Border Daily Placemat showed that a migrant from the southwest border that ICE enrolls in ATD will only be in that program for a little more than 135 days, or a little over 4 months. It's my understanding that, due to the many backlogs facing our immigration system, one of the migrants enrolled in ATD for 4 months will be in our country for years while they move

through their 240 proceedings and the removal process. Is this the case? Please answer yes or no. If no, why is this not the case?

- a) Why is ICE enrolling individuals in ATD for only 4 or so months?
- b) What purpose does enrolling an individual for 4 months serve if the person will be in our country for years after they are disenrolled from ATD?

**Response:** With certain exceptions, noncitizens enrolled in ICE's Alternatives to Detention – Intensive Supervision Appearance Program (ATD – ISAP) who are deemed to be compliant with their release conditions are often removed from the program; however, certain programs that use ATD – ISAP, including the Dedicated Docket and the Family Expedited Removal Management program, require noncitizens to remain on ATD – ISAP for the entirety of their removal proceedings. As of August 31, 2023, the average length of stay on ATD – ISAP was approximately 544 days.

ATD – ISAP exists to improve compliance with release conditions and provide important case management services for noncitizens on ICE's non-detained docket. This is done by an individualized case review to ensure that the appropriate levels of case management and technology are assigned to improve compliance with release conditions. As recurring case reviews are conducted, ICE may determine that a de-escalation in requirements is appropriate. De-escalation may include decreased levels or frequency of case management, reduced technology, or, if determined appropriate, removal from the requirements of ATD – ISAP participation.

*Recalcitrant Countries.*

3. One of the more unprecedented issues arising during this border crisis is the growing population of migrants who are from recalcitrant countries – countries that will not accept their nationals that we are trying to deport.
  - a) How do recalcitrant countries impact your work?

**Response:** Uncooperative countries, as categorized in ICE's bi-annual Removal Cooperation Initiative Tool assessment, make it more difficult for the agency to complete the removal aspect of its critical public safety and national security mission.

To address this challenge, ERO employs working-level strategies to elicit improved foreign government cooperation via a two-pronged domestic and international approach, wherein: 1) its Headquarters-based personnel will engage Washington, D.C. Embassy staff to advance immediate issuance of pending travel documents (TD), encourage a recurring and repeatable TD issuance process implementation, and promote the adoption of efficiency-enhancing initiatives; while 2) its internationally deployed personnel will directly engage host nation U.S. Embassies and foreign government officials to negotiate TD issuance, socialize ERO repatriation and fugitive enforcement initiatives, request additional flexible removal flight frequency

authorizations (when operationally necessary), and encourage reduced repatriation mission impediments (e.g., narrow flight arrival windows, excessive manifest notification times, etc.).

ERO will gradually scale the above-referenced compliance-seeking activities commensurate with foreign government cooperation progress, seeking higher-level agency or interagency support when 1) the administration requires immediate, high-priority country action (e.g., immediate large-frame charter flight acceptance to decompress a given nationality's encounter pressure at the U.S. SWB); or 2) focused, sustained ERO domestic and international engagements fail to elicit the required cooperation enabling ERO to conduct its critical public safety repatriation mission.

When ERO engagements aimed at achieving foreign governments' cooperation with their obligation to accept and not unreasonably delay the return of their nationals ordered removed cannot alone compel foreign government cooperation, U.S. Department of Homeland Security (DHS) and DOS may jointly pursue visa sanctions under Section 243(d) of the Immigration and Nationality Act (INA).

Does the continued and increasing flow of migrants from recalcitrant countries undermine our border security?

**Response:** ICE notes irregular migration from all countries, not just uncooperative ones, to the SWB presents challenges to all aspects of operations, including border security and interior enforcement.

b) Which recalcitrant countries are the biggest threat to your border security mission?

**Response:** Cuba and Venezuela—ICE “uncooperative” countries in Central and South America and the Caribbean—impede DHS's ability to effect its repatriation mission, respectively via Cuba's unwillingness to consistently abide by Migration Accord provisions and Venezuela's prolonged suspension of both direct charter, as well as third country commercial removals. Additionally, ICE considers numerous non-Western-Hemisphere countries uncooperative or at-risk of non-compliance—including China, Pakistan, and India—because these countries hamper DHS mission success per their refusal to consistently and timely issue travel documents, which forces ICE to release noncitizens whom it would otherwise repatriate.

c) Has the Administration followed INA 243(d) and imposed visa sanctions on these recalcitrant countries? If not, why not?

**Response:** While DHS can request DOS to impose visa sanctions under INA 243(d), the authority ultimately sits with the Secretary of State. ICE respectfully defers to DOS to address this question.

- d) Please share with the Subcommittee a list of the current sanctions in place pursuant to INA 243(d).

**Response:** While DHS can request DOS to impose visa sanctions under INA 243(d), the authority ultimately sits with the Secretary of State. ICE respectfully defers to DOS to address this question.

- e) Do you believe that the visa sanction process is effective? If not, what would be effective?

**Response:** Visa sanctions remain an important U.S. strategic tool with which the U.S. government may compel improved returns cooperation. The threat of visa sanctions incentivizes countries to increase cooperation on matters of issuing travel documents and accepting charters. This demonstrates that limited and targeted sanction actions as part of a suite of broader measures can be effective. This could include applying visa sanctions to a specific group, such as new personal staff of diplomats or certain visa categories.

- f) How should we in Congress seek to address the recalcitrant country issue moving forward?

**Response:** ICE notes that failure by uncooperative countries to accept their citizens or nationals ordered removed from the United States impedes ICE removal operations and compounds public safety threats counter to Administration priorities, whereby ICE has been forced to release noncitizens—including those with criminal convictions. Therefore, ICE regularly works both directly with foreign governments and through the DOS to improve cooperation. However, when ERO engagements aimed at compelling foreign governments to comply with their obligation to accept and not unreasonably delay the return of their nationals ordered removed from the United States fails to elicit cooperation, additional measures are required. The August 2017 DOS – DHS Memorandum of Understanding (MOU) concerning the removal of noncitizens, seeks to address the issue. This MOU provides for a number of alternatives to address uncooperative countries' failure to accept their nationals, including 243(d) visa sanctions. Therefore, ERO requests Congress to not only continue supporting DHS notifications to the Secretary of State under 243(d), but also indirectly advocate for ERO international expansion (i.e., increase dedicated staffing funding) to locations where in-country engagement can best advance achievement of ERO's removal mission/goals and there exists the greatest need to elicit country removals cooperation; i.e., expedite travel document issuance and/or promote adoption of initiatives increasing receiving countries' willingness to accept the return of their nationals ordered removed from the United States.

Congress could withhold any form of foreign aid to recalcitrant countries. Additionally, Congress could give DHS the authority to determine the need for sanctions if certain benchmarks are not achieved, or Congress could consider laws that require DOS to take action commensurate with a DHS determination that a country is recalcitrant.

*Custody Determinations.*

4. It is my understanding that ICE uses an algorithm or equation to perform what it calls “custody determinations,” which is how ICE decides which ATD technology to enroll a migrant in or whether to detain a migrant. Please share with the Subcommittee a copy of the algorithm, equation, or other documents that outline the analysis ICE uses to perform a custody determination.

**Response:** Rather than using an algorithm or equation, ERO makes a holistic case review based on criminal, immigration, and supervision history, family and/or community ties, proximity to case management sites, status as a caregiver or provider, and other humanitarian or medical considerations to determine enrollment eligibility in the ATD – ISAP and subsequently reporting frequencies and technology type. When release of a noncitizen is not prohibited by law,<sup>1</sup> ICE exercises its discretion in making custody determinations to release noncitizens with conditions. These custody determinations 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 considerations.

In certain cases, a noncitizen may be enrolled in ICE’s ATD - ISAP, which uses case management and technology to manage noncitizens’ compliance with release conditions while they are on ICE’s non-detained docket. To be eligible for enrollment in ATD - ISAP, noncitizens must be at

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<sup>1</sup> ICE is bound by requirements to detain certain noncitizens in accordance with U.S. immigration laws. The INA’s prohibitions on release include:

- INA § 235(b) (8 U.S.C. § 1225(b)): Generally requires the detention of applicants for admission who appear subject to removal, including noncitizens arriving at a port of entry and certain other noncitizens who have not been admitted or paroled into the United States. Noncitizens subject to expedited removal generally are detained under this authority at all stages of the process, including the determination of inadmissibility, pending a final determination of credible fear of persecution or torture, and until removed. Noncitizens claiming credible fear “shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed.” See INA §§ 235(b)(1)(B)(ii), 235(b)(1)(B)(iii)(IV) ((8 U.S.C. §§ 1225(b)(1)(B)(ii), 1225(b)(1)(B)(iii)(IV)). Such noncitizens may only be paroled on a case-by-case basis for “urgent humanitarian reasons” or “significant public benefit,” requiring an individualized assessment. 8 C.F.R. §§ 212.5(b), 235.3(b)(2)(iii), 235.3(b)(4)(ii), 235.3(c)(2)(permitting parole of noncitizens referred for an Asylum Merits interview on a case-by-case basis for urgent humanitarian reasons or significant public benefit).
- INA § 236(c) (8 U.S.C. § 1226(c)): Mandates that certain criminal and terrorist noncitizens are subject to mandatory detention pending removal proceedings, and ICE may not release them while their removal proceedings are pending.
- INA § 236A (8 USC § 1226a): Mandates detention of noncitizens certified as terrorists by the Attorney General.
- INA § 238(a)(2) (8 U.S.C. §1228(a)(2)): Mandates detention for the expedited removal (Administrative Removals) of noncitizens convicted of committing aggravated felonies.
- INA § 241(a)(2), 8 U.S.C. § 1231(a)(2): Dictates that certain criminal and terrorist noncitizens who are subject to a final order of removal may not be released during the 90-day removal period.

least 18 years of age, effectively removable from the United States, and in some stage of the immigration process. ATD - ISAP case management options include, but are not limited to, residence verifications, home visits, office visits, alert notifications, and court tracking. ATD - ISAP technology options include biometric voice identification through telephonic reporting, biometric facial comparison through smart device application, and global positioning system monitoring through ankle-worn or wrist-worn device.

*Enforcement Priorities.*

5. In 2021, as Secretary Mayorkas was implementing the enforcement priorities, I asked him about collateral arrests conducted by ICE. Since January 2021, has ICE's approach toward collateral arrests been modified whatsoever? If so, please describe in detail any changes in policies or operations pertaining to collateral arrests. Please also share any written guidance, email correspondence, or other documents that describe any changes in policies or operations pertaining to collateral arrests.

**Response:** ICE continues to use its limited resources to target those who threaten public safety, national security, or bypass U.S. immigration law, including in the case of collateral arrests. ICE chooses arrest targets carefully and, when encountering unknown subjects during a targeted arrest operation that are determined to be without a legal status in the United States, ICE assesses whether those individuals should be arrested based on the current ICE priorities or records their information and requests they appear at an ICE office for processing. Currently there is no differentiation between a collateral and targeted arrest in the ICE processing system.

6. Please share with the Subcommittee a breakdown of the number of collateral arrests and number of aliens who were arrested in such collateral arrest over the past 10 fiscal years, including FY2023, which will conclude by the time the response to this question is cleared by the Office of Management and Budget.

**Response:** As stated above, ICE continues to use its limited resources to target those who threaten public safety, national security, or bypass U.S. immigration law, including in the case of collateral arrests. ICE chooses arrest targets carefully and, when encountering unknown subjects during a targeted arrest operation that are determined to be without a legal status in the United States, ICE assesses whether those individuals should be arrested based on the current ICE priorities or records their information and requests they appear at an ICE office for processing. Currently there is no differentiation between a collateral and targeted arrest in the ICE processing system.

7. The DHS enforcement priorities do not mention visa overstays as a priority for enforcement. How many visa overstays have been arrested and/or removed since January 2021? In answering this question, please provide a breakdown of arrests and removals of visa

overstays that covers the last 10 fiscal years, including FY2023, which will conclude by the time the response to this question is cleared by the Office of Management and Budget.

**Response:** Visa overstays are a priority if found to be a threat to national security, public safety, or border security, and therefore may be targeted for enforcement. Please see the below charts for the requested data.

**Fiscal Year (FY) 2013 to FY 2023<sup>2</sup> ICE Removals of Visa Overstays**

Fiscal Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
Total	5,365	4,314	3,142	2,756	4,880	7,726	7,602	5,427	2,207	1,591	3,195	48,205

**FY 2013 to FY 2023<sup>3</sup> ERO Administrative Arrests of Visa Overstays**

Fiscal Year	2013	2014	2015	2016	2017	2018	2019	2020	2021	2022	2023	Total
Total	7,015	5,370	2,701	2,738	6,829	10,174	9,363	7,083	2,695	2,159	4,729	60,856

8. Do you believe that a stronger interior enforcement mission – more arrests and removals – would have an impact on the current and ongoing border crisis? Why or why not?

**Response:** ERO enforces laws by using its limited resources engaging and arresting immigration violators in the interior of the United States through targeted, intelligence driven operations to prioritize its compliance and enforcement actions in ways that help protect communities nationwide.

*Parole + Alternatives to Detention.*

*Parole + Alternatives to Detention.*

9. Please share with the Subcommittee a description of the costs to ICE incurred thus far and a projection of future costs associated with processing the Notice to Report and Parole +

<sup>2</sup> FY 2013-FY 2023 ICE Removals data retrieved on November 14, 2023.

<sup>3</sup> FY 2013-FY 2023 ERO Administrative Arrests data retrieved on November 14, 2023.

Alternatives to Detention backlogs. In answering this question, please update the analysis that ICE provided to the Court during the *United States v. Florida* litigation.<sup>4</sup>

**Response:** In FY 2022, ERO conducted Operation Horizon to address the Notice to Report (NTR) and Parole Plus Alternatives to Detention (Parole+ATD) backlog. The total FY 2022 costs captured for Operation Horizon were \$15,811,132.03 for payroll, of which \$13,771,155.72 was for overtime. No additional Operation Horizon costs were recorded in the financial system for FY 2023.

As of November 16, 2023, there were 331,610 NTR/Parole+ATD noncitizens remaining to be fully processed into removal proceedings. The projected cost associated with fully processing the NTR/Parole+ATD backlog is \$81.4 million.

The timeframe to accomplish this task depends on the allocation of scarce officer staff power against competing mission-critical requirements. Since the last analysis, additional competing priorities have been introduced. Some of these include, but are not limited to, ERO filing Notices to Appear (NTAs) or re-issuing and filing NTAs for CBP NTA book-outs that were not initially filed with and accepted by EOIR at the time of the noncitizen's release into the interior and filing NTAs for other unprocessed cases. These vie for priority and resources with the NTR/Parole+ATD backlog.

There have been significant efficiencies applied to address issuing NTAs to this cohort to include filing NTAs by mail. However, many still require manual intervention by officers and all require complete processing as a part of the enforcement action. Given the several steps and time required, ICE estimates that, on average, three noncitizens who were referred to ICE under NTR or Parole+ATD, during the period those processes were in place, can be fully processed per day, per officer. Fully processing noncitizens into removal proceedings may involve at a minimum the following activities:

- Officers begin by conducting background research on each noncitizen. This includes checking government databases for fingerprints and other biometrics and reviewing case files to assist in determining the noncitizen's status and location. U.S. Postal Service address validation tools and direct methods such as querying places of employment may also be used.
- Once a noncitizen's location has been confirmed, an NTA or other appropriate charging document is issued and served to the noncitizen. Preferably, the noncitizen is served in-person, but U.S. mail may be used. If U.S. mail is used, the officer will also send the noncitizen instructions to report for additional processing. The NTA is subsequently filed with EOIR to receive acceptance on an EOIR court docket. ERO Case Management databases are then updated with this information.
- If contact is made, the officer requests the noncitizen present themselves for an interview. Upon arrival, biometrics including fingerprints are taken, if needed. If the

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<sup>4</sup> OPINION AND ORDER, *Florida v. United States*, N.D. Fla., Case No. 3:21-cv-1066 (Mar. 8, 2023).

noncitizen fails to comply or cannot be located, the noncitizen is then referred to ERO Enforcement for further action.

ICE notes that there will likely be some in this cohort who will voluntarily depart the United States, apply for asylum with USCIS, or who otherwise will not require an NTA to be issued; while others are likely to remain at-large beyond this estimated timeframe.

**Question:** Has ICE ever assessed whether the growing list of administrative duties, like processing migrants who were released with a NTR or Parole+ATD, has impacted its ability to conduct its removal mission? If so, please share any assessments with my staff.

**Response:** ERO is confronted with challenges on multiple interconnected fronts (detained case management, non-detained case management, enforcement, and removal operations) with limited resources in funding and personnel. As of October 28, 2023, ERO had over 6.39 million active cases on the non-detained docket and more being added daily.

**Question:** Please share with the Subcommittee the earliest and latest date available in ECAS for ICE to use in service of a Notice to Appear, broken down by immigration court.

a) Will you commit to providing this information to the Subcommittee on a monthly basis moving forward? If not, why not?

**Response:** ICE respectfully defers to EOIR.

**Question:** Prior to ICE's revision of the ICE Southwest Border Daily Placemat, ICE data showed how many migrants released with a NTR or Parole+ATD reported after the 60 day window. For example, as of 10.28.2022, roughly 45,000 migrants reported after the 60-day period for a NTR or Parole/ATD.

- a) To date, how many migrants reported after the 60-day reporting period?
- b) Did those migrants have their parole terminated, did their parole continue, or did they receive "re-parole" upon checking in after the 60-day period? Or, was 60-day period a condition that DHS decided to waive upon their check-in?
- c) What penalties or consequences has ICE imposed upon migrants who have reported after the 60-day window? To how many individuals described in your response to question a) has ICE imposed such penalties?
- d) Were any of the migrants who reported after the 60 days arrested, detained, or removed?

**Response:** This information is included in the current version of the SWB Daily Placemat. As of November 1, 2023, 202,294 noncitizens who were previously released with an NTR or

Parole+ATD have checked-in<sup>5</sup> after the 60-day reporting period. Out of those who checked-in to ICE after 60 days:

- 44,207 noncitizens were arrested;
- 5,805 were detained; and
- 405 were removed.

When a noncitizen checks-in to the ICE field office, officers continue processing the noncitizen's immigration case. At this time, officers may take various enforcement actions. Officers will also issue the appropriate charging document, including Form I-862, Notice to Appear. In certain situations, officers conduct custody determinations, during which the officer may release the noncitizen on parole or one of ICE's other release mechanisms as appropriate. With regard to the question about "re-parole" following termination, ERO does not track such data. When noncitizens do not comply with instructions to check-in to an ICE field office within the given timeframe, officers may take further enforcement action. Officers make enforcement decisions on a case-by-case basis, under the guidance of the current enforcement priorities.

13. When Operation Horizon started, ICE mailed NTAs out to migrants who had not reported. Included within those documents was a sheet which stated: "Unless you have committed a serious crime, or the government thinks you may be a risk to the United States, YOU WILL NOT [emphasis in the original document] be taken into custody during the appointment." Does receipt of an Operation Horizon packet count as "checking-in" for compliance with the terms placed upon parole?

- a) If so, how, if at all, does ICE confirm receipt of an Operation Horizon packet? Does ICE require physical verification to ensure that a check-in has occurred?
- b) Do Operation Horizon Packets contain new I-94s to extend the parole of the migrant who did not report but was eligible for a mail-in NTA through this program?

**Response:** The Operation Horizon packets do not contain new I-94s to extend the parole of noncitizens nor count as "checking-in" for compliance with the terms placed upon parole. Noncitizens were provided with a flyer titled "Reporting to ICE after Release into the United States" to schedule an in-person appointment using the ICE Appointment Scheduler.

#### *Circumvention of Lawful Pathways.*

14. My staff asked DHS for a briefing in June 2023 on the implementation of the new Circumvention of Lawful Pathways regulation; however, that briefing has not yet been scheduled. To better understand the regulation and how it is being implemented, I ask the following questions:

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<sup>5</sup> Noncitizens are given credit for a check-in through many different methods, ranging from a phone call, to an appointment scheduled in the Field Office Appointment Scheduler, to an arrangement for future processing, an online change of address, or an in-person check-in.

- a) How many individuals have been subject to the rebuttable presumption of ineligibility?

**Response:** From May 12, 2023, to October 17, 2023, USCIS found approximately 63,380 individuals subject to the rebuttable presumption of asylum ineligibility that was promulgated in the Circumvention of Lawful Pathways Final Rule (CLP).

- b) How many have voluntarily withdrawn their application after receiving notification that the rebuttable presumption applies?

**Response:** From May 12, 2023, through October 11, 2023, CBP had 10,152 noncitizens arrive at a Southwest Border port of entry and withdraw their application for admission, and one noncitizen processed for refusal under the Visa Waiver Program, after receiving notification that a rebuttable presumption applies. Additionally, please refer to the response below.

- c) How many have continued their application after being informed of the opportunity to withdraw the application and voluntarily depart?

**Response:** At this time, USCIS provides a voluntary withdrawal advisal to noncitizens who are in U.S. Border Patrol (USBP) custody and who are nationals of Cuba, Haiti, Nicaragua, or Venezuela (CHNV). USCIS informs the noncitizen of the opportunity to voluntarily withdraw their application for admission at two points during the interview. The first opportunity is prior to determining whether the noncitizen is subject to the CLP rule, and the second opportunity is after determining that the noncitizen is subject to the CLP rule and did not establish an exception or rebut the presumption of ineligibility for asylum. USCIS does not explicitly track in case management systems whether the noncitizen withdrew at the first or second opportunity. From May 12, 2023, through October 17, 2023, USCIS interviewed approximately 12,370 CHNV nationals in USBP custody. Of those, approximately 1,580 noncitizens requested to voluntarily withdraw their application for admission. USCIS administratively closed their cases and returned the cases to USBP to process the noncitizens' requests.

- d) How many have been found to have a negative credible fear interview as a result of the rebuttable presumption? How many of these individuals have appealed? How many have voluntarily departed at this stage of the process?

**Response:** USCIS does not collect data on which cases result in a negative credible fear determination as a result of the rebuttable presumption. As such, USCIS does not have the requested data on how many individuals found to have a negative credible fear as a result of the rebuttable presumption have subsequently sought immigration judge review. Note that, under the CLP, noncitizens cannot administratively appeal a negative determination and only may seek immigration judge review. 8 C.F.R. § 208.33(b)(2)(v)(C). Additionally, USCIS does not track how many individuals voluntarily depart after a negative credible fear determination.

e) How many have been removed pursuant to a denial?

**Response:** From May 12, 2023, through October 17, 2023, ICE removed 16,439 noncitizens with negative credible fear case actions and decisions.

f) How many have been denied but not appealed their case?

**Response:** Assuming “denial” refers to a negative credible fear determination, approximately 5,950 individuals have not requested immigration judge review after a negative determination. Note, under the CLP, that noncitizens cannot administratively appeal a negative determination, and only may seek immigration judge review. 8 C.F.R. § 208.33(b)(2)(v)(C).

g) Please share all training materials, policy guidance, and reports from the pilot sites regarding the rebuttable presumption with my staff.

**Response:** USCIS has provided responsive documents.

h) Will you commit to sharing the data points described in a) through g) with the Subcommittee on a monthly basis moving forward? If not, why not?

**Response:** The Department is committed to providing Congress with accurate and timely immigration data to the maximum extent possible. The Department currently provides extensive data related to credible fear screenings in the monthly Immigration Enforcement and Legal Processes Report, published by the Office of Homeland Security Statistics. Tracking and reporting such data is resource intensive, methodologically complex, and requires extensive coordination among the Department and DHS components. The Department is unable to commit to the provision of additional data at this time.

*Special Interest Aliens.*

15. Please share with the Committee a copy of the current ICE guidance regarding “special interest aliens” or any successor term.

**Response:** “Special interest alien” is neither a legal term defined in statute or regulation, nor is it used in current ICE policy.

ICE officers use intelligence-driven leads to identify noncitizens who present a possible threat to national security and public safety, and work closely with federal partners to ensure that if any derogatory information comes to light, appropriate action is taken.

16. Does ICE monitor special interest aliens differently from other populations ICE monitors? If so, please share the current ICE guidance in place regarding the monitoring of a special interest alien.

**Response:** As stated in the above response, ICE officers use intelligence-driven leads to identify noncitizens who present a possible threat to national security, public safety, and border security. Noncitizens known to ICE who are not in ICE custody are monitored on ICE's non-detained docket. If warranted, noncitizens in ICE custody may be released with ATD, which can include monitoring devices.

ICE makes enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers. Furthermore, ICE is bound by statutory requirements not to release certain noncitizens from immigration detention.<sup>6</sup> When a noncitizen is statutorily eligible for release, ICE exercises its discretion in making custody determinations.

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<sup>6</sup> The INA's limitations on release include:

- INA § 235(b) (8 U.S.C. § 1225(b)) Generally require the detention of applicants for admission who appear subject to removal, including noncitizens arriving at a port of entry and certain other noncitizens who have not been admitted or paroled into the United States. Noncitizens subject to expedited removal are detained under this authority at all stages of the process, including the determination of inadmissibility, pending a final determination of credible fear of persecution or torture, and until removed. Noncitizens claiming credible fear "shall be detained pending a final determination of credible fear of persecution and, if found not to have such a fear, until removed." See INA §§ 235(b)(1)(B)(ii), 235(b)(1)(B)(iii)(IV) ( (8 U.S.C. §§ 1225(b)(1)(B)(ii), 1225(b)(1)(B)(iii)(IV)). Such noncitizens may only be paroled on a case-by-case basis for "urgent humanitarian reasons" or "significant public benefit," requiring an individualized assessment. 8 C.F.R. §§ 212.5(b), 235.3(b)(2)(iii) (limiting release during expedited removal process or after final expedited removal order to where it is "required to meet a medical emergency or is necessary for a legitimate law enforcement objective."), 235.3(b)(4)(ii), 235.3(c)(2)(permitting parole of noncitizens referred for an Asylum Merits interview on a case-by-case basis for urgent humanitarian reasons or significant public benefit).
- INA § 236(c) (8 U.S.C. § 1226(c)): Limits release of certain criminal noncitizens and those noncitizens described in the security and related grounds of the INA from detention pending removal proceedings.
- INA § 236A (8 USC § 1226a): Mandates detention of noncitizens certified by the Secretary of Homeland Security who are described in specific provisions of the security and related grounds of the INA or those engaged in any activity which threatens national security. See 6 U.S.C. § 251(2) (transferring to the Secretary of Homeland Security all functions under the detention and removal program in 8 U.S.C. § 1226a that formerly resided with the Attorney General); see also *Jama v. ICE*, 541 U.S. 335, 338 n.1 (2005).
- INA § 238(a)(2) (8 U.S.C. § 1231(a)(2)): Mandates detention for the expedited removal (Administrative Removals) of noncitizens convicted of committing aggravated felonies.
- INA § 241(a)(2), 8 U.S.C. § 1231(a)(2): Dictates that certain criminal noncitizens and those noncitizens described in the security and related grounds of the INA who are subject to a final order of removal may not be released during the 90-day removal period.

**Post-Hearing Questions for the Record  
Submitted to Andrew Davidson  
From Senator Kyrsten Sinema**

**“After Apprehension: Tracing DHS’s Responsibilities after Title 42.”  
September 6, 2023**

1. In the hearing, you stated that the Circumvention of Lawful Pathways has affected the time it takes to conduct credible fear interviews. Can you expand on this and discuss how it has affected the credible fear interviews procedurally?

**Response:** The Circumvention of Lawful Pathways rule (CLP) requires that a U.S. Citizenship and Immigration Services (USCIS) asylum officer evaluate whether the presumption of asylum ineligibility applies, and if so, whether the noncitizen has established an exception to the applicability of the presumption, or that they have rebutted the presumption of ineligibility. This requires officers to ask additional questions and lines of inquiry during the interview, as well as to document the finding as part of completing the credible fear screening. If the noncitizen is subject to the presumption, and is screened at the higher reasonable possibility standard, additional questions during the interview may be required.

2. Please detail USCIS’ process for an affirmative asylum claim. How long on average does it take to adjudicate an affirmative asylum claim, from the perspective of USCIS?

**Response:** After arriving in the United States, an asylum seeker applies for asylum affirmatively either electronically or by mail by filing Form I-589, Application for Asylum and for Withholding of Removal. With some exceptions, asylum applicants are required to file within one year of arrival. After filing, an applicant appears for a biometrics collection appointment at a U.S. Citizenship and Immigration Services (USCIS) Application Support Center, and USCIS conducts identity and security checks. After submitting biometrics, an applicant receives a notice for an in-person non-adversarial interview with an asylum officer at an asylum office or at a USCIS field office.

Operation Allies Welcome (OAW) cases remain the highest priority affirmative asylum workload due to requirements outlined in the Extending Government Funding and Delivering Emergency Assistance Act and a court-ordered settlement agreement. After OAW cases, USCIS schedules asylum interviews in the following order of priority:

- First priority: Applications that were scheduled for an interview but were rescheduled at the applicant’s request or the needs of USCIS.
- Second priority: Applications pending 21 days or fewer.
- Third priority: All other pending affirmative asylum applications are scheduled for interviews starting with newer filings and working back towards older filings.

Workload priorities related to border management and enforcement and staffing limitations affect scheduling new applications for an interview within 21 days. Asylum office directors may consider, on a case-by-case basis, an urgent request for an interview outside of the priority order listed above. The interview itself generally lasts approximately two hours, although the time may vary depending on the case. Applicants must bring an interpreter if an applicant cannot proceed with the interview in English. (If available, a USCIS-contracted interpreter monitors the interview.) Applicants may also bring an attorney or accredited representative to the interview, along with witnesses to testify in support of the applicant's claim for asylum.

In addition to the asylum interview, the asylum officer completes identity and security checks and makes an asylum eligibility determination. A supervisory asylum officer then reviews the asylum officer's decision for legal sufficiency. In addition to 100 percent supervisory review, depending on the case, the supervisory asylum officer may refer the decision to USCIS Asylum Division Headquarters staff for additional quality assurance review. Headquarters review or notification is mandatory for certain designated categories of cases. Most often an applicant returns to the asylum office to pick up the decision two weeks after the asylum interview. However, USCIS may mail decisions to applicants who live far from an asylum office or an asylum sub-office, or if a final determination will not be ready by their scheduled decision pick up date.

In general, the Asylum Division estimates that it may take approximately four hours for an asylum officer to adjudicate a simpler affirmative asylum application and that 16 cases can be assigned to each asylum officer over a two-week period. For simpler cases, it may take approximately two hours to conduct an interview and approximately two additional hours to research country conditions, complete identity and security checks, write an assessment explaining the decision, and issue a decision. Some cases take less time, but many cases require significantly more time to interview, research, and finalize. It is not uncommon for a complex case to require a request to the applicant for more information or follow-up interviews.

3. During the hearing, you mentioned that one of the bottlenecks is that the expedited removal process remains a paper-based process. What has USCIS done to digitize their parts of this system, and what delays have there been to move forward with this effort?

**Response:** USCIS spearheaded the initiative to enable digital issuance of all A-files created by border enforcement partners. USCIS led interagency coordination and developed several paperless solutions for identity and records management, such as digital A-number validation. Digital A-number validation informs a user if an A-number already exists for a given individual. Digital A-number issuance then allows a user to issue a digitally generated A-number if one does not already exist. USCIS also developed the digital A-file repository in Content Management Service (CMS)-STACKS system, a digital file viewing and content management system for official immigration records, and worked with partner systems so that they can push and pull content from their end-

user systems to and from the digital A-file repository in CMS-STACKS. Approximately 70 percent of border enforcement A-files are created digitally on a monthly basis, but only for selected dispositions; expedited removal credible fear (ER-CF) is not yet one of the supported dispositions. Once partners are ready to fully operationalize their use of digital A-files for additional dispositions, the percentage of digital A-file issuance will increase. Specific to expedited removal process flow, USCIS worked to integrate functionality with the Unified Immigration Portal (UIP) and can now access in an automated fashion credible fear referrals digitally from U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE). USCIS also worked with UIP to automate its decision output, including service documents, to CBP and ICE. Automated referrals that USCIS receives from ICE are limited to Southwest Border ICE facilities, and there is additional development work needed to expand automated referrals from interior ICE facilities and referrals from CBP in the Family Expedited Removal Management (FERM) process.

**Senator James Lankford Post-Hearing Questions for the Record****Submitted to Mr. Andrew Davidson****After Apprehension: Tracing DHS Responsibilities After Title 42****Wednesday, September 6, 2023***Credible Fear Interviews*

1. When my staff and I visited the Arlington Asylum Office in April, we noticed that it took over 3 hours for USCIS to complete 1 credible fear interview. This individual did not speak a rare language, and the circumstances around their crossing appeared to be similar to most of the other migrant flow. How long does the average credible fear interview take?

**Response:** USCIS currently assigns credible fear screening interviews at a rate of three interviews for an eight-hour workday, per officer. Under this assignment rate, the assumed average is 2.6 hours per case including the interview and all other officer-assigned tasks. A 3-hour interview would not be outside of the average case range. Credible fear interview assignment is standardized to allow for the completion of all aspects of case processing, including a screening interview and preparation of decision materials. The length of credible fear interviews varies depending on case-specific factors.

2. It is my understanding that credible fear interviews were originally intended to be short, quick interviews to quickly determine whether or not an alien would be *refouled* upon removal from the United States. Has USCIS explored ways reducing the time it takes to administer credible fear interviews? If so, please share any assessments, studies, or reports developed regarding policies or procedures to reduce the time a credible fear interview takes.

**Response:** Yes, USCIS Refugee, Asylum and International Operations Directorate (RAIO) has explored ways to reduce the time of credible fear interviews. Within Fiscal Year 2023 (FY) alone USCIS gained substantive efficiencies within the credible fear interview process. On April 10, 2023, USCIS updated credible fear interviewing procedures to no longer require asylum officers to re-read Form M-444, Information about Credible Fear Interview, to noncitizens during a credible fear interview when there is already a complete Form M-444 in the credible fear referral packet. Reflecting the updated procedures, asylum officers must verify that the noncitizen received Form M-444 and understands the credible fear determination process (see 8 CFR 208.30(d)(2)). If the noncitizen received the M-444 but indicates they do not understand the credible fear process, the asylum officer should read verbatim a summary explanation of the credible fear process to the noncitizen and document in the interview notes that they read the explanation to the noncitizen. The asylum officer should also answer questions posed by the noncitizen to ensure understanding of the credible fear process. USCIS provided a Form M-444 summary to contracted interpreter service providers so it is readily available to read back

to noncitizens during credible fear interviews should the noncitizen indicate they do not understand the credible fear process.

Additionally, on May 2, 2023, asylum officers began using an updated, streamlined template for AI Otro Lado Permanent Injunction (AOL PI) screening questions for new credible fear interviews conducted on or after May 2, 2023. In the majority of credible fear interviews, asylum officers now ask only one or two questions in order to determine if the noncitizen previously crossed the border from Mexico to the United States, between July 16, 2019, and June 30, 2020. If the noncitizen did not previously cross the border during that time period, then asylum officers do not need to ask any additional AOL PI screening questions and can continue with the credible fear interview. Prior to the issuance of the streamlined AOL PI screening question template, asylum officers asked all of the AOL PI screening questions and drafted a summary of the responses which then were read back to the noncitizen. Implementation of the streamlined AOL screening questions has reduced credible fear interview times by approximately 15 to 20 minutes.

On February 20, 2023, USCIS streamlined eliciting testimony requirements in credible fear screenings. For cases where an officer elicited sufficient testimony to arrive at a legally sufficient positive decision, there is no longer a requirement to elicit further testimony for other potential decision types. Additionally, officers were previously expected to ask all applicants whether they were harmed or could be harmed on account of all protected characteristics (their political opinion, religion, race/ethnicity, nationality, or another characteristic that could form a basis for a particular social group (PSG)), even when sufficient testimony to support a positive determination had already been elicited. This is no longer required for positive determinations, thus decreasing elicitation requirements.

On February 20, 2023, asylum officers began using an electronic checklist through the Global Interview Notes and Assessment (GINA) tool to document credible fear determinations. This tool streamlined decision-making by requiring less written analysis than the Microsoft Word document version it replaced. As of that date: 1) a written credibility analysis is no longer required for positive determinations; 2) a three-prong analysis of a PSG analysis is no longer required, unless the case involves a novel PSG; 3) officers are now required to provide written analysis for nexus or state action for all positive determinations only (including country of origin information as necessary); and 4) GINA clarifies written analysis requirements so asylum officers understand how to fill out the checklist correctly and efficiently.

Other than these initiatives, USCIS is committed to realizing additional efficiencies in the Asylum Division workload. This is an ongoing process and a priority of the agency.

*FY2023 Citizenship and Immigration Services Ombudsman Report*

3. The CIS Ombudsman noted in the FY 2023 annual report that the growing population of parolees and other humanitarian workloads is undermining USCIS' ability to clear backlogs

in the legal immigration system. I have heard rumors that USCIS is pulling people from legal immigration workloads, like employment-based visas, to hear credible fear interviews. Do you agree with the Ombudsman that the current border crisis and the workloads created by that crisis are impacting the historic backlogs at USCIS? If not, why not?

**Response:** Increases in credible fear referrals and the assignment of staff to conduct credible fear interviews has, in part, impacted backlogs at USCIS; in particular, increases in the affirmative asylum backlog. Specifically, the affirmative asylum backlog is the result of growing numbers of credible fear screenings and a prolonged, significant increase in affirmative asylum application filings, particularly during a period when USCIS prioritized older asylum applications over newer ones. Both workloads are processed by USCIS asylum officers. In periods of peak humanitarian screening volumes, USCIS assigns a substantial portion of its asylum officers to ensure expeditious completion of credible fear and reasonable fear cases. This decreases the number of asylum officers assigned to affirmative asylum interviews and adjudications and extends the amount of time applicants must wait for their asylum interview. As the U.S. Department of Homeland Security prepared for the May 11, 2023, expiration of the Title 42 public health order concerning the COVID-19 pandemic, USCIS assigned the majority of its asylum officers dedicated to the affirmative asylum workload, to credible fear screenings.

USCIS asylum officers conduct credible fear screenings of individuals placed in expedited removal proceedings who claim fear of return to their home countries, a fear of persecution or torture, or an intent to seek asylum. Such individuals are entitled by statute to a credible fear interview with a USCIS asylum officer, to determine if they have a credible fear of persecution or torture if returned to their home country. USCIS asylum officers also conduct reasonable fear screenings for noncitizens who are subject to a reinstated order of removal or final administrative removal orders based on an aggravated felony conviction, and claim a fear of return to their designated country of removal.

USCIS must prioritize the credible fear workstream as a high priority because noncitizens awaiting credible fear determination are subject to mandatory detention, with limited exceptions. USCIS also must prioritize reasonable fear screenings because DHS regulations require USCIS to complete reasonable fear screenings within 10 days of the individual's referral to an asylum officer for screening, absent exceptional circumstances. In FY 2023, USCIS received 149,700 credible fear screening referrals and 10,400 reasonable fear screening referrals. In comparison, USCIS received 30,800 credible fear referrals in FY 2020, 58,947 in FY 2021, and 68,300 in FY 2022. Historically since FY 2013, USCIS has received more than 90,000 credible fear referrals in an FY four times, including FY 2023.

4. Is it true that USCIS has been pulling immigration officers off of legal immigration workloads to hear credible fear interviews? If so, please share specific numbers regarding how many immigration officers or supervisory immigration officers have been assigned to hear credible fear interviews, the specific office from which the immigration officer or

supervisory immigration officer has been reassigned, and any assessment of the impact this decision will have on other USCIS workloads.

**Response:** USCIS is making modifications to its allocated staffing levels to maximize its ability to respond to increased credible fear referrals at the Southwest Border. This is something USCIS does routinely, as all USCIS workloads shift and surge in times of increased filings, backlogs, and emerging needs across agency operations. Immediately following the expiration of Title 42 in May 2023, USCIS trained and detailed officers to support the immediate need to conduct increased credible fear screenings. This equated to a total of 356 employees, consisting of Immigration Officers (IOs), Immigration Services Officers (ISOs), Supervisory Immigration Officers (SIOs), Supervisory Immigration Services Officers (SISOs), and attorneys from the Office of the Chief Counsel (OCC), all with previous training in asylum or refugee adjudications. This initial cadre of employees was detailed for a period of 60-120 days to support the effort. The Field Operations (FOD) and Fraud Detection and National Security (FDNS) Directorates had 157 employees detailed from the various field and district offices, the National Benefits Center, and FDNS RAO HQ Asylum Offices. The Service Center Operations Directorate (SCOPS) had 89 employees from all five Service Centers detailed to the effort. The remaining 110 employees came from all other USCIS Directorates across the agency. Due to continued increases in the credible fear caseload, USCIS solicited and trained additional adjudication officers from across the agency to help respond to the need. In that second round of staffing, a total of 313 officers (IOs, ISOs, SIOs, and SISOs) from across the agency were trained as asylum officers to conduct credible fear screenings for 120-day details. The breakdown by directorate includes: 182 from FOD, 20 from FDNS, 104 from SCOPS, and 7 from all other directorates. Detailing the 313 officers to conduct credible fear interviews had a direct impact on other USCIS workloads.

*Voluntary Departure.*

5. It's my understanding that USCIS has expanded voluntary departure to allow for migrants to withdraw their application both before and after being screened for the rebuttable presumption. I also understand that migrants are notified that they should instead schedule an appointment through CBPOne. Is this the case?

**Response:** During the credible fear interview, USCIS offers noncitizens who entered on or after May 12, 2023, are in Border Patrol custody, and are citizens of Cuba, Haiti, Nicaragua, or Venezuela, the opportunity to voluntarily withdraw their application for admission and be returned to Mexico, where, if qualified, they may seek parole under the appropriate processes for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV). The voluntary withdrawal of an application for admission is a different process than voluntary departure in which an immigration judge allows a noncitizen to depart the United States voluntarily during a specified period of time after the order is issued, in lieu of being removed under an order of removal. Compare INA § 235(a)(4), 8 U.S.C. § 1225(a)(4) (withdrawal of an application for admission), with INA § 240B, 8 U.S.C. § 1229c (voluntary departure). Voluntary withdrawal also differs from the process by which any noncitizen can elect to dissolve their credible fear case and choose to be expeditiously removed.

USCIS reads a voluntary withdrawal advisal to eligible noncitizens at the beginning of the credible fear interview. If the noncitizen decides not to withdraw their application for admission during the first advisal, USCIS continues the interview and makes a determination on the presumption of ineligibility for asylum. If the noncitizen is subject to the presumption (and has not established an exception or rebutted it), the asylum officer explains this determination and offers the noncitizen a second opportunity to withdraw their application for admission. USCIS does not tell the noncitizen that they “should” schedule an appointment through the CBP One™ app, but does inform the noncitizen of the availability of the CBP One™ mobile app to schedule an appointment to present at a U.S. port of entry.

a) How many migrants have voluntarily departed under this expansion?

**Response:** During the credible fear interview, USCIS offers noncitizens who entered on or after May 12, 2023, are in Border Patrol custody, and are citizens of either Cuba, Haiti, Nicaragua, or Venezuela, the opportunity to voluntarily withdraw their application for admission. USCIS reads a voluntary withdrawal advisal to eligible noncitizens at the beginning of the credible fear interview. If the noncitizen decides not to withdraw their application for admission during the first advisal, and sufficient testimony is then elicited to determine that the noncitizen has not demonstrated that they could establish an exception to or rebut the presumption of ineligibility for asylum, USCIS will again ask the noncitizen if they would like to withdraw their application for admission. USCIS does not tell the noncitizen that they “should” schedule an appointment through the CBP One app, but does inform the noncitizen of the availability of the CBP One mobile app. a. USCIS is unable to provide data responsive to this question as USCIS does not grant voluntary departure or track such information.

b) Has DHS used taxpayer resources to pay for the departure of those who have requested voluntary departure?

**Response:** USCIS does not track such data as USCIS does not grant the actual voluntary departure. U.S. Border Patrol reports 673 noncitizens withdrew their applications for admission when offered by USCIS.

c) Do you think that referring a migrant to a parole pathway during the voluntary departure process undermines the rebuttable presumption? If not, why not?

**Response:** No. The Circumvention of Lawful Pathways rule (CLP)’s rebuttable presumption of asylum ineligibility was coupled with an expansion of lawful, safe, and orderly pathways into the United States, including parole processes for Cubans, Haitians, Nicaraguans, and Venezuelans (CHNV). Successful implementation of the CHNV parole processes, when paired with consequences for noncitizens who do not avail themselves of such pathways, demonstrates clearly that migrants will wait to utilize a safe, lawful, and orderly pathway to the

United States if one is available, rather than putting their lives and livelihoods in the hands of ruthless smugglers.

Noncitizens permitted a single instance of voluntary departure pursuant to the Immigration and Nationality Act (INA) § 240B, 8 U.S.C. § 1229c or withdrawal of their application for admission pursuant to INA § 235(a)(4), 8 U.S.C. § 1225(a)(4) remain eligible to participate in the CHNV parole process. Permitting individuals to voluntarily depart or withdraw their application for admission one time reduces the burden on DHS resources by reducing strain on detention and removal flight capacity, agent and officer resources, and reducing costs associated with detention and monitoring.

- d) Please share any guidance or training materials regarding this new voluntary departure process with my staff.

**Response:** Only noncitizens who are Cuban, Haitian, Nicaraguan, or Venezuelan (CHNV) nationals, and who are being held in U.S. Border Patrol (rather than ICE) custody may be offered the opportunity to voluntarily withdraw. USCIS provides these noncitizens with an advisal that describes the parole processes and the CBP One™ app. If the noncitizen elects to continue with the credible fear process, the asylum officer makes a determination on the CLP presumption of asylum ineligibility. Noncitizens who are subject to the presumption and who fail to establish an exception to it or rebut it, receive a second advisal regarding the opportunity to voluntarily withdraw their application for admission.

*Parole Processes and Sponsor Vetting.*

6. The *New York Times* recently found that there are some parolees who have been left homeless after arriving through the United for Ukraine parole program, because DHS insufficiently vetted their sponsors. Do you think that this report's characterization of the vetting situation for these sponsors is accurate? If not, why not?

**Response:** No. USCIS disagrees with the characterization that the parole processes insufficiently vet potential supporters. In addition to determining a potential supporter's financial ability to support the beneficiary for the duration of parole, under the Uniting for Ukraine (U4U) process, USCIS conducts robust security and background vetting on potential supporters, which includes screening for serious public safety and national security concerns, and any red flags for exploitation or human trafficking risks. If USCIS determines that a supporter may pose a risk to the safety of a parolee, USCIS takes steps to prevent the supporter from being confirmed to support beneficiaries under this process in the future, and alerts local U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) offices and other law enforcement as appropriate.

Please note that the term "sponsor" relates to Form I-864, Affidavit of Support Under Section 213A of the INA, which is inapplicable to the U4U process.

- a) How does USCIS vet sponsors under U4U and the Cuba, Nicaragua, Haiti, and Venezuela and the family reunification parole programs? Please describe the vetting under each program in detail.

**Response:** The U4U and CHNV parole processes include multiple levels of screening and vetting of potential supporters. To qualify as a supporter, an individual must be a US citizen, national, or lawful permanent resident; hold a lawful status in the United States such as Temporary Protected Status or asylum; or be a parolee or recipient of deferred action or Deferred Enforcement Departure, pass security and background vetting (including biographical checks for public safety, national security, human trafficking, and exploitation concerns), and demonstrate sufficient financial resources to receive, maintain, and support the beneficiary they are committing to support, for the duration of the beneficiary's stay in the United States.

Potential supporters must file a Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, on behalf of an eligible noncitizen or their immediate family member. A separate Form I-134A must be filed for each beneficiary, including minors and members of the same household. To demonstrate the ability to support a beneficiary, potential supporters must submit evidence including, but not limited to, copies of U.S. federal tax returns, letters of employment, and statements from a bank or financial institution. USCIS uses Federal Poverty Guidelines, as outlined by the U.S. Department of Health and Human Services, as a general guide in determining the potential supporter's ability to sufficiently support a beneficiary. Each Form I-134A filed receives individual review by a USCIS employee.

The Family Reunification Parole (FRP) processes are invitation-based and the beneficiary must be the eligible family member beneficiary of an approved Form I-130, Petition for Alien Relative. Under the FRP processes, petitioners of certain approved Form I-130 receive an invitation to initiate the FRP process for their eligible family members by filing a Form I-134A for each beneficiary. Each invited Form I-130 petitioner is a U.S. citizen or lawful permanent resident who files a Form I-134A for each beneficiary with USCIS and is reviewed and vetted as described in the paragraph above. The Form I-130 petitioner who files the Form I-134A must establish that they have enough income and assets to financially support the intended beneficiary and the rest of their household at a minimum of 100 percent of the Federal Poverty Guidelines.

Please note that the term "sponsor" relates to Form I-864, Affidavit of Support Under Section 213A of the INA, which is inapplicable to the U4U, FRP and CHNV processes.

- b) Please share any training materials regarding the vetting of sponsors under the U4U, CHNV, and family reunification programs with the Subcommittee.

**Response:** USCIS leverages established training procedures and materials from a variety of programs. Training materials are not always required for specific benefits as review and knowledge of security checks are widely applied to adjudications. **If additional material is requested USCIS stands ready to fulfill such a request.**

7. How many sponsor applications has USCIS approved under the U4U, CHNV, and family reunification parole programs? How many have USCIS denied? Will you commit to sharing this data with the Subcommittee on a monthly basis moving forward? If not, why not?

**Response:** Note that USCIS' review of Form I-134A (and, with respect to U4U and the Process for Venezuelans prior to January 6, 2023, review of Form I-134, Declaration of Financial Support (online)) entails confirming or non-confirming the sufficiency of the request. As of March 14, 2024, USCIS confirmed 284,000 Form I-134A and Form I-134 under U4U, and issued non-confirmation notices for 32,300 Form I-134A and Form I-134 filed under U4U. As of March 14, 2024, USCIS confirmed 508,000 Form I-134A and Form I-134 under the CHNV processes and non-confirmed 56,000 Form I-134A and Form I-134. As of March 14, 2024, USCIS confirmed 12,800 Form I-134A under the FRP processes and non-confirmed 8,200 Form I-134A. Due to the vetting process for beneficiaries, not all USCIS confirmations under U4U, CHNV, and FRP processes result in CBP issuing advance travel authorizations to beneficiaries. Legislative Affairs will coordinate with the Subcommittee to have this data transmitted monthly.

Please further note that the term "sponsor" relates to Form I-864, Affidavit of Support Under Section 213A of the INA, which is inapplicable to the U4U, FRP and CHNV Processes.

8. It is my understanding that sponsorship applications are signed under penalty of perjury. How does USCIS enforce sponsorship agreements? Please describe this process in detail.

**Response:** Note that the term "sponsor" relates to Form I-864, Affidavit of Support Under Section 213A of the INA, which is inapplicable to the U4U, FRP and CHNV processes. Additionally, the support obligations that flow from INA § 213A, as well as enforceability of such obligations, do not apply to U4U, FRP and CHNV processes. To the extent that you are asking about supporters who filed Form I-134A (or Form I-134 prior to January 6, 2023 under U4U and the Process for Venezuelans), as with all immigration applications, petitions, and requests, knowingly and willfully providing false information or concealing a material fact related to Form I-134A or other evidence of financial support submitted in connection with a parole request could result in non-confirmation of the Form I-134A, and, in certain circumstances, referral of the matter to ICE or DOJ for investigation if warranted. Additionally, if we get post-confirmation information about potential fraud or misrepresentations tied to the Form I-134A, we may refer the case to ICE or DOJ for investigation.

9. New York, Chicago, Boston, and Washington D.C. have all raised serious concerns about the number of migrants who are present in their cities who are accessing their cities' homelessness programs and other social services. In light of the *New York Times* report on U4U, it is likely that some of the migrants who are accessing social services in these cities should have sponsors who have signed documents under penalty of perjury to provide financial support. How, if at all, is DHS monitoring these sponsors to ensure they uphold the agreements they have made?

**Response:** Support obligations that flow from INA § 213A, as well as enforceability of such obligations, do not apply to the U4U process referenced in the question and do not apply to the CHNV or FRP processes. With respect to the U4U and CHNV processes, to be considered for parole under these processes, the beneficiary must have a confirmed supporter who has filed Form I-134A on their behalf. The supporter agrees to provide financial support to the Form I-134A beneficiary for the duration of the beneficiary's stay in the United States.

When a supporter who is not upholding their agreement to support the beneficiary is reported to USCIS, USCIS takes steps to prevent the supporter from being confirmed to support beneficiaries in the future, and alerts law enforcement agencies when suspected safety risks and fraud are identified.

The term "sponsor" relates to Form I-864, Affidavit of Support Under Section 213A of the INA. To the extent these questions pertain to the enforceability of Form I-864, please note Form I-864 is only required for certain applicants for immigrant visas and adjustment of status to that of a lawful permanent resident.

*Non-Detained Credible Fear Docket.*

10. In response to some questions I asked during my visit to the Arlington Asylum Office earlier this year, USCIS shared the following information regarding the non-detained credible fear docket.

"There are approximately 40,000 non-detained credible fear (CF) cases currently data entered in the Asylum Division's case management system, Global, pending interview or service of the determination. We do not have complete data on how many non-detained credible fear cases presently exist, because there is an unknown number of cases that have not been data entered into Global, and therefore do not appear on reports of our pending workload.

"Additionally, USCIS is dependent on ICE to refer cases to us. Once referred, the asylum offices complete data entry. Generally, cases are referred to USCIS via e-mail from ICE, and there is no system to track them until they are fully data entered into our case management system."

- a) Please share with the Subcommittee a breakdown of the known cases on the non-detained credible fear docket based upon the following criteria: pending interview, service of determination, amount of time pending interview or service of determination (as applicable), and determinations for cases which are pending service of determination.

**Response:** As of October 20, 2023, approximately 42,170 non-detained credible fear cases in USCIS' case tracking system were pending interview, and approximately 1,163 non-detained credible fear cases were interviewed and pending completion. Median time between non-detained case creation and completion of the first interview is 18 days. Median time between the first completed interview and case completion is three days. All credible fear determinations are subject to supervisory review, and a determination is not final until the case

is served; therefore, USCIS is unable to report on determinations for cases that are pending service.

- b) Will you commit to sharing the data described in a) with the Subcommittee on a monthly basis moving forward? If not, why not?

**Response:** Yes. The Office of Homeland Security Statistics will provide [monthly data](#) on credible fear cases by outcome for the Southwest Border.

- c) What steps, if any, has USCIS taken to ensure that each case on the non-detained credible fear docket is tracked in Global?

**Response:** The USCIS Asylum Division has instructed asylum offices to enter non-detained credible fear cases into Global when they receive the referrals from ICE beginning with the oldest first.

- d) Are USCIS and ICE systems interoperable? If not, what resources and timelines are needed to make the systems interoperable, so that cases on the non-detained credible fear are able to be tracked electronically from beginning to end of the credible fear process?

**Response:** Both USCIS and ICE share information via the Unified Immigration Portal (UIP). Administered by CBP, the UIP provides agencies involved in the immigration process a means to view and access certain information from each of the respective agencies from a single portal in near real time (as the information is entered into the source systems). It is used, for example, to share scheduling and processing data among components for certain aspects of the immigration journey (arrest, detention, referral, detention, credible fear interview, and Immigration Judge review).

USCIS' major IT systems, including the Electronic Immigration System (ELIS), CLAIMS3 (C3), and Global, work seamlessly with other cross-agency systems. ICE authorized users are able to access ELIS directly to adjudicate parole cases. The Global system is integrated with ICE to create certain credible fear cases for asylum officers. USCIS continues to work with ICE to better integrate scheduling for interviews and service of decisions. USCIS and ICE, along with the other components, also continue to enhance other data sharing efforts to address gaps and increase efficiencies.

*Parole Guidance.*

11. During the hearing, I raised that I have engaged DHS previously to obtain guidance regarding how DHS and USCIS make decisions “on a case-by-case basis” based upon “the totality of the circumstances.” To date, DHS has not provided this information to us. USCIS in its public statements continues to maintain that it will make decisions regarding parole on a “case-by-cases after reviewing the totality of the circumstances.” Has USCIS or DHS

developed any guidance, trainings, or other written materials regarding how to evaluate such noncitizens “on a case-by-case basis” or how to evaluate the “totality of the circumstances”?

- a) If so, please share these materials with my staff.
- b) If not, please describe in exacting detail how USCIS ensures its officers exercise their discretion in a uniform manner.

**Response:** For Form I-131 parole requests adjudicated by the USCIS International and Refugee Affairs Division, officers are trained to apply a two-step analysis. The first step is to decide whether the requestor has shown that there are urgent humanitarian reasons for parole, and/or that granting parole would be of significant public benefit. Officers consider all the relevant evidence in this determination. If the record establishes urgent humanitarian reasons or a significant public benefit for parole, officers then conduct the second step of the analysis, the exercise of discretion.

USCIS officers are trained to exercise discretion on a case-by-case basis by evaluating positive factors in the record against any negative factors. No single factor will determine the outcome of the case. Officers evaluate the complete record, the totality of circumstances, considering articulable, objective, and relevant facts to determine if discretion should be exercised favorably to authorize parole.

As part of reviewing the sufficiency of Form I-134A, Online Request to be a Supporter and Declaration of Financial Support, filed under one of the parole processes, USCIS' Immigration Records and Identity Services staff determine whether the potential supporter is eligible, has passed security and background vetting, and has demonstrated the financial resources to support a beneficiary for the duration of their stay in the United States. However, the actual parole determination for the beneficiary is made by CBP on a case-by-case basis in the exercise of discretion when the beneficiary arrives at a U.S. port of entry.