



**Homeland
Security**

Privacy Office, Mail Stop 0655

November 30, 2020

**SENT VIA E-MAIL TO: foia@americanoversight.org,
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Austin R. Evers
Executive Director
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

Re: **18-cv-02840 (2019-HQLI-00018)**
American Oversight v. DHS
Sixth Interim Release

Dear Mr. Evers:

This is the sixth interim release of records to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), received on October 4, 2018.

For this production, DHS reviewed 306 pages of which 285 pages are released in full or withheld in part or in full pursuant to FOIA exemptions (b)(5), (b)(6), and (b)(7)(e). DHS has also located and sent six pages to other agencies for consultation. An additional 15 pages were non-responsive to the original request. The 285 pages for release are bates stamped DHS-001-02840-001334 to DHS-001-02840-001618.

If you have any questions regarding this release, please contact Assistant United States Attorney, Michael A. Tilghman II, Civil Division, United States Attorney's Office for the District of Columbia, by email at michael.tilghman@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Bradley E. White".

Bradley E. White
Senior Director, FOIA Litigation,
Appeals, and Policy

From:	Ammons, Samantha (b)(6)
Subject:	OLA Weekly Report - July 27, 2018
Date:	2018/07/27 17:27:31
Importance:	High
Priority:	Urgent
Type:	Note

Below is this week's report.

Thanks,

Samantha Ammons

Director, Mission Support

DHS, Office of Legislative Affairs

(b)(6)

OLA Weekly Activity Reports for July 27

Headquarters Team:

Look Ahead//Major Activities for Next Week

- Continued work with PLCY, CBP, ICE, and HHS for the planning of a HSGAC-PSI briefing on the pending release of the DHS-HHS Joint Concept of Operations document regarding UACs.
- Continued work with OGC and OLA leadership on the Reauthorization side-by-side tasking for HQ Offices and Components.
- Engagement with OGC and MGMT on several bills related to HQ Team work that were passed during this week's CHS mark-up.
- Follow-up with HSGAC-PSI from in-camera review of MGMT/OCIO documentation.
- Continued preparation with MGMT/OCSCO and OCHCO and OGC for pending briefing on sensitive personnel security matter.
- Follow-up from successful engagement with RM Correa, Rep. Taylor, and CHS-OME Majority and Minority staff on the HOPR Act and a draft substitute amendment.

- Initial discussions concerning a DHS hiring event and industry day event to occur as part of the Congressional Black Caucus Annual Legislative event in September.
- Work with HSGAC to host for several Senate and House Committees an interim briefing on the Northern Border Strategy implementation plan.
- Discussion with PLCY, OPA, and OPE on potential rollout of the Department's EMP/GMD Strategy.
- Engagement with CHS Full Committee Staff Director on passage of the BITMAP bill in this week's CHS mark-up (this has FO Counselor attention).
- HQ Team participation in the DHS 2018 National School Security Roundtable.
- Scheduling potential unclassified and classified C-UAS briefings.

Legislative Actions/Updates

- Approximately 25 hours of work on Congressional Notifications to Appropriators.
- Follow-up from successful engagement with RM Correa, Rep. Taylor, and CHS-OME Majority and Minority staff on the HOPR Act and a draft substitute amendment. PLCY, MGMT, OGC, CBP, and USSS participated in the meeting. This effort has had AS2 input and involvement and White House interest.
- Engagement with OGC and MGMT on several bills related to HQ Team work that were passed during this week's CHS mark-up.
- Engagement with OCIO and OGC on S. 1281 concerning a Bug Bounty Pilot for DHS.
- Continued coordination with interagency partners (DOJ, FAA, NSC, DOD) on approach to C-UAS legislative language and scheduling additional interagency briefings.
- After extensive engagement with the NSC and the Hill regarding ICE authority concerns with the Export Control and Reform Act of 2018, the NSC has decided to support expanded international undercover authorities for Department of Commerce agents. Consequently, OLA, OGC, PLCY, and ICE efforts on the Hill to affect the legislation have evolved into focusing on mitigation of the bill's effects. The final version of FIRMA posted online as part of the FY19 NDAA conference report and included the issues of concern from the Export Control and Reform Act of 2018. Currently, PLCY and OGC are doing an impact analysis on the language.

Team Accomplishments for this Week

- Successful site-visit for HOCR staff to MGMT/OCHCO office to discuss pay cap issues.

- C-UAS engagements of note: well-received CHS Minority briefing on S&T actions; and interagency T&I briefing that confirmed significant remaining challenges.
- Successful CHS-EPRC hearing with S&T and FEMA witnesses.
- Successful briefing with Rep. Steve King on e-bonding legislation.

Congressional and Staff Delegations

- N/A

Nominations

- Continued work on the S&T nomination and an additional nomination matter.

Border Security and Immigration (BSI) Team:

Look Ahead//Major Activities for Next Week

- Senate Hearing – Committee on the Judiciary: Full Committee Hearing on Family Reunifications - 7/31.
- Senate Briefing – Homeland Security & Government Affairs Committee: Full Staff Briefing on Family Reunifications – tentatively planned for 8/2.

Legislative Actions/Updates

- Distributed family reunification data to key Congressional staff.
- As follow-up to June family reunification briefing, managing and tracking get-backs to assist with drafting potential “skinny” family separation bill (led by Sens. Tillis and Cruz).
- Working with ONDCP and OGC to review hemp provisions in the Senate-passed version of the farm bill.

Team Accomplishments for this Week

- Full Committee Briefings w/ SMEs from HHS/DOJ/CBP/ICE/USCIS provided to:
- House Energy & Commerce
- Member Engagements

(b)(5); (b)(7)(E)

- Constituent issue for Rep. Chabot (OH-01)
- Constituent issue for Rep. Matsui (CA-06)

(b)(5); (b)(7)(E)

request from Chairman Portman.

- Working on A-File request from Senator Grassley
 - Staffed DAS Wonnemberg in meeting with Rep. Burgess on H-2B and other immigration issues.
 - Attended meeting at USCIS with Congressman Sablan (CNMI) to discuss operational issues relating to (H.R. 5956) new public law affecting transitional workers in the CNMI.
 - Working with USCIS on Rep. Peter King request to speak with D1 on immigration case.
 - Working with Rep. Conaway's office on H-2B case to prevent from rising to S1.
 - Assisting HQ Team on Guam-CNMI Visa Waiver Program briefing request from Congressman Sablan.
 - Assisting HQ Team with E-Bonding Immigration proposal from Rep. Steve King.
- S1 Congressional Hispanic Caucus meeting prep (briefing book updates, logistics coordination with CHC staff)
 - Get-backs coordination (7/18 family separation briefings)
 - Daily Significant Congressional Engagements Tracker
 - Assist mission support team with mail merge for S1 letter to entire 115th Congress

Congressional and Staff Delegations

- STAFFDEL - Harpers Ferry, WV (7/27): Senate Appropriations Staff to tour the Advanced Training Center.
- CODEL – Louisville, KY (7/27): Sen. McConnell to visit ICE ERO and receive briefing on ERO, HSI and USAO's operations.
- STAFFDEL – Arlington, VA (7/30): Senate HSGAC Staff to visit Cyber Crimes Center
- CODEL – Bay St. Louis, MS (8/3): Sen. Wicker, Sen. Hyde-Smith, and Rep. Kelly to visit ICE Tactical Intelligence Center.
- STAFFDEL – McAllen, TX (August TBD): HSGAC Staff from Rep. Steve Russell's office will visit CBP facilities in South Texas.
- CODEL – San Diego, CA (August TBD): Rep. Valadao, Rep. Susan Davis, and Rep. Denham to visit CBP facilities in Southern California.

Nominations

- Undergoing initial review of nominee materials.

Emergency Management, Aviation Security and Law Enforcement Team:Look Ahead//Major Activities for Next Week:

- FLETC employee transcribed interview with HOCR staff scheduled for next week.
- Courtesy visits between FEMA nominee Mr. Gaynor and Senators Peters (D-MI), Heitkamp (D-ND), Daines (R-MT), Caper (D-DE), Moore Capito (R-WV), Lankford (R-OK), and Enzi (R-WY).
- Reviewing Mr. Gaynor's HSGAC Policy Questionnaire and DRAFT testimony.

Legislation Action//Update:

- Chairman Thune in an effort to broaden the appeal of a four-year FAA authorization bill, the Chairman is including other committee-approved bills to authorize the Transportation Security Administration and the National Transportation Safety Board. The move is also an effort to clear as much of the committee's business as possible when an opportunity for floor time arises. The TSA bill, also sponsored by Chairman Thune, would authorize the agency through 2020.
- The Senate is circulating a list of 46 amendments likely being considered as part of a manager's package on the FAA bill (S.1405). Included is a federal counter drone authorities for DOJ and DHS and a provision that would require the FAA to develop a plan to implement an air traffic control system for drones.
- The following bills passed out of the CHS committee this week:
 - H.R. 6265: PreCheck Act of 2018 to ensure that only travelers who are members of a trusted traveler program use TSA security screening lanes designated for trusted travelers, introduced by Rep. Katko (R-NY).
 - H.R. 6459: TSA Opportunities to Pursue Expanded Networks for Business Act a bill expected to be introduced prior to consideration to amend the Homeland Security Act of 2002 to require a strategy to diversify the technology stakeholder marketplace regarding the acquisition by the TSA of security screening technologies, introduced by Rep. Thompson (D-MS).
 - H.R. 6461: TSA National Deployment Force Act a bill expected to be introduced prior to consideration to amend title 49, USC, to establish in the TSA a National Deployment Office, introduced by Rep. Watson Coleman (D-NJ).

Team Accomplishments for This Week:

- FEMA Hearing with House Committee on Homeland Security, Subcommittee on Emergency Preparedness, Response & Communications, “Innovation, with a focus on innovative ideas and policies,” Witness: FEMA Deputy Administrator for Resilience Daniel Kaniewski.
- FEMA announced the opening of the Notice of Funding Opportunity for the FY18 Continuing Training Grant (CTG) Program on 7/25. The application period closes on 8/24. The program provides funding via cooperative agreements to partners to develop and deliver training to prepare communities to prevent, protect against, mitigate, respond to, and recover from acts of terrorism and natural, man-made, and technological hazards. The CTG Program will provide \$8 million to qualified applicants and it is highly competitive (last year there were only four awards). Eligible applicants include state, local, tribal, and territorial governments, along with eligible non-profit organizations to include colleges and universities.

STAFFDELS & CODELS:

- FEMA CODEL to Puerto Rico and USVI w/ Reps. Nancy Pelosi (D, CA-12), Luis Gutierrez (D, IL -04), Nydia Velazquez (D, NY-07), Sheila Jackson-Lee (D, TX-18), Jim McGovern (D, MA-02), Greg Meeks (D, NY-05), Terri Sewell (D, AL-07), Michelle Lujan Grisham (D, NM-01), Raul Ruiz (D, CA-36), Robin Kelly (D, IL-02), Brenda Lawrence (D, MI-14), Dwight Evans (D, PA-02), Val Demings (D, FL-10), Adriano Espaillat (D, NY-13), Darren Soto (D, FL-09), and Stacey Plaskett (D, VI At Large), regarding hurricanes Maria and Irma recovery.

Nominations

- Peter T. Gaynor to be Deputy Administrator, FEMA—Mr. Gaynor has several courtesy visits with Senators next week: Senators Gary Peters (D-MI); Hedi Heitkamp (D-ND); Steve Daines (R-MT); Tom Carper (D-DE); Shelley Moore Capito (R-WV); James Lankford (R-OK) and Mike Enzi (R-WY).
- Reviewing Mr. Gaynor’s Policy Questionnaire and DRAFT testimony.

Intelligence and Cyber:

Look Ahead//Major Activities for Next Week

- At this time, there are NO I&A briefings/meetings scheduled for 7/30 – 8/3.
- Beginning prep for a possible informal HPSCI Member Roundtable with DHS I&A Under Secretary Glawe on 9/12. Still waiting for DHS I&A confirmation of the USIA’s availability on that date. HPSCI requests that we provide an answer no later than COB on 7/27.

- Beginning prep for both the CHS and HSGAC “World Wide Threat” hearings in September.
- At this time, there are no scheduled prep-calls or rollouts for DHS I&A during the week of 7/30.

Legislative Actions/Updates

- There are NO outstanding TDA or get-back requests for DHS I&A.
- I&A and NPPD are coordinating document clearance to the Senate HSGAC.
- I&A is prepping a Congressional Notification to its committees of jurisdiction (SSCI, HPSCI, HSGAC, CHS, SAC-HS, and HAC-HS) regarding internal realignment to the Mission Center construct.

Team Accomplishments for this Week

- DHS I&A and CBP, along with the ODNI-NCTC and FBI, provided a monthly threat update to House CHS Members on 7/25. This was a classified briefing regarding Northern border threat trends. Committee Members were pleased with the overall discussion. CHS Chairman McCaul and Rep. Katko both indicated an interest in receiving a briefing on airport security/threats and Computed Tomography (CT) scanners in the near future. Notified Russel Vieco (OLA-Emergency Management, Aviation, and Law Enforcement) this morning, and will coordinate with his team should we receive an official request from House CHS.

Congressional and Staff Delegations

- Nothing significant to report

Nominations

- Nothing significant to report

Mission Support:

Look Ahead//Major Activities for Next Week

- Participate in the re-scheduled demo of the USCIS Knowledge Management System.
- Pilot the InfoPath form for the OLA Correspondence Tracker and address any issues.

- Continued work with ESEC and lead Components to closeout S1/AS2 Open Congressionals with a focus on Family Reunification and Election Infrastructure letters.
- Continued coordination with CFO on the submission of OSEM's FY 20 OMB Justification.
- Create guidance for new shared calendars.
- Continued work on DHS Congressional Plan of the Day and Weekly Engagement Outlook.

Mission Support Actions/Updates

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- To date, there is no additional interest in the second VERA/VSIP opportunity.
- Continued work with CRSO to prepare for the impending move to St. Elisabeths.
- Continued coordination with CFO on the end-of-year financial deadlines.

Team Accomplishments for this Week

- Made significant progress to the SharePoint OLA Correspondence Tracker.
- Transmitted approximately 34 congressional letters to over 320 Members of Congress and diligently worked through numerous requests for OLA clearance.
- Coordinated with CRSO, CFO and CIO on actions related to readiness, finance and information technology.
- Completed the required Intranet Quorum (IQ) training for version 4.
- Made updates to the S1/S2 Authorizing Committee Getbacks Process.
- Tracked and updated the Congressional Engagement Metrics.
 - *Week Ending, July 27, 2018:* 4 hearings, 7 witnesses & 51 engagements
 - *Year to Date:* 75 hearings, 107 witnesses & 1,154 engagements

30-day Outlook for Congressional and Staff Delegations:

July 27 USCG w/ Senator Marco Rubio (R-FL)

Location: Chesapeake Bay, Maryland

Subject: USCGC EAGLE ride on

POC: (b)(6) (USCG OCA)

July 30 ICE w/ Senate HSGAC Staff

Location: Arlington, VA

Subject: Cyber Crimes Center

POC: (b)(6) (ICE OCR)

August 03 USCG w/ Senate HSGAC Staff

Location: Elizabeth City, NC

Subject: Tour Coast Guard Air Station Elizabeth City

POC: (b)(6) (USCG OCA)

August 03 TSA w/ Senate Committee on Commerce, Science, and Transportation Staff

Location: Arlington, VA

Subject: Tour Ronald Reagan National Airport TSA System Integration Facility

POC: (b)(6)

August 03 ICE w/ Senator Roger Wicker (R-MS), Sen. Cindy Hyde-Smith (R-MS), and Rep. Trent Kelly (R-MS-01)

Location: Bay St. Louis, MS

Subject: Tour ICE Tactical Targeting Center

POC: (b)(6) (ICE OCR)

August 06 FEMA w/ House T&I Staff

Location: Kilauea, Hawaii

Subject: Kilauea Volcanic Eruption and Earthquake Response and Recovery Efforts

POC: (b)(6) (FEMA CAD)

August 09 USCG w/ Staff – All Members

Location: Philadelphia, Pennsylvania

Subject: Sector Delaware Bay Missions Day

POC: (b)(6) (USCG OCA)

August 10-15 USCG Commandant w/ Senator Lisa Murkowski (R-AK), and Michael Enzi (R-WY)

Location: Coast Guard District 17 (Alaska)

Subject: Region visit

Participant: Admiral Karl Schultz, Commandant (USCG)

POC: (b)(6) (USCG OCA)

August 16-17 USCG Commandant w/ Senator Dan Sullivan (R-AK)

Location: Coast Guard District 17 (Alaska)

Subject: Region visit

Participant: Admiral Karl Schultz, Commandant (USCG)

POC: (b)(6) (USCG OCA)

August 17 TSA w/ House CHS Staff

Location: Arlington, VA

Subject: Tour Ronald Reagan National Airport TSA System Integration Facility

POC: (b)(6)

August 21-24 USCG w/ Rep. Ileana Ros-Lehtinen (R, FL-27)

Location: Charleston, Miami, Key West, Puerto Rico

Subject: Tour Coast Guard District 7

POC: (b)(6) (USCG OCA)

August 26-31 USCG Commandant w/ Rep. Kevin Yoder (R, KS-03)

Location: Alameda, Seattle, and Kodiak

Subject: Region visit

Participant: Admiral Karl Schultz, Commandant (USCG)

POC: (b)(6) (USCG OCA)

Sender:	Ammons, Samantha (b)(6)
Sent Date:	2018/07/27 17:27:31

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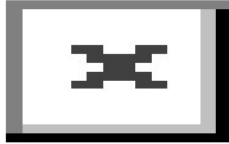
From:	DHS Legislative Affairs (b)(6)
Sent Via:	(b)(6)
To:	"Wonnenberg, David (b)(6) (b)(6) "Dinh, Uyen (b)(6) (b)(6) "Micone, Vincent (b)(6) (b)(6) "Ciccone, Christine (b)(6) (b)(6) "Hymowitz, Emily (b)(6) (b)(6) "Phillips, James M (b)(6) (b)(6) "Ammons, Samantha (b)(6) (b)(6) "Vieco, Russell (b)(6) (b)(6) "Nusratv, Jeffrey (b)(6) (b)(6) "Readinger, Jeff (b)(6) (b)(6) "Blume, Allen (b)(6) (b)(6) "Keene, Judith (b)(6) (b)(6) "Miller, Jonathan (b)(6) (b)(6) "Rocca, Andrew (b)(6) (b)(6)
CC:	"DHS Legislative Affairs (b)(6) (b)(6)
Subject:	HEARING TRANSCRIPT 05-08-2018 S1 Nielsen before Senate Approps re: FY2019 budget request
Date:	2018/05/09 10:33:17
Priority:	Normal
Type:	Note

Please find attached and appended below the *Bloomberg Government* transcription of the following S1, hearing held Tuesday, May 08, 2018:
Fiscal Year 2019 funding request and budget justification for the U.S. Department of Homeland Security

Senate Committee on Appropriations, Subcommittee on Homeland Security

Sole Witness: **DHS Secretary** Kirstjen Nielsen

2:30 p.m., 192 Dirksen WEBCAST



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CAPITO: I want to welcome everyone. I call this hearing of the Subcommittee on Homeland Security to order. And I'm very pleased to begin my first hearing as the chair - chairman of this subcommittee. It is the subcommittee's first hearing of this budget cycle and its purpose is to review the Department of Homeland Security's fiscal year 2019 budget request.

We thank the Secretary, Secretary Kirstjen Nielsen of Homeland Security for agreeing to appear before our subcommittee. Secretary Nielsen is appearing before our subcommittee for her first time and we look forward to hearing her insight. I'm also very, extremely pleased to be joined by our subcommittee's Ranking Member, Senator John Tester from Montana. We look forward to working together. We were just talking about that, through the fiscal year 2019 process.

I'm also very pleased that the Vice Chair of the full Appropriations Committee, Senator Patrick Leahy from Vermont is here with us today. So, thank you. As the highest ranking official at the Department of Homeland Security, Secretary Nielsen has one of the most challenging jobs in government.

Her department and its nearly 250,000 employees carry out a broad set of missions that spans the entire globe. They work to combat terrorism, manage who and what passes through our air, land and sea borders. Secure civilian cyber space, prepare for and respond to disasters and protect countless other national security interests.

The subcommittee will work to support the department in meeting these demands in an effective and efficient manner. The recently enacted appropriations bill provided significant investments for the department towards those ends. It made significant investments in a new border wall system for the highest trafficked portions of the southwest border.

It provided a record level of funding for immigration enforcement. For the first time, it dedicated significant funding to opioid detection equipment and to research and to improve those detection capabilities, something I'm extremely interested in.

It included the largest ever investment in equipment for the men and women of the Coast Guard. It dramatically accelerated the deployment of the cyber security tools that will be used by nearly every single civilian agency of the federal government. And in combination with emergency supplemental appropriations bills, it provided the necessary fiscal year 2018 resources response to and recovery from a historic 2017 disaster season.

While that bill took many positive steps, we are now turning our attention to the 2019 budget request. It is very clear to me that the department's workforce, which I'm very pleased to say, includes many West Virginians, it's - they consider this their most valuable resource and this budget request acknowledges that.

I know that it is your goal to ensure the department can improve workforce retention, recruitment, development and Senator Tester and I want to be partners with you in those efforts.

We will hear from Secretary Nielsen, today, about border security. While we saw a dramatic decrease in illegal border crossing, last year, it is my understanding that those rates have increased in recent months.

We look forward to hearing how your budget seeks to meet that challenge. I am pleased that the department has provided our subcommittee with a comprehensive plan for border security. Your budget request mirrors that plan, would suggest that continuous investment in a border wall system should be made over a 10 year period.

While there are other areas where we believe your budget request gets it right, there are some areas where we want to work with you to ensure we are recommending a sufficient level of investment in these areas, cyber security, equipment to detect opioids and other dangerous substances before they enter our borders, Coast Guard vessels, aircrafts and infrastructure, strengthening partnerships between state and local leaders and research and development. These are also parts of this budget request that are not - there are also parts of this budget request that, I believe, are not grounded in reality and that artificially deflate the real overall needs of the department. The request assumes a billion dollars in revenue which could only be realized by a fee increase proposals that have not yet been authorized by law.

CAPITO: We request your assistance as we consult with you and your staff, to make adjustments necessary to allow this budget to work, despite these challenges. Again, Madam Secretary, we appreciate your testimony and your willingness to answer questions from members of this subcommittee. I'll now turn to our distinguished Ranking Member, Senator Tester, for any opening remarks. And then, I will go to, after that, Senator Leahy for any opening remarks before you begin your testimony. So, thank you, again, and Senator Tester.

TESTER: Thank you, Chairman Capito. Good afternoon, Madam Secretary, welcome. We're here today to examine the DHS budget request for fiscal year 2019. I also want to recognize our new chairman of the subcommittee.

Senator Capito, I look forward to working together to develop some of the bipartisan DHS appropriation bill for fiscal 2019, and by your opening statement, Madam Chair, I would just tell you that we're pretty much on the same page.

So thank you. It is also worth recognizing that the 240,000 DHS employees who go to work everyday with -- with the goal of keeping this nation safe, we are absolutely indebted to them for their dedication and their service.

In total, the department's request for fiscal year 2019 includes \$47.4 billion, that's \$289 million below the fiscal year 2018 appropriation that we just enacted back in March. The department that you lead has a multitude of diverse missions, including border and immigration security, protecting cyber space, making sure air travel is secure, helping communities prepare for and respond to natural or manmade disasters and monitoring our coast lines and waterways to save lives, intercept the legal drugs, prevent bad actors from invading our ports.

It's a big job. As appropriators, our job is to allocate resources across the entire DHS enterprise to address all threats. This budget provides close to seven percent increase for border security and immigration enforcement.

But it has a near equal reduction for the rest of the department. I support additional funding for border security when done in a smart and effective way. But at the same time, we cannot shortchange other priorities like local law enforcement, fire fighters, cyber security -- excuse me, airport security, and critical R&D.

Montana's police officers and sheriffs have told me time and time again how critical these resources are to keeping them safe. Unfortunately, it is my assessment that the budget

underfunds TSA staffing, eliminates VIPR teams, and ends funding for airport law enforcement support.

The science and technology directorate would be cut by 30 percent. It is incredibly important that we have good science and technology to leap ahead of technologies and stay ahead of terrorist groups.

There is no additional or dedicated funding request to help states secure their election systems, even though at least 21 states were targeted by Russian hackers in the last election. This is a big deal for a democracy.

FEMA prepared it's (ph) grants and state and local training would be reduced by 20 -- 20 percent, while quite frankly the threats are more diverse than ever. And finally the budget relies on a faulty assumption that an unauthorized increase in aviation security fees would be enacted to offset \$520 million in budget authority.

Look, we're at the beginning of this process, and I look forward to discussing with you these priorities and these issues today. Your request also proposed to hire a thousand new personnel for CBP and ICE, despite the fact that those agencies have had a hard time simply backfilling for attrition.

Hiring has been a challenge. In fact, such a challenge that the CBP awarded a contract to a company in 2017 to aid with the hiring of new agents. The total value of that award is \$297 million, \$43 million of that \$297 million has been obligated so far, and yet based on the latest data that I think we got from the CBP, there are fewer border -- border patrol agents on board today than when that contract was awarded.

Before I can agree to additional contracts -- additional funds for this contract, we need to see evidence that this is truly a wise use of taxpayer dollars, because so far it doesn't appear to be that way.

Finally the fiscal year 2018 omnibus included \$1.345 billion for the construction of a physical barriers along the southwestern border, some replacement miles, some new miles.

The department still needs to supply this committee with an execution plan that describes the total number of miles, location and cost for each segment. If there are potential cost increase, we need to know those details too and the implications that that could have on this budget.

So thank you again, Madam Secretary, for appearing before the committee and I look forward to our discussion.

CAPITO: Thank you, Senator Tester. And I'd like to recognize the ranking member of the full committee, Senator Leahy for opening statement.

LEAHY: Thank you, Madam Chair. I -- I appreciate that. We have a lot of work ahead of us and, Madam Secretary, you're here to pen (ph) the Department of Homeland Security's budget request.

It reflects the Trump administration's priorities for your agency, as well as priorities that we're going to discuss with you today. And we're all (ph) going to ask who are those (ph) priorities are supported by the facts.

I know within days of taking office, the president attempted to make good on his Muslim ban by ordering a travel ban on citizens of certain Muslim majority countries. He did this despite a consensus among top national security experts, even within his own administration.

This (ph) citizenship alone is not a reliable indication of terrorism. And after promising to treat DREAMers with great heart, his words, the president proved heartless. He abruptly ended the program, he walked away from the only serious (ph) bipartisan, republican and democrat compromise to protect DREAMers, in order to, in his words, stop the massive in flow of drugs.

The president should know by now that DREAMers, by definition, are law abiding strivers, they're not drug kingpins. President Trump has repeatedly argued that a border wall is necessary to prevent drugs from pouring into our country, despite the reality that most illegal drugs come to illegal ports of entry, including the post office.

And when Mexico laughed off the president's promise that Mexico would pay for the wall, well then he broke his campaign promise and said the American taxpayers should foot the bill, even though he promises Mexico would pay for it.

Just yesterday after months of claiming the DHS does not have an official policy to separate families, your department announced to refer (ph) 100 percent of adults who cross the border for criminal prosecution, which of course is a de facto family separation policy.

No matter what you call it, a new policy is going to result in thousands of children, some of them infants, being forcibly separated from their families. The view of this around the rest of the -- rest of the world is shocking and most people around the rest of the world say this is so beneath the great United States.

LEAHY: Also (ph) (inaudible) straighten our limited federal resources, it will clog our court systems, all without any clear explanation, oh it (ph) keeps America safe. So at my core, my concern is not just a administration that's turning its back on immigrants by pursuing ineffective policies in the name of national security.

I'm equally concerned this administration is turning its back on what it means to be Americans. We are a nation of immigrants. All right (ph) my grandparents or my wife's parents were a proud on at that (ph). Now this committee will gladly retain a bunch of request with flexed (ph) priorities that rooted in reality.

And address the real threats facing our nation. Not a budget in campaign promises that will never be fulfilled. But we're going to be much less receptive to a bunch of request intended to provide a megaphone. The administration is fear mongering against immigrants and refugees and chair, thank you very much.

CAPITO: Thank you. That concludes our opening statements and we'll have the testimony from the Secretary. Thank you for coming.

NIELSEN: Thank you. Well good afternoon. I thank you all for having me here today to discuss the needs, gaps and vulnerabilities we have in the Department of Homeland Security and ways in which we can work together to meet those and give the folks executing these missions what they need.

So madam Chair, ranking member Tester, distinguished members of the committee it's a privilege to appear before you here today. I'm honored to present the President's 2019 Budget Request for the Department of Homeland Security and discuss how that budget will help keep the American people safe.

I want to first start by thanking this committee for the 48.2 billion provided to the Department in the recently passed Consolidated Appropriations Act. The hard working men and women of DHS deserve the resources needed to do their jobs and they deserve our support as they safe guard our communities.

I thank you for your continued support, for supporting them in this last budget cycle and hope that we can work together to continue to do so. The President's 2019 Budget builds on the 2018 budget and request 47.5 billion in net discretionary funding for DHS. It also includes an additional 6.7 billion for the disaster relief fund for response and recovery to major disasters. Today, I'd like to outline several (ph) core missions empowered by this budget. Securing and managing our borders and enforcing our immigration laws. Protecting our nation from terrorism

and countering threats. Preserving and upholding the nation's prosperity and economic security. Securing cyber space and critical infrastructure and strengthening Homeland Security preparedness and achieving resilience.

Within all of these missions we are aiming to put our employees first and empower our front line defenders to do their jobs. This will help mature the department and more importantly help us better secure the Homeland.

I want to spend the bulk of my time this afternoon focusing on border security and the enforcement of our immigration laws. We are preparing to release our northern border strategy soon which I know members of this committee will take an interest in reviewing. I look forward to speaking with you in greater detail on your thoughts and perspectives.

I also look forward to working with you on that and keeping an open dialogue on what needs to be done to further enhance security on our northern frontier. On the Southwest border which gets more attention these days, we have made vast improvements over the past 15 months but make no mistake we do face a crisis.

We continue to see unacceptable levels of illegal drugs, dangerous gangs, criminal activity and illegal aliens flow across our southern border. The current statistics for last month are simple -- simply sobering.

Over all, the number of illegal aliens encountered at the border more than tripled when compared to the same time last year. For the second month in a row we have seen more than 50,000 illegal aliens enter our country.

We've been apprehending these crossers with historic efficiency but illicit smuggling groups understand that our ability to actually remove those who come here illegally does not keep pace so they continue to come back.

For example, just the other week our agents received a tip about a suspected smuggler in McAllen, Texas. When they searched his residents, they found not only a fire arm and ammunition but also 70 people in a so called stash house. All illegally in the United States. The man himself had four removal (ph) orders and had been convicted of illegal entry five times. That's what we're up against. Fortunately, the President's budget would invest in new border wall construction, technology and infrastructure to stop illegal activity.

The proposed budget would also allow us to recruit, hire and train additional U.S. border patrol agents, additional U.S. immigration and customs enforcement officers and additional support personnel to help carry out these critical missions.

As we seek more funding for our border wall system, our people and the assets we need I will press forward with tough border security actions and enforcement to the fullest extent of the law. My message to smugglers, traffickers and criminals is clear. If you try to enter our country without authorization you have broken the law.

The Attorney General has declared that we will have zero tolerance for all illegal border crossings and I stand by that. We are a country of laws. It is our policy that anyone crossing the border illegally will be detained and referred for prosecution.

We will no longer exempt classes or groups of individuals from prosecution. And if they file a fraudulent asylum claim or assist others in doing so, they will also be referred for prosecution, convicted and removed from the United States.

But our zero tolerance policy and more funding for border security will only get us part way there. We urgently need Congress to pass legislation to close legal loop holes that are being exploited to gain entry into our country.

Apprehensions without the ability to remove those who have no legal right to be here is not border security. The smugglers know these loop holes and they are taking advantage of us every single day. They know it's easier to get released into America if they claim asylum, if they're part of a family or if they are unaccompanied children.

So it should come as no surprise that we are seeing a spike in all of these categories. Word is getting out. Asylum claims are up 200 percent in the last five years. Family unit apprehensions are up nearly 600 percent compared to this time last year.

And UAC apprehensions are up more than 300 percent. In fact, five years ago, apprehensions of families and unaccompanied children were less than 1 out of every 10 apprehensions. Now they approach almost one half, 40 percent of all apprehensions.

The gaming of the system is unacceptable. We need urgent action from Congress to close these dangerous legal loop holes that are making our country vulnerable. For border security to work violation of the law must have consequences.

Before I move on, I want to make one final point. While activists claim that these migrant flows are helping people, I would argue the opposite. The journey to our border endangers the illegal aliens themselves. The communities they pass through, our agents' border and U.S. communities in our homeland.

Illegal migrants face the prospect of robbery, rape and murder as they travel. And the criminal network smuggling them are the same networks that smuggle drugs and weapons and which have caused instability in communities throughout the region and our country.

To be clear, human smuggling operations are lining the pockets of transnational criminals. They are not humanitarian endeavors. Smugglers prioritize profit over people and when aliens pay them to get here they're contributing (per) up to 500 million a year to groups that are fueling greater violence and instability in America. There are other options aside from the dangerous journey north to our borders, ones that I continue to advocate.

If they have a legitimate need to flee their home countries, migrants should seek protection in the first safe country they enter, including Mexico, not subject themselves to an unnecessary long and dangerous journey and or turn themselves in to the ports of entry.

I have met with hundreds of members of Congress, they have all told me they want to secure the border, but when it comes down to it, too often there is reluctance to support our folks in doing what they were required to do, which is enforce the law.

That's what men and women have signed up for, that's the oath I took. This is also what the American people demand, we are a country of laws. This administration and this department will continue to do everything we can to enforce the law, which is why we are committed ourselves to do when we swore our own oaths.

In addition to border security and immigration, I wanted to quickly touch on another -- other topics, but happy to ask -- answer any questions you might have. We also make important enhancements across our other missions to support countering terrorism, the budget would allow TSA to deploy advanced tools to detect threats.

It funds new CBP initiatives to identify high risk travelers, ramps up defenses against weapons of mass destruction, provides vital funding to protect soft targets from concert venues to schools against attack.

To advance our economic security and prosperity, the president's budget provides critical resources to enforce our trade laws and to keep foreign adversaries from stealing our trade secrets, technology and innovation.

To support cyber security and critical infrastructure security and resilience, the budget equips DHS to continue making historic strides to address systemic cyber risk, secure .gov networks and assist critical infrastructure owners and operators.

It also enables DHS importantly to support state and local election officials in defending our election systems. Finally this year's budget will allow us to strengthen homeland security preparedness and national resilience.

Last year we experienced one of the most costly and damaging season for national disasters in history with accumulative cost exceeding \$300 billion. President's budget will devote the resources and attention needed to ensure recovery and to help communities across our nation create a culture of preparedness to be more resilient to disasters.

In addition to the areas I mentioned today, I'm also firmly committed to maturing the department and putting our employees first. I ask the committee to -- to work with me on this budget, to support the needs of the men and women of DHS, to support our missions (ph) and help us make our country more secure.

It's a true honor to lead the men and women of DHS and I commit -- remain committed to working with you to do just that. Thank you very much for your time today and look forward to your questions.

CAPITO: Thank you, Madam Secretary. And I want to help my colleagues stay happy on my subcommittee, so Senator Hoeven is going to be chairing the -- on the floor -- presiding on the floor, so I'm yielding my time to Senator Hoeven to begin the questioning.

HOEVEN: Thank you, Chairman Capito, very much, I really appreciate it. Secretary Nielsen, thank you for being here, more importantly thank you for the very good job that you're doing as Secretary of Homeland Security.

We appreciate it very much. One of the tools that we're using on the border is unmanned aerial systems, both on the northern border and the southern border. You and I have talked about it and we're looking forward to having you come to Grand Forks, where we have 900 miles of border security responsibility and we're using unmanned aircraft as a big part of that.

My question to you is we also have to be -- not only using unmanned aircraft for surveillance, but also now increasingly we have to be aware that we've got to protect our borders from unmanned aircraft threats that may come into our country. And I know you're working on that, so my first question is, do you have adequate funding for counter-UAS type activities that you need to do?

NIELSEN: I thank you for the question because this is an emerging threat and one that's very top of our mind. We see how UASs are used in the theater, but we also have already seen them used by TCOs to transfer drugs across our border.

HOEVEN: OK.

NIELSEN: So, it's only a matter of time, we fear, until we watch them use it to, actually, transfer IEDs or something explosive materials. They disrupt our surveillance and they cause problems with our communication already. So, we have put together a legislative request for authority that would help us surveil (ph) and disrupt.

It's not dissimilar to what the Department of Defense has. We're working with DOJ to finalize that language, but I would, very much, look forward to working with you on that so that we can protect our border.

HOEVEN: Have you started looking into utilizing private companies to help leverage your capabilities, both, in some of that counter-UAS work, but also, even in using your fleet. One of the challenges, and I remember from my time chairing this subcommittee, is personnel. You

know, getting enough personnel because you have such and incredible demand for skilled people, you have great people and you need more of them, including pilots. And so, have you started to look at private sector options, both, to fully utilize your fleet of unmanned aircraft, as well as, to do some of this counter-UAS work.

That's one of the things that we can show you are some of these creative, innovative uses because we, not only, have the military using unmanned aircraft up there, we have civilian, Guard, Reserve, active forces, but then, also, Customs and Border Protection. And so, are you moving this direction to try to leverage, you know, your resources - your manpower needs?

NIELSEN: We are, as you know, we're working with some of the great establishments in your state to do some training and piloting, but there's a lot we can learn. We work with the private sector, now, using UAS, already, in a variety of means, for example, to determine the damage after a disaster. We often...

HOEVEN: Right.

NIELSEN: ...do that in conjunction, you know, pre and post disaster along the coastlines. So, we do have partnerships, already, with the private sector. Yes, we are looking to continue to leverage those for the security needs across the border and around crowded places.

HOEVEN: Again, thanks for the work you're doing. We look forward to working with you in this area and other areas as well.

NIELSEN: Thank you.

CAPITO: And now I'm going to turn to Senator Leahy for his questions.

LEAHY: Thank you, very much. Madam Secretary, I recall the morning you appeared before the Judiciary Committee in January where you are required under the law to tell truth in your answers. You released, the morning you appeared, you released a report claiming that 73 percent of individuals convicted of international terrorism charges since 9/11, or 402 in total, were foreign born.

I asked you questions about that, points (ph) you couldn't answer. You testified, again, under your requirement of telling the truth that you'd get back to me, you haven't. I've had a number of inquiries to you, it's been four months. Even though you stated you would get back - just let me try again.

A report was released pursuant to the President's travel ban. How many of the 402 individuals, listed in the report, were citizens from countries included in the travel ban? Easy question, go ahead.

NIELSEN: Sir, I continue to commit to get back to you with the information, the challenge.

LEAHY: Oh come on, it's been months and months and months and you were relying (ph) in the travel ban based on the president's statement. He must have had something to back it up with. You had to have something to back it up because you said it.

Now you said it (ph) and that's what the country has to fall. So tell me, how many of the 402?

NIELSEN: So there's two issues here, one is the information that we have from our partners in the interagency and I thank you for your detailed letter in February, we are looking to make sure that we respond fully, but some of the information is not DHS information.

So you do have my commitment (inaudible) --

LEAHY: But you used it as your information, the president used it as his information, are you telling me these numbers are just sort of made up out of whole cloth and then we'll just stall the Congress if they ask us where it comes from?

NIELSEN: No sir, I'm not. The second point I was going to make is the two are somewhat disaggregated, so what we have done with the countries that you mentioned, we have set a

international for the first time baseline of information that we need to assure ourselves that we know who is travelling to our country and whether they have an intent to do us harm.

If those countries cannot meet that burden, then we have tailored travel restrictions for them. As you know, we worked very closely with the country of Chad. Chad just came off (inaudible) --

LEAHY: How many of the 402 came from Chad?

NIELSEN: Sir, what I'm saying is the two are separate. One was a report on international terrorism, and yes three -- the report said that three out of four --

LEAHY: Are -- are you -- are you saying that cannot answer my question after all these months of the 402? Yes or no.

NIELSEN: I do not have that information with me today, sir.

LEAHY: OK, do you know how many of these were people extradited here, sent here by law so they could be tried?

NIELSEN: I do not have that information.

LEAHY: Like Osama Bin Laden's son-in-law.

NIELSEN: I do not have that information with me today.

LEAHY: Now the White House cites its report when they argue for an end to diversity visas and family unification, can (ph) the 402 come through those programs?

NIELSEN: I'm -- I'm sorry?

LEAHY: The White House says that we need this -- in talks about the 402, it said that shows a need to end diversity visas and family reunification. How many of the 402 came through either of those programs?

NIELSEN: Sir, as I said, I am committed to getting you the information, I don't have it in front of me today, I'm working with the air (ph) agency where the information was pulled.

LEAHY: OK these -- these facts are still on the White House website. There doesn't seem to be any backup for them. But it becomes what our policy is made on. I can make any policy if I just want to make up the facts.

Now I'd ask you about CBP directive that permits border officers to search (ph) through Americans like trying devices (ph) at the border for no reason at all. You responded and I agreed with your response, there has to be a reasonable suspicion.

But now CBP has the directive that allows for officers to manually search through U.S. citizens phones, having no suspicion at all. Senator Daines and I introduced a bill, requiring CBP to at least have reasonable suspicion in these cases.

In other words, Americans faced (ph) with American officers who say here we're going to go through your phone. Now would you support codifying this standard for border searches of American's electronic devices based on what said before?

NIELSEN: Sir, I would look forward to looking at the language and working with you, absolutely. There should be a reason to search a phone. I don't, to my knowledge...

LEAHY: You said there should be a reason.

NIELSEN: Yes, sir.

LEAHY: OK, that's not what the policy says now, so you're saying that you should have a reason, it can't just be because they feel like it?

NIELSEN: CVP, as you know, has broad authority to -- for inspections at the border, but I'm not aware of any policy that says they can take any American's phone and search it for no good reason. I'm not aware of that policy.

LEAHY: Well, this new CVP Director says they can. So, please look at that because, you know, it becomes a police state if you do that. I'll submit my other questions for the record and I appreciate the courtesy of, both, you and Senator Tester.

CAPITO: Thank you, Senator Leahy. So, I'll begin my questioning, Madam Secretary, the 2018 appropriations bill, recently enacted into the law, provides, for the first time in about a decade, significant new funding for new mileage of a border wall system along the southwest border. You addressed this in your opening statement. Do you believe that these investments will secure the southwest border in ways that cannot, feasibly, be achieved through technology or personnel? Let me -- let me go ahead, I have three questions and you can, sort of, (inaudible).

NIELSEN: OK.

CAPITO: It's my understanding, too, that the funds provided in 2018 and those requested in 2019 will be used to build a border wall system. Can you explain what those components would be? And then, lastly, how will these investments improve the safety of our Border Patrol? They, obviously, are well trained. Many of them go through Harpers Ferry at the training center there, in my -- in my state. So, how will this more effectively secure their -- their own security? So, those are my three questions about the border wall.

NIELSEN: Sure. Thank you for combining them because it's easier to answer. So, for the wall system, as you know, the wall system is a combination of personnel, technology and infrastructure. What we're attempting to do with, what we call, the wall system is reach operational control at the border.

So, there's -- that's made up of four capabilities. One is impedance and denial, which is that infrastructure wall which we, do believe, in and of itself, decreases the amount of assaults on our Border Patrol which, as you know, is up 73 percent. It's a 30 foot wall, so it makes it that much more difficult for those attempting to cross illegally to attacked our -- or attack our folks. Two, it provides access and mobility. So, that's the roads. That's the ability to get to the wall, to get to somebody that we need to interdict. Three, it's the domain awareness surveillance. We do that through technology, as you know, as well as personnel. And the fourth is the personnel themselves and making sure they're mission ready, which is the training that occurs at Harpers Ferry and others.

So, together with '17, '18 and '19, we're looking at about -- if '19 should be funded at the request, looking at about 200 miles of wall. Some of that is replacement and some of that is wall that has never existed there before.

CAPITO: So, is that wall (ph) -- is that a wall system or is that...

NIELSEN: It's, it's.

CAPITO: ...all physical wall. I think that's the question Senator Tester.

NIELSEN: Yes, so two -- good -- so, 200 miles is what we -- it would -- that would -- that includes physical infrastructure.

CAPITO: OK.

NIELSEN: But when we have physical infrastructure, we make sure to include the other capabilities with it...

CAPITO: OK.

NIELSEN: ...so that we get the biggest thing (ph).

CAPITO: It's a combination then? Yes. My second question is on election security. It's Election Day in West Virginia, in case you missed that on the national news. And, obviously, we saw, during the last election, some of the difficulties that we had, in terms of some cyber security and

cyber hacking and all of the things that -- known and unknown to some of us, already. I'm not sure we know what all happened in 2016.

So, on a scale of one to ten, where you rate the United States in relation to other nation states, in terms of our overall cyber security posture in elections? And the other thing I'm wondering is, what kind of lessons learned your department has -- has learned? I know you've been working with the Election Assistance Commission which we just funded, that was my last subcommittee. I think it was \$340 million for this -- in -- in the 2018 budget -- or 2018 bill that we passed. But how you're working with states to make sure that their election infrastructure is safe and that for the 2018 election we're going to have the assurances that our elections are much safer than we found out they were in 2016.

NIELSEN: So there's two things that are top of mind for me as part of this conversation, one is helping state local secure the election infrastructure itself, and the other is combating what we've seen very visibly now as foreign influence and attempts to influence voter's decision making through false propaganda or through a speech that is misdescribed (ph) in terms of who is providing that speech.

On the former DHS has lead, compared to other countries, I would say that we are pushing the bubble. We actually provided threat indicators for example to France for their election.

We also have seen in other countries physical attacks on election places, such as in Libya over the last couple weeks. So the part that DHS does, I believe that we are above or actually helping other countries. We talked about it at the G7 a couple weeks ago when I represented the United States' security administrator.

In terms of what we are doing, we need to do more, we're working hand in glove with the Election Assistance commission as you mentioned, as well as state and local officials. I also, in the weeks to come, will be hosting a meeting on the Hill and ask for as many members who have time to attend that I can explain to you not only what we're doing, but how we can further help our state and local partners.

There's a lot of best practices we've learned, redundancy is always top of mind, we either need paper ballots or a way to audit. But there are some things that we can encourage our state and locals to do.

For example, every state has the opportunity for provisional ballot, but some do not give a provisional ballot if you show up at a voting place and you are not on the voter roll. So if you look at the system and everywhere in which it could be compromised, there is a lot more that we need to do to work with the state and locals.

CAPITO: Thank you, I will like to say since I voted early in my state, we did change the local voting system where we were and we've got a touch screen but it does have the paper back up to it, so I felt very secure there and -- and was pleased to cast my vote. So I'll go to the ranking member and Senator Murray.

MURRAY: Thank you very much, and thank you Senator Tester for -- for yielding. Madam Secretary, thank you for being here. I just have to start -- I just have to say I am really disappointed in this administration's treatment of our immigrants and religious minorities and many others.

I can't say I'm shocked, I listened to President Trump's rhetoric during the campaign, but I am disappointed and I'm going to keep standing with these families across our country to fight back, whether we're talking about DREAMers who have come out of the shadows to participate in the DACA program or whether we're talking about TPS recipients who have been part of our communities for decades.

There are families who are being torn apart at our borders today, and we're banning people from visiting our country really because of their religion. So I just want to state I disagree with this administration on every step of the way.

But I, today, wanted to focus my questions to you on one of the more damaging decisions. In December, acting in secret, ICE changed how it would treat pregnant women in their custody. And the new policy means that a lot more pregnant women will be stuck in detention for a longer period of time, often with inadequate support, whether it's nutrition or medical care or prenatal care.

And in response to that, the American Academy of Pediatricians, the American College of Obstetricians and Gynecologists and the American Academy of Family Physicians wrote to you saying that detention quote puts the health of women and adolescents and their pregnancies at great risk.

And they go on to explain something that should be obvious, detention facilities do not offer the level of care that pregnant women need. Now on top of the real consequences to these pregnant women, for months the departments didn't even tell Congress about this inhumane and dramatic policy change, and when this new policy change was finally posted on your website, the question and answer page included a question stating, and I quote, isn't detaining pregnant women a human rights abuse?

Well your question and answer page raised the question and I think the answer is pretty clear. When your department is doing something that is wrong and misguided and in my opinion cruel and an embarrassment to our country, I think it's wrong and I really urge you to reverse course on this.

I know it's wrong, I -- I think you should, but I want to ask you a couple of questions about this. Can you truthfully tell us that detention facilities offer the same level of care to pregnant women as a hospital or other medical facility that's designed to care for pregnant women?

NIELSEN: What I can tell you is we screen everyone, every female for pregnancy from ages 18 to 56 when we encounter them. We provide them prenatal care, we provide them separate housing, we provide them specialists, we will take them to appointments if they need to go somewhere else.

We provide them counseling and we provide them religious --

MURRAY: OK, but they are in detention for this (ph). Do you know how many pregnant women are detained today?

NIELSEN: I don't know how many, no ma'am. But I will say the reason they're detained is because they illegally crossed our border. If they went to a port of entry, that would not be a crime. So I would like to encourage those who are pregnant --

MURRAY: (Inaudible) let me just tell you, I'm short on time, I have another question, but I will tell you you're just trying to discourage pregnant women, they don't come here because they're pregnant.

NIELSEN: No, I'm trying to encourage them from breaking the law. If they go to a port of entry, they have not broken the law. They can make their asylum claim.

MURRAY: But to put them in a detention center, that is inhumane (inaudible).

NIELSEN: They broke the law, yes ma'am, we -- we do not exempt classes, we enforce the law.

MURRAY: And so therefore (inaudible) treat them inhumanely and cruelly.

NIELSEN: Well I will tell -- I will tell you actually they provide -- they are given not only adequate care in facilities --

MURRAY: Well you -- you and I will disagree on that point.

NIELSEN: OK, but it is much better care than when they're living in the shadows and they're not provided any care after entering our country illegally.

MURRAY: We obviously disagree, and let me just ask you another question because this committee gets a lot of requests for additional funds to reprogram our funds or transfer funds due to overspending and a lack of fiscal discipline in your department.

As you know, Congress, not this administration, sets your budget and you have to live within the means that we give to you, and to me far too frequently it seems a big part of DHS overspending is caused by ICE unnecessarily detaining people, like we talked about, pregnant women.

As you know, detention is really expensive, every year ICE -- each year ICE detains someone, it costs taxpayers over \$50,000. For comparison, by the way, that's four times the amount the federal government spends on each child in our public schools.

So what this means is that taxpayers are now footing the bill for food, medical care, clothing and the expensive prison contracts that ICE is using for detention, like the facility that's in my home state.

To me that's really inexpensible (ph) because there are less expensive and more effective alternatives to detention. And in fact, according to your own budget, to use one of the alternatives to detention costs less than \$1,500 per year compared to that \$50,000.

So while you're asking for billions of dollars in additional funds to build the unnecessary border wall, hire more ICE and border patrol, expand detention, militarize the border, you're asking to cut funding for alternatives to detention in your budget.

So why is the department not asking us to expand the use of alternatives to detention in order to save taxpayer money?

NIELSEN: We are looking to do both. So as you know, one of the alternatives to detention is an ankle bracelet. We do utilize those in situations where appropriate. If somebody, however, is -- has broken the law, in the sense that there are multiple re-entry, or they have some other reason to be criminally prosecuted, we actually turn them over to the Marshals.

We defer them over for prosecution, in which case there is no option for an alternate to detention. So if you look at all the numbers, we are trying to find ways to do it. But I do want just say again, if you cross in between the ports of entry, if you -

MURRAY: I know what your philosophy is. I'm out of time. I just want -

NIELSEN: It's not a philosophy. It's a law Congress passed.

MURRAY: Well, I -- I just will say to you -

NIELSEN: So she's encourages you to go to the ports, if they need to come to seek alyssum.

MURRAY: -- I believe that you (inaudible), and the use of ATD. It seems to me it's cost payer saving, and much more humane. Thank you.

CHAIRWOMAN: Senator Lankford?

LANKFORD: Thank you. Senator Nielsen, would you pass on a thank you from this committee to the law enforcement folks that we work with. They have an incredibly difficult job. And they literally put their lives on the line every single day, to be able to protect the United States, and our neighbors.

And we very much appreciate the work that you're doing, and the work that they're doing all the time. I'd also like to thank you for the very hard work you all have done on election security.

You all have done a lot in the past year, working on election security issues, and trying to get to a better place than what we were in 2016, both clearances and getting security clearances for state leaders, working in coronation, helping people to think through the "what if's" and trying to be able to have that ongoing dialogue that's much needed.

So I appreciate that very much. And if you could pass that on to your team as well, because they've done a lot of work on that.

NIESEN: Thank you.

LANKFORD: Let me ask some specific appropriation questions. One of them is about the dollars that were given during -- for 2018 for wall construction -- the wall system. Can you give us a progress report of what's happening? And I have a ton of questions to be able to go through, so if you can give me just a brief update on what's happening on that wall construction -- the wall system for 2018?

NIESEN: Sure. So what we're doing right now, as you know, is building a 30 foot new bollard-style wall in Plaxico. We are then moving to Santa Teresa. After that, we will move to RGV. So we have, as you know, about 650 for existing miles now.

And we're -- 980 we're looking at. But over the next three years, we'd get to that 200. So we're moving forward as expeditiously as we can. As you know, it's a complicated process with the land acquisition, and working with state and locals. We work very closely with the governors, the ranchers, and others, who along the border own the property, to understand where and when we need the wall.

LANKFORD: OK. But that's moving expeditiously at this point?

NIESEN: Yes, sir.

LANKFORD: Great. So \$276 million has been requested for Calexico to finish up that port of entry as well? Help me understand what those dollars would go towards. That's a chunk of money to be able to finish off that port of entry there. That's -- and I believe that's the second year of that funding for that. What would happen with Calexico if that money is allocated?

NIESEN: If the money is allocated, we'd build up the rest of the wall system. So it's not just that infrastructure, and impence, but it's also the surveillance. It's also looking at how to connect it to the nearest port of entry, and some of the technology -- it's the integrated towers. And it's the training of personnel, and additional personnel who would then be needed to work at that location.

LANKFORD: So Calexico, itself, is a border crossing port of entry? How -- give me a ballpark, not just for that facility, but for all of our southern border, the number of legal crossings that happen a day, or a year, whichever one you want to do there?

NIESEN: It's 360 million a year that DHS encounters, and that's northern and southern border. But of course, it's mostly southern.

LANKFORD: Mostly southern?

NIESEN: Yes, sir.

LANKFORD: So easily estimate half a million -- one way, half a million people cross from Mexico into the United States every day?

NIESEN: Yes, San Ysidro -- which has been in the news a lot lately, as you know -- we process 100,000 people a day in San Ysidro, alone.

LANKFORD: It -- it is always interesting to me the number of times I get into a conversation with people and they talk about the only way to get into the country is illegally crossing into the country, that that's the only route, when we have half a million people a day, legally crossing into the United States...

NIESEN: Yes, sir.

LANKFORD: ...working through the process the right way. So it's not as if the only way to be able to cross our southern border is to illegally cross that border.

NIESEN: Correct, and it's much, much safer to go through the ports of entry for the immigrant.

LANKFORD: Let me ask you your vision for the St. Elizabeth's facility. Who do you think would move there, as -- what part of your office? I know there's been some debate on where that will go, and who will go there for that St. Elizabeth's facility.

NIELSEN: St. Elizabeth's has been a bit of a difficult construction project. We were very much restricted in how we can build. As you know, we had to build within a building, if you will, to observe the historical requirements that D.C. laid out. And so what that means is we're constantly rejiggering who can go there at what time, because we're trying to get people there as quickly as possible.

So the Coast Guard is there. The headquarters elements (ph) fortunately are now not slated to go there until about March 2019, but we continue to work with GSA to move forward as quickly as we can.

LANKFORD: OK. Do you anticipate FEMA moves there?

NIELSEN: FEMA is -- is still slated to move there, yes sir.

LANKFORD: OK.

NIELSEN: Now, that could change, and we would definitely let you know if that's the case.

LANKFORD: Let me run through a couple of quick things as well. I visited with folks from the Coast Guard and Customs and Border Patrol about the steps that they have to go through in the process of interdicting drugs on the water. They're -- they have the same steps, but a very different process. Customs and Border Patrol can move very rapidly through those steps, Coast Guard may take 30 to 40 minutes to be able to move through the exact same steps.

If you wouldn't mind, take a look at that, and try to figure out why Customs and Border Patrol can move much faster than Coast Guard can. That makes -- makes it very, very difficult for them, and is also a large cost savings if we can actually make those two consistent on it.

I know that there is -- from the omnibus bill, there was a decision that was requested to be on (ph) H-2B Visas. You were given additional authority to be able to increase those numbers, and we're still waiting for that process to work through that.

And one last quick question from you: are there asylum laws in Costa Rica, and Belize, and Ecuador, and Brazil, and other countries? Because there's a lot of talk about people from Central America coming to the United States. It's my understanding Costa Rica's a very peaceful country as well, Belize's a very peaceful country, what -- what -- what's the belief of why they would come here rather than there for asylum?

NIELSEN: What I can say is we encourage anybody who is in fear for their life to go to the first safe country that they enter. That is the international approach, the G7 approach, the Five Eyes (ph) approach, the UNHCR approach. So we continue to encourage those to do it. Under our laws, the only way that we can stop people is if we have safe third (ph) agreements with other countries. We are working towards those, we have -- we'll have one with Canada.

LANKFORD: OK. Thank you.

CAPITO: Thank you. Senator Murkowski.

MURKOWSKI: Thank you, Madam Chair, and Madam Secretary, welcome. Nice to see you here. I'm not going to ask questions on immigration, but I -- I do want to acknowledge, as you say, we are a nation of laws, absolutely.

We are also a nation filled with very compassionate hearts, and I am going to share with you a letter that I received from the Alaska Catholic Conference, with specific requests to programs such as the Refugee Assistance and Immigration Services, where we have helped, in Alaska, to -- to establish about 130 refugees, as -- as well as some other -- some other measures that they have

asked to be brought to -- to the attention of not only the committee, but to yours as well. So I will be forward -- forwarding that to you.

NIELSEN: Thank you.

MURKOWSKI: You mentioned in your comments the northern border, and I would like to speak to the northern border. In your F.Y. '19 budget request, you state, "Our great nation has always been shielded by threats -- from threats by distance and by two oceans. And we can no longer have confidence in that protection." I need to you amend that statement because we have three oceans that we need to be aware of. It's the Atlantic, it's the Pacific and it is the Arctic. And I would argue that, as an arctic nation, in the past that sea ice, up north, has really acted as that shield, to provide protection for our northern-most border. But as we're seeing the rapid diminishment of the Arctic sea ice that once protected us and then the heightened international interest that is, certainly, focused in the region, coming from Russia, coming from China and other, other nations. We are -- we are more and more vulnerable to, to, not only, domestic, but international threat.

The importance of protecting our political, our economic, our energy, environmental, other interests in the region, I think need to be a priority. And yet, the, the department's budget, in my view, doesn't reflect the Arctic as a priority, now, having said that. Thank you, thank you for the recognition that as an Arctic nation, we do need a polar icebreaker and the resources that are in this budget are significant and important and, absolutely, welcomed.

But we, also, recognize that what the Coast Guard needs to achieve its statutory mission in the Arctic is a fleet of icebreakers. And it's been recommended that there be three heavy and three medium icebreakers. So, we're making momentum. I'm not complaining about that, but I am worried that we're not setting ourselves up to do more than to address the needs for one icebreaker, something that we recognize is going to take many of years to construct.

So, how do we expedite the construction of the remaining two heavies and then the subsequent three medium icebreakers that we need? Do we need to look to, to block buying? How can we be smart about this? Because I think we need to be smart.

NIELSEN: We are looking at block buying. The good news is, as you very well know, the Coast Guard is now positioned to accept money through the DHS budget or through the Navy. That makes a very big difference. The 30750 (ph), together, there will get us the next icebreaker. But I share your concerns. China is much more strategic than we are in this area, Russia, much more strategic than we are in this area.

This is the way to defend our sovereignty and we need to take it seriously. So, I, very much, look forward to working with you on other creative ways that we can get the money faster, into the private sector and encourage the industry to build faster.

MURKOWSKI: Well, we, we will work with you on that because I am fearful that we're taking this one at a time. And one at a time means that we're not going to be prepared. And it will be just extra costly. As I'm speaking about Coast Guard, we have -- we have been working hard with the Coast Guard to deal with replacing some, some aging assets that we have up north. And we've got new, new offshore patrol cutters coming our way, as well as patrol boats and that's good. But where we're lacking is the, is the shore-side infrastructure. So, we need to know that we can work with you in ensuring that we're able to bring these assets online without being delayed because we haven't provided for the necessary resources for the, for the shore-side infrastructure. So...

NIELSEN: Thank you. Yes, you have my commitment.

MURKOWSKI: Good. Thank you. And I'm moving quickly because I need to get this last one in. And Secretary Lankford - Secretary - Senator Lankford mentioned the H-2B visas and you have received yet another letter from the Alaska delegation on the H2B Visa situation.

We are coming up against the beginning of our season. If we don't get an answer really within this next week, we're in a situation where once again our processors are not able to be on the ready to -- to receive the fish when they hit.

We can control lots of things. We cannot control when the fish come. So this is -- this is a priority for us and we are -- we are asking you -- urging you politely and then forcefully to -- to address this very, very quickly. We can't be in the same situation that we were last year. Where in the assistance came after the fish had already come.

NIELSEN: I agree. If I could just ask in return to work with you. I've talked many members of Congress on this issue. Because of our appropriations cycle as you know does not correspond to the seasons of -- the seasonality of the H2B. So I just like to request formally that Congress please put the sealing (ph) number in law.

It's the only thing that is fair to these companies who are trying to plan for understand what they will have each year. So you have me now. I will make a decision. The decision is working its way through the international -- or inner agency process, but I can't guarantee what the next secretary will say neither can the companies.

So the fairest thing to do for these companies to insure their survivability is to put the number in law. Not to give it up to the discretion of process that then has to go through the inner agency. We have to write a reg. Takes a long time.

So you have both my commitment to get this done as quickly as possible. I should be able to give you an update here very shortly on that. But also I would like to work with you to just get this in law so that companies know what they can do.

MURKOWSKI: I appreciate that and we'll look for that very -- very promptly. Thank you.

Thank you, madam Chair.

CAPITO: Thank you. Senator Tester's being very generous here and yielding his questioning time to his friend Senator Boozman now.

BOOZMAN: What's happened?

TESTER: New chair.

BOOZMAN: Very good. Well, first of all I want to congratulate the new Chair and I know that you're going to do an outstanding job as you do in everything you, you know sink your teeth into around here. So congratulations. You do have a very, very good partner.

And then certainly; Adam, Peter, Chris and Christian, you're staff do a great job as does Senator Tester. So thank you all for helping us be successful. And we really do appreciate all of your hard work. And thank you Secretary Nielsen for being here.

I've enjoyed working with you and you're staff and then visiting all over lots of men and women that are working very, very hard in lots of different components. I think with Homeland Security, you know we tend to concentrate on the border in this (ph). We forget all of the other things whether it's cyber, you know, international gangs, all of those kind of things that you all work so, so very hard and really do an outstanding job.

NIELSEN: Thank you.

BOOZMAN: So, we do appreciate it. Let me ask you about -- the Department is considering reorganization actions that would involve programs within the science and technology directorate. We started being supportive of D.H. cargo -- DHS cargo and poor security research.

How will the reorganization change the cargo and border security research program -- programs that are currently underway within DHS and ...

NIELSEN: Yes. Let me -- if I could, let me give you a -- a high-level answer and then would love to have (inaudible) folks then brief you in detail. What we're trying to do writ large is take the S&T portfolio and have it be driven by requirements.

So there is a bit of a -- there has been a bit of a disconnect in the past. So what we've done is we've moved some of the requirements; identification, the piloting, some of the research and development into the components which includes in this case cargo.

So we're actually looking at increasing our capabilities in National Targeting Center. As you know, we're working towards the National Vetting Center which will enable us to get the information from either department.

So the mission still remains. It's just an efficiency question of the best way to make that it very quickly follows from the requirements. But happy to come and break it down for you very specifically as to how we're doing that.

BOOZMAN: No, that would be helpful. And again, I guess as things go forward if you just kind of keep us updated. You know kind of give us where we're at and where we're going. And then again, update us as we get there.

NIELSEN: Happy to.

BOOZMAN: That'll be very, very helpful. I hear a lot as I'm out and about with our local fire departments and emergency service organizations that benefit from FEMA grants. And such as the assistant to Fire Fighters Grant, the staffing for adequate fire and emergency response grant, the President's Budget cuts those significantly.

I guess what I'd like to know is what the cuts are based on and then also how is the Department insuring that these local organizations -- they really do work very, very hard stretching their dollars, you know better than anybody stretches them. How do they -- how can we insure that they have the tools to keep their community safe?

NIELSEN: I think part of the answer is one of partnership. So what we've endeavored to do since I've been here is to reach out -- and I spent actually quite -- quite a bit of time with the fire community asking what is the best way they can receive support from us.

So we continue to remain support of the Safer Grantson (ph) AFG Grants but they also need additional training, they need additional guidance, they need additional protective action information. For example, we've recently published something on fentanyl and how to, you know not to be infected by that, dogs.

So there's other things we're doing to try to supplement the pure grant of money to help them most effectively build the capacity. But the need is there. I would very much look forward to working with you. Have spent quite a bit of time with them. Again, we -- we will continue to support SAFER and AFG in particular.

BOOZMAN: Very good. And again, I would appreciate you looking at that and -- and whoever's -- you know is in charge of those. Since -- Congress is probably going to be helpful in that regard and we do want plus (ph) dollars being used as wisely as they can.

I would argue that -- that again nobody stretches those dollars any -- any -- anymore than those local -- local budgets. They do a very, very good job in our community. So with that I yield back. Thank you very much.

CAPITO: Thank you. Senator Kennedy. Questions?

KENNEDY: You caught me off guard Madam Chairman. Thank you.

CAPITO: Part of my strategy.

KENNEDY: I understand. You're good at it. Madam Secretary, I'm going to deal a preliminary issue out of the way first. The impoverished pregnant women in our detention centers who came here from Guatemala, Nicaragua, Mexico, where do you think they get better medical treatment, in our detention centers or back home?

NIELSEN: I would offer per what they have told us in our detention centers.

KENNEDY: OK. Let me ask you this. Is there a country on God's green earth that let's in more immigrants legally than the United States of America?

NIELSEN: Not close. No, sir.

KENNEDY: OK. How many illegal immigrants came into America last year?

NIELSEN: Well, we had 50,000 just the last month and the month before that I don't have the total figure but a substantial number.

KENNEDY: OK. While (ph), you're the Secretary of the Department, 500,000?

NIELSEN: Sure. That would be about right.

KENNEDY: OK. You're -- you're a National Security expert and you're Secretary of the Department. I want you to forget about the politics for a moment, I can't believe I'm saying this but forget about the money for a moment, forget about trying to make somebody happy for a moment.

I want you to -- to -- to take your expertise and tell me one, two, three, four, five, six, what we have to do to cut that 500,000 in half.

NIELSEN: OK, putting the other two aside, what we need to do is agree as a country that we are going to enforce the laws that Congress has passed.

KENNEDY: OK, I -- I understand that, Madam Secretary. I'm not trying to be rude, but I try to --

NIELSEN: Do you want me to go through the loopholes?

KENNEDY: -- stay within my time, and -- and I want to come down from -- from the -- the platitudes, tell me as secretary what we need to do. One, two, three, four, five.

NIELSEN: Sure, so we need to get rid of the floor as a settlement, we need to revise --

KENNEDY: Get rid of the what?

NIELSEN: The floor as settlement. We need to revise TVPRA, we need to get rid of --

KENNEDY: What is TVPRA?

NIELSEN: That is the -- trafficking prevention act -- victims prevention act. So what that does is unfortunately through the court cases, they way that they have --

KENNEDY: It's OK, I'll look it up later.

NIELSEN: OK, got it. Zebidos (ph), which is a court case that requires us to release illegal aliens back into the communities, we need a safe third country agreement with Mexico.

We need to increase the penalties for asylum fraud, all the fraud does is ruin the chances of people who really need asylum. We need to change the way in which we process UACs so that we discourage the smuggling and the TCOs, and we need to go ahead and very closely focus on dismantling the smuggling in TCOs from beginning to end.

I think that's six, I can keep going, but those six would get us probably 75 percent of the way there if not 80 percent.

KENNEDY: Now we're talking. Thank you for being candid. I'm going to have my -- my team get in touch with your team so we can go into that in a little more detail. I want to talk about the wall for a second.

We've got about 1,900 miles of border with Mexico. I know that all of it doesn't need a wall, I get that, and some of it is already walled. We've already built a wall in -- in America, 2,700 miles of walls along the interstate, spent about \$5 billion.

Now that's not how I would've spent the money, put walls along the interstate. I'd have spent the money fixing the interstate, but they did it anyway. We built 2,700 miles of walls along our interstates in America.

And they're tall walls, and they're thick walls. They cost \$1.8 million a mile. How come the wall with Mexico costs \$25 billion -- million -- \$25 million a mile?

NIELSEN: So I -- I'd be happy to come break it down with you. The border security investment plan goes section by section, not all sections are the same. We have some parts in the desert where we have floating wall.

We have other parts in Calexico where we need a 30 foot wall. We have parts in Yuma where the wall is very different. So first of all I just want to be clear, the -- the wall is not the same.

When you're filling in a wall in an area like Smuggler's Gulch, it's very expensive, excuse the numbers because you literally are building, you know, in a -- in a ravine. It's also the wall systems, so when we put the numbers together it's not just the infrastructure, but it's everything that makes that infrastructure work (ph).

KENNEDY: Suppose we told you look we understand that, we don't want a Cadillac wall, we want a Chevy wall. And we said how about -- how does \$12.5 million dollars a mile sound?

NIELSEN: What -- what --

KENNEDY: You can give a -- a Chevy wall, can't you?

NIELSEN: Well I don't know that we can, sir, because again this is all based on the needs that the men and women who have experience and do this for a living have told us that they need to ensure...

(AUDIO GAP)

NIELSEN: ... works, nobody can scale it, nobody can tunnel under it, nobody can bust through it. I don't that the (inaudible) for the walls on highways, I don't know. But be happy to sit down with you in detail and determine if there is a Chevy version that will meet their operational needs.

KENNEDY: Chevy's a good car.

NIELSEN: Absolutely.

KENNEDY: Am -- am I done? I am done.

CAPITO: I think you are.

KENNEDY: I stayed within -- almost within my time. Thank you, Madam Secretary.

NIELSEN: Thank you, sir.

CAPITO: Senator Tester.

TESTER: Yes, thank you, Madam Chair. Thank you for being here, Madam Secretary. Through the previous questions there's about -- between '17, '18 and '19 there's about 200 miles of wall planned (ph). Is that correct?

NIELSEN: Yes, sir.

TESTER: Recent -- in recent discussions we've had, both with folks familiar with the southern border and -- and I -- I don't want to (inaudible) but even (ph) you, I think the biggest advantage we get out of a wall is folks are restricted once they get -- it takes them awhile to get across the border, by that time you can get folks there.

So that 200 miles, where's it going? Can you tell us today? Is this going to be going in populated areas?

NIELSEN: So it's in Calexico, San Diego, Santa Teresa.

TESTER: OK, these are all towns then, right?

NIELSEN: Some of them, some of the replacement wall for example --

TESTER: OK, I'm talking about the new wall.

NIELSEN: OK, so 200 includes both.

TESTER: OK, the new wall portion?

NIELSEN: But yes, the new wall is in mostly urban areas where the vanishing time is highest.

TESTER: That's -- and that's exactly -- that's the word I was thinking of, vanishing time. So you (inaudible) you said you -- you -- you're working with the ranchers and the farmers along the border where that may happen.

Are you working with the cities and towns?

NIELSEN: Absolutely, yes.

TESTER: (Inaudible) ask this is because I -- on a totally different issue, because I'm on the Banking Committee, I had...

(AUDIO GAP)

TESTER: ... noxious weeds that are on the banks of the Rio Grande and how they need to be controlled, because folks can hide in them. And I told them that they weren't going to have to worry about that because there was probably going to be a wall. There's two towns, one on each side of the Rio Grande right there, because that's mostly where it was.

They were shocked, they didn't believe me, they didn't think it was possible. They in fact said that can't be, and so the question is -- is -- and -- and I do this more for the two senators from Texas than I do myself, but if the folks on the border don't know that this is coming, there's going to be an incredible price to pay from a P.R. standpoint.

Are you OK with that?

NIELSEN: No, sir, I'm not. I think the outreach is vital. So if -- if you'd be willing, I'd love to talk to them myself, but we do spend a tremendous amount both through the governors, through the Sheriff's Association, through a whole variety of associations to try to work with everybody in those -- in those state and local areas.

And as you say, we do spend quite a bit of time removing those more nefarious species down there.

TESTER: And -- and -- and the other thing I would say is, is if you could -- you don't have to give it to me today, although if you have it at your fingertips I'd love to have it, but I need you to have -- give this to committee where those miles are going.

NIELSEN: Yes, happy to.

TESTER: And also as long as you're doing it, where the existing fence is going to be replaced at too.

NIELSEN: Happy to.

TESTER: OK, I appreciate that. Let me talk a little bit about another issue that was already talked this morning, and that is the request for pre-disaster mitigation in the case of wildfires. I don't need to give you the statistics, but I will.

52,000 fires this last year, 9 million acres burnt, 1.3 in Montana, yet the budget proposes only \$39 million for pre-disaster mitigation. And I will tell you, there are plenty of folks like the National Institute of Building Sciences that every dollar you put into pre-mitigation is worth -

NIELSEN: Is six.

TESTER: -- six. You got it. You got the figure. This 39 million is about 200 million less than '18. And I will grant (ph) we plussed '18 up pretty healthy. But even off of '17, it's -- it's about 60 percent cut. What's the plan there?

I mean, because it doesn't make a lot of sense to me. The fires are going to burn. The climate's changed. We heard Senator Murkowski talk about the Arctic Ocean going away.

And I can tell you that we burnt 1.3 (ph) million acres in Montana last year. Pre-mitigation monies are important. Are you -- what's the plan?

NIELSEN: The plan is to (inaudible) be frank here. The plan is to work with you all to try to (inaudible) relook overall at the grant program. As you know, people are embedded in the state program that you asked (inaudible), et cetera.

We at DHS though very much do believe that money spent at the front end, to help the communities become more resilient to all hazards, the way not only to best protect them, but to best use limited resources.

TESTER: OK.

NIELSEN: Though I would be happy to come and talk to you about how we can do that.

TESTER: So (inaudible) be great. And we need to do that. We really do.

NIELSEN: Yes, sir.

TESTER: So thank you.

Election security, very quickly and then I'll turn it back to the chairwoman. You talked about audits and provisional ballots, and physical attacks. I want talk about the voting machines for a second.

NIELSEN: Yes.

TESTER: And who's (ph) responsibility it is to make the determination. Because we -- we had a classified briefing a while back, and they talked a little bit about what had transpired in the 2016 election. It's concerning. And I'm not going to get into that.

But what I am going to get into is who's responsibility is it to make sure the states are doing what they need to do to make sure (inaudible). There are some folks in some of the states thank think election tampering is going to help one side or the other, which is crazy, because, quite frankly, the Democracy is at risk.

So can you tell me whose responsibility is to make sure the voting machines are -- I mean -- Chairwoman Capito said, you know, we've got a charge a paper trail with ours, which is great, by the way. Give credit, to -- where credit is due. Is there somebody telling these states what they need to do to be able to stop this tampering? Because I -- it's serious business.

NIELSEN: Yes, it's -- it's very serious. I mean all Americans should know that their vote is counted, and it's counted correctly.

TESTER: That's correct.

NIELSEN: I mean its -- so I'm in full agreement.

It's the -- ultimately, constitutionally, it's the responsibility of the state and locals. Having said that, DHS is pushing very forward in prioritizing any request we get from the state to do a whole variety of things.

On the voting machines, themselves, we've encouraged them as a best practice to unplug it. It does not need to be connected to the internet. It should not be connected to the internet. So we've offered vulnerability assessments. We've given clearances. We do classified briefings. We're doing information sharing.

TESTER: What if they don't (inaudible)?

NIELSEN: Well, we -- we have had instances where that is the case. They have either worked with third-party vendors into (ph) provide their cyber security, or they remain concerned about what they consider to be interference of the federal government, as we've tried to assist them. But what I would like to just mention quickly is I am going to host a day on the Hill. I'd invite all members to come. I'd like to walk you through very clearly what we at DHS are doing, but to

also ask you help us message to the state and local officials what they need to do to secure the election.

TESTER: Well, and I've got take to kick it back. But I'll just tell you very quickly, I'm not absolutely sure that people know the threat that's out there, because some have tried to minimize that threat. And so, some (inaudible) really has to take the bull by the horns. And I don't know if it's you, or if it's Department of Justice, or who it is. But we've got to be able to hold somebody accountable on this.

Thank you, and I would sure like another round if I could.

CAPITO: Senator Shaheen?

SHAHEEN: Thank you, madam chair, and thank you Secretary Nielsen for being here.

I understand that Senator Murkowski has already raised with you the issue of H-2B visas, so I apologize for raising it again. But, let me just start by saying that the employment rate in New Hampshire is 2.6 percent. We are the second lowest in the country.

We have businesses, particularly in the agriculture sector, in the tourism sector, who cannot find workers, to the extent that last summer we had restaurants and business in our tourism industry who were closing an additional day a week because they couldn't find people. And what we're hearing now that they are desperate to get those workers who have come here on H-2B visas. I talked to a landscaper last week who has the same folks from Jamaica who have come here for the last 10 years. They have bank accounts in the United States. They have drivers licenses in New Hampshire. They come here, they work hard for the summer, and then they go back. And yet, right now he has no idea whether these folks are going to be able to come to the country or not. So what can I tell these businesses who are desperately calling to say, what are we going to do about workers, because we don't know what the governments going to do?

NIELSEN: What I'd say is we have to balance two things. We want to make sure that Americans who need jobs have them, but we also do not...

SHAHEEN: Well, let me just say in New Hampshire that is not an issue.

NIELSEN: As I said -- if you could let me finish ma'am? What I was going to say was, it is not the intent of the Department of Homeland Security to administer any visa program that inadvertently puts companies out of business because we are not giving them the visas that they need. So the decision should be coming out very shortly, and I'm happy to give you a call, even later today, to talk to you a bit about it further.

But what I would say again is -- I ask Congress to put the ceiling in law then countries can, countries -- excuse me, companies can understand how many they'll get, they can plan towards it, they'll have sustainability, there'll be predictability and transparency in the system.

Every time Congress kicks the can to DHS we have to wait for an appropriations, we have to do an independent review, we have to do a reg -- the system doesn't work. The best -- my best thing that I can ask you to do is please put the amount in law to help the companies who need the help.

SHAHEEN: I think we'd be delighted to do that. And in fact as you know, the Senate did that when we passed a comprehensive immigration bill in 2013. So I would hope that we could do that as well, and provide some certainty.

Let me ask you about refugees to this country. We have an Indonesian community in New Hampshire who came to this country fleeing religious persecution. We had an agreement with ICE during the Obama administration, as long as those folks checked in regularly that they would be allowed to stay as long, as they were holding jobs, not getting in to trouble.

And yet this administration has prioritized those individuals, many of whom have been here for over 10 years, who have children who are American citizens -- they've been prioritized for

deportation. Can I -- can you explain that? And can I have your commitment that you will relook at this issue? Because they are facing very real dangers if they go back to Indonesia because of the persecution of Christians in Indonesia.

NIELSEN: You do have my commitment to relook at it. DHS does not send anybody -- and actually we don't make the final decision. As you know, an immigration judge does, but collectively we do not send anyone back to their deaths, so...

SHAHEEN: Well let me just say these folks until they recently were able to get a stay from the court, had not been before an immigration judge. They were targeted by, as I said, by ICE for deportation. Just were asked -- they reported in as they had been doing for years under this agreement. When they reported in, they were told come back the next time on a given date with your ticket because you're going back to Indonesia, even though you may be in danger of being killed.

NIELSEN: You have my commitment to look into this.

SHAHEEN: Thank you. As you know, the number of refugees who have been admitted during 2018 has been set at 45,000. That's an historical context where we have under the refugee act, accepted about 95,000 refugees a year, it's my understanding.

I understand that despite the target of 45,000 for 2018, that so far this year, as of April 1st, so more than halfway through the fiscal year, we've only accepted 10,548 refugees for resettlement. That's just 23 percent of the admissions determination and 73 percent fewer than the same time period last year. Can you talk about what the reason is for this reduction and whether you expect we will get to the 45,000 number by the end of the fiscal year?

NIELSEN: We will process whatever applications we've received. As you know, we work with UNHCR and there's a whole refugee resettlement process. I would like to work with this committee and other members of congress. There's some confusion in the U.S., because in the U.S., we're the rare country that combines asylees and refugees.

The only difference is a refugee applies aboard and an asylee applies at point of entry who's already here. We have 300,000 asylees in backlog. So when you put the whole number together, it's not only a very large number, but the number of refugees that we accepted in 2017 were more than the top other three countries combined.

The summary in here is the right math and the right way to think about this, but most countries do not -- they just consider it as one number or they don't accept asylees. So we either have to decide do we want to accept refugees that go through the formal refugee process, or do we want to accept those claiming asylum on our border.

As you know, we've had a 1,750 percent increase in asylum claims in the last five years. So to put it in perspective, it's the same resources that look at asylees and refugees. So I would like to have a further conversation with you about how we want to work it as a country.

SHAHEEN: That would be very helpful. Madam chair, I know that I'm out of time but could I just ask for a clarification? So the 10,548 refugees, is that number on top of a number of asylees?

NIELSEN: Yes, ma'am, 300,000.

SHAHEEN: That have been accepted into the country?

NIELSEN: We had -- I'll get that to you. I want to say there's about 100,000 last year. We have 300 currently being processed. But, yes, I'll be happy to get you the number.

CAPITO: Thank you. Senator Baldwin.

BALDWIN: Thank you, Madam Chair. Secretary Nielsen, I want to follow up with you on an issue we discussed last month. According to Citizenship and Immigration Services data, as of

March 31st, there were more than 9,000 pending DACA renewal applications for individuals whose deferred status and work authorization had expired.

Some of them have undoubtedly faced the impossible choice faced the impossible choice between stopping work, including teachers needing to quit in the middle of an academic semester the, or continuing to do so without authorization.

I wanted to, again, ask you on the record what I raised with you previously is, will those individuals seeking to renew their DACA status be penalized in that process if they have continued to work without authorization?

NIELSEN: Will they be penalized? If they have the application in, which I believe is what we discussed the last time, then we're giving them that benefit of the doubt, if you will, and we will not take any prosecutory decisions above them.

So that's above and beyond what we're required to do by the court, but I do understand that there were those who have applied late in the process because of previous court decisions. So if you have an application in, we will not target you for deportation and we will not prosecute you if you're continuing your status while you're waiting for the formal renewal.

BALDWIN: So if you continue working, say you're that third grade teacher, and you're waiting for your DACA status to be renewed, that will not be viewed as a factor of somehow being, you know, in or out of compliance?

NIELSEN: Right. We will not target you for deportation because of that.

BALDWIN: But how about would the renewal be rejected?

NIELSEN: If the application is in, we are processing all renewal applications, not new applications but all renewal applications under the current court case. So as long as you haven't committed a crime or otherwise fallen out of status, I mean, you should be approved.

BALDWIN: So the second question I have is, will the administration be asking any of the courts that have made orders in this matter to clarify whether applicants for renewal can receive work authorizations at the time that their cases are pending?

NIELSEN: I'm not aware if DOJ is asking for that specific clarification, but I'm happy to find out and get back to you.

BALDWIN: And that's not something that your department has requested?

NIELSEN: No, ma'am. Partially because we're -- we have court cases telling us to stop, court cases telling us to restart, so we're just waiting, unfortunately. What we're doing is complying with all final judicial orders at the moment. One of them, as you know, includes the direction that we must continue to execute the program as it was executed before September of last year.

BALDWIN: That's the most recent one.

NIELSEN: Yes, ma'am.

BALDWIN: And they didn't have any comment in that order about work authorization?

NIELSEN: Not that I'm aware, but I'll get that to you.

BALDWIN: Yeah, please do. I'm happy to.

NIELSEN: Last month, senator Cassidy and I introduced legislation that gives the Food and Drug Administration more tools to reduce illicit fentanyl and other drugs from entering through our international mail facilities including by strengthening coordination with CBP. This measure was included in a broader opioid crisis response measure that has been approved by the help committee. We introduce this measure because international shipping is a major source of illicit fentanyl. Particularly from China.

According to a report by the U.S. China Economic and Security Review Commission, China is the largest source of illicit fentanyl entering the U.S. with Chinese manufactures shipping fentanyl products to small scale distributors and criminal organizations across the United States. Do you agree that China is a major source of illicit fentanyl that enters the United States and do you believe that more must be done to combat the shipment of illicit fentanyl from China to our international mail facilities?

NIELSEN: Yes, to all the above.

BALDWIN: OK. Thank you. I see my time has expired.

CAPITO: Thank you. I think I have an additional question or two and then so we'll go a quick second round and I -- I thank you for your patients and for your questions and so I'm going to go ahead start. I want to kind of follow up on Senator Baldwin on counter drug efforts through DHS.

Senator Shaheen and I worked on a number of issues surrounding fentanyl as all of us have but our states are particularly highly affected by this. So I'm very interested and we're going to be having a hearing in this subcommittee where we're going to be talking about the department's effort, more specifically on opioid trafficking.

But if you could talk a little bit in more depth on -- I know we've passed the INTERDICTION Act, we -- we put \$65 million into that, what you're doing with that, and then I know in combination of what the Coast Guard is doing.

But I'm really interested more on the fentanyl coming across the border and -- and what -- how this has developed and how you're using the \$65 million.

NIELSEN: Sure, and I -- I thank you for your continued focus on this area, this really is one where we all have to work together and unfortunately it just keeps getting worse. And so we -- we -- there's a lot more we can do.

So at DHS, we work to stop it at source, we're working on international agreements. China does remain the main source, without question, of fentanyl, but China also has recently signed an agree -- or passed a law a couple months ago to stop to (ph) the precursors of fentanyl.

So we're working as much as we can in the international community. In terms of stopping it at the border, we do so by land, sea and air. The Coast Guard plays a role, CBP plays a role, ICE plays a role, we have border enforcement security teams, 58 throughout the country. They work with state and locals to combat opioid trafficking.

In the mail, I'm happy to announce that in November we have canines now at every international mail facility. Canines, as we know, when imprinted correctly, are actually the best source of detection.

We also are using money that you have provided us in the omnibus for non-intrusive detection equipment. We have an additional ask in '19 that will help with the ports of entry so that we can see even smaller and smaller amounts.

We also have provided guidance on a medical preventive perspective for first responders to take care, and then finally we're also doing things through S&T. So we're about -- through our (inaudible) technology director to issue a contract for a wearable fentanyl detector, so that first responders can also be even more protected when they are looking at packages.

CAPITO: (Inaudible) I hadn't that final -- your final thought there, I'd be interested in maybe when it moves forward to see a -- a demonstration on how it works. Just last question I have is on cyber security, and we haven't talked about that a whole lot, but that is obviously part of our nation's critical infrastructure.

And the president's FY2019 budget called for a transfer of approximately \$48 million cyber security research and development to the national protection and programs directorate. Without this transfer, the fiscal year 2019 request is actually a \$28 million net decrease from the fiscal year. So I -- that's concerned to us and -- and it raises a question. What is the status of the department's effort to secure federal networks and why does the budget request propose a relatively stagnant level of funding for cyber operations?

NIELSEN: So the good news is in many of our systems and programs, they were necessarily front loaded, in other words the first phase and second phase of programs such as continuous diagnostic monitoring (ph) or what we call the Einstein program required a capability build on the front end.

The back end is really maintenance and operation and then agreements with the departments and agencies on how to employ it in training. So actually the -- the -- the initial influx of cash, if you -- if you would, was required and now we have gone down. What we're looking to do now though is we're looking much more at systemic risk. We're changing the way that we look at the protection of critical infrastructure, we're doing so with sector specific agencies and owners and operators themselves so that we can understand through the interdependencies what we need to do better to fill those gaps.

So it's sort of a -- what I would say is a general evolution of the maturation of -- of what we need to do. We do need to do more. Everyday we're looking at gaps and -- and -- and following the threat indicators to see the patterns and -- and then to come back to you to see what else we will need.

CAPITO: Well I appreciate that, I would say just in the form of a comment, it's -- it's a little -- when you -- when you see the threat -- the threat you see today is not -- and you can tell me a lot more about this, is not the threat we're going to see tomorrow.

So I -- I would -- I would think that resources to -- in an anticipatory fashion or research and development is going to be critical to be able to -- so we're not just always looking at what happened and trying to fix that, we're -- we're looking ahead to see -- to prevent what that next threat could be.

So I appreciate that. Senator Tester.

TESTER: Thank you, Madam Chair. Just real -- real quickly, I referenced this in my opening remarks, there's a contract out there that -- that -- that the CBP has entered into on hiring, and -- and I want the contract. I'll just be honest with -- your -- your 43 million bucks, supposed to hire 7,500 people, they haven't hired anybody.

And by the way, if they would have hired the 7,500 people, it would have been \$39,000 per person, would have been the cost. It's one of those things that people go to the Senate floor and make speeches on, and I just want to know why is this happening, and are you going to stop it? And I -- I just don't see the positive. I mean, I see a positive for trying to get people on board, we need to do that, but this seems a bit beyond the pale.

NIELSEN: Yes, sir -- Senator, let me just start by -- you and I have had many conversations about the border security and the hiring, and I really appreciate your support, always.

TESTER: Yes, absolutely.

NIELSEN: And I know that you're asking the question for the purposes of trying to get us the focus that we need in the most effective way possible.

TESTER: Yes.

NIELSEN: The way the contract works is a sentry (ph) does not get paid until we have entry on duty, until there's an EOD. The 13,000 is meant to capture the full life cycle of hiring, so it's

everything from the advertising through to the training, through the onboarding; in CBP's case, it's the polygraph, it's the physical test, so our...

TESTER: And the -- and the 297 -- 297 million is for the 13,000 people to be hired?

NIELSEN: Yes, sir, as far as I believe, I'll get back -- I've got numbers wrong in my mind, but I believe so, yes sir.

TESTER: OK.

NIELSEN: So we're -- we're happy to show you our modeling. CBP and our HR folks did quite a bit of work on what is the most effective way to do this...

TESTER: Yes.

NIELSEN: ...and at least the figures showed that rather than hiring up our HR department to be able to have all the people we need to process this, it was more cost-effective to do it by EOD, so again, they're not paid unless we actually bring somebody on board.

TESTER: OK, so just -- OK, at that rate it's 43,000 bucks a person; 13,000 by 297 million. Here -- here -- here's the rub: you signed the contract in November, it says you've allocated 43 million, you said they get no money until they bring on the person and they're actually on board, but -- but the question is they haven't done anything yet. I mean, it -- we're -- November, hell, we're 7, 8 months into this thing.

NIELSEN: So some of this was the strategy around, for example, looking at how we could add mobility into the process. As you know, there are some places in front of our border areas where people do not necessarily -- it's not a draw. So...

TESTER: I -- I got it.

NIELSEN: OK.

TESTER: I understand that. What I don't understand -- and there's plenty of folks out there, there's third-party administrators that do all sorts of things for the government, and I could tell you a lot of them I've had some pretty bad experience with, because they promise, they don't deliver. And this doesn't look like they're delivering.

Whether they're delivering in Washington D.C. or Whitefish, Montana, or Minot, North Dakota, anywhere, hard places, easy places, but we obviously want to try to get some more people on board, and I just -- I've gotta tell you, when I look at this, it appears to be just a total boondoggle. I mean, I'm just going to tell you.

NIELSEN: Well I -- you know, I share your view on holding -- holding accountable...

TESTER: Yes.

NIELSEN: So why don't we come talk to you this week, and just walk you through...

TESTER: We'd love to.

NIELSEN: ...and let's figure out how to make it better.

TESTER: We'd love to. And then I've got a number of questions, just want to touch on one real quick, and that's TSA -- TSA's cut, getting rid of some VIPR units, getting rid of a number of other things, it's pretty important. That's all I'm going to tell you.

I mean, those guys do a hell of a job, and we need to make sure that's beefed up just as much as we do on our ports and borders, which I think we all agree to. Thank you for being here.

NIELSEN: Thank you.

CAPITO: Senator Shaheen?

SHAHEEN: Thank you, Madam Chair. I want to pick up on Senator Capito's questions about cyber-security, because I was pleased to hear recently that all federal agencies were able to comply with DHS's directive to remove Kaspersky Lab products from their systems.

Now, as you know, when we passed the Defense Authorization Act, we went a step farther, Section 1634 of that directive requires that the federal government remove Kaspersky software from third parties when they are using Kaspersky products. Can you talk about what the status is of the implementation of that piece of the directive?

NIELSEN: Yes. I can't get you the exact figures, which I'm happy to do later today. Potentially (ph) what we're doing is we're -- we're looking at it from a supply chain perspective, which is what you're describing and what was in the NDAA. So it's very important for us to understand not only who our contractors are contracting with, but when they provide a service or a software, what's embedded there within.

So we've done a lot of assessment and modeling to understand where it can be found.

Unfortunately, for many of the third party providers, they weren't even aware that they had Kaspersky...

SHAHEEN: Right.

NIELSEN: ...on their systems and within their products.

So we're pretty advanced on that. We're also working with other parts of the federal interagency to determine how to be more forward-pushing and consequences for not pulling Kaspersky out of all systems.

But I'm happy to get you the numbers later today.

SHAHEEN: And is there any thought going forward to make sure that any foreign parties are also required to disclose the identity -- any foreign parties that we're doing business with are also required to disclose the identity of the service providers that they work with, so we know that they also are not using Kaspersky software or other software that we might have concerns about?

NIELSEN: We are -- yes, is the short answer. We're working very closely with the intel community, so that as soon as there is a flag or a concern, we can work very quickly within the federal interagency to do that. We also at DHS are looking throughout our contracting process; it has to be that we can pause and turn off contracts the moment we have a concern. If someone's been hacked, if someone's vulnerable, or if somebody's using software that we know will put us at risk.

So we'd love to come talk to you about that. We're doing a full review, and working within the authorities we have to find out ways to do that.

SHAHEEN: That'd be great. Thank you. I heard Attorney General Sessions' announcement about taking children from their families when they're apprehended at the southern border. I had a chance to visit the southern border during the -- 2015, and to visit some detention centers down there where children were staying with their families, and there was a great deal of concern about the potential impact on the children of that.

Do we have any projections about how many children -- I think I heard the number 700 or 800 children who had already been taken from their families when they had come across the border -- do we have any sense of how many we're projecting for the next fiscal year, what kind of situation they're going to be in, whose -- how many foster families are going to be needed, what the cost of that is going to be?

I -- I -- I am -- as former governor who used to worry about how we kept children in their families when there were difficult family situations, and remember that the research that I had shows that children were better off with their families in terms of their long-term development; do we have any idea what the potential is for us to have an impact on these kids for years to come because we will have taken them away from their families?

NIELSEN: We are working with the community to understand the science. I think another member had referenced studies that are available. As you know, we turn over all children to the Health and Human Services, that then goes through a process to find a custodial relationship or some other sponsor.

I was very concerned when I came back to the department to learn that in many cases we did not do any sort of check before we turned over children, and so we now are making sure that those children are going to safe places, which I think is very -- for obvious reasons, very important.

In terms of separating, I just would make one more plea to everyone who can help me message: if you are fleeing and you have a need to come to the United States, please come to the ports of entry. You -- you -- you know, we will process your claim there. But if you come across the border illegally, you've -- you've broken the law and we have to prosecute. It's the only way to keep our border -- to have a border.

So if you have a claim, you have children, you're concerned for your life, go to a port of entry. You'll be processed. We have asylum laws. But when you break the law, that's where it gets very difficult because we have to prosecute those who break the law.

But we'd love to work with you more, if you have other ideas on -- on how to do that.

SHAHEEN: Are we messaging that to the Central American countries where many of these refugees are coming from?

NIELSEN: We -- we are. We have a youth outreach program, we're doing an internship with the Department of State, we also are working with local radio stations as well with the Department of State to try to message this. Certainly the embassies are messaging this. But again, if you have a legitimate claim and you come to a port of entry, you haven't broken the law.

SHAHEEN: Right, that's why I'm asking...

NIELSEN: Yes

SHAHEEN: ...but are we messaging that piece of it?

NIELSEN: Yes. We need to do more and more, but yes, that is a campaign that we are -- we are in the midst of executing, yes.

SHAHEEN: Thank you very much (ph).

CAPITO: Thank you. Senator Baldwin?

BALDWIN: Thank you. In the fiscal year 2018 funding bill, I worked with my colleagues on a \$10 million set aside within FEMA's State Homeland Security Grant Program for nonprofits that are at risk of terrorism.

Previously, nonprofits in Wisconsin and those located in most of the states represented on this subcommittee were ineligible for that type of funding.

FEMA will now be able to help enhance the security vulnerable targets in smaller communities. This is important because the terrorist threat is not limited to America's big cities. I think of the 2012 tragic shooting at a Sikh temple in Oak Creek, Wisconsin, in which six people were killed and four wounded.

In 2016, a planned terrorist attack at a Milwaukee Masonic temple was thwarted, thankfully, by the great work of the FBI, and the multiple bomb threats that have been received by the Milwaukee Jewish community center last year. Setting up this program is, therefore, a top priority of mine, and it has been for years, so I'm eager to learn when the Department of Homeland Security already stands it up and open up an application period to start awarding funds.

NIELSEN: Thank you. It is very important. As you know, there's 50 million set aside traditionally in (inaudible), but to your exact point that was -- that pretended that the attacks and

those funds that are needed by non-profits only existed in urban areas. So this will help us make sure that non-profits in other areas throughout the country, you know, have the funding that they need to protect.

The short answer is, the time schedule that we normally follow per law in the appropriations cycle will be making those notices later this summer but I just received a brief talked to my folks on it this past Friday, so we're happy to come and talk about our plans of how we'll implement it and what we're looking at in terms of allocations and -- and, you know, going towards the date in the normal cycle of grant funding.

BALDWIN: OK, I'll look forward that follow-up. Thank you.

CAPITO: Well, I see there are no further questions. This concludes today's hearing. Secretary Nielsen, we appreciate you appearing for the subcommittee and your frank and open and honest answers.

The hearing record will remain open for two weeks from today. I think you did mention you were going to do a lot of follow-up with members so that will be appreciated. Senators must submit written questions for the record. We ask that the department respond to them within a reasonable amount of time.

The subcommittee will meet again -- this subcommittee next Wednesday, May 16th, to more closely exit role of the department in countering the flow of opioids and other dangerous drugs into our country. With that, the subcommittee stands in recess.

END

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SENATE APPROPRIATIONS COMMITTEE, HOMELAND SECURITY SUBCOMMITTEE HEARING ON THE F.Y. 2019 BUDGET FOR THE HOMELAND SECURITY DEPARTMENT

May 08, 2018

SPEAKERS:

SEN. SHELLEY MOORE CAPITO, R-W.VA
CHAIRMAN

SEN. JON TESTER, D-MONT.
RANKING MEMBER

SEN. JOHN BOOZMAN, R-ARK.
SEN. JOHN HOEVEN, R-N.D
SEN. LISA MURKOWSKI, R-ALASKA
SEN. JAMES LANKFORD, R-OKLA
SEN. JOHN KENNEDY, R-LA
SEN. RICHARD C. SHELBY, R-ALA

SEN. JEANNE SHAHEEN, D-N.H.
SEN. PATRICK J. LEAHY, D-VT
SEN. PATTY MURRAY, D-WASH.
SEN. TAMMY BALDWIN, D-WIS.
SEN. JOE MANCHIN III, D-W.VA.

WITNESS:

❖ HOMELAND SECURITY SECRETARY **KIRSTJEN NIELSEN**

CAPITO: I want to welcome everyone. I call this hearing of the Subcommittee on Homeland Security to order. And I'm very pleased to begin my first hearing as the chair - chairman of this subcommittee. It is the subcommittee's first hearing of this budget cycle and its purpose is to review the Department of Homeland Security's fiscal year 2019 budget request.

We thank the Secretary, Secretary Kirstjen Nielsen of Homeland Security for agreeing to appear before our subcommittee. Secretary Nielsen is appearing before our subcommittee for her first time and we look forward to hearing her insight. I'm also very, extremely pleased to be joined by our subcommittee's Ranking Member, Senator John Tester from Montana. We look forward to working together. We were just talking about that, through the fiscal year 2019 process.

I'm also very pleased that the Vice Chair of the full Appropriations Committee, Senator Patrick Leahy from Vermont is here with us today. So, thank you. As the highest ranking official at the

Department of Homeland Security, Secretary Nielsen has one of the most challenging jobs in government.

Her department and its nearly 250,000 employees carry out a broad set of missions that spans the entire globe. They work to combat terrorism, manage who and what passes through our air, land and sea borders. Secure civilian cyber space, prepare for and respond to disasters and protect countless other national security interests.

The subcommittee will work to support the department in meeting these demands in an effective and efficient manner. The recently enacted appropriations bill provided significant investments for the department towards those ends. It made significant investments in a new border wall system for the highest trafficked portions of the southwest border.

It provided a record level of funding for immigration enforcement. For the first time, it dedicated significant funding to opioid detection equipment and to research and to improve those detection capabilities, something I'm extremely interested in.

It included the largest ever investment in equipment for the men and women of the Coast Guard. It dramatically accelerated the deployment of the cyber security tools that will be used by nearly every single civilian agency of the federal government. And in combination with emergency supplemental appropriations bills, it provided the necessary fiscal year 2018 resources response to and recovery from a historic 2017 disaster season.

While that bill took many positive steps, we are now turning our attention to the 2019 budget request. It is very clear to me that the department's workforce, which I'm very pleased to say, includes many West Virginians, it's - they consider this their most valuable resource and this budget request acknowledges that.

I know that it is your goal to ensure the department can improve workforce retention, recruitment, development and Senator Tester and I want to be partners with you in those efforts. We will hear from Secretary Nielsen, today, about border security. While we saw a dramatic decrease in illegal border crossing, last year, it is my understanding that those rates have increased in recent months.

We look forward to hearing how your budget seeks to meet that challenge. I am pleased that the department has provided our subcommittee with a comprehensive plan for border security. Your budget request mirrors that plan, would suggest that continuous investment in a border wall system should be made over a 10 year period.

While there are other areas where we believe your budget request gets it right, there are some areas where we want to work with you to ensure we are recommending a sufficient level of investment in these areas, cyber security, equipment to detect opioids and other dangerous substances before they enter our borders, Coast Guard vessels, aircrafts and infrastructure, strengthening partnerships between state and local leaders and research and development.

These are also parts of this budget request that are not - there are also parts of this budget request that, I believe, are not grounded in reality and that artificially deflate the real overall needs of the department. The request assumes a billion dollars in revenue which could only be realized by a fee increase proposals that have not yet been authorized by law.

CAPITO: We request your assistance as we consult with you and your staff, to make adjustments necessary to allow this budget to work, despite these challenges. Again, Madam Secretary, we appreciate your testimony and your willingness to answer questions from members of this subcommittee. I'll now turn to our distinguished Ranking Member, Senator Tester, for any opening remarks. And then, I will go to, after that, Senator Leahy for any opening remarks before you begin your testimony. So, thank you, again, and Senator Tester.

TESTER: Thank you, Chairman Capito. Good afternoon, Madam Secretary, welcome. We're here today to examine the DHS budget request for fiscal year 2019. I also want to recognize our new chairman of the subcommittee.

Senator Capito, I look forward to working together to develop some of the bipartisan DHS appropriation bill for fiscal 2019, and by your opening statement, Madam Chair, I would just tell you that we're pretty much on the same page.

So thank you. It is also worth recognizing that the 240,000 DHS employees who go to work everyday with -- with the goal of keeping this nation safe, we are absolutely indebted to them for their dedication and their service.

In total, the department's request for fiscal year 2019 includes \$47.4 billion, that's \$289 million below the fiscal year 2018 appropriation that we just enacted back in March. The department that you lead has a multitude of diverse missions, including border and immigration security, protecting cyber space, making sure air travel is secure, helping communities prepare for and respond to natural or manmade disasters and monitoring our coast lines and waterways to save lives, intercept the legal drugs, prevent bad actors from invading our ports.

It's a big job. As appropriators, our job is to allocate resources across the entire DHS enterprise to address all threats. This budget provides close to seven percent increase for border security and immigration enforcement.

But it has a near equal reduction for the rest of the department. I support additional funding for border security when done in a smart and effective way. But at the same time, we cannot shortchange other priorities like local law enforcement, fire fighters, cyber security -- excuse me, airport security, and critical R&D.

Montana's police officers and sheriffs have told me time and time again how critical these resources are to keeping them safe. Unfortunately, it is my assessment that the budget underfunds TSA staffing, eliminates VIPR teams, and ends funding for airport law enforcement support.

The science and technology directorate would be cut by 30 percent. It is incredibly important that we have good science and technology to leap ahead of technologies and stay ahead of terrorist groups.

There is no additional or dedicated funding request to help states secure their election systems, even though at least 21 states were targeted by Russian hackers in the last election. This is a big deal for a democracy.

FEMA prepared it's (ph) grants and state and local training would be reduced by 20 -- 20 percent, while quite frankly the threats are more diverse than ever. And finally the budget relies on a faulty assumption that an unauthorized increase in aviation security fees would be enacted to offset \$520 million in budget authority.

Look, we're at the beginning of this process, and I look forward to discussing with you these priorities and these issues today. Your request also proposed to hire a thousand new personnel for CBP and ICE, despite the fact that those agencies have had a hard time simply backfilling for attrition.

Hiring has been a challenge. In fact, such a challenge that the CBP awarded a contract to a company in 2017 to aid with the hiring of new agents. The total value of that award is \$297 million, \$43 million of that \$297 million has been obligated so far, and yet based on the latest data that I think we got from the CBP, there are fewer border -- border patrol agents on board today than when that contract was awarded.

Before I can agree to additional contracts -- additional funds for this contract, we need to see evidence that this is truly a wise use of taxpayer dollars, because so far it doesn't appear to be that way.

Finally the fiscal year 2018 omnibus included \$1.345 billion for the construction of a physical barriers along the southwestern border, some replacement miles, some new miles.

The department still needs to supply this committee with an execution plan that describes the total number of miles, location and cost for each segment. If there are potential cost increase, we need to know those details too and the implications that that could have on this budget.

So thank you again, Madam Secretary, for appearing before the committee and I look forward to our discussion.

CAPITO: Thank you, Senator Tester. And I'd like to recognize the ranking member of the full committee, Senator Leahy for opening statement.

LEAHY: Thank you, Madam Chair. I -- I appreciate that. We have a lot of work ahead of us and, Madam Secretary, you're here to pen (ph) the Department of Homeland Security's budget request.

It reflects the Trump administration's priorities for your agency, as well as priorities that we're going to discuss with you today. And we're all (ph) going to ask who are those (ph) priorities are supported by the facts.

I know within days of taking office, the president attempted to make good on his Muslim ban by ordering a travel ban on citizens of certain Muslim majority countries. He did this despite a consensus among top national security experts, even within his own administration.

This (ph) citizenship alone is not a reliable indication of terrorism. And after promising to treat DREAMers with great heart, his words, the president proved heartless. He abruptly ended the program, he walked away from the only serious (ph) bipartisan, republican and democrat compromise to protect DREAMers, in order to, in his words, stop the massive in flow of drugs.

The president should know by now that DREAMers, by definition, are law abiding strivers, they're not drug kingpins. President Trump has repeatedly argued that a border wall is necessary to prevent drugs from pouring into our country, despite the reality that most illegal drugs come to illegal ports of entry, including the post office.

And when Mexico laughed off the president's promise that Mexico would pay for the wall, well then he broke his campaign promise and said the American taxpayers should foot the bill, even though he promises Mexico would pay for it.

Just yesterday after months of claiming the DHS does not have an official policy to separate families, your department announced to refer (ph) 100 percent of adults who cross the border for criminal prosecution, which of course is a de facto family separation policy.

No matter what you call it, a new policy is going to result in thousands of children, some of them infants, being forcibly separated from their families. The view of this around the rest of the -- rest of the world is shocking and most people around the rest of the world say this is so beneath the great United States.

LEAHY: Also (ph) (inaudible) straighten our limited federal resources, it will clog our court systems, all without any clear explanation, oh it (ph) keeps America safe. So at my core, my concern is not just a administration that's turning its back on immigrants by pursuing ineffective policies in the name of national security.

I'm equally concerned this administration is turning its back on what it means to be Americans. We are a nation of immigrants. All right (ph) my grandparents or my wife's parents were a proud on at that (ph). Now this committee will gladly retain a bunch of request with flexed (ph) priorities that rooted in reality.

And address the real threats facing our nation. Not a budget in campaign promises that will never be fulfilled. But we're going to be much less receptive to a bunch of request intended to provide a megaphone. The administration is fear mongering against immigrants and refugees and chair, thank you very much.

CAPITO: Thank you. That concludes our opening statements and we'll have the testimony from the Secretary. Thank you for coming.

NIELSEN: Thank you. Well good afternoon. I thank you all for having me here today to discuss the needs, gaps and vulnerabilities we have in the Department of Homeland Security and ways in which we can work together to meet those and give the folks executing these missions what they need.

So madam Chair, ranking member Tester, distinguished members of the committee it's a privilege to appear before you here today. I'm honored to present the President's 2019 Budget Request for the Department of Homeland Security and discuss how that budget will help keep the American people safe.

I want to first start by thanking this committee for the 48.2 billion provided to the Department in the recently passed Consolidated Appropriations Act. The hard working men and women of DHS deserve the resources needed to do their jobs and they deserve our support as they safe guard our communities.

I thank you for your continued support, for supporting them in this last budget cycle and hope that we can work together to continue to do so. The President's 2019 Budget builds on the 2018 budget and request 47.5 billion in net discretionary funding for DHS. It also includes an additional 6.7 billion for the disaster relief fund for response and recovery to major disasters.

Today, I'd like to outline several (ph) core missions empowered by this budget. Securing and managing our borders and enforcing our immigration laws. Protecting our nation from terrorism and countering threats. Preserving and upholding the nation's prosperity and economic security. Securing cyber space and critical infrastructure and strengthening Homeland Security preparedness and achieving resilience.

Within all of these missions we are aiming to put our employees first and empower our front line defenders to do their jobs. This will help mature the department and more importantly help us better secure the Homeland.

I want to spend the bulk of my time this afternoon focusing on border security and the enforcement of our immigration laws. We are preparing to release our northern border strategy soon which I know members of this committee will take an interest in reviewing. I look forward to speaking with you in greater detail on your thoughts and perspectives.

I also look forward to working with you on that and keeping an open dialogue on what needs to be done to further enhance security on our northern frontier. On the Southwest border which gets more attention these days, we have made vast improvements over the past 15 months but make no mistake we do face a crisis.

We continue to see unacceptable levels of illegal drugs, dangerous gangs, criminal activity and illegal aliens flow across our southern border. The current statistics for last month are simple -- simply sobering.

Over all, the number of illegal aliens encountered at the border more than tripled when compared to the same time last year. For the second month in a row we have seen more than 50,000 illegal aliens enter our country.

We've been apprehending these crossers with historic efficiency but illicit smuggling groups understand that our ability to actually remove those who come here illegally does not keep pace so they continue to come back.

For example, just the other week our agents received a tip about a suspected smuggler in McAllen, Texas. When they searched his residents, they found not only a fire arm and ammunition but also 70 people in a so called stash house. All illegally in the United States.

The man himself had four removal (ph) orders and had been convicted of illegal entry five times. That's what we're up against. Fortunately, the President's budget would invest in new border wall construction, technology and infrastructure to stop illegal activity.

The proposed budget would also allow us to recruit, hire and train additional U.S. border patrol agents, additional U.S. immigration and customs enforcement officers and additional support personnel to help carry out these critical missions.

As we seek more funding for our border wall system, our people and the assets we need I will press forward with tough border security actions and enforcement to the fullest extent of the law. My message to smugglers, traffickers and criminals is clear. If you try to enter our country without authorization you have broken the law.

The Attorney General has declared that we will have zero tolerance for all illegal border crossings and I stand by that. We are a country of laws. It is our policy that anyone crossing the border illegally will be detained and referred for prosecution.

We will no longer exempt classes or groups of individuals from prosecution. And if they file a fraudulent asylum claim or assist others in doing so, they will also be referred for prosecution, convicted and removed from the United States.

But our zero tolerance policy and more funding for border security will only get us part way there. We urgently need Congress to pass legislation to close legal loop holes that are being exploited to gain entry into our country.

Apprehensions without the ability to remove those who have no legal right to be here is not border security. The smugglers know these loop holes and they are taking advantage of us every single day. They know it's easier to get released into America if they claim asylum, if they're part of a family or if they are unaccompanied children.

So it should come as no surprise that we are seeing a spike in all of these categories. Word is getting out. Asylum claims are up 200 percent in the last five years. Family unit apprehensions are up nearly 600 percent compared to this time last year.

And UAC apprehensions are up more than 300 percent. In fact, five years ago, apprehensions of families and unaccompanied children were less than 1 out of every 10 apprehensions. Now they approach almost one half, 40 percent of all apprehensions.

The gaming of the system is unacceptable. We need urgent action from Congress to close these dangerous legal loop holes that are making our country vulnerable. For border security to work violation of the law must have consequences.

Before I move on, I want to make one final point. While activists claim that these migrant flows are helping people, I would argue the opposite. The journey to our border endangers the illegal alien themselves. The communities they pass through, our agents' border and U.S. communities in our homeland.

Illegal migrants face the prospect of robbery, rape and murder as they travel. And the criminal network smuggling them are the same networks that smuggle drugs and weapons and which have caused instability in communities throughout the region and our country.

To be clear, human smuggling operations are lining the pockets of transnational criminals. They are not humanitarian endeavors. Smugglers prioritize profit over people and when aliens pay them to get here they're contributing (ph) up to 500 million a year to groups that are fueling greater violence and instability in America. There are other options aside from the dangerous journey north to our borders, ones that I continue to advocate.

If they have a legitimate need to flee their home countries, migrants should seek protection in the first safe country they enter, including Mexico, not subject themselves to an unnecessary long and dangerous journey and or turn themselves in to the ports of entry.

I have met with hundreds of members of Congress, they have all told me they want to secure the border, but when it comes down to it, too often there is reluctance to support our folks in doing what they were required to do, which is enforce the law.

That's what men and women have signed up for, that's the oath I took. This is also what the American people demand, we are a country of laws. This administration and this department will continue to do everything we can to enforce the law, which is why we are committed ourselves to do when we swore our own oaths.

In addition to border security and immigration, I wanted to quickly touch on another -- other topics, but happy to ask -- answer any questions you might have. We also make important enhancements across our other missions to support countering terrorism, the budget would allow TSA to deploy advanced tools to detect threats.

It funds new CBP initiatives to identify high risk travelers, ramps up defenses against weapons of mass destruction, provides vital funding to protect soft targets from concert venues to schools against attack.

To advance our economic security and prosperity, the president's budget provides critical resources to enforce our trade laws and to keep foreign adversaries from stealing our trade secrets, technology and innovation.

To support cyber security and critical infrastructure security and resilience, the budget equips DHS to continue making historic strides to address systemic cyber risk, secure .gov networks and assist critical infrastructure owners and operators.

It also enables DHS importantly to support state and local election officials in defending our election systems. Finally this year's budget will allow us to strengthen homeland security preparedness and national resilience.

Last year we experienced one of the most costly and damaging season for national disasters in history with accumulative cost exceeding \$300 billion. President's budget will devote the resources and attention needed to ensure recovery and to help communities across our nation create a culture of preparedness to be more resilient to disasters.

In addition to the areas I mentioned today, I'm also firmly committed to maturing the department and putting our employees first. I ask the committee to -- to work with me on this budget, to support the needs of the men and women of DHS, to support our missions (ph) and help us make our country more secure.

It's a true honor to lead the men and women of DHS and I commit -- remain committed to working with you to do just that. Thank you very much for your time today and look forward to your questions.

CAPITO: Thank you, Madam Secretary. And I want to help my colleagues stay happy on my subcommittee, so Senator Hoeven is going to be chairing the -- on the floor -- presiding on the floor, so I'm yielding my time to Senator Hoeven to begin the questioning.

HOEVEN: Thank you, Chairman Capito, very much, I really appreciate it. Secretary Nielsen, thank you for being here, more importantly thank you for the very good job that you're doing as Secretary of Homeland Security.

We appreciate it very much. One of the tools that we're using on the border is unmanned aerial systems, both on the northern border and the southern border. You and I have talked about it and we're looking forward to having you come to Grand Forks, where we have 900 miles of border security responsibility and we're using unmanned aircraft as a big part of that.

My question to you is we also have to be -- not only using unmanned aircraft for surveillance, but also now increasingly we have to be aware that we've got to protect our borders from

unmanned aircraft threats that may come into our country. And I know you're working on that, so my first question is, do you have adequate funding for counter-UAS type activities that you need to do?

NIELSEN: I thank you for the question because this is an emerging threat and one that's very top of our mind. We see how UASs are used in the theater, but we also have already seen them used by TCOs to transfer drugs across our border.

HOEVEN: OK.

NIELSEN: So, it's only a matter of time, we fear, until we watch them use it to, actually, transfer IEDs or something explosive materials. They disrupt our surveillance and they cause problems with our communication already. So, we have put together a legislative request for authority that would help us surveil (ph) and disrupt.

It's not dissimilar to what the Department of Defense has. We're working with DOJ to finalize that language, but I would, very much, look forward to working with you on that so that we can protect our border.

HOEVEN: Have you started looking into utilizing private companies to help leverage your capabilities, both, in some of that counter-UAS work, but also, even in using your fleet. One of the challenges, and I remember from my time chairing this subcommittee, is personnel. You know, getting enough personnel because you have such and incredible demand for skilled people, you have great people and you need more of them, including pilots. And so, have you started to look at private sector options, both, to fully utilize your fleet of unmanned aircraft, as well as, to do some of this counter-UAS work.

That's one of the things that we can show you are some of these creative, innovative uses because we, not only, have the military using unmanned aircraft up there, we have civilian, Guard, Reserve, active forces, but then, also, Customs and Border Protection. And so, are you moving this direction to try to leverage, you know, your resources - your manpower needs?

NIELSEN: We are, as you know, we're working with some of the great establishments in your state to do some training and piloting, but there's a lot we can learn. We work with the private sector, now, using UAS, already, in a variety of means, for example, to determine the damage after a disaster. We often...

HOEVEN: Right.

NIELSEN: ...do that in conjunction, you know, pre and post disaster along the coastlines. So, we do have partnerships, already, with the private sector. Yes, we are looking to continue to leverage those for the security needs across the border and around crowded places.

HOEVEN: Again, thanks for the work you're doing. We look forward to working with you in this area and other areas as well.

NIELSEN: Thank you.

CAPITO: And now I'm going to turn to Senator Leahy for his questions.

LEAHY: Thank you, very much. Madam Secretary, I recall the morning you appeared before the Judiciary Committee in January where you are required under the law to tell truth in your answers. You released, the morning you appeared, you released a report claiming that 73 percent of individuals convicted of international terrorism charges since 9/11, or 402 in total, were foreign born.

I asked you questions about that, points (ph) you couldn't answer. You testified, again, under your requirement of telling the truth that you'd get back to me, you haven't. I've had a number of inquiries to you, it's been four months. Even though you stated you would get back - just let me try again.

A report was released pursuant to the President's travel ban. How many of the 402 individuals, listed in the report, were citizens from countries included in the travel ban? Easy question, go ahead.

NIELSEN: Sir, I continue to commit to get back to you with the information, the challenge.

LEAHY: Oh come on, it's been months and months and months and you were relying (ph) in the travel ban based on the president's statement. He must have had something to back it up with. You had to have something to back it up because you said it.

Now you said it (ph) and that's what the country has to fall. So tell me, how many of the 402?

NIELSEN: So there's two issues here, one is the information that we have from our partners in the interagency and I thank you for your detailed letter in February, we are looking to make sure that we respond fully, but some of the information is not DHS information.

So you do have my commitment (inaudible) --

LEAHY: But you used it as your information, the president used it as his information, are you telling me these numbers are just sort of made up out of whole cloth and then we'll just stall the Congress if they ask us where it comes from?

NIELSEN: No sir, I'm not. The second point I was going to make is the two are somewhat disaggregated, so what we have done with the countries that you mentioned, we have set a international for the first time baseline of information that we need to assure ourselves that we know who is travelling to our country and whether they have an intent to do us harm.

If those countries cannot meet that burden, then we have tailored travel restrictions for them. As you know, we worked very closely with the country of Chad. Chad just came off (inaudible) --

LEAHY: How many of the 402 came from Chad?

NIELSEN: Sir, what I'm saying is the two are separate. One was a report on international terrorism, and yes three -- the report said that three out of four --

LEAHY: Are -- are you -- are you saying that cannot answer my question after all these months of the 402? Yes or no.

NIELSEN: I do not have that information with me today, sir.

LEAHY: OK, do you know how many of these were people extradited here, sent here by law so they could be tried?

NIELSEN: I do not have that information.

LEAHY: Like Osama Bin Laden's son-in-law.

NIELSEN: I do not have that information with me today.

LEAHY: Now the White House cites its report when they argue for an end to diversity visas and family unification, can (ph) the 402 come through those programs?

NIELSEN: I'm -- I'm sorry?

LEAHY: The White House says that we need this -- in talks about the 402, it said that shows a need to end diversity visas and family reunification. How many of the 402 came through either of those programs?

NIELSEN: Sir, as I said, I am committed to getting you the information, I don't have it in front of me today, I'm working with the air (ph) agency where the information was pulled.

LEAHY: OK these -- these facts are still on the White House website. There doesn't seem to be any backup for them. But it becomes what our policy is made on. I can make any policy if I just want to make up the facts.

Now I'd ask you about CBP directive that permits border officers to search (ph) through Americans like trying devices (ph) at the border for no reason at all. You responded and I agreed with your response, there has to be a reasonable suspicion.

But now CBP has the directive that allows for officers to manually search through U.S. citizens phones, having no suspicion at all. Senator Daines and I introduced a bill, requiring CBP to at least have reasonable suspicion in these cases.

In other words, Americans faced (ph) with American officers who say here we're going to go through your phone. Now would you support codifying this standard for border searches of American's electronic devices based on what said before?

NIELSEN: Sir, I would look forward to looking at the language and working with you, absolutely. There should be a reason to search a phone. I don't, to my knowledge...

LEAHY: You said there should be a reason.

NIELSEN: Yes, sir.

LEAHY: OK, that's not what the policy says now, so you're saying that you should have a reason, it can't just be because they feel like it?

NIELSEN: CVP, as you know, has broad authority to -- for inspections at the border, but I'm not aware of any policy that says they can take any American's phone and search it for no good reason. I'm not aware of that policy.

LEAHY: Well, this new CVP Director says they can. So, please look at that because, you know, it becomes a police state if you do that. I'll submit my other questions for the record and I appreciate the courtesy of, both, you and Senator Tester.

CAPITO: Thank you, Senator Leahy. So, I'll begin my questioning, Madam Secretary, the 2018 appropriations bill, recently enacted into the law, provides, for the first time in about a decade, significant new funding for new mileage of a border wall system along the southwest border. You addressed this in your opening statement. Do you believe that these investments will secure the southwest border in ways that cannot, feasibly, be achieved through technology or personnel?

Let me -- let me go ahead, I have three questions and you can, sort of, (inaudible).

NIELSEN: OK.

CAPITO: It's my understanding, too, that the funds provided in 2018 and those requested in 2019 will be used to build a border wall system. Can you explain what those components would be? And then, lastly, how will these investments improve the safety of our Border Patrol?

They, obviously, are well trained. Many of them go through Harpers Ferry at the training center there, in my -- in my state. So, how will this more effectively secure their -- their own security? So, those are my three questions about the border wall.

NIELSEN: Sure. Thank you for combining them because it's easier to answer. So, for the wall system, as you know, the wall system is a combination of personnel, technology and infrastructure. What we're attempting to do with, what we call, the wall system is reach operational control at the border.

So, there's -- that's made up of four capabilities. One is impedance and denial, which is that infrastructure wall which we, do believe, in and of itself, decreases the amount of assaults on our Border Patrol which, as you know, is up 73 percent. It's a 30 foot wall, so it makes it that much more difficult for those attempting to cross illegally to attacked our -- or attack our folks.

Two, it provides access and mobility. So, that's the roads. That's the ability to get to the wall, to get to somebody that we need to interdict. Three, it's the domain awareness surveillance. We do that through technology, as you know, as well as personnel. And the fourth is the personnel themselves and making sure they're mission ready, which is the training that occurs at Harpers Ferry and others.

So, together with '17, '18 and '19, we're looking at about -- if '19 should be funded at the request, looking at about 200 miles of wall. Some of that is replacement and some of that is wall that has never existed there before.

CAPITO: So, is that wall (ph) -- is that a wall system or is that...

NIELSEN: It's, it's.

CAPITO: ...all physical wall. I think that's the question Senator Tester.

NIELSEN: Yes, so two -- good -- so, 200 miles is what we -- it would -- that would -- that includes physical infrastructure.

CAPITO: OK.

NIELSEN: But when we have physical infrastructure, we make sure to include the other capabilities with it...

CAPITO: OK.

NIELSEN: ...so that we get the biggest thing (ph).

CAPITO: It's a combination then? Yes. My second question is on election security. It's Election Day in West Virginia, in case you missed that on the national news. And, obviously, we saw, during the last election, some of the difficulties that we had, in terms of some cyber security and cyber hacking and all of the things that -- known and unknown to some of us, already. I'm not sure we know what all happened in 2016.

So, on a scale of one to ten, where you rate the United States in relation to other nation states, in terms of our overall cyber security posture in elections? And the other thing I'm wondering is, what kind of lessons learned your department has -- has learned? I know you've been working with the Election Assistance Commission which we just funded, that was my last subcommittee. I think it was \$340 million for this -- in -- in the 2018 budget -- or 2018 bill that we passed.

But how you're working with states to make sure that their election infrastructure is safe and that for the 2018 election we're going to have the assurances that our elections are much safer than we found out they were in 2016.

NIELSEN: So there's two things that are top of mind for me as part of this conversation, one is helping state local secure the election infrastructure itself, and the other is combating what we've seen very visibly now as foreign influence and attempts to influence voter's decision making through false propaganda or through a speech that is misdescribed (ph) in terms of who is providing that speech.

On the former DHS has lead, compared to other countries, I would say that we are pushing the bubble. We actually provided threat indicators for example to France for their election.

We also have seen in other countries physical attacks on election places, such as in Libya over the last couple weeks. So the part that DHS does, I believe that we are above or actually helping other countries. We talked about it at the G7 a couple weeks ago when I represented the United States' security administer.

In terms of what we are doing, we need to do more, we're working hand in glove with the Election Assistance commission as you mentioned, as well as state and local officials. I also, in the weeks to come, will be hosting a meeting on the Hill and ask for as many members who have time to attend that I can explain to you not only what we're doing, but how we can further help our state and local partners.

There's a lot of best practices we've learned, redundancy is always top of mind, we either need paper ballots or a way to audit. But there are some things that we can encourage our state and locals to do.

For example, every state has the opportunity for provisional ballot, but some do not give a provisional ballot if you show up at a voting place and you are not on the voter roll. So if you look at the system and everywhere in which it could be compromised, there is a lot more that we need to do to work with the state and locals.

CAPITO: Thank you, I will like to say since I voted early in my state, we did change the local voting system where we were and we've got a touch screen but it does have the paper back up to it, so I felt very secure there and -- and was pleased to cast my vote. So I'll go to the ranking member and Senator Murray.

MURRAY: Thank you very much, and thank you Senator Tester for -- for yielding. Madam Secretary, thank you for being here. I just have to start -- I just have to say I am really disappointed in this administration's treatment of our immigrants and religious minorities and many others.

I can't say I'm shocked, I listened to President Trump's rhetoric during the campaign, but I am disappointed and I'm going to keep standing with these families across our country to fight back,

whether we're talking about DREAMers who have come out of the shadows to participate in the DACA program or whether we're talking about TPS recipients who have been part of our communities for decades.

There are families who are being torn apart at our borders today, and we're banning people from visiting our country really because of their religion. So I just want to state I disagree with this administration on every step of the way.

But I, today, wanted to focus my questions to you on one of the more damaging decisions. In December, acting in secret, ICE changed how it would treat pregnant women in their custody.

And the new policy means that a lot more pregnant women will be stuck in detention for a longer period of time, often with inadequate support, whether it's nutrition or medical care or prenatal care.

And in response to that, the American Academy of Pediatricians, the American College of Obstetricians and Gynecologists and the American Academy of Family Physicians wrote to you saying that detention quote puts the health of women and adolescents and their pregnancies at great risk.

And they go on to explain something that should be obvious, detention facilities do not offer the level of care that pregnant women need. Now on top of the real consequences to these pregnant women, for months the departments didn't even tell Congress about this inhumane and dramatic policy change, and when this new policy change was finally posted on your website, the question and answer page included a question stating, and I quote, isn't detaining pregnant women a human rights abuse?

Well your question and answer page raised the question and I think the answer is pretty clear. When your department is doing something that is wrong and misguided and in my opinion cruel and an embarrassment to our country, I think it's wrong and I really urge you to reverse course on this.

I know it's wrong, I -- I think you should, but I want to ask you a couple of questions about this. Can you truthfully tell us that detention facilities offer the same level of care to pregnant women as a hospital or other medical facility that's designed to care for pregnant women?

NIELSEN: What I can tell you is we screen everyone, every female for pregnancy from ages 18 to 56 when we encounter them. We provide them prenatal care, we provide them separate housing, we provide them specialists, we will take them to appointments if they need to go somewhere else.

We provide them counseling and we provide them religious --

MURRAY: OK, but they are in detention for this (ph). Do you know how many pregnant women are detained today?

NIELSEN: I don't know how many, no ma'am. But I will say the reason they're detained is because they illegally crossed our border. If they went to a port of entry, that would not be a crime. So I would like to encourage those who are pregnant --

MURRAY: (Inaudible) let me just tell you, I'm short on time, I have another question, but I will tell you you're just trying to discourage pregnant women, they don't come here because they're pregnant.

NIELSEN: No, I'm trying to encourage them from breaking the law. If they go to a port of entry, they have not broken the law. They can make their asylum claim.

MURRAY: But to put them in a detention center, that is inhumane (inaudible).

NIELSEN: They broke the law, yes ma'am, we -- we do not exempt classes, we enforce the law.

MURRAY: And so therefore (inaudible) treat them inhumanely and cruelly.

NIELSEN: Well I will tell -- I will tell you actually they provide -- they are given not only adequate care in facilities --

MURRAY: Well you -- you and I will disagree on that point.

NIELSEN: OK, but it is much better care than when they're living in the shadows and they're not provided any care after entering our country illegally.

MURRAY: We obviously disagree, and let me just ask you another question because this committee gets a lot of requests for additional funds to reprogram our funds or transfer funds due to overspending and a lack of fiscal discipline in your department.

As you know, Congress, not this administration, sets your budget and you have to live within the means that we give to you, and to me far too frequently it seems a big part of DHS overspending is caused by ICE unnecessarily detaining people, like we talked about, pregnant women.

As you know, detention is really expensive, every year ICE -- each year ICE detains someone, it costs taxpayers over \$50,000. For comparison, by the way, that's four times the amount the federal government spends on each child in our public schools.

So what this means is that taxpayers are now footing the bill for food, medical care, clothing and the expensive prison contracts that ICE is using for detention, like the facility that's in my home state.

To me that's really inexpensible (ph) because there are less expensive and more effective alternatives to detention. And in fact, according to your own budget, to use one of the alternatives to detention costs less than \$1,500 per year compared to that \$50,000.

So while you're asking for billions of dollars in additional funds to build the unnecessary border wall, hire more ICE and border patrol, expand detention, militarize the border, you're asking to cut funding for alternatives to detention in your budget.

So why is the department not asking us to expand the use of alternatives to detention in order to save taxpayer money?

NIELSEN: We are looking to do both. So as you know, one of the alternatives to detention is an ankle bracelet. We do utilize those in situations where appropriate. If somebody, however, is -- has broken the law, in the sense that there are multiple re-entry, or they have some other reason to be criminally prosecuted, we actually turn them over to the Marshals.

We defer them over for prosecution, in which case there is no option for an alternate to detention. So if you look at all the numbers, we are trying to find ways to do it. But I do want just say again, if you cross in between the ports of entry, if you -

MURRAY: I know what your philosophy is. I'm out of time. I just want -

NIELSEN: It's not a philosophy. It's a law Congress passed.

MURRAY: Well, I -- I just will say to you -

NIESLEN: So she's encourages you to go to the ports, if they need to come to seek alyssum.

MURRAY: -- I believe that you (inaudible), and the use of ATD. It seems to me it's cost payer saving, and much more humane. Thank you.

CHAIRWOMAN: Senator Lankford?

LANKFORD: Thank you. Senator Nielsen, would you pass on a thank you from this committee to the law enforcement folks that we work with. They have an incredibly difficult job. And they literally put their lives on the line every single day, to be able to protect the United States, and our neighbors.

And we very much appreciate the work that you're doing, and the work that they're doing all the time. I'd also like to thank you for the very hard work you all have done on election security. You all have done a lot in the past year, working on election security issues, and trying to get to a better place than what we were in 2016, both clearances and getting security clearances for state leaders, working in coronation, helping people to think through the "what if's" and trying to be able to have that ongoing dialogue that's much needed.

So I appreciate that very much. And if you could pass that on to your team as well, because they've done a lot of work on that.

NIESLEN: Thank you.

LANKFORD: Let me ask some specific appropriation questions. One of them is about the dollars that were given during -- for 2018 for wall construction -- the wall system. Can you give us a progress report of what's happening? And I have a ton of questions to be able to go through, so if you can give me just a brief update on what's happening on that wall construction -- the wall system for 2018?

NIELSEN: Sure. So what we're doing right now, as you know, is building a 30 foot new bollard-style wall in Plaxico. We are then moving to Santa Teresa. After that, we will move to RGV. So we have, as you know, about 650 for existing miles now.

And we're -- 980 we're looking at. But over the next three years, we'd get to that 200. So we're moving forward as expeditiously as we can. As you know, it's a complicated process with the land acquisition, and working with state and locals. We work very closely with the governors, the ranchers, and others, who along the border own the property, to understand where and when we need the wall.

LANKFORD: OK. But that's moving expeditiously at this point?

NIELSEN: Yes, sir.

LANKFORD: Great. So \$276 million has been requested for Calexico to finish up that port of entry as well? Help me understand what those dollars would go towards. That's a chunk of money to be able to finish off that port of entry there. That's -- and I believe that's the second year of that funding for that. What would happen with Calexico if that money is allocated?

NIELSEN: If the money is allocated, we'd build up the rest of the wall system. So it's not just that infrastructure, and impence, but it's also the surveillance. It's also looking at how to connect it to the nearest port of entry, and some of the technology -- it's the integrated towers. And it's the training of personnel, and additional personnel who would then be needed to work at that location.

LANKFORD: So Calexico, itself, is a border crossing port of entry? How -- give me a ballpark, not just for that facility, but for all of our southern border, the number of legal crossings that happen a day, or a year, whichever one you want to do there?

NIELSEN: It's 360 million a year that DHS encounters, and that's northern and southern border. But of course, it's mostly southern.

LANKFORD: Mostly southern?

NIELSEN: Yes, sir.

LANKFORD: So easily estimate half a million -- one way, half a million people cross from Mexico into the United States every day?

NIESEN: Yes, San Ysidro -- which has been in the news a lot lately, as you know -- we process 100,000 people a day in San Ysidro, alone.

LANKFORD: It -- it is always interesting to me the number of times I get into a conversation with people and they talk about the only way to get into the country is illegally crossing into the country, that that's the only route, when we have half a million people a day, legally crossing into the United States...

NIESEN: Yes, sir.

LANKFORD: ...working through the process the right way. So it's not as if the only way to be able to cross our southern border is to illegally cross that border.

NIESEN: Correct, and it's much, much safer to go through the ports of entry for the immigrant.

LANKFORD: Let me ask you your vision for the St. Elizabeth's facility. Who do you think would move there, as -- what part of your office? I know there's been some debate on where that will go, and who will go there for that St. Elizabeth's facility.

NIESEN: St. Elizabeth's has been a bit of a difficult construction project. We were very much restricted in how we can build. As you know, we had to build within a building, if you will, to observe the historical requirements that D.C. laid out. And so what that means is we're constantly rejiggering who can go there at what time, because we're trying to get people there as quickly as possible.

So the Coast Guard is there. The headquarters elements (ph) fortunately are now not slated to go there until about March 2019, but we continue to work with GSA to move forward as quickly as we can.

LANKFORD: OK. Do you anticipate FEMA moves there?

NIESEN: FEMA is -- is still slated to move there, yes sir.

LANKFORD: OK.

NIESEN: Now, that could change, and we would definitely let you know if that's the case.

LANKFORD: Let me run through a couple of quick things as well. I visited with folks from the Coast Guard and Customs and Border Patrol about the steps that they have to go through in the process of interdicting drugs on the water. They're -- they have the same steps, but a very different process. Customs and Border Patrol can move very rapidly through those steps, Coast Guard may take 30 to 40 minutes to be able to move through the exact same steps.

If you wouldn't mind, take a look at that, and try to figure out why Customs and Border Patrol can move much faster than Coast Guard can. That makes -- makes it very, very difficult for them, and is also a large cost savings if we can actually make those two consistent on it.

I know that there is -- from the omnibus bill, there was a decision that was requested to be on (ph) H-2B Visas. You were given additional authority to be able to increase those numbers, and we're still waiting for that process to work through that.

And one last quick question from you: are there asylum laws in Costa Rica, and Belize, and Ecuador, and Brazil, and other countries? Because there's a lot of talk about people from Central America coming to the United States. It's my understanding Costa Rica's a very peaceful country as well, Belize's a very peaceful country, what -- what -- what's the belief of why they would come here rather than there for asylum?

NIELSEN: What I can say is we encourage anybody who is in fear for their life to go to the first safe country that they enter. That is the international approach, the G7 approach, the Five Eyes (ph) approach, the UNHCR approach. So we continue to encourage those to do it. Under our laws, the only way that we can stop people is if we have safe third (ph) agreements with other countries. We are working towards those, we have -- we'll have one with Canada.

LANKFORD: OK. Thank you.

CAPITO: Thank you. Senator Murkowski.

MURKOWSKI: Thank you, Madam Chair, and Madam Secretary, welcome. Nice to see you here. I'm not going to ask questions on immigration, but I -- I do want to acknowledge, as you say, we are a nation of laws, absolutely.

We are also a nation filled with very compassionate hearts, and I am going to share with you a letter that I received from the Alaska Catholic Conference, with specific requests to programs such as the Refugee Assistance and Immigration Services, where we have helped, in Alaska, to -- to establish about 130 refugees, as -- as well as some other -- some other measures that they have asked to be brought to -- to the attention of not only the committee, but to yours as well. So I will be forward -- forwarding that to you.

NIELSEN: Thank you.

MURKOWSKI: You mentioned in your comments the northern border, and I would like to speak to the northern border. In your F.Y. '19 budget request, you state, "Our great nation has always been shielded by threats -- from threats by distance and by two oceans. And we can no longer have confidence in that protection." I need to you amend that statement because we have three oceans that we need to be aware of. It's the Atlantic, it's the Pacific and it is the Arctic.

And I would argue that, as an arctic nation, in the past that sea ice, up north, has really acted as that shield, to provide protection for our northern-most border. But as we're seeing the rapid

diminishment of the Arctic sea ice that once protected us and then the heightened international interest that is, certainly, focused in the region, coming from Russia, coming from China and other, other nations. We are -- we are more and more vulnerable to, to, not only, domestic, but international threat.

The importance of protecting our political, our economic, our energy, environmental, other interests in the region, I think need to be a priority. And yet, the, the department's budget, in my view, doesn't reflect the Arctic as a priority, now, having said that. Thank you, thank you for the recognition that as an Arctic nation, we do need a polar icebreaker and the resources that are in this budget are significant and important and, absolutely, welcomed.

But we, also, recognize that what the Coast Guard needs to achieve its statutory mission in the Arctic is a fleet of icebreakers. And it's been recommended that there be three heavy and three medium icebreakers. So, we're making momentum. I'm not complaining about that, but I am worried that we're not setting ourselves up to do more than to address the needs for one icebreaker, something that we recognize is going to take many of years to construct.

So, how do we expedite the construction of the remaining two heavies and then the subsequent three medium icebreakers that we need? Do we need to look to, to block buying? How can we be smart about this? Because I think we need to be smart.

NIELSEN: We are looking at block buying. The good news is, as you very well know, the Coast Guard is now positioned to accept money through the DHS budget or through the Navy. That makes a very big difference. The 30750 (ph), together, there will get us the next icebreaker. But I share your concerns. China is much more strategic than we are in this area, Russia, much more strategic than we are in this area.

This is the way to defend our sovereignty and we need to take it seriously. So, I, very much, look forward to working with you on other creative ways that we can get the money faster, into the private sector and encourage the industry to build faster.

MURKOWSKI: Well, we, we will work with you on that because I am fearful that we're taking this one at a time. And one at a time means that we're not going to be prepared. And it will be just extra costly. As I'm speaking about Coast Guard, we have -- we have been working hard with the Coast Guard to deal with replacing some, some aging assets that we have up north.

And we've got new, new offshore patrol cutters coming our way, as well as patrol boats and that's good. But where we're lacking is the, is the shore-side infrastructure. So, we need to know that we can work with you in ensuring that we're able to bring these assets online without being delayed because we haven't provided for the necessary resources for the, for the shore-side infrastructure. So...

NIELSEN: Thank you. Yes, you have my commitment.

MURKOWSKI: Good. Thank you. And I'm moving quickly because I need to get this last one in. And Secretary Lankford - Secretary - Senator Lankford mentioned the H-2B visas and you have received yet another letter from the Alaska delegation on the H2B Visa situation.

We are coming up against the beginning of our season. If we don't get an answer really within this next week, we're in a situation where once again our processors are not able to be on the ready to -- to receive the fish when they hit.

We can control lots of things. We cannot control when the fish come. So this is -- this is a priority for us and we are -- we are asking you -- urging you politely and then forcefully to -- to address this very, very quickly. We can't be in the same situation that we were last year. Where in the assistance came after the fish had already come.

NIELSEN: I agree. If I could just ask in return to work with you. I've talked many members of Congress on this issue. Because of our appropriations cycle as you know does not correspond to the seasons of -- the seasonality of the H2B. So I just like to request formally that Congress please put the sealing (ph) number in law.

It's the only thing that is fair to these companies who are trying to plan for understand what they will have each year. So you have me now. I will make a decision. The decision is working its way through the international -- or inner agency process, but I can't guarantee what the next secretary will say neither can the companies.

So the fairest thing to do for these companies to insure their survivability is to put the number in law. Not to give it up to the discretion of process that then has to go through the inner agency. We have to write a reg. Takes a long time.

So you have both my commitment to get this done as quickly as possible. I should be able to give you an update here very shortly on that. But also I would like to work with you to just get this in law so that companies know what they can do.

MURKOWSKI: I appreciate that and we'll look for that very -- very promptly. Thank you. Thank you, madam Chair.

CAPITO: Thank you. Senator Tester's being very generous here and yielding his questioning time to his friend Senator Boozman now.

BOOZMAN: What's happened?

TESTER: New chair.

BOOZMAN: Very good. Well, first of all I want to congratulate the new Chair and I know that you're going to do an outstanding job as you do in everything you, you know sink your teeth into around here. So congratulations. You do have a very, very good partner.

And then certainly; Adam, Peter, Chris and Christian, you're staff do a great job as does Senator Tester. So thank you all for helping us be successful. And we really do appreciate all of your hard work. And thank you Secretary Nielsen for being here.

I've enjoyed working with you and your staff and then visiting all over lots of men and women that are working very, very hard in lots of different components. I think with Homeland Security, you know we tend to concentrate on the border in this (ph). We forget all of the other things whether it's cyber, you know, international gangs, all of those kind of things that you all work so, so very hard and really do an outstanding job.

NIELSEN: Thank you.

BOOZMAN: So, we do appreciate it. Let me ask you about -- the Department is considering reorganization actions that would involve programs within the science and technology directorate. We started being supportive of D.H. cargo -- DHS cargo and poor security research.

How will the reorganization change the cargo and border security research program -- programs that are currently underway within DHS and ...

NIELSEN: Yes. Let me -- if I could, let me give you a -- a high-level answer and then would love to have (inaudible) folks then brief you in detail. What we're trying to do writ large is take the S&T portfolio and have it be driven by requirements.

So there is a bit of a -- there has been a bit of a disconnect in the past. So what we've done is we've moved some of the requirements; identification, the piloting, some of the research and development into the components which includes in this case cargo.

So we're actually looking at increasing our capabilities in National Targeting Center. As you know, we're working towards the National Vetting Center which will enable us to get the information from either department.

So the mission still remains. It's just an efficiency question of the best way to make that it very quickly follows from the requirements. But happy to come and break it down for you very specifically as to how we're doing that.

BOOZMAN: No, that would be helpful. And again, I guess as things go forward if you just kind of keep us updated. You know kind of give us where we're at and where we're going. And then again, update us as we get there.

NIELSEN: Happy to.

BOOZMAN: That'll be very, very helpful. I hear a lot as I'm out and about with our local fire departments and emergency service organizations that benefit from FEMA grants. And such as the assistant to Fire Fighters Grant, the staffing for adequate fire and emergency response grant, the President's Budget cuts those significantly.

I guess what I'd like to know is what the cuts are based on and then also how is the Department insuring that these local organizations -- they really do work very, very hard stretching their dollars, you know better than anybody stretches them. How do they -- how can we insure that they have the tools to keep their community safe?

NIELSEN: I think part of the answer is one of partnership. So what we've endeavored to do since I've been here is to reach out -- and I spent actually quite -- quite a bit of time with the fire community asking what is the best way they can receive support from us.

So we continue to remain support of the Safer Grantson (ph) AFG Grants but they also need additional training, they need additional guidance, they need additional protective action information. For example, we've recently published something on fentanyl and how to, you know not to be infected by that, dogs.

So there's other things we're doing to try to supplement the pure grant of money to help them most effectively build the capacity. But the need is there. I would very much look forward to working with you. Have spent quite a bit of time with them. Again, we -- we will continue to support SAFER and AFG in particular.

BOOZMAN: Very good. And again, I would appreciate you looking at that and -- and whoever's -- you know is in charge of those. Since -- Congress is probably going to be helpful in that regard and we do want plus (ph) dollars being used as wisely as they can.

I would argue that -- that again nobody stretches those dollars any -- any -- anymore than those local -- local budgets. They do a very, very good job in our community. So with that I yield back. Thank you very much.

CAPITO: Thank you. Senator Kennedy. Questions?

KENNEDY: You caught me off guard Madam Chairman. Thank you.

CAPITO: Part of my strategy.

KENNEDY: I understand. You're good at it. Madam Secretary, I'm going to deal a preliminary issue out of the way first. The impoverished pregnant women in our detention centers who came here from Guatemala, Nicaragua, Mexico, where do you think they get better medical treatment, in our detention centers or back home?

NIELSEN: I would offer per what they have told us in our detention centers.

KENNEDY: OK. Let me ask you this. Is there a country on God's green earth that let's in more immigrants legally than the United States of America?

NIELSEN: Not close. No, sir.

KENNEDY: OK. How many illegal immigrants came into America last year?

NIELSEN: Well, we had 50,000 just the last month and the month before that I don't have the total figure but a substantial number.

KENNEDY: OK. While (ph), you're the Secretary of the Department, 500,000?

NIELSEN: Sure. That would be about right.

KENNEDY: OK. You're -- you're a National Security expert and you're Secretary of the Department. I want you to forget about the politics for a moment, I can't believe I'm saying this but forget about the money for a moment, forget about trying to make somebody happy for a moment.

I want you to -- to -- to take your expertise and tell me one, two, three, four, five, six, what we have to do to cut that 500,000 in half.

NIELSEN: OK, putting the other two aside, what we need to do is agree as a country that we are going to enforce the laws that Congress has passed.

KENNEDY: OK, I -- I understand that, Madam Secretary. I'm not trying to be rude, but I try to --

NIELSEN: Do you want me to go through the loopholes?

KENNEDY: -- stay within my time, and -- and I want to come down from -- from the -- the platitudes, tell me as secretary what we need to do. One, two, three, four, five.

NIELSEN: Sure, so we need to get rid of the floor as a settlement, we need to revise --

KENNEDY: Get rid of the what?

NIELSEN: The floor as settlement. We need to revise TVPRA, we need to get rid of --

KENNEDY: What is TVPRA?

NIELSEN: That is the -- trafficking prevention act -- victims prevention act. So what that does is unfortunately through the court cases, they way that they have --

KENNEDY: It's OK, I'll look it up later.

NIELSEN: OK, got it. Zebidos (ph), which is a court case that requires us to release illegal aliens back into the communities, we need a safe third country agreement with Mexico.

We need to increase the penalties for asylum fraud, all the fraud does is ruin the chances of people who really need asylum. We need to change the way in which we process UACs so that

we discourage the smuggling and the TCOs, and we need to go ahead and very closely focus on dismantling the smuggling in TCOs from beginning to end.

I think that's six, I can keep going, but those six would get us probably 75 percent of the way there if not 80 percent.

KENNEDY: Now we're talking. Thank you for being candid. I'm going to have my -- my team get in touch with your team so we can go into that in a little more detail. I want to talk about the wall for a second.

We've got about 1,900 miles of border with Mexico. I know that all of it doesn't need a wall, I get that, and some of it is already walled. We've already built a wall in -- in America, 2,700 miles of walls along the interstate, spent about \$5 billion.

Now that's not how I would've spent the money, put walls along the interstate. I'd have spent the money fixing the interstate, but they did it anyway. We built 2,700 miles of walls along our interstates in America.

And they're tall walls, and they're thick walls. They cost \$1.8 million a mile. How come the wall with Mexico costs \$25 billion -- million -- \$25 million a mile?

NIELSEN: So I -- I'd be happy to come break it down with you. The border security investment plan goes section by section, not all sections are the same. We have some parts in the desert where we have floating wall.

We have other parts in Calexico where we need a 30 foot wall. We have parts in Yuma where the wall is very different. So first of all I just want to be clear, the -- the wall is not the same.

When you're filling in a wall in an area like Smuggler's Gulch, it's very expensive, excuse the numbers because you literally are building, you know, in a -- in a ravine. It's also the wall systems, so when we put the numbers together it's not just the infrastructure, but it's everything that makes that infrastructure work (ph).

KENNEDY: Suppose we told you look we understand that, we don't want a Cadillac wall, we want a Chevy wall. And we said how about -- how does \$12.5 million dollars a mile sound?

NIELSEN: What -- what --

KENNEDY: You can give a -- a Chevy wall, can't you?

NIELSEN: Well I don't know that we can, sir, because again this is all based on the needs that the men and women who have experience and do this for a living have told us that they need to ensure...

(AUDIO GAP)

NIELSEN: ... works, nobody can scale it, nobody can tunnel under it, nobody can bust through it. I don't that the (inaudible) for the walls on highways, I don't know. But be happy to sit down with you in detail and determine if there is a Chevy version that will meet their operational needs.

KENNEDY: Chevy's a good car.

NIELSEN: Absolutely.

KENNEDY: Am -- am I done? I am done.

CAPITO: I think you are.

KENNEDY: I stayed within -- almost within my time. Thank you, Madam Secretary.

NIELSEN: Thank you, sir.

CAPITO: Senator Tester.

TESTER: Yes, thank you, Madam Chair. Thank you for being here, Madam Secretary. Through the previous questions there's about -- between '17, '18 and '19 there's about 200 miles of wall planned (ph). Is that correct?

NIELSEN: Yes, sir.

TESTER: Recent -- in recent discussions we've had, both with folks familiar with the southern border and -- and I -- I don't want to (inaudible) but even (ph) you, I think the biggest advantage we get out of a wall is folks are restricted once they get -- it takes them awhile to get across the border, by that time you can get folks there.

So that 200 miles, where's it going? Can you tell us today? Is this going to be going in populated areas?

NIELSEN: So it's in Calexico, San Diego, Santa Teresa.

TESTER: OK, these are all towns then, right?

NIELSEN: Some of them, some of the replacement wall for example --

TESTER: OK, I'm talking about the new wall.

NIELSEN: OK, so 200 includes both.

TESTER: OK, the new wall portion?

NIELSEN: But yes, the new wall is in mostly urban areas where the vanishing time is highest.

TESTER: That's -- and that's exactly -- that's the word I was thinking of, vanishing time. So you (inaudible) you said you -- you -- you're working with the ranchers and the farmers along the border where that may happen.

Are you working with the cities and towns?

NIELSEN: Absolutely, yes.

TESTER: (Inaudible) ask this is because I -- on a totally different issue, because I'm on the Banking Committee, I had...

(AUDIO GAP)

TESTER: ... noxious weeds that are on the banks of the Rio Grande and how they need to be controlled, because folks can hide in them. And I told them that they weren't going to have to worry about that because there was probably going to be a wall. There's two towns, one on each side of the Rio Grande right there, because that's mostly where it was.

They were shocked, they didn't believe me, they didn't think it was possible. They in fact said that can't be, and so the question is -- is -- and -- and I do this more for the two senators from Texas than I do myself, but if the folks on the border don't know that this is coming, there's going to be an incredible price to pay from a P.R. standpoint.

Are you OK with that?

NIELSEN: No, sir, I'm not. I think the outreach is vital. So if -- if you'd be willing, I'd love to talk to them myself, but we do spend a tremendous amount both through the governors, through the Sheriff's Association, through a whole variety of associations to try to work with everybody in those -- in those state and local areas.

And as you say, we do spend quite a bit of time removing those more nefarious species down there.

TESTER: And -- and -- and the other thing I would say is, is if you could -- you don't have to give it to me today, although if you have it at your fingertips I'd love to have it, but I need you to have -- give this to committee where those miles are going.

NIELSEN: Yes, happy to.

TESTER: And also as long as you're doing it, where the existing fence is going to be replaced at too.

NIELSEN: Happy to.

TESTER: OK, I appreciate that. Let me talk a little bit about another issue that was already talked this morning, and that is the request for pre-disaster mitigation in the case of wildfires. I don't need to give you the statistics, but I will.

52,000 fires this last year, 9 million acres burnt, 1.3 in Montana, yet the budget proposes only \$39 million for pre-disaster mitigation. And I will tell you, there are plenty of folks like the National Institute of Building Sciences that every dollar you put into pre-mitigation is worth -

NIELSEN: Is six.

TESTER: -- six. You got it. You got the figure. This 39 million is about 200 million less than '18. And I will grant (ph) we plussed '18 up pretty healthy. But even off of '17, it's -- it's about 60 percent cut. What's the plan there?

I mean, because it doesn't make a lot of sense to me. The fires are going to burn. The climate's changed. We heard Senator Murkowski talk about the Arctic Ocean going away.

And I can tell you that we burnt 1.3 (ph) million acres in Montana last year. Pre-mitigation monies are important. Are you -- what's the plan?

NIELSEN: The plan is to (inaudible) be frank here. The plan is to work with you all to try to (inaudible) relook overall at the grant program. As you know, people are embedded in the state program that you asked (inaudible), et cetera.

We at DHS though very much do believe that money spent at the front end, to help the communities become more resilient to all hazards, the way not only to best protect them, but to best use limited resources.

TESTER: OK.

NIELSEN: Though I would be happy to come and talk to you about how we can do that.

TESTER: So (inaudible) be great. And we need to do that. We really do.

NIELSEN: Yes, sir.

TESTER: So thank you.

Election security, very quickly and then I'll turn it back to the chairwoman. You talked about audits and provisional ballots, and physical attacks. I want talk about the voting machines for a second.

NIELSEN: Yes.

TESTER: And who's (ph) responsibility it is to make the determination. Because we -- we had a classified briefing a while back, and they talked a little bit about what had transpired in the 2016 election. It's concerning. And I'm not going to get into that.

But what I am going to get into is who's responsibility is it to make sure the states are doing what they need to do to make sure (inaudible). There are some folks in some of the states think think election tampering is going to help one side or the other, which is crazy, because, quite frankly, the Democracy is at risk.

So can you tell me whose responsibility is to make sure the voting machines are -- I mean -- Chairwoman Capito said, you know, we've got a charge a paper trail with ours, which is great, by the way. Give credit, to -- where credit is due. Is there somebody telling these states what they need to do to be able to stop this tampering? Because I -- it's serious business.

NIELSEN: Yes, it's -- it's very serious. I mean all Americans should know that their vote is counted, and it's counted correctly.

TESTER: That's correct.

NIELSEN: I mean its -- so I'm in full agreement.

It's the -- ultimately, constitutionally, it's the responsibility of the state and locals. Having said that, DHS is pushing very forward in prioritizing any request we get from the state to do a whole variety of things.

On the voting machines, themselves, we've encouraged them as a best practice to unplug it. It does not need to be connected to the internet. It should not be connected to the internet. So we've offered vulnerability assessments. We've given clearances. We do classified briefings. We're doing information sharing.

TESTER: What if they don't (inaudible)?

NIELSEN: Well, we -- we have had instances where that is the case. They have either worked with third-party vendors into (ph) provide their cyber security, or they remain concerned about what they consider to be interference of the federal government, as we've tried to assist them.

But what I would like to just mention quickly is I am going to host a day on the Hill. I'd invite all members to come. I'd like to walk you through very clearly what we at DHS are doing, but to also ask you help us message to the state and local officials what they need to do to secure the election.

TESTER: Well, and I've got take to kick it back. But I'll just tell you very quickly, I'm not absolutely sure that people know the threat that's out there, because some have tried to minimize that threat. And so, some (inaudible) really has to take the bull by the horns. And I don't know if

it's you, or if it's Department of Justice, or who it is. But we've got to be able to hold somebody accountable on this.

Thank you, and I would sure like another round if I could.

CAPITO: Senator Shaheen?

SHAHEEN: Thank you, madam chair, and thank you Secretary Nielsen for being here.

I understand that Senator Murkowski has already raised with you the issue of H-2B visas, so I apologize for raising it again. But, let me just start by saying that the employment rate in New Hampshire is 2.6 percent. We are the second lowest in the country.

We have businesses, particularly in the agriculture sector, in the tourism sector, who cannot find workers, to the extent that last summer we had restaurants and business in our tourism industry who were closing an additional day a week because they couldn't find people. And what we're hearing now that they are desperate to get those workers who have come here on H-2B visas.

I talked to a landscaper last week who has the same folks from Jamaica who have come here for the last 10 years. They have bank accounts in the United States. They have drivers licenses in New Hampshire. They come here, they work hard for the summer, and then they go back.

And yet, right now he has no idea whether these folks are going to be able to come to the country or not. So what can I tell these businesses who are desperately calling to say, what are we going to do about workers, because we don't know what the governments going to do?

NIELSEN: What I'd say is we have to balance two things. We want to make sure that Americans who need jobs have them, but we also do not...

SHAHEEN: Well, let me just say in New Hampshire that is not an issue.

NIELSEN: As I said -- if you could let me finish ma'am? What I was going to say was, it is not the intent of the Department of Homeland Security to administer any visa program that inadvertently puts companies out of business because we are not giving them the visas that they need. So the decision should be coming out very shortly, and I'm happy to give you a call, even later today, to talk to you a bit about it further.

But what I would say again is -- I ask Congress to put the ceiling in law then countries can, countries -- excuse me, companies can understand how many they'll get, they can plan towards it, they'll have sustainability, there'll be predictability and transparency in the system.

Every time Congress kicks the can to DHS we have to wait for an appropriations, we have to do an independent review, we have to do a reg -- the system doesn't work. The best -- my best thing that I can ask you to do is please put the amount in law to help the companies who need the help.

SHAHEEN: I think we'd be delighted to do that. And in fact as you know, the Senate did that when we passed a comprehensive immigration bill in 2013. So I would hope that we could do that as well, and provide some certainty.

Let me ask you about refugees to this country. We have an Indonesian community in New Hampshire who came to this country fleeing religious persecution. We had an agreement with ICE during the Obama administration, as long as those folks checked in regularly that they would be allowed to stay as long, as they were holding jobs, not getting in to trouble.

And yet this administration has prioritized those individuals, many of whom have been here for over 10 years, who have children who are American citizens -- they've been prioritized for deportation. Can I -- can you explain that? And can I have your commitment that you will relook at this issue? Because they are facing very real dangers if they go back to Indonesia because of the persecution of Christians in Indonesia.

NIELSEN: You do have my commitment to relook at it. DHS does not send anybody -- and actually we don't make the final decision. As you know, an immigration judge does, but collectively we do not send anyone back to their deaths, so...

SHAHEEN: Well let me just say these folks until they recently were able to get a stay from the court, had not been before an immigration judge. They were targeted by, as I said, by ICE for deportation. Just were asked -- they reported in as they had been doing for years under this agreement. When they reported in, they were told come back the next time on a given date with your ticket because you're going back to Indonesia, even though you may be in danger of being killed.

NIELSEN: You have my commitment to look into this.

SHAHEEN: Thank you. As you know, the number of refugees who have been admitted during 2018 has been set at 45,000. That's an historical context where we have under the refugee act, accepted about 95,000 refugees a year, it's my understanding.

I understand that despite the target of 45,000 for 2018, that so far this year, as of April 1st, so more than halfway through the fiscal year, we've only accepted 10,548 refugees for resettlement. That's just 23 percent of the admissions determination and 73 percent fewer than the same time period last year. Can you talk about what the reason is for this reduction and whether you expect we will get to the 45,000 number by the end of the fiscal year?

NIELSEN: We will process whatever applications we've received. As you know, we work with UNHCR and there's a whole refugee resettlement process. I would like to work with this committee and other members of congress. There's some confusion in the U.S., because in the U.S., we're the rare country that combines asylees and refugees.

The only difference is a refugee applies aboard and an asylee applies at point of entry who's already here. We have 300,000 asylees in backlog. So when you put the whole number together,

it's not only a very large number, but the number of refugees that we accepted in 2017 were more than the top other three countries combined.

The summary in here is the right math and the right way to think about this, but most countries do not -- they just consider it as one number or they don't accept asylees. So we either have to decide do we want to accept refugees that go through the formal refugee process, or do we want to accept those claiming asylum on our border.

As you know, we've had a 1,750 percent increase in asylum claims in the last five years. So to put it in perspective, it's the same resources that look at asylees and refugees. So I would like to have a further conversation with you about how we want to work it as a country.

SHAHEEN: That would be very helpful. Madam chair, I know that I'm out of time but could I just ask for a clarification? So the 10,548 refugees, is that number on top of a number of asylees?

NIELSEN: Yes, ma'am, 300,000.

SHAHEEN: That have been accepted into the country?

NIELSEN: We had -- I'll get that to you. I want to say there's about 100,000 last year. We have 300 currently being processed. But, yes, I'll be happy to get you the number.

CAPITO: Thank you. Senator Baldwin.

BALDWIN: Thank you, Madam Chair. Secretary Nielsen, I want to follow up with you on an issue we discussed last month. According to Citizenship and Immigration Services data, as of March 31st, there were more than 9,000 pending DACA renewal applications for individuals whose deferred status and work authorization had expired.

Some of them have undoubtedly faced the impossible choice faced the impossible choice between stopping work, including teachers needing to quit in the middle of an academic semester the, or continuing to do so without authorization.

I wanted to, again, ask you on the record what I raised with you previously is, will those individuals seeking to renew their DACA status be penalized in that process if they have continued to work without authorization?

NIELSEN: Will they be penalized? If they have the application in, which I believe is what we discussed the last time, then we're giving them that benefit of the doubt, if you will, and we will not take any prosecutory decisions above them.

So that's above and beyond what we're required to do by the court, but I do understand that there were those who have applied late in the process because of previous court decisions. So if you have an application in, we will not target you for deportation and we will not prosecute you if you're continuing your status while you're waiting for the formal renewal.

BALDWIN: So if you continue working, say you're that third grade teacher, and you're waiting for your DACA status to be renewed, that will not be viewed as a factor of somehow being, you know, in or out of compliance?

NIELSEN: Right. We will not target you for deportation because of that.

BALDWIN: But how about would the renewal be rejected?

NIELSEN: If the application is in, we are processing all renewal applications, not new applications but all renewal applications under the current court case. So as long as you haven't committed a crime or otherwise fallen out of status, I mean, you should be approved.

BALDWIN: So the second question I have is, will the administration be asking any of the courts that have made orders in this matter to clarify whether applicants for renewal can receive work authorizations at the time that their cases are pending?

NIELSEN: I'm not aware if DOJ is asking for that specific clarification, but I'm happy to find out and get back to you.

BALDWIN: And that's not something that your department has requested?

NIELSEN: No, ma'am. Partially because we're -- we have court cases telling us to stop, court cases telling us to restart, so we're just waiting, unfortunately. What we're doing is complying with all final judicial orders at the moment. One of them, as you know, includes the direction that we must continue to execute the program as it was executed before September of last year.

BALDWIN: That's the most recent one.

NIELSEN: Yes, ma'am.

BALDWIN: And they didn't have any comment in that order about work authorization?

NIELSEN: Not that I'm aware, but I'll get that to you.

BALDWIN: Yeah, please do. I'm happy to.

NIELSEN: Last month, senator Cassidy and I introduced legislation that gives the Food and Drug Administration more tools to reduce illicit fentanyl and other drugs from entering through our international mail facilities including by strengthening coordination with CBP. This measure was included in a broader opioid crisis response measure that has been approved by the help committee. We introduce this measure because international shipping is a major source of illicit fentanyl. Particularly from China.

According to a report by the U.S. China Economic and Security Review Commission, China is the largest source of illicit fentanyl entering the U.S. with Chinese manufactures shipping fentanyl products to small scale distributors and criminal organizations across the United States.

Do you agree that China is a major source of illicit fentanyl that enters the United States and do you believe that more must be done to combat the shipment of illicit fentanyl from China to our international mail facilities?

NIELSEN: Yes, to all the above.

BALDWIN: OK. Thank you. I see my time has expired.

CAPITO: Thank you. I think I have an additional question or two and then so we'll go a quick second round and I -- I thank you for your patients and for your questions and so I'm going to go ahead start. I want to kind of follow up on Senator Baldwin on counter drug efforts through DHS.

Senator Shaheen and I worked on a number of issues surrounding fentanyl as all of us have but our states are particularly highly affected by this. So I'm very interested and we're going to be having a hearing in this subcommittee where we're going to be talking about the department's effort, more specifically on opioid trafficking.

But if you could talk a little bit in more depth on -- I know we've passed the INTERDICT Act, we -- we put \$65 million into that, what you're doing with that, and then I know in combination of what the Coast Guard is doing.

But I'm really interested more on the fentanyl coming across the border and -- and what -- how this has developed and how you're using the \$65 million.

NIELSEN: Sure, and I -- I thank you for your continued focus on this area, this really is one where we all have to work together and unfortunately it just keeps getting worse. And so we -- we -- there's a lot more we can do.

So at DHS, we work to stop it at source, we're working on international agreements. China does remain the main source, without question, of fentanyl, but China also has recently signed an agree -- or passed a law a couple months ago to stop to (ph) the precursors of fentanyl.

So we're working as much as we can in the international community. In terms of stopping it at the border, we do so by land, sea and air. The Coast Guard plays a role, CBP plays a role, ICE plays a role, we have border enforcement security teams, 58 throughout the country. They work with state and locals to combat opioid trafficking.

In the mail, I'm happy to announce that in November we have canines now at every international mail facility. Canines, as we know, when imprinted correctly, are actually the best source of detection.

We also are using money that you have provided us in the omnibus for non-intrusive detection equipment. We have an additional ask in '19 that will help with the ports of entry so that we can see even smaller and smaller amounts.

We also have provided guidance on a medical preventive perspective for first responders to take care, and then finally we're also doing things through S&T. So we're about -- through our (inaudible) technology director to issue a contract for a wearable fentanyl detector, so that first responders can also be even more protected when they are looking at packages.

CAPITO: (Inaudible) I hadn't that final -- your final thought there, I'd be interested in maybe when it moves forward to see a -- a demonstration on how it works. Just last question I have is on cyber security, and we haven't talked about that a whole lot, but that is obviously part of our nation's critical infrastructure.

And the president's FY2019 budget called for a transfer of approximately \$48 million cyber security research and development to the national protection and programs directorate.

Without this transfer, the fiscal year 2019 request is actually a \$28 million net decrease from the fiscal year. So I -- that's concerned to us and -- and it raises a question. What is the status of the department's effort to secure federal networks and why does the budget request propose a relatively stagnant level of funding for cyber operations?

NIELSEN: So the good news is in many of our systems and programs, they were necessarily front loaded, in other words the first phase and second phase of programs such as continuous diagnostic monitoring (ph) or what we call the Einstein program required a capability build on the front end.

The back end is really maintenance and operation and then agreements with the departments and agencies on how to employ it in training. So actually the -- the -- the initial influx of cash, if you -- if you would, was required and now we have gone down. What we're looking to do now though is we're looking much more at systemic risk. We're changing the way that we look at the protection of critical infrastructure, we're doing so with sector specific agencies and owners and operators themselves so that we can understand through the interdependencies what we need to do better to fill those gaps.

So it's sort of a -- what I would say is a general evolution of the maturation of -- of what we need to do. We do need to do more. Everyday we're looking at gaps and -- and -- and following the threat indicators to see the patterns and -- and then to come back to you to see what else we will need.

CAPITO: Well I appreciate that, I would say just in the form of a comment, it's -- it's a little -- when you -- when you see the threat -- the threat you see today is not -- and you can tell me a lot more about this, is not the threat we're going to see tomorrow.

So I -- I would -- I would think that resources to -- in an anticipatory fashion or research and development is going to be critical to be able to -- so we're not just always looking at what happened and trying to fix that, we're -- we're looking ahead to see -- to prevent what that next threat could be.

So I appreciate that. Senator Tester.

TESTER: Thank you, Madam Chair. Just real -- real quickly, I referenced this in my opening remarks, there's a contract out there that -- that -- that the CBP has entered into on hiring, and -- and I want the contract. I'll just be honest with -- your -- your 43 million bucks, supposed to hire 7,500 people, they haven't hired anybody.

And by the way, if they would have hired the 7,500 people, it would have been \$39,000 per person, would have been the cost. It's one of those things that people go to the Senate floor and make speeches on, and I just want to know why is this happening, and are you going to stop it?

And I -- I just don't see the positive. I mean, I see a positive for trying to get people on board, we need to do that, but this seems a bit beyond the pale.

NIELSEN: Yes, sir -- Senator, let me just start by -- you and I have had many conversations about the border security and the hiring, and I really appreciate your support, always.

TESTER: Yes, absolutely.

NIELSEN: And I know that you're asking the question for the purposes of trying to get us the focus that we need in the most effective way possible.

TESTER: Yes.

NIELSEN: The way the contract works is a sentry (ph) does not get paid until we have entry on duty, until there's an EOD. The 13,000 is meant to capture the full life cycle of hiring, so it's everything from the advertising through to the training, through the onboarding; in CBP's case, it's the polygraph, it's the physical test, so our...

TESTER: And the -- and the 297 -- 297 million is for the 13,000 people to be hired?

NIELSEN: Yes, sir, as far as I believe, I'll get back -- I've got numbers wrong in my mind, but I believe so, yes sir.

TESTER: OK.

NIELSEN: So we're -- we're happy to show you our modeling. CBP and our HR folks did quite a bit of work on what is the most effective way to do this...

TESTER: Yes.

NIELSEN: ...and at least the figures showed that rather than hiring up our HR department to be able to have all the people we need to process this, it was more cost-effective to do it by EOD, so again, they're not paid unless we actually bring somebody on board.

TESTER: OK, so just -- OK, at that rate it's 43,000 bucks a person; 13,000 by 297 million. Here -- here -- here's the rub: you signed the contract in November, it says you've allocated 43 million, you said they get no money until they bring on the person and they're actually on board, but -- but the question is they haven't done anything yet. I mean, it -- we're -- November, hell, we're 7, 8 months into this thing.

NIELSEN: So some of this was the strategy around, for example, looking at how we could add mobility into the process. As you know, there are some places in front of our border areas where people do not necessarily -- it's not a draw. So...

TESTER: I -- I got it.

NIELSEN: OK.

TESTER: I understand that. What I don't understand -- and there's plenty of folks out there, there's third-party administrators that do all sorts of things for the government, and I could tell you a lot of them I've had some pretty bad experience with, because they promise, they don't deliver. And this doesn't look like they're delivering.

Whether they're delivering in Washington D.C. or Whitefish, Montana, or Minot, North Dakota, anywhere, hard places, easy places, but we obviously want to try to get some more people on board, and I just -- I've gotta tell you, when I look at this, it appears to be just a total boondoggle. I mean, I'm just going to tell you.

NIELSEN: Well I -- you know, I share your view on holding -- holding accountable...

TESTER: Yes.

NIELSEN: So why don't we come talk to you this week, and just walk you through...

TESTER: We'd love to.

NIELSEN: ...and let's figure out how to make it better.

TESTER: We'd love to. And then I've got a number of questions, just want to touch on one real quick, and that's TSA -- TSA's cut, getting rid of some VIPR units, getting rid of a number of other things, it's pretty important. That's all I'm going to tell you.

I mean, those guys do a hell of a job, and we need to make sure that's beefed up just as much as we do on our ports and borders, which I think we all agree to. Thank you for being here.

NIELSEN: Thank you.

CAPITO: Senator Shaheen?

SHAHEEN: Thank you, Madam Chair. I want to pick up on Senator Capito's questions about cyber-security, because I was pleased to hear recently that all federal agencies were able to comply with DHS's directive to remove Kaspersky Lab products from their systems.

Now, as you know, when we passed the Defense Authorization Act, we went a step farther, Section 1634 of that directive requires that the federal government remove Kaspersky software from third parties when they are using Kaspersky products. Can you talk about what the status is of the implementation of that piece of the directive?

NIELSEN: Yes. I can't get you the exact figures, which I'm happy to do later today. Potentially (ph) what we're doing is we're -- we're looking at it from a supply chain perspective, which is what you're describing and what was in the NDAA. So it's very important for us to understand not only who our contractors are contracting with, but when they provide a service or a software, what's embedded there within.

So we've done a lot of assessment and modeling to understand where it can be found. Unfortunately, for many of the third party providers, they weren't even aware that they had Kaspersky...

SHAHEEN: Right.

NIELSEN: ...on their systems and within their products.

So we're pretty advanced on that. We're also working with other parts of the federal interagency to determine how to be more forward-pushing and consequences for not pulling Kaspersky out of all systems.

But I'm happy to get you the numbers later today.

SHAHEEN: And is there any thought going forward to make sure that any foreign parties are also required to disclose the identity -- any foreign parties that we're doing business with are also required to disclose the identity of the service providers that they work with, so we know that they also are not using Kaspersky software or other software that we might have concerns about?

NIELSEN: We are -- yes, is the short answer. We're working very closely with the intel community, so that as soon as there is a flag or a concern, we can work very quickly within the federal interagency to do that. We also at DHS are looking throughout our contracting process; it has to be that we can pause and turn off contracts the moment we have a concern. If someone's been hacked, if someone's vulnerable, or if somebody's using software that we know will put us at risk.

So we'd love to come talk to you about that. We're doing a full review, and working within the authorities we have to find out ways to do that.

SHAHEEN: That'd be great. Thank you. I heard Attorney General Sessions' announcement about taking children from their families when they're apprehended at the southern border. I had a chance to visit the southern border during the -- 2015, and to visit some detention centers down there where children were staying with their families, and there was a great deal of concern about the potential impact on the children of that.

Do we have any projections about how many children -- I think I heard the number 700 or 800 children who had already been taken from their families when they had come across the border -- do we have any sense of how many we're projecting for the next fiscal year, what kind of situation they're going to be in, whose -- how many foster families are going to be needed, what the cost of that is going to be?

I -- I -- I am -- as former governor who used to worry about how we kept children in their families when there were difficult family situations, and remember that the research that I had shows that children were better off with their families in terms of their long-term development; do we have any idea what the potential is for us to have an impact on these kids for years to come because we will have taken them away from their families?

NIELSEN: We are working with the community to understand the science. I think another member had referenced studies that are available. As you know, we turn over all children to the Health and Human Services, that then goes through a process to find a custodial relationship or some other sponsor.

I was very concerned when I came back to the department to learn that in many cases we did not do any sort of check before we turned over children, and so we now are making sure that those children are going to safe places, which I think is very -- for obvious reasons, very important.

In terms of separating, I just would make one more plea to everyone who can help me message: if you are fleeing and you have a need to come to the United States, please come to the ports of entry. You -- you -- you know, we will process your claim there. But if you come across the border illegally, you've -- you've broken the law and we have to prosecute. It's the only way to keep our border -- to have a border.

So if you have a claim, you have children, you're concerned for your life, go to a port of entry. You'll be processed. We have asylum laws. But when you break the law, that's where it gets very difficult because we have to prosecute those who break the law.

But we'd love to work with you more, if you have other ideas on -- on how to do that.

SHAHEEN: Are we messaging that to the Central American countries where many of these refugees are coming from?

NIELSEN: We -- we are. We have a youth outreach program, we're doing an internship with the Department of State, we also are working with local radio stations as well with the Department of State to try to message this. Certainly the embassies are messaging this. But again, if you have a legitimate claim and you come to a port of entry, you haven't broken the law.

SHAHEEN: Right, that's why I'm asking...

NIELSEN: Yes

SHAHEEN: ...but are we messaging that piece of it?

NIELSEN: Yes. We need to do more and more, but yes, that is a campaign that we are -- we are in the midst of executing, yes.

SHAHEEN: Thank you very much (ph).

CAPITO: Thank you. Senator Baldwin?

BALDWIN: Thank you. In the fiscal year 2018 funding bill, I worked with my colleagues on a \$10 million set aside within FEMA's State Homeland Security Grant Program for nonprofits that are at risk of terrorism.

Previously, nonprofits in Wisconsin and those located in most of the states represented on this subcommittee were ineligible for that type of funding.

FEMA will now be able to help enhance the security vulnerable targets in smaller communities. This is important because the terrorist threat is not limited to America's big cities. I think of the 2012 tragic shooting at a Sikh temple in Oak Creek, Wisconsin, in which six people were killed and four wounded.

In 2016, a planned terrorist attack at a Milwaukee Masonic temple was thwarted, thankfully, by the great work of the FBI, and the multiple bomb threats that have been received by the Milwaukee Jewish community center last year. Setting up this program is, therefore, a top priority of mine, and it has been for years, so I'm eager to learn when the Department of Homeland Security already stands it up and open up an application period to start awarding funds.

NIELSEN: Thank you. It is very important. As you know, there's 50 million set aside traditionally in (inaudible), but to your exact point that was -- that pretended that the attacks and those funds that are needed by non-profits only existed in urban areas. So this will help us make sure that non-profits in other areas throughout the country, you know, have the funding that they need to protect.

The short answer is, the time schedule that we normally follow per law in the appropriations cycle will be making those notices later this summer but I just received a brief talked to my folks

on it this past Friday, so we're happy to come and talk about our plans of how we'll implement it and what we're looking at in terms of allocations and -- and, you know, going towards the date in the normal cycle of grant funding.

BALDWIN: OK, I'll look forward that follow-up. Thank you.

CAPITO: Well, I see there are no further questions. This concludes today's hearing. Secretary Nielsen, we appreciate you appearing for the subcommittee and your frank and open and honest answers.

The hearing record will remain open for two weeks from today. I think you did mention you were going to do a lot of follow-up with members so that will be appreciated. Senators must submit written questions for the record. We ask that the department respond to them within a reasonable amount of time.

The subcommittee will meet again -- this subcommittee next Wednesday, May 16th, to more closely exit role of the department in countering the flow of opioids and other dangerous drugs into our country. With that, the subcommittee stands in recess.

END

May 08, 2018 19:32 ET .EOF

From:	DHS Legislative Affairs (b)(6)
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To:	"Wonnenberg, David (b)(6) (b)(6) "Dinh, Uyen (b)(6) (b)(6) "Ciccione, Christine (b)(6) (b)(6) "Phillips, James M (b)(6) (b)(6) "Vieco, Russell (b)(6) (b)(6) "Nusraty, Jeffrey (b)(6) (b)(6) "Hymowitz, Emily (b)(6) (b)(6) "Readinger, Jeff (b)(6) (b)(6) "Wieczorek, Erin (b)(6) (b)(6) "Corbin, Susan (b)(6) (b)(6) "Rocca, Andrew (b)(6) (b)(6)
CC:	"DHS Legislative Affairs (b)(6) (b)(6) (b)(6) "Micone, Vincent (b)(6) (b)(6) "Ammons, Samantha (b)(6) (b)(6)
Subject:	HEARING TRANSCRIPT 05-15-2018 S1 Nielsen before Senate Homeland re: authorities and resources
Date:	2018/05/15 19:39:16
Priority:	Normal
Type:	Note

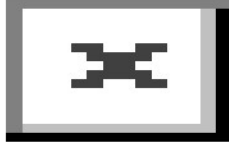
Please find attached and appended below the *Bloomberg Government* transcription of the following S1 hearing held Tuesday, May 15, 2018:

“Authorities and Resources Needed to Protect and Secure the United States”

Senate Committee on Homeland Security and Governmental Affairs

Witness: **DHS Secretary** Kirstjen Nielsen

2:30 p.m., 342 Dirksen WEBCAST



(b)(6)

JOHNSON: This hearing will come to order. I want to welcome Secretary Nielsen. Thank you for your service. I did read your press release on National Police Week, and I think it is fitting and proper that we pay tribute to law enforcement officers killed in action, and just, really, honor the -- the families for their service as well.

According to National Law Enforcement Officers Memorial Fund, since 1791 (ph), 21,500 -- 21,541 law enforcement officials have paid the ultimate price, sacrificed their lives. Last year, 129, year-to-date, this year, 53, so I think it'd be fitting and proper if we just recognize a moment of silence, to honor those and their families.

Thank you. I would ask you unanimous consent that my written statement, be entered into the record.

The title of the series "Authorities and Resources Needed to Protect and Secure the United States," and I know, Secretary Nielsen, you've testified before the Appropriation Committee, so, obviously the Senators can ask any questions they want, but from my standpoint, I'm -- I'm -- cause we are the authorizing committee, I really want to concentrate on the authorities part of that -- that hearing title. And you know, I'd just kind of like to go down the list of things that are, certainly, on my mind and hopefully yours as well.

But I think this committee did a very good job. We're kind of known for a very bipartisan, nonpartisan approach, to try and find areas of agreement. And we did exactly that, with the DHS Authorization Act, which I am hoping we can pass through the senate, as quickly as possible, marry up with a House bill, to provide you the authorities that have basically become obsolete in many cases.

I know, in the Omnibus, of section 782, the flexibility of reorganizing parts of your department was actually taken away, which is important when we take a look at NPPD, turn that into the Cybersecurity and Infrastructure Security Act, or agency.

These are the things that you need to do, to do your job, to keep this nation safe. In cooperation with your department we're working with a number of members. I see two of them, they're co-sponsors, right now, to the Preventing Emerging Threats Act of 2018, which a big part of that is, really addressing, countering unmanned aircraft systems, which is a growing threat.

It's a real threat, and it's confusing. It's -- they're conflicting authorities; no authorities, from your standpoint, in terms of addressing those and being able to take those out the air, and, again, it's a complex situation. And of course, I think it's just crucial that we fix our completely broken immigration system. The fact that we have laws, legal precedent, loopholes, that, because you follow the law, really prevent you from deterring additional illegal immigration.

A class example of how that would actually work was in 2005, under Secretary Chertoff, we had a flow of illegal immigrants coming in from Brazil because they had a Visa waiver system with Mexico.

So we had over 30,000 Brazilians come in 2005 and Secretary Chertoff, by utilizing his authorities, apprehended, nearly called the program Texas Hold'em -- apprehended those Brazilians, held them in detention until their case could be adjudicated and then returned them. By the following year less than 2,000 Brazilians came in here. So the goal of his actions were to reduce, if not stop, the flow as opposed to -- you know right now we've got -- unfortunately you are forced to apprehend, process and disperse. And that is a huge incentive for additional illegal immigration.

So I -- those are the types of authorities that I want to hopefully discuss in this committee. Those types of authorities I want to provide you as Secretary of Homeland Security so you can actually fulfill your mission of providing greater security for our Homeland.

So with that I'll turn it over to my Ranking Member, Senator McCaskill.

MCCASKILL: Chairman and thank you Secretary Nielsen for being here. I -- I'd like to talk about DHS's budget and authorities and policies in two important areas today. And one is on the border as it relates to border patrol staffing. I am concerned about Border Patrol staffing.

I think the men and women of the Border Patrol do an amazing job. I think they are brave and courageous and hard working and this is law enforcement week in Washington and I think it's important to recognize all of the men and women in uniform across this country who protect us.

But it's interesting because when you look at the staffing along the border, the diagram of the staffing it has been on a downward trajectory since President Trump took office. In September of 2016, there were 19,828 border patrol agents along our southern -- along the borders.

And in April of 2018, it's actually down 500, 400 and some staff. And that is spite of the fact that there's an authorization for many more as you are painfully aware of I'm sure. We have an authorization for 21,370.

So we're you know hundreds and hundreds lower than we were when President Trump took office and we are many more under for what are authorized and we keep debating addition authorizations as if that's somehow going to solve the problem.

And we've talked about this is in various hearings and I know everyone wants to point it to the polygraph but it doesn't seem reasonable to me that that is the only reason. You can't keep up attrition right now.

You can't hire and we've got some outrageous, I think, contracts for recruitment. One of the things I want to talk about today is, are we missing the vote here in terms of improving pay and working conditions?

MCCASKILL: I mean many times people leave a job because they don't feel that they are getting adequate pay or they're not being asked to perform in ideal working conditions and I know that it's impossible to make this work always ideal because it -- law enforcement, you have to take what comes.

But there's a real problem that clearly we're not getting at. And that's one of the things I want to talk about today. The other things I want to talk about today is the difference between Border Patrol agents and Border Patrol officers.

And I don't think most Americans understand that we use those -- those terms, and for most people they probably think they're the same thing. I don't know how that happened, I don't know how we named them that way.

But it's terribly misleading, because of course the officers are the ones that are at the port of entries. The agents are the ones along the border. And unlike the Border Patrol agents, we are not authorizing significantly new officers.

Even though it is very clear in a report I released from the minority staff of this committee. Analyzing what is happening, we found that 88 percent of all the opioids seized over the past five years were seized at ports of entry, not along the border.

So close to 90 percent of what is being seized in terms of dangerous opioids is happening with our Border Patrol officers at ports, not along the border, not in the desert, not along the river, not as has been described sometimes by people in this administration.

That this is a problem of people trying to enter illegally with drugs. It's actually coming in through the ports. And I -- the fentanyl seizure increases on two fronts are in the ports of entry on the southern border and in mail facilities.

And in both instances, you are also woefully understaffed. And so that's -- these are the two areas I want to talk about. Where your staffing demands are clearly not being met, and we've got to figure out this problem. Because you know we can -- people can give speeches and talk about you know that we've got to you know turn back illegal immigrants and there are too many illegal immigrants coming across.

And nobody is disagreeing with wanting to secure the border. But when you can't hire the people you need. And when the people you hire are leaving more quickly than you can hire replacements, there is a more fundamental problem here than just adding more personnel.

And I'd like us to try to get -- see if we can get to the bottom of that today. And I would ask that my written statement be made part of the record.

JOHNSON: Without objection. It is the tradition of this committee to swear in witnesses, so if you'd stand and raise your right hand. Do you swear the testimony you give before this committee will be the truth, the whole truth and nothing but the truth, so help you God?

NIELSEN: I do.

JOHNSON: Please be seated. Secretary Kirstjen Nielsen is the sixth Secretary for the Department of Homeland Security. And the first former DHS employee to become the Secretary. Prior to joining the department, Ms. Nielsen served as the Deputy Principal White House Chief of Staff to President Trump.

Secretary Nielsen also served as the Chief of Staff to then Secretary John Kelly at the Department of Homeland Security. Secretary Nielsen served in the Bush administration as a special assistant to the President, and Senior Director on the White House Homeland Security Council from 2004 to 2007.

She holds a Bachelor Degree from Georgetown University School of Foreign Service, and a JD from the University of Virginia School of Law. Secretary Nielsen?

NIELSEN: Thank you. Well good afternoon Chairman Johnson, Ranking Member McCaskill and other distinguished members of the committee. I appreciate the opportunity to appear before you today, and I'd like if I could to submit my full written testimony for the record.

JOHNSON: Without objection.

NIELSEN: I want to begin by thanking you. As the Chairman mentioned, we greatly appreciate your advancing the DHS authorization bill earlier this year. As you know we have not been reauthorized since our creation 15 years ago.

This results in critical -- critical gaps that effect our ability to protect the American people. I also want to thank you in general and to the full committee for being strong supporters of DHS, for listening to our analysis of emerging threats and listening to what we need to do our jobs.

NIELSEN: A lot has changed in 15 years. The threats have evolved, our enemies have adapted and -- and our adversaries are resurgent. In the meantime, our authorities have not kept pace. So today, I want to highlight several areas where DHS request your support, in order to help us

better secure our country, including achieving border security and closing immigration loopholes, transforming our cyber agency within DHS, authorizing the Countering Weapons of Mass Destruction Office, providing authorities to help us counter unmanned aerial systems, and supporting the president's 2019 budget proposal for DHS.

First and foremost, border security is national security, and while we have made vast improvements, make no mistake, we do face a crisis. We see unacceptable levels of illegal drugs, dangerous gangs, criminal activity, and illegal aliens flow across our southern border. That is why, last month, we deployed the National Guard to our southern border.

Anyone who thinks this is a stunt should look at the stats. Our officers have apprehended more than 2,000 people attempting to illegally enter our country, and they are interdicting drugs that would likely, otherwise, have gone undetected. At the same time, my message to smugglers, traffickers, and criminals is clear. If you try to enter our country without authorization, you've broken the law.

The attorney general has declared that we have zero tolerance for all illegal border crossings, and I stand by that. Anyone crossing the border illegally or filing a fraudulent asylum claim will be detained, referred for criminal prosecution, and removed from the United States, as appropriate. But our National Guard deployment, zero tolerance policy, border wall construction, and other actions will only get us partway there.

We urgently need congress to pass legislation, to close the legal loopholes that are fueling this crisis, in the first place. Those, coming illegally, know it's easier to get released into America if they claim asylum. They know it's easier to get released if they're part of a family or if they're unaccompanied children, so it should as no surprise that we seeing a spike in all of these categories.

Word is getting out. Asylum claims are up 200 percent in the past years, family unit apprehensions are up nearly 600 percent, compared to this time, last year, and UAC apprehensions are up, more than 300 percent. In fact, five years ago, apprehensions of families and UACs were less than one, out of every 10 apprehensions. Now, they approach almost half of 40 percent.

Some say these increases are the result of spreading crime or failing economies in source (ph) countries, but in those places, we are actually seeing economic growth and lower homicide rates. The reality is, that their economies are -- that their economies are cratering. It's that our -- excuse me. The reality is not that their economies are cratering, it's that, ours is booming.

America is the land of opportunity, and that's a pull factor for anyone, but we if have a legal system of immigration, for those who want to come here, for economic reasons, they should do so legally. Asylum is for people fleeing persecution, not those, searching for a better job, yet, our broken system, with it's debilitating court rulings, are crushing backlog and gaping loopholes, allows illegal migrants to get into our country, anyway and for whatever reason they want.

This scamming of the system is acceptable. We need urgent action from congress, to close these dangerous legal loopholes that are making our county vulnerable. I would also note, and it's important, I try to say this at every opportunity, that the journey, itself, to our borders is risky. It endangers the illegal aliens, themselves, the communities they pass through, our agents at the border, and U.S. communities, in our homeland.

To be clear, human smuggling operations are lining the pockets of transnational criminals. They are not humanitarian endeavors. Smugglers prioritize profits over people, and when aliens pay them to get here, they are contributing \$500 million, a year or more, to groups that are fueling greater violence and instability in America and the region.

There are other options. If migrants have a legitimate need to flee, they should seek protection in the first safe county they enter, including Mexico. They should not subject themselves to a long and dangerous journey. This is not and should not be a political or partisan issue, and I hope that we can discuss real solutions, today.

The past four presidents have pleaded with congress to act on this security challenge, but this administration is tired of waiting, so in the meantime, we are doing everything within our authorities to secure the border and enforce our laws.

Turning to the cyber domain, I want to make clear, today, that we've reached a turning point in cyber threat evolution, where digital security is converging with personal and physical security. Cybersecurity can no longer be relegated to the IT department and thought of as a nuisance.

Now, it's a matter of preserving our lives, our livelihoods, and our American way of life.

One of the most critical parts of the DHS Authorization Bill is it's elevation of our cybersecurity and infrastructure security resilience mission, transforming the National Protection and Programs Division, NPPD, into a new operational component. The Cybersecurity and Infrastructure Security Agency is imperative to our success on the frontlines, of the digital battlefield.

It will be a clear focal point for our interagency industry and international partners, it will help DHS recruit and retain employees with critical skill sets, and it will clarify DHS' Role, as national risk manager for cybersecurity and critical infrastructure security. I ask and thank for the committee's continued support and the transformation of this component.

I also want to take this opportunity to mention the department's cybersecurity strategy, which is being rolled out, today. The strategy is built on the concepts of mitigating systemic risk and strengthening collective defense. Both will inform our approach to defending U.S. networks and supporting governments, at all levels in the private sector, in increasing the security and resilience of critical infrastructure. I do look forward to discussing that with you further, today. I am also seeking your support to confront another category of evolving threats, weapons of mass destruction.

From the chemical attacks in Syria, to Russian's Brazen assassination attempt against a U.K. defector, we have seen the damage that these agents can do, and we know that terrorists are not only using them on the battlefield but are working to incorporate them into western attacks. In December, I announced the establishment of a DHS Countering Weapons of Mass Destruction Office, which is, now, leading a response to these threat streams and incidents, but the office still lacks critical authorities. While we currently have the ability to respond comprehensively to nuclear threats, we lack comparable authorities for chemical and biological threats.

I ask this committee and all of congress to work with me, to permanently authorize this office and to equalize the authorities we possess across all threat vectors. Further, our enemies are exploring other technologies, as well, such as drones, to put our country in danger. ISIS has used armed drones to strike targets in Syria, and we are increasingly concerned that they'll try the same tactics on our soil.

We have also seen drones used to smuggle across our borders and to conduct surveillance on sensitive government locations. So, today, I'd like to particularly thank Chairman Johnson, Ranking Member McCaskill, Senator Heitkamp, and Senator Hoeven for responding to our request and introducing a bill to help DHS counter the growing threat posed by UAS.

DHS needs clear legal authority to identify, track, and mitigate drones that could pose a danger to the public and to DHS operations. Our proposal and your bill would authorize DHS and the Department of Justice to conduct limited counter-UAS operations, for a narrow set of important and prioritized missions, all the while, importantly protecting privacy and civil liberties.

We are grateful for your leadership on this and look forward to working with you as the legislation moves forward.

Finally, I would like to ask for the committee's support for the president's 2019 budget. The budget for DHS requests \$47.5 billion in net discretionary funding, and an additional \$6.7 billion for the disaster relief fund for response and recovery to major disasters.

This budget sustains and strengthens out most critical programs and capabilities. It emphasizes protecting our nation from terrorism, encountering threats, securing and managing our borders, enforcing our immigration laws, preserving and upholding the nation's prosperity and economic security, securing cyber space and critical infrastructure, and strengthening homeland preparedness and resilience.

Throughout all of these missions, the budget also prioritizes my goal of putting our dedicated employees first and maturing DHS operations. I ask the committee to support this budget, to continue supporting our employees and our missions, and to continue to help us make our country more secure.

I thank you very much for your time, and I look forward to your questions.

JOHNSON: Thanks, Secretary Nielsen. Before I turn questioning over to Senator McCaskill, I do want to put up and draw everybody's attention to a couple charts. The first one is UAC apprehensions.

The reason I'm doing this is to make the point that regardless of what a particular loss says, we within our laws, our prestance (ph), our legal loopholes, create incentives for people who come this country illegally.

And I think the first example was the Deferred Action for Childhood Admissions -- or Arrivals. If you take a look at the number of children coming in here from Central America in 2009, '10, '11, '12, it was relatively minimal and in June 2012 we had the Deferred Action for Childhood Arrivals.

And you can see what happened afterwards. I don't have the figures year to date 2018, but I think we're on pace for an increase again over 2017. The next chart has five and a half years of apprehension history at the border.

And again, nothing's definitive, this isn't scientific, but it's pretty indicative that when President Trump came into office, obviously dedicated to securing our border and Secretary Kelly -- Kelly I think said all the right things in terms of being dedicated and -- and giving CBP and ICE the authority to enforce law.

There was a dramatic drop in apprehensions, which indicates the number of people coming in illegally. Unfortunately, the reality of what our laws are has -- has gotten into the -- the fabric of people's consciousness and the result being people realize that they can still go up to the border, has an unaccompanied child, we apprehend them, we process them, we disperse them.

We've only returned three and a half percent of unaccompanied children from Central America, I believe, if my numbers are right. And of course we still have the issue of people walking up claiming credible fear and going through a similar type of process.

Not showing up for their -- their hearings, that type of thing. So that's the reality of our law, and so a deterrent factor worked for about a year, but until we actually change those laws, then I think we're going to have a real tough time actually deterring illegal immigration.

But with that, I'll turn it over to Senator McCaskill.

MCCASKILL: Well first I would not call the DACA recipients -- the unaccompanied minors apprehensions, the vast majority of the unaccompanied minors are walking across this (ph) saying help us please.

I think apprehension is a weird word to use (inaudible) --

JOHNSON: Well that -- that's precisely my point, though. They can just walk in and turn themselves in.

MCCASKILL: OK, the second point I'd make -- the second point I'd make is DACA was wiped off the books by this administration in March of this year, and since March the number of people coming across the border has increased, not decreased.

So DACA is gone, it is no longer the law, and we went from having 36,000 people apprehended at the border in February to 50,000 in March and then almost to 51,000 in April.

So if DACA was the magic thing that is causing this, it seems to me we'd see -- and by the way, DACA doesn't even apply to these kids. None of them are qualified for DACA, none of them. So I -- you know, I think we've got problems securing our borders, and I don't want to argue about that because I think we all agree that we have to secure our borders.

I want to focus in on this -- once again, your opening statement, you talked about the drugs at the southern border. Ninety percent of the opioids that are being seized are being seized at the ports of entry, correct Secretary Nielsen?

NIELSEN: I don't have that exact figure, but yes, the majority --

MCCASKILL: We do, we got it from you.

NIELSEN: -- the majority of drugs that we see are coming through the ports of entry.

MCCASKILL: Like 90 percent, 85 percent of the fentanyl, which is killing all of our constituents every day, 85 percent of it is coming in through the ports, not across the southern border.

So whenever this talking point that it's the people coming across the southern border that are bringing all the drugs, it's like fingernails on a blackboard because it's just not accurate. And here's the thing I don't get, there has been zero requests for additional port officers, zero, last year or this year, to be used at these critical places.

You did ask for 60 this year, but it was all for a training center, not for actually deployment into these ports, and according to your own staffing, your own staffing studies, you are short by over 4,000 officers at these ports.

Our citizens are dying from fentanyl, everyday our emergency rooms are overloaded. There isn't a week that goes by that I told talk to a parent in Missouri who has lost a child to fentanyl overdose that's (ph) coming in in this manner.

Can you explain why we're continuing to ask for more agents along the border when we can't hire enough but there's no request for this critical, critical need in our country.

NIELSEN: Yes, Senator, first I'd just like to say it is a -- a huge problem. It's one, as you know, that we take seriously, the full administration. Let me give you a short answer and a long answer. The short answer is it's not just the people at the ports. So what we have done is we've asked for additional technology, as you know we have now trained canines at every port of entry to actually find the drugs.

What we find is far, far and away the best way to detect the drugs coming through the ports is through that non-intrusive technology and through canines. So we have increased that and we continue to ask for additional resources.

What we've also done, though, is taken the approach to try to push the borders out. So rather than waiting for the drugs to come here, we're working much more forward -- in a forward deployed fashion through GTTFs, through what we have in Key West, which as you know JIATF-South is a multi 20, 30 country effort to identify and track the drugs before we ever reach our shores, before they ever reach the ports of entry.

We also -- you mentioned in your opening remarks, the vast increase in mail. We thank you for the INTERDICT Act, we're working with you on the STOP Act, we need to do more there, absolutely because that's the other way that fentanyl is getting in.

So we're trying to look at it as a system of systems, in other words what are all the different interdiction points that we can best get after this. Another one we have asked for budget on, are our cyber capabilities within ICE and Secret Service, because most of these drugs and marketplaces are on the dark web.

So we've increased our capability to take them down to track the TCOs to their source and to turn off not only their market but their ability to get the drugs. So yes, we have to continue to do more but we're trying to do it in a layered approach so it's a system of system approach.

MCCASKILL: Is there a good answer as to why there was zero requests for additional port officers when you are 4,000 staff members under your staffing model, and yet there were 750 additional agents requested along the Southern border even though you can't even fill -- or the attrition that you're having now? Is there a good reason as to why there would be that dichotomy?

NIELSEN: The good news I'll mention quickly is that the attrition's down and we can talk more about hiring because I know that was a concern of yours in general. But happy to -- happy to come in myself or have folks come and walk you through the model.

The other part about drugs that I didn't mention is what we tend to see is the drugs themselves will be smuggled through the ports of entry. Again we use the technology and K-9s. But the people, the actually TCO members who will then sell the drugs, come in between the ports of entry because they know if they come in at the port of entry they'll be stopped.

So it's a -- you know we need to stop the people and the drugs. But in terms of the staffing model that you're discussing, I'm happy to come talk to you about it in detail.

MCCASKILL: Yes. It doesn't -- it doesn't -- and if you look at your staffing at the United States in terms of mail facilities it's even worse. I mean, you've got 17 officers covering two shifts in Cincinnati, screening almost 46 million import shipments in one year. I mean that's just overwhelming. I just think somebody has got to get off the political speeches and get to the problem and be pragmatic.

You know all of us want to support what you need along the border. But this notion that if we can just say look over here, look over here, it's all about people coming across the border and totally ignore the biggest public health crisis this country has ever faced by not adequately staffing the places where the drugs are coming in, is just heart breaking to me.

NIELSEN: But ma'am I'm not -- I'm not saying that. What I'm suggesting is that what we find is the best way to identify those drugs is through technology and K-9s and that's what we're increasing.

MCCASKILL: But you have to have people to run both technology and K-9.

NIELSEN: We have to have ...

(CROSSTALK)

MCCASKILL: Every dog has a handler.

(CROSSTALK)

NIELSEN: We have to have people as well.

MCCASKILL: In fact, more than one handler.

NIELSEN: But there's no suggestion that we have a lack of people to work with the K-9s or run the machines. So again, happy to walk you through but I do want to make clear we're attacking the opioid crisis from many, many levels with many capabilities.

MCCASKILL: I have questions about the air marshals, but I will hold those until the next round. Thank you, secretary.

NIELSEN: Thank you

JOHNSON: Senator Hoeven.

HOEVEN: Thank you Chairman Johnson and thank you, secretary for being here today and for the important work that you're doing every day. I'm going to follow up with some of the things we talked about at our DHS appropriation hearing, which you were at recently.

I'm pleased to cosponsor legislation with this committee's leadership that will give you authorities at DHS in regard to addressing some of the challenges with making sure that in our airspace, we managed the UAS, unmanned aerial vehicles and systems, adequately, not only to protect privacy but also security. That's very important work.

And my first question is while we're working with you to provide those authorities to track and disable threatening unmanned aircraft and as you have developed these counter UAS capabilities, do you have a plan in place to identify promising technologies from the private sector and get them validated by the department so that you can use them in this effort? And how will you go about testing and evaluating counter UAS technologies?

NIELSEN: Thank you. So we've learned quite a few lessons from the Department of Defense which as you know, has this authority already and uses it in theater. So we're looking at their testing models. The approach would absolutely be to go to the private sector. It often is at DHS. It doesn't make sense to reinvent the wheel when something already exists, so that could fill a need.

So we're specifying out the requirements, making sure we understand what it is we need to do and then work in conjunction with the private sector. As you know there's many centers of excellence, particularly those as well in your state. We're doing a lot of work there with the university as well. Everything from intern programs to other capability building exercises to get both the people and the technology.

HOEVEN: So you hit the nail on the head there. That's where I'm going. We're working with you on a time to get you out this summer to see what we're doing in counter UAS not only from the military stand point but customs and border protection as well as a private sector because you develop that plan, we think we can be very helpful in terms of you seeing some of the things that are being done.

And then leveraging some of that technology development for DHS. When Secretary Mattis was in front of our Defense Appropriations Committee, we also talked about it in terms of the military and in the same way they're both seeking authority and developing some of these counter UAS technology. So we appreciate your willingness to engage in that. We think it'll be very helpful and productive.

NIELSEN: Thank you again for the bill.

HOEVEN: The -- you have an incredible ops center in California that is managing your unmanned aircraft along the border. And so I guess my question, does air in Marine -- that air in Marine operations center have sufficient capacity to handle all these far flung UAS activities and do you have back-up and -- we'll capacity and back-up?

That's another, I guess, area that I know you're going to continue to develop and grow. And how's that going? Can we be of help there?

NIELSEN: Yes. Thank you. So as you say, the op center in California allows us to -- to deploy, to understand and track where we are using and to help us with a model for when we need to use them, where we need to use them.

I do address we're trying to use a task force unity of effort approach. So we borrow, help if you will, from other parts of DHS that either have the technical capability to fly and to have the flight hours to use the UAS, but also in terms of their models.

As you know, we use UAS for a variety of things. We use them on the border, but we also use them for disaster response to understand, you know what it looked like before the hurricane, what it looked like after, to determine public assistance.

So there's quite a few areas within DHS that we use it. We'll continue to use this center. As you mentioned, redundancy, what we are looking at in addition to the underlining capability is making sure that we do have that redundancy. That's sort of that next phase that we're in now.

HOEVEN: There's an incredible pilot shortage both for man and unmanned aircraft. And actually I want to commend you and Commissioner McAleenan with Customs and Border Protection for developing the Pathways Program which we have at Grand Forks, which in essence provides jobs for young people that are getting their training in aviation at the University of North Dakota.

So not only does CBP get a quality employee, young -- great young person and of course they need the man power as we've talked about, but it also helps them get an education because they're working for CBP. Great program. I think it's a great way to help with a pilot shortage in the aviation industry both man and unmanned. So I want to commend you on that.

And then I want to kind of switch gears for a minute and ask about -- for -- you know, when you do detain, apprehend unaccompanied children coming across the border as well as others, what are you doing to try to address the adjudication process which is such a bottleneck in terms of trying to address this issue? You know I know you're short there. What can you do and what are you doing to try to adjudicate these individuals?

NIELSEN: So as they continue to find out every day our integration process is very complex as - as you well know. It involves many, many departments. What we've tried to do is look at it from an end to end approach. In the example you just gave, there are actually about three or four different processes that those groups would undertake. So in some cases we need additional immigration judges; DOJ is working on that. In some cases we need additional processes and agreements with other parts of the interagency family; we have done, for example with the HHS to make sure that we're appropriately taking care of UAC's and their custody.

And then there's other parts who depending if they're referred for prosecution, we hand them over to the marshals. We want to make sure that's a process that works. And then in some cases we use alternates to detention as you know rather than detaining them we will have check ins, in some cases ankle bracelets, but other ways to make sure that we have them detained while they are awaiting their removal...

HOEVEN: Is that working?

NIELSEN: It does work. It does work. It's a good combination. We do it on a case by case basis. There's lots of criteria that we look at to determine when that's appropriate and when that's not appropriate but again I think it's some of the opening remarks, perhaps the Chairman made.

If you look at UACs, 66 percent of those who receive final (ph) orders - receive the final orders purely because they never showed up for court and we find that we're only able to remove 3.5 percent of those who should be removed who a judge has said has a final. So if we can track them, it's a much more efficient process while we wait for the final adjudication.

HOEVEN: Thank you Madam Secretary and thanks for the work you're doing. I know it's challenging work; we appreciate it. Thank you Mr. Chairman.

JOHNSON: Senator Carper.

CARPER: Thanks, again Secretary Nielsen, welcome. Thank you joining us today.

NIELSEN: Thank you Sir.

CARPER: I - we got a couple of recovering governors here on this panel and I still think like one and one of the things I focus on is I do customer calls in my state. I visit businesses large and small throughout the year and our governor and I visited yesterday a fairly large financial services company in the northern part of our state. Last week I was down in the southern part of our state where we do a lot of agriculture and I don't care where I go I hear employers large and small talk about how difficult it is to find people who will come to work and actually do a job and I don't care if it's landscaping. I don't care if it's like food processing. I don't care if it's someone working in financial services. They're having a hard time getting people who can pass a drug test, who have the skills, and who will come to work.

And you and I have talked a bit about how to address at least part of this challenge and talked in fact I led (ph) a letter I think of a couple dozen Senators who wrote to you and urged you to use the - the authority that we granted in the spending bill for the balance of this fiscal year to go ahead and issue additional H-2B visas and I think you have - you're basically in the legislation we passed, we authorized doubling of that cap to maybe another 100,000 or 169,000.

And my question is not going to solve all of our problems for all of our employers as you know but you have this authority. We hear a (inaudible) this week from companies that are afraid they're going to lose their business because they don't have people come to work and do the jobs; they're seasonal jobs.

And so let me just ask, what is the timeline for releasing additional H-2B visas and when will you announce the decision? How many additional visas does the department plan to release?

NIELSEN: Thank you Sir. We - it's in final interagency processes. You know it involves regulation so the regulation should be ready here shortly and...

CARPER: Can I say something? I don't mean to be rude.

NIELSEN: Yes.

CARPER: I don't mean to interrupt you.

NIELSEN: No.

CARPER: That's just a - that's not good enough. These - these - these companies, they're highly seasonal. They need the folks now. They needed them a month ago and to say that -- and whenever I talk to you about this it's basically we're working this; we're going through the process and so forth. They need - they need the workers now.

NIELSEN: Yes, I understand. I understand.

CARPER: If they were here, they would tell you.

NIELSEN: I have been collecting evidence. I've asked everyone I've talked to -- to give me examples so that I can enter and package it and send it back to Congress to say please put -- next year please put the ceiling in law. There's no need to tie it to appropriations...

CARPER: They gave you the authority to basically double the number of visas...

NIELSEN: I understand that if you all are...

CARPER: You have the power. This Administration is not reluctant about using executive power.

NIELSON: If -- if you all are wanting to help the companies, which I know you are, the best thing that we can do is give them stability and predictability. Putting them into a situation each year where we wait on an appropriations cycle and we wait on whichever secretary - secretary then to make a determination does not give them the ability to plan and deep their businesses open. So I would respectfully respect again that Congress work with us to put this in law. We

know it's a need. Let's just put it in law then everybody knows what it is and the businesses can plan.

CARPER: We put it in law. We said there are 69,000 visas that could be issued now additional visas and all you have to do is do it. There's plenty of need. There's plenty of need. Where's that authority?

NIELSON: But Sir, if you wanted 69,000 additional, just put it in law and then there's no discretion and there's no timing. If it's already in law and everyone can plan to it. So as...

CARPER: That's a very disappointing - that's very disappointing.

NIELSON: Well it shouldn't be because I think we both want to help the companies so I'm telling you in my experience, this is the best way to help them is to give them some predictability and not tie it...

CARPER: If I - If I - pardon me. If our roles were different and you were in the Senate and I was the Secretary of the Department. We would issue those 69,000 visas. We'd put a lot of people to work and I'll say frankly, save a lot of businesses from going under.

Let me ask my second question. Thank you. The decision to extend or terminate TPS lies with the Secretary of Homeland Security as you know. In consultation with the State Department, your predecessor and Former Deputy Elaine Duke declined to end TPS for Honduras only four months ago in November. Did you speak with Ms. Duke or other former administration officials prior to terminating TPS for Honduras? Did you speak with Jim Nealon our former Ambassador to Honduras?

NIELSON: At the time before Ambassador Nealon and then Deputy Secretary Duke left, yes I did talk with them.

CARPER: And can you give us some idea what was said?

NIELSON: No. I cannot Sir. Those are predeliberative (ph) conversations.

CARPER: Former Secretary Kelly also said in an interview on NPR, I think it was last week. He said I think we should fold all the TPS people that have been here for a considerable period of time and find a way for them to a path of citizenship. Those are his words for last week. Do you agree with General Kelly's remarks?

NIELSON: I have said the same under oath.

CARPER: OK. We talk in this room oftentimes about root causes, why people come here from Honduras, Guatemala, Salvador and other places. They come here because their lives are not just difficult; their lives in many cases are horrendous. We contribute directly to that.

In the last Administration there was a fair amount of discussion about root causes. We put in place -- Congress passed the Alliance for Prosperity sort of like a Central American version, as you know, of Plan Columbia. I haven't heard much about what's going on there lately. Maybe you could bring us up to speed. As you know, Bank of Columbia has been taking a long time, 20 years. But over time, it's become very successful. And what's going on with Alliance for Prosperity and how -- how are we doing there?

NIELSEN: So as I understand it sir, the State Department is distributing funds, but as you know that is a State Department program. What we are doing at DHS is we worked in conjunction with State and the government of Mexico, Spain, Canada, others last year to host a conference with the Northern Triangle.

To talk about this issue and talk about how to increase their prosperity in addition to security. We plan to host such a conference again next month.

CARPER: When and where?

NIELSEN: In D.C. And we don't have the exact date because it'll be around the Organization of American States, so it's a bit up to them as to which day works, so we're still finalizing a date. But we are working on some interesting programs to help in the same way.

One that I have found to be very interesting is one with El Salvador, where it's a micro competition. And the company who wins receives about \$27,000 equivalent, which is the amount they would otherwise pay a smuggler to come to the United States.

It allows them to stay in country and open up a business. So we are working on creative ways to try to help. I agree with you, we have to help the countries as well with the push and pull factors. And of course as you and I have talked about before, we also have to increase our overall drug demand here so that we don't have that pull factor.

CARPER: All right. As they say at Home Depot, you can do it, we can help. They can do it, we have an obligation -- I think a moral obligation to help. Thank you.

JOHNSON: Senator Hassan?

HASSAN: Thank you Mr. Chair and thank you Ranking Member McCaskill. And Secretary Nielsen, thank you for appearing before the committee. Just a couple of weeks ago, I traveled to the U.S. southern border to meet with Border Patrol port officers and ICE detention officers. We know that people are dying on both sides of the border as a result of the drug cartel's narcotics trafficking efforts. In 2016, drug overdoses killed more than 60,000 Americans, while in 2017 Mexico hit a record of nearly 30,000 homicides.

The vast majority of which resulted from the drug trade violence. These numbers go hand-in-hand. The drug cartels use violence and money to dab in the -- their smuggling routes, killing many innocent Mexicans and migrants.

The cartels excess means that more and more drugs make their way into the United States, where Americans are dying of overdoses at unprecedented rates. I was impressed by my visits to El Paso and McAllen, Texas to see the robust screening effort conducted by CBP of incoming traffic from Mexico.

In fact, in El Paso just before I arrived, they had seized 25 pounds of cocaine because we have vigilant, excellent CBP port officers, as I know you know. However, stopping the drug cartels is not solely a matter of securing traffic coming into the United States.

We have to attack the drug cartels business model. That means stopping the flow of both money -- drug money and weapons that travel southbound into Mexico from the United States.

Unfortunately, as I saw in my trip, our southbound screening effort for traffic leaving the U.S. for Mexico pales in comparison to CBP's screening of traffic entering the U.S.

We're in a system that our officers refer to as pulse and search. So intermittent checking of southbound traffic. We were told by CBP officials that they need expanded facilities, more personnel and updated technology in order to try to strengthen our ability to stop the flow of guns and money back into the cartels hands.

So are you satisfied with the current state of southbound inspections along the southern border?

NIELSEN: No.

HASSAN: And what more do you need and what actions will you take to address these shortfalls?

NIELSEN: So the ports as you know are very different, the infrastructure. So part of what we're doing is I've had multiple conversations with the government of Mexico on this exact issue. I've committed to them that we will decrease the flow of guns and money headed their direction.

But part of this agreement with them is to how we can restructure the ports --

HASSAN: Right.

NIELSON: -- so that we had those secondary lanes so we can pull people over we suspect.

HASSAN: Right.

NIELSON: So we're doing more. We're working on agreements back and forth. And then we're working on some modeling and data that would lead us to a resource request to come to you.

HASSAN: Well, that would be excellent. What I heard loudly and clearly from our wonderful subject matter experts at the border was that they need more people.

And I think that echoes what you heard from Senator McCaskill. We need more people at the ports of entry, we need them south bound as well as north bound. And I also know there were some infrastructure issues for those second lanes of traffic and the like. But I would look forward to working with you on that.

I also wanted to touch on another issue that we heard about on the border. As you know, last year Congress passed the INTERDICT Act which requires DHS to increase the number of fentanyl screening devices available to CBP officers.

The officers have faced a shortage of these devices, which are essential to identifying correctly fentanyl and other drugs as well as keeping CBP officers safe from these toxic chemicals.

Despite the passage of the INTERDICT Act, the port personnel I spoke with made clear that the devices were still in short supply. When I spoke to them about the INTERDICT Act, legislation and its mission, they were encouraged by the possibility of more devices heading their way.

But they had clearly not received the benefits that we intended when we passed this bill and when the president signed it into law and now that was I think in December. So why aren't the devices getting in to the hands of these port officers? What accounts for the delay and what are our plans to get more devices there?

NIELSON: Well, first of all that's unacceptable. So, you have my commitment to look in to it and get that to you this week. I am not aware that they don't have the devices. They need to be trained --

HASSAN: Yes.

NIELSON: -- they need their protective gear to, as you know, touch packages. And they also need the devices, so.

HASSAN: Right. They have -- you know, I saw one of the devices. The issue is they just don't have enough for them all to use. And I think our intent was to get --

NIELSON: Absolutely, I will look in to this.

HASSAN: -- this technology to our personnel as quickly as we could. And then another issue that came up, because I went from the border then down to Mexico City.

And in my meetings with U.S. embassy personnel in Mexico City, and with key Mexican government officials, we discussed how Mexico has to significantly grow its federal police force if it's going to have success against these -- the drug cartels.

While the Mexican government has to find the resources and the will to expand its federal police force, the United States can certainly play a key role in helping to train and professionalize the police force.

In a meeting with the National Security Commissioner Sales, I conveyed how every law enforcement officer in the state of New Hampshire attends the same training facility in order to standardize and professionalize their training.

And I also shared how DHS runs the federal law enforcement training center, or FLETC, in order to integrate and standardize law enforcement training for over 90 federal law enforcement units.

Has DHS considered working with its Mexican counterparts to help provide trainings to Mexican federal law enforcement?

NIELSON: Absolutely, and we actually do. We have graduated some already from training facilities. We're continuing to expand that. We also work with Sumar (ph) and Sudona (ph), parts of the military --

HASSAN: Right.

NIELSON: -- which, as you know play, a huge role.

HASSAN: Right.

NIELSON: We've done a lot of training with them. We do a lot of joint operations back and forth across the border. But yes, this would be a priority for us.

HASSAN: And so, when you say a lot of joint training, do we open up parts of FLETC to our Mexican counterparts? Can they come over and train, with us?

NIELSON: We do offer courses for Mexican counterparts, yes ma'am. I will get you the locations. I believe it's at FLETC, but if not, it's a DHS owned facility.

HASSAN: OK, well thank you very much. I will have more questions for a second round, but I'm happy to yield now, thank you.

JOHNSON: Senator Harris.

HARRIS: Thank you. Secretary Nielsen, as I sit here today I'm extremely concerned about the administration's repeated attacks on some of the most vulnerable communities and in particular children and pregnant women as it relates to the work of DHS. And in particular under your leadership, DHS has rescinded the DACA program and under the leadership of the administration predating your arrival as secretary.

DHS has rescinded the DACA program, putting 700,000 young people Everest's (ph) of deportation. It has separated 700 children from their parents at the border since October 2017, including more than 100 children who are under the age of four. The agency has released a directive that allows for more detention of pregnant women to immigrant detention facilities. The agency has instituted a new information sharing system between the office of refugee resettlement and ICE that is likely to have a chilling effect on sponsors who otherwise would be willing to come forward to provide care for unaccompanied minors.

And instead of allowing the children to -- to remain in detention, the agency has dramatically increased enforcement actions that have left an untold number of both immigrant and U.S. citizen children without one or both parents, leaving some of those children in the child welfare system. And then just last Wednesday, the Washington Post reported that you are considering undermining the Flores agreement; an agreement that ensures standards of care for immigrant children, such as the provision of meals and recreation and that they are placed in a least restrictive setting as possible.

In the course of carrying out these actions, the administration has routinely provided misleading information to this committee and has even gone so far as to claim that policy such as routinely separating families are carried out in the best interests of the child which many consider to be cruel.

So my question to you is last Thursday when the New York Times reported that the president has directed you to separate parents from children when they cross into the United States as a way to deter illegal immigration, is that correct? Have you been directed to separate parents from children as a method of deterrence of undocumented immigration?

NIELSEN: I have not been directed to do that for purposes of deterrence, no.

HARRIS: What -- what purpose has -- have you been given for separating parents from their children?

NIELSEN: So, my decision has been that anyone who breaks the law will be prosecuted. If you're a parent or you're a single person, or you happen to have a family, if you cross between the ports of entry, we will refer you for prosecution, you have broken U.S. law.

HARRIS: At an April 26 hearing, I asked Undersecretary James McCament to provide me with what percentage of cases exist in your agency where a child has been separated from a parent or guardian since October 2017, wherein the case resulted in trafficking charges. I've not been given the information. Can you provide that to me?

NIELSEN: I do not have it now, but yes I will provide it to you.

HARRIS: OK, can you do that by the end of next week?

NIELSEN: If we have the information, yes.

HARRIS: Thank you. I also asked that I be provided with what training and procedures are being given to CBP officers as it relates to how they are instructed to carry out family separation. I've not receive that information. Do you have that today?

NIELSEN: No, you have not asked me for it so I do not have it.

HARRIS: No, I asked you before. OK, so again, by the end of next week, please.

NIELSEN: Can you explain a little more what you're looking for?

HARRIS: Sure. So your agency will be separating children from their parents...

NIELSEN: No, what we'll be doing is prosecuting parents who have broken the law, just as he did every day in the United States of America.

HARRIS: I can appreciate that, but if that parent has a four-year-old child, what do you plan on doing with that child?

NIELSEN: The child, under law, goes to HHS for care and custody.

HARRIS: They will be separated from their parents.

NIELSEN: Just like they (ph) they do in the United States every day.

HARRIS: So, they will be separated from their parents, and my question then is, when you are separating children from their parents do you have a protocol in place about how that should be done?

And are you training the people who will actually remove a child from their parent on how to do that in the least traumatic way? I would hope you do train on how to do that.

And so the question is, and the request has been to give us the information about how you are training and what the protocols are for separating a child from their parent?

NIELSEN: I'm happy to provide you with the training information.

HARRIS: Thank you. And what steps are being taken, if you can tell me, to ensure that once separated, parent and child, that there will be an opportunity to at least sustain communication between the parent and their child?

NIELSEN: The children are at HHS. But I'm happy to work with HHS to get you an answer for that.

HARRIS: And I'd like for it to be broken down between what you're doing for children over the age of four and what you're doing for children under the age of four.

On May 4th, the president of the American Academy of Pediatrics issued a statement on behalf of the organization, stating that he is appalled by a new policy by the DHS that will forcibly separate children from their parents.

He went on to talk about that they will create stressful experiences like family separation, which can cause irreparable harm, disrupting a child's brain architecture, affecting his or her short and long term health. And these findings are generally shared by the American Medical Association and many child welfare advocates and professionals.

Last Tuesday, before Senate Appropriations, you testified that you are quote "working with the community to understand the science as it relates to the impact of such separation."

Do you dispute that separating a child from their parent will create and cause trauma for that child?

NIELSEN: I believe the question that was asked to me, if I was aware of the information. And what I said is, I would be happy to look into the studies.

Again, we do not have a policy to separate children from their parents. Our policy is, if you break the law we will prosecute you. You have an option to go to a port of entry and not illegally cross into our country.

HARRIS: Secretary Nielsen, we do have a policy in this country, as a general matter in the justice system, that if someone breaks the law they will be prosecuted.

We also have protocols about what is allowable and not in connection with an arrest, in connection with detention in a jail, in connection with how many hours or days with which we can bring charges or not.

So to suggest that the only law in this country relates to what you do at the end is really misleading.

NIELSEN: But that's not what I just said, ma'am. If you're asking if we train and we take care of them, and we work with HHS, we now have a memorandum of agreement so that we can make sure that the children go to people who are actually family members and who are not traffickers and who won't abuse them.

HARRIS: Right so that's the -- those are the policies I'd like to see.

NIELSEN: OK.

HARRIS: Thank you.

JOHNSON: Before I go to Senator Lankford, I think this is a good time -- actually Senator Daines, I see you showed up. This would be a good time to explain a little bit more, when you say that we do this every -- you know, prosecutors, law enforcement, local law enforcement does this every day.

So let's consider maybe a drug deal or a single parent with children in the home. That drug dealer is arrested. Is there any difference really, in terms of how DHS handles some of -- you're going to prosecute, you're going to detain somebody who's entered the country through the port -- other than the ports of entry; is there any difference in terms of how DHS would handle that situation, those children, than what local law enforcement -- other than different jurisdictions may have different rules?

NIELSEN: Right, so broadly speaking, not to my knowledge. The idea here is to make sure that the now unaccompanied children, or the children whose parent is incarcerated because they broke a law, are cared for.

So we transfer those to HHS. And as I just mentioned, we have now worked on a memorandum of agreement to ensure that those children are not then in turn placed in the hands of traffickers, criminals, et cetera.

JOHNSON: And again, I want to underscore, that only applies to family units, a parent that crosses illegally between the ports of entry. If they show up at the port, claim asylum, those family units are kept together because we have a process for that?

NIELSEN: In current policy, yes sir.

JOHNSON: OK. Senator Daines?

DAINES: Thank you, Mr. Chairman. Secretary Nielsen, it's good to see you again. Thank you for your service to secure our homeland.

I am thankful for the leadership you are showing, in terms of deploying National Guard resources to secure our borders, building the first border wall in 10 years, establishing a national vetting process to better target those with criminal intent who seek to enter this country.

As a father of four children myself, I sleep better knowing that you are leading in securing our homeland. Thank you.

I want to switch gears and talk about flooding in my home state of Montana. We had a tremendous snowpack this winter. The skiers were thrilled. As a fly fisherman, I can't wait. As we say, the rivers blow out, and clear up and (inaudible) the rivers. But in the meantime we have flooding going on in Montana.

We're facing severe flooding due to rapidly melting snowpack in our mountains, combined with some recent heavy rainfalls. Surging rivers and streams affect our communities across our state, forcing families from homes, schools, businesses. Roadways are closing.

In fact, Montana has declared a statewide flooding emergency and mobilized state resources, but more flooding is yet to come. And federal aid is going to be needed.

How is DHS assisting these affected in communities in Montana now? And how can your department provide support in the coming months as we deal with additional flooding, as well as, believe it or not, the upcoming wildfire season?

NIELSEN: Yes, I can't believe we're there again already, between that and hurricane season.

So what we're doing at FEMA is we're trying to increase the capability and capacity in general towards resilience. So in part, that means we're using things called the integrated management teams. We're pushing people out into the communities to help them build their capacity for instant management.

We have conducted various reviews on alert and warning. We're reviewing the equipment needs and requirements. And then as you know, in certain cases once the thresholds of the Stafford Act are met under a national disaster, there are funds available from the Disaster Relief Fund.

So it's a combination of on the ground capacity building exercises, et cetera, and then funding, of course, when the thresholds are met.

DAINES: Thank you. And I know we'll be in touch with your team as we continue to -- excuse the (inaudible), navigate through these difficult times right now in Montana.

I want to switch gears now and talk about the National Guard on the Southwest Border. As you pointed out in your testimony, there's probably no issue more important for DHS right now than border security and immigration.

According to CBP, Southwest Border migration numbers for April, the number of illegal border crossers more than tripled in April of 2018 compared to April of 2017. Securing our borders is crucial to protecting the American people and upholding the rule of law.

I'm grateful to hear from you today in response to some of the questions; it's about the rule of law. That's what sets this great nation apart is freedom and the rule of law. You're doing an admirable job and I know you and your workforce are working tirelessly to get the job done.

More resources are needed, however. And I support President Trump's call last month for the deployment of the National Guard to enhance CBPs capacities out at our southwest border. My question for you is what further steps will be taken by the administration to mitigate illegal activity at the border?

NIELSEN: Many things, as much as we can do within the laws. So we're changing regs, to the extent that we can, to clarify particular issues. We are doing all of this, the protection of UACs, like the MOU that I just mentioned.

We're working with the border governors. So, as you may know, I have had lots of conversations and I talk with them monthly, Governor Abbott, Governor Ducey, Governor Martinez, Governor Brown, not just on the deployment of the National Guard, but we else we can do with local communities, with border sheriffs, to make sure that when we indentify criminal aliens, that we can apprehend them and remove them.

We, also, are working through some pilot projects with Mexico, on ways that we can prevent the flows (ph) that do have a legitimate claim to come to this country. Again, I encourage all migrants, if they have a need to flee, to seek shelter in that first safe country that they -- they encounter. So we'll continue to do what we can on our side.

DAINES: Thank you. The issue of children came up in your last line of questioning. I want to probe that a bit more with you. I've introduced legislation with my colleague from New Hampshire, Senator Hassan. It's called, the Homeland Security for Children Act, which will simply ensure that DHS includes input from organizations representing the needs of children when soliciting stakeholder feedback and developing policies.

The question is do you believe it's important to indentify and integrate the needs of the children into the policies and activities of the department?

NIELSEN: I think it is our duty to protect them, to keep them in a safe environment, to provide for them when they're in our care, and to make sure that, within that 48 period -- 48-hour period, when we transfer them to HHS, that we do all we can to help HHS then take care of those children. Yes, I do.

DAINES: One thing I've seen and appreciate response here is I think we need to make sure that the necessary steps are in place so that children are kept safe during emergencies. We think about preparedness. Sometimes we don't always remember in the policies, the importance of children, and thinking about their unique needs.

Lastly, I want to talk about border wall contractors. A number of state and local governments are considering legislation that would require them discriminate against companies involved in the design or construction of any extension of the wall along our southern border.

Further, some cities are targeting contractors that provide database services supporting federal immigration priorities. This type of legislation could obstruct the federal government's lawful functions and cause private companies, contracted with the federal government, to hesitate in fulfilling the critical roles asked of them. My question is, what is the position of the department on this issue, and how do you plan to respond?

NIELSEN: So we continue to work with border governors and government officials. You know, I would just say that border security is the most basic and necessary requirement of a country to protect its citizens. So, I do worry that the -- either, intended or unintended consequence of this would be that the federal government cannot do its most basic duty to protect its citizens.

But we're also trying to work them to explain and find out what the real concern is, because it's not always clear on its face what the concern is, other than they just don't agree with us enforcing the law.

DAINES: Thanks, Secretary Nielsen. Thanks.

JOHNSON: Senator McCaskill has a question for you real quick.

MCCASKILL: Yes, I just want to clarify something. There was -- the chairman wanted to equate the process by which children are separated from their parents, to a similar process when someone is arrested in -- let's just take a community, where I was the elected prosecutor for years. When a child is left without a parent because of breaking the law in the state system, the police hand it over to the social service agency, who then has primary responsibility ongoing

through social workers, placement, a child abuse hotline, they are always in contact with the state authorities until there is some kind of permanency to their legal situation.

Let's compare and contrast what happens with DHS. DHS keeps the children for maybe 48 hours, hands off to HHS. HHS then tries to put them somewhere. And very, very, very few even household visits for sponsors. And then they're done after they find a sponsor. There is no handing off to the state social service agencies. That's why nobody's showing up for the hearing, secretary. It's because it's not like the state system.

I can assure you that if a child was supposed to show up somewhere that was in a state's care, phone - phone would ring, or the child abuse hotline would ring, or a teacher would be required to call in. That's not happening with these kids. That's why they're not coming to court. Nobody's paying any attention. So I just couldn't let it pass that we were equating those two systems, because having a great deal of experience in one of them, having handled child abuse cases for a number of years, nothing is further than (ph) the truth.

And there is still not a joint concept of operations, which was promised to Senator Portman and I at a hearing in 2016, as to how we're going to alleviate this problem. So once you start taking these children, please, I don't think any record should reflect that somehow we are - you are confident, or anybody is confident, that they're being placed in a safe and secure environment and being appropriately managed.

Because frankly, if they were, they'd come to their hearings.

NIELSEN: Can I just respond to that? I think the comparison I was trying to make was in separation of families. It's just - it's not something unique we do with illegal aliens when someone has broken the law. Having...

MCCASKILL: (OFF-MIKE) have to separate children from families, when there's been a violation.

NIELSEN: Yes, ma'am. But having said that, I just want to say, I couldn't agree with your concerns more. Period. We are working with HHS, we've done this MOA. I will look into the CONOPS. I do know that we've revised it because we now, in conjunction with HHS, are requiring various checks be made to ensure that the sponsor truly does have a custodial relationship and is not a trafficker or an abuser.

And as you know, we've had terrible instances of that occurring. It's not acceptable. It's not acceptable...

MCCASKILL: You know, the fact that there isn't a CONOPS, the fact that there is no joint concept of operations, and we are upping the number of children we're taking from families is outrageous.

NIELSEN: So, there is a CONOPS. What I'm suggesting is we...

MCCASKILL: (OFF-MIKE)

NIELSEN: Yes. And I appreciate that and we'll get it to you. We're updating it because we now have this MOA with HHS that requires both of us to share information so that we can vet the sponsor who appears to take the child, especially when that sponsor is not a parent.

MCCASKILL: (OFF-MIKE)

NIELSEN: So this is why, we just signed this MOA. I couldn't agree more, we have to do more.

JOHNSON: Of course (ph), I would completely agree, the state's going to be better than the federal government at just about anything it does. And the point I was making in terms of DACA, I mean I completely understand that that does not apply to current arrivals, but they don't know that. DACA was used as a spark, they were told once they get there, they can stay. And by the way, they have. 96.5 percent of unaccompanied children from Central America have stayed.

They use social media, that's communicated down to Central America and more come. So it's that flood into a federal system that has created the crisis. So again, the goal of policy ought to be to reduce the flow, like Secretary Chertoff did in Brazil. Senator Heitkamp.

HEITKAMP: I don't think I can let that go without at least some comment. DACA - if you say it was a magnet that pulled people because they are so connected, they certainly are connected enough to know that the program has been terminated. So we know that Central America presents a unique problem as it relates to unaccompanied minors because of a law that was passed by the United States Congress

So the -- the wringing of hands about what is in fact the draw in to this country, is -- is -- its -- its critically important that we look at this from what is driving the factors below. And you and I have had long conversations about the need to work with the other countries in the region to allow people to refugee in place, to allow people to live with their families in a safe location somewhere within the region. We're on the verge of having a very anti-American government elected in Mexico; it's going to make your job even harder.

And so we can talk about why that is, I think we should just recognize it's going to happen. So we have to prepare for a relationship change that we're going to have that's going to create an even greater problem. But we have to be humanitarian about how we deal with this, especially as it relates to children. Now we all sat at this dais, you know, about a month ago and I think I said we're the worst foster parents in the world.

We don't keep track of these kids, and we are begging you, if in fact this is going to be the outcome, where we're separating children, in some cases, infants, from their parents we need to know where these kids are.

NIELSEN: I couldn't agree more.

HEITKAMP: Well that hasn't been...

NIELSEN: Again, in the last administration there was no MOA to even screen or vet -

HEITKAMP: I'm -- I'm not -- I'm not talking about politics here

NIELSEN: No I'm not either

HEITKAMP: I'm talking about change

NIELSEN: I'm saying what we've done to improve the situation because you're exactly right, we owe more to these children to protect them. So I'm saying I agree, we've taken steps and we will continue to strengthen what our partners do to protect these children. They're not in our custody, but I take it upon myself to work with my interagency partners to do this.

HEITKAMP: And I would share Senator Harris' concern about making sure people are trauma informed, and trauma trained, because what you're doing to children when you take them away from their parents is the most trauma-impactful thing you can do to a child.

So let's -- let's be good -- let's be good people and good Americans, as it relates to how we treat children. But I don't want to want to use my whole time; I want to talk a little bit about the northern border strategy, we figure this is going to come up. You're five months late in getting me the plan when is that plan going to happen?

NIELSEN: It should be out this week.

HEITKAMP: OK, thank you. I'll look forward to seeing it and thank you again. I think again, we such a hyper focus on the southwest boarder, a hyper focus on the open areas of the southwest boarder and as Senator McCaskill pointed out, a lot of the drug traffic is coming through the points of entry, we know that that's a problem that we need to address.

And that brings me to the second thing I want to get at, which is technology. And -- and understanding what that technology -- what's available, what we're doing right now to train, what

we're doing right now to provide resources. I want to associate myself with the remarks of my senior senator, Senator Hoeven.

We -- we appreciate the work that's being done to train pilots. I think that we have a great resource in North Dakota with the co-location of Customs and Border Protection, air and marine, along with the air base, along with a training center for training pilots, along with a lot of great law enforcement folks who are working to try to figure out how we can embed and -- and use new technologies.

So I, again, invite you to come up to North Dakota...

(CROSSTALK)

NIELSEN: Yes. I'm looking forward to it.

HEITKAMP: ... take a look -- yeah? And -- and I think you'll find some very interesting things up on the border.

One of the unique problems that we have in North Dakota, as you know, is -- is hiring and retention. That's not just a problem in North Dakota, but it's a problem across the agency.

Senator McCaskill, I think, made a great point on retention. What -- what do you think is going to improve retention, and how do we get a better answer on how we can deal with the attrition challenge that you have?

NIELSEN: Yeah. This is -- for obvious reason, all the ones that Ranking Member McCaskill mentioned and -- and you did as well, important. But it's also important just for basic morale, right?

HEITKAMP: Mm-hmm.

NIELSEN: It's important for us to be able to do our jobs. So I do take this very seriously. And of my six priorities, one is what I call "employees first."

Now, this is a big chunk of that, you know? What -- what is it (ph), can we do to make them willing to continue to serve, and to conserve...

(CROSSTALK)

HEITKAMP: Why do you think they're leaving now...

NIELSEN: I think...

(CROSSTALK)

HEITKAMP: ... Secretary (ph)?

NIELSEN: ... you know, one of the things that we found over the last year is, the system was not built for mobility. So if you are in a -- a rural -- it's not even rural.

If you're in an area where there's just not a lot of infrastructure, particularly on the Southern border, if you are a young CBP agent, you might be willing to do that for a few years. But if the system can't allow you to move, you might just decide to leave.

So one of the things we've built in is that mobility. We've also built in cross-training. We find that particularly (ph) in some of the areas, what you are trained to do is not necessarily what you do because of the limited...

(CROSSTALK)

HEITKAMP: What -- one of the -- one of the pieces of advice that Senator Tester (ph) used to provide and I used to follow up on is, you know, there's people who live up there. There's people who...

NIELSEN: Absolutely.

HEITKAMP: ... live on the Northern Tier. They like it. That's home...

NIELSEN: Yeah.

HEITKAMP: ... they hunt, they fish, they know exactly what they're doing. You know. They -- they have friends and family. We need to do better, recruiting from the -- the local people who live there, who have lived that lifestyle.

Because if you move someone in from Tennessee, let's say, and then an ICE (ph) position comes open in Tennessee, we'll lose them from border patrol.

And -- and so we've seen this, we've talked to the folks up there. Very -- very much would like to see you look at recruiting within the -- the area. Because those are folks who are used to that lifestyle.

NIELSEN: And we (ph) -- if I could (ph) really (ph)...

(CROSSTALK)

HEITKAMP: And finally, I want to...

NIELSEN: ... quickly on that one?

HEITKAMP: Yeah.

NIELSEN: We just -- we found that we weren't very good at that, which is partly why...

HEITKAMP: Yeah.

NIELSEN: ... we're working with Accenture. And I know Ranking Member had some concerns that she mentioned at the front end. Happy to come and -- and speak to you both about that.

But part of the concept of that Accenture contract is to go into those areas and recruit there for people that we need there, because of exactly what you're saying.

HEITKAMP: No, I think you -- yeah, I think you'd be more successful, in terms of retention.

And I'm out of time. I'll probably submit some additional questions for the record and -- and you probably know I'm concerned and -- and aware of some challenges we have with the border sheriffs.

That's a critical relationship, both in the northern border and the southern border. And we want to follow up on some of the -- some of the issues that we've had with the local law enforcement.

NIELSEN: Yes.

And, Chairman, do you mind if I just respond to that quickly?

JOHNSON: No, fine.

NIELSEN: I -- you and I had a brief conversation. I couldn't agree more. I spoke with the sheriff in Cochise (ph) County, I've met with a variety of sheriffs when I was in Texas, met with the National Sheriffs Association last week...

HEITKAMP: Good.

NIELSEN: ... will continue to meet with them. But, yes, we look to their expertise, their experience. They're a very important part of understanding the needs.

HEITKAMP: And they can be an incredible resource for you in terms of intel if you have a relationship with them.

NIELSEN: Yes. I agree. Thank you.

HEITKAMP: Thank you.

JOHNSON: Now I just want to offer clarification. I think Senator Heitkamp, you said DHS does this to the children or families when a parent brings a child illegally into this country between the ports of entry, DHS is responding, reacting to that illegal act.

I hate to give advice but, you know, if those parents want to do it legally, they can go right up to the port of entry, claim asylum and then, you know, basically have to make the case.

But they're -- they're coming across illegally because they don't want to have to go through that process, the legal process. So we're -- Secretary Nielsen, DHS is enforcing the laws and if we don't like the laws, we're going to have to try and change them.

But, again, I -- it's not what DHS is doing to them. DHS is forced to react, and is forced to follow the law.

NIELSEN: Yes, sir.

JOHNSON: Senator Peters?

PETERS: Thank you, Mr. Chairman, Secretary Nielsen.

NIELSEN: Good afternoon.

PETERS: Thank you for being here. Secretary Nielsen, I think you're well aware of probably the most significant threat that we have to our national security comes from cyber-attacks, and we're seeing these cyber-attacks increase in frequency as well as in sophistication.

And as this -- as this committee has discussed this issue on numerous occasions, we always talk about a whole-of-government approach, that we have to bring all of our resources to bear in order to thwart this -- this threat.

And yet, oftentimes, we operate in silos. Different agencies are doing their own thing, and there isn't any kind of communication between them.

And so there's been a pretty concerted effort to try to harmonize the responsibilities as well as understand those whole-of-government capabilities that may exist across the -- the breadth of government.

And I know that DHS, along with a number of other civilian and military entities, have certainly made some significant progress in this area.

But we also need to have leadership from the White House to make sure that this actually happens, and that's why I was disappointed to hear reports that National Security Advisor John Bolton is considering eliminating the White House cyber coordinator position within the -- the White House.

What impact would this change in leadership have, do you think, on the -- the national cyber mission?

NIELSEN: So I have not had a conversation with Ambassador Bolton about that particular issue.

What I would suggest, at least from a DHS perspective, we have strengthened all of our relationships with the silos that you referenced, to make sure that we're bringing all to bear.

Not just through a sharing of capacity and capabilities, but clarifying and re-clarifying our roles and responsibilities from policy efforts.

So your underlying point is valid. It's top-of-mind for me because no one entity has all of the authorities, capability and capacity to address this. So we have to bring everything we have to bear.

Within DHS, I find that we have pockets of excellence within the Secret Service, within ICE, within the Coast Guard, within TSA and, of course within NPPD. So we're trying to knit all that together so that we have best-in-class services, sort of that collective of -- collective defense model.

PETERS: So you mentioned, you weren't aware of this -- this -- or -- statement that John Bolton made. Could you tell me a little bit about the kind of coordination that goes on between DHS, cyber leadership and the White House, in relation to cyber-security? Is there ongoing communication coordination?

NIELSEN: Since Ambassador Bolton has come to the job, he and I speak regularly. We spoke over the weekend about events that were emerging in Tennessee, for example, and the alleged cyber-attack.

So we continue to -- to work together, if there are any issues that we ever have, that we need to raise to their attention, we do so.

We are working hand-in-glove on the National Cyber Security Strategy. We released the DHS cyber security strategy today. We did that in close coordination with NSC.

PETERS: It's been reported that the -- the United States may see increased cyber-attacks from Iran in the coming weeks and months. Has the department seen an increase in Iranian cyber-attacks in the past week?

NIELSEN: We have not, but we are looking. We have something that -- a posture that we call "shields up." We're in close coordination with state and local governments, private sector, critical infrastructure owners and operators and the intel community, constantly asking and assessing to see if we see any uptick in -- in activity.

PETERS: So you're anticipating it may be a -- a reality?

NIELSEN: We're anticipating it's a possibility; and, therefore, we will be prepared.

PETERS: I would discuss the northern border, pickup on Senator Heitkamp, coming from a northern border up in Michigan. We have two of the nation's border crossings in Michigan, one up in Port Huron with Canada and Sanria, and down in Detroit. We have had a number of issues in terms of staffing and capacity.

Those border crossings are particularly important from an economic standpoint, and I know the difficult balancing act that the -- the department has to -- to keep us safe by -- at the same time, making sure that commerce moves efficiently across those borders. Right now, we are in the process of building a second bridge in the Detroit-Windsor, which is one of the top crossings in the country, in North America, the Gordie Howe Bridge

In fact, it's been funded by the Canadian Government, but looking from resources from the United States to make sure that our customs plaza is fully funded. Now, do I have your commitment that that will be fully funded and properly staffed so that we can achieve that twin goal of keeping us safe, while -- while at the same time allowing commerce to move efficiently across that border?

NIELSEN: Yes, we would like to facilitate legal trade and travel, as you know. I'm not as familiar with this, but, yes. We would want to make sure that it allows legal trade and travel and facilitates that.

PETERS: Well, I would like to have a further discussion with you...

NIELSEN: Happy to.

PETERS: ... Or your staff as well. This is a critical issue for us. And I can appreciate you may not be fully up to speed on this particular one, but it's one that I think we need to pursue and I'd love to have that conversation.

And it goes, actually, with the other border crossing which is the Blue Water Bridge, which is between Sarnia and Port Huron. Now, that's a border crossing that needs to be expanded. In fact, the government came in and condemned a number of houses with eminent domain, cleared out land because of a customs expansion that should have taken place years ago. It still has not occurred.

It's an incredibly problematic situation to say the least, for the city of Port Huron. And it's a piece of critical infrastructure. Do you have any idea when that plaza will be completed and -- and is that something that you're prepared to talk about today?

NIELSEN: No, but we'll get you an answer this week.

PETERS: Well, I would appreciate that as well, we'll follow-up. And the -- the other final piece of major infrastructure in Michigan is the Soo Locks, which are -- connect Lake Superior with the rest of the Great Lakes system.

DHS reported in 2016 that if the Poe Lock -- which is the major lock that can allow the large freighters to move through there. If anything happens to that lock, within a matter of weeks the entire U.S. economy would go into a recession. You would have production facilities shut down, factories, mines, auto parts would have difficulty being constructed. So, it certainly fits the definition of -- of critical infrastructure in -- in no uncertain terms.

Now, we had President Trump in our state recently, who's made a statement that we're going to fix the Soo Locks, we're going to construct the additional lock that we've been looking for, for some time. Could you give us an update on that?

NIELSEN: Sure. So we -- what we've done at DHS is look at the modeling, because as you say, it's a concentrated point of dependency and some might even argue it's a single point of failure when it comes to trade. So we're doing the modeling and then we're also working with our counterparts in commerce, the Council of Economic Advisers at the White House, to make sure that we understand all of the consequences.

It is critical infrastructure. We treat it as such. So we're continuing that voluntary relationship to make sure that we have the redundancy and resiliency built in, but happy to come give you a more detailed brief about what specifically we're doing.

PETERS: Well, I would like to -- a brief on what has happened since the president's statement. We have the -- the report from DHS, which clearly states that it's critical infrastructure...

NIELSEN: Yes.

PETERS: ... That could lead to a recession. The Army Corps of Engineers are finishing a study that we expect to see shortly, that will also come to what I believe will be a similar conclusion. But it's something that we need to focus on and look forward to meeting with your folks to talk further about it.

NIELSEN: Thank you.

JOHNSON: I agree, Senator Peters, on that one. Senator Portman.

PORTMAN: Thank you, Mr. Chairman. And, Secretary Nielsen, thank you for...

NIELSEN: Good afternoon.

PORTMAN: ... Being here today and for being here at a critical time. You're in the process of putting your own imprint on a massive organization that was created by Congress some 16 years ago, and has never been reauthorized since. And I appreciate the fact, Mr. Chairman, that you and the Ranking Member Senator McCaskill have worked hard on a authorization bill, again, for the first time in almost two decades. It's -- it's overdue in my view, and I think there's a lot of positive things in that bill.

So, we appreciate you working with us. I asked you earlier today in a conversation, what you thought about it. And I think you're generally supportive of it.

NIELSEN: Yes, sir.

PORTMAN: And I hope you'll work with the chair and ranking member to get that not just to the Senate floor for a vote, but to get that signed into law. There are a number of provisions in that bill that I feel strongly about; one is some of my provisions to strengthen security for nonprofit institutions, focusing research on some emerging threats as was talked earlier in the cyber-security space, also in chemical weapons as well as some important requirements to combat the illicit opiates -- opioids that are coming into our country.

You know, we here in my state of Ohio have had epidemic levels of opioid addiction, and overdoses and deaths, starting with prescription drugs and heroine. And now, it's this synthetic heroine or synthetic opioids, including fentanyl, carfentanil and others.

And it's now the big problem. I mean, we had 60 percent of the people who died in Ohio last year, our worst year ever, died because of fentanyl. Locally in Columbus, Ohio, they just issued a report from that county, Franklin County, that two-thirds of their deaths last year were attributable to fentanyl.

It's coming in through the U.S. mail system, primarily. That's what all the experts say, including testimony before this committee and before our Permanent Subcommittee Investigations. So, our own United States mail system is providing the conduit for this poison. It's not coming over land, from Mexico as -- as heroine was. It's -- at least the vast majority of it is not.

Most of it is coming from China. We know where it's coming from. We know how it's coming. And we know that the Post Office, unbelievably, does not require the same information on packages as other private carriers have to in order for law enforcement to identify those packages.

So, the Post Office has about 900 million packages a year, by far the most; more than FedEx, UPS, DHL combined. Again, those private carriers have to give law enforcement, including your good folks at Customs and Border Protection, the information. They can then find these packages that are suspect, where it's from, what's in it, where it's going. The Post Office, for the most part, doesn't have that because we do not have a requirement on them.

The requirement was put in place on the other carriers right after 9/11. And the thought was that the Post Office would do it also, because we required that they do a study of it. They said it would take them some time, it's been 16 years and they're still studying it.

So our legislation that many members of this committee have strongly supported -- I see Senator Hassan here, for instance, she's been a big advocate of this as have others -- is just to say, let's make the Post Office, also, give your people what they say they need. And they've testified before us here that they need it and need it badly.

Senator Carper, who was here earlier, and I conducted a year-long investigation into this issue through the Permanent Subcommittee Investigations. We were able, by using some undercover folks from your department -- thank you for lending them to us -- to find out some really shocking news, which is that people are selling this stuff online freely, not worried about the enforcement side. And saying, if you send it through the Post Office, it's guaranteed; if you send it through a private carrier, it's not.

And, bottom line is, you know, in this authorization legislation we have some good things about helping with regard to working with the Chinese government, to information sharing. But the central issue here, the real gap in our defenses against this drug coming in is the delivery method. So, I hope you'll work with us.

What your people will tell you is it's like finding a needle in a haystack if you don't have this information. If you have it, at least you have a fighting chance of both stopping some of this poison from coming in that is the most powerful, potent drug ever, 15 times more powerful than heroine, but also increasing the price of the drug just by reducing some of that supply. Because one of our problems right now, in my state and others, is the fact that this is not only readily available, it's relatively inexpensive.

You're aware about the legislation because we've talked about it, the STOP Act. You're aware of the fact that we are trying very hard to get this through the process right now, not just this committee which has done, I think, a very good job on doing the research, but -- the committee of jurisdiction. I guess, my question to you would be are you willing to help us to get this done? And, in particular, we've heard rumors that the House may move on something that is a watered down version. They by the way have 270 co-sponsors of our bill and yet the committee there,

Ways and Means Committee apparently is talking about giving the Post Office more time to do this. Not having a requirement, ultimately, because there'd be no penalties associated with it. I guess, I would ask you, are you willing to work with us and stick with us to insure that we can require the Post Office to provide this information to your law enforcement folks so we can stop more of this deadly poison from coming in?

NIELSEN: Yes, absolutely. You have my commitment and I know, as you know, you have that of Commissioner McAleenan as well.

PORTMAN: Yes, the commissioner's been great in -- as acting and now as commissioner, we appreciate it. Well, I thank you. We want to work with you on it. With regard to the H-2B Visa program, let me just read you one e-mail that I got this week -- last week actually now, from a landscaper in Ohio. You know, I've talked briefly about this issue.

He says, Rob, we've got \$8,000 in revenue per day. We are not able to capture -- or \$250,000 a month. We will close \$2 million under our budget for the year which means we will lose close to \$ 1 million this year. This is a small landscaper. This is just because he cannot rely the labor force that he has relied on in the past.

Can you just tell us briefly what your commitment is? You and I've talked about this with regard to the H-2B rule, getting a 301B (ph). And then, what you think ought to be done in terms of legislative visa cap?

NIELSEN: Yes. The difficulty with the reg process is it's the reg process, I'll just be honest. We go as fast as we can, but the APA requires us to do certain things that takes awhile.

What we've tried to do is mimic the rule from last summer so that it can go as quickly as possible. The more changes, if we had made them to that underlying reg, longer it would take. And I completely understand that time is of the essence.

So what we chose to do is do something as quickly as we can under the APA. What I had mentioned to you earlier, and I mentioned earlier in testimony, was that the best way to fix this -- the best way to fix this is to take all of the information that the members have which I'm gathering.

Everyone I've talked to, and you as well, I said please give me examples of companies that are going out of business because of either the problems with the seasonality or because there's not enough. To package it up, give it back and just put it in law. That will give the companies predictability.

They'll understand how many visas will be available and they'll understand when. Right now, as you know, it's tied to the appropriations process, which it's anyone's guess when we can get that through. So it's very difficult on businesses.

PORTMAN: Well, I would agree with your approach. My time is coming to an end, just to say that meanwhile right now we need -- we need relief. And then, finally, with regard unaccompanied kids, I don't have time to go into it.

But we have information now from you all as of 10 days ago, that on July 30, you will have a new deadline to deliver the joint concept of operations which we really need, both for the sake of these kids not to be trafficked or abused but also to be sure, as Senator McCaskill said, these kids actually show up at their court proceedings. And that's not happening now for a lot of kids.

So the Memorandum Agreement's good. We want to get this joint operations concept in place in order to insure these kids are protected. Thank you, Mr. Chairman.

JOHNSON: Thanks, Senator Portman. Before I go into the second round of questions I just have -- I kind of want to walk through -- I will, by the way, reinforce what Senator Portman talked about the HB -- H2-B Visas. There's not one manufacturing plant in Wisconsin, not one dairy

farm, not one resort that can hire enough people. So that really is a pressing need and I understand the problems you have with the rules and regulations.

I do want to give you the opportunity. I just put my UAC chart up there that, again, I think kind of shows that DACA sparked it. But I want you to go through three different examples and talk about the laws that you have to follow. That, in the case of UACs result in only three and a half percent being returned, which, again, from my stand point, when you come and you get to stay, that's a huge incentive for more to come.

But I want you to cover an example of UAC. I want you -- family units, and then an adult that claims credible fear. All under the backdrop, according to my calculations and this is an estimate, since 2013 about 750,000 unaccompanied children and a parent and one child, in terms of numbers we have, have entered this country illegally, and most of them are still probably in this country. But just -- just go through exactly what is the process? UAC show up and let's say they do it legally.

NIELSEN: Sure. So, a UAC, if they're unaccompanied we -- they come and they're put -- OK, let me back up.

JOHNSON: And, again, I want the laws or the precedence that actually...

NIELSEN: I understand.

JOHNSON: ... Force you to do what you do.

NIELSEN: So if they are Mexican children of Mexican origin, we can put them into expedited removal if they have no legal reason to be here. So that means they haven't claimed asylum, they don't have a legal visa, and they're not part of the legal immigration system. If they are other than Mexican which is the phrase in the law, so that's normally we talk about the northern triangle country. We do not put them in expedited removal.

In any case, we only keep the child for 48 hours. After 48 hours, we turn them over to HHS. We now have this process by which will help HHS vet the sponsors to help place the child in a safe place and safe care.

So that's the UACs. The UACs, though, important to know that overall under current court cases, we can only hold UACs for 20 days, which does quite a few things. It puts a lot of pressure, time pressure, on making sure that we find as a community, a suitable sponsor. But it also serves as a tremendous pull factor because they will only be apprehended for 20 days, even if there's no valid reason to be here.

JOHNSON: Can -- just quick talk about the laws, the legal precedents that force you -- you've got to give -- DHS has to give up an unaccompanied child within 48 hours to HHS. And then HHS can only hold them for 20 days.

NIELSEN: Yes, sir. That's under the Flores Settlement. It's a combination of the Flores Settlement and the Trafficking Act. The Trafficking Act is, in part, why we give them over to HHS.

JOHNSON: OK. Now, family units.

NIELSEN. So family units, they come if they are claiming asylum. We do all we can to keep them as a family as they go through the process, I mentioned earlier. Sometimes they're detained if we don't believe they're a risk, on a case-by-case basis, we do other methods such as, you know, we have alternatives to the detention process.

The difficulty there is the backlog. So we have a 600,000 person backlog. We've had an increase of 1,700 percent in asylum claims over the last -- you know, 10, 15 years. So, what that means as they go through the system is 80 percent of the people coming in past that initial credible fear.

But only 20 percent are actually granted asylum by a judge. So our concern is that there's just a lot of fraud. It doesn't mean that you made a fraudulent claim, it could just mean that you believe that you can seek asylum, for example, for family reunification. But our laws don't allow you to seek asylum for the sole purpose of family reunification.

JOHNSON: But of the family units that have come here since 2013, how many have been returned because they don't qualify for asylum?

NIELSEN: Again, if they're with the children, we have to release the children. So that often means we release the parents as well and almost (inaudible) --

JOHNSON: So -- so -- so, a vast majority are still in this country?

NIELSEN: Yes, sir.

JOHNSON: OK, so now an adult with credible fear?

NIELSEN: So an adult with credible fear we process - well it's interesting. We have ongoing litigation that prevents us in some cases from detaining them; in some cases we must - must let them go on parole. There are certain exceptions to that but we do not have the ability to detain until we can process them and determine if they need to be removed.

They claim asylum, they go into the asylum bucket. Again, the problem with the asylum bucket is the backlog and it's very heavily abused by those who actually do not seek asylum there by putting those who need asylum in jeopardy of not receiving it in a timely manner.

JOHNSON: OK, thank you. Senator McCaskill.

MCCASKILL: (off mic)

First of all, I - I think you are really working hard at trying to address some of the shortcomings of these children and I - I - oversight sometimes is unpleasant but it doesn't mean that any of us up here don't respect how difficult your job is.

I am really worried about a case involving a whistleblower at TSA. And what is really upsetting to me about this particular case as you know there's been a lot of coverage about morale at TSA and problems of drugs and drinking and inappropriate behavior.

This is an actual complaint that was investigated by the office of the Inspector General at Homeland Security. And this activity predated you so I want to be clear about that. But following this investigation by the I.G. four charges were brought against an SES employee including poor judgment for maintaining an inappropriate relationship; basically lying about an intimate and sexual relationship during the investigation; inappropriate conduct by violating hiring practices and there's more details there; unprofessional conduct by forwarding an email to a subordinate employee in which he referred to an assistant administrator in inappropriate language I won't use in this hearing.

So what was really most concerning about this OIG report and I've got the report here and I'd like to make it a part of the record just so we have it. Mr. Chairman, if there's without objection I hope.

JOHNSON: Without objection.

MCCASKILL: But what is really scary about this review is that they found a series of deviations from standard policy in terms of how this was handled. Allowing the employee to receive unusually favorably treatment and as know one of the biggest problems you have with morale is the rules have to apply to everybody. OIG specifically identified three members of senior leadership at TSA that interfered with the disciplinary process in a way that promoted favoritism. This was the Deputy Administrator, the Former Assistant Administrator of the Office of Personal -- Professional Responsibility and the current Chief Counsel.

So imagine my surprise when I find out that we're working on this and who is in charge, the Chief Counsel, and by the way the table of penalties required this SES be removed according to the Table of Penalties at TSA.

Instead, they offered a suspension, permitted the employee to continue to receive the same salary that he was receiving the ranking -- excuse me, the Chairman of this committee and I have sent a letter to you in February asking about what disciplinary actions have been taken against the senior leadership that interfered in the disciplinary process involving a complaint by a whistleblower that has been investigated by the I.G. and found to be valid.

And I'm particularly worried that we put the fox in charge of the henhouse if this Chief Counsel, that was part of the problem is cited in this report is in fact the one that is supposedly now helping making sure this does not happen again. So you're welcome to take this for the record Secretary if you have an answer today, but this is why you have bad morale.

NIELSON: I -- I would like to get into more detail and on the record - or excuse me - to take and return to get back to you. But let me just say this, whistleblowers need to be protected. Period.

The I.G. needs to be listened to. The I.G. serves an extraordinarily important function, particularly at a department the size of DHS.

I would say that if the policy is such that a person who is part of the complaint is then put in charge of rectifying the situation that's wholly inappropriate, I will for sure look into that. You're right, that's - that's not acceptable. And accountability, you've heard me say it many times before. The vast majority of people, men and women who work at DHS are dedicated professionals. When something like this occurs, we need to all hold them accountable as a community; it's as simple and as complicated as that. It needs to be done. I'm not as familiar with the particular one but I can guarantee you I will look into it and get back to you.

MCCASKILL: I would love that and I - I should just tell you that this staff, this committee has been talking to a number of whistleblowers from the federal marshal program. Did I say TSA? I didn't mean TSA. It's the federal marshal program.

NIELSEN: Oh, I see, OK.

MCCASKILL: If I said the wrong thing. These are all the air marshals and there is - you got trouble there. is inequities that are occurring, there is favoritism that's occurring, there is abusive behavior that is occurring, and we have got a string of whistleblowers that have been coming to us about various problems.

So if you get back to us specifically on this case involving an investigation by the Inspector General as it relates to the Federal Air Marshal Program and I -- I would like your take on now that you have been there a short period of time, but nonetheless long enough, I would like what your view is of the Federal Air Marshal Program and whether or not it is being utilized effectively and whether or not we are putting marshals on the right flights? Are we putting marshals on too many flights? You know I have always questioned some of the procedures because you know flying back and forth to D.C. on commercial airlines as often as I do for many years, it was really obvious to the marshals were.

They were the two guys in jeans that got on first. You know and so if there was some effort to, you know, have them intermingle and be effective at detecting and shutting down, it was like OK everybody is standing in line at Southwest all of us that were waiting to be herded on standing by our station.

"Well, there goes marshals. They're going to load us pretty soon," and then I would say something, "Have the marshals gone on yet?" And everybody would look at me like I said a dirty word, oh what? "What are you talking about," like it was some secret. So it just has always

worried me that we are not staying on top of what is the most effective way for us to put security in the air and I would love your take on that from your view as the Secretary of Homeland Security.

NIELSEN: Yes, I -- I appreciate that. I -- what we're in the process of doing with the Administrator right now is actually looking at that full program. You know, how should it work, does it make sense, is the modeling right? The example that you are using is at least as I understand it was a procedure under the belief that deterrence was the most important. So to some extent if the marshals were obvious as to who they were there would be a deterrent value...

MCCASKILL: Shouldn't they have been in uniforms then?

NIELSEN: So I'm not disagreeing, I'm just explaining...

MCCASKILL: Yes.

NIELSEN: as I...

MCCASKILL: Yes.

NIELSEN: ...understand it.

MCCASKILL: Yes.

NIELSON: But your point is valid, which is as long as we're resourcing this way, we want it to be effective. So we -- the Administrator and I are happy to come to talk to you about our initial findings and what we're looking at that yes. But yes, it needs to be looked at from soup to nuts to make sure that it's effective, yes.

MCCASKILL: And we'll be glad in the appropriate time to share with you some of the whistleblower investigations that are ongoing.

But I would like your specific response to that I.G. investigation where people in the highest levels of management were skewing the process in favor of somebody that was SES as opposed to someone who had been abused.

JOHNSON: Senator Hassan.

HASSAN: Thank you very much, and again good afternoon, Secretary. I wanted to touch on homegrown terrorism for a minute and our efforts to prevent it. According to the president's budget request, the Office of Terrorism Prevention Partnerships currently is staffed by 12 people. Its predecessor office - the Office of Community Partnerships had 16 positions. And through a reprogramming of appropriations requested by then Secretary Johnson was able to use support staff to build an outreach team that could build relationships with community groups, with civic leaders and law enforcement throughout the country.

According to the budget request for fiscal year '19, the Office of Terrorism Prevention Partnerships is quote dedicated to the mission of countering violent extremism and the building of community partners necessary to support countering violent extremism efforts, that's the quote.

So given that the budget and personnel for this office is smaller, but the overall mission is still the same, it would seem that this office would be hard pressed to build partnerships across the country with no field staff. Has DHS budgeted for field staff for this office?

NIELSEN: There is some field staff, I'm happy to get you the specific numbers. Just more broadly very quickly, what we've done is we've put the office within the larger Office of Public Engagement. So we've actually first multiplied --

HASSAN: Right.

NIELSEN: -- the office, if you will, to make sure that we do as a whole group, as a whole part of DHS, look to build those community relationships.

HASSAN: OK, well I'd love to have our offices follow-up and get full information about that. And as a follow-up to that, DHS co-leads the Interagency Task Force on counter and violent extremism along with the Justice Department.

The task force was created to help coordinate the government's ability to tackle homegrown terrorism. In 2015, this task force was staffed by representatives from 11 different departments. Can you tell me how many different federal agencies currently provide staff to this Interagency Task Force?

NIELSEN: I do not know the specific number, but happy to get back to you this week.

HASSAN: OK, I would appreciate that greatly, because obviously -- especially when it comes to homegrown terrorism. The name of the game is coordination and communication among agencies --

NIELSEN: Absolutely.

HASSAN: -- and with local authorities and state authorities. I also wanted to touch on a New Hampshire specific issue. In my state, we have a significant Indonesian community, many of whom came to New Hampshire fleeing religious persecution against Christians in Indonesia. They have become members of the community, they have worked jobs and paid taxes. And they have raised their families in the sea coast area of New Hampshire.

Now after many years of them living in this country, the Department of Homeland Security has prioritized them for deportation, a decision that could put their lives at risk if they return to a country where violence against religious minorities remains a serious issue.

Last week, you publicly pledged to my fellow New Hampshire Senator Jeanne Shaheen that you'd take another look at this issue. When you went back and looked again at this issue, what did you find? Have you asked immigration and customs enforcement to review and reconsider their efforts to deport members of this community?

NIELSEN: We have asked them to review it. On the face of it, we don't have an instance. I'd love to work with both of you to get some additional facts. We don't have an instance that they have moved in any way from prioritization.

Again, our prioritization as you know, is criminals. We don't prioritize groups, nationalities, religious groups. So yes, we're looking in it. We're particularly concerned, as you know, given the recent terrorist events in Indonesia against Christians, Catholics in particular case.

HASSAN: And let me just be clear that these are people who regularly went in for their check ins at ICE on a regular basis and all of a sudden last year they got tickets, leave, and if it weren't for a federal district court telling your department that they could not deport these people, they would be deported.

So if there was a read (ph) -- and these people are not criminals, so there was some level of new prioritization there that has put this community at risk and I think there is a strong feeling in New Hampshire, and I'm -- I'm glad to hear your response that we need to get some predictability and sustainability here for these people and they really do face persecution back home.

And so we'd love to work with you on that, and it would be really good if you could make a commitment to finalize an answer on that in the near term.

NIELSEN: Yes -- yes ma'am.

HASSAN: OK, thank you. Lastly, I know there's been a lot of discussion while I was at another hearing on the issue of not only unaccompanied minors but families with minor children. I'll just add my support to the line of questioning you heard from members of the committee about our concerns about this when we had a hearing just a couple of weeks ago about the handling of minors, especially as they to sponsors -- sponsor families and the like.

It was very clear that the department does not -- neither DHS or HHS, they don't coordinate at all with local authorities and with the states as we look at how we're going to address the needs of children generally who come to this country and are unaccompanied or separated from their families.

And I don't support the separation of children from their families, I'll add my comments in support of what you heard from my colleagues on that issue. But if children are placed away from their families, I think it's imperative that the department and HHS work with the states. States have interstate compacts about how to protect children who aren't with their families, it's important for local school districts for instance to know to expect these children at school, not only for the local school district's planning purposes, but so that if these kids don't show up, there's somebody somewhere who knows to go look for them and find out what's happened to them.

So I just think, you know, to -- to echo what you've heard from both sides of the aisle this afternoon, we need to see planning and we need to see a better system for addressing the needs of children who come to this country. Thank you.

JOHNSON: Senator Harris.

HARRIS: Thank you. Secretary Nielsen, how many children have been separated from their parents at ports of entry since January of 2017?

NIELSEN: So I understand you've referenced 700 before, which I believe was an HHS number. Our figures are not the same as theirs, but we're happy to come give you our numbers and explain why they differ.

HARRIS: OK, great and can you submit that by the end of next week with the other information? And do you know --

MCCASKILL: Could you share that with the committee? I think that's something --

NIELSEN: Of course.

MCCASKILL: -- if you guys have different numbers of children, that's something that just on its face is rather alarming. So I'd like to figure out why.

NIELSEN: Yes, I think it's in part because when HHS does the interview, they don't ask the child why they're unaccompanied. So their numbers are different than ours if you're asking at the border for example.

So it's -- it's not necessarily that they conflict, it's just they're asking different questions, but yes of course we'll provide you (inaudible) explaining you (ph) that.

HARRIS: OK and -- and again, I've asked these questions of Undersecretary McHamot (ph) before, so perhaps everyone's working on it and I would expect that we should get it by the end of next week.

And can you also give us information about what the average length of separation has been between those children and their parents, and that would be -- those -- that number that you are now going to bring to us.

NIELSEN: OK.

HARRIS: And also what timelines, in terms of the policy that you have, exists to establish a parental relationship or to reunify families? I'm hoping and will assume that your protocols would have such a goal in mind or at least a timeframe.

NIELSEN: Yes, ma'am, they do. Part of it is a voluntary DNA test, if it's a family member. The concern that I have with that, and we do offer that, but the concern of course is you could still have a custodial relationship and not be a blood relative.

So it's not dispositive to an appropriate custodian. But yes, of course that is our goal.

HARRIS: And then as it relates to the number of children who have been separated from their parents at points of entry, again I would like also for the committee, information on how many of those cases resulted in trafficking charges.

In regarding detention conditions, Secretary, are you aware that multiple federal oversight bodies, such as the OIG and the JAO have documented medical negligence of immigrants in the detention system in particular, that ICE has reported 170 deaths in their custody since 2003? Are you familiar with that?

NIELSEN: No, ma'am.

HARRIS: Are you aware that they also found that pregnant women in particular receive insufficient medical attention while in custody, resulting in dehydration and even miscarriages?

NIELSEN: I do not believe that is a current assessment of our detention facilities.

HARRIS: OK, can you please submit to this committee a current assessment on that point.

NIELSEN: Yes, I'm happy to. So we provide neonatal care, we do pregnancy screening from ages 15 to 56. We provide outside specialists should you seek it. We do not detain any women past their third trimester, once they enter the third trimester, we provide them separate housing. So yes, we're happy to detail all of the things we do to take good care of them.

HARRIS: And did you submit that to the OIG in response to the findings?

NIELSEN: We have been in -- yes, of course, working in conjunction with the OIG. I'm not sure exactly what the date is of the OIG report that you're referencing, but I will look into it after this.

HARRIS: And then also between fiscal year '12 and March of 2018, it's our understanding -- before I go on, the OIG report is from December of this past year, 2017, so it's very recent, five months ago.

Also between FY12 and March 2018, ICE received, according to these reports, 1,448 allegations of sexual abuse in detention facilities, and only a small percent of these claims have been investigated by DHS -- OIG. Are you familiar with that?

NIELSEN: I'm not familiar with that number, no.

HARRIS: OK, can you please provide to this committee an analysis of what is going on and what plan you have to investigate those cases of sexual abuse and what is the protocol in place in terms of what is being done to allow the victim to be in a safe place during and pending any investigation, what kind of services are these victims getting in terms of treating their trauma, much less any medical attention they may need as a result of what might be the sexual abuse?

NIELSEN: I will. What I have done is I've talked to the International Committee of the Red Cross and I had them visit some of our detention facilities. I'm sure they would be happy to come brief you on that, but their determination is that based on nothing but appropriate detention, and in fact, much better detention that they, in their experience, have seen in other areas.

HARRIS: I'm sorry, is this in response to the concern that you have received 1,448 allegations of sexual abuse in detention facilities?

NIELSEN: No, ma'am. This is in response to my wanting to ensure that the detention centers are taking appropriate care of anybody who is detained.

HARRIS: OK, well obviously sexual abuse would not fall in that category.

NIELSEN: It would not. I guess what I'm saying is that just happened. I don't know when these results are that you're talking about. So I will look into them, of course.

HARRIS: FY12 through March of 2018 this year.

NIELSEN: We will look into it.

HARRIS: Thank you.

And regarding your treatment in the facilities of pregnant women; on December 14, again in this report, ICE issued a new directive that terminated a previous policy of presumptive release for pregnant women which were apprehended or transferred to ICE.

ICE adopted a policy for a presumption of release in August of 2016 in recognition of the clear health risks that detaining pregnant women in jail-like conditions pose.

I was alarmed frankly, Secretary, by your statement to Senator Murray before the Senate Appropriations Committee last Tuesday, that pregnant women in ICE detention were receiving quote, "much better care than when they're living in the shadows."

So, are you aware that this statement contradicts the views of the American College of Obstetricians and Gynecologists, the American Academy of Family Physicians and the American Academy of Pediatricians, who have all criticized the harmful affects of immigration detention on the medical and mental health of pregnant women?

NIELSEN: What I do know is that if you cross between points of entry, you will be detained and prosecuted. I also know that of the only 35 people that we have currently in detention who are pregnant, 33 are statutorily required to be detained. I also know that we go above and beyond to provide them adequate healthcare.

The questioning was whether or not they received adequate healthcare. I was saying yes they do, and it's paid for. So if they are coming here and they're fleeing persecution, and they don't have adequate funds and they're trying to get equivalent care in the shadows, it was my discussion that we were providing care within the detention centers.

HARRIS: So is it your intention to continue with ending a program that allowed for presumptive release for pregnant women?

NIELSEN: If you're in your third trimester you will be released. But if you break the law you will be detained.

HARRIS: So when in the third trimester exactly? How many weeks?

NIELSEN: When it begins. When it begins.

HARRIS: At the beginning of the third trimester?

NIELSEN: Yes, ma'am.

HARRIS: And is there a directive that has gone out?

NIELSEN: Yes.

HARRIS: Will you supply the committee, please, with a copy of it (ph)?

NIELSEN: Yes, it's the same policy we've always had. The only thing we are doing now is we are no longer exempting classes of people from the law. If you break the law, you will be prosecuted.

HARRIS: Thank you.

JOHNSON: As long as we're talking about UAC still, is there any -- and you're going to be providing some data. I've just got a couple requests. In terms of family units, the best numbers I can come up with since 2013, about 225,000 family units. You just take the minimum one child. That's basically 450,000 additional individuals.

If you're -- you're saying about 700 are -- we've seen separations of parents from -- exempt from 2013? Or is that just currently in detention?

NIELSEN: That's -- I believe the HHS number was a year long number.

JOHNSON: A year? OK. So, yes, I kind of just liked all that data together. As long as you're also providing that, I'd like to know which of those separations are due because you simply aren't aware, is that really the parent?

NIELSEN: Understood.

JOHNSON: Is there some -- is there some question? So you're really taking that step to protect the child so we're not dealing with a human trafficking situation.

We had a whistleblower in May of 2017. Referred to him, I think it's in 2014, 18 self admitted MS-13 members were apprehended and just released. At that PSI hearing, I brought some more information. I don't have it right here. But it was actually a rather alarming number of MS-13 members that had been captured and some of them had been deported. Do you have -- DHS, are you keeping more accurate figures on MS-13?

NIELSEN: Yes, we are in conjunction with the Department of Justice. One of the other loopholes that I would just mention quickly is a court case called Zadvydas. Zadvydas requires us to release criminal aliens back into the communities after six months, if their country's not willing to take them back. Many countries, such as China, Cuba, are not willing to take them back. The criminals go back into the community. We had 1700 of these last year.

JOHNSON: OK, I was going -- so that was last year. Do you have that information going back a number of years?

NIELSEN: I'm happy to.

JOHNSON: OK, I'd like that type of data.

Working on the peace legislation, in terms of authorities on unidentified aircraft systems, this is a really complex issue. It really is. And I guess I'd just kind of like to give you the ability to just kind of describe the complexity of it, where you are constrained.

I mean, I think we are so far behind the curve on this thing, as these drones have become far more prevalent and are a real danger. And they're being used in the battlefield and they're dropping -- again, I really don't want to put any ideas in people's head.

But can you just talk about what you want to do in working with DHS? I was trying to at least get a discussion -- kind of a more robust response. And again, I realize there are jurisdictional issues, that type of thing.

I just want to have you talk a little bit more of the complexities of the issue and baseline what you're asking for in terms of authority, what you absolutely need?

NIELSEN: Sure. So right now we do not have the ability to interdict or monitor, or actually in some cases identify in a traditional sense. The Department of Defense has such authorities. So what we have done is we've mimicked our request, and then the bill this committee's introduced -- oh, go ahead.

JOHNSON: So real quick, what is the department -- you know -- name the facilities the Department of Defense has? Is it just around their facilities? I mean what -- how limited is their ...

NIELSEN: Theirs is limited as well, yes. So I wouldn't say all of their -- I defer to the Department of Defense, of course. But it doesn't cover all of their facilities. So it's very specific and limited cases, yes.

JOHNSON: So we have sports stadiums and we have a number of venues that simply have -- there's no authority whatsoever; not local, not state, not federal?

NIELSEN: Correct.

JOHNSON: OK.

NIELSEN: So it's soft targets, is a big concern, and then of course the border. So we're already seeing them being used. I also don't want to put any ideas in people's minds, but we're already being -- we already see them being used in various ways on the border.

JOHNSON: The Department of Energy has some authority as well?

NIELSEN: The Department of Energy does. DHS and DOJ are the two departments that are currently lacking any authority.

In terms of what we're doing, you're right, we have -- because we lack authority we have limitations on testing. We have limitations on research and development. We have limitations on purchasing and using. The authority that would be in the bill that you both have introduced would go a very long way in helping us to get on top of this threat.

JOHNSON: The more I continue to work with you I think this is absolutely crucial.

MCCASKILL: I just need to correct something for the record. In the section of my book, I had a whole section on the morale and whistle blower issues at the federal martial's (inaudible). Then I had a separate section on the IG report where there was problems with an SES employee that was manipulated by senior management. That was TSA.

NIELSEN: OK, thank you.

MCCASKILL: So, I wanted to make sure ...

NIELSEN: Appreciate it.

MCCASKILL: ... we didn't close the hearing without me explaining that I was -- I got them conflated as we were talking about it. I wanted to clarify that before we closed out the hearing.

JOHNSON: OK, not a problem.

Let's quick turn to election security; we've held a briefing on this. We've certainly talked about this in other venues during other hearings as well.

From my standpoint, there are three areas that are at risk. It's affecting the voter tally -- I mean the actual vote. And then you also have affecting the voter file.

And then, finally, just because of the disruption, the public not having faith that it was a legitimate election.

It's my understanding -- I just -- first of all, that the department has all the authorities you believe you need to address all three. Is that correct?

NIELSEN: Yes. Yes, that's correct.

JOHNSON: Voter tallies, because elections machines are not tied into the internet, although there are some with Wi-Fi that (ph) are disabled, but...

NIELSEN: Right. Our best practice that we recommend is, "Do not connect to the internet..." (CROSSTALK)

JOHNSON: And then they just -- they really aren't. Unless it's done through nefarious means or something, correct?

NIELSEN: Yes.

JOHNSON: So it'd be really very difficult to change the vote tally for an outside actor through a cyber-attack or something, to actually change the vote tally. Is that your understanding?

NIELSEN: That is my understanding. I think what is more likely is the counter-influence question. You know, would they change the minds of Americans through propaganda and -- et cetera? So that's something the FBI has lead on, we're (ph) working (ph) with (ph) them (ph).

(CROSSTALK)

JOHNSON: That'd -- that'd be the Facebook, where they're...

(CROSSTALK)

NIELSEN: Yes. Yes, sir.

JOHNSON: ... OK. Basically illegally campaigning. Voter files, that's a concern. But, again, we have different controls and things in place that -- we know that. It'd be disruptive in election, and then that would turn into, "Is this a legitimate election?"

NIELSEN: What we recommend there is redundancy. So if you have -- if you don't use a paper ballot, then make sure that you have an audit function.

So at the end of the day, we can all assure ourselves that Americans have voted and their voted -- vote counts, and is counted correctly.

JOHNSON: One of the reasons I'm pointing this out and then I'll -- I'll be finished, is I think that the biggest threat, really, is just the public perception, is this a legitimate election.

And if we overstate the ability of a bad -- the ability of a bad actor to vote -- affect the voter file or the vote tally, we actually do the -- the -- the, you know, malign actors' job for them.

So I think it's very important that we are very honest in terms of what is the threat, in terms of the first two. So we don't affect the third.

NIELSEN: I -- sir, I agree with that. What we're doing at DHS, as you know, the responsibility, first and foremost, belongs to state and local election officials. We're working with them.

We're hosting a meeting for all members of Congress. I understand the Senate might not be able to attend on Thursday. But to answer any questions, talk about what DHS is doing, talk about the threat .

We'll do it again for the Senate. I think it's very important that (ph) everyone understands what we are doing. But also what the states are doing and what, in some cases, they need to do to make sure that they assure their public that they are doing everything they can.

JOHNSON: But, again, you believe you have the authorities and resources...

(CROSSTALK)

NIELSEN: We have all the authorities we need.

JOHNSON: ... to counter this?

NIELSEN: Yes.

JOHNSON: Secretary -- or, Senator McCaskill, you have any further questions?

(CROSSTALK)

MCCASKILL: Did (ph) you (ph) just (ph) call me "Secretary"?

JOHNSON: No. No, I didn't finish it.

(LAUGHTER)

MCCASKILL: (OFF-MIKE) ... appreciate the secretary being (ph).

JOHNSON: Well, then we'll close out the hearing.

Secretary Nielsen, again, thank you for your service. Certainly appreciate your taking the time here, and -- and your forthright answers to our questions.

The hearing record will remain open for 15 days until May 30th at 5 p.m. for the submission of statements and questions for the record. This hearing is adjourned.

END

May 15, 2018 19:02 ET .EOF

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DHS OIG Getbacks Tracker
 Summary Report: 4/28/2020

Overall	#
Total getbacks since Jan. 1, 2018:	133
Number of completed getbacks:	96
Number of open getbacks:	37
Percent completed:	72.2%
Average days open:	23.3
Oldest open getback:	April 26, 2018
Number of open getbacks exceeding 14 days:	37
Number of open getbacks exceeding 30 days:	23

BY EVENT

(completed events hidden)

CHS Hearing on FY19 Budget (4/26/18)	#
Total number of getbacks:	33
Number of completed getbacks:	10
Number of open getbacks:	23
Percent completed:	30.3%
Average days open:	32.9
Oldest open getback:	April 26, 2018
Number of open getbacks exceeding 14 days:	23
Number of open getbacks exceeding 30 days:	23
HSGAC Hearing on Authorities and ... (5/15/18)	#
Total number of getbacks:	30
Number of completed getbacks:	17
Number of open getbacks:	13
Percent completed:	56.7%
Average days open:	17.1
Oldest open getback:	May 15, 2018
Number of open getbacks exceeding 14 days:	13
Number of open getbacks exceeding 30 days:	0

SAC-HS Hearing on FY19 Budget (5/8/18)	#
Total number of getbacks:	11
Number of completed getbacks:	10
Number of open getbacks:	1
Percent completed:	90.9%
Average days open:	12.0
Oldest open getback:	May 8, 2018
Number of open getbacks exceeding 14 days:	1
Number of open getbacks exceeding 30 days:	0

* Event	Event Date	Member of Congress	Getback	Tasked To	Date Tasked	Updates	Date Completed
CHS Hearing on FY19 Budget	4/26/18	Rep. Thompson (D-MS)	S1 promised Rep. Thompson the DHS-wide cybersecurity strategy (originally due March 23, 2017) "within the next two weeks".	FO	4/30/18	UPDATE May 16 - Jeff Nusraty provided press release/report to staff *DUE: May 10, 2018 UPDATE (5/2): FO planning to release on the 15th. UPDATE (4/30): FO has this report for review; OLA will touch base with DCOS.	5/16/18
CHS Hearing on FY19 Budget	4/26/18	Rep. Jackson Lee (D-TX)	S1 promised Rep. Jackson Lee DHS will look into the deportation case of constituent Jose Escobar (open correspondence from Rep. Jackson Lee).	ICE	5/1/18	UPDATE (5/2): ICE OCR updated Rep. Jackson's staff on the status of this case via email. UPDATE (5/1): ICE spoke with Rep. Jackson Lee three times re: this individual last year. ICE will pull their records and reach out to her office again. Update forthcoming.	5/2/18
CHS Hearing on FY19 Budget	4/26/18	Rep. Barragan (D-CA)	Rep. Barragan requested that S1 commit to and schedule a meeting with the Congressional Hispanic Caucus; S1 replied "I'd be happy to."	OLA	4/26/18	RESPONSE FOR CLEARANCE: OLA Senior Advisor Ciccone working with staff on potential meeting.	
CHS Hearing on FY19 Budget	4/26/18	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question asking why DHS is not taking any new DACA applications "since the courts have indicated your ending of the program was incorrect".			UPDATE 05/17: CHS provided question as a QFR on 5/17/2018. NO Additional action is required for DHS OLA.	5/17/18

CHS Hearing on FY19 Budget	4/26/18	Rep. Correa (D-CA)	Rep. Correa requested written information comparing what threats are coming through Canada versus what threats are coming through ports.	I&A	5/9/18	(b)(5)
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CHS Hearing on FY19 Budget	4/26/18	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question regarding whether "Mexico is going to pay for the wall, and [if so] how the wall is going to proceed".			(b)(5)
CHS Hearing on FY19 Budget	4/26/18	Rep. Keating (D-MA)	Rep. Keating requested that S1 get back to him regarding H-2B caps.	OLA	4/26/18	UPDATE 5/7 - OLA spoke with staff by phone to confirm receipt of 5/7/18 correspondence. Office requests continued updates on H-2B decision. *NOTE: this get back may have been fulfilled by close of correspondence WF 1160999.
CHS Hearing on FY19 Budget	4/26/18	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question regarding the purpose of the 4,000 National Guardsmen to be stationed at the border, and whether S1 had "any input into that selection"?			AWAITING COMPONENT RESPONSE
CHS Hearing on FY19 Budget	4/26/18	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question asking whether S1 and the President would "ask and demand that Paul Ryan put [any bipartisan DACA bills] on the floor for us to be able to vote for them?"			AWAITING COMPONENT RESPONSE
CHS Hearing on FY19 Budget	4/26/18	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question asking whether S1 would "instruct your Border Patrol agents to not treat DACA eligible and/or DACA status individuals unfairly at the border by stopping them at the border and not allowing them to come back and forth".			AWAITING COMPONENT RESPONSE

	CHS Hearing on FY19 Budget	4/26/18	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to the Congresswoman's statement that FEMA needs to be "fixed in terms of bifurcating recovery as opposed to rescue", and that "reimbursement monies have not yet come to schools and other facilities and people in desperate need".			AWAITING COMPONENT RESPONSE	
	CHS Hearing on FY19 Budget	4/26/18	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a copy of S1's statements regarding Mark Anthony Conditt (Austin, TX, serial bomber) if available.	OPA	5/4/18	<p>RESPONSE FOR CLEARANCE: The Secretary commented on this situation in March, which was documented in the following two articles. Further inquiries should be directed to the FBI, which is the lead agency for the investigation.</p> <p>Department of Homeland Security Secretary Kirstjen Nielsen told senators that "although the situation appears to be over, we urge the public to remain alert and report any suspicious activity or packages or devices."</p> <p>https://www.cnbc.com/2018/03/21/austin-bombings-suspect-reportedly-shot-by-police.html</p> <p>Kirstjen Nielsen, secretary of the Department of Homeland Security, told reporters on Capitol Hill on Tuesday that her department was working with FBI to support the investigation.</p> <p>Nielson said the case wasn't unprecedented because of previous bombers who mailed explosives. But she said the Texas case is unusual because the explosions have come in a relatively tight geographic area and a faster time frame.</p> <p>"Not like this, not with packages, not in a geographic limited area and certainly not within this time frame," Nielson said.</p> <p>https://www.usatoday.com/story/news/2018/03/20/experts-serial-bombers-rare-and-difficult-identify/442939002/</p>	

CHS Hearing on FY19 Budget	4/26/18	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 respond in writing to whether "there a written statement as to what our U.S. policy is on people who are fleeing very dangerous countries ... versus other types of people who are coming over because I get the sense that we're ... locking them together."			UPDATE 05/17: CHS provided question as a QFR on 5/17/2018. NO Additional action is required for DHS OLA.	5/17/18
CHS Hearing on FY19 Budget	4/26/18	Rep. Payne (D-NJ)	S1 promised Rep. Payne she would personally look into an alleged report of "a TSO having an accident on herself because they weren't allowed to leave their post" if the Congressman's office would provide the name of that TSO.	TSA	5/9/18	(b)(5)	
CHS Hearing on FY19 Budget	4/26/18	Rep. Perry (R-PA)	S1 promised Rep. Perry information on the DHS pilot program to collect DNA from non-U.S. persons being detained under the United States laws.	ICE	5/4/18	AWAITING COMPONENT RESPONSE	
CHS Hearing on FY19 Budget	4/26/18	Rep. Perry (R-PA)	S1 promised Rep. Perry specifics related to the use and cost of ankle monitor bracelets and detention beds for ICE detainees.	ICE	5/4/18	AWAITING COMPONENT RESPONSE	

CHS Hearing on FY19 Budget	4/26/18	Rep. Perry (R-PA)	S1 promised Rep. Perry information related to DHS unity of effort initiatives, including internal benchmarks, "measurements to performance controls, internal controls to work on joint task force to eliminate inefficiencies", etc.	MGMT	5/9/18	AWAITING COMPONENT RESPONSE	
CHS Hearing on FY19 Budget	4/26/18	Rep. Rice (D-NY)	S1 promised Rep. Rice that she would provide any relevant internal documents regarding the TPS designation for El Salvador.	USCIS	5/4/18	AWAITING COMPONENT RESPONSE	
CHS Hearing on FY19 Budget	4/26/18	Rep. Donovan (R-NY)	Rep. Donovan requested that S1 "please speak or write to us to what more we can do to enhance the security of this transportation mode [mass transit security]"; including how DHS is "supporting information sharing when it comes to threats to mass transit?"	TSA	5/9/18	UPDATE 5/16 - this question is addressed in Rep. Donovan's QFR #1. ESEC tasking. *DUE: May 16, 2018	5/16/18
CHS Hearing on FY19 Budget	4/26/18	Rep. Donovan (R-NY)	Rep. Donovan requested that S1 provide answers in writing to the following three questions about the Securing the Cities program: 1) What changes is the department proposing to the program? 2) What outreach have you done to participating jurisdictions to solicit their feedback? 3) How are you addressing the concerns that the Department is receiving from securing the city's jurisdictions?			UPDATE 5/16 - this question is addressed in Rep. Donovan's QFR #2. ESEC tasking.	5/16/18
CHS Hearing on FY19 Budget	4/26/18	Rep. Rogers (R-AL)	S1 promised Rep. Rogers a breakdown as to what percentage of the cost associated with the border security system is actually the wall as opposed to technologies and personnel.	CBP/CFO	5/4/18	AWAITING COMPONENT RESPONSE	
CHS Hearing on FY19 Budget	4/26/18	Rep. Higgins (R-LA)	S1 promised Rep. Higgins demographic information for illegal immigrants who have received a summons for court, including, "Who they are, their age, their gender, their nation of origin, whether or not they have an anchor family, et cetera?"	USCIS	5/4/18	UPDATE 5/10 - Emailed LD with POC at DOJ OLA UPDATE 5/9 - Per USCIS, this is an issue for EOIR. USCIS checking to see if there is an appropriate Hill POC there.	5/10/18

CHS Hearing on FY19 Budget	4/26/18	Rep. Demings (D-FL)	S1 promised Rep. Demings the number of "people have been killed as an act of violence at the southwest border during [S1's] tenure as secretary."	CBP	5/4/18	5/14 - OLA sent staff an updated spreadsheet of deaths, organized by type, which was pulled together by USBP for 12/17 - 5/18.	5/14/18
CHS Hearing on FY19 Budget	4/26/18	Rep. Rogers (R-AL)	S1 promised Rep. Rogers the cost of the "added expense" incurred by DHS as a result of sanctuary jurisdictions.	ICE	5/4/18	AWAITING COMPONENT RESPONSE	
CHS Hearing on FY19 Budget	4/26/18	Rep. Garrett (R-VA)	S1 committed to looking into Rep. Garrett's constituent issue (constituent attempting to adopt a girl from Senegal).	USCIS	4/27/18	<p>COMPLETED: May 18, 2018: USCIS and Department of State held a call with Rep. Garrett and two of his staffers. USCIS attendees were Aaron Calkins, Chief, Office of Legislative Affairs, Dan Renaud, Associate Director, Field Operations Directorate, Monterey Rowe, Associate Chief, Office of Legislative Affairs and (b)(6) Office of Legislative Affairs. USCIS informed Rep Garrett that the parole in place request had been expedited and denied. USCIS explained that resolution could be gained by (b)(6) and the child departing the U.S. Once the child departs the U.S. USCIS would be able to complete the adjudication of the pending I-600. The Department of State then explained the I-604 process once, which is completed once USCIS sends them the approved I-600.</p> <p>May 18, 2018: Senators Mark Warner (D-VA) and Tim Kaine (D-VA) also submitted written requests for USCIS to expedite the parole in place application. USCIS staff responded these letters.</p> <p>May 16, 2018: USCIS received notice that (b)(6) hired a new attorney, (b)(6) who has submitted a request to USCIS for Humanitarian Parole in Place (PIP) in order for (b)(6) child to overcome the requirement of 8CFR 204.3(k)(3) without leaving the United States. Rep. Garrett and Rep. Mark Meadows (R-NC-11) submitted a letter to Director Cissna requesting USCIS to expedite the PIP request. USCIS stated the PIP request would be expedited. USCIS ultimately denied the PIP request as USCIS cannot grant parole to a person who has been inspected and admitted. Ms. Boyle's child was inspected and admitted when she entered the U.S. on her B-2 visa.</p> <p>May 11: USCIS connected with attorney of mother.</p>	5/11/18

	CHS Hearing on FY19 Budget	4/26/18	Rep. Thompson (D-MS)	S1 promised Rep. Thompson status update for when DHS will submit the Quadrennial Homeland Security Review (originally due December 31, 2017).	PLCY	5/9/18	(b)(5)
	CHS Hearing on FY19 Budget	4/26/18	Rep. Thompson (D-MS)	S1 promised Rep. Thompson status of the update plan for the DHS HQ Consolidated Plan (originally due August 27, 2016).	MGMT	5/9/18	(b)(5)
	CHS Hearing on FY19 Budget	4/26/18	Rep. Thompson (D-MS)	S1 promised Rep. Thompson explanation of how DHS arrived at the statistic "90 percent of UACs released never show up for court" (from SJC Hearing 1/16/18).	USCIS	5/4/18	(b)(5)
	CHS Hearing on FY19 Budget	4/26/18	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 respond in writing as to how proposed cuts in the DHS budget (e.g., reductions or eliminations in security grants, VIPR teams, Law Enforcement Officers grants, exit lane staffing) are consistent with protecting the homeland.			AWAITING COMPONENT RESPONSE

	CHS Hearing on FY19 Budget	4/26/18	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 provide DHS's policy regarding the migrant caravan approaching the southern border.	CBP, ICE	5/4/18	Status: It is CBP policy to process anyone making a claim of asylum at a port of entry. [CBP: please provide policy]	
	CHS Hearing on FY19 Budget	4/26/18	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 provide DHS's policy regarding the separation of minors from parents, and specifically DHS policy "dealing with the trauma that that [sic] must inflict upon both these children ... as well as their families".	CBP, ICE	5/4/18	(b)(5)	
	CHS Hearing on FY19 Budget	4/26/18	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 respond to a letter she sent requesting that DHS explain "the cost associated with protecting the Trump kids going around the world doing Trump business" (outstanding correspondence).	OLA/USSS		OUTSTANDING CORRESPONDENCE -- Workflow# 1159769, currently in component clearance (due noon 6/1). Update 6/4: OGC clearance still outstanding.	
	CHS Hearing on FY19 Budget	4/26/18	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 explain in writing how DHS justifies "putting additional resources down on the southern border, particularly in the form of our National Guard when all of the data that we have been receiving [shows] a significant diminishment [sic] of people coming across the border."			AWAITING COMPONENT RESPONSE	
	SAC-HS Hearing on FY19 Budget	5/8/18	Sen.Boozman (R-AR)	Brief on S&T reorganization and its impacts	S&T	5/9/18	5/18 - S&T has offered a brief to Senator Boozman.	5/18/18
	SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Kennedy (R-LA)	Discussion on whether a lesser expensive version of the border wall system would be acceptable (Chevy wall)	CBP	5/10/18	5/18 - Senator Kennedy declined a meeting with CBP to discuss the border wall system. CBP offered a CBP 101 brief to his staff.	5/18/18
	SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Tester (D-MT)	Provide the Committee a listing of where the replacement and new border wall is going	CBP	5/10/18	5/16 - Response provided to SAC staff, who will provide to Senator Tester's staff. 5/16 - S1 Counselors cleared for release. 5/16 - CBP provided planned locations for the border wall funded by FY19 PB.	5/16/18

SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Tester (D-MT)	Provide brief on the plans for FEMA grants	FEMA	5/10/18	5/17 - FEMA ready to brief, but awaiting proposed dates. SAC currently busy with mark-ups, so they are not yet ready to add the brief to their calendar. 5/17 - Brief offered to SAC and Senator Tester staff on pre-disaster mitigation grant program.	5/17/18
SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Shaheen (D-NH)	S1 commitment to look at ICE targeting Indonesian community in New Hampshire for deportation	ICE	5/10/18	5/21 - Response provided to SAC staff, who will provide to Senator Shaheen's staff. 5/21 - S1 Counselors cleared for release. 5/18 - OGC cleared for release. 5/18 - ICE provided talking points and signed letter sent to Sen Shaheen in March.	5/21/18
SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Shaheen (D-NH)	Number of people who have applied for refugee status and the number who have applied for asylum in 2018	USCIS	5/10/18	UPDATE 5/14 - Response provided to SAC staff, who indicated they will provide to Senator Shaheen's staff. 5/14 - Response cleared by S1 Counselors. 5/11 - USCIS provided response.	5/14/18
SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Shaheen (D-NH)	By COB today, provide status on implementation of requirement Federal Government to remove Kaspersky Lab products from third parties.	NPPD	5/9/18	UPDATE 5/13 - CFO provided NPPD-drafted response via email to Scott Nance.	5/13/18
SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Baldwin (D-WI)	Ask DOJ if they have asked the courts for clarification on whether DACA recipients with expired work authorizations who have applied for DACA renewal will be penalized if they work without a valid authorization	USCIS	5/10/18	5/18 - Response provided to SAC staff, who will provide to Senator Baldwin's staff; 5/18 - S1 Counselors cleared; 5/17 - OGC cleared; 5/17 - Response provided by USCIS.	5/18/18
SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Baldwin (D-WI)	Provide brief on the FEMA grant program to support nonprofit organizations located outside of designated Urban Areas Security Initiative (UASI) jurisdictions and are determined to be at high risk of a terrorist attack	FEMA	5/10/18	5/24 - Senator Baldwin's staff indicated that they've reviewed the NOFO and associated documents and have no questions. Consequently, they "no longer need FEMA to respond to Senator Baldwin's request for more information regarding roll out of NGSP-S." 5/24 - FEMA reached out to Senator Baldwin's staff to schedule the briefing.	5/24/18
SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Murkowski (R-AK)	Provide an update on the H-2B Visa cap increase	USCIS	5/9/18	5/25: H-2B announcement provided to staff by OLA	5/25/18

SAC-HS Hearing on FY19 Budget	5/8/18	Sen. Tester (D-MT)	Secretary committed to provide a brief this week regarding the CBP hiring contract to explore ways it can be improved	CBP / OCHCO	5/8/18	5/24 - CBP still has not responded, per CFO. 5/18 - All components have cleared. ESEC is waiting on CBP's cover memo and draft response. 5/8 - COS tasked ESEC to have a letter drafted to Senator Tester for S1 signature by COB 5/10.	
HSGAC Hearing on Authorities and Resources	5/15/18	HSGAC (Harris)	S1 promised the number of children separated from their parents at ports of entry since January of 2017, and to explain why DHS and HHS numbers differ. (McCaskill: share that with the committee.)	CBP / ICE	5/17/18	STATUS: CBP-OCA passed Harris' staff information responsive to the request made by the Senator on 5/29: Number of children separated from their parents at ports of entry since January of 2017. CBP requested DHS-OLA take the lead on providing a response regarding the differences in HHS-DHS numbers as CBP cannot speak to numbers obtained by ICE and USCIS. OLA has received the necessary input from CBP, and are waiting on detail from ICE and HHS regarding their respective processes for tracking family separations. Once OLA has this information, OLA can provide a written response explaining the differences between DHS and HHS data. ESEC received commitment from OLA on 6/4 that they will send updates to ESEC regarding the substance of discussion with ICE and HHS on 6/5.	
HSGAC Hearing on Authorities and Resources	5/15/18	HSGAC (Harris)	S1 promised 1) an analysis of what is going on with the 1,448 allegations of sexual abuse in ICE detention facilities between FY12 and March 2018, and 2) what plan S1 has to "investigate those cases of sexual abuse and 3) what is the protocol in place in terms of what is being done to allow the victim to be in a safe place during and pending any investigation, what kind of services are these victims getting in terms of treating their trauma [and what] medical attention they may need as a result of what might be the sexual abuse?"	ICE	5/17/18	OLA RECOMMEND COMPLETION: Per Hannah's request, ICE completed a detailed response to all 3 questions with additional background on PREA on 6/1.	
HSGAC Hearing on Authorities and Resources	5/15/18	HSGAC (Harris)	S1 promised information about the average length of separation has been for children separated from their parents.	ICE	5/17/18	ICE TRANSMITTED RESPONSE (6/4): ICE does not statistically track the requested information. Parents who are separated from their children due to criminal prosecutions are in DOJ custody by the Bureau of Prisons. Children will be treated as UACs and in HHS custody. Therefore, the length of separation is dependent on sentencing by a judge due to the prosecution.	6/4/18



HSGAC Hearing on Authorities and Resources	5/15/18	HSGAC (Harris)	S1 promised the current assessment of detention conditions in DHS / ICE detention facilities (especially with regards to pregnant women).	ICE	5/17/18	(b)(5)	
HSGAC Hearing on Authorities and Resources	5/15/18	HSGAC (Harris)	S1 promised the DHS / ICE policy regarding the detention of pregnant women, including the third trimester release directive.	ICE	5/17/18	<p>ICE TRANSMITTED RESPONSE (6/4): The Directive entitled, "Identification and Monitoring of Pregnant Detainees" was revised for consistency with the President's January 25, 2017 Executive Order 13768, Enhancing Public Safety in the Interior of the United States, to allow ICE officers and agents to exercise discretion when determining whether to arrest or detain a pregnant individual. The current policy allows for the exercise of discretion to be made on a case-by-case basis and in a manner that no longer exempts a category of aliens from enforcement of the nation's immigration laws. A copy of the new directive is provided.</p> <p>In terms of third trimester release, pregnant women are generally not detained for long periods during their third trimester. There are instances where an individual is encountered or presents themselves to a border patrol agent or ICE officer and is later determined to be in their third trimester. These individuals are usually released within a few days or weeks, depending on the circumstances of their case.</p>	6/4/18

HSGAC Hearing on Authorities and Resources	5/15/18	HSGAC (Harris)	S1 promised to look into whether the current assessment of DHS / ICE detention facilities was submitted to OIG in response to the findings of the Dec. 2017 OIG report.	ICE	5/17/18	ICE TRANSMITTED RESPONSE (6/4): ICE did provide the required 90-day response to OIG-18-32 "Concerns about ICE Detainee Treatment and Care at Detention Facilities." On March 9, 2018, ICE was informed that OIG will be conducting another series of five unannounced inspections, and expects to complete its fieldwork in May 2018, and issue a draft report by June 2018. ICE response to OIG in attachment.	6/4/18
HSGAC Hearing on Authorities and Resources	5/15/18	HSGAC (Harris)	Sen. Harris requested what timelines, in terms of DHS policy, exist to establish a parental relationship or to reunify families.	ICE	5/17/18	STATUS: The U.S. Department of Homeland Security (DHS) does not currently have a blanket policy mandating the separation of families. However, ICE evaluates claims of a familial relationship on an individual basis. These situations are often complex and depend on multiple factors. ERO FOJCs work in coordination with HHS staff to gather information needed to verify claimed relationships.	
HSGAC Hearing on Authorities and Resources	5/15/18	HSGAC (Harris)	Information on how many of those cases where children who have been separated from their parents at points of entry resulted in trafficking charges.	ICE / USCIS	5/17/18	OLA RECOMMEND COMPLETION: ICE Homeland Security Investigations does not have the ability to track this particular sub-set of criteria in its case management system.	
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Harris (D-CA)	S1 promised the "training and procedures [that] are being given to CBP officers as it relates to how they are instructed to carry out family separation."	CBP / ICE	5/17/18	(b)(5)	

HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Harris (D-CA)	S1 promised what steps are being taken so that the separated parent and child can sustain communication, "broken down between what [DHS is] doing for children over the age of four and what [DHS is] doing for children under the age of four."	CBP / ICE	5/17/18	<p>STATUS: U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) and U.S. Department of Health and Human Services (HHS) are working together to establish multiple options for parent/guardian communication with a child. Upon validation of the parent/guardian and child relationship, ICE ERO Officers and HHS staff and contractors work to schedule communications via telephone, Skype, or using FaceTime. ICE ERO has created posters, in multiple languages, that explain to a parent/guardian how to request a communication with his or her child. ICE ERO Officers in adult detention facilities, working with the ICE ERO Field Office Juvenile Coordinators (FOJCs), identify the HHS facility where the child is housed and coordinate with HHS for the parent/guardian to communicate with the child. Whenever possible the communication will be via video, but at a minimum will be telephonic.</p> <p>In those cases involving a child under the age of 4, ICE ERO will strive, whenever possible, to ensure video communication. HHS has indicated that most of their contract facilities have Skype capability, as do most ICE adult detention facilities.</p> <p>ICE ERO officers and contract detention staff will be tasked with facilitating these communications. Individual facility processes will be identified by the local ICE ERO management. The ICE ERO HQ Juvenile and Family Residential Management Unit will provide support to ERO Field Office management and liaison with HHS HQ management to ensure operational success.</p>	
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Harris (D-CA)	S1 requested a copy of the DHS-HHS UAC MOA.	PLCY	5/17/18	COMPLETED: OLA provided a copy to HSGAC-PSI immediately prior to the 4/26 hearing, so it would have been shared with Senator Harris and her staff prior to that hearing.	5/21/18

HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Harris (D-CA)	S1 promised the "percentage of cases [that] exist in your agency where a child has been separated from a parent or guardian since October 2017, wherein the case resulted in trafficking charges." (Same getback as one made by Undersecretary James McCament on 4/26/18.)	PLCY / CBP / ICE	5/17/18	OLA RECOMMEND COMPLETION: ICE Homeland Security Investigations does not have the ability to track this particular sub-set of criteria in its case management system.	
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Hassan (D-NH)	S1 promised to look in to why CBP officers have not received the fentanyl screening devices authorized under the INTERDICT Act, and to "get that to you this week."	CBP	5/17/18	<p>COMPLETED: Because of the timing of the FY 2018 full year enacted appropriations, the \$30.5 million for Opioid Detection and Labs was not available until the week of 5/14. Acquisitions are currently underway.</p> <p>To date, OFO has purchased a total of 92 Gemini presumptive testing devices. The San Ysidro Port of Entry purchased two devices on their own, which raises the overall available number of devices to 94. As of 5/22, 84 devices have been deployed to major International Mail Facilities, Express Consignment Facilities, and Ports of Entry (POE). Ten instruments have been utilized for training purposes. These ten instruments will soon be refurbished and deployed to the field. OFO anticipates purchasing and deploying an additional 150-250 devices over the next 2 years. CBP provided the chart to ESEC on 5/22.</p>	5/22/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Hassan (D-NH)	S1 promised the locations (i.e. DHS facilities) where DHS trains Mexican federal law enforcement.	FLETC	5/17/18	OLA TRANSMITTED RESPONSE (6/4): In FY 2016, FLETC has trained 17 Mexican federal law enforcement officers in advanced training programs at the International Law Enforcement Academies in San Salvador, El Salvador, and Roswell, New Mexico.	6/4/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Hassan (D-NH)	S1 committed to finalizing an answer on the issue of New Hampshire Indonesian deportations in the near term.	ICE	5/17/18	<p>UPDATE: ICE was tasked to update this getback with further information per COS guidance on 6/4.</p> <p>The cases you raised are the subject of ongoing litigation. As a result, we are unable to comment on them directly at this time. ICE insists that there is no other information that they can provide at this time and requests that this get-back be marked as completed.</p>	

HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Hassan (D-NH)	S1 promised the number of different federal agencies providing staff to this Interagency Task Force on countering violent extremism.	OPE	5/17/18	COMPLETED: Currently, three agencies, DOJ, FBI, and NCTC contribute time to the interagency task force on countering violent extremism and participate in the weekly coordination meeting. Additionally, DHS is actively looking at options to elevate and expand interagency action on terrorism prevention—including through the task force—and would be willing to brief your staff at the appropriate time.	5/21/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Hassan (D-NH)	S1 promised the specific number of field staff in the Office of Terrorism Prevention.	OPE	5/17/18	OLA CONFIRMED TRANSMITTAL ON 6/4: OTPP has two Federal staff serving as Regional Directors, based in California and Colorado. Since its establishment as the Office of Community Partnerships in 2015, OTPP has worked directly with communities through a federal field staff presence in two cities—Los Angeles and Denver. The field staff work with local stakeholders (e.g., government officials, law enforcement officers, and civil society leaders) to develop community-specific approaches to prevent terrorism. In FY17, OTPP utilized reprogrammed contract monies to trial an expansion of the field staff program to a total of 14 municipalities by employing 16 contractors. The trial affirmed the approach of working through communities; several communities demonstrated clear progress in developing and implementing terrorism prevention efforts. In FY18, the field staff program has returned to two federal regional directors who are expanding their programs beyond the confines of Los Angeles and Denver to other localities (e.g., San Diego, CA and Fort Collins, CO) as well as helping implement more statewide approaches to terrorism prevention in California and Colorado.	6/4/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Heitkamp (D-ND)	S1 offered to "speak to you both [Heitkamp and McCaskill]" about the Accenture contract, especially re: recruiting locals for the Northern Border.	CBP	5/17/18	COMPLETED: CBP-OCA discussed this getback with Heitkamp and McCaskill's staff and they informed CBP that they are happy with the information, recent briefings and telecons they've received on this topic, and requested an update on a follow up briefing later this summer. See CBP attachment for breakdown on previous contact.	5/29/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Heitkamp (D-ND)	Invited S1 to visit North Dakota.	FO	5/17/18	CLOSED - ESEC forwarded to S1 Scheduler to coordinate with OLA.	5/17/18

HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Heitkamp (D-ND)	Requested a copy of the Northern Border Strategy (S1: "should be out this week").	PLCY	5/17/18	COMPLETED: DHS produced an updated Northern Border Strategy in January 2018. The Strategy incorporates findings from the Threat Analysis and assigns Component responsibilities at the sub-objective level. The Strategy is with S1 for signature and will transmit to the Hill once finalized. DHS-OLA actively communicates with Heitkamp's staff about the rollout of this Strategy.	5/30/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Hoeven (R-ND)	Invited S1 to visit North Dakota this summer and see "what we're doing in counter UAS."	FO	5/17/18	CLOSED - ESEC forwarded to S1 Scheduler to coordinate with OLA.	5/17/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Johnson (R-WI)	S1 Promised the number of MS-13 members who were apprehended and released as a result of Zadvydas, "going back a number of years."	CBP / ICE	5/17/18	STATUS: ICE is updating the language in this getback per (b)(6) guidance on 6/4.	
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Johnson (R-WI)	Sen. Johnson requested a number for how many family separations are the result of DHS not being aware of who the parent is?	CBP / ICE	5/17/18	(b)(5)	

HSGAC Hearing on Authorities and Resources	5/15/18	Sen. McCaskill (D-MO)	S1 offered to "come in myself or have folks come and walk you through the [staffing] model." (Re: why DHS has not made any requests for additional port officers.)	CBP	5/17/18	COMPLETED: CBP-OCA was in contact with McCaskill's staff numerous times (5/22-5/24) about this get back and spoke for the final touchbase on 5/29. The staff verbally concurred that they are good with the information CBP has already provided the office on 5/9, and that another briefing is not necessary at this time. CBP provided an attachment detailing the breakdown of previous contact to ESEC on 5/29.	5/29/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. McCaskill (D-MO)	S1 promised a copy of the UAC Joint Concept of Operations.	PLCY / CBP / ICE	5/17/18	(b)(5)	
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. McCaskill (D-MO)	S1 offered to "come talk to you [McCaskill]" about initial findings re: the effectiveness of the Federal Air Marshal program. (S1 also offered to have the Administrator come talk to the RM.)	TSA	5/17/18	OLA RECOMMEND COMPLETION: TSA reached out to Senator McCaskill's staff and scheduler on both 5/17 and 5/18, noting the following potential dates based on the Administrator's availability: June 5, 14 and 27. The Senator's scheduler indicated they would get back to TSA if any of those dates will work.	6/4/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. McCaskill (D-MO)	Sen. McCaskill is "particularly worried" that the Chief Counsel of the Federal Air Marshal Program, who was cited by the IG whistleblower report, is the person "supposedly now helping making sure this does not happen again." S1 guaranteed that she would look into this IG investigation.	TSA	5/17/18	(b)(5)	
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Peters (D-MI)	S1 promised to "have a further discussion" with Sen. Peters re: fully funding and staffing the Gordie Howe Bridge customs plaza (Detroit-Windsor). (S1 or staff.)	CBP	5/17/18	COMPLETED: CBP-OCA emailed Peters' staff on 5/22 and 5/23, and a telecom on 5/24. CBP received the data on 5/31 and transmitted the information to the staff on 6/1. Email correspondence was provided to ESEC on 6/1.	6/1/18

HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Peters (D-MI)	S1 promised Sen. Peters an answer for when the Blue Water Bridge plaza (Port Huron) will be completed "this week".	CBP	5/17/18	(b)(5)	6/1/18
HSGAC Hearing on Authorities and Resources	5/15/18	Sen. Peters (D-MI)	S1 promised a briefing on "a brief on what has happened [with the Soo Locks] since the president's statement."	NPPD / CBP	5/17/18	OLA RECOMMEND COMPLETION: NPPD spoke with Senator Peter's office and the US Army Corps of Engineers (USACE) on 5/22/2018 and determined that the update on what the government had done on the Soo Locks modernization project would be more appropriately briefed by the USACE. NPPD directly connected Peter's office to USACE for coordination moving forward. USACE POC: (b)(6) Chief, Future Directions Branch U.S. Army Corps of Engineers (b)(6) (b)(6) Future Directions Branch U.S. Army Corps of Engineers (b)(6) David.W.Wedington@usace.army.mil	6/4/18

Hot Topics – In the News

Q. Does DHS have a policy of separating parents from their children at the border?

(b)(5)

Q. Has DHS separated 700 children from their families at the border?

(b)(5)

Q. The President tweeted that he directed you to not allow the caravan in – are you blocking their entry?

(b)(5)

Q. Are you considering keeping members of the caravan in Mexico?

(b)(5)

Q. You have said you will make a decision on H2-B visas soon – do you have any update on that?

(b)(5)

Q. Why deploy the National Guard now?

(b)(5)

Q. Last night, a U.S. District Court Judge ruled that DHS has to accept new DACA applications and renewals – is the Department complying?

(b)(5)

Q. How many personnel do you have on the border now?

(b)(5); (b)(7)(E)

(b)(5); (b)(7)(E)

Q. What mission sets have been agreed to with California?

(b)(5); (b)(7)(E)

Q. Is California supporting the border security mission?

(b)(5); (b)(7)(E)

Q. Are these mission sets different than what other states have agreed to?

(b)(5)

Q. Is DHS seeking MOA's with each of the border states?

(b)(5)

Q. How long will troops be deployed for?

(b)(5)

Q. How much will this cost?

(b)(5)

Q. How does the Supreme Court ruling that voids grounds of removal for aggravated felony effect DHS?

(b)(5); (b)(7)(E)

Q. Would you be in favor of additional Syria strikes?

(b)(5)

Q. How can DHS confirm the reports that there was a 2000% increase in Russian bot activity following the airstrikes in Syria?

(b)(5)

Q. With all this news around Russian cyber activity, what is DHS doing to counter their actions?

(b)(5)

Q. DHS posted a listing for a media monitoring contract – are you monitoring journalists and tracking them?

(b)(5)

Q. Last week at RSA, you declined to express confidence in states' preparation to defend their election systems ahead of the primaries. Why is that?

(b)(5)

Q. With all this news around Russian cyber activity, what is DHS doing to counter their actions?

(b)(5)

Q. Are you concerned that the leadership changes at the NSC will affect the Administration's election security efforts?

(b)(5)

Q. What has the United States done to deter and/or address Russia and the Russian cyber threat?

(b)(5)

Q. What do you think of the ongoing Russia investigation?

(b)(5)

Q. Do you think the "hack back" approach is best when countering adversaries?

(b)(5)

Q. There are reports that FEMA was going to displace hundreds of Puerto Ricans from hotels. Why is FEMA displacing all these people and leaving them homeless?

(b)(5)

Question#:	1
Topic:	Domestic Terrorism
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: I believe the travel ban and divisive rhetoric have had significant consequences. Since the election we have seen a spike in anti – Muslim incidents in my home State of Michigan. We have seen a rash of bomb threats against Jewish Community Centers in Michigan and across the country. That's why my colleague Senator Portman and I, led a letter calling on DHS and DOJ to address these horrific incidents and to provide these communities with the resources they need. The letter was signed by all 100 members of the Senate. Make no mistake, some of our darkest elements in our society have been emboldened. All you need to do is look at alt-right and white supremacy activity that has taken place in Charlottesville and across the country.

How much of your budget is spent on domestic terrorism versus international terrorism?

(b)(5)

(b)(5)

Question: Do you think legislation is required to address domestic extremism?

(b)(5)

Question#:	1
Topic:	Domestic Terrorism
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: The federal government maintains lists of international terror organizations; do you think the same should apply for domestic terror groups beyond the nine movements tracked by the FBI?

(b)(5)

DRAFT

Question#:	2
Topic:	Cyber Threat Information Sharing
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: I continue to be deeply troubled by the disclosure of the Equifax hack, which demonstrated corporate leadership's systemic disregard for data security and basic cyber-hygiene best practices. The vulnerability identified in the breach had a patch issued for it in March, meaning at least 60 days went by without the patch being implemented. But poor patch management is just the tip of the iceberg. Across the federal government, numerous agencies are relying on outdated software that may be vulnerable to attacks. In report issued last month, the President's National Infrastructure Advisory Council (NIAC) concluded, "there is a narrow and fleeting window of opportunity before a watershed, 9/11-level cyberattack to organize effectively and take bold action." The challenges identified are well-known and reflected in study after study. DHS has a clear mission to share with the private sector but it often does not "own" the threat information and must work through other agencies to declassify and share. Explain how DHS is working to improve information sharing processes with FBI to ensure the right individuals in the private sector receive timely, actionable cyber threat information.

(b)(5)

Question#:	3
Topic:	Critical Information Sectors
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: This committee recently heard from the head of Israel's National Cyber Bureau who offered that Israel has a more narrow definition of critical infrastructure in cyberspace. For example, our Electricity and Financial sectors take on added importance because they underpin the operations of other critical infrastructure sectors. With that in mind, what is DHS doing to improve engagement with the most critical infrastructure sectors?

(b)(5)

Question#:	3
Topic:	Critical Information Sectors
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

Question#:	3
Topic:	Critical Information Sectors
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

Question#:	3
Topic:	Critical Information Sectors
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

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(b)(5)

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Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

Question#:	3
Topic:	Critical Information Sectors
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

(b)(5)

DRAFT

Question#:	4
Topic:	CBP Staffing Levels
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: Each day, thousands of cargo containers from around the world pass through our nation's ports - delivering vital goods and services to consumers, creating jobs, and supporting economic growth. In Southeast Michigan, the Port of Monroe is one such location. Each day, the Port connects the five great lakes, serves 17 U.S. states, and provides access to 15 major international ports. In today's resource-constrained environment, balancing security concerns with the need to facilitate the free flow of commerce remains an ongoing challenge. This is especially true for the Port of Monroe, which falls 12 miles outside of the CBP's area of responsibility for the Detroit Point of Entry. Over the years, this has resulted in CBP providing entirely discretionary container screening. This arrangement has forced the port to decline certain shipments, complicated efforts to expand port operations, and left potential security threats unmitigated. Commercial maritime shipping remains a viable conveyance for all manner of domestic threats: illicit drugs, chemical, biological, or radiological weapons - even human smuggling.

Does CBP have adequate staffing levels to absorb an increase of multimodal freight in Michigan?

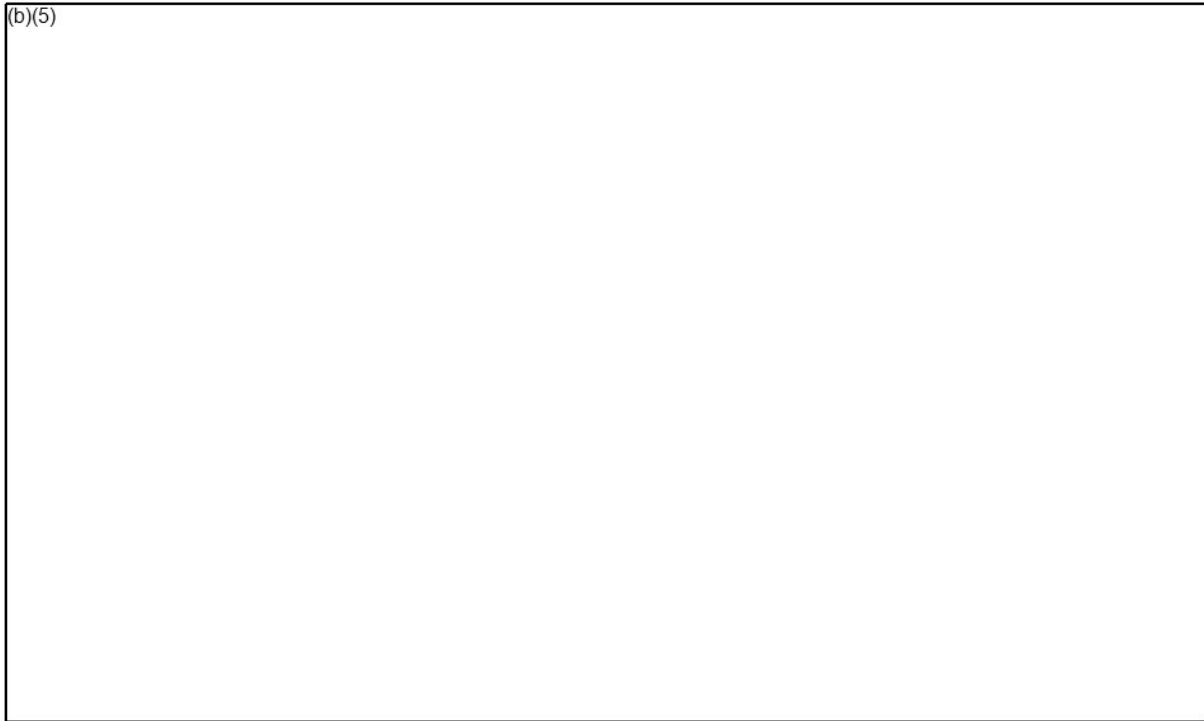
(b)(5)

Question: If CBP were to receive increased funding levels for staffing, would CBP increase staffing levels along the northern border concurrently with increases in southern border staffing?

(b)(5)

Question#:	4
Topic:	CBP Staffing Levels
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)



DRAFT

Question#:	5
Topic:	Scanning Equipment
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: Is CBP authorized to accept donations of fixed or mobile scanning equipment at ports? If not, why not?

(b)(5)

Question: Do mobile scanners provide acceptable levels of accuracy in detecting threats while screening cargo?

(b)(5)

Question: Is CBP willing and able to provide technical assistance to ports that are pursuing the possibility of installing scanning equipment?

(b)(5)

Question#:	6
Topic:	Reimbursements
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: Is CBP authorized to accept reimbursements for staff time and expenses, including overtime expenses, at ports? If not, why not?

(b)(5)

Question#:	7
Topic:	Freight
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: What is CBP protocol on processing or scanning breakbulk freight? Is crated freight considered "containerized" or "breakbulk" by CBP? What is the definition of "containerized" freight? What is the definition of "breakbulk" freight?

(b)(5)

Question: Is crated freight considered "containerized" or "breakbulk" by CBP?

(b)(5)

Question: What is the definition of "containerized" freight?

(b)(5)

Question: What is the definition of "breakbulk" freight?

(b)(5)

Question#:	8
Topic:	Waterborne Freight
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: What discretion is afforded to CBP regional offices in determining processing protocol on waterborne freight? Are there standard procedures CBP regional offices must follow nationwide with respect to processing waterborne freight?

What procedures are in place at CBP to ensure that freight cargo is treated uniformly throughout maritime systems and across regional CBP offices?

(b)(5)

Question: Are there standard procedures CBP regional offices must follow nationwide with respect to processing waterborne freight?

(b)(5)

Question: What procedures are in place at CBP to ensure that freight cargo is treated uniformly throughout maritime systems and across regional CBP offices?

(b)(5)

Question#:	9
Topic:	Manifests
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: What procedures are in place at CBP to ensure a timely response to submitted manifests in order to provide adequate lead time for shippers and customers?

(b)(5)

[Redacted content]

DRAFT

Question#:	10
Topic:	ACE Systems
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: In the event freight is manifested and accepted in CBP's ACE system well in advance of estimated arrival dates, what procedures does CBP have in place to provide certainty to shippers and customers that accepted manifests will be processed as expected on the arrival date?

(b)(5)

Question: If a manifest for cargo is accepted in ACE for unloading at a specific port, is it certain the cargo can actually be unloaded at that port?

(b)(5)

Question#:	10
Topic:	ACE Systems
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

Question: If not, why is the manifest accepted in ACE and how is the shipper/vessel operator notified cargo unloading is being restricted at a port?

(b)(5)

Question: What records are kept related to rejected cargo?

(b)(5)

Question#:	11
Topic:	Great Lakes Ports
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: Does CBP accept International containerized and crated cargo by vessel in all Great Lakes ports?

(b)(5)

Question: Which ports in the Great Lakes have limitations on their ability to accept international container and crated cargo?

(b)(5)

Question: If there is a difference among ports, what is the justification?

(b)(5)

Question#:	11
Topic:	Great Lakes Ports
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

Question#:	12
Topic:	Bioterrorism
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

Question: A bioterrorist attack could have a devastating impact in a major city, both in terms of human life and our sense of safety and security. However, reports such as the Blue Ribbon study panel's report on biodefense have indicated that our national defense against bioterrorism is lacking in both detection capability and response. In the 2016 Worldwide Threat Assessment, the CRISPR gene editing tool was identified as a key enabling technology that could be used by terrorists to more easily create a biological weapon.

Among the terrorist threats facing the homeland, how worried are you about bioterrorism as compared to other threats such as conventional terrorism or dirty bombs?

How much does the rapid spread of biotechnology due to advancements such as CRISPR impact your assessment of the threat of bioterrorism?

Could CRISPR be used by someone who doesn't have bad intentions, but perhaps isn't taking the proper safety precautions, to inadvertently cause a health emergency?

Is DHS prepared to deal with the emerging bioterror threats that exist today?

What can DHS do to better prepare for these threats?

(b)(5)

Question#:	12
Topic:	Bioterrorism
Hearing:	Threats to the Homeland
Primary:	The Honorable Gary Peters
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

DRAFT

Question#:	13
Topic:	Jones Act
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: During the hearing, you committed to "put someone in place that can be responsible for responding to requests from Congress about your activities as it relates to the Jones Act or any other work in Puerto Rico."

What is the name of this person?

(b)(5)

DRAFT

Question#:	14
Topic:	DACA Information Sharing
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: During the hearing, you committed to provide me an answer as to whether Department of Homeland Security (DHS) will keep its promise to DACA applicants and ensure that their information is not shared with U.S. Immigrations Customs and Enforcement (ICE) pursuant to the policy articulated in Question 19 of the archived DACA FAQs from the DHS website.

Please provide this answer.

(b)(5)

Question#:	15
Topic:	Enforcement Priorities
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Will you commit that DACA recipients who fall out of status will not be considered enforcement priorities and that ICE resources will not be used to deport them, including after March 5?

(b)(5)

(b)(5)

DRAFT

Question#:	16
Topic:	Ending DACA
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 5, you issued a memo rescinding the original June 15, 2012 memo that established DACA. During its five-year history, DACA has allowed young people who know no other country as their home and passed rigorous background screening to come out of the shadows and contribute more fully to their communities and our economy. DACA recipients are students at our colleges and universities, teachers, doctors, and engineers. DACA recipients are also our sons, daughters, mothers, fathers, sisters, and brothers. Many play central roles in caring and providing for their families.

In making the decision to end DACA, please detail any conversations that DHS officials had with outside stakeholders, including other government agencies such as DOJ and the White House in consideration of its decision.

Were any other factors considered in the decision to end DACA other than the legal advisement issued by Attorney General Sessions on September 5? Please describe those factors.

In making the decision to rescind DACA, did you or any DHS official review any legal advisement or material from the Department of Justice or the White House Office of Legal Counsel other than September 5 letter issued by Attorney General Sessions? If so, please describe and provide any related documentation.

(b)(5)

Question#:	16
Topic:	Ending DACA
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

DRAFT

Question#:	17
Topic:	Economic Impact
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: The Center for American Progress has estimated that the rescission of DACA will cost the U.S. \$460 billion in gross domestic product over ten years and cost California billions of dollars annually. Other economists and business leaders have agreed that ending DACA will not only hurt those with DACA, but our economy as a whole. Did you consider the adverse economic impact of rescinding DACA as part of your decision? If so, please detail any related research, data and findings as part of that consideration.

(b)(5)

Question#:	18
Topic:	Renewal Notifications
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Previously, DHS directly notified DACA recipients of the need to renew their status as their DACA expiration date approached. It is my understanding that this practice was changed under this Administration.

When was this change made?

Who made this decision?

Please describe the reason DHS stopped providing this notification to DACA recipients and provide any related memo or guidance effecting his change.

(b)(5)

Question: Who made this decision?

(b)(5)

Question: Please describe the reason DHS stopped providing this notification to DACA recipients and provide any related memo or guidance effecting his change.

(b)(5)

Question#:	19
Topic:	October 5th Deadline
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Please detail what steps DHS took to notify DACA recipients of the October 5 renewal deadline.

(b)(5)

(b)(5)

Question: Will DHS adhere to historic immigration policy and commit to processing all DACA applications postmarked by the October 5, 2017 (or any subsequent deadline) instead of requiring that applications be physically received by USCIS?

(b)(5)

Question#:	19
Topic:	October 5th Deadline
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

Question: Before the September 5 announcement, DHS's policy was to allow DACA recipients to apply for renewal even if their grant had expired. For these individuals who might have been out of status on September 5 because they were collecting needed documents, or saving for a fee, they now have no options. Will you commit to revisiting DHS's policy prohibiting DACA recipients whose DACA expired before September 5 from applying for relief?

(b)(5)

Question#:	20
Topic:	DACA Applications Denied
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What will happen to DACA applications denied due to not meeting the October 5 deadline? Will they get their fees back? Will they be referred to ICE?

(b)(5)

Question: Will they get their fees back?

(b)(5)

Question: Will they be referred to ICE?

(b)(5)

Question#:	21
Topic:	UAC Policy
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Comment [JJ]:

Question: It has been rumored in the press that DHS will be releasing new policy as it relates to unaccompanied alien children (UACs). Please describe what change is policy is being considered by the Department, including for UACs who "age-out" after turning 18, and provide any related memos or guidance.

(b)(5)

DRAFT

Question#:	22
Topic:	Due Process Protections
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Congress has legislated on due-process protections afforded to unaccompanied children. Both the Homeland Security Act and the Trafficking Victims Protection Act of 2008 provide specific protections to ensure children have a fair process to have their story adjudicated. What actions are you taking to modify existing procedures and how do they comport with Congressional intent?

(b)(5)

Question#:	23
Topic:	Family Separation
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: There have been reports that instances of family separation are increasing at the U.S./Mexico border. Very young children [including babies and toddlers] are being separated from their families. Your predecessor Secretary Kelly assured us DHS was not to be separating families as a matter of deterring women and children from seeking protection at our borders.

What are you doing to ensure families are not being systematically separated, and if they are, what steps is the Department taking to ensure reunification and communication of separated family members?

What are you doing to ensure families are not being systematically separated, and if they are, what steps is the Department taking to ensure reunification and communication of separated family members?

(b)(5)

Question: Is DHS currently drafting or considering a policy to separate families at the border?

(b)(5)

Question: What procedures exist when U.S. Customs and Border Protection (CBP) makes such a decision (i.e, reviews, opportunity for parents to be represented in challenging a separation)?

(b)(5)

Question#:	23
Topic:	Family Separation
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

DRAFT

Question#:	24
Topic:	UAC Parents
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS has recently conducted enforcement actions against parents of unaccompanied minors as part of efforts to prosecute parents for smuggling. This past weekend, the New York Times reported that the agency plans to conduct additional actions to assist in prosecuting parents for unlawfully reentering the country.

How does the agency make decisions regarding any children encountered during these enforcement actions?

Is there a policy regarding referral, placement, or reunification of these children?

(b)(5)

Question#:	25
Topic:	Seven Enforcement Priorities
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: During the hearing, I asked you to provide me more detail on how agents on the ground are being trained in relation to the seven enforcement priorities enumerated in the February 20 DHS memo issued by former Secretary Kelly. In response to a Question For the Record (QFRs) about Deportation Officers training around these priorities submitted after the June 6, 2017 HSGAC hearing on the Department of Homeland Security Fiscal Year 2018 Budget Request, DHS stated, "ICE law enforcement officers are also notified of policy changes, including the Executive Orders issued by President Trump and implementation memoranda issued, via broadcast email messages from agency and department leadership. These broadcast messages include hyperlinks to the Executive Orders and implementation memoranda that are posted to either public websites or internal agency intranet sites."

Can you provide my office with a copy of any e-mail(s) from agency/department leadership about the February 20, 2017 implementation memo that set out the seven new enforcement priorities?

(b)(5)

From: Office of the Secretary
Sent: Tuesday, February 21, 2017 9:22 AM
Subject: Message from Secretary Kelly on Implementation of Executive Orders



**Homeland
Security**

February 21, 2017

President Trump recently signed several executive orders that affect our Department's operations and impact the execution of our mission to secure the homeland. As you have likely seen reported, the implementation of these executive orders has generated a

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Hearing:	Threats to the Homeland
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significant amount of interest in what we do, and reinforces the importance of securing the border and enforcing our nation's laws.

Today, I have issued implementation memos regarding two of the executive orders that impact Department operations, *Border Security and Immigration Enforcement Improvements*, and *Enhancing Public Safety in the Interior of the United States*.

These implementation memoranda, along with fact sheets and Q&A documents, are available at www.dhs.gov/executiveorders. I will continue to keep you informed and provide substantive information to help you to successfully perform your duties. As part of this effort, we will ensure this page is updated early and often, as appropriate.

As we implement these executive orders to help keep the American people safe, we are and will remain in compliance with all federal court orders. As always, I ask each of you to continue to exercise your authority and responsibilities in the most respectful and professional manner.

Thank you again for your service to our great nation and for all you do to accomplish our vital missions.

Sincerely,

John F. Kelly
Secretary of Homeland Security

With honor and integrity, we will safeguard the American people, our homeland, and our values.

From: ERO Taskings
Sent: Tuesday, February 21, 2017 10:08 PM
Subject: Implementing the President's Border Security and Interior Immigration Enforcement Policies

The following message is sent on behalf of Matthew T. Albence, Executive Associate Director for Enforcement and Removal Operations to ERO Personnel:

Question#:	25
Topic:	Seven Enforcement Priorities
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

On January 25, 2017, President Trump issued two Executive Orders addressing DHS' immigration enforcement and border security missions: Executive Order No. 13767 entitled *Border Security and Immigration Enforcement Improvements*, and Executive Order No. 13768 entitled *Enhancing Public Safety in the Interior of the United States*. On February 20, 2017, Secretary Kelly issued two memoranda implementing the president's Executive Orders. These implementation memoranda, along with fact sheets and Q&A documents, are available at www.dhs.gov/executiveorders.

Effective immediately, Enforcement and Removal Operations (ERO) will conduct operations in accordance with to the Secretary's memos. **All ERO personnel should familiarize themselves with the attached memorandum entitled "Implementing the President's Border Security and Interior Immigration Enforcement Policies," as well as the other documents at the above link.** Please direct any questions about Executive Order implementation to your local chain of command, who will forward them to ERO HQ Field Operations, as necessary.

I want to thank all of you for your dedication and commitment to the mission of DHS and ICE. This is a pivotal time for us, and I have no doubt that you will continue to execute your duties with the same high level of professionalism and integrity that you always have.

Stay safe.

Matt

Question#:	26
Topic:	Changing ICE Policies
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: According to DHS answers to my QFRs submitted after the June 6, 2017 HSGAC hearing on the Department of Homeland Security Fiscal Year 2018 Budget Request, "ICE is currently working with the Department's Office of Policy and other programs to examine current ICE policies and guidance to ensure their alignment with the President's recent Executive Orders and the vision and plans for implementing those orders." Can you provide me with a list of ICE policies and guidance that are changing due to the review process described in DHS's answer?

(b)(5)

Question#:	27
Topic:	Notification Delay
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 22, 2017, state officials elected to oversee elections were officially notified by DHS - for the first time - of attempted or actual intrusions into their election systems during the 2016 election.

Why did DHS wait for over a year to notify secretaries of state and other elected officials of actual or attempted security breaches in their states? Has DHS considered the implications of this delay on securing such systems in advance of upcoming elections?

(b)(5)

Question#:	27
Topic:	Notification Delay
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)

DRAFT

Question#:	28
Topic:	Election Security Timeline
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: At a June Senate Intelligence Committee hearing, DHS Acting Under Secretary for Cybersecurity and Communications Janette Manfra asserted that DHS was developing a policy to help states secure their election systems. What is the timeline for establishing such a policy?

(b)(5)

(b)(5)

Question#:	29
Topic:	State Officials Clearances
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: One of the impediments to providing more-detailed threat assessments to the states in 2016 was the classified nature of the information. What is the timeline for providing state officials with clearances? Once clearances are granted, what process will be in place to ensure threat assessments are provided to the states?

(b)(5)

(b)(5)

Question#:	29
Topic:	State Officials Clearances
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

DRAFT

Question#:	30
Topic:	State Election Cyber Security
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: I am working with my colleague, Senator Lankford, and a bipartisan group of senators to draft a bill that aims to address many of the vulnerabilities and inefficiencies surrounding state election cybersecurity, such as improving information sharing, modernizing election infrastructure, and providing guidelines about steps state officials can take to strengthen their defenses. Does this sound like a measure DHS would support?

(b)(5)

DRAFT

Question#:	31
Topic:	Election Security Task Force
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Homeland Security has reportedly formed an election security task force to improve state and local voting infrastructure, drawing on resources and expertise from across the Department. Can you please provide details regarding the mission of the task force, the number of staff and budget of the task force, mechanisms for coordinating with state election officials, and plans to report its operational plans and observations to Congress?

(b)(5)

Question#:	32
Topic:	Border Wall
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 26, 2017, the CBP issued a press releases announcing that construction on 8 wall prototypes began. On October 8, 2017, the White House released their immigration policy priorities which re-iterated President Trump's call to build a wall across the Southwest Border.

Does DHS require additional authorization from Congress to construct any portion of this "border wall" along federal lands?

(b)(5)

Question#:	33
Topic:	State, Tribal, or Private Property
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Does DHS require additional authorization from Congress to construct any portion of this "border wall" on state, tribal or private property?

(b)(5)

Question: Has DHS consulted with states and federally recognized tribes impacted by any plans for construction of new border wall? If so, please list and describe such consultation.

(b)(5)

Question#:	34
Topic:	California Invasive Species
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

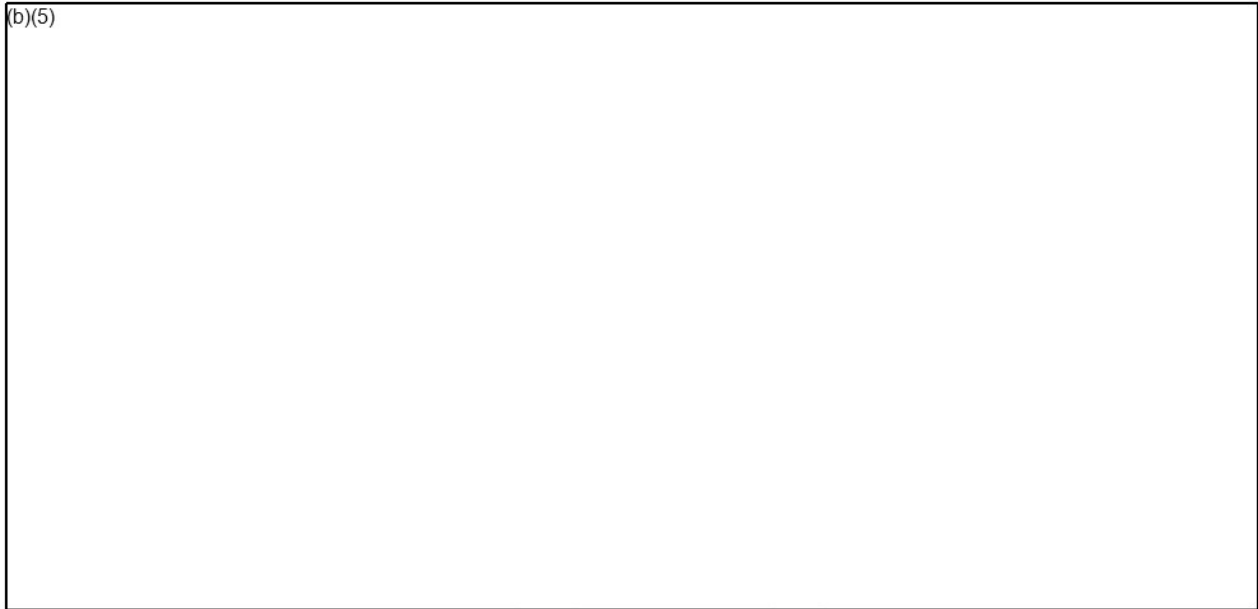
Question: California citrus farmers have assets worth up to \$2.5 billion in fruits they produce and ship all over the world. However, the Asian citrus psyllid is an invasive species that is still found to threaten to compromise this industry.

What specific plans has CBP instituted at ports of entry to ensure that invasive species does not enter the California?

(b)(5)

Question#:	34
Topic:	California Invasive Species
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)



DRAFT

Question#:	35
Topic:	CBP Data Sharing
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

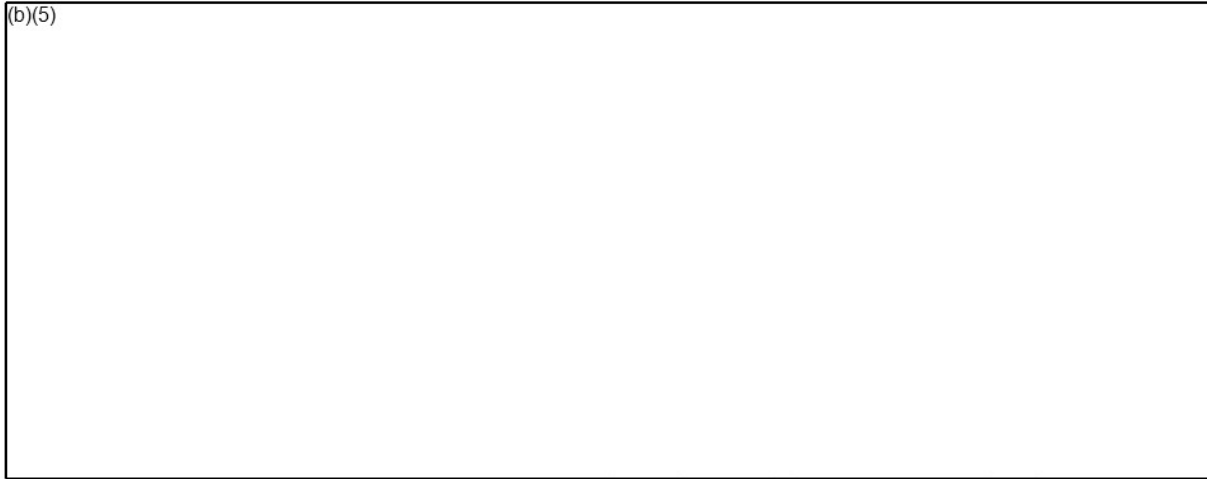
Question: Does CBP share data and coordinate a unified management plan with other federal agencies like the USDA, Fish and Wildlife, and the EPA to ensure early detection, exclusion, and eradication of invasive species?

What sort of data does the CBP have on invasive species that have entered and been caught or have entered but have been overlooked at ports of entry?

(b)(5)

Question#:	35
Topic:	CBP Data Sharing
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)



DRAFT

Question#:	36
Topic:	Coordination with USPS
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: I understand that mail is another mode that invasive species have increasing entered into our nation. Could you tell me your coordination with the U.S. Postal Service to deter pests from entering?

(b)(5)

DR

Question#:	37
Topic:	Invasive Species Budget
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: What percentage of CBP's budget is dedicated to invasive species management?

(b)(5)

Question: Does this get shared with other federal agencies?

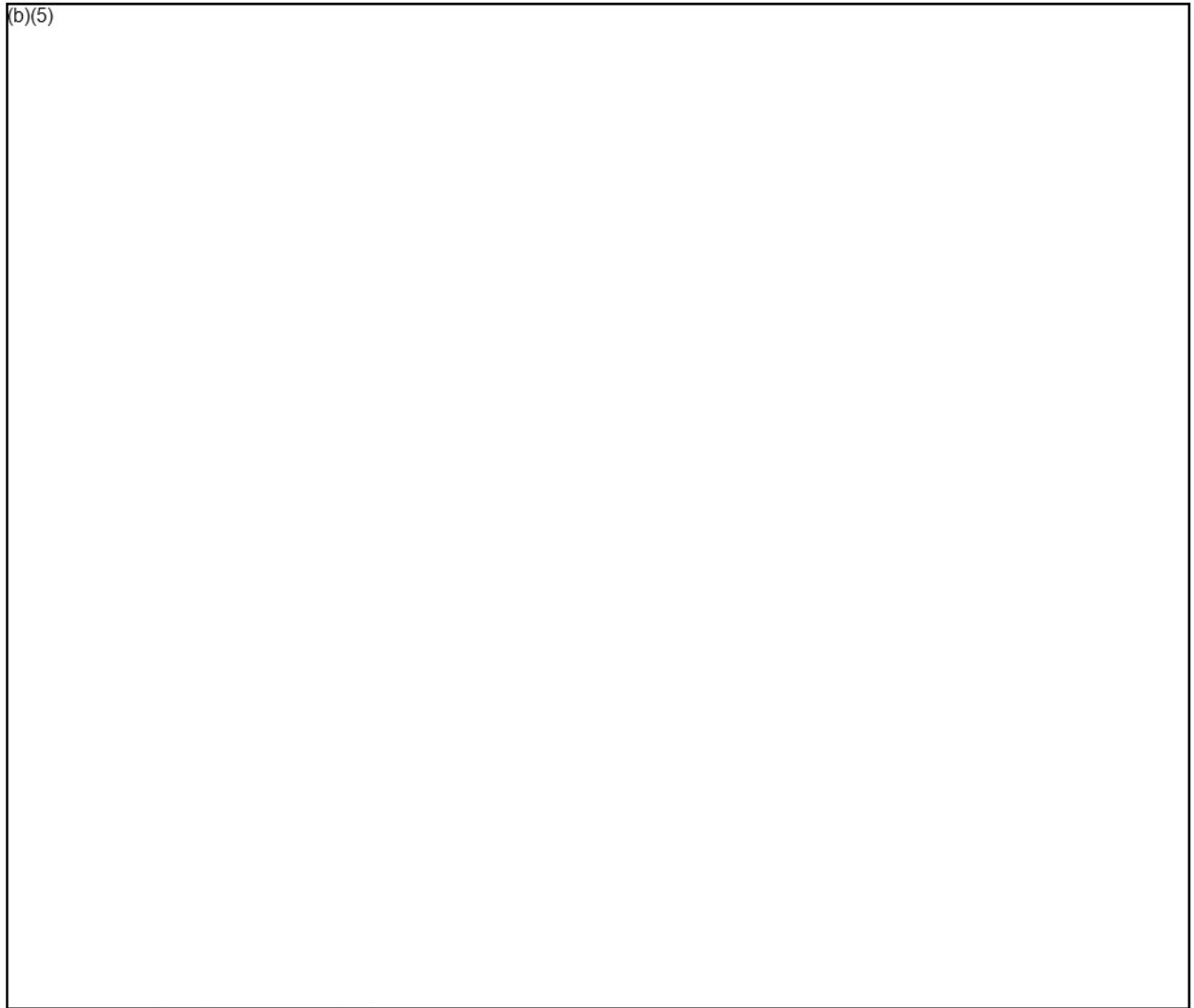
(b)(5)

Question: Do you think more funding is needed to bolster CBP's invasive species program or do you think there are other recommendations that could help improve the program?

(b)(5)

Question#:	37
Topic:	Invasive Species Budget
Hearing:	Threats to the Homeland
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

(b)(5)



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2	CHS 04/26/2018	Rep. Thompson (D-MS)	S1 promised Rep. Thompson the DHS-wide cybersecurity strategy (originally due March 23, 2017) "within the next two weeks".	FO	5/10/2018	5/16/2018	Uyen Dinh Jon Foltz	COMPLETED: OLA provided press release/report to staff
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4	CHS 04/26/2018	Rep. Thompson (D-MS)	S1 promised Rep. Thompson explanation of how DHS arrived at the statistic "90 percent of UACs released never show up for court" (from SJC Hearing 1/16/18).	ICE / USCIS			James "Jamie" Phillips Jon Foltz	(b)(5)
5	CHS 04/26/2018	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question regarding whether "Mexico is going to pay for the wall, and [if so] how the wall is going to proceed".	CBP (MGMT/CF O support)			James "Jamie" Phillips Jon Foltz	
6	CHS 04/26/2018	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question regarding the purpose of the 4,000 National Guardsmen to be stationed at the border, and whether S1 had "any input into that selection"?	CBP			James "Jamie" Phillips Jon Foltz	
7	CHS 04/26/2018	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question asking whether S1 and the President would "ask and demand that Paul Ryan put [any bipartisan DACA bills] on the floor for us to be able to vote for them?"	OLA			Uyen Dinh Jon Foltz	

8	CHS 04/26/2018	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question asking whether S1 would "instruct your Border Patrol agents to not treat DACA eligible and/or DACA status individuals unfairly at the border by stopping them at the border and not allowing them to come back and forth".	CBP			James "Jamie" Phillips Jon Foltz	AWAITING COMPONENT RESPONSE
9	CHS 04/26/2018	Rep. Jackson Lee (D-TX)	S1 promised Rep. Jackson Lee DHS will look into the deportation case of constituent Jose Escobar (open correspondence from Rep. Jackson Lee).	ICE		5/2/2018	James "Jamie" Phillips Jon Foltz	COMPLETED: ICE OCR updated Rep. Jackson's staff on the status of this case via email.
10	CHS 04/26/2018	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to the Congresswoman's statement that FEMA needs to be "fixed in terms of bifurcating recovery as opposed to rescue", and that "reimbursement monies have not yet come to schools and other facilities and people in desperate need".	FEMA			Russ Vieco Jon Foltz	(b)(5)
11	CHS 04/26/2018	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a copy of S1's statements regarding Mark Anthony Conditt (Austin, TX, serial bomber) if available.	OPA			Emily Hymowitz Jon Foltz	(b)(5)
12	CHS 04/26/2018	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question asking why DHS is not taking any new DACA applications "since the courts have indicated your ending of the program was incorrect".	USCIS		5/17/2018	James "Jamie" Phillips Jon Foltz	COMPLETED: CHS provided question as a QFR on 5/17/2018. NO Additional action is required for DHS OLA.
13	CHS 04/26/2018	Rep. Rogers (R-AL)	S1 promised Rep. Rogers a breakdown as to what percentage of the cost associated with the border security system is actually the wall as opposed to technologies and personnel.	CBP/CFO			James "Jamie" Phillips Jon Foltz	AWAITING COMPONENT RESPONSE

14	CHS 04/26/2018	Rep. Rogers (R-AL)	S1 promised Rep. Rogers the cost of the "added expense" incurred by DHS as a result of sanctuary jurisdictions.	ICE			James "Jamie" Phillips Jon Foltz	(b)(5)
15	CHS 04/26/2018	Rep. Keating (D-MA)	Rep. Keating requested that S1 get back to him regarding H-2B caps.	OLA		5/7/2018	Uyen Dinh Jon Foltz	COMPLETED: OLA spoke with staff by phone to confirm receipt of correspondence. Office requests continued updates on H-2B decision. *NOTE: this get back may have been fulfilled by close of correspondence WF 1160999.
16	CHS 04/26/2018	Rep. Perry (R-PA)	S1 promised Rep. Perry information on the DHS pilot program to collect DNA from non-U.S. persons being detained under the United States laws.	ICE			James "Jamie" Phillips Jon Foltz	(b)(5)
17	CHS 04/26/2018	Rep. Perry (R-PA)	S1 promised Rep. Perry specifics related to the use and cost of ankle monitor bracelets and detention beds for ICE detainees.	ICE			James "Jamie" Phillips Jon Foltz	(b)(5)

18	CHS 04/26/2018	Rep. Perry (R-PA)	S1 promised Rep. Perry information related to DHS unity of effort initiatives, including internal benchmarks, "measurements to performance controls, internal controls to work on joint task force to eliminate inefficiencies", etc.	MGMT			Emily Hymowitz Jon Foltz	(b)(5)
19	CHS 04/26/2018	Rep. Payne (D-NJ)	S1 promised Rep. Payne she would personally look into an alleged report of "a TSO having an accident on herself because they weren't allowed to leave their post" if the Congressman's office would provide the name of that TSO.	TSA			Russ Vieco Jon Foltz	(b)(5)

20	CHS 04/26/2018	Rep. Watson Coleman (D- NJ)	Rep. Watson Coleman requested that S1 respond in writing as to how proposed cuts in the DHS budget (e.g., reductions or eliminations in security grants, VIPR teams, Law Enforcement Officers grants, exit lane staffing) are consistent with protecting the homeland.	MGMT (CFO)			Emily Hymowitz Jon Foltz	(b)(5)
21	CHS 04/26/2018	Rep. Watson Coleman (D- NJ)	Rep. Watson Coleman requested that S1 respond in writing to whether "there a written statement as to what our U.S. policy is on people who are fleeing very dangerous countries ... versus other types of people who are coming over because I get the sense that we're ... locking them together."	PLCY		5/17/2018	Emily Hymowitz Jon Foltz	COMPLETED: CHS provided question as a QFR on 5/17/2018. NO Additional action is required for DHS OLA.
22	CHS 04/26/2018	Rep. Watson Coleman (D- NJ)	Rep. Watson Coleman requested that S1 provide DHS's policy regarding the migrant caravan approaching the southern border.	CBP, ICE			James "Jamie" Phillips Jon Foltz	(b)(5)

23	CHS 04/26/2018	Rep. Watson Coleman (D- NJ)	Rep. Watson Coleman requested that S1 provide DHS's policy regarding the separation of minors from parents, and specifically DHS policy "dealing with the trauma that that [sic] must inflict upon both these children ... as well as their families".	CBP, ICE			James "Jamie" Phillips Jon Foltz	(b)(5)
24	CHS 04/26/2018	Rep. Watson Coleman (D- NJ)	Rep. Watson Coleman requested that S1 respond to a letter she sent requesting that DHS explain "the cost associated with protecting the Trump kids going around the world doing Trump business" (outstanding correspondence).	OLA/USSS			Eddie Gleason Uyen Dinh Jon Foltz	OUTSTANDING CORRESPONDENCE -- Workflow# 1159769; Update 6/7; Package is on hold per OGC.
25	CHS 04/26/2018	Rep. Watson Coleman (D- NJ)	Rep. Watson Coleman requested that S1 explain in writing how DHS justifies "putting additional resources down on the southern border, particularly in the form of our National Guard when all of the data that we have been receiving [shows] a significant diminishment [sic] of people coming across the border."	CBP			James "Jamie" Phillips Jon Foltz	(b)(5)
26	CHS 04/26/2018	Rep. Rice (D- NY)	S1 promised Rep. Rice that she would provide any relevant internal documents regarding the TPS designation for El Salvador.	USCIS			James "Jamie" Phillips Jon Foltz	(b)(5)
27	CHS 04/26/2018	Rep. Donovan (R- NY)	Rep. Donovan requested that S1 "please speak or write to us to what more we can do to enhance the security of this transportation mode [mass transit security]"; including how DHS is "supporting information sharing when it comes to threats to mass transit?"	TSA		5/16/2018	Russ Vieco Jon Foltz	COMPLETED: this question is addressed in Rep. Donovan's QFR #1. ESEC tasking.

28	CHS 04/26/2018	Rep. Donovan (R-NY)	Rep. Donovan requested that S1 provide answers in writing to the following three questions about the Securing the Cities program: 1) What changes is the department proposing to the program? 2) What outreach have you done to participating jurisdictions to solicit their feedback? 3) How are you addressing the concerns that the Department is receiving from securing the city's jurisdictions?	I&A		5/16/2018	Jeffrey Nusraty Jon Foltz	COMPLETED: this question is addressed in Rep. Donovan's QFR #2. ESEC tasking.
29	CHS 04/26/2018	Rep. Correa (D-CA)	Rep. Correa requested written information comparing what threats are coming through Canada versus what threats are coming through ports.	I&A			Jeffrey Nusraty Jon Foltz	(b)(5)
30	CHS 04/26/2018	Rep. Higgins (R-LA)	S1 promised Rep. Higgins demographic information for illegal immigrants who have received a summons for court, including, "Who they are, their age, their gender, their nation of origin, whether or not they have an anchor family, et cetera?"	USCIS		5/10/2018	James "Jamie" Phillips Jon Foltz	COMPLETED: Emailed LD with POC at DOJ OLA UPDATE 5/9 - Per USCIS, this is an issue for EOIR. USCIS checking to see if there is an appropriate Hill POC there.
31	CHS 04/26/2018	Rep. Demings (D-FL)	S1 promised Rep. Demings the number of "people have been killed as an act of violence at the southwest border during [S1's] tenure as secretary."	CBP		5/14/2018	James "Jamie" Phillips Jon Foltz	COMPLETED: OLA sent staff an updated spreadsheet of deaths, organized by type, which was pulled together by USBP for 12/17 - 5/18.
32	CHS 04/26/2018	Rep. Barragan (D-CA)	Rep. Barragan requested that S1 commit to and schedule a meeting with the Congressional Hispanic Caucus; S1 replied "I'd be happy to."	FO			Uyen Dinh Jon Foltz	(b)(5)

33	CHS 04/26/2018	Rep. Garrett (R-VA)	S1 committed to looking into Rep. Garrett's constituent issue (constituent attempting to adopt a girl from Senegal).	USCIS		5/11/2018	James "Jamie" Phillips Jon Foltz	<p>COMPLETED: May 18, 2018: USCIS and Department of State held a call with Rep. Garrett and two of his staffers. USCIS attendees were Aaron Calkins, Chief, Office of Legislative Affairs, Dan Renaud, Associate Director, Field Operations Directorate, Monterey Rowe, Associate Chief, Office of Legislative Affairs and Tim Kirsch, Office of Legislative Affairs. USCIS informed Rep Garrett that the parole in place request had been expedited and denied. USCIS explained that resolution could be gained by Ms. Boyle and the child departing the U.S. Once the child departs the U.S. USCIS would be able to complete the adjudication of the pending I-600. The Department of State then explained the I-604 process once, which is completed once USCIS sends them the approved I-600.</p> <p>May 18, 2018: Senators Mark Warner (D-VA) and Tim Kaine (D-VA) also submitted written requests for USCIS to expedite the parole in place application. USCIS staff responded these letters.</p> <p>May 16, 2018: USCIS received notice that Ms. Boyle hired a new attorney, Mr. Dan Berger, who has submitted a request to USCIS for Humanitarian Parole in Place (PIP) in order for Ms. Boyle's child to overcome the requirement of 8CFR 204.3(k)(3) without leaving the United States. Rep. Garrett and Rep. Mark Meadows (R-NC-11) submitted a letter to Director Cissna requesting USCIS to expedite the PIP request. USCIS stated the PIP request would be expedited. USCIS ultimately denied the PIP request as USCIS cannot grant parole to a person who has been inspected and admitted. Ms. Boyle's child was inspected and admitted when she entered the U.S. on her B-2 visa.</p> <p>May 11: USCIS connected with attorney of mother.</p> <p>May 4: USCIS provided OLA internal memo that was sent to S1</p>
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12	CHS 04/26/2018	Rep. Jackson Lee (D-TX)	Rep. Jackson Lee requested a written response to a question asking why DHS is not taking any new DACA applications "since the courts have indicated your ending of the program was incorrect".	USCIS	5/17/2018	James "Jamie" Phillips Jon Foltz	COMPLETED: CHS provided question as a QFR on 5/17/2018. NO Additional action is required for DHS OLA.
13	CHS 04/26/2018	Rep. Rogers (R-AL)	S1 promised Rep. Rogers a breakdown as to what percentage of the cost associated with the border security system is actually the wall as opposed to technologies and personnel.	CBP/CFO		James "Jamie" Phillips Jon Foltz	AWAITING COMPONENT RESPONSE

14	CHS 04/26/2018	Rep. Rogers (R-AL)	S1 promised Rep. Rogers the cost of the "added expense" incurred by DHS as a result of sanctuary jurisdictions.	ICE			James "Jamie" Phillips Jon Foltz	(b)(5)
15	CHS 04/26/2018	Rep. Keating (D-MA)	Rep. Keating requested that S1 get back to him regarding H-2B caps.	OLA		5/7/2018	Uyen Dinh Jon Foltz	COMPLETED: OLA spoke with staff by phone to confirm receipt of correspondence. Office requests continued updates on H-2B decision. *NOTE: this get back may have been fulfilled by close of correspondence WF 1160999.
16	CHS 04/26/2018	Rep. Perry (R-PA)	S1 promised Rep. Perry information on the DHS pilot program to collect DNA from non-U.S. persons being detained under the United States laws.	ICE			James "Jamie" Phillips Jon Foltz	(b)(5)
17	CHS 04/26/2018	Rep. Perry (R-PA)	S1 promised Rep. Perry specifics related to the use and cost of ankle monitor bracelets and detention beds for ICE detainees.	ICE			James "Jamie" Phillips Jon Foltz	(b)(5)

18	CHS 04/26/2018	Rep. Perry (R-PA)	S1 promised Rep. Perry information related to DHS unity of effort initiatives, including internal benchmarks, "measurements to performance controls, internal controls to work on joint task force to eliminate inefficiencies", etc.	MGMT		Emily Hymowitz Jon Foltz	(b)(5)
19	CHS 04/26/2018	Rep. Payne (D-NJ)	S1 promised Rep. Payne she would personally look into an alleged report of "a TSO having an accident on herself because they weren't allowed to leave their post" if the Congressman's office would provide the name of that TSO.	TSA		Russ Vieco Jon Foltz	(b)(5)
20	CHS 04/26/2018	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 respond in writing as to how proposed cuts in the DHS budget (e.g., reductions or eliminations in security grants, VIPR teams, Law Enforcement Officers grants, exit lane staffing) are consistent with protecting the homeland.	MGMT (CFO)		Emily Hymowitz Jon Foltz	AWAITING COMPONENT RESPONSE - with IOUSM for clearance as of 6/1.
21	CHS 04/26/2018	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 respond in writing to whether "there a written statement as to what our U.S. policy is on people who are fleeing very dangerous countries ... versus other types of people who are coming over because I get the sense that we're ... locking them together."	PLCY	5/17/2018	Emily Hymowitz Jon Foltz	COMPLETED: CHS provided question as a QFR on 5/17/2018. NO Additional action is required for DHS OLA.

22	CHS 04/26/2018	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 provide DHS's policy regarding the migrant caravan approaching the southern border.	CBP, ICE		James "Jamie" Phillips Jon Foltz	(b)(5)
23	CHS 04/26/2018	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 provide DHS's policy regarding the separation of minors from parents, and specifically DHS policy "dealing with the trauma that that [sic] must inflict upon both these children ... as well as their families".	CBP, ICE		James "Jamie" Phillips Jon Foltz	(b)(5)
24	CHS 04/26/2018	Rep. Watson Coleman (D-NJ)	Rep. Watson Coleman requested that S1 respond to a letter she sent requesting that DHS explain "the cost associated with protecting the Trump kids going around the world doing Trump business" (outstanding correspondence).	OLA/USSS		Eddie Gleason Uyen Dinh Jon Foltz	OUTSTANDING CORRESPONDENCE -- Workflow# 1159769; Update 6/7; Package is on hold per OGC.

25	CHS 04/26/2018	Rep. Watson Coleman (D- NJ)	Rep. Watson Coleman requested that S1 explain in writing how DHS justifies "putting additional resources down on the southern border, particularly in the form of our National Guard when all of the data that we have been receiving [shows] a significant diminishment [sic] of people coming across the border."	CBP			James "Jamie" Phillips Jon Foltz	(b)(5)
26	CHS 04/26/2018	Rep. Rice (D- NY)	S1 promised Rep. Rice that she would provide any relevant internal documents regarding the TPS designation for El Salvador.	USCIS			James "Jamie" Phillips Jon Foltz	(b)(5)
27	CHS 04/26/2018	Rep. Donovan (R- NY)	Rep. Donovan requested that S1 "please speak or write to us to what more we can do to enhance the security of this transportation mode [mass transit security]"; including how DHS is "supporting information sharing when it comes to threats to mass transit?"	TSA		5/16/2018	Russ Vieco Jon Foltz	COMPLETED: this question is addressed in Rep. Donovan's QFR #1. ESEC tasking.
28	CHS 04/26/2018	Rep. Donovan (R- NY)	Rep. Donovan requested that S1 provide answers in writing to the following three questions about the Securing the Cities program: 1) What changes is the department proposing to the program? 2) What outreach have you done to participating jurisdictions to solicit their feedback? 3) How are you addressing the concerns that the Department is receiving from securing the city's jurisdictions?	I&A		5/16/2018	Jeffrey Nusraty Jon Foltz	COMPLETED: this question is addressed in Rep. Donovan's QFR #2. ESEC tasking.

29	CHS 04/26/2018	Rep. Correa (D-CA)	Rep. Correa requested written information comparing what threats are coming through Canada versus what threats are coming through ports.	I&A			Jeffrey Nusraty Jon Foltz	(b)(5)
30	CHS 04/26/2018	Rep. Higgins (R-LA)	S1 promised Rep. Higgins demographic information for illegal immigrants who have received a summons for court, including, "Who they are, their age, their gender, their nation of origin, whether or not they have an anchor family, et cetera?"	USCIS		5/10/2018	James "Jamie" Phillips Jon Foltz	COMPLETED: Emailed LD with POC at DOJ OLA UPDATE 5/9 - Per USCIS, this is an issue for EOIR. USCIS checking to see if there is an appropriate Hill POC there.
31	CHS 04/26/2018	Rep. Demings (D-FL)	S1 promised Rep. Demings the number of "people have been killed as an act of violence at the southwest border during [S1's] tenure as secretary."	CBP		5/14/2018	James "Jamie" Phillips Jon Foltz	COMPLETED: OLA sent staff an updated spreadsheet of deaths, organized by type, which was pulled together by USBP for 12/17 - 5/18.
32	CHS 04/26/2018	Rep. Barragan (D-CA)	Rep. Barragan requested that S1 commit to and schedule a meeting with the Congressional Hispanic Caucus; S1 replied "I'd be happy to."	FO			Uyen Dinh Jon Foltz	(b)(5)
33	CHS 04/26/2018	Rep. Garrett (R-VA)	S1 committed to looking into Rep. Garrett's constituent issue (constituent attempting to adopt a girl from Senegal).	USCIS		5/11/2018	James "Jamie" Phillips Jon Foltz	COMPLETED: May 18, 2018: USCIS and Department of State held a call with Rep. Garrett and two of his staffers. USCIS attendees were Aaron Calkins, Chief, Office of Legislative Affairs, Dan Renaud, Associate Director, Field Operations Directorate, Monterey Rowe, Associate Chief, Office of Legislative Affairs and Tim Kirsch, Office of Legislative Affairs. USCIS informed Rep Garrett that the parole in place request had been expedited and denied. USCIS explained that resolution could be gained by Ms. Boyle and the child departing the U.S. Once the child departs the U.S. USCIS would be able to complete the adjudication of the pending I-600. The Department of State then explained the I-604 process once, which is completed once USCIS sends them the approved I-600. May 18, 2018: Senators Mark Warner (D-VA) and Tim Kaine (D-VA) also submitted written requests for USCIS to expedite the parole in place application. USCIS staff responded these letters. May 16, 2018: USCIS received notice that Ms. Boyle hired a new attorney, Mr. Dan Berger, who has submitted a request to USCI for Humanitarian Parole in Place (PIP) in order for Ms. Boyle's child to overcome the requirement of 8CFR 204.3(k)(3) without leaving the United States. Rep. Garrett and Rep. Mark Meadows (R-NC-11) submitted a letter to Director Cissna requesting USCIS to expedite the PIP request. USCIS stated the PIP request would be expedited. USCIS ultimately denied the PIP request as USCIS cannot grant parole to a person who has been inspected and admitted. Ms. Boyle's child was inspected and admitted when she entered the U.S. on her B-2 visa. May 11: USCIS connected with attorney of mother. May 4: USCIS provided OLA internal memo that was sent to S1

Significant Correspondence Report



1/16/2018

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Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

January 16, 2017

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20528

SCANNED/RECEIVED
BY ESEC/SEC
2018 JAN 16 PM 12:41

Dear Secretary Nielsen:

We, the undersigned organizations who serve or work on behalf of immigrants, refugees, and asylum seekers, write to express our profound opposition to the proposal currently under review to separate migrant families arriving or apprehended at our borders.¹ This proposed policy is fundamentally un-American, cruel, and breaches U.S. and international child welfare and refugee principles and laws. Family separation will only further traumatize those already fleeing harm, and will inhibit their ability to access a legal process to which they have a right. Moreover, family separation will not deter future others from seeking protection. Instead, it will only render them even more vulnerable on an already dangerous journey. We urge you to reverse course on any policy proposal that would seek to tear apart families or otherwise inflict trauma and harm.

Family unity is recognized as a fundamental human right, enshrined in international law.² Moreover, separating children from their parents is cruel, traumatizing all those involved,³ and exposes children to toxic stress that can have lifelong consequences.⁴ The American Academy of Pediatrics expressed serious concern over a similar proposal by your predecessor, calling the plan “harsh and counterproductive” and stating that authorities should “exercise caution to ensure that the emotional and physical stress children experience as they seek refuge in the United States is not exacerbated by the additional trauma of being separated from their siblings, parents or other relatives and caregivers.”⁵

As illustrated by a complaint recently filed with the Department of Homeland Security’s (DHS) oversight components, as well as recent media reports, separating family members at the border, including in numerous instances where a parent is subsequently referred for criminal prosecution, presents additional, unnecessary obstacles to meaningfully accessing the legal process. The practice of separating family

¹ “Trump Administration Considers Separating Families to Combat Illegal Immigration,” *New York Times*, December 21, 2017. https://www.nytimes.com/2017/12/21/us/trump-immigrant-families-separate.html?_r=0; “To curb illegal border crossings, Trump administration weighs new measures targeting families,” *Washington Post*, December 21, 2017. https://www.washingtonpost.com/world/national-security/to-curb-illegal-border-crossings-trump-administration-weighs-new-measures-targeting-families/2017/12/21/19300dc2-e66c-11e7-9ec2-518810e7d44d_story.html?utm_term=.b453d1a71549

² Family unity as a protected right can be found in: Final Act of the 1951 U. N. Conference of Plenipotentiaries on the Status Of Refugees and Stateless Persons, Recommendation B.; U.N. International Covenant on Civil and Political Rights, art. 23, (March 23, 1976); U.N. Convention on the Rights of the Child, art. 9, (September 2, 1990); General Comment 6 to the Convention, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin” (CRC 2005).

³ For further discussion, see: Women’s Refugee Commission, Kids in Need of Defense, and Lutheran Immigration and Refugee Service: *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families*. March 2017. Pp. 12-13. <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values>. See also: American Immigration Council. *Divided by Detention: Asylum-Seeking Families’ Experiences of Separation*. August 2016. <https://www.americanimmigrationcouncil.org/research/divided-by-detention-asylum-seeking-families-experience-of-separation>

⁴ Artiga, S. and Ubri, P, Kaiser Family Foundation, *Living in an Immigrant Family in America: How Fear and Toxic Stress are Affecting Daily Life, Well-Being, & Health*, December 13, 2017, available at: <https://www.kff.org/report-section/living-in-an-immigrant-family-in-america-issue-brief/>.

⁵ See “AAP Statement Opposing Separation of Mothers and Children at the Border.” March 4, 2017. Available at: <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx>. For further discussion and recommendations on the treatment of immigrant children, see also: Linton JM, Griffin M, Shapiro AJ, AAP COUNCIL ON COMMUNITY PEDIATRICS. Detention of Immigrant Children. *Pediatrics*. March 2017. Available at: <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>

members at the border seriously impacts the ability to present their case for legal protection.⁶ Parents or children may be uncomfortable or simply unable to articulate the details of an asylum claim that is in fact linked to the family member from whom they have been separated. Separation could also result in only one family member retaining important documents that help the family to establish identity or provide much needed evidence to support their claim. Currently, DHS components and the Office of Refugee Resettlement (ORR) lack the mechanisms to ensure not only that communication between separated family members is coordinated, but also to ensure that family members who have been separated can pursue their case together if they wish to do so. Cases where one family member is referred for criminal prosecution for illegal entry or illegal re-entry present not only additional hurdles to family reunification, but the DHS Office of Inspector General (OIG) has already identified the prosecution of asylum seekers as a practice that may violate U.S. obligations under international law.⁷

In addition, rendering thousands of children unaccompanied and sending them to ORR custody will unnecessarily overwhelm the system and cause a crisis in care. Children may ultimately languish in CBP custody for significant periods of time as they await transfer to ORR shelters that will now find themselves with a sudden and significant increase in children, including toddlers and babies, requiring care. In other words, family separation would not only traumatize families and create obstacles to protection, it will come at great financial cost and create chaos while overburdening current government systems.

Many of the families who are currently turning themselves in to U.S. border officials or presenting themselves at ports of entry are doing so because they feel they have no other choice for survival. Similar policies of detaining asylum-seeking families to deter their migration have already been found by a U.S. court to violate U.S. law.⁸ Comprehensive research of DHS data has proven that even U.S. policies of deterrence will have little impact on migration from Northern Triangle countries, and in fact, spikes in regional violence have a causal effect in driving migration.⁹ Indeed, evidence has shown that children and families fleeing Northern Triangle countries continue to seek asylum in other surrounding countries.¹⁰

Secretary Nielsen, we implore you to respect the principles of family unity and liberty in our immigration and border enforcement policies. Families should not be separated nor needlessly locked up in costly and

⁶ American Immigration Council, Women's Refugee Commission, et al. "The Separation of Family Members Apprehended by or Found Inadmissible while in U.S. Customs and Border Protection (CBP) Custody at the U.S.-Mexico Border." Complaint filed with DHS Office of Civil Rights and Civil Liberties (CRCL) and Office of Inspector General (OIG), December 11, 2017. Available at: <https://www.womensrefugeecommission.org/images/zdocs/Family-Separation-Complaint-FINAL-PUBLIC-12-11-17.pdf>. See also: "Trump moves to end 'catch and release', prosecuting parents and removing children who cross border," *Houston Chronicle*, November 25, 2017. Available at: <http://www.houstonchronicle.com/news/houston-texas/houston/article/Trump-moves-to-end-catch-and-release-12383666.php>.

⁷ The 1951 Refugee Convention states: "The Contracting States shall not impose penalties, on account of their illegal entry or presence, on refugees who, coming directly from a territory where their life or freedom was threatened..." See: *Streamline: Measuring its Effect on Illegal Border Crossing*, DHS Office of the Inspector General, May 2015, pp. 16-17, available at: https://www.oig.dhs.gov/assets/Mgmt/2015/OIG_15-95_May15.pdf. See also: *The Rise in Criminal Prosecutions of Asylum Seekers*, Human Rights First, July 2017, available at: <http://www.humanrightsfirst.org/sites/default/files/hrf-criminal-prosecution-of-asylum-seekers.pdf>.

⁸ See *R.I.L.R. v Johnson*. Information available at: <https://www.aclu.org/cases/rilr-v-johnson>

⁹ See Violence, Development, and Migration Waves: Evidence from Central American Child Migrant Apprehensions, CGD Working Paper 459. Washington, DC: Center for Global Development, available at: <https://www.cgdev.org/publication/violence-development-and-migration-waves-evidence-central-american-child-migrant> (Finding that in almost 180,000 cases of unaccompanied child migration from Northern Triangle from 2011 through 2016, U.S. policies, environmental and economic factors provided no reliable indicator for a child's migration. Instead they concluded violence was the single biggest indicator and that for every ten murders in a region, six additional children will migrate).

¹⁰ See "They Are Refugees: An Increasing Number of People Are Fleeing Violence in the Northern Triangle," *Center for American Progress*, February 24, 2016. Available at: <https://www.americanprogress.org/issues/immigration/news/2016/02/24/131645/they-are-refugees-an-increasing-number-of-people-are-fleeing-violence-in-the-northern-triangle/>

inhumane family or adult detention facilities. The Department has long had alternatives available to both practices, including the recently terminated Family Case Management Program (FCMP), to mitigate flight risk and support compliance with immigration requirements and court proceedings.¹¹ Respecting the fundamental right to family unity and the right to seek safety without fearing punishment through detention or separation from one's children, parents, or other family members is not at odds with our laws and values but in fact a central component of those laws and values that this Administration has committed to uphold.

If you have any questions, please do not hesitate to reach out to (b)(6) at the Women's Refugee Commission at (b)(6) or (b)(6) at the American Immigration Council at (b)(6) for more information.

Sincerely,

National Organizations

African American Ministers In Action
 America's Voice
 American Civil Liberties Union
 American Friends Service Committee (AFSC)
 American Immigration Lawyers Association
 American-Arab Anti-Discrimination Committee (ADC)
 Americans for Immigrant Justice
 Amnesty International USA
 Appleseed
 Asian Pacific Institute on Gender-Based Violence
 ASISTA
 Asylum Seeker Advocacy Project (ASAP) at the Urban Justice Center
 Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
 Catholic Legal Immigration Network, Inc.
 Center for American Progress
 Center for Constitutional Rights (CCR)
 Center for Gender & Refugee Studies
 Center for Justice and International Law (CEJIL)
 Center on Immigration and Child Welfare
 Center on Immigration at Cabrini University
 Church World Service
 Congregation of Our Lady of Charity of the Good Shepherd, US Provinces

¹¹ "ICE Shuts Down Family Case Management Program," *The Atlantic*, June 9, 2017, available at: <https://www.theatlantic.com/news/archive/2017/06/ice-shuts-down-program-for-asylum-seekers/529887/>. See also: American Immigration Lawyers Association, Lutheran Immigration and Refugee Service, National Immigrant Justice Center, and Women's Refugee Commission. *The Real Alternatives to Family Detention*. Available at: <http://www.aila.org/infonet/the-real-alternatives-to-detention>

CREDO
Detention Watch Network
Farmworker Justice
First Focus
Franciscan Action Network
Free Migration Project
Futures Without Violence
Global Campaign to End Immigration Detention of Children
Grassroots Leadership
HIAS
Human Rights First
Human Rights Watch
Immigrant Justice Corps
Immigrant Legal Resource Center
International Detention Coalition (IDC)
International Rescue Committee
Jobs With Justice
Kids in Need of Defense
Latin America Working Group
Lutheran Immigration and Refugee Service
Maryknoll Office for Global Concerns
MomsRising
National Advocacy Center of the Sisters of the Good Shepherd
National Association of Social Workers (NASW)
National Center for Youth Law
National Council of Jewish Women
National Employment Law Project
National Immigrant Justice Center
National Immigration Law Center
National Network to End Domestic Violence
National Resource Center on Domestic Violence
Oxfam America
Partnership for America's Children
People For the American Way
PICO National Network
Save the Children
Southeast Asia Resource Action Center (SEARAC)

Southern Border Communities Coalition
Southern Poverty Law Center
Tahirih Justice Center
The Advocates for Human Rights
The Center for Victims of Torture
The Children's Partnership
The United Methodist Church - General Board of Church and Society
U.S. Committee for Refugees and Immigrants
Unitarian Universalist Service Committee
Voto Latino
Washington Office on Latin America
We Belong Together
Women's Refugee Commission
Young Center for Immigrant Children's Rights

State/Local Organizations

African Services Committee
Al Otro Lado
Aldea - The People's Justice Center
American Gateways
Arizona Chapter, American Immigration Lawyers Association
Atlas: DIY
BorderLinks
California Immigrant Policy Center
Capital Area Immigrants' Rights Coalition
Casa Mariposa Detention Visitation Program
Catholic Charities of Southern New Mexico
Center for the Human Rights of Children, Loyola University Chicago
Central American Resource Center
Coalition to Abolish Slavery & Trafficking
Colibrí Center for Human Rights
Empowerment Congress of Doña Ana County
End Streamline Coalition
Fuerza del Valle
Healthy House Within a MATCH Organization

Her Justice
Hope Border Institute
Human Rights Initiative of North Texas
Immigrant Legal Advocacy Project
Interfaith Welcome Coalition
Keep Tucson Together
Kino Border Initiative
La Union del Pueblo Entero
Labor Justice Committee
Las Cruces Christian Coalitian
Las Cruces CIVIC
Law Foundation of Silicon Valley
Migrant Rights Collective
NM CAFe
Northern Illinois Justice for Our Neighbors
Pangea Legal Services
Pantsuit Austin
Pantsuit Republic
Pennsylvania Council of Churches
Pennsylvania Immigration and Citizenship Coalition
Pennsylvania Immigration Resource Center
Pima County Interfaith Civic Education Organization (PCICEO)
Public Counsel
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Roman Catholic Diocese of Las Cruces
Shalom Mennonite Fellowship
Shut Down Berks Coalition
Southside Worker Center
Southwest Environmental Center
St. Mark's Presbyterian Church
Su Casa Catholic Worker
The Florence Immigrant and Refugee Rights Project
The Resurrection Project
Tucson Samaritans

Tulsa Immigrant Resource Network

Unitarian Universalist Legislative Advocacy Network

USC International Human Rights Clinic

YWCA Greater Austin

via electronic mail

January 16, 2018

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, NW
Washington, DC 20016

SCANNED/RECEIVED
BY EXEC SEC
2018 JAN 16 PM 1:21

Urgent Appeal from Experts in Child Welfare, Juvenile Justice and Child Development to Halt Any Plans to Separate Children from Parents at the Border

Dear Secretary Nielsen:

We, the below-signed organizations, have well-recognized expertise in the fields of child welfare, juvenile justice and child health, development and safety. We understand that your agency is considering plans to separate children from their parents when they arrive at or are found near the U.S. border. We fear these actions will have significant and long-lasting consequences for the safety, health, development, and well-being of children, and urgently request that the Administration reverse course on any policies that would separate families.

Countless reports have documented that these families are fleeing persecution and violence in their countries, and come here seeking protection. While many come from Central American countries, the parents and children arrive at our border from all over the world, including countries in Africa, the Caribbean, South America, Asia, the Middle East and Europe. According to recent reports, the proposed plan would require that parents be placed in adult immigration detention centers and/or summarily deported, while their children would be transferred to the custody of the Department of Health and Human Services in facilities across the country—as far away as Illinois, Washington, New York, Florida, and Michigan. HHS would bear the responsibility of caring for the traumatized children and finding suitable, alternative caregivers. These children could remain in government care for months or more than a year, during which time the continued separation from their parents would compound their trauma and the time it would take them to recover and return to a trajectory of good health and normal development. Nor would it make any sense to require those children to participate in a formal legal proceeding about their immigration case while separated from the parent who brought them here, who may have critical information—or the only information—about the child's claim for protection.

There is overwhelming evidence that children need to be cared for by their parents to be safe and healthy, to grow and develop.¹ Likewise, there is ample evidence that separating children from their mothers or fathers leads to serious, negative consequences to children's health and development.² Forced separation disrupts the parent-child relationship and puts children at

¹ See, e.g., American Psychological Assn, *Parents and Caregivers are Essential to Children's Healthy Development*, available at <http://www.apa.org/pi/families/resources/parents-caregivers.aspx>.

² See, e.g., (b)(6) "Easy Come, Easy Go: The Plight of Children Who Spend Less than 30 Days in Foster Care," 19 U. Pa. J. L. Soc. Change 207 (2017) (identifying harms to

increased risk for both physical and mental illness. Adverse childhood experiences—including the incarceration of a family member—are well-recognized precursors of negative health outcomes later in life.³ And the psychological distress, anxiety, and depression associated with separation from a parent would follow the children well after the immediate period of separation—even after eventual reunification with a parent or other family. We are deeply concerned that the proposed plan would formalize such harm by taking children from their parents as a matter of policy.

Family unity is a foundational principle of child welfare law. In order to grow and develop, children need to remain in the care of their parents where they are loved, nurtured and feel safe. Thus parents' rights to the care and custody of their children are afforded particularly strong protection under the U.S. Constitution.⁴ While parent-child relationships are generally the province of state law, federal law also recognizes the principle of family unity by providing strong incentives for states to keep children with their parents and to provide services to families to prevent separation and maintain family unity.⁵ The proposed changes to your agency's policies would eviscerate that principle.

For all of these reasons, we urge you to abandon any plans to systematically separate children from their families absent evidence that a specific parent posed a threat to the safety and well-being of his or her child, as required by the laws of all 50 states.

Sincerely,

National Organizations

Alliance for Strong Families and Communities

American Academy of Pediatrics

Campaign for Youth Justice

Casa de Esperanza: National Latin@ Network for Healthy Families and Communities

Center for Children's Law and Policy

Center for Law and Social Policy (CLASP)

Child Welfare League of America

Children's Defense Fund

children arising from even short-term separation from a parent's custody as a result of state action); and (b)(6) "The Distress of Citizen-Children with Detained and Deported Parents," *J. Child & Fam. Studies*, 2015; 24(11):3213-3223 (the arrest and separation of parents "serve[s] only to complete the trauma, and the certain detrimental impact on the children's mental health.").

³ See, e.g., (b)(6) Health-related Outcomes of Adverse Childhood Experiences in Texas, 2002, *Prev Chronic Dis.*, 2010; 7(3):A52, available at http://www.cdc.gov/pcd/issues/2010/may/09_0158.htm.

⁴ See, e.g., *Santosky v. Kramer*, 455 U.S. 745, 753 (1982) (a parent's right to the care and custody of her child is a fundamental liberty interest).

⁵ See U.S. Dep't of Health and Human Services, Children's Bureau, Child Welfare Information Gateway, *Reasonable Efforts to Preserve or Reunify Families and Achieve Permanency for Children*, (March 2016), available at <https://www.childwelfare.gov/pubPDFs/reunify.pdf> ("Federal law has long required State agencies to demonstrate that reasonable efforts have been made to provide assistance and services to prevent the removal of a child from his or her home.").

Coalition for Juvenile Justice
Dorothy Day Catholic Worker
Every Mother is a Working Mother Network
Family Focused Treatment Association
Field Center for Children's Policy, Practice & Research
First Focus
Foster Care Alumni of America
Jim Casey Youth Opportunities Initiative
Justice Policy Institute
Juvenile Law Center
National Alliance of Children's Trust Funds
National Association of Counsel for Children
National Center for Housing and Child Welfare
National Center for Parent Leadership, Advocacy, and Community Empowerment
National Center on Adoption and Permanency
National Crittenton Foundation
National Domestic Violence Hotline
National Juvenile Defender Center
National Juvenile Justice Network
Partnership for America's Children
Robert F Kennedy Children's Action Corps
School Social Work Association of America
UNICEF USA
W. Haywood Burns Institute
Youth Advocate Programs (YAP)
Youth Law Center

State and Local Organizations

ACTIONN (NV)
Advocates for Children and Youth (MD)
AIDS Foundation of Chicago (IL)
Alaska Children's Trust
All Faiths Children's Advocacy Center (NM)
Allendale Association (IL)
Alliance for Childhood Education (KS, MO)
Brooklyn Defender Services (NY)
California Department of Social Services
Center for Children's Advocacy, Inc. (CT)
Center for Family Representation (NY)
Center on Halsted (IL)
Chicago Children's Advocacy Center (IL)
Child and Family Policy Center (IA)
Child Welfare Organizing Project (NY)
Children's Action Alliance (AZ)
Children's Advocacy Alliance (NV)
Children's Law Center (DC)

Children's Service Society (UT)
 CHRIS 180 (GA)
 Citizens' Committee for Children of New York, Inc. (NY)
 Citizens for Juvenile Justice (MA)
 Coalition for Asian American Children and Families (NY)
 Community Behavioral Healthcare Association of Illinois (IL)
 Community Chest, Inc (NV)
 Connecticut Alliance of Foster and Adoptive Families, Inc
 Connecticut Association for Human Services
 Connecticut Voices for Children
 Council of Family and Child Caring Agencies (NY)
 County Welfare Directors Association of California (CA)
 Duane Dean Behavioral Health Services (IL)
 EverThrive Illinois
 Family to Family Connection, ISD 13 (NV)
 Forestdale, Inc. (NY)
 Foster Adopt Connect (MO, KS)
 Foster Care Alumni of America-Illinois Chapter
 Foster Change (NV)
 Foster Kinship (NV)
 Heartland for Children (FL)
 Heartland Human Care Services (IL, MI)
 Hillsides (CA)
 Hispanic Caucus (NV)
 Illinois Collaboration on Youth
 Illinois Partners for Human Service
 Instituto del Progreso Latino (IL)
 Interfaith Movement for Human Integrity (CA)
 JCCA (NY)
 Juvenile Protective Association (IL)
 Juvenile Restorative Justice, Inc. (KY)
 Kaleidoscope (IL)
 Kansas Action for Children
 Kansas Appleseed
 Kansas Association for the Education of Young Children
 Kansas Head Start Association
 Kids Forward (WI)
 Kids in Common, a program of Planned Parenthood Mar Monte (CA)
 Loyola University Chicago Civitas Childlaw Center
 Make it Work Nevada
 Maryville Academy (IL)
 Massachusetts Adoption Resource Exchange (MA)
 MercyFirst (NY)
 Methodist Children's Home Society (MI)
 Metropolitan Family Services (IL)

Montgomery County Department of Health and Human Services (MD)
National Association of Social Workers (NASW) CT Chapter
National Association of Social Workers (NASW) IL Chapter
National Association of Social Workers (NASW) KY Chapter
National Association of Social Workers (NASW) NJ Chapter
National Association of Social Workers (NASW) NM Chapter
National Association of Social Workers (NASW) TX Chapter
New Jersey Parents Caucus, Inc
New Mexico Voices for Children
New York City Administration for Children's Services
One Hope United (IL, FL, MO, WI)
OneJustice (CA)
Pride Inc., Pride Manchester, Inc., Pride Wilton, Inc. (ND)
PromiseShip (NE)
Rhode Island Coalition for Children and Families
Rhode Island KIDS COUNT
Rincon Family Services (IL)
Schuyler Center for Analysis & Advocacy (NY)
SPAN Parent Advocacy Network (NJ)
Starfish Family Homes (IL)
Sunny Hills Services (CA)
Texans Care for Children
The Adoption Exchange (CO, NV, UT)
The Children's Home Society of New Jersey
The Children's Partnership (CA)
The Foster and Adoption Coalition of Nevada
The Gay and Lesbian Community Center of Southern Nevada
Treatment Alternatives for Safe Communities (IL)
United Community Services of Johnson County (KS)
Voices for Children of San Antonio (TX)
Voices for Georgia's Children
Voices for Illinois Children
VOICES Youth Centers (CA)
Wayfinder Family Services (CA)
Wisconsin Association of Family & Children's Agencies (WI)
Youth Employment Coalition (IL)
Youth Service, Inc. (PA)
Youth, Rights and Justice (OR)

Significant Correspondence Report



3/23/2017

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(b)(5)

of the Freedom of Information and Privacy Act

SCANNED/RECEIVED
BY ESEC SEC

March 22, 2017

2017 MAR 23 AM 10: 01

The Honorable John F. Kelly
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue NW
Washington, DC 20016

Dear Secretary Kelly:

We, the undersigned 184 organizations who serve or work on behalf of immigrants, refugees, asylum seekers, and children, write to express our profound opposition to your recent proposal to separate migrant families arriving at our borders. In addition to this proposed policy being fundamentally un-American and cruel, it is also profoundly misguided. Family separation will only further traumatize those already fleeing harm, and will inhibit their ability to access a legal process to which they have a right under U.S. and international law. Moreover, this policy will not prevent mothers from fleeing harm to bring their children to safety and may in fact make them even more vulnerable on an already dangerous journey. We urge you to reverse course on any policy proposal that would seek to tear apart families or otherwise inflict trauma and harm.

Family unity is recognized as a fundamental human right, enshrined in international law.¹ Moreover, separating children from their parents is cruel, traumatizing all those involved.² The American Academy of Pediatrics, in a recent statement, expressed serious concern over the proposal to separate migrant parents from their children, calling the plan “harsh and counterproductive” and stating that authorities should “exercise caution to ensure that the emotional and physical stress children experience as they seek refuge in the United States is not exacerbated by the additional trauma of being separated from their siblings, parents or other relatives and caregivers.”³

Separating family members at the border would seriously impact their ability to present their case for asylum or other legal protection. Parents or children may be uncomfortable or simply unable to articulate the details of an asylum claim that is in fact linked to the family member from whom they have been separated. This is especially concerning given the recent shifts to the U.S. Citizenship and Immigration Services training manuals for conducting credible and reasonable fear interviews. These interviews, meant to serve as basic screening interviews to

¹ Family unity as a protected right can be found in: Final Act of the 1951 U. N. Conference of Plenipotentiaries on the Status Of Refugees and Stateless Persons, Recommendation B.; U.N. International Covenant on Civil and Political Rights, art. 23, (March 23, 1976); U.N. Convention on the Rights of the Child, art. 9, (September 2, 1990); General Comment 6 to the Convention, “Treatment of Unaccompanied and Separated Children Outside their Country of Origin” (CRC 2005).

² For further discussion, see: Women’s Refugee Commission, Kids in Need of Defense, and Lutheran Immigration and Refugee Service: *Betraying Family Values: How Immigration Policy at the United States Border is Separating Families*. March 2017. Pp. 12-13. <https://www.womensrefugeecommission.org/rights/gbv/resources/1450-betraying-family-values>. See also: American Immigration Council. *Divided by Detention: Asylum-Seeking Families’ Experiences of Separation*. August 2016. <https://www.americanimmigrationcouncil.org/research/divided-by-detention-asylum-seeking-families-experience-of-separation>

³ See “AAP Statement Opposing Separation of Mothers and Children at the Border.” March 4, 2017. Available at: <https://www.aap.org/en-us/about-the-aap/aap-press-room/Pages/immigrantmotherschildrenseparation.aspx>. For further discussion and recommendations on the treatment of immigrant children, see also (b)(6) AAP COUNCIL ON COMMUNITY PEDIATRICS. Detention of Immigrant Children. *Pediatrics*. March 2017. Available at: <http://pediatrics.aappublications.org/content/pediatrics/early/2017/03/09/peds.2017-0483.full.pdf>

ensure the United States does not erroneously deport an individual to a country where they will face harm and persecution, are already full of obstacles for asylum seekers who undergo these interviews in detention and after a long and harrowing journey. In addition to not being able to fully articulate an asylum claim that may be linked to the circumstances of a separated family member, separation could also result in only one family member retaining important documents that help the family to establish identity or provide much needed evidence to support their claim. Currently, DHS components and the Office of Refugee Resettlement lack the mechanisms to ensure not only that communication between separated family members is coordinated, but also to ensure that family members who have been separated can pursue their case together if they wish to do so.

In addition, rendering thousands of children unaccompanied and sending them to ORR custody will overwhelm the system and cause a crisis in care. A recent analysis showed that the costs to ORR alone of potential family separation would be over \$300 million annually, not including the additional costs DHS will face as well.⁴ And although ORR currently cares for thousands of unaccompanied children, those traveling together with families may be more likely to be very small children, including infants and toddlers, who will require enormous additional resources and capacity to ensure appropriate care. In other words, family separation would not only traumatize families and create obstacles to protection, it will come at great financial cost and create chaos while overburdening current government systems.

The stated purpose for your proposal, to deter families from making the journey, neither justifies such an inherently cruel measure nor can it be met. The families who are currently turning themselves in to U.S. border officials or presenting themselves at ports of entry are doing so because they feel they have no other choice for survival. Deterrence efforts will have little effect when someone is fleeing harm and feels that they have no other option but to seek protection elsewhere. When the National Immigrant Justice Center, a legal service provider in Chicago that represents hundreds of asylum seekers, talked to some of their clients about whether the prospect of separation from their children would have deterred them, several underscored this point. In the words of one: "Because of the circumstances, even if I knew [we might be separated], I would make the journey to the United States and I would have begged and pleaded not to be separated. Both options are terrible." Another said: "The only thing that I thought about was my children. I did not want to leave my country, but we had to because of the security for me and my children. My son was two and a half and my daughter was about fourteen. I knew she was afraid and I just tried to tell her we would be safe."

Moreover, rather than protect those seeking safety at the southern border from the "terribly dangerous networks" you describe, separating families may actually exacerbate the vulnerability to smugglers and traffickers they already face. Those same families who feel they have no other choice but to flee may now try any alternative available to the perceived risk of family separation, meaning they may well be driven only further into the hands of unscrupulous smugglers and traffickers.

⁴ Center for American Progress and Kids in Need of Defense. "Separating Mothers from their Children at the Border is Wrong and Costly." March 2017. <https://www.americanprogress.org/issues/immigration/news/2017/03/13/427970/separating-mothers-children-border-wrong-costly/>

To threaten families who are fleeing harm and legally seeking protection at our borders with family separation in order to deter their migration is cruel and unjust. Similar policies of detaining asylum-seeking families to deter their migration have already been found by a U.S. court to violate U.S. law.⁵ DHS must respect the principles of family unity and liberty in its immigration and border enforcement policies. Families should not be separated nor needlessly locked up in costly and inhumane family or adult detention facilities. The Department has long had alternatives available to both practices, including to mitigate flight risk and support compliance with immigration requirements and court proceedings.⁶

Secretary Kelly, we urge you and the Administration not to implement a policy of separating migrant families. Respecting the fundamental right to family unity and the right to seek safety without fearing punishment through detention or separation from one's children, parents, or other family members is not at odds with our laws and values but in fact a central component of those laws and values that this Administration has committed to uphold.

If you have any questions, please do not hesitate to reach out to (b)(6) at the Women's Refugee Commission at (b)(6) for more information.

Sincerely,

National Organizations

Alianza Americas
 Alliance for Citizenship
 Alliance to End Slavery & Trafficking
 American Academy of Pediatrics
 American Civil Liberties Union (ACLU)
 American Federation of Teachers
 American Friends service committee
 American Immigration Council
 American Immigration Lawyers Association
 American Psychological Association, Division 24, Executive Committee
 American-Arab Anti-Discrimination Committee
 Americans for Immigrant Justice
 AMIGA Lawyers
 Amnesty International USA
 Asian Pacific Institute on Gender-Based Violence
 ASISTA
 Asylum Seeker Advocacy Project (ASAP) at the Urban Justice Center
 Casa de Esperanza: National Latin@ Network for Healthy Families and Communities
 Catholic Legal Immigration Network, Inc.
 Center for Community Change

⁵ See *R.I.L.R. v Johnson*. Information available at: <https://www.aclu.org/cases/rilr-v-johnson>

⁶ American Immigration Lawyers Association, Lutheran Immigration and Refugee Service, National Immigrant Justice Center, and Women's Refugee Commission. *The Real Alternatives to Family Detention*. <https://www.womensrefugeecommission.org/images/zdocs/Real-Alternatives-to-Family-Detention.pdf>

Center for Constitutional Rights
Center for Gender & Refugee Studies
Center for Law and Social Policy
Child Welfare League of America
Church World Service
Columban Center for Advocacy and Outreach
Committee in Solidarity with the People of El Salvador (CISPES)
Community Initiatives for Visiting Immigrants in Confinement (CIVIC)
Council on American-Islamic Relations
Detention Watch Network
Dominicans Mission San Jose
ECPAT-USA
Evangelical Lutheran Church in America, Advocacy Office
Fair Immigration Reform Movement
First Focus
Franciscan Action Network
Friends Committee on National Legislation
Futures Without Violence
Global Campaign to End Child Detention
Grassroots Leadership
HIAS
Human Rights Campaign
Human Rights First
Human Rights Watch
Immigrant Legal Resource Center
Interfaith Worker Justice
International Rescue Committee
Justice Strategies
Kids in Need of Defense
Latin America Working Group (LAWG)
Latino Commission on AIDS
LatinoJustice PRLDEF
Leadership Conference of Women Religious
League of United Latin American Citizens
Lutheran Immigration and Refugee Service
Mennonite Central Committee U.S. Washington Office
MomsRising/MamásConPoder
NASW-NM
National Asian Pacific American Women's Forum
National Center for Youth Law
National Council of Jewish Women
National Council of La Raza
National Immigrant Justice Center
National Immigration Law Center
National Justice for Our Neighbors
National Latina Institute for Reproductive Health

National Latina/o Psychological Association
National Network for Immigrant and Refugee Rights
National Partnership for New Americans (NPNA)
NETWORK Lobby for Catholic Social Justice
Oxfam America
Pax Christi USA
Redwood Justice Fund
Refugee and Immigrant Center for Education and Legal Services (RAICES)
Save the Children
Scalabrini International Migration Network
Sisters of Mercy South Central Community
Sojourners
Southeast Asia Resource Action Center (SEARAC)
Southern Border Communities Coalition
Southern Poverty Law Center
Tahirih Justice Center
Teach Plus
The Advocates for Human Rights
U.S. Committee for Refugees and Immigrants
UC Davis Immigration Law Clinic
Unitarian Universalist Service Committee
Washington Office on Latin America (WOLA)
We Belong Together
Women's Refugee Commission
Young Center for Immigrant Children's Rights

State/Local Organizations

Abused Woman's Aid in Crisis
African Services Committee
Alliance for Children's Rights
American Gateways
Apoyo Legal Migrante Asociofo (ALMA)
Artemis Justice Center
Asylum Seeker Assistance Project
Atlas: DIY
Beckner Immigration Law PLLC
Boston College Center for Human Rights and International Justice
Center for the Human Rights of Children, Loyola University Chicago
Central American Resource Center (DC)
Central American Resource Center Los Angeles
Chelsea Collaborative
Church Council of Greater Seattle
Coalition for Humane Immigrant Rights (CHIRLA)
Community Legal Services in East Palo Alto
Community, Faith and Labor Coalition

Connecticut Legal Services
DC-Maryland Justice for Our Neighbors
Dominican Sisters of San Rafael
Dorcas International Insitute of Rhode Island
End Domestic Abuse WI
Finex House Legal Advocacy Program
Florida Immigrant Coalition
Florida Legal Services, Inc.
Fordham Law School Feerick Center for Social Justice
Friends of Broward Detainees
Greater New York Labor Religion Coalition
Her Justice
Hillsides
Human Rights Initiative of North Texas
Immigrant Defenders Law Center
Immigrant Legal Advocacy Project
Immigration Center for Women and Children (ICWC)
Immigration Taskforce, SWPA Synod, Evangelical Lutheran Church in America
Indianapolis Worker Justice Center
Iowa Coalition Against Domestic Violence
Just Neighbors
Justice Center of South East MA
Justice for our Neighbors Houston
Justice For Our Neighbors Southeastern Michigan
Justice for Our Neighbors West Michigan
Kino Border Initiative
La Plata County Thrive! Living Wage Coalition
Latin American Coalition
Law Office of Monica Eav Glicken PC
Lawyers Committee for Civil Rights of the San Francisco Bay Area
Los Angeles Center for Law and Justice
Mass Interfaith Worker Justice
Massachusetts Immigrant and Refugee Advocacy Coalition
MetroWest Legal Services
Miami Workers Center
MICA Project
Migrant and Immigrant Community Action Project
My Sisters' Place
National Farm Worker Ministry
Nationalities Service Center
Nebraska Appleseed Center for Law in the Public Interest
Northern Illinois Justice for Our Neighbors
Northwest Immigrant Rights Project
Palm Beach County Coalition for Immigrant Rights
Perez-Jenkins Law LLC
Public Counsel

Puentes Advocacy Counseling & Education
Reformed Church of Highland Park
Rio Grande Valley Equal Voice Network
Rocky Mountain Immigrant Advocacy Network
Safe Horizon
Safe Passage Project
Sanctuary for Families
SC Appleseed Legal Justice Center
SEIU Florida Public Services Union
SEPA Mujer, Inc.
Services, Immigrant Rights, and Education Network (SIREN)
South Florida Interfaith Worker Justice
Southwestern Law School Immigration Law Clinic
Stockton University
Swanson Law Office
Terra Firma Healthcare and Justice for Immigrant Children
The Florence Immigrant and Refugee Rights Project
The Legal Aid Society, New York
TN Coalition to End Domestic & Sexual Violence
Tulsa Immigrant Resource Network
Unitarian Universalist Mass Action Network
UnLocal, Inc.
UNO Immigration Ministry
USC International Human Rights Clinic
Violence Intervention Program
Volunteer Attorneys for Rural Nevadans
Washington Defender Association Immigration Project
Washington Immigration Defense Group
Whitlock & Gray, LLC

CC: Kevin K. McAleenan, Acting Commissioner, U.S. Customs and Border Protection
Thomas D. Homan, Acting Director, U.S. Immigration and Customs Enforcement
Veronica Venture, Acting Officer, DHS Office of Civil Rights and Civil Liberties
John Roth, Inspector General of the Department of Homeland Security
(b)(6) Director, Executive Office for Immigration Review
(b)(6) Acting Director, Office of Refugee Resettlement

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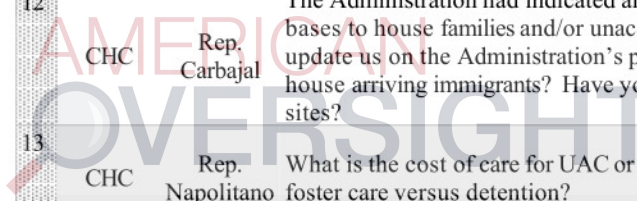
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Completed getbacks as of 9/26: 30 out of 30 (100%)

#	Briefing	Member	Questions / Get-back	Component	Status / Action
1	CHC	Rep. Barragan	What is the reasoning behind USCIS' recent denaturalization efforts?	USCIS	(b)(5)
2	CHC	Rep. Barragan	How are kids being processed at the border?	CBP	
3	CHC	Rep. Barragan	How can a child defend himself (legally) during court proceedings?	DOJ	
7	CHC	Sen. Menendez	Question about alleged traffickers advertising "billboards" in Central America; reference quote S1 said at Aspen. S1 said it might have been advertisements; lost in translation. <i>(S1 told Sen. Menendez she would pass along information on where billboards or advertisements saying "grab a kid and come to the US" are located</i>	OGC	
8	CHC	Rep. Costa	Expressed vehement concern about ICE I-9 audits & raids. Why is DHS arresting people at courthouses?	ICE	
9	CHC	Lujan	Why are you using the 1% reprogramming for detention beds and not for fighting TCOs, drug or human traffickers?	ICE	
12	CHC	Rep. Carbajal	The Administration had indicated an intention to use military bases to house families and/or unaccompanied children. Can you update us on the Administration's plans to use military bases to house arriving immigrants? Have you identified any of these sites?	ICE	
13	CHC	Rep. Napolitano	What is the cost of care for UAC or separated children in US foster care versus detention?	HHS	



14	CHC	Rep. Castro	Have any children died or have been severely injured in DHS/HHS care?	ICE / HHS	(b)(5)
15	CHC	Rep. Espaillat	There have been well-documented reports and accounts of sexual abuse and physical abuse occurring in ICE detention facilities. How does DHS ensure prompt and thorough investigations of these facilities and staff when reports of abuse are reported?	ICE	
16	CHC	Rep. Espaillat	What additional accountability measures are needed? For example, is DHS planning to request additional funding to increase unannounced inspections at ICE detention facilities or has DHS agreed to require ICE agents to wear body cameras? <i>(SI said no body cameras because of privacy & civil liberty issues.)</i>	ICE	
17	CHC	Rep. Correa	Would like to work with S1 on legislation to allow military veterans to become citizens.	OGC / PLCY	
18	CHC	Rep. Torres	Question on asylum capacity in the Northern Triangle region and a follow up question on expanding the Protection Transfer Agreement with Costa Rica.	PLCY	
25	CHC	CHC Office	Does USCIS plan to require asylum seekers to meet a higher evidentiary standard for credible fear during their credible fear interview? Please provide any guidance USCIS has issued to asylum adjudicators.	USCIS	
26	CHC	CHC Office	Who should we report violation of detention standards to when we encounter them? We would like these violations to be addressed ASAP so that people are treated humanely.	ICE	
27	CHC	CHS Office	Why is there now a 2 week waiting period to receive tours? <i>In our oversight capacity Members and staff have to be reactionary and address issues as soon as they arise. HHS has that policy and is considering revising it as two weeks is too long. It impedes our oversight role.</i>	CBP/ICE	



<p>28</p> <p>CHC CHC Office</p> <p>Who in DHS is responsible for selecting the food detainees are given? Can we see the policy on this?</p> <p>ICE</p>
<p>29</p> <p>CHC CHC Office</p> <p><i>Secretary Nielsen said the all detainees are receiving proper and thorough medical examinations upon their entry into the U.S. however, there are reports that the medical screenings of detainees are being rushed or not completed at all. It was reported last month that at the Federal Correctional Complex in Victorville California, where 1,000 detainees were sent, an outbreak of scabies and a case of chicken pox occurred among the detainees. It has also been reported that children have been handed back to their parents filthy and infected with lice. What is DHS/CBP medical examination and care policy for migrants who present themselves at our Ports of Entry (POE) and what is the policy for migrants who are apprehended between our POE? What is the medical examination and care policy for migrant's policy once they arrive at a detention facility?</i></p> <p>CBP/ICE</p>
<p>30</p> <p>CHC CHC Office</p> <p><i>According to an October 24, 2011 memorandum to the Immigration and Customs Enforcement (ICE) Field Office Directors by former ICE Director, John Morton, ICE enforcement actions should not occur at nor be focused on "sensitive" locations, such as schools, churches, hospitals and other health care facilities. These "enforcement actions" include arrests, interviews, searches, and surveillance done for purposes of immigration enforcement. On July 25, 2018, during your meeting with members of the Congressional Hispanic Caucus, you told Members that this policy remains in place. Is this still the official policy for Immigration and Customs Enforcement? If so, what are the penalties for violating this policy?</i></p> <p>ICE</p>
<p>31</p> <p>CHC CHC Office</p> <p><i>Two Immigration and Customs Enforcement (ICE) vans have been parked in front of two Special Supplemental Nutrition Program for Women, Infants, and Children (WIC) health centers in the state of New Mexico. Reportedly, these ICE surveillance trucks have been found outside of centers in the border towns of Chaparral and Hatch, New Mexico every day, for a number of weeks. Given the fact that this appears to be in violation of current ICE policies, please clarify this policy. If these vans are in violation of ICE policies, please share when these vans have been instructed to move. Please also inform me of the penalties for these violations.</i></p> <p>ICE</p>

(b)(5)



35	CHC CHC Office	<p><i>On June 28, 2018, USCIS issued new policy that will dramatically increase its issuance of NTAs resulting in the unnecessary initiation of removal proceedings against thousands of families, students, professional workers and others who are applying for benefits before USCIS and have those applications denied. This is a dramatic departure from USCIS's longstanding mission as the benefits and services arm.</i></p> <p>Has DHS or USCIS conducted an estimate of the number of additional NTAs USCIS is likely to issue once this new policy is implemented? In 2017 it issued 91,711 total NTAs the vast majority (about 60,000) of which were NOT for enforcement purposes but were for people who received positive credible fear determinations at the border and therefore the NTA was issued to give them the opportunity to appear in court to seek asylum before a judge.</p>	USCIS	(b)(5)
36	CHC CHC Office	<p><i>In March, ICE announced that it would reverse the Obama administration's presumption of release policy for pregnant detainees. This reversal is alarming given well-documented reports of substandard medical care, pregnancy complications, and, tragically, even miscarriages for detainees in ICE custody. On its website about this policy reversal, ICE claims that it will detain pregnant women who are "deemed a flight risk or danger to the community."</i></p> <p>What documented examples do you have of pregnant detainees who posed a genuine flight risk or a danger to the community? Without compromising the privacy or safety of such detainees, please provide all relevant details demonstrating how their actions constituted a flight risk or a danger to the community. How many pregnant women are currently detained in ICE custody? Have any of them suffered medical complications or miscarriages since ICE announced its policy change?</p>	ICE	
37	CHC CHC Office	<p><i>Since 2012, ICE has wrongfully arrested and detained nearly 1,500 individuals who are U.S. citizens. Despite a mandate that ICE must review an individual's claim of citizenship within 48 hours, U.S. citizens have been detained for much longer periods of time – in one instance, for more than three years. In the year since President Trump took office, ICE arrests have surged by 40 percent, raising real concerns that U.S. citizens are being wrongfully apprehended in higher numbers.</i></p> <p>Since 2012, how many U.S. citizens have been mistakenly arrested and detained by ICE each year? Is it still ICE's policy to conclude its review of an individual's citizenship claim within 48 hours? What are you doing to enforce that policy so that U.S. citizens are not languishing in ICE detention facilities?</p>	ICE	

<p>39</p> <p>CHC CHC Office</p> <p><i>In December 2016, the non-partisan Homeland Security Advisory Council issued a set of recommendations for a dramatic overhaul of ICE's inspections system yet to our knowledge none of these recommendations have been adopted. The FY18 omnibus spending bill requires that ICE must terminate a detention contract if two consecutive evaluations are less than "adequate." I am concerned by evidence that strongly suggests ICE is manipulating the inspections process to get around this oversight requirement. Notably, every authorized ICE facility has passed every inspection since 2012, even those where multiple people have died as a result of medical neglect. Additionally, ICE appears to be delaying the issuance of final inspections so as to give facilities time to clean up deficiencies, as evidenced by a November 2017 ICE document revealing that ICE had withheld a final inspection result for more than 100 days for four detention facilities with a preliminary recommended failing inspection rating. (Relevant data and sourcing online here.)</i></p> <p>What is your justification for ICE's significant pattern of delay in issuing final inspections results for its detention facilities? What steps is the agency taking to implement the recommendations</p>	<p>ICE</p>
<p>40</p> <p>CHC CHC Office</p> <p>What steps is DHS taking to explore innovative ATD models as a way to decrease the current detention population?</p>	<p>ICE</p>
<p>41</p> <p>CHC CHC Office</p> <p>Why, given its proven successes, and given that it costs a fraction of the cost of either family detention or the separate detention of an adult and a child, did DHS decide to terminate the Family Case Management Program?</p>	<p>PLCY / ICE</p>
<p>44</p> <p>CHC CHC Office</p> <p>Why did ICE discontinue the FCMP? Can you commit to looking into reinstating the Family Case Management Program as one of ICE's alternative to detention options?</p>	<p>ICE</p>

(b)(5)



46	CHC	CHC Office	USCIS is 95 percent customer fee funded agency. It receives relatively few dollars from Congress for its mission. What steps is USCIS taking to reduce these unacceptably high naturalization case backlogs?	USCIS	(b)(5)
47	CHC	CHC Office	How does USCIS plan to hold itself accountable to the CUSTOMERS who pay thousands of dollars to have their applications adjudicated, who are now waiting significantly longer to have their cases decided?	USCIS	
48	CHC	CHC Office	Can you confirm that USCIS is using its finite resources – again, the clear majority which come from CUSTOMER fees – to deliver on this Administration’s promise to curb LEGAL immigration to the U.S?	USCIS	

#	Briefing	Member	Questions / Get-back	Component	OLA POC
24	CHC	CHC Office	At our meeting, S1 mentioned that CBP "recoded" their database and no family identification numbers or data was lost when attempting to reunify families. Can you explain in detail how and what CBP data was recoded and why federal employees are reviewing documents manually to figure out who was in fact apprehended as a family unit at the Southern border?	CBP	(b)(6)
33	CHC	CHS Office	Last week NY Times reported that CBP plans to eliminate the use of ports of entry as asylum processing centers and require asylum seekers instead to seek protection outside of the United States. Neither DHS nor CBP has issued a formal statement about it. Caitlin Dickerson, "Trump Administration Considers Unprecedented Curbs on Asylum for Migrants" (Jul. 18, 2018), https://www.nytimes.com/2018/07/18/us/immigration-asylum-children.html .	CBP	
34	CHC	CHS Office	Attorneys at the border have interviewed people who were forced to wait for days at POEs and then were told they would not be able to enter at all. Attorneys have heard at least one account from a family that was turned back more than once at POEs when they tried to enter and had no choice but to enter without inspection between POEs (that family was	CBP	
43	CHC	CHS Office	You have repeatedly testified that individuals seeking protection should and will be processed appropriately if they present themselves at a port of entry. To be clear, the law guarantees the right to seek asylum regardless of whether that request is made at a port of entry or in another part of the country. Specifically with regard to ports of entry, we are deeply alarmed at recent reports that CBP may be considering denying individuals and families the ability to seek asylum at ports of entry. Can you confirm whether CBP is indeed considering such a plan? If not, can you provide assurances that CBP will continue to permit individuals and families to seek asylum at ports of entry, and that CBP will not turn back	CBP	
20	CHC	CHC Office / Sen. Cortez Masto	Is parole being considered for the deported parents to return to USA to collect their children?	DOJ	
5	CHC	Sen. Cortez Masto	Where are the kids of deported parents?	HHS	
11	CHC	Rep Grijalva	UAC and kids being held up to 5 days now allegedly w/o access to water, little exercise, short showers; why is DHS not treating these kids humanely.	HHS	
4	CHC	Sen. Cortez Masto	Of the 463 reported deported—what % chose not to take their kids?	ICE	
6	CHC	Sen. Cortez Masto	Of 194 cases where Courts cited examples of unfit or unverified parents—what were the causes? (S1 told Sen. Cortez Masto she would send her information and details including a breakdown on why some parents are ineligible.)	ICE	
21	CHC	CHC Office	Please describe exactly what DHS is doing to locate and reunify these parents with their children and how DHS is working with the consulates.	ICE	
38	CHC	CHS Office	Trust is further eroded when ICE targets minors as alleged gang members with little or no evidence of their gang affiliation. A recent class action lawsuit asserts that 30 out of 35 teenagers rounded up by ICE last year were subsequently released from detention by judges because of insufficient evidence of their gang membership. Last year, a high-security detention center intended for criminal aliens publicly complained that ICE was sending too many teenagers into its custody without providing any verifiable evidence of their gang membership. Since President Trump took office, how many immigrants has ICE arrested and detained as alleged gang members who ultimately were released due to insufficient evidence of their gang affiliation? (ICE)	ICE	
22	CHC	CHC Office	• Many of the parents who were deported were likely coerced into signing deportation orders or signed without understanding all their rights or what they consented to. Will these cases be reopened? (ICE/USCIS)	ICE/ USCIS	
10	CHC	Rep. Costa, Rep. Lujan, Chairwoman Lujan Grisham	Requested S1 to put in writing which agencies DHS consulted with before implementing the zero-tolerance policy.	OGC	
19	CHC	CHC Office	Regarding the 463 parents who have been deported, what is the plan to reunite these parents with their children? Will the children be sent to the country of origin or will the parents be brought to the U.S.?	PLCY	
42	CHC	CHS Office	The administration missed the July 10th deadline to reunify children under the age of five. Since then, there have been countless reports of reunifications gone awry and the agencies appear to be scrambling to make the July 26th deadline. When the zero tolerance policy began, did DHS have a plan in place for reuniting families? If so, what was the plan? And why is your agency - in cooperation with HHS and DOJ - now struggling to carry it out?	PLCY	
45	CHC	CHS Office	We are deeply concerned over the administration's zero-tolerance policy and the criminal prosecution of migrants and asylum seekers, including the impact this has had on families who were separated and who have not yet been reunited. Can you confirm that a charge or conviction of illegal entry would not be used as a justification for the initial or continued separation of parents or legal guardians and their children? Can you confirm that a charge or conviction of illegal re-entry would not be used as a justification for the initial or continued separation of parents or legal guardians and their children?	PLCY	
23	CHC	CHC Office	How will a child's case be reconciled with a parents' deportation if the child has a valid immigration case in the U.S.?	USCIS	
32	CHC	CHS Office	On July 11, 2018, U.S. Citizenship and Immigration Services (USCIS) published a policy memorandum that profoundly restricts the ability of vulnerable individuals to obtain asylum or refugee status in the United States and will result in the deportation of bona fide asylum seekers who are fleeing life-threatening danger. What additional guidance has USCIS issued to asylum adjudicators (or does it plan to issue)? What are the current rates of positive and negative determinations for credible fear interviews of those being screened at the border for asylum-related protections? What are the current rates of positive and negative determinations for reasonable fear interviews of those being screened at the border?	USCIS	



**Homeland
Security**

Privacy Office, Mail Stop 0655

December 30, 2020

**SENT VIA E-MAIL TO: foia@americanoversight.org,
hart.wood@americanoversight.org
JYenouskas@goodwinlaw.com
ASun@goodwinlaw.com**

Austin R. Evers
Executive Director
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

**Re: 18-cv-02840 (2019-HQLI-00018)
American Oversight v. DHS
Seventh Interim Release**

Dear Mr. Evers:

This is the seventh interim release of records to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), received on October 4, 2018.

For this production, DHS reviewed 369 pages of which 40 pages are released in full or withheld in part or in full pursuant to FOIA exemptions (b)(5) and (b)(6). An additional 329 pages were non-responsive to the original request. The 40 pages for release are bates stamped DHS-001-02840-001619 to DHS-001-02840-001658.

If you have any questions regarding this release, please contact Assistant United States Attorney, Michael A. Tilghman II, Civil Division, United States Attorney's Office for the District of Columbia, by email at michael.tilghman@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Bradley E. White".

Bradley E. White
Senior Director, FOIA Litigation,
Appeals, and Policy

Enclosed: 40 pages

From:	Lim, Evelyn (b)(6) (b)(6)
To:	"Wolf, Chad (b)(6) (b)(6)
CC:	"Ciccione, Christine (b)(6) (b)(6) "Dinh, Uyen (b)(6) (b)(6) "Blume, Allen (b)(6) (b)(6) "Taylor, Miles (b)(6) (b)(6) "Hummelberg, Hannah (b)(6) (b)(6)
Subject:	Re: Washington Times: House Appropriations Committee tackles family separation issue
Date:	2018/07/11 17:37:29
Priority:	Normal
Type:	Note

How's this coming?

Evelyn Lim

(b)(6)

On Jul 11, 2018, at 3:25 PM, Wolf, Chad (b)(6) wrote:

Need all listing / description of the provisions passed. Thanks.

Chad F. Wolf
Chief of Staff
Department of Homeland Security

(b)(6)

From: Waldman, Katie

Sent: Wednesday, July 11, 2018 3:12 PM

Subject: Washington Times: House Appropriations Committee tackles family separation issue

House Appropriations Committee tackles family separation issue
Washington Times

(b)(6)

July 11, 2018

<https://www.washingtontimes.com/news/2018/jul/11/house-appropriations-committee-tackles-family-sepa/>

The House Appropriations Committee on Wednesday flexed the power of the federal purse to tackle the ongoing issue of migrant children getting

separated from their parents at the border, passing a series of provisions to prod more information from the Trump administration on the matter.

The committee approved an amendment from Rep. Rosa DeLauro that would reduce funding for the office of the secretary of Health and Human Services in next year's spending bill by \$100,000 per day starting in August if the administration doesn't submit a broader family reunification plan to Congress.

"There is no plan. There never was a plan," said Ms. DeLauro, Connecticut Democrat and the ranking member on the spending subcommittee with jurisdiction over HHS.

The Office of Refugee Resettlement within HHS is the division tasked with caring for unaccompanied illegal immigrant children until they can be placed with sponsors.

A broader-based "manager's amendment" offered by Rep. Tom Cole, the Oklahoma Republican who chairs the subcommittee, requires the administration to submit quarterly reports to Congress on the status of the children who have been separated.

It also includes language that allows HHS to accept private donations for the care of unaccompanied alien children in the custody of the federal government, including for items such as medical and school supplies.

The panel also approved a separate amendment from Mr. Cole to allow families to be held in detention facilities longer — language that mirrored a section in a recent GOP immigration bill introduced by House Judiciary Chairman Robert W. Goodlatte.

The committee also adopted other Democratic proposals that sought to keep migrant siblings together in the event they're separated from their parents, and to prevent detained children from being medicated until they've been examined by a medical professional.

The proposals were offered as amendments to the 2019 spending bill that funds the Departments of Labor, Health, and Education.

The House spending bill would still have to be reconciled with the Senate version, which passed the appropriations committee last month. That measure does include language directing the administration to provide regular updates on the family separation issue.

The Labor-HHS bill is typically one of the tougher measures to pass, in large part because the House version has included myriad policy “riders” opposed by Democrats on issues ranging from abortion to gun control.

Sender:	Lim, Evelyn (b)(6) (b)(6)
Recipient:	"Wolf, Chad (b)(6) (b)(6) "Ciccione, Christine (b)(6) (b)(6) "Dinh, Uyen (b)(6) (b)(6) "Blume, Allen (b)(6) (b)(6) "Taylor, Miles (b)(6) (b)(6) "Hummelberg, Hannah (b)(6) (b)(6)
Sent Date:	2018/07/11 17:37:28
Delivered Date:	2018/07/11 17:37:29

OFFICE OF INSPECTOR GENERAL

Special Review - Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy



**Homeland
Security**

AMERICAN OVERSIGHT

September 27, 2018

MULTI-DHS-18-0601-000004 **OIG-18-84**



DHS OIG HIGHLIGHTS

Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy

September 27, 2018

Why We Did This Special Review

In light of the heightened public and congressional interest in the Department of Homeland Security's separation of families at the southern border pursuant to the Government's Zero Tolerance Policy, the DHS Office of Inspector General (OIG) conducted unannounced site visits to U.S. Customs and Border Protection and U.S. Immigration and Customs Enforcement facilities in and around El Paso and McAllen, Texas on June 26–28, 2018. The following report describes OIG's observations in the field and its analysis of family separation data provided by the Department.

What We Recommend

This report is observational and contains no recommendations.

For Further Information:

Contact our Office of Public Affairs at (202) 981-6000, or email us at DHS-OIG.OfficePublicAffairs@oig.dhs.gov.

What We Observed

DHS was not fully prepared to implement the Administration's Zero Tolerance Policy or to deal with some of its after-effects. Faced with resource limitations and other challenges, DHS regulated the number of asylum-seekers entering the country through ports of entry at the same time that it encouraged asylum-seekers to come to the ports. During Zero Tolerance, CBP also held alien children separated from their parents for extended periods in facilities intended solely for short-term detention.

DHS also struggled to identify, track, and reunify families separated under Zero Tolerance due to limitations with its information technology systems, including a lack of integration between systems.

Finally, DHS provided inconsistent information to aliens who arrived with children during Zero Tolerance, which resulted in some parents not understanding that they would be separated from their children, and being unable to communicate with their children after separation.

DHS' Response

Appendix B provides DHS' management response in its entirety.



OFFICE OF INSPECTOR GENERAL


Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

September 27, 2018

MEMORANDUM FOR: The Honorable Kevin K. McAleenan
Commissioner
U.S. Customs and Border Protection

Ronald D. Vitiello
Senior Official Performing the Duties of
the Director
U.S. Immigration and Customs Enforcement

FROM: John V. Kelly 
Senior Official Performing the Duties of the
Inspector General

SUBJECT: Special Report – *Initial Observations Regarding Family
Separation Issues Under the Zero Tolerance Policy*

For your action is the final special report *Initial Observations Regarding Family Separation Issues Under the Zero Tolerance Policy*. This special report reflects work undertaken pursuant to our authorities and obligations under Section 2 of the *Inspector General Act of 1978*, as amended. Specifically, the Department of Homeland Security (DHS) Office of Inspector General performed this work for the purpose of promoting economy, efficiency, and effectiveness in the administration of, and preventing fraud, waste, and abuse in, DHS' programs and operations. This final special report addresses the technical comments and incorporates the management response provided by your offices. This report is observational and contains no recommendations.

Consistent with our responsibility under the *Inspector General Act of 1978*, as amended, we will provide copies of our report to Congress and will post it on our website for public dissemination.

Please call me with any questions, or your staff may contact Jennifer Costello, Chief Operating Officer, at (202) 981-6000.

Attachment



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Background

On April 6, 2018, President Trump directed several Federal agencies, including the Department of Homeland Security (DHS), to report on their efforts to end a practice developed under prior administrations of releasing certain individuals suspected of violating immigration law into the United States pending resolution of their administrative or criminal cases — a practice sometimes referred to as “catch and release.”¹ The same day, Attorney General Jeff Sessions directed all Federal prosecutors along the Southwest Border to work with DHS “to adopt immediately a zero-tolerance policy” requiring that all improper entry offenses be referred for criminal prosecution “to the extent practicable” (referred to throughout this report as the Zero Tolerance Policy).²

Within DHS, U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) played critical roles in implementing the Administration’s Zero Tolerance Policy. CBP’s Office of Field Operations (OFO) inspects all foreign visitors and goods entering at established ports of entry, while U.S. Border Patrol is responsible for apprehending individuals who enter the United States illegally between ports of entry. CBP transfers aliens in its custody to ICE, which is responsible for, among other duties, detaining certain aliens with pending immigration proceedings and deporting all aliens who receive final removal orders.

Before implementation of the Zero Tolerance Policy, when CBP apprehended an alien family unit attempting to enter the United States illegally, it usually placed the adult in civil immigration proceedings without referring him or her for criminal prosecution. CBP only separated apprehended parents from children in limited circumstanceFs — *e.g.*, if the adult had a criminal history or outstanding warrant, or if CBP could not determine whether the adult was the child’s parent or legal guardian. Accordingly, in most instances, family units either remained together in family detention centers operated by ICE while their civil immigration cases were pending,³ or they were released into the United States with an order to appear in immigration court at a later date.

¹ Presidential Memorandum for the Secretary of State, the Secretary of Defense, the Attorney General, the Secretary of Health and Human Services, and the Secretary of Homeland Security, April 6, 2018.

² Dept. of Justice, *Memorandum for Federal Prosecutors Along the Southwest Border*, April 6, 2018. Entering the United States without inspection and approval is a civil offense and may also result in criminal charges. See 8 United States Code (U.S.C.) §§ 1227 (civil grounds for removal), 1325 (crime of improper entry), 1326 (crime of reentry). The Department of Justice has the authority to decide whether and to what extent to prosecute Federal crimes.

³ A Federal court has interpreted the *Flores* Agreement — a 1997 settlement that establishes minimum conditions for the detention, release, and treatment of children — to generally limit



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The Zero Tolerance Policy, however, fundamentally changed DHS' approach to immigration enforcement. In early May 2018, DHS determined that the policy would cover alien adults arriving illegally in the United States with minor children. Because minor children cannot be held in criminal custody with an adult, alien adults who entered the United States illegally would have to be separated from any accompanying minor children when the adults were referred for criminal prosecution. The children, who DHS then deemed to be unaccompanied alien children,⁴ were held in DHS custody until they could be transferred to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement, which is responsible for the long-term custodial care and placement of unaccompanied alien children.⁵

The Administration's Zero Tolerance Policy and the resulting family separations sparked intense public debate. On June 20, 2018, President Trump issued Executive Order 13,841, halting the practice of family separation. On June 26, 2018, a Federal court ordered the Government to reunify separated children and parents within 30 days.⁶ On September 20, 2018, the Government reported to the court that it had reunified or otherwise released 2,167 of the 2,551 children over 5 years of age who were separated from a parent and deemed eligible for reunification by the Government.⁷ The Government also

the time children can stay at such family centers to 20 days. *Flores v. Lynch*, 212 F. Supp. 3d 907, 914 (C.D. Cal. 2015). In July 2018, that Federal court denied the Government's request to modify the *Flores* Agreement to allow it to detain families for longer. *Flores v. Sessions*, 85-cv-4544 (C.D. Cal. July 9, 2018). However, in August 2018, another Federal court permitted families to remain in Government facilities together longer than 20 days if the adult waives the child's rights under the *Flores* Agreement. *Ms. L. v. ICE*, 18-cv-428 (S.D. Cal. Aug. 16, 2018). DHS and HHS recently proposed regulations that, if implemented, would terminate the *Flores* Agreement. 83 Fed. Reg. 45,486 (Sept. 7, 2018).

⁴ An unaccompanied alien child is a child under 18 years of age with no lawful immigration status in the United States who has neither a parent nor legal guardian in the United States nor a parent nor legal guardian in the United States "available" to provide care and physical custody for him or her. 6 U.S.C. § 279(g)(2). As such, children traveling with a related adult other than a parent or legal guardian — such as a grandparent or sibling — are still deemed unaccompanied alien children.

⁵ DHS must transfer unaccompanied alien children to HHS within 72 hours unless there are "exceptional circumstances." 8 U.S.C. § 1232(b)(3). There are special requirements for unaccompanied alien children from Mexico and Canada that may permit a different process, 8 U.S.C. § 1232(a)(2)(A), but if those requirements are not met, CBP must follow the same process established for unaccompanied alien children from other countries. 8 U.S.C. § 1232(a)(3).

⁶ *Ms. L. v. ICE*, 18-cv-428 (S.D. Cal. June 26, 2018). The order required the Government to reunite children under the age of 5 with their families within 14 days, and children 5 years old and older within 30 days.

⁷ The Government can also release a child to another family member or sponsor, or if the child turns 18. *Ms. L. v. ICE*, 18-cv-428 (S.D. Cal. Sept. 20, 2018). According to the Government, the remaining 402 children involved in the lawsuit that are still in HHS' care include 182 children



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reported that it had reunited 84 of the 103 children under 5 years of age who were separated and initially deemed eligible for reunification.

In response to significant congressional and public interest related to the Zero Tolerance Policy, a multi-disciplinary team of DHS Office of Inspector General (OIG) attorneys, inspectors, and criminal investigators deployed to areas in and around El Paso and McAllen, Texas, to conduct unannounced visits at CBP and ICE facilities between June 26 and June 28, 2018.⁸ This report describes the OIG team's observations in the field, as well as the team's review of family separation data provided by the Department. This report does not evaluate the merits of the Zero Tolerance Policy or family separations. Further, the report does not evaluate the Department's efforts to reunify separated families because those efforts took place after the OIG team's field visits. Observations from specific locations in the field are not necessarily generalizable. Appendix A provides more information on the scope and methodology of the review.

Results of Review

The OIG's observations indicate that DHS was not fully prepared to implement the Zero Tolerance Policy, or to deal with certain effects of the policy following implementation. For instance, while the Government encouraged all asylum-seekers to come to ports of entry to make their asylum claims, CBP managed the flow of people who could enter at those ports of entry through metering, which may have led to additional illegal border crossings. Additionally, CBP held alien children separated under the policy for long periods in facilities intended solely for short-term detention.⁹ The OIG team also observed that a lack of a fully integrated Federal immigration information technology system made it difficult for DHS to reliably track separated parents and children,

where the adult associated with the child is not eligible for reunification or is not currently available for discharge, and 220 children where the Government has determined the parent is not entitled to reunification under the lawsuit. In 134 of those 220 cases, the adult is no longer in the United States and has indicated an intent not to reunify with his or her child. *Ms. L. v. ICE*, 18-cv-428 (S.D. Cal. Sept. 20, 2018).

⁸ In the Rio Grande Valley sector, which encompasses McAllen, the OIG team went to facilities operated by Border Patrol (McAllen Station and Ursula Central Processing Center), CBP OFO (Gateway International Bridge, Brownsville and Matamoros International Bridge, and Hidalgo ports of entry), and ICE Enforcement and Removal Operations (ERO) (Port Isabel Detention Center). In the El Paso sector, the team went to facilities operated by Border Patrol (Clint Station, Paso Del Norte Processing Center, and El Paso Station), CBP OFO (Paso del Norte International Bridge port of entry), and ICE ERO (El Paso Processing Center and Tornillo Processing Center).

⁹ Notwithstanding this observation, OIG observed that the DHS facilities it visited appeared to be operating in substantial compliance with applicable standards for holding children. The detailed results of OIG's unannounced inspections of these facilities are described in a separate OIG report titled *Results of Unannounced Inspections of Conditions for Unaccompanied Alien Children in CBP Custody*.



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raising questions about the Government's ability to accurately report on separations and subsequent reunifications. Finally, inconsistencies in the information provided to alien parents resulted in some parents not understanding that their children would be separated from them, and made communicating with their children after separation difficult.

Although this report does not make formal recommendations for corrective action, it highlights issues with DHS' handling of alien families that warrant the Department's attention. OIG anticipates undertaking a more in-depth review of some of these issues in future work.

CBP Faced Resource and Other Challenges in Responding to the Effects of the Zero Tolerance Policy

Under the Zero Tolerance Policy, the Government encouraged asylum-seekers to come to U.S. ports of entry. At the same time, CBP reported that overcrowding at the ports of entry caused them to limit the flow of people that could enter. This may have led asylum-seekers at ports of entry to attempt illegal border crossings instead. Additionally, CBP officials said that because of limited processing capacity at HHS facilities and other factors, CBP held unaccompanied alien children for long periods in facilities intended for short-term detention.

CBP Regulated the Number of Asylum-Seekers Entering at Ports of Entry, Which May Have Resulted in Additional Illegal Border Crossings

While the Zero Tolerance Policy was in effect, Government officials — including the DHS Secretary and the Attorney General — publicly encouraged asylum-seeking adults to enter the United States legally through a port of entry to avoid prosecution and separation from their accompanying children.¹⁰ However, at the same time, CBP was regulating the flow of asylum-seekers at ports of entry through “metering,” a practice CBP has utilized at least as far

¹⁰ See, e.g., Press Briefing by Press Secretary Sarah Sanders and DHS Secretary Kirstjen Nielsen, June 18, 2018, <https://www.whitehouse.gov/briefings-statements/press-briefing-press-secretary-sarah-sanders-department-homeland-security-secretary-kirstjen-nielsen-061818/> (“And finally, DHS is not separating families legitimately seeking asylum at ports of entry. If an adult enters at a port of entry and claims asylum, they will not face prosecution for illegal entry. They have not committed a crime by coming to the port of entry.”); Dept. of Justice, *Attorney General Sessions Addresses Recent Criticisms of Zero Tolerance By Church Leaders*, June 14, 2018, <https://www.justice.gov/opa/speech/attorney-general-sessions-addresses-recent-criticisms-zero-tolerance-church-leaders> (“[I]f the adults go to one of our many ports of entry to claim asylum, they are not prosecuted and the family stays intact pending the legal process.”).



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back as 2016 to regulate the flow of individuals at ports of entry.¹¹ Although DHS asserts that the Zero Tolerance Policy and metering at ports of entry are distinct issues, a CBP official reported that the backlogs created by these competing directives likely resulted in additional illegal border crossings.

At the ports of entry the OIG team visited, pedestrian footbridges link the United States and Mexico, with the international line dividing the two countries running across the middle of the bridges. CBP's processing facilities are stationed on the U.S. side at the north ends of the bridges. To reach these facilities, an alien must cross the international line and walk a short distance across U.S. soil. When an asylum-seeker arrives at the processing facility, CBP officers examine the individual's identification and travel documents, conduct an initial interview, obtain fingerprints and photographs, and then seek placement of the individual with ICE, or HHS if an unaccompanied alien child is involved.

When metering, CBP officers stand at the international line out in the middle of the footbridges. Before an alien without proper travel documents (most of whom are asylum-seekers) can cross the international line onto U.S. soil,¹² those CBP officers radio the ports of entry to check for available space to hold the individual while being processed. According to CBP, the officers only allow the asylum-seeker to cross the line if space is available.¹³ When the ports of entry are full, CBP guidance states that officers should inform individuals that the port is currently at capacity and that they will be permitted to enter once there is sufficient space and resources to process them. The guidance further states officers may not discourage individuals from waiting to be processed.

¹¹ CBP officials informed the OIG team that CBP instituted metering to address safety and health hazards that resulted from overcrowding at ports of entry. Whether this practice is permissible under Federal and/or international law is currently being litigated and OIG expresses no opinion here on the legality or propriety of the practice. *See, e.g., Washington v. United States*, 18-cv-939 (W.D. Wash. 2018); *Al Otro Lado, Inc. v. Nielsen*, 17-cv-2366 (S.D. Cal. 2017).

¹² By law, once an individual is physically present in the United States, he or she must generally be allowed to apply for asylum, regardless of immigration status. *Immigration and Nationality Act*, 8 U.S.C. § 1158(a)(1). Federal law also generally prohibits the return of an alien to a country where he or she may face torture or persecution. *See* 8 U.S.C. § 1231(b)(3); 8 C.F.R. §§ 208.16-.17.

¹³ The head of a nongovernmental organization who is familiar with the flow of asylum-seekers suggested to the OIG team that CBP meters individuals even when there is available space. Although OIG observed asylum-seekers being turned away at some of the ports of entry we visited, CBP claimed that the processing facilities were full at those times. During our visits, OIG did not observe CBP turning away asylum-seekers while there was available space.



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However, some officers in El Paso informed the OIG team that they advise individuals to return later.¹⁴

Although the OIG team did not observe severe overcrowding at the ports of entry it visited, the team did observe that the space designated for holding asylum-seekers during processing is limited. Additionally, CBP policies limit how and whether certain classes of aliens can be detained in the same hold room, which further constrains the available space. For instance, mothers and their young children must be held separately from unaccompanied minors, who must be held separately from adult men. Depending on who is being held on a given day and the configuration of the hold rooms, the facility can reach capacity relatively quickly. At one port of entry the OIG team visited, CBP staff attempted to increase their capacity by converting former offices into makeshift hold rooms.

While the stated intentions behind metering may be reasonable, the practice may have unintended consequences. For instance, OIG saw evidence that limiting the volume of asylum-seekers entering at ports of entry leads some aliens who would otherwise seek legal entry into the United States to cross the border illegally. According to one Border Patrol supervisor, the Border Patrol sees an increase in illegal entries when aliens are metered at ports of entry. Two aliens recently apprehended by the Border Patrol corroborated this observation, reporting to the OIG team that they crossed the border illegally after initially being turned away at ports of entry. One woman said she had been turned away three times by an officer on the bridge before deciding to take her chances on illegal entry.¹⁵

CBP Detained Unaccompanied Alien Children for Extended Periods in Facilities Intended for Short-Term Detention

Absent “exceptional circumstances,” the law generally permits CBP to hold unaccompanied alien children in its custody for up to 72 hours before transferring them to the HHS Office of Refugee Resettlement pending resolution of their immigration proceedings.¹⁶ Moreover, CBP policy dictates, “[e]very effort must be made to hold detainees for the least amount of time” possible.¹⁷ As a result, CBP facilities are not designed to hold people for long periods of time.

¹⁴ Some media reports alleged that CBP was threatening asylum-seekers and giving them false information while metering. The OIG team was unable to confirm these allegations.

¹⁵ The fact that both aliens and the Border Patrol reported that metering leads to increased illegal border crossings strongly suggests a relationship between the two. Based on the limited scope of this review, the OIG team could not corroborate these anecdotal observations with data or evaluate the effects in other sectors it did not visit.

¹⁶ See 8 U.S.C. § 1232(b)(3).

¹⁷ CBP, *National Standards on Transport, Escort, Detention, and Search* § 4.1 (October 2015).



OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

The OIG team determined that CBP exceeded the 72-hour period in many instances. Data provided by CBP to OIG indicates that, during the week of the OIG’s fieldwork (June 25 to June 29, 2018), 9 out of the 21 unaccompanied alien children (42 percent) who approached the ports of entry visited by OIG were held for more than 72 hours. The data further indicates that 237 out of 855 unaccompanied alien children (28 percent) apprehended by Border Patrol between ports of entry were detained for more than 72 hours at the facilities the OIG team visited. Although the average length of time unaccompanied alien children spent in custody during this period was 65 hours, one unaccompanied alien child remained in custody for 12 days (over 280 hours).

OIG also obtained a broader data set from CBP showing how long separated children were held in Border Patrol custody during the entire period the Zero Tolerance Policy was in effect (May 5 to June 20, 2018). As discussed further in the following section, OIG has concerns about the quality and reliability of this data set. Notwithstanding these concerns, the Border Patrol’s data shows that the Rio Grande Valley sector exceeded the 72-hour time period for at least 564 children (44 percent of children detained during this time). This sector also held a child for 25 days, nearly three times longer than any other Southwest Border Patrol sector. The El Paso sector exceeded the 72-hour period for 297 children (nearly 40 percent of children detained in the sector during this time). All other sectors exceeded that period 13 percent of the time.¹⁸

Figure 1: Length of Custody of Separated Unaccompanied Alien Children in Border Patrol Custody during Zero Tolerance Policy (May 5 – June 20, 2018)

	0–3 Days	4 Days	5+ Days	Max. Days in Custody
Rio Grande Valley, TX	56.0%	16.9%	27.1%	25
El Paso, TX	60.2%	16.9%	22.9%	9
All Other Southwest Border Sectors	86.8%	9.6%	3.6%	8
Total – All Sectors	67.1%	14.5%	18.4%	25

Source: OIG-generated figures based on data obtained from Border Patrol

According to many Border Patrol officials with whom the OIG team met, HHS’ inability to accept placement of unaccompanied alien children promptly

¹⁸ The number of children held for more than 72 hours may be even higher than these figures, as the data received shows the dates — not the specific hours — that a child was apprehended and transferred from Border Patrol. A child held for 3 days could actually have been held for more than 72 hours depending on the time that he/she was apprehended and transferred. For example, if an unaccompanied alien child was booked in at 8:00 a.m. on June 1 and booked out at 9:00 a.m. on June 4, the unaccompanied alien child was in CBP custody for 73 hours, but would be identified in the data provided as having been in custody for just 3 days.



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resulted in unaccompanied alien children remaining in CBP custody for extended periods. CBP officials also cited other possible reasons for extended detention, including the need to provide an unaccompanied alien child with medical care or delays in transportation arrangements provided by ICE. However, other evidence indicates that CBP officials may have inadvertently omitted critical information from unaccompanied alien children placement requests submitted to HHS, which could have also contributed to delays. For instance, one CBP juvenile coordinator in the Rio Grande Valley sector, who is responsible for assisting with the placement of unaccompanied alien children with HHS, recalled HHS contacting him several times per day for necessary information CBP failed to provide when initially submitting particular placement requests. Another CBP juvenile coordinator in El Paso recalled a similar experience. One Border Patrol official stated it would have been useful to have an HHS employee on site to assist with the care and placement of unaccompanied alien children.

Senior Border Patrol and OFO officials also reported that detaining unaccompanied alien children for extended periods resulted in some CBP employees being less able to focus on their primary mission. For instance, instead of patrolling and securing the border, officers had to supervise and take care of children.

Information Technology and Data Issues Make It Difficult for DHS to Identify, Track, and Reunify Separated Families

The United States does not have a fully integrated Federal immigration information technology system. As a result, Federal agencies involved in the immigration process often utilize separate information technology systems to facilitate their work. The OIG team learned that the lack of integration between CBP's, ICE's, and HHS' respective information technology systems hindered efforts to identify, track, and reunify parents and children separated under the Zero Tolerance Policy. As a result, DHS has struggled to provide accurate, complete, reliable data on family separations and reunifications, raising concerns about the accuracy of its reporting.

Lack of Integration between Critical Information Technology Systems Undermines the Government's Ability to Efficiently Reunite Families

ICE officers reported that when the Zero Tolerance Policy went into effect, ICE's system did not display data from CBP's systems that would have indicated



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whether a detainee had been separated from a child.¹⁹ They explained that although CBP enters this family separation data into certain fields within its own system, those particular fields are not visible in ICE's system.²⁰ As a result, ICE officers at the Port Isabel Detention Center stated that when processing detainees for removal, officials initially treated separated adults the same as other detainees and made no additional effort to identify and reunite families prior to removal. Eventually, in early June 2018, Port Isabel officials began taking manual steps — such as interviewing detainees — to identify adults separated from their children.

Further compounding this problem, DHS' systems are not fully integrated with HHS' systems. For instance, while the Border Patrol's system can automatically send certain information to HHS regarding unaccompanied alien children who are apprehended after illegally crossing the border, OFO's system cannot.²¹ Instead, for unaccompanied alien children who arrive at ports of entry, OFO officers must manually enter information into a Microsoft Word document, which they then send to HHS as an email attachment. Each step of this manual process is vulnerable to human error, increasing the risk that a child could become lost in the system.

On June 23, 2018, DHS announced that DHS and HHS had “a central database” containing location information for separated parents and minors that both departments could access and update.²² However, OIG found no evidence that such a database exists. The OIG team asked several ICE employees, including those involved with DHS' reunification efforts at ICE Headquarters, if they knew of such a database, and they did not. Two officials suggested that the “central database” referenced in DHS' announcement is actually a manually-compiled spreadsheet maintained by HHS, CBP, and ICE personnel. According to these officials, DHS calls this spreadsheet a “matching table.”

¹⁹ ICE uses a system called the ENFORCE Alien Removal Module (EARM). CBP has two separate systems: (1) the Border Patrol uses a system called e3, and (2) OFO uses a system called SIGMA.

²⁰ At some point, CBP officials began using a free text field to record family separation information because that field is visible in ICE's system. However, that information was apparently not consistently recorded and is not searchable. Therefore, without reviewing individual files, ICE was unable to determine which aliens had been separated from their children.

²¹ Although the Border Patrol's system can automatically send certain information to HHS, the Border Patrol apparently cannot later retrieve what it sent to HHS. To better understand the data inconsistencies discussed later in this report, the OIG team requested the data that the Border Patrol sent when it placed certain children with HHS. The Border Patrol said it does not store that data and therefore could not provide it to the OIG team.

²² See DHS Fact Sheet: *Zero-Tolerance Prosecution and Family Reunification* (June 23, 2018), <https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification>.



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This matching table, however, was not created until after June 23, suggesting that it is not the “central database” referenced in the Department’s June 23 announcement. Moreover, when the OIG team asked ICE for information that should have been accessible to ICE via the central database (*e.g.*, information on the current location of separated children), ICE did not have ready access to the information. Instead, ICE had to request the information from HHS. DHS has since acknowledged to the OIG that there is no “direct electronic interface” between DHS and HHS tracking systems.

Lack of Access to Reliable Data Poses an Obstacle to Accurate Reporting on Family Separations

In the course of this review, OIG made several requests to DHS for data relating to alien family separations and reunifications. For example, OIG requested a list of every alien child separated from an adult since April 19, 2018,²³ as well as basic information about each child, including the child’s date of birth; the child’s date of apprehension, separation, and (if applicable) reunification; and the location(s) in which the child was held while in DHS custody. It took DHS many weeks to provide the requested data, indicating that the Department does not maintain the data in a readily accessible format. Moreover, the data DHS eventually supplied was incomplete and inconsistent, raising questions about its reliability.

For instance, when DHS first provided family separation data from its own information technology systems, the list was missing a number of children OIG had independently identified as having been separated from an adult. When OIG raised this issue with the Department, CBP officials stated that they believed the errors were due to agents in the field manually entering data into the system incorrectly. Additionally, the data provided from DHS’ systems was not always consistent with the data on the matching table that DHS and HHS use to track reunifications. For example, the DHS systems do not contain the date (if any) that each separated child and adult were reunited, while the matching table does.

Similarly, OIG identified 24 children who appeared in the DHS data set, but not on the matching table. When OIG requested additional information from the Department about these 24 children, the information provided revealed inaccuracies in the data DHS had previously provided to OIG. For example, the initial data set indicated that ICE had not yet removed a particular adult. The new information revealed that ICE had in fact removed the adult several weeks before it provided the initial data set to OIG. Additionally, while the initial data

²³ OIG selected this date because Border Patrol officials stated that they could not feasibly identify children who were separated before that date.



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set identified two particular minors as having been separated from an adult, the new information indicated the minors entered the country unaccompanied. Nevertheless, CBP's and ICE's systems both continue to identify the minors as having been separated from an adult.

Despite these issues with the reliability of some of DHS' data, OIG was able to determine from other data maintained by ICE that 23 of the 24 children were properly left off the matching table. For example, the list derived from the DHS data contained separated families where the child had since been placed with a sponsor out of Office of Refugee Resettlement custody, as well as children who were separated from adults who were not parents or legal guardians. None of these cases met the criteria for inclusion on the matching table.

Regarding the one remaining child identified by OIG, OIG learned that DHS reunited the child with his parent in September. The circumstances surrounding the September reunification of this child with his parent raise questions about the accuracy of the Department's previous reporting on family separations and reunifications. For instance, on July 26, 2018, DHS declared that it had reunified all eligible parents in ICE custody with their children; yet this eligible parent was in ICE custody on that date, but was not reunified with his child until September.²⁴

Dissemination of Inconsistent or Inaccurate Information Resulted in Confusion among Alien Parents about the Separation and Reunification Process

The OIG team observed inconsistencies in the information provided to aliens who arrived with children, resulting in some parents not understanding that their children would be separated from them and/or being unable to communicate with their children after separation.

Alien Parents Were Provided Inconsistent or Incorrect Information about Being Separated from Their Children

CBP officials reported that, prior to separation, adult aliens accompanied by children were given an HHS flyer providing information about a national call

²⁴ See Tal Kopan, "Hundreds of Separated Children Not Reunited By Court-Ordered Deadline," *CNN*, July 26, 2018, <https://www.cnn.com/2018/07/26/politics/family-separations-deadline/index.html>.



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center²⁵ and/or a “Next Steps for Families” flyer²⁶ produced jointly by DHS and HHS. In English and Spanish, the Next Steps flyer explains the separation process in four steps, and provides information on how to locate and speak with one’s child after separation. However, at the Port Isabel Detention Center, one of the four detainees interviewed by the OIG team reported that she had never seen the Next Steps flyer. The other three detainees reported that they were only provided a copy *after* they had been separated from their children and transferred to the ICE facility.

The OIG team also asked six individuals about the information provided to them before or at the time they were separated from their children. Five of the six said they did not receive any information. The sixth stated that when he left the Border Patrol facility to appear in court for prosecution, a Border Patrol Agent told him that his 5-year-old daughter would still be at the Border Patrol facility when he returned. When he arrived at court, however, he was given a short flyer that explained for the first time that he would be separated from his child. After his court hearing, he was driven back to the same Border Patrol facility, but not taken inside. Instead, he was placed on a bus to be transferred to an ICE detention facility without his daughter.

Detained Parents Reported Mixed Results in Locating and Speaking with Their Children after Separation

HHS maintains a toll-free number for aliens to call to obtain information about their separated children. Although the OIG team observed flyers containing the toll-free number at the Port Isabel Detention Center, staff reported that, at least in one area with female detainees, ICE posted the flyer for the first time on June 27, 2018 (a week after the Executive Order ending family separations). In addition, posted flyers at Port Isabel and another detention facility in El Paso failed to indicate that detainees must dial a unique code assigned to each individual by the detention facility before dialing the HHS toll-free number.

One mother with whom the OIG team spoke stated she had previously tried to call the toll-free number, but had not been able to get it to work. The team assisted her with making the call, and she was able to speak with an operator after holding for a couple of minutes. The HHS operator told the mother, however, that she could not release information about the child because the operator could not ascertain parentage over the telephone. The operator

²⁵ HHS’s flyer (English version) is available at https://www.acf.hhs.gov/sites/default/files/orr/orr_national_call_center_english_508.pdf.

²⁶ The “Next Steps for Families” flyer is available at https://www.dhs.gov/sites/default/files/publications/18_0615_CBP_Next-Steps-for-Families.pdf.



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informed the mother that the child's aunt, who apparently had been identified as the child's sponsor in HHS' system, had information about the child.

While onsite at the Port Isabel Detention Center, the OIG team witnessed early efforts to facilitate enhanced communication between separated families. The Detention Center had begun offering free phone calls for separated parents trying to reach their children and had started installing computer tablets for video calls. While OIG spoke with several detainees who confirmed that they were permitted to make free phone calls to their children, a group of separated mothers in one dorm had not yet had a chance to make free calls. In addition to these efforts, ICE had contracted social workers to come to the Detention Center to prepare ICE officers for assisting parents as they reconnected with their children. The OIG team also observed HHS personnel at the Detention Center interviewing detainees and collaborating with ICE employees working on reunification efforts.

The team spoke with 12 adult aliens — some who were in ICE detention and others who had been released — about their experiences locating and communicating with their children after separation.²⁷ These individuals reported mixed results:

- Only 6 of the 12 individuals reported being able to speak with their children while in detention.
- Of the 6 who were able to speak with their children, 2 reported receiving assistance from ICE personnel and 4 reported receiving assistance from non-detained family members, legal representatives, or social workers.
- Of the 6 who were unable to speak with their children, none of them reported receiving any assistance from ICE. Five of the 6 also reported being unable to reach an operator on HHS' toll-free number or were told the number was not working. One of the 6 reported that he never received any information on how to make the call.

Several factors may have contributed to these mixed results. For instance, the OIG team observed that some adults expressed hesitation about requesting information from ICE officers. Some adults appeared to be unable to read Spanish or English, while others spoke indigenous dialects. In addition, important information about how to contact separated children was not always available. For example, a poster appearing throughout an ICE facility in El Paso directed detainees to a particular document on reunifications in the law library, but no ICE personnel could locate the document when OIG asked for it.

²⁷ The experiences of these adults reflect the types of issues some alien parents separated from children faced while in detention. This is not a statistical sample, and these individuals' experiences are not necessarily representative of what other alien parents encountered.



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Additionally, ICE personnel reported they were often unaware that adults in their custody had been separated from children, which likely impacted their ability to provide more assistance.

Additional Observations

In addition to the issues identified previously, the OIG team made the following noteworthy observations during its fieldwork:

- A senior Border Patrol official stated that the resources required to increase prosecutions under the Zero Tolerance Policy hampered the Border Patrol's ability to screen possible fraudulent claims of parentage. In particular, it limited the resources that could be devoted to conducting interviews and other behavioral analyses typically undertaken by the Border Patrol to verify that an adult and child are related.
- Border Patrol does not currently conduct DNA testing to verify that an adult claiming to be the parent of an accompanying child is, in fact, the parent. As a result, Border Patrol is limited to confirming parentage with documentation provided by an adult or obtained from consular officials from the adult's home country, making detecting fraud and definitively proving parentage more difficult.
- Border Patrol agents do not appear to take measures to ensure that pre-verbal children separated from their parents can be correctly identified. For instance, based on OIG's observations, Border Patrol does not provide pre-verbal children with wrist bracelets or other means of identification, nor does Border Patrol fingerprint or photograph most children during processing to ensure that they can be easily linked with the proper file.
- CBP may have been able to avoid separating some families. In McAllen, Texas, many adults prosecuted under the Zero Tolerance Policy were sentenced to time served and promptly returned to CBP custody. Several officers at CBP's Central Processing Center in McAllen stated that if these individuals' children were still at the facility when they returned from court, CBP would cancel the child's transfer to HHS and reunite the family. However, CBP officials later arranged to have adults transferred directly from court to ICE custody, rather than readmitting them where they might be reunited with their children. According to a senior official who was involved with this decision, CBP made this change in order to avoid doing the additional paperwork required to readmit the adults.



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OIG Analysis of DHS' Management Response

We have included a copy of DHS' Management Response in its entirety in appendix B. In its response, DHS raised concerns that the draft report conflated actions the Department took under the Zero Tolerance Policy with separate CBP efforts to manage the flow of asylum-seekers at ports of entry. In the final report, we have clarified how even though the two policies may have been implemented separately, their effects are interrelated. Similarly, to address DHS' comment that the draft report did not adequately account for factors that may have caused CBP to detain unaccompanied alien children beyond the 72-hour period generally permitted by Federal law, we have included additional factors that we observed during our fieldwork. The Management Response also states that the draft report failed to recognize the Department's efforts to reunify families separated under the Zero Tolerance Policy. However, as we note, the observations in this report are limited to June 26–28, 2018, before reunification efforts were underway. DHS also provided technical comments that OIG incorporated as appropriate.



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Appendix A

Objective, Scope, and Methodology

DHS OIG was established by the *Homeland Security Act of 2002* (Public Law 107-296) by amendment to the *Inspector General Act of 1978*.

The objective of this special report is to detail some of our observations from field visits to CBP and ICE facilities in and around McAllen and El Paso, Texas, that pertain to the separation of alien adults and children who entered the United States at or between ports of entry together in order to claim asylum. We selected facilities in and around McAllen, Texas, because the Rio Grande Valley Border Patrol sector had more apprehensions of family units and unaccompanied alien children than any other sector in April–May 2018. We selected facilities in and around El Paso, Texas, because the El Paso Border Patrol sector had the third-most apprehensions during that time as well as active ports of entry. We conducted our unannounced field visits between June 26 and 28, 2018, at the following facilities:

Rio Grande Valley, Texas

CBP Border Patrol facilities:

- McAllen Station;
- Ursula Central Processing Center;

CBP OFO facilities:

- Gateway International Bridge POE;
- Brownsville and Matamoros International Bridge POE;
- Hidalgo POE.

ICE ERO Facility:

- Port Isabel Detention Center.

El Paso, Texas

CBP Border Patrol facilities:

- Clint Station;
- Paso del Norte Processing Center;
- El Paso Station;

CBP OFO facility:

- Paso del Norte International Bridge POE;

ICE ERO facilities:

- El Paso Processing Center;
- Tornillo Processing Center.

Throughout our visits, we spoke with approximately 50 CBP and ICE employees, including line officers, agents, and senior management officials. We



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met with 17 alien detainees (both adults and children) as well as parents who had been separated from their children and subsequently released from ICE custody. We also spoke with people in Mexico waiting for CBP officers to permit them to enter the United States to make asylum claims. Additionally, we spoke with CBP and ICE headquarters personnel in Washington, D.C., regarding statistical tracking, Department policies, and the computer systems those entities use to track individuals in their custody. We also reviewed relevant directives, guidance, policies, and procedures, as well as documents and communications related to the Zero Tolerance Policy implemented by DHS and the Department of Justice in May 2018.

This special report was prepared according to the *Quality Standards for Federal Offices of Inspector General* issued by the Council of the Inspectors General on Integrity and Efficiency, and reflects work performed by the DHS OIG Special Reviews Group and the Office of Inspections and Evaluations pursuant to Section 2 of the *Inspector General Act of 1978*, as amended. Specifically, this observational report provides information about CBP and ICE actions during and after the implementation of the Zero Tolerance Policy for the purpose of keeping the Secretary of DHS and Congress fully and currently informed about problems and deficiencies relating to the administration of DHS programs and operations and the necessity for corrective action. This report is designed to promote the efficient and effective administration of, and to prevent and detect fraud, waste, and abuse in, the programs and operations of DHS.



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Department of Homeland Security

Appendix B
DHS' Management Response to the Draft Report


U.S. Department of Homeland Security
Washington, DC 20528



**Homeland
Security**

September 14, 2018

MEMORANDUM FOR: John V. Kelly
Senior Official Performing the Duties of the
Inspector General

FROM: Jim H. Crumacker, CIA, CFE 
Director
Departmental GAO-OIG Liaison Office

SUBJECT: Management's Response to OIG Draft Report: "Special Report
Observations Regarding Family Separation Issues Based on
Field Visits to Texas on June 26-28, 2018"
(Project No. 18-095-ISP-CBP)

Thank you for the opportunity to review and comment on this draft report. The U.S. Department of Homeland Security (DHS) appreciates the work of the Office of Inspector General (OIG) in planning and conducting its review and issuing this report.

U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) perform an essential role in securing our Nation's borders at and between ports of entry, and enforcing U.S. immigration law in the interior of the country. As part of securing our borders and enforcing immigration laws, both are committed to treating all people humanely. CBP and ICE officers and agents continually uphold the utmost professionalism while maintaining efficient border operations.

While the OIG's draft report provides valuable insights, including observations about the lack of information technology integration across key immigration systems, the report makes a critical category error by conflating prosecutions of adults crossing the border illegally between ports of entry ("Zero Tolerance Policy") with operational actions to manage the flow of asylum seekers at Ports of Entry through the process known as "queue management." These policies and operations are separate and distinct.

It is also important to note that the queue management practices the OIG assessed were undergoing pilot evaluation as directed by the Secretary of Homeland Security during the OIG field visits for this report. The OIG's repeated conflation of the Zero Tolerance



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Policy and queue management throughout the draft report, however, detracts from an accurate understanding of either issue. The incorporation of results or findings in the section of the report titled “Lack of Resources Caused CBP to Limit the Number of Asylum-Seekers Entering at Ports of Entry” does not relate to or support “Observations Regarding Family Separation.” The practice of queue management does not result in Zero Tolerance-based prosecution or family separation at ports of entry, as it is lawful for family units to present themselves without documentation at ports of entry to claim asylum. Family units presenting themselves at ports of entry are only separated in limited circumstances, such as those acknowledged by the OIG in the introduction as predating Zero Tolerance—including an adult having criminal history or outstanding warrant, or a communicable disease, or if CBP cannot determine that the adult is a child’s parent or legal guardian.

As noted in the draft report, CBP’s processes and policies at ports of entry may require some individuals who do not have travel documents to wait at the International Boundary prior to entering the United States. These processes are in place to protect the health and safety of both travelers and CBP employees in the port area and to ensure appropriate balance of resources across CBP’s multiple critical missions at ports of entry. CBP policy does not require that the individual leave the line and prohibits officers from requiring individuals to leave or turning individuals seeking admission away. At its discretion, CBP may prioritize certain individuals with urgent needs such as those traveling with children, or individuals who may be pregnant or have other medical emergencies, to be processed, even when there otherwise may not be processing resources or holding capacity absent those urgent needs.

The report notes that “CBP exceeded the 72-hour limit in many instances,” referring to the statutory time frame for CBP to transfer an unaccompanied alien child to the custody of the Department of Health and Human Services (HHS). By doing so, the report implies that CBP did not perform its duties in a timely manner. However, the report does not recognize that in all but the rarest cases, CBP has completed all of its duties including processing unaccompanied alien children and making referrals to HHS, as appropriate. In fact, CBP sometimes performs custodial duties beyond the 72-hour limit due primarily to lack of available and timely placement on the part of HHS, and, in rare cases other extenuating circumstances, such as transportation delays or medical concerns – factors that OIG’s report does not acknowledge. Indeed, the report omits many factors that might provide context to the larger issue of custodial responsibility, instead suggesting lack of diligence by CBP based solely on one official’s recollection of HHS requests for more information. In reality, the care and transfer of unaccompanied alien children is a critical operational priority that is carefully and robustly managed by CBP.

In addition, the draft report provides no mention of the Department’s significant accomplishments to reunify families. DHS coordinated with HHS, which deployed HHS staff to ICE detention locations to ensure that communication between the parents and



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their children occurred. Despite the fact that the two Departments' tracking systems have no direct electronic interface, the government took exhaustive efforts to overcome this challenge and stand up a process to safely reunify families expeditiously in compliance with the June 26, 2018, decision in *Ms. L. v. ICE*.¹ These efforts included establishing a Special Operations Center staffed with personnel from both Departments. The Court in *Ms. L* also acknowledged the government's strides in facilitating communication.

Concerning the 24 children that were identified by your team, CBP and ICE further analyzed CBP and ICE data systems and worked with HHS to determine that the 24 children are appropriately not included in the data set because they were determined not to be the children of *Ms. L* class members based on valid reasons, as provided for in the *Ms. L* court order. These reasons included the parent's criminal history the fact that the child entered either unaccompanied or with a relative who was not their parent or legal guardian, the child was separated because the parent presented a danger to the child, or the child was reunified with his or her parents or legal guardians before the date of the court order.

Again, thank you for the opportunity to review and comment on this draft report. Technical comments were provided under separate cover. Please feel free to contact me if you have any questions. We look forward to working with you again in the future.

¹ *Ms. L. v. ICE*, No. 18-cv-428 (S.D. Cal.).



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Appendix C
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Washington, DC 20528-0305

Congress of the United States
Washington, DC 20515

SCANNED/RECEIVED
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2018 JUN 27 AM 8:37

June 26, 2018

The Honorable Alex M. Azar II
 Secretary
 U.S. Department of Health and Human Services
 330 C Street SW
 Washington, D.C. 20416

The Honorable Kirstjen M. Nielsen
 Secretary
 U.S. Department of Homeland Security
 245 Murray Lane SW
 Washington, D.C. 20528

Dear Secretaries Azar and Nielsen:

As federal officials, we have a moral obligation to uphold the values that have always made America a beacon of hope, democracy and decency in the world.

We also have an obligation to the hardworking taxpayers across this nation who entrust us to spend their money wisely.

Over the last several weeks, we have been appalled by the images of children being separated from their parents at the border and haunted by the cries of toddlers taken from their mothers. We believe to our core that this is an immoral policy and a harmful misuse of taxpayer funds.

News sources have reported that it is costing the taxpayers as much as \$256 per night at permanent facilities and \$775 per child per day at makeshift tent cities under this family separation policy. It is our understanding that this does not necessarily include things like the cost of transporting children from the border to detention centers.

The public deserves a complete and thorough accounting of exactly how much of their money you have spent breaking up thousands of families on our southern border. Specifically, we are requesting, in writing:

- The average per day bed costs for children separated from their parents. Include individual costs at temporary tent cities for immigrant children, permanent facilities or shelters for immigrant children and family detention facilities.
- The average length of detention of children separated from their parents.
- The amount spent to transport separated children to their detention centers.
- The amount agencies pay in rent, maintenance or other indirect costs for facilities to house or care for separated children.
- The number of staff hours spent separating children from their parents.

- A description of the kind of trauma counseling these children receive and how much has been spent in this area.
- A description of the medical care these children receive. Please itemize the cost associated with the various treatments provided on things like mental health exams, immunizations and other pediatric treatments.
- A full list of contractors, contracts and contract costs to house or in any way care for children separated from their parents.
- Account for any additional direct or indirect costs, beyond those specified above, incurred by the federal government in separating and detaining children taken from their parents.
- The estimated cost to taxpayers to reunite these children with their families.
- The estimated timeline for completing reuniting these children with their families.

In short, we are requesting full and immediate transparency in accounting of this misuse of taxpayer dollars.

It's hard to underscore how alarming it has been to see the White House, Department of Homeland Security and Department of Health and Human Services issuing contradictory and false information over the last few weeks. We urge you to take this opportunity to be transparent and forthright with the American public.

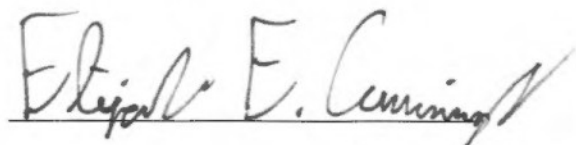
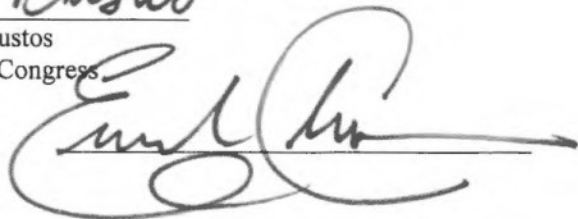
We request that you provide this information as quickly as possible, but no later than July 10th.

Thank you for your prompt attention to this matter.

Sincerely,



Cheri Bustos
Member of Congress



Yvette D. Clarke

Betsy L

Shelia Johnson Lee

Rh

Hank Johnson

Karen Bass

Daniel N. Claitor

Lee A. Hastings

David Lipton

Bill Foster

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Bill Russell Jr

Wm. T. T. T.

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Val Deming

Ag Allen

C. A. Dutch Ruppel

Ann C. Hill
CT-4

Edy Palumbo
Colo#7

[Signature] WA-6

Denny Heck WA 10

Lynelle Raphael-Allard

Kathleen Rice

Kathy Cast

Bob A. Brady

Steve Cohen

Ammon L. DeBene

Paul D. Dwyer

John L. ...

Jeffrey M. ...

Judy Ann ...

W. H. A.

Dan ...

JORDAN CASTRO

Lydia M Velazquez

Peter Ayle CA-31

Chris M Loney

~~Chris M Loney~~ CA-36

Justin CA-34

Paul Carter

Grace Napolitano CA-32

John

Jon Schkowsky

Katherine Clark MAS

John Kelly

David T. Jones

Alan Jones

Michael E. Capuano

W. Tompkins

Laura Blunt Rochester

Tom Blunt

Brenda Lawrence

Scott Walker

Donald Spang

A. Donald McEachin

Charlie Crist

Ann McFane Fuster

Jimmy Gomez

J. A.

[Signature]

Mark Gallego

Greg Green

Paul S. Lantz

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Diana Rotke

[Signature]

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of the Freedom of Information and Privacy Act

Page 40

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of the Freedom of Information and Privacy Act



**Homeland
Security**

Privacy Office, Mail Stop 0655

January 29, 2021

**SENT VIA E-MAIL TO: foia@americanoversight.org,
hart.wood@americanoversight.org
JYenouskas@goodwinlaw.com
ASun@goodwinlaw.com**

Austin R. Evers
Executive Director
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

**Re: 18-cv-02840 (2019-HQLI-00018)
American Oversight v. DHS
Eighth Interim Release**

Dear Mr. Evers:

This is the eighth interim release of records to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), received on October 4, 2018.

For this production, DHS reviewed 347 pages of which nine pages are released in full or withheld in part or in full pursuant to FOIA exemption (b)(6). An additional 338 pages were non-responsive to the original request. The nine pages for release are bates stamped DHS-001-02840-001659 to DHS-001-02840-001667.

If you have any questions regarding this release, please contact Assistant United States Attorney, Michael A. Tilghman II, Civil Division, United States Attorney's Office for the District of Columbia, by email at michael.tilghman@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Bradley E. White".

Bradley E. White
Senior Director, FOIA Litigation,
Appeals, and Policy

Enclosed: nine pages

From:	Hoffman, Jonathan (b)(6) (b)(6)
To:	"Houlton, Tyler (b)(6) (b)(6) "Wolf, Chad (b)(6) (b)(6)
Subject:	FW: Wrapup of Dilley Tour coverage
Date:	2018/08/10 10:16:01
Priority:	Normal
Type:	Note

Ma'am –

We had asked ICE to do some media tours of the detention facilities. The coverage is very good. The embargo lifted at 7:00am and media will be running clips throughout the day. Below are a few of the stories. We are sharing these widely.

Jonathan

From: Johnson, Liz (b)(6)
Sent: Friday, August 10, 2018 10:11 AM
To: Hoffman, Jonathan (b)(6)
Subject: Wrapup of Dilley Tour coverage

JH – per request, following is an initial wrap-up of media coverage from the FRC tour yesterday. Overall, pretty fair and straightforward coverage, which will be helpful in countering further egregious reports of mistreatment/poor conditions, etc. AP story especially good. Our photographer and videographer provided pool footage, some of which can be seen below. Let me know if you need more.

Thanks,
Liz

FOX San Antonio preview: <https://foxsanantonio.com/news/local/a-look-inside-the-dilley-detention-center>

DILLEY, Texas - It's one of three immigration, customs and enforcement family detention centers in the United States, and it's just 80 miles south of San Antonio.

On Thursday, our Yami Virgin was invited by ICE to tour the facility where hundreds of undocumented women and children are being held.

As of Thursday, 1,520 women with their minor children are being housed here. The cost? \$13 million a month.

"This is a female head of household with children so those people are coming in they get medically screened here, they get full medical services, they get we have the accredited school here," said Daniel Bible of ICE.

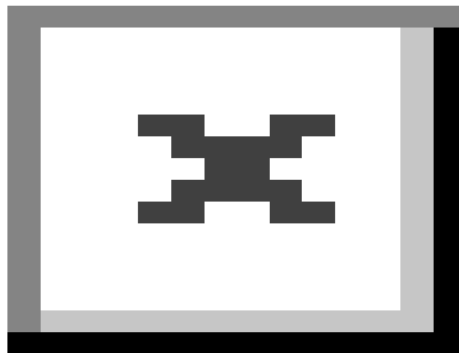
You can see more of Yami's tour on FOX News at Nine.

Texas lockup is epicenter of family immigration detention

By WILL WEISSERT

Associated Press

Aug 10, 2018 Updated 7 min ago



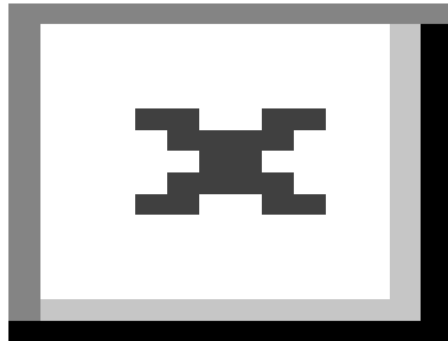
[epicenter of family immigration detention](#)

[Texas lockup is](#)

This Thursday, Aug. 9, 2018, photo, provided by U.S. Immigration and Customs Enforcement, shows a scene from a tour of South Texas Family Residential Center in Dilley, Texas. Currently housing 1,520 mothers and their children, about 10 percent are families who were temporarily separated and then reunited under a “zero tolerance policy” that has since been reversed.

(Charles Reed/U.S. Immigration and Customs Enforcement via AP)

- Charles Reed



[epicenter of family immigration detention](#)

[Texas lockup is](#)

DILLEY, Texas (AP) — A little boy with closely cropped hair was sitting quietly and grinning when he suddenly sprang to his feet and tried to swipe a brownie off a nearby tray. He couldn't quite reach it, though, instead sending crumbs and napkins in all directions and eliciting happy squeals from two children nearby.

It's a scene that could play out in elementary school cafeterias nationwide as youngsters prepare to head back to class. But inside the Dilley immigration lockup, it's a glimpse of the epicenter of family immigration detention policies that the Trump administration has sought to tighten.

Federal authorities on Thursday allowed reporters to tour the 50 -plus-acre (more than 200,000-sq.-meter) compound that's holding 1,520 women and children ages 1 to 17, the nation's largest such facility, in a remote corner of South Texas, about 70 miles (110 kilometers) southwest of San Antonio. Agency ground rules prevented reporters from interviewing immigrants being held at the facility.

Another lockup in equally rural Karnes City, Texas, is housing 630 fathers and their sons, while a smaller detention center in Pennsylvania holds mothers and fathers and their children.

Border arrest figures released Wednesday underscore the strain that families have put on the detention system, which has a maximum capacity of around 3,000. In July, families accounted for 9,258 of the Border Patrol's 31,303 arrests, or 29.5 percent. In June, they were 27.6 percent of total arrests.

The Trump administration's "zero tolerance" policy of criminally prosecuting immigrants crossing the border illegally led to families being separated before public outcry prompted a presidential executive order halting the practice in June. About 10 percent of families at Dilley were reunited after being separated, but aren't showing signs of trauma that would set them apart from other families being held, said Daniel Bible, field office director for U.S. Immigration and Customs Enforcement's San Antonio sector.

"What I think you're seeing out here is the typical interaction that these people have all day," Bible said. "We haven't noticed that there's been any change."

Many families at Dilley are fleeing gang or drug violence in their home countries, which are most frequently Guatemala, Mexico, El Salvador and Honduras. They are seeking U.S. asylum, a process that can take years, and argue that their lives could be in danger if they are deported.

The facility receives about 110 new immigrants daily, most apprehended in Texas' Rio Grande Valley. Dilley only accepts mothers with children and doesn't take people with criminal records.

Women and girls ages 10 and older are given pregnancy tests upon arrival and everyone gets physicals, mental health and dental screenings and immunizations within two weeks. Posters featuring a long-nosed Pinocchio proclaim in Spanish: "The No. 1 rumor you've heard about vaccinations. It's not true," a reference to some beliefs that immunizations can be harmful to children.

Immigrants typically stay at Dilley around 15 days. A federal court decision prohibits the government from holding families in detention for longer than 20 days, though some stay longer by choice while appealing if they fail initial interviews as part of their asylum cases. Michael Sheridan, an ICE contract officer representative who led the tour, said most people at Dilley pass

the initial screenings and are eventually released to live with relatives already in other parts of the U.S.

With an annual operating budget of \$156 million, Dilley is a series of low-slung compounds on what was once an encampment for oil field workers. Mothers and their children are assigned to different "neighborhoods" named after animals and typically share trailers with bunk beds and communal bathrooms.

The cafeteria offers three meals daily and has a permanent salad bar, rice and beans station, and small ovens that keep warm the flour and corn tortillas that are always available. The most popular meal is chicken nuggets, Sheridan said. There are playgrounds, gyms, a salon trailer offering free haircuts and a library with thousands of books in Spanish and English where detainees can check their email and the internet — but can't access social media such as Facebook.

In classroom trailers, students are taught Texas curriculum, though they don't begin the day with the Pledge of Allegiance as in other schools statewide.

Immigrant families largely move freely about the grounds, many pushing identical gray strollers and wearing Dilley-issued, colorful but otherwise non-descript T-shirts, pants, shorts and baseball caps rather than uniforms.

"It's a non-correctional setting. It's informal," Sheridan said.

Still, advocacy groups note concerns, including that Dilley doesn't have a pediatrician on staff around-the-clock. The facility has three doctors who are generally present during business hours and other medical staff attend to patients during off-hours, though.

Katy Murdza, advocacy director of the Dilley Pro Bono Project, which works with detained immigrants, said children at the facility who need medicine have to line up, sometimes for hours, at pharmacy trailers that dispense medicine through windows reminiscent of ticket booths. She

said the classes have trouble accommodating children who speak languages other than Spanish, like Mayan tongues common in Guatemala.

"I think that all the families who come here are traumatized," Murdza said. "A lot of people say they wouldn't have wanted to leave their countries but feel they have no choice."

Inside a Texas Detention Facility for Immigrant Families

The centers have become focal points in Trump's efforts to crack down on illegal immigration

By

Alicia A. Caldwell

Wall Street Journal

Aug. 10, 2018 7:00 a.m. ET

DILLEY, Texas—In the past 10 months, more than 25,000 immigrant mothers and their children caught illegally crossing into the U.S. at the border with Mexico have spent their first weeks in the country living in a sprawling compound of trailers, tents and playgrounds.

The children go to school most days and their parents meet with lawyers and immigration advocates who volunteer at the U.S. Immigration and Customs Enforcement detention center. Almost everyone will ask for asylum in the U.S., a process that could take several years.

For most, the stay will last no more than 20 days, because of a federal court ruling that bars the government from detaining children with their parents for any longer.

The South Texas Family Residential Center in Dilley and a second family detention center about 95 miles to the east in Karnes have become focal points in President Trump's continuing efforts to crack down on illegal immigration and quickly deport people caught crossing the border illegally. Both are operated by contractors and overseen by ICE.

The Trump administration wants the families' stay at the detention centers to end only when an immigration judge decides if they should be deported or allowed to stay and live in the U.S. But

so far, neither the judge in California who ordered the 20-day limit nor Congress has acted to change the rules.

So families rotate in and out of the facility, which can hold as many as 2,400 mothers and children. Daniel Bible, an ICE official in charge of detaining and deporting unauthorized immigrants in this part of Texas, said since October only 122 people have been deported from the center. The others are released to relatives or on their own, many with an ankle monitor and a court date to appear for their asylum hearing after their stay here.

Since Mr. Trump signed an executive order ending the practice of separating families at the border and a federal judge in San Diego ordered the government to reunite thousands of parents and children in June, numerous mothers and their children have been sent to Dilley.

Mr. Bible said Thursday that about 10% of the roughly 1,500 immigrants being held there were immigrants who had been separated at the border and later reunited. The rest, he said, were sent to the detention center after being apprehended along the Mexican border. About 100 newly arrived immigrants are brought in daily.

ICE officials allowed a group of reporters into the detention facility Thursday and provided a guided tour. At one of the indoor gyms, the door was propped open by a speaker blasting a Jimmy Buffett song. The classrooms were outfitted like most typical schools, with science projects on display for the older children and the alphabet on a wall for the youngest.

Michael Sheridan, an ICE manager and program analyst at the center, said any child, 4 to 17 years old, attends school as long as they are at Dilley. Classes include English as a second language, social studies, math and science. The average stay at Dilley is about 15½ days right now, he said.

Detainees may move about the 55-acre compound freely during the day. They wear either their own clothes or T-shirts, jeans and shoes given to them upon arrival. Unlike at the Border Patrol processing center where most of the families were taken after their initial arrests, none are required to surrender their shoelaces, and there are no cells or locked areas.

Immigration advocates have long objected to family detention centers and faulted the conditions. Numerous groups have pushed to have both Karnes and Dilley closed since the facilities were

opened, during the Obama administration, when a crush of families were caught crossing the border illegally in 2014.

Katy Murdza, advocacy coordinator of the Dilley Pro Bono Project, which offers legal aid to detainees at the facility, said her group “has concerns with pretty much all” the services at the detention center, from medical care to education to food.

Mr. Bible said the detention facility meets or exceeds his agency’s standards for caring for families.

The Trump administration has said zero-tolerance and family separation were part of a broader effort to deter would-be border crossers from trying to sneak into the U.S. The Obama administration also used family detention as a deterrence.

But it is unclear if the effort is having any impact on border crossings. In July, arrests at the border declined for the second straight month. The number of families caught crossing the border illegally was also down slightly, though arrests at the Mexican border historically dip during the hottest summer months.

Ms. Murdza said parents interviewed by her group worry about how the U.S. government will treat them once they arrive but opt to come anyway because conditions in their home country are so dire.

“They don’t make this decision lightly,” Ms. Murdza said. “They’re doing it feeling they don’t have any choice. We’re still seeing so many families who said they were afraid to come, but they had no other choice.”

Sender:	Hoffman, Jonathan (b)(6)
	(b)(6)
Recipient:	"Houlton, Tyler (b)(6)
	(b)(6)
	"Wolf, Chad (b)(6)
	(b)(6)

	(b)(6)	
Sent Date:	2018/08/10 10:16:00	
Delivered Date:	2018/08/10 10:16:01	



**Homeland
Security**

Privacy Office, Mail Stop 0655

March 30, 2021

SENT VIA E-MAIL TO: foia@americanoversight.org,
hart.wood@americanoversight.org
JYenouskas@goodwinlaw.com
ASun@goodwinlaw.com

Austin R. Evers
Executive Director
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

Re: **18-cv-02840 (2019-HQLI-00018)**
American Oversight v. DHS
10th Interim Release

Dear Mr. Evers:

This is the 10th interim release of records to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), received on October 4, 2018.

For this production, DHS reviewed 387 pages of which 179 pages are withheld in full pursuant to FOIA exemption (b)(5). An additional 205 pages were non-responsive to the original request. DHS has also located and sent three pages to other agencies for consultation. The 179 pages for release are bates stamped DHS-001-02840-001668 to DHS-001-02840-0011846.

If you have any questions regarding this release, please contact Assistant United States Attorney, Michael A. Tilghman II, Civil Division, United States Attorney's Office for the District of Columbia, by email at michael.tilghman@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Bradley E. White".

Bradley E. White
Senior Director, FOIA Litigation,
Appeals, and Policy

Enclosed: 179 pages

From:	(b)(6)
To:	"Taylor, Miles (b)(6) (b)(6) "Wolf, Chad (b)(6) (b)(6)
Subject:	FW: Yoder: 'Crown Jewel' Homeland Funding Bill on Tap in House
Date:	2018/07/12 14:38:07
Priority:	Normal
Type:	Note

Kirstjen Nielsen
Secretary of Homeland Security

From: (b)(6)
Sent: Thursday, July 12, 2018 6:18:13 PM
To: S1KMN
Subject: FW: Yoder: 'Crown Jewel' Homeland Funding Bill on Tap in House

Can we talk about this as well as the beds funding issue?

From: (b)(6)
Sent: Thursday, July 12, 2018 12:28 PM
To: (b)(6)
(b)(6)
(b)(6)
Subject: Yoder: 'Crown Jewel' Homeland Funding Bill on Tap in House

CQ
July 11, 2018

Yoder: 'Crown Jewel' Homeland Funding Bill on Tap in House
By: Jennifer Shutt and Paul Krawzak

The House Appropriations Committee may mark up the last of its 12 spending bills before the August recess, according to Homeland Security Subcommittee Chairman Kevin Yoder.

"We're working it. It's going to be the icing on the cake — the crown jewel of the 12 bills," Yoder, R-Kan., said Wednesday, adding that his "hope is that it is in full committee before the August recess."

Dan Newhouse, R-Wash., a member of the Homeland Security appropriations panel, said GOP appropriators were tentatively eyeing Tuesday, July 17, for a subcommittee markup, with full

committee action to occur the following week. The committee has not formally announced its schedule, however.

The unreleased draft bill, which has a \$51.4 billion allocation within the statutory nondefense cap for fiscal 2019, has been subject to both political and logistical problems. President Donald Trump now wants \$5 billion for construction of barriers along the U.S.-Mexico — a \$3.4 billion increase from the \$1.6 billion the administration requested in February when it sent its fiscal 2019 budget request to Congress. But the White House still has not sent up an official revised request, however, making it difficult for appropriators to respond.

In addition, the Trump administration's family separation policy for migrants who cross the border illegally, while since revoked via executive order, has given Democrats a political opening to pounce on vulnerable Republicans. Democrats are likely to use the amendment process on the DHS bill to force Republicans to take a position on Trump's immigration policies.

For example, support for Democratic presidential candidate Hillary Clinton in 2016 eclipsed backing for Trump by 1.2 percentage points in Yoder's district, and Inside Elections with Nathan L. Gonzales has a "Lean Republican" rating on Yoder's race. In a sign of how seriously the national GOP is taking Yoder's difficult re-election bid, Vice President Mike Pence was scheduled to be in Kansas City, Mo., on Wednesday to participate in a fundraising event for Yoder.

Yoder, who took over the Homeland panel's chairmanship just two months ago, said the obstacles were clearing for his bill. "I think [Labor-HHS-Education] and Homeland are some of the more difficult bills to piece together for a variety of reasons," Yoder said. "But, it is certainly nearing completion and we are excited to get that rolling."

The Homeland subcommittee is discussing providing more funding for the border wall than the \$1.6 billion in the Senate version of the bill (S 3109), which is funded at \$3.1 billion less than the House allocation for fiscal 2019.

Newhouse said he is supportive of more wall money. "There's a conversation, there's a lot of different numbers being floated, but I really couldn't tell you exactly where that's going to end up," he said. Fresh from a trip to the southern border, Newhouse said "our people need more resources, they absolutely do, and they need some help. We are asking them to do a very difficult job."

He added that while he favors more than the \$1.6 billion Trump initially asked for in his fiscal 2019 budget request, "I'm not sure what the right number is. But I think as much as we can provide for them the better to help alleviate the pressure."

Yoder said he hasn't yet decided on how much for border wall funding will be in the bill. "It's a fluid process," he said.

Several lawmakers, including House Appropriations Chairman Rodney Frelinghuysen, R-N.J., want the administration to file the paperwork outlining the White House's formal request for more wall money.

"I think that would be quite desirable," Frelinghuysen said Wednesday.

The House Appropriations Committee has reported 10 of its spending bills to the floor and is expected to report out the Labor-HHS-Education bill draft today. The Senate Appropriations Committee has reported all 12 of its bills to the floor.

Sender:	(b)(6)
Recipient:	"Taylor, Miles (b)(6) (b)(6) "Wolf, Chad (b)(6) (b)(6)
Sent Date:	2018/07/12 14:38:08
Delivered Date:	2018/07/12 14:38:07



**Homeland
Security**

Privacy Office, Mail Stop 0655

April 30, 2021

SENT VIA E-MAIL TO: foia@americanoversight.org,
hart.wood@americanoversight.org
JYenouskas@goodwinlaw.com
ASun@goodwinlaw.com

Austin R. Evers
Executive Director
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

Re: **18-cv-02840 (2019-HQLI-00018)**
American Oversight v. DHS
11th Interim Release

Dear Mr. Evers:

This is the 11th interim release of records to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), received on October 4, 2018.

For this production, DHS reviewed 301 pages of which 53 pages are released in full, while 60 pages are withheld either in part or in full pursuant to FOIA exemption (b)(5). An additional 188 pages were non-responsive to the original request. The 113 pages for release are Bates stamped DHS-001-02840-001847 to DHS-001-02840-001959.

If you have any questions regarding this release, please contact Assistant United States Attorney, Michael A. Tilghman II, Civil Division, United States Attorney's Office for the District of Columbia, by email at michael.tilghman@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Eric A. Neuschaefter".

Eric A. Neuschaefter
Senior Director, FOIA Litigation, Appeals, Policy, and
Training (Acting)

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of the Freedom of Information and Privacy Act

From:	Blume, Allen (b)(6) (b)(6)
To:	"Wolf, Chad (b)(6) (b)(6)
CC:	"Ciccione, Christine (b)(6) (b)(6) "Dinh, Uyen (b)(6) (b)(6) "Lim, Evelyn (b)(6) (b)(6) "Taylor, Miles (b)(6) (b)(6) "Hummelberg, Hannah (b)(6) (b)(6) "Fulghum, Chip (b)(6) (b)(6) "Marcott, Stacy (b)(6) (b)(6)
Subject:	RE: Washington Times: House Appropriations Committee tackles family separation issue
Date:	2018/07/12 11:33:58
Priority:	Normal
Type:	Note

Chad,

HAC finished its work on the FY19 appropriations bill for Labor, Education, and HHS last night approving \$177.1B. There were 10 amendments related to immigration/family separation that were adopted.

- Amendment including language to overturn the 1997 Flores legal settlement that prevents undocumented children from being held together with their parents in detention for more than 20 days while awaiting criminal or civil immigration court proceedings.
- An amendment that would require HHS to release a formal plan for reuniting children with their parents who had been forcibly separated under the administration's "zero tolerance" policy.
- An amendment to require that siblings in HHS custody remain together.
- An amendment that would prevent HHS from administering any medications to a child in its custody unless he or she received a physical and mental health evaluation.
- Language that would require the HHS inspector general to review the administration's policy on family separations.
- A provision that would steer around \$10 million in mental health funding toward counseling for minors separated from their families.
- An amendment that would require a report from HHS on the number of pre-literate children in its custody and a list of languages that they speak.
- An amendment to require the Office of Refugee Resettlement to protect the genetic information of individuals whose DNA is tested for the purposes of reunification.

- Manager's amendment that would allow HHS to accept donations of things like medical supplies, clothing and school supplies for the unaccompanied children in HHS' care. It also requires HHS to provide Congress with regular reports about how many migrant children it has in its care, how long they've been in custody, and their reunification status.
- Amendment to prevent HHS and its contractors from asking religious questions during family reunification evaluations.

Attached is the legislative language of each amendment from the HAC FY19 bill.

Thanks,

Allen

Begin forwarded message:

From: "Blume, Allen" (b)(6)
Date: July 11, 2018 at 5:40:38 PM EDT
To: "Wolf, Chad" (b)(6)
Cc: "Cicccone, Christine" (b)(6) "Dinh, Uyen"
(b)(6) "Lim, Evelyn" (b)(6) "Taylor, Miles"
(b)(6) "Hummelberg, Hannah" (b)(6)
"Fulghum, Chip" (b)(6) "Marcott, Stacy"
(b)(6)
Subject: Re: Washington Times: House Appropriations Committee tackles family separation issue

Chad

The HAC markup is still ongoing.

The adopted amendments thus far include:

- Amendment including language to overturn the 1997 Flores legal settlement that prevents undocumented children from being held together with their parents in detention for more than 20 days while awaiting criminal or civil immigration court proceedings.
- Amendment requiring HHS to release a formal plan for reuniting children with their parents.
- Manager's amendment that would allow HHS to accept donations of things like medical supplies, clothing and school supplies for the unaccompanied children in HHS' care. It also requires HHS to provide Congress with regular reports about how many migrant children it has in its care, how long they've been in custody, and their reunification status.

- Amendment that would require siblings in HHS' custody to remain together, was also adopted by voice vote.
- Amendment that would prevent HHS from administering any medications to a child in its custody unless he or she received a physical and mental health evaluation.

Will provide update once Markup is complete.

Thanks

Allen

Allen Blume
Budget Director
Office of the Chief Financial Officer
U. S. Department of Homeland Security

(b)(6)

Sent from my iPhone

On Jul 11, 2018, at 3:25 PM, Wolf, Chad (b)(6) wrote:

Need all listing / description of the provisions passed. Thanks.

Chad F. Wolf
Chief of Staff
Department of Homeland Security

(b)(6)

From: Waldman, Katie
Sent: Wednesday, July 11, 2018 3:12 PM
Subject: Washington Times: House Appropriations Committee tackles family separation issue

House Appropriations Committee tackles family separation issue

Washington Times
David Sherfinski
July 11, 2018

<https://www.washingtontimes.com/news/2018/jul/11/house-appropriations-committee-tackles-family-sepa/>

The House Appropriations Committee on Wednesday flexed the power of the federal purse to tackle the ongoing issue of migrant children getting separated from their parents at the border,

passing a series of provisions to prod more information from the Trump administration on the matter.

The committee approved an amendment from Rep. Rosa DeLauro that would reduce funding for the office of the secretary of Health and Human Services in next year's spending bill by \$100,000 per day starting in August if the administration doesn't submit a broader family reunification plan to Congress.

"There is no plan. There never was a plan," said Ms. DeLauro, Connecticut Democrat and the ranking member on the spending subcommittee with jurisdiction over HHS.

The Office of Refugee Resettlement within HHS is the division tasked with caring for unaccompanied illegal immigrant children until they can be placed with sponsors.

A broader-based "manager's amendment" offered by Rep. Tom Cole, the Oklahoma Republican who chairs the subcommittee, requires the administration to submit quarterly reports to Congress on the status of the children who have been separated.

It also includes language that allows HHS to accept private donations for the care of unaccompanied alien children in the custody of the federal government, including for items such as medical and school supplies.

The panel also approved a separate amendment from Mr. Cole to allow families to be held in detention facilities longer — language that mirrored a section in a recent GOP immigration bill introduced by House Judiciary Chairman Robert W. Goodlatte.

The committee also adopted other Democratic proposals that sought to keep migrant siblings together in the event they're separated from their parents, and to prevent detained children from being medicated until they've been examined by a medical professional.

The proposals were offered as amendments to the 2019 spending bill that funds the Departments of Labor, Health, and Education.

The House spending bill would still have to be reconciled with the Senate version, which passed the appropriations committee last month. That measure does include language directing the

administration to provide regular updates on the family separation issue.

The Labor-HHS bill is typically one of the tougher measures to pass, in large part because the House version has included myriad policy “riders” opposed by Democrats on issues ranging from abortion to gun control.

Sender:	Blume, Allen (b)(6)
	(b)(6)
	"Wolf, Chad (b)(6)
	(b)(6)
	"Ciccone, Christine (b)(6)
	(b)(6)
	"Dinh, Uyen (b)(6)
	(b)(6)
Recipient:	"Lim, Evelyn (b)(6)
	(b)(6)
	"Taylor, Miles (b)(6)
	(b)(6)
	"Hummelberg, Hannah (b)(6)
	(b)(6)
	"Fulghum, Chip (b)(6)
	(b)(6)
	"Marcott, Stacy (b)(6)
	(b)(6)
Sent Date:	2018/07/12 11:33:58

Page 110 of the bill, after the final section (before the short title), insert the following:

Sec. 230. Effective during the period beginning on the date of the enactment of this Act and ending December 31, 2022, for the purposes of any provision of law, the recommendations of the United States Preventive Service Task Force regarding cervical cancer screening with a combination of cytology and human papillomavirus testing for women age 30 to 65 (issued in March 2012) shall be considered the most current recommendations of the United States Preventive Service Task Force for such cervical cancer screening. Any final recommendation regarding cervical cancer screening described in the preceding sentence issued by the United States Preventive Service Task Force that is based on the draft recommendation for such screening issued by the United States Preventive Service Task Force in 2017 shall have no force or effect under any provision of law.

Sec. 231. Section 9(jj)(7) of the Small Business Act (15 U.S.C. 638(jj)(7)) is amended by striking “fiscal year 2017” and inserting “fiscal year 2019”.

Sec. 232. The Department of Health and Human Services may accept donations from the private sector, nongovernmental organizations, and other groups independent of the Federal Government for the care of unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2)) in the care of the Office of Refugee Resettlement of the Administration for Children and Families, including medical goods and services, school supplies, toys, clothing, and any other items intended to promote the wellbeing of such children.

Sec. 233. Not later than 30 days after the last day of each calendar quarter (beginning with the first calendar quarter beginning on or after the date of the enactment of this Act), the Secretary shall submit to Congress a report on, with respect to children who were separated from their parents or legal guardians by the Department of Homeland Security and subsequently classified as unaccompanied alien children and transferred to the custody of the HHS’ Office of Refugee Resettlement—

- (1) the number of children so separated;
- (2) the length of any such separation;
- (3) the status of any efforts undertaken by the Secretary to reunify such children with a parent or legal guardian; and
- (4) the number of any such reunifications.

And amend the report accordingly.

**AMENDMENT TO LABOR, HHS, EDUCATION
APPROPRIATIONS BILL, 2019
OFFERED BY MS. CLARK OF MASSACHUSETTS**

At the end of the bill (before the spending reduction account), insert the following:

1 SEC. _____. Not later than 30 days after the date of
2 the enactment of this Act, the Secretary of Health and
3 Human Services shall submit to the Committee on Appro-
4 priations of both Houses of Congress a report that details
5 the following:

6 (1) What guidance, if any, the Office of Ref-
7 ugee Resettlement of the Administration for Chil-
8 dren and Families provides to the shelters and staff
9 of such Office of Refugee Resettlement regarding
10 the unique medical and mental health needs of chil-
11 dren who have been separated from their parents.

12 (2) What resources, if any, the Department of
13 Health and Human Services provides to children
14 who have been separated from their parents to ad-
15 dress the mental health and trauma such children
16 have experienced and may continue to experience.

17 (3) How the Department of Health and Human
18 Services ensures that children who have been sepa-

1 rated from their parents have timely access to treat-
2 ment from qualified health professionals.

3 (4) The average period of time that children
4 separated from their parents stay in the care of the
5 Office of Refugee Resettlement of the Administra-
6 tion for Children and Families.



Amendment to Labor, Health and Human Services, Education and Related Agencies
Appropriations Bill, 2019

Offered by Mr. Price of North Carolina, Ms. Lowey of New York, Mr. Cuellar of Texas,
and Ms. Katherine Clark of Massachusetts

On page 110 of the bill, after the final section (before the short title) insert the following at the appropriate place:

“Sec. -- Beginning with April 2018, the Secretary shall submit to Congress a monthly report on, with respect to children who were separated from their parents or legal guardians by the Department of Homeland Security and subsequently classified as unaccompanied alien children and transferred to the custody of the HHS’ Office of Refugee Resettlement—

- (1) the number and ages of children so separated at or between ports of entry;
- (2) the length of any such separation;
- (3) the status of any efforts undertaken by the Secretary to reunify such children with a parent or legal guardian; and
- (4) the number of any such reunifications, and whether the reunified families were placed in family detention.”

On page 99 of the Committee Report, under the heading “REFUGEE AND ENTRANT ASSISTANCE,” insert the following language directly after the table:

“Unaccompanied Children

The Committee directs that in cases of separation, within 24 hours, parents, legal guardians, or other relatives shall be informed of the whereabouts of their children and children shall be informed of the whereabouts of their parents, legal guardians, or other relatives, except in cases of suspected abuse or trafficking.

The Committee also directs the Secretary of HHS to work in collaboration with the Secretary of DHS to submit a report to the Committees on Appropriations of the House of Representatives and of the Senate within 60 days of this bill’s enactment detailing actions it has taken and will take and policies it has implemented and will implement to facilitate: 1) the ability of separated children to make contact and maintain communication with their separated parents, relatives, legal guardians, or primary caregivers (for tender-age and non-verbal children, this should include methods to facilitate in-person visits and video chats); 2) the ability of family members residing abroad to utilize the hotline to receive

information on the status and location of separated children; and 3) the coordinated reunification and post-release support of a separated child and adult family member, when it is in the best interest of the child.”

**AMENDMENT TO LABOR, HHS, EDUCATION
APPROPRIATIONS BILL, 2019
OFFERED BY MS. CLARK OF MASSACHUSETTS**

At the end of the bill (before the spending reduction account), insert the following:

1 SEC. _____. Not later than 30 days after the date of
2 the enactment of this Act, the Secretary of Health and
3 Human Services shall submit to the Committee on Appro-
4 priations of both Houses of Congress a report that details
5 the following:

6 (1) The number of pre-literate children who
7 were in the custody of the Office of Refugee Reset-
8 tlement of the Administration for Children and
9 Families during fiscal year 2018.

10 (2) A list of languages that were spoken by
11 such children and the number of translators that
12 were needed with respect to each such language.

13 (3) Any additional resources that were needed
14 by such Office of Refugee Resettlement to ensure
15 that such children were able to communicate with
16 the staff of such Office of Refugee Resettlement.



**AMENDMENT TO LABOR, HHS, EDUCATION
APPROPRIATIONS BILL, 2019
OFFERED BY MS. CLARK OF MASSACHUSETTS**

At the end of the bill (before the spending reduction account), insert the following:

1 SEC. _____. None of the funds made available by
2 this Act may be used by the Office of Refugee Resettle-
3 ment of the Administration for Children and Families, or
4 any contractor employed by such Office of Refugee Reset-
5 tlement, to ask any question relating to religion, the prac-
6 tice of religion, or the frequency of religious observation
7 as part of an assessment or requirement for any potential
8 sponsor or adoptive or foster parent of an unaccompanied
9 alien child (as defined in section 462(g) of the Homeland
10 Security Act of 2002 (6 U.S.C. 279(g))) in the custody
11 of such Office of Refugee Resettlement, or during the
12 process of reunifying such a child with a parent.



**AMENDMENT TO LABOR, HHS, EDUCATION
APPROPRIATIONS BILL, 2019
OFFERED BY MS. WASSERMAN SCHULTZ OF
FLORIDA**

On page 99 of the Committee Report, under the heading “REFUGEE AND ENTRANT ASSISTANCE,” insert the following language directly after the table:

“Within 30 days of enactment, the Inspector General shall report to the Committee on the implementation of and any interagency coordination associated with the previous policy of separating migrant families, the Executive Order issued on June 20, 2018 entitled ‘Affording Congress an Opportunity to Address Family Separation,’ and efforts made to reunify families separated under the previous family separation policy.”

LHHS-ED: KAPTUR #2**AMENDMENT TO LABOR HEALTH AND
HUMAN SERVICES EDUCATION AND
RELATED AGENCIES APPROPRIATIONS
BILL****OFFERED BY MS. KAPTUR OF OHIO AND
MS. CLARK OF MASSACHUSETTS**

On page 99 of the Committee Report, under the heading “Refugee and Entrant Assistance,” insert the following language directly after the table:

Protection of DNA – The Committee understands that DNA testing is being used for the purpose of reunifying families that were separated by the Department of Homeland Security. The Committee directs the Office of Refugee Resettlement (ORR) to ensure the protection of privacy and genetic material, data, or information of children, parents, and of all individuals being tested and their relatives. The Committee prohibits any governmental agency or private entity from accessing, using, or storing any genetic material, data, or information collected in this reunification effort, including for the purpose of criminal or immigration enforcement. Any genetic material, data, and information obtained should be fully destroyed after testing and the probability of a genetic relationship is calculated, and in any case no later than 30 days following the calculation. The entities conducting the DNA testing shall obtain the consent of any

LHHS-ED: KAPTUR #2

individual over age 18 prior to testing, and shall make every effort to obtain the consent of a guardian prior to testing on anyone under age 18. Prior to the use of DNA testing, the agency shall use as its default other techniques commonly utilized by U.S. courts for determining familial relationships—including official documents, representations from a witness, parent, relative, and or child, and/or observation of behaviors of the adult and child toward each other. The agency shall not require DNA testing as a condition of reunification in cases where alternative means of demonstrating a familial relationship have been established. In any case where DNA testing is used, the agency shall require use of the least privacy-invasive type of DNA test available to confirm the relationship claimed. A no-match or failure to provide consent shall not be used as a basis for concluding that there is no familial relationship between a child and adult in cases where there may be a familial relationship without a biological relationship, or in cases where there may be alternative means to prove a familial relationship. The agency shall develop protocols for establishing a familial relationship in cases where an individual does not want to consent to DNA testing or may not have a biological relationship with a child.

Amendment to Labor, Health and Human Services, Education and Related Agencies
Appropriations Bill, 2019

Offered by Mr. Ruppertsberger of Maryland

On page 99 of the Committee Report, under the heading “Refugee and Entrant Assistance” insert the following language directly after the table:

*“Unaccompanied Children.—*The Committee supports oversight efforts relating to forced family separation and efforts to mitigate the trauma experienced by separated children.

The Committee directs the Office of Refugee Resettlement (ORR) to comply with its legally mandated duties as outlined in Section 462 of the Homeland Security Act of 2002, Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008, and the 1997 *Flores* settlement agreement.”

**AMENDMENT TO LABOR, HHS, EDUCATION
APPROPRIATIONS BILL
OFFERED BY MR. SERRANO OF NEW YORK**

At the end of title II (before the short title), insert the following:

1 SEC. _____. (a) None of the funds made available in
2 this or any other Act may be used to house unaccompanied
3 alien children (as such term is defined in section 462(g)
4 of the Homeland Security Act of 2002 (6 U.S.C. 279(g)))
5 in large-scale institutional shelter facilities, except—

6 (1) in the case of such a facility which was used
7 for such purpose on the date of the enactment of
8 this Act, provided that such facility complies with all
9 applicable requirements in section 235 of the Wil-
10 liam Wilberforce Trafficking Victims Protection Re-
11 authorization Act of 2008 (8 U.S.C. 1232) and the
12 Stipulated Settlement Agreement filed in the United
13 States District Court for the Central District of
14 California on January 17, 1997 (CV 85–4544–RJK)
15 (commonly known as the “Flores Settlement Agree-
16 ment”); or

17 (2) in the case that the Secretary of Health and
18 Human Services determines that housing such chil-

1 dren in such a facility is necessary on a temporary
2 basis due to an influx of such children or an emer-
3 gency.

4 (b) None of the funds made available in this Act may
5 be used to house unaccompanied alien children in soft-
6 sided dormitories.

 On page 99 of the Committee Report, under the
 heading “Refugee and Entrant Assistance” insert the fol-
 lowing language directly after the table:

7 The Committee further directs ORR to prioritize funding
8 for expanded use of community-based residential care
9 placements (including long-term and transitional foster
10 care and small group homes) to ensure sufficient capacity
11 to house all tender age children, as well as pregnant and
12 parenting teens, who are referred, with the exception of
13 those who require a higher level of care. Additionally, the
14 Committee directs ORR to increase family reunification
15 services (home studies and post-release services). ORR is
16 directed to arrange for such services to be provided by
17 non-governmental organizations with experience and ex-
18 pertise in working with unaccompanied, migrant children.
19 None of the requirements mentioned in the bill or report
20 should be construed to supersede or modify the William
21 Wilberforce Trafficking Victims Protection Act of 2008 (8

1 U.S.C. 1232 et seq.), the Flores Settlement Agreement,
2 Public Law 107–296, or any applicable Federal child wel-
3 fare law, including the Adoption and Safe Families Act
4 of 1997 (Public Law 105–89). Additionally, nothing in
5 this bill or report should be construed to supersede or
6 modify any applicable State child welfare laws.



**AMENDMENT TO LABOR, HHS, EDUCATION
APPROPRIATIONS BILL, 2019
OFFERED BY MS. CLARK OF MASSACHUSETTS**

At the end of the bill (before the spending reduction account), insert the following:

1 SEC. _____. Except in the case of a medical emer-
2 gency, none of the funds made available by this Act may
3 be used by a health care provider to administer any medi-
4 cation to an unaccompanied alien child (as defined in sec-
5 tion 462(g)(2) of the Homeland Security Act of 2002 (6
6 U.S.C. 279(g)(2))) in the care of the Office of Refugee
7 Resettlement of the Administration for Children and Fam-
8 ilies, unless such minor has received a physical and mental
9 health evaluation, including a trauma assessment and an
10 assessment for comorbidities, while in such care.



Subject:

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Subject:

Page 064

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 065

Withheld pursuant to exemption

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of the Freedom of Information and Privacy Act

Page 066

Withheld pursuant to exemption

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of the Freedom of Information and Privacy Act

Page 067

Withheld pursuant to exemption

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of the Freedom of Information and Privacy Act

Page 068

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Page 069

Withheld pursuant to exemption

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of the Freedom of Information and Privacy Act

Page 070

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of the Freedom of Information and Privacy Act

Page 071

Withheld pursuant to exemption

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of the Freedom of Information and Privacy Act

Page 072

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 073

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Significant Correspondence Report



7/2/2018

Control Number	Date Received	To	From	Summary	Counselor	Tasked	Signature Level	Priority Due Date	Interim Required
1165638 18-4133	06.29.18	Sen. McConnell Rep. Ryan cc: POTUS S1 Sen. Warren Sen. Markey Rep. Neal Rep. McGovern Rep. Tsongas Rep. Kennedy Rep. Clark Rep. Moulton Rep. Capuano Rep. Lynch Cong. Hispanic Caucus Cong. Black Caucus Gov. Baker	State Rep. Frank Moran (MA)	Writes regarding family separation immigration policy.	Tracy/Ryan	CBP	For Your Information	N/A	N/A
1165639 18-4188	06.29.18	S1 AG Sessions	Martin M. Looney Senate President and Pro Tempore (CT) +15	A cohort from the State of Connecticut Senate write regarding the separation of immigrant families.	Tracy/Ryan	CBP	Leadership Clearance/Component Head	07.25.18	No
1165640 18-4173	07.02.18	S1 Alex Azar II	Rep. Meng (NY) +22	Write regarding claims of the federal government's inability to quickly reunite children that were separated from their families.	Tracy/Ryan	ICE	Leadership Clearance/Component Head	07.18.18	No
1165647 18-4199	07.02.18	S1 Alex Azar II Betsy DeVos Jeff Sessions cc: Virginia Foxx	Rep. Scott (VA) +16	Write regarding Administration's "zero tolerance" policy.	Tracy/Ryan	ICE	Leadership Clearance/Component Head	07.25.18	No
1165652 18-4164	06.29.18	AG Sessions cc: S1 Illinois Congressional Delegation	Lisa Madigan Attorney General for the State of Illinois	Writes regarding the AG Sessions decision to rescind two immigration policies: 1) the separation of families at the U.S. Border; and 2) The termination of asylum status for victims of domestic violence and gang violence.	Tracy/Ryan	CBP/USCIS	For Your Information	N/A	N/A
1165658 18-3906	07.02.18	S1	Sen. Peters (MI) Sen. Stabenow (MI)	Write to urge an extension for TPS for Yemen.	Tracy/Ryan	USCIS	Leadership Clearance/Component Head	07.18.18	No
1165654 18-4200	07.02.18	POTUS cc: S1	Rep. Jerry Nadler +House Judiciary Committee Democrats +18	Writes regarding the alleged disconnect between what the administration tells the public, versus their actions regarding family separation.	Tracy/Ryan	ICE/CBP	For Your Information	N/A	No

1165669 18-4147	07.02.18	S1 Alex Azar II Jeff Sessions	Rep. Stivers (OH) +42	Write regarding safety and the security of families with children immigrating to the United States.	Tracy/Ryan	CBP	Leadership Clearance/Component Head	07.25.18	No
1165676 18-3885	07.02.18	S1 Sec. Azar	Sen. Warren (MA) +10	Request information from DHS and HHS on the status of efforts to reunify parents and children that have been separated at the border.	Tracy/Ryan	ICE	Leadership Clearance/Component Head	07.25.18	No



The Commonwealth of Massachusetts
SCANNED/RECEIVED
BY EXPC SEC
NO LEGISLATIVE CAUCUS
STATE HOUSE, ROOM 460 • BOSTON, MA 02133-1054 • TELEPHONE: (617) 722-2688
2018 JUL -2 AM 6:36

REP. FRANK MORAN, CHAIR
17TH ESSEX DISTRICT

SEN. SONIA CHANG-DÍAZ, VICE CHAIR
2ND SUFFOLK DISTRICT

REP. AARON VEGA, TREASURER
5TH HAMPDEN DISTRICT

REP. EVANDRO C. CARVALHO, CLERK
5TH SUFFOLK DISTRICT

REPRESENTATIVES

REP. BYRON RUSHING
9TH SUFFOLK DISTRICT

REP. JEFFREY SÁNCHEZ
15TH SUFFOLK DISTRICT

REP. RUSSELL E. HOLMES
6TH SUFFOLK DISTRICT

REP. CARLOS GONZÁLEZ
10TH HAMPDEN DISTRICT

REP. JOSÉ F. TOSADO
9TH HAMPDEN DISTRICT

REP. JUANA MATIAS
16TH ESSEX DISTRICT

REP. CHYNAH TYLER
7TH SUFFOLK DISTRICT

REP. BUD L. WILLIAMS
11TH HAMPDEN DISTRICT

REP. ANDRES VARGAS
3RD ESSEX DISTRICT

(b)(6)

June 20, 2018

Senator Mitch McConnell, Majority Leader
317 Russell Senate Office Building
Washington, DC 20510

Speaker Paul Ryan
Office of the Speaker
H-232 The Capitol
Washington, DC, 20515

RE: Family Separation Immigration Policy

Dear Leader McConnell and Speaker Ryan:

Today we join the chorus of concerned Americans who find ourselves at a loss of words regarding the current treatment of immigrant families. The policy of the Trump administration is truly abhorrent as they strip families of their children, warehouse them like cattle, and make light of the situation claiming that their cries sound like music to their ears.

We recognize the difficulty you both face regarding the seemingly insurmountable challenge of successfully passing immigration policy in this environment. Nonetheless, it is an issue which we can no longer ignore and one which requires your most expeditious response. In the absence of swift action, we feel truly concerned that this policy will lead to irreparable long term effects from trauma imposed upon these children and families.

Recognizing that President Trump has no intention of changing his mind, we write to you today in the hopes that your leadership can herald in a resolution to this travesty. In doing so you would be joining a group of bipartisan Americans who want to see an end to a practice in which history will undoubtedly shine an ugly light upon.

As we request your action on this matter, we also applaud the hordes of Americans who have taken a stand against these injustices. We need not look any further than Governor Charlie Baker who chose to cancel our state's National Guard deployment to the southern border. In doing so he cited the inhumane treatment of children as he sought to assure the resources of our Commonwealth were directed to matters aligned with our core values.

We ask that you utilize your legislative authorities to bring the quickest possible end to this policy of separating immigrant families. On behalf of the concerned residents of Massachusetts, we ask that you please respond by sharing concrete plans to end this policy and restore American values in immigration policy.

If you have any questions, please do not hesitate to contact us via our Chairman, Representative Frank Moran, at ^{(b)(6)}

Sincerely,



REP. FRANK MORAN, CHAIR
17TH ESSEX DISTRICT

CC:

PRESIDENT DONALD TRUMP
SECRETARY KIRSTJEN NIELSEN
SENATOR ELIZABETH WARREN
SENATOR ED MARKEY
CONGRESSMAN RICHARD NEAL
CONGRESSMAN JAMES MCGOVERN
CONGRESSWOMAN NIKI TSONGAS
CONGRESSMAN JOSEPH KENNEDY
CONGRESSWOMAN KATHERINE CLARK
CONGRESSMAN SETH MOULTON
CONGRESSMAN MICHAEL CAPUANO
CONGRESSMAN STEPHEN LYNCH
CONGRESSMAN WILLIAM KEATING
CONGRESSIONAL HISPANIC CAUCUS
CONGRESSIONAL BLACK CAUCUS
GOVERNOR CHARLIE BAKER

SENATOR MARTIN M. LOONEY
PRESIDENT PRO TEMPORE

Eleventh District
New Haven, Hamden & North Haven



State of Connecticut
SENATE

State Capitol
Hartford, Connecticut 06106-1591
132 Fort Hale Road
New Haven, Connecticut 06512
Home: (b)(6)
Capitol: 860-240-8600
Toll-free: 1-800-842-1420
www.SenatorLooney.cga.ct.gov

June 19, 2018

The Honorable Kirstjen Nielsen
Secretary
U.S. Department of Homeland Security
3801 Nebraska Avenue, N.W.
Washington, D.C. 20528

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, N.W.
Washington, D.C. 20530

2018 JUL -2 AM 6:36
SCANNED/RECEIVED
BY EXEC SEC

Dear Secretary Nielsen and Attorney General Sessions:

We write to you regarding the cruel and inhumane policy of forcibly separating migrant children from their parents when apprehended at the border. We feel compelled to speak out against this heartless and unconscionable practice which runs counter to the very fabric of American society and Connecticut's values.

This crisis is a tragedy of this administration's own making, stirring the echoes of some of history's darkest hours. And at what cost? The senseless trauma that these children are experiencing will have long and lasting effects. It is why this policy has been rightly condemned by the president of the American Academy of Pediatrics, former first ladies of the United States, at least 75 former U.S. Attorneys, members of Congress and countless others.

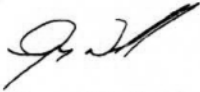
Tearing families apart should not be the official policy of the Department of Homeland Security and the Department of Justice. This policy has brought international shame to the United States. In Connecticut, we value immigrants, we have enshrined it in our laws and our public policy because we know that time and again America is at its strongest when we openly accept people from foreign lands; when we view immigrants not as competition, but as brothers and sisters in carrying forward the torch of liberty.

We demand that the Departments of Homeland Security and Justice immediately halt forcibly separating migrant children from their parents and end this zero tolerance policy for undocumented immigrants entering the United States.

Sincerely,

Martin M. Looney
Senate President Pro Tempore

Bob Duff
Senate Majority Leader



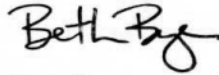
Gary Winfield
Senator, 10th District



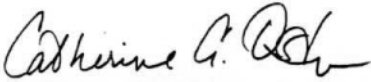
Doug McCrory
Senator, 2nd District



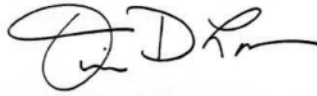
Marilyn Moore
Senator, 22nd District



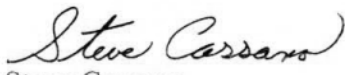
Beth Bye
Senator, 5th District



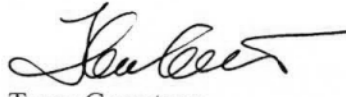
Cathy Osten
Senator, 19th District



Tim Larson
Senator, 3rd District



Steve Cassano
Senator, 4th District



Terry Gerratana
Senator, 6th District



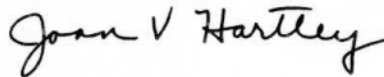
Carlo Leone
Senator, 27th District



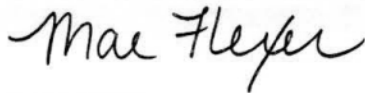
John Fonfara
Senator, 1st District



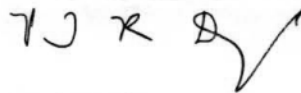
Edwin Gomes
Senator, 23rd District



Joan Hartley
Senator, 15th District



Mae Flexer
Senator, 29th District



Paul Doyle
Senator, 9th District

Congress of the United States
Washington, DC 20515

June 29, 2018

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Dept. of Homeland Security
Washington, DC 20528

The Honorable Alex M. Azar II
Secretary
U.S. Dept. of Health & Human Services
200 Independence Avenue, SW
Washington, DC 20201

2018 JUL -2 AM 8:00
SCANNED/RECEIVED
BY EXEC SEC

Dear Secretary Nielsen and Secretary Azar:

Stories continue to persist about the inability of the federal government to quickly reunite every child who has been separated from a parent at the U.S.-Mexico border. Claims have been made by attorneys representing clients impacted by the Administration's family separation policy that this inability, at times, stems from difficulties in matching children to their parents. This, to us is unacceptable. We believe that at all times the government should know which parent a child belongs to, where each party is located, have on file – at minimum – photographs of the entire family unit together as well as individually, have a single database which every federal agency may access to verify identity and location, and that parents and children should be permitted to speak to one another (preferably through video conference) within 24 hours of being separated and at least three times a week thereafter.

In response to our concerns about the government's ability to quickly reunite families, we would like to know the following:

1. For every child who crossed the border with a parent and was subsequently separated, can you identify which child belongs to which parent?
2. Do you know the location of each parent and each child?
3. At any time ever, was either one of your agencies unsure of either the identity of a separated parent or child, or unsure to which separated parent(s) a child belonged?
4. Please describe, in detail, the manner in which separated families were tracked as belonging to one another from apprehension at the border until reunification.

5. Will you commit to expanding the visual identity records of separated families in your custody? At the very least through photographs where such records do not exist?
6. Will you commit to establishing a single tracking database that all relevant federal agencies may use to track an impacted party?

We thank you for your time spent reviewing this letter, and we urge you in the strongest possible terms to reunite children with their parents immediately. Additionally, we ask that such reunification happen in a setting outside of family detention, whether it be via release on bond, recognizance, or parole.

Sincerely,

Gene M. J.

Nydia Velazquez

Zyette D. Clarke

Stacy E. Platt

John W. Ryan

Bill Foster

Michael E. Caputo

Ish Joh

Paul Swick

Jenni Swell

Frederick L. Wilson

Eleanor H. Norton

Cheri Bustos

Dan Claitor

Markwayne Mullins

[Signature]

Juan Vargas

Kelli R Keate

Missis
Jung Young

Jane Juen

Gudry Chen

Jung M-Nung

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 CAROL SHEA-PORTER, NEW HAMPSHIRE
 ADRIANO ESPAILLAT, NEW YORK

June 28, 2018

The Honorable Alex M. Azar, II
 Secretary
 U.S. Department of Health and Human
 Services
 330 C Street SW
 Washington, DC 20416

The Honorable Betsy DeVos
 Secretary
 U.S. Department of Education
 400 Maryland Avenue SW
 Washington, DC 20202

The Honorable Kirstjen Nielsen
 Secretary
 U.S. Department of Homeland Security
 300 7th Street SW
 Washington, DC 20024

The Honorable Jeff Sessions
 Attorney General of the United States
 U.S. Department of Justice
 Robert F. Kennedy Department of Justice
 Building
 Constitution Avenue NW
 Washington, DC 20530

2018 JUL -2 AM 9:06
 SCANNED/RECEIVED
 BY EXEC SEC

Dear Secretary Azar, Secretary DeVos, Secretary Nielsen, and Attorney General Sessions:

We write seeking information on the oversight mechanisms and processes of the U.S. Departments of Health and Human Services (HHS), Education (ED), Homeland Security (DHS) and Justice (DOJ) to ensure the provision of educational, health, and other services to unaccompanied alien children (hereafter referred to as "unaccompanied minors"), as required by federal law, Supreme Court precedent, and the 1997 settlement Flores v. Sessions, CV 85-4544 ('Flores settlement').

The Trump Administration's "zero tolerance" immigration policy that separated children from their parents upon entry to the United States, including those seeking asylum, has resulted in thousands of children who are now "unaccompanied" by virtue of forced separation, including infants and toddlers. Mounting evidence and conflicting statements from administration officials raise serious concerns regarding the administration's capacity and willingness to ensure compliance with all applicable requirements regarding the rights, remedies, and services for these children while in the custody of care provider facilities (CPFs) under contract or cooperative agreement with HHS' Office of Refugee Resettlement (ORR). Unanswered questions remain about the health and safety of these separated children, including trauma caused by family separation, the provision of general and special education services, and the process for family reunification.

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The President issued an Executive Order on June 20th purported to halt these practices. However, the Order is silent on reunification for children presently in ORR's custody; calls for the modification of the Flores settlement, which could result in the detention of holding children well beyond the 20-day limit; and, does not address the ongoing questions regarding the health and safety of detained children. As such, this Executive Order has the effect of replacing one avoidable and manufactured crisis with another.

To that end, we look forward to receipt of the administration's written responses by the close of business on Friday, July 6th. In the interim, we urge you to swiftly reunify unaccompanied children who are currently in the care of the U.S. government with their parents or family members.

Oversight of Tender-Age Facilities

Media reports have detailed that hundreds of very young children, including toddlers and infants, are being detained in CPFs, referred to as "tender age" facilities.¹ The Department of Defense has also reportedly agreed to house migrant children at military bases.²

1. Please list the specific guidance and/or regulations the federal government is following to ensure the health and safety of infants and toddlers detained in tender age facilities. Please indicate whether any aforementioned guidance and/or regulations were developed for or are approved for the long-term and indefinite care of toddlers and infants.
2. Please detail the training that is provided to tender age facility personnel, including the tools and skills provided to facility personnel in order to meet the health and safety needs of infants and toddlers.
3. What is the administration's process for ongoing evaluation, oversight, and monitoring of these facilities to ensure compliance with all relevant child welfare and health and safety standards?
4. Is HHS currently housing, or does it intend to house, infants and toddlers at military sites?

Trauma and Health Services for Unaccompanied Minors

Forced family separation causes additional trauma to unaccompanied minors. Studies show that the trauma of separation "interrupts the brain's architecture at a critical time of development, when neural circuits ... are forming rapidly ... in infants and toddlers."³ According to the American Academy of Pediatrics and other child welfare organizations, "forced separation disrupts the parent-child relationship and puts children at increased risk for both physical and mental illness" and is recognized to a "precursor of negative health outcomes later in life," including "psychological distress, anxiety, and depression" that impacts children even after

¹ MarketWatch, *Trump administration holding hundreds of babies, toddlers at 'tender age' migrant facilities*, (Jun. 19, 2018) <https://www.marketwatch.com/story/trump-administration-holding-hundreds-of-babies-toddlers-at-tender-age-migrant-facilities-2018-06-19>

² The Washington Post, *Pentagon will make room for up to 20,000 migrant children on military bases*, (June 21, 2018) https://www.washingtonpost.com/news/checkpoint/wp/2018/06/21/pentagon-asked-to-make-room-for-20000-migrant-children-on-military-bases/?noredirect=on&utm_term=.88d807ed75c2

³ PBS, *How the toxic stress of family separation can harm a child*, (Jun. 18, 2018) <https://www.pbs.org/newshour/health/how-the-toxic-stress-of-family-separation-can-harm-a-child>

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Page 3

eventual reunification.⁴ As you know, the Flores settlement requires CPFs to assess for and address youth trauma.⁵ It further requires CPFs to provide “appropriate routine medical and dental care...including a complete medical examination (including screenings for infectious disease) within 48 hours of admission.”⁶

1. What services are available to children who have experienced or are experiencing trauma?
2. Please detail the training that is provided to facility personnel regarding youth trauma, including the tools and skills provided to personnel to address the psychological trauma resulting from forced family separation.
3. Please indicate any training or tools provided to specifically address trauma in infants and toddlers.
4. What is the process for assessing, evaluating, and meeting the health care needs of unaccompanied minors, including the provision of essential vaccinations and prescriptions, identification of chronic and acute conditions, and assessments of general well-being? How are the health care needs of unaccompanied minors being met at CPFs?

Safety of Unaccompanied Minors at CPFs

According to federal court filings, Shiloh Treatment Center, a CPF south of Houston, Texas, is alleged to have forcibly injected unaccompanied children with medications that CPF personnel described as “vitamins.”⁷ Shiloh Treatment Center is one of more than seventy companies that receive federal funds to operate as a CPF to house and supervise children deemed unaccompanied. According to an investigation by the Center for Investigative Reporting, roughly half of the nearly \$3.5 billion federal dollars paid to such companies in the last four years went to CPFs facing “serious allegations of mistreating children.”⁸

1. What is ORR’s process for reviewing contracts and cooperative agreements with companies operating CPFs that have been accused of mistreatment?
2. Is DOJ presently investigating any allegations of child abuse or mistreatment in facilities operated by companies under contract or cooperative agreement with ORR?
3. What specific policies or guidelines has ORR established regarding the provision of health care services to unaccompanied minors? Please list and detail the oversight processes ORR has in place to ensure that contracted companies operating CPFs are providing high quality health care services for each unaccompanied minor.

Educational Needs of Unaccompanied Minors

The Flores settlement requires CPFs to conduct an educational assessment of each unaccompanied minor within 72 hours of the child’s admission. CPFs are then required to provide “educational services based on the individual academic development, literacy level, and

⁴ Letter to Secretary Nielsen (Jan. 16, 2018)

https://static1.squarespace.com/static/597ab5f3beba0a625aaf45/t/5a5e55cf0d9297a44bbb8d3e/1516131791958/2018_01_16+Child+Welfare+Juvenile+Justice+Opposition+to+Parent+Child+Separation+Plan.pdf

⁵ Office of Refugee Resettlement, *Children Entering the United States Unaccompanied: Section 3*, (Published Apr. 20, 2015) <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3>

⁶ *id.*

⁷ Federal Court Filings; Shiloh Treatment Center <https://www.documentcloud.org/documents/4525292-420-2-Exhibit-Vol-2-Exs-21-30-Pages-109-73.html>

⁸ The Center for Investigative Reporting, *Migrant children sent to shelters with histories of abuse allegations*, (Jun. 20, 2018) <https://www.revealnews.org/article/migrant-children-sent-to-shelters-with-histories-of-abuse-allegations/>

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Page 4

linguistic ability” of each unaccompanied minor.⁹ Current ORR policy specifies that each unaccompanied minor must (1) receive “a minimum of six hours of structured education, Monday through Friday, throughout the entire year in basic academic areas (Science, Social Studies, Math, Reading, Writing, Physical Education, and English as a Second Language (ESL), if applicable);” and, (2) receive educational services using learning materials that “reflect cultural diversity and sensitivity,” among other requirements.¹⁰

1. What is the administration’s process to ensure that every unaccompanied minor at a CPF receives –
 - a. an educational assessment within 72 hours of admission to a CPF; and
 - b. the required educational services, including provision of the required learning materials, while detained in ORR custody?
2. What is ORR’s process for evaluation, monitoring, and oversight of required educational services, including curriculum, content, and instruction, provided to unaccompanied minors while in custody to ensure equality of services and appropriateness of services for each unaccompanied minors’ individualized needs, including his or her native language?
3. What are the credentials and educational experience of the individuals providing educational services to unaccompanied minors in CPFs or in DHS custody? Please detail the recruitment and selection of these educators and the educational experience required.
4. In the event of indefinite family detention in DHS custody, what are the processes in place to ensure timely assessment and delivery of educational services for each unaccompanied minor? What is DHS’s oversight process to ensure quality of assessments and related services?

Unaccompanied Minors with Disabilities

Media reports have also found that unaccompanied minors with disabilities have been forcibly separated from their families. One report includes a grandparent who was separated from her grandson, a child with disabilities, after making an asylum claim made at an official Port of Entry.¹¹ This presents new challenges for CPFs, which, even prior to this policy, often failed to identify unaccompanied minors with disabilities, such as Down syndrome or autism spectrum disorders. These incidences also raise new concerns about CPFs’ compliance with applicable federal law and regulations governing the rights, remedies, and special education services for children with disabilities.

1. Are you aware that each state in receipt of funds under the Individuals with Disabilities Education Act (IDEA) must comply with statutory requirements to locate, identify, and evaluate all children with disabilities located within the state, including unaccompanied minors? As such, what is the coordination between ORR, IDEA Part C Lead Agencies, IDEA primary referral sources, and state and local educational agencies to ensure compliance with the IDEA Child Find mandate¹² to identify, locate, and evaluate all

⁹ Office of Refugee Resettlement, *Children Entering the United States Unaccompanied: Section 3*, (Published Apr. 20, 2015) <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-3>

¹⁰ *id.*

¹¹ Texas Tribune, *A grandmother seeking asylum was separated from her disabled grandson at the border. It’s been 10 months*, (Jun. 13, 2018) <https://www.texastribune.org/2018/06/13/immigrant-child-asylum-disabilities-separated-grandmother-border/>

¹² 20 U.S.C. § 1412(a)(1)(3)

June 28, 2018

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- children with disabilities (including unaccompanied minors) who need early intervention or special education services under the IDEA?
2. Federal law requires parental consent prior to a child's disability evaluation¹³ and parental involvement in development of each child's individualized educational plan (IEP)¹⁴ to determine the special education services provided. What is the process by which ORR obtains parental consent prior to evaluations for IDEA services?
 3. What training is provided to CPF personnel, including personnel working with infants and toddlers, regarding –
 - a. assessment and placement of unaccompanied minors with disabilities in the appropriate setting; and
 - b. the provision of special education services aligned to the individualized educational needs of each unaccompanied child requiring provision of such services?
 4. If families are detained in DHS custody as a result of the Executive Order, what processes are in place to ensure compliance with all IDEA requirements for identification, evaluation, and provision of special education services for unaccompanied minors with disabilities?

Family Reunification

Forced family separation raises questions about the government's capacity to reunify all parents and children. Because adults are processed through detention and deportation proceedings at a faster rate than children, there is great concern for the possible permanent familial separation in instances where a parent is deported while the child remains in the United States.¹⁵ While the Flores settlement calls for the placement of unaccompanied minors with foster families or licensed child-care facilities after a short time, the Executive Order directs the Attorney General to "file a request with the U.S. District Court for the Central District of California to modify the Settlement Agreement in the Flores settlement in a manner that would permit the Secretary, under present resource constraints, to detain alien families together throughout the pendency of criminal proceedings for improper entry or any removal or other immigration proceedings." According to news reports, on June 22, 2018, HHS formed a family reunification task force to include the HHS Assistant Secretary of Preparedness and Response and HHS' Emergency Management Group.¹⁶ Additionally, a June 26th preliminary injunction requires nearly all children under five to be returned to their parents within 14 days and older children to be returned within 30 days.¹⁷ In light of these developments, a clear and comprehensive unification plan must be developed and promptly implemented.

1. Please list the membership of this task force including agencies, offices, and officials; task force objectives; and the resources available for use by the task force.

¹³ 20 U.S.C. § 1414(a)(1)(D); 20 U.S.C. § 1436(e)

¹⁴ 20 U.S.C. § 1414(d)(1)(B)(i)

¹⁵ NBC, *Former ICE Director: Some migrant family separations are permanent*, (Jun. 19, 2018) <https://www.nbcnews.com/storyline/immigration-border-crisis/former-ice-director-some-migrant-family-separations-are-permanent-n884391>

¹⁶ Politico, *HHS creates task force to reunify migrant families*, (Jun. 22, 2018)

<https://www.politico.com/story/2018/06/22/separated-families-migrants-reunite-667172>

¹⁷ CNN, *Federal judge orders reunification of parents and children, end to most family separations at border*, (June 27, 2018) <https://www.cnn.com/2018/06/26/politics/federal-court-order-family-separations/index.html>

June 28, 2018

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2. How will this task force achieve family reunification of parents and their children, particularly within the timeframe required by the preliminary injunction? Specifically, how will the task force address family separations where a parent has been deported, but the child has remained in the U.S.?
3. With the announcement of the Executive Order and June 26th Court Order, what is the administration's plan for unaccompanied minors who are in ORR custody beyond 20 days, in violation of the Flores settlement?
4. What process will the administration employ to determine "fitness" as the term is used in the June 26th Court Order to ensure that such reading is congruent with child welfare best practices and not used as a loophole to continue detention of unaccompanied minors separate from their parents?
5. According to ORR's case processing and placement guidelines,¹⁸ children under age 13 and sibling groups with one sibling under age 13 are given priority for transitional foster care placements. What is ORR's process to ensure all young children (including children who are not yet verbal and children too young to know identifying details, such as a parent's name or address) who are placed into foster care receive sufficient documentation to allow for successful family reunification?

We thank you for your immediate attention to these questions and look forward to your prompt and detailed response by close of business on Friday, July 6th.

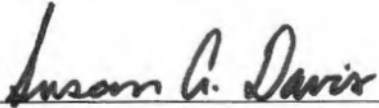
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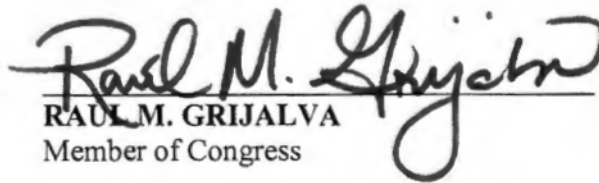
ROBERT C. "BOBBY" SCOTT
Ranking Member



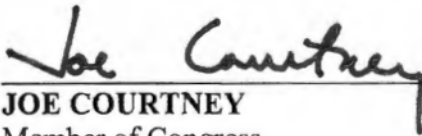
SUZANNE BONAMICI
Vice Ranking Member



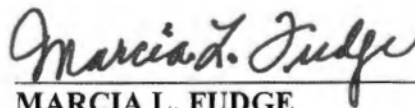
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Member of Congress



RAUL M. GRIJALVA
Member of Congress



JOE COURTNEY
Member of Congress

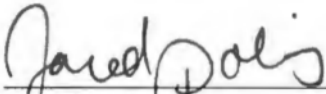


MARCIA L. FUDGE
Member of Congress

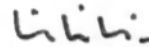
¹⁸ Office of Refugee Resettlement, *Children Entering the United States Unaccompanied: Section 1*, (Published Jan. 30, 2015) <https://www.acf.hhs.gov/orr/resource/children-entering-the-united-states-unaccompanied-section-1>

June 28, 2018

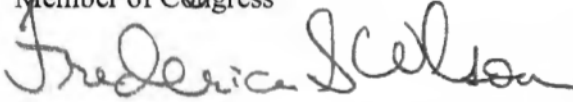
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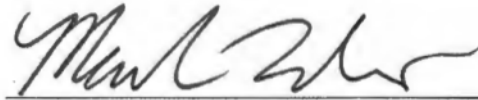
JARED POLIS
Member of Congress



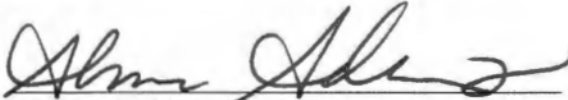
GREGORIO KILILI CAMACHO SABLAN
Member of Congress



FREDERICA S. WILSON
Member of Congress



MARK TAKANO
Member of Congress



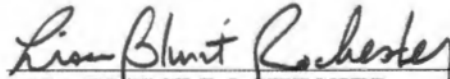
ALMA S. ADAMS Ph.D.
Member of Congress



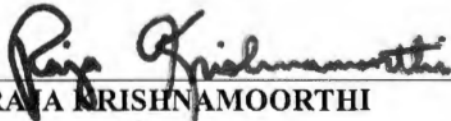
MARK DESAULNIER
Member of Congress



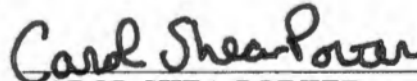
DONALD NORCROSS
Member of Congress



LISA BLUNT ROCHESTER
Member of Congress



RAJA KRISHNAMOORTHY
Member of Congress



CAROL SHEA-PORTER
Member of Congress



ADRIANO ESPAILLAT
Member of Congress

cc: Virginia Foxx, Chairwoman
Committee on Education and the Workforce



**OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS**

Lisa Madigan
ATTORNEY GENERAL

June 19, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530

Dear Attorney General Sessions:

I write you today about two of your policies that serve to destroy the dignity of individuals and families seeking asylum in our country. The first is your policy to rip children from asylees as federal authorities detain them; the second is your policy to categorically deny asylum applications from those who have suffered domestic violence and other horrors you have deemed "private criminal activity." These policies show complete disdain for women and children, and I ask you today to immediately withdraw and stop enforcement of both policies.

1. Decision to Separate Families at the U.S. Border

First, your Department and its coordinating agencies have begun a barbaric and unforgiving practice of separation of children from their families at our country's borders. This policy has extended beyond those being prosecuted for illegal entry to families seeking to apply lawfully for asylum. Our country is watching as federal immigration agents, acting in accordance with your "zero tolerance" policy toward immigrants, tell detained parents that their children, including those as young as toddlers, are being bathed in another room, when in reality they have been transported sometimes thousands of miles away. Federal authorities are preventing parents and children from communicating with each other for weeks and months at a time. The children are kept behind chain-link fences in detention centers. Make no mistake: beyond the obvious fact that your policy violates the universal legal principle of acting in the best interests of children, your policy has terrorized these families, created widespread misery, and risks destroying their lives forever. It must end immediately. I call on you to cease the separation of families as they attempt to enter our country.

In addition to lacking any moral foundation, your actions have no legal basis. Your Department has taken the position, along with members of President Trump's administration and

2018 JUL -2 AM 8:52
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The Honorable Jeff Sessions
June 19, 2018

supporters in Congress, that these separations are required by federal law. Yet, Congress has passed no law requiring you to separate families. It is your policy decision alone that has brought us to this shameful point.

You have shamefully accused parents who bring their children to this country in search of a better life of “smuggling a child.” In support of your position and in an effort to urge immigrants “to obey the laws of the government,” you have cited a Bible passage that was also once used to justify slavery. Numerous religious leaders have rightly criticized you for taking that passage out of context and for using scripture to justify an inhumane and unjust policy.

You announced your “zero-tolerance policy” for immigrants in April. Yet as far back as 2005, Congress has cautioned the Department of Homeland Security against separating immigrant families. It stated that “[c]hildren who are apprehended by DHS while in the company of their parents are not in fact ‘unaccompanied;’ and if their welfare is not at issue, they should not be placed in ORR [Office of Refugee Resettlement] custody.”¹ Your policy of separating families after their physical entry to the United States violates that directive. Your “zero-tolerance policy” on immigration has led to widespread criminal prosecutions of individuals suspected of committing the misdemeanor of illegal entry, but also detention of those who lawfully apply for asylum at the border. In both cases, ICE agents are taking children away from their detained parents, sometimes through unimaginably deceitful means, and sending them to facilities that can be thousands of miles away. As you are no doubt aware, a federal court has already found that a lawsuit seeking to stop these practices sufficiently alleges facts that shock the conscience and violate the right to family integrity.²

As justification for these practices, your Department has cited a federal law that deems a child an “unaccompanied alien” if the child is under 18, not here lawfully, and has no parent or legal guardian in this country available to provide care and physical custody, along with another law that says those unaccompanied children shall be sent to the Department of Health and Human Services.³ It is your own policy and actions that have rendered these children “unaccompanied.” The children you are tearing from their families did not arrive in this country alone. You are arresting their parents and detaining lawful asylum applicants in vast numbers. And nothing about your detention of immigrant parents renders them unavailable to provide care for and physical custody of their children except for where this administration has chosen to house them. As you know, the federal government has facilities designed for housing entire families. It is also capable of enacting policies that are humane and just. Your policy is the opposite. You have twisted the law to create the outcome you desire, and it must end now.

¹ H.R. Rep. No. 109-79, at 38 (2005), available at <https://bit.ly/2tfaAI9>.

² *Ms. L. v. U.S. Immigration & Customs Enf.*, No. 3:18-cv-428, 2018 WL 2725736, at *12 (S.D. Cal. June 6, 2018) (“These allegations call sharply into question the separations of Plaintiffs from their minor children. This is especially so because Plaintiffs allegedly came to the United States seeking shelter from persecution in their home countries, and are seeking asylum here. For Plaintiffs, the government actors responsible for the ‘care and custody’ of migrant children have, in fact, become their persecutors. This is even more problematic given Plaintiffs’ allegations and assertions that there is a government practice, and possibly a forthcoming policy, to separate parents from their minor children in an effort to deter others from coming to the United States.”).

³ See 6 U.S.C. § 279(g)(2); 8 U.S.C. § 1232(b)(3).

The Honorable Jeff Sessions
June 19, 2018

2. Termination of Asylum Status for Victims of Domestic Violence and Gang Violence

Your decision to reverse existing legal interpretation and end the possibility of asylum for individuals persecuted through domestic violence or gang violence is another example of using the law to achieve cruel and unjustified results. The Immigration and Nationality Act allows any person who is physically present in or arrives in the United States to apply for asylum.⁴ It is the burden of the applicant to prove that she is a refugee, meaning that she is unable or unwilling to return to her home country because of persecution, or a well-founded fear of persecution, due to her race, religion, nationality, political opinion or membership in a particular social group.⁵ As in all areas of the law where interpretation and flexibility are required, the determination of whether an individual has suffered persecution as a member of a particular social group has been interpreted to further justice.

With your recent action to terminate asylum status for victims of domestic violence and gang violence, you have used this flexibility to turn a blind eye to persecution. Since 2014, it has been the policy of the United States to grant refugee status to victims of domestic violence. In *Matter of A-R-C-G- et. al*, 26 I&N Dec. 388, 388 (BIA 2014), the Board of Immigration Appeals ruled that “married women in Guatemala who are unable to leave their relationship can constitute a cognizable particular social group that forms the basis of a claim for asylum or withholding of removal under sections 208(a) and 241(b)(3) of the Immigration and Nationality Act.” In explaining its decision, the Board noted that this particular social group “is composed of members who share the common immutable characteristic of gender,” and that “marital status can be an immutable characteristic where the individual is unable to leave the relationship.”⁶ This well-reasoned decision recognizes that domestic violence can rise to the level of past persecution warranting the grant of asylum.⁷

On June 11, 2018, you personally overruled that policy,⁸ apparently uninterested in the heightened abuse that women and children can face in countries where their suffering is ignored. Your opinion dismisses domestic violence as “private criminal activity” and a “purely personal matter.” This is a depraved characterization of domestic violence without any empathy for victims of a crime that is often rooted in cultural norms and acceptance of abuse towards women. Your new policy requires an asylum applicant to “show that flight from her country is necessary because her home government is unwilling or unable to protect her,”⁹ setting a cruel precedent that ignores a sad reality for many refugees. The effect of your ruling is that individuals persecuted by non-state actors are precluded from obtaining asylum unless they can show the government sponsored or enabled the persecution.¹⁰ This is an unprecedented shift. As your ruling acknowledges, “[g]enerally, claims by aliens pertaining to domestic violence or gang

⁴ Section 208(a)(1).

⁵ Section 208(b)(1), Section 101(a)15P.

⁶ *Matter of A-R-C-G- et. al*, 26 I&N Dec. 388, 392-93 (BIA 2014) (decided Aug. 26, 2014).

⁷ *Id.* at 390.

⁸ *Matter of A-B-*, *Respondent*, 27 I&N Dec. 316 (A.G. 2018) (decided June 11, 2018).

⁹ *Id.* at 317.

¹⁰ *Id.* at 318.

The Honorable Jeff Sessions
June 19, 2018

violence perpetrated by non-governmental actors will not qualify for asylum.”¹¹ You have discounted the persecution that is domestic violence as merely “victim[s] of a particular abuser in highly individualized circumstances”¹² – a decision that is both inhumane and ignorant of the realities of life in the applicants’ home countries.

Lastly, you have included in your decision a directive to immigration judges that can only be described as biased and cruel. While acknowledging that granting asylum involves some level of discretion, you “remind all asylum adjudicators that a favorable exercise of discretion is a discrete requirement for the granting of asylum and should not be presumed or glossed over solely because an applicant otherwise meets the burden of proof for asylum eligibility under the INA.”¹³ In other words, you have instructed decisionmakers that, even if an applicant has met the burden required by law, they still should consider denying a request for asylum. Not only is this contrary to the application of law, but it is contrary to the ideals of justice that favor the use of discretion to grant relief, not take it away. I urge you to rescind your ruling regarding applications for asylum and to instead continue the prior policy of granting refugee status to those who can demonstrate they were persecuted as victims of domestic violence.

Any disruption of longstanding precedents that govern the entry of individuals into the United States must be rooted in empathy, justice, and compassion. Your recent decisions run counter to each of these foundational American ideals. I urge you to reconsider these policy changes.

Sincerely,



Lisa Madigan
Attorney General of Illinois

cc: The Honorable Kirstjen Nielsen, Secretary of the U.S. Department of Homeland Security

Illinois Congressional Delegation

¹¹ *Id.* at 320.

¹² *Id.* at 336 n. 9.

¹³ *Id.* at 345 n. 12.

United States Senate
WASHINGTON, DC 20510

June 29, 2018

The Honorable Kirstjen M. Nielsen
Secretary of Homeland Security
U.S. Department of Homeland Security
Washington, DC 20528

SCANNED/RECEIVED
BY EXEC SEC
2018 JUL -2 AM 10:36

Dear Secretary Nielsen:

I am writing to urge you to extend Temporary Protected Status (TPS) for Yemen until it is safe for Yemeni nationals to return to that country.

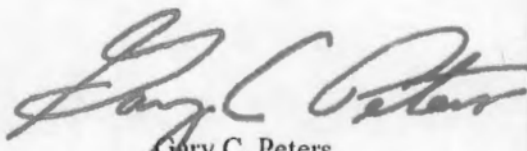
On March 4, 2017, TPS for Yemen was extended through September 3, 2018. The Department of Homeland Security (DHS) noted that "continued deterioration of the conditions for civilians in Yemen...prevent Yemeni nationals from returning to Yemen in safety and it is not contrary to the national interest of the United States to permit Yemeni nationals to remain temporarily in the United States."

The conditions that DHS described in that notice have not improved. Yemen remains in an ongoing armed conflict. The conflict has contributed to a famine that leaves millions of Yemenis without secure access to food. Yemen is experiencing the worst cholera outbreak in modern history, among other diseases that are spreading in the war torn country.

As you know, TPS does not provide a separate path to lawful permanent residence or citizenship and TPS is not available to those who are inadmissible to the United States for criminal or national security reasons. To be eligible for TPS an individual must already have been continuously present in the United States since the effective date of the designation.

At this time, based on the ongoing armed conflict and humanitarian situation we ask you to extend TPS for Yemen.

Sincerely,



Gary C. Peters
United States Senator



Debbie Stabenow
United States Senator

U.S. House of Representatives
Committee on the Judiciary
 Washington, DC 20515-6216
 One Hundred Fifteenth Congress

June 28, 2018

President Donald J. Trump
 1600 Pennsylvania Ave
 Washington, DC

Dear President Trump,

We have repeatedly expressed our disagreement with your Administration's decision to separate families at our Southern border. We remain opposed to any policy that separates children from their parents or legal guardians in order to deter future migrant flows. Such a policy is inhumane, cruel, and un-American.

We have concerns not only with the policy itself, but with the chaos and confusion that this Administration displayed in its implementation. For weeks, your Administration refused to concede that a family separation policy was in existence. On June 17th, Secretary of Homeland Security Kirstjen Nielsen tweeted that there was no family separation policy. Yet a mere 3 days later, you signed an Executive Order reversing this supposedly non-existent policy.¹ This disconnect is emblematic of the disarray that surrounded the implementation of the family separation policy.

At least one media source suggests that your senior immigration advisor, Stephen Miller, was the architect of the family separation policy, reporting that he intentionally refused to consult with relevant agencies as he formulated the policy because he feared that career government officials would sabotage its implementation.² The result of this paranoia was an ill-advised policy that was also poorly executed. The human cost of this incompetence is evidenced by the pandemonium in immigration detention centers across the country, as desperate parents and traumatized children attempt to locate each other with minimal success. In a recent decision, Federal Judge Dana M. Sabraw explains: "the government has no system in place to keep track of, provide effective communication with, and promptly produce alien children. The unfortunate

¹ Secretary Kirstjen Nielson, *Twitter*, 17 Jun 2018, <https://twitter.com/SecNielsen/status/1008467414235992069>

² The "secretive nature of the effort was born of Miller's assumption that hostile bureaucrats would try to undermine the administration's aggressive policies before they got off the ground, by leaking to the news media or pushing alternative proposals to senior officials." Eliana Johnson, *Stephen Miller roiling nation with back-channel immigration meetings*, *POLITICO* (June 26, 2018) <https://www.politico.com/story/2018/06/26/stephen-miller-trump-immigration-win-678720>

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reality is that under the present system migrant children are not accounted for with the same efficiency and accuracy as *property*.”³

It is our understanding that although criminal immigration-only prosecutions for parents traveling with children have been temporarily paused, over 2,000 children remain separated from their parents.⁴ Your Administration, and the relevant agencies—the Department of Justice, the Department of Homeland Security, and the Department of Health and Human Services—have failed to communicate a clear, cognizable plan for family reunification.⁵ Your Administration continues to make contradictory statements with regards to family reunification, and these claims fail to line up with what is being reported by lawyers working to reunify families.⁶

As Members of Congress with jurisdiction over immigration and criminal enforcement, we seek to better understand the inception of the family separation policy, its implementation, and the level of coordination between relevant agencies. We ask that your Administration answer the following questions:

- (1) When did the Department of Justice begin criminally prosecuting parents who entered the country with children?
 - (a) How many parents have been criminally prosecuted pursuant to 8 U.S.C sections 1325 and 1326, respectively, since January 20, 2017? Please provide a monthly breakdown of these prosecutions.
 - (b) How many children have been separated from their parents as a result of these prosecutions since January 20, 2017?
 - (c) How many parents who were prosecuted pursuant to this policy have been removed since January 20, 2017?
 - (d) How many parents have been removed without their children since January 20, 2017?
 - (e) How many children have been removed without their parents since January 20, 2017?
 - (f) How many children whose parents were prosecuted pursuant to this policy have been removed since January 20, 2017?

- (2) On what date did your Administration decide to implement a zero-tolerance policy recommending the prosecution of all parents encountered between ports of entry?

³ *Ms. L v. ICE*, Case No: 18cv0428 (S.D.Ca. June 26, 2018) at p. 14-15.

⁴ Tal Kopan, *DHS: 2000 children separated from parents border*, CNNPolitics, 16 June 2018, <https://www.cnn.com/2018/06/15/politics/dhs-family-separation-numbers/index.html>

⁵ Isaac Stanley-Becker & Devlin Barrett, *Federal judge orders reunification of migrant families*. Washington Post. June 27, 2018. https://www.washingtonpost.com/news/morning-mix/wp/2018/06/27/federal-judge-enjoins-separation-of-migrant-children-orders-family-reunification/?utm_term=.3e0fc78c7263

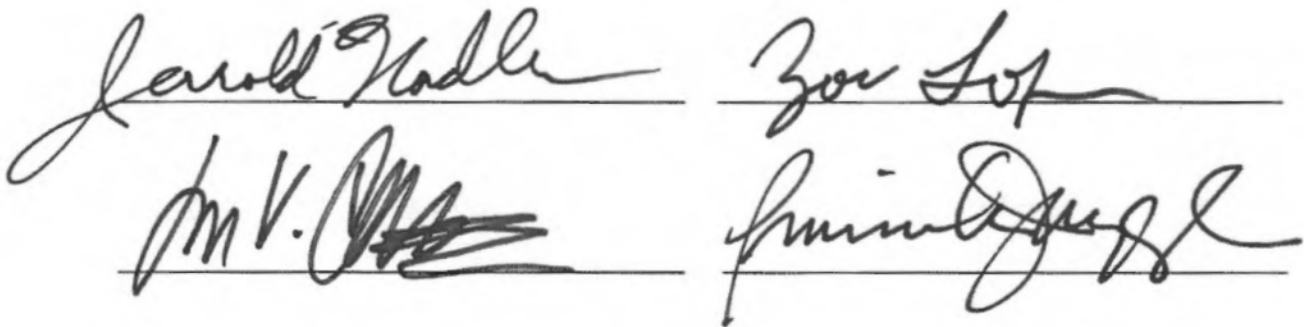
⁶ Ella Nielson, *The Trump administration says it has reunited more than 500 families. One legal group in Texas has confirmed 4 cases*. Vox. June 26, 2018, <https://www.vox.com/policy-and-politics/2018/6/26/17500996/family-separation-reunification-trump-administration>

- (a) Which, if any, agencies were consulted in advance of this policy announcement?
 - (b) Did any such consultations involve career officials at the relevant agencies? If so, what was the level and nature of those discussions?
 - (c) What advice, guidance, or consultation did DHS provide in advance of the policy announcement? Please provide us with a copy of any relevant documentation.
 - (d) What advice, guidance, or consultation did DOJ provide in advance of the policy announcement? Please provide us with a copy of any relevant documentation.
What advice, guidance, or consultation did HHS provide in advance of the policy announcement? Please provide us with a copy of any relevant documentation.
- (3) When did your Administration decide to expand the use of family separation for individuals legally entering at the ports of entry?
- (a) How many parents encountered at ports of entry were separated from their children since January 20, 2017?
 - (b) How many children were taken from parents who entered at ports of entry?
- (4) Please describe the preparatory steps, if any, taken by the Administration to implement the policy before its announcement.
- (a) Prior to the announcement of the policy, what systems were put in place, if any, to ensure that children separated from their parents were tracked and accounted for, both with respect to their location and to the identity of their parents?
 - (b) Prior to the announcement of the policy, what steps were taken, if any, to ensure that parents separated from their children could communicate with those children?
 - (c) Prior to the announcement of the policy, what steps were taken, if any, to ensure that parents were aware of the location of their children, and that children were aware of the location of their parents?
 - (d) Prior to the announcement of the policy, what other steps were taken, if any, to ensure the reunification of parents and children after the conclusion of the parents' criminal proceedings?
- (5) Please describe the steps, if any, taken by the Administration after implementation of the policy to identify, track, and reunify separated families.
- (a) After the announcement of the policy, what systems have been put in place, if any, to ensure that children separated from their parents are tracked and accounted for, both with respect to their location and to the identity of their parents?
 - (b) After the announcement of the policy, what steps have been taken, if any, to ensure that parents separated from their children can communicate with those children?

- (c) After the announcement of the policy, what steps have been taken, if any, to ensure that parents are aware of the location of their children, and that children are aware of the location of their parents?
 - (d) After the announcement of the policy, what other steps have been taken, if any, to ensure the reunification of parents and children after the conclusion of the parents' criminal proceedings?
 - (e) After the announcement of the policy, what policy recommendations have internal agency civil rights organizations, such as the DHS Office of Civil Rights and Civil Liberties or the DOJ Civil Rights Division, provided to the Administration?
- (6) Please provide, in detail, the number of children who have been reunited with their separated parents since January 20, 2017.
- (a) Please provide a monthly breakdown of child-parent reunifications since January 20, 2017?
 - (b) Please provide a narrow range of age and gender of children who have been reunified since January 20, 2017.
 - (c) Of the families that have been reunified since January 20, 2017, how many have been removed?
 - (d) Of the families that have been reunified since January 20, 2017, how many have signed voluntary orders of removal, stipulated orders of removal, or failed to pursue legal relief before an immigration judge.

We understand that your Administration is responding to many inquiries from Members of Congress regarding the family separation policy, but we trust that you will respond to our requests with the utmost urgency and expedience. We look forward to reviewing your response.

Sincerely,



The block contains four handwritten signatures, each written over a horizontal line. The signatures are arranged in two columns. The top-left signature is 'Jarrod Nadler', the top-right is 'Zoe Lof', the bottom-left is 'Jim V. [unclear]', and the bottom-right is 'Jim [unclear]'. The signatures are in black ink and appear to be cursive or semi-cursive.

Hank Johnson

John J. ...

John ...

Karen Bass

Jamie Rask

Uae B. Demunip

Sheila Schuster

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Alfred Dentch

...

...

Ted W. Linn

David M. Culline

CC: Chairman Bob Goodlatte, House Judiciary Committee
Kirstjen Nielsen, Secretary of Homeland Security
Jefferson Sessions, Attorney General, Department of Justice
Alex Azar, Secretary of Health and Human Services

STEVE STIVERS
15TH DISTRICT, OHIO



FINANCIAL SERVICES COMMITTEE

Congress of the United States
House of Representatives

June 21, 2018

The Honorable Jeff Sessions
Attorney General
U.S. Department of Justice
Washington, DC 20530

The Honorable Alex M. Azar
Secretary
U.S. Department of Health and Human Services
Washington, DC 20201

The Honorable Kirstjen M. Nielsen
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

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BY EXEC SEC
2018 JUL -2 PM 12:01

Dear Attorney General Sessions, Secretary Nielsen, and Secretary Azar:

We are writing today regarding our concern about the safety and the security of families with children immigrating to the United States.

We support the defense of our nation's borders and all who work to keep us safe. We are encouraged by President Trump's recent executive order to end the practice of family separation. Policies allowing children to be separated from their parents are in direct conflict with America's humanitarian responsibility and our nation's history of protecting those seeking safety. We can enforce our laws and do so in a humane manner to respect families from any nation.

We are seeking clarification on the guidance used to carry out your duties encountering and processing immigrants crossing the U.S. border. While there may be rare instances which justify federal enforcement to separate a parent from their child, we seek clarification on how those determinations are made, and any additional statutory reforms that Congress must provide to ensure no family is needlessly separated. While efforts are underway in Congress to reform our immigration laws to prevent the separation of families, together with the President's executive order directing the care and unity of families encountered at the border, we seek to better understand, and help others to understand, the responsibilities and process involved with your respective agencies. Specifically we request responses to the following questions:

1. How many children have been separated from their parents while crossing the U.S. border in the past five years, each year, crossing both;
 - a. illegally to gain entrance and,
 - b. in seeking asylum at legal ports of entry?

WASHINGTON OFFICE:
1022 LONGWORTH HOUSE OFFICE BUILDING
WASHINGTON, DC 20515
PH: (202) 225-2015
FAX: (202) 225-3529

CENTRAL OHIO DISTRICT OFFICE:
3790 MUNICIPAL WAY
HILLIARD, OH 43026
PH: (614) 771-4968
FAX: (614) 771-3990

SOUTHEAST OHIO DISTRICT OFFICE:
104 E. MAIN STREET
LANCASTER, OH 43130
PH: (740) 654-2654
FAX: (740) 654-2482

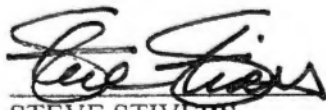
SOUTHWEST OHIO DISTRICT OFFICE:
69 N. SOUTH STREET
WILMINGTON, OH 45177
PH: (937) 283-7049
FAX: (937) 283-7052

AMERICAN
OVERSIGHT

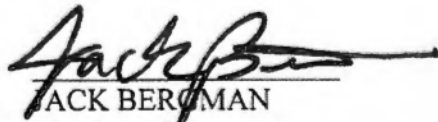
3. What agency guidance or statute has been used to justify separations for illegal entry and for those seeking asylum?
4. If a parent is separated from their child for any period of time, either during processing or in temporary detention:
 - a. What procedures are followed to ensure parents are made aware of the welfare of a child in HHS custody?
 - b. What procedures are followed to assist and expedite family reunification following any separation period?
 - c. How are your respective agencies coordinating your responsibilities between DOJ, DHS, and HHS to ensure the timely and safe reunification of families?
5. What specific training is offered to DOJ, DHS and HHS personnel to ensure the well-being for children is prioritized and maintained throughout any processing or separation period?
6. Given the increase of concern over family separation, what actions are your agencies taking to ensure there is no confusion among personnel processing families crossing our border?
7. Do your respective agencies require additional statutory authority to ensure no family is separated needlessly when entering the country?
8. Given President Trump's executive order in response to family separation, please provide information on how that executive order;
 - a. Will be interpreted by your agencies?
 - b. How does this order change your current procedures?
 - c. How will your agencies implement this policy change to ensure no family is needlessly separated and to help reunite those currently separated?

We believe there is nothing more important than family, and especially in protecting the well-being of children. We look forward to your prompt and complete response. As Congress continues to work for permanent reform, it is critical we have an understanding of how your agencies implement President Trump's executive order, and enforce the laws of our nation.

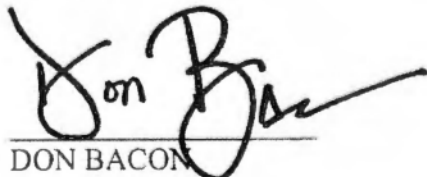
Sincerely,



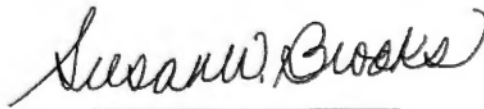
STEVE STIVERS
Member of Congress



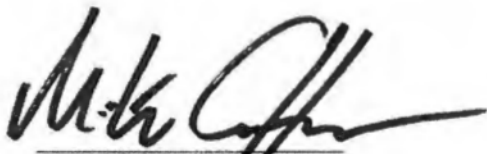
JACK BERGMAN
Member of Congress



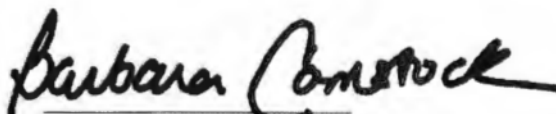
DON BACON
Member of Congress



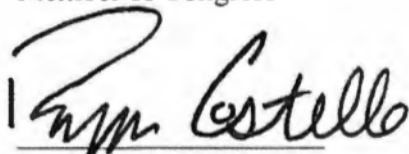
SUSAN BROOKS
Member of Congress



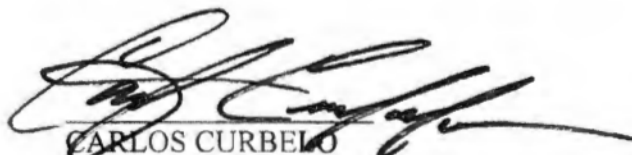
MIKE COFFMAN
Member of Congress



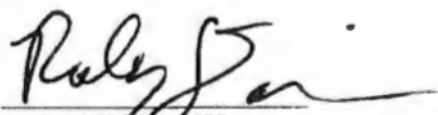
BARBARA COMSTOCK
Member of Congress



RYAN COSTELLO
Member of Congress



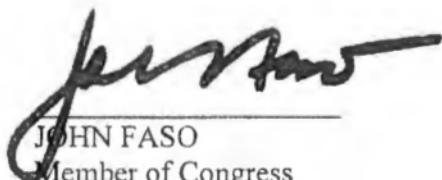
CARLOS CURBELO
Member of Congress




RODNEY DAVIS
Member of Congress



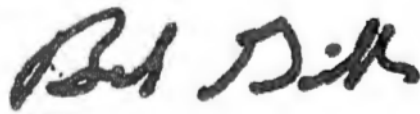
JOHN CURTIS
Member of Congress




JOHN FASO
Member of Congress



JEFF DENHAM
Member of Congress



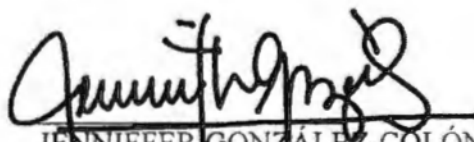
BOB GIBBS
Member of Congress



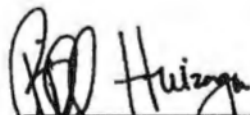
BRIAN FITZPATRICK
Member of Congress



KAREN HANDEL
Member of Congress



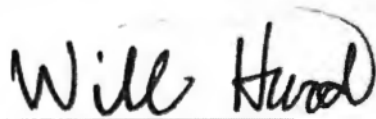
JENNIFFER GONZÁLEZ-COLÓN
Member of Congress



BILL HUIZENGA
Member of Congress



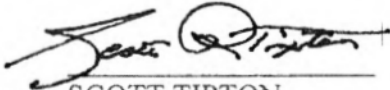
FRENCH HILL
Member of Congress




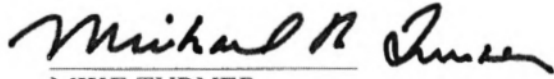
WILL HURD
Member of Congress



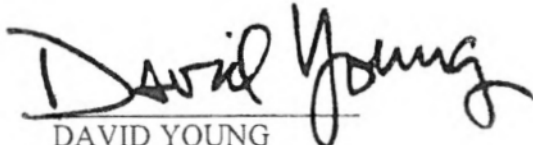
RANDY HULTGREN
Member of Congress


SCOTT TIPTON
Member of Congress


DAVID G. VALADAO
Member of Congress


MIKE TURNER
Member of Congress


FRED UPTON
Member of Congress


DAVID YOUNG
Member of Congress


MIMI WALTERS
Member of Congress

United States Senate

WASHINGTON, DC 20510

July 2, 2018

The Honorable Alex Azar
Secretary
U.S. Department of Health and Human Services
200 Independence Avenue SW
Washington, DC 20201

The Honorable Kristjen M. Nielsen
Secretary
U.S. Department of Homeland Security
Washington, DC 20528

SCANNED/RECEIVED
BY EXEC SEC
2018 JUL -2 PM 1:03

Dear Secretary Azar and Secretary Nielsen:

We are deeply concerned by reports of chaotic attempts to reunify parents and children that have been separated at the border. We are writing today to request information from the Department of Health and Human Services (HHS) and the Department of Homeland Security (DHS) on the status of efforts to reunify these families.

Since the President's Executive Order was signed on June 20, 2018, the Administration has repeatedly indicated that families would be reunited, claiming that "Department of Homeland Security (DHS) and Health and Human Services (HHS) have a process established to ensure that family members know the location of their children and have regular communication after separation to ensure that those adults who are subject to removal are reunited with their children for the purposes of removal." The Administration claims that "the United States government knows the location of all children in its custody and is working to reunite them with their families," and that to do so, "[t]here is a central database which HHS and DHS can access and update" containing information on the location of separated parents and their children.¹

However, the hastily-signed order provided no clarity on how to reunify families, or how to handle families that have already been separated or new families that cross the border seeking asylum. According to reports, the "Department of Homeland Security ... Department of Justice and the Department of Defense...remain uncertain how to carry out an order they aren't sure is legal in the first place."² Furthermore, we are concerned that even as the Administration works to

¹ Department of Homeland Security, "Fact Sheet: Zero-Tolerance Prosecution and Family Reunification," press release, June 23, 2018, <https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification>

² Politico, "Hasty immigration order gives way to West Wing tensions," Eliana Johnson, Annie Karni, and Nancy Cook, June 22, 2018, <https://www.politico.com/story/2018/06/22/trumps-quick-fix-on-family-separations-unleashes-internal-tensions-667175>

reunify families, it continues to deport adults and family members who had children taken from them—reducing their chances of reunification even further.³

HHS currently has over two thousand children in its care who have been separated from their parents, and HHS and DHS are responsible for reuniting these families. To help us better understand the current status of reunification efforts, as well as your agencies' plans to improve and hasten reunification, we request that you provide us with the following information by July 6, 2018, with weekly updates and briefings on your progress until all families are reunited.

1. An anonymized, de-identified list of all children who were separated from a parent or adult family member pursuant to the Administration's "Zero Tolerance" policy. For each child, please also provide the following information:
 - a. The total number of days the child has been separated from their parent or adult family member;
 - b. Whether or not HHS' Office of Refugee Resettlement (ORR) has identified the parent or adult family member from whom they were separated;
 - c. Whether or not ORR has successfully contacted the parent or adult family member from whom they were separated; and
 - d. Whether the child is currently under the care of ORR, has been deported, or has been released to a sponsor.

2. An anonymized, de-identified list of all parents and adult family members separated from their children pursuant to the Administration's "Zero Tolerance" policy, and their relation to the child. For each parent or adult family member, please also provide the following information:
 - a. The total number of days the parent or adult family member has been separated from their children;
 - b. Whether or not ORR has identified the child from whom they were separated;
 - c. Whether or not ORR has successfully contacted the parent or adult family member to notify them of their child's location; and
 - d. Whether the parent or adult family member is currently being detained, has been deported, or has been released.


3. An anonymized, de-identified list that connects the parents and adult family members listed in (2) with their children, as listed in (1); and

³ Vox, "500 migrant kids have been reunited with their parents. More than 1,000 are still caught in the system," Jen Kirby, June 23, 2018, <https://www.vox.com/2018/6/23/17494084/trump-administration-separated-kids-reunification-process>


4. A detailed briefing for Members of Congress from DHS and HHS officials providing information on how the agencies are currently working to connect parents and adult family members listed in (2) with their children listed in (1).

In order to protect the identity of migrants and their children, please do not share their names or any identifying personal information in your response. We urge DHS and HHS to work as swiftly as possible to reunite these families.

Sincerely,



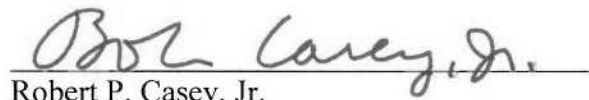
Elizabeth Warren
United States Senator



Bill Nelson
United States Senator



Bernard Sanders
United States Senator



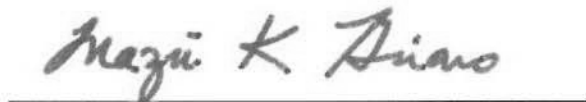
Robert P. Casey, Jr.
United States Senator



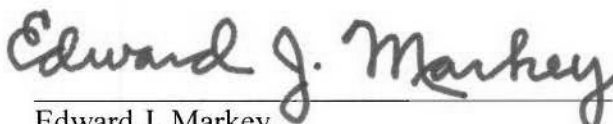
Kirsten Gillibrand
United States Senator




Richard Blumenthal
United States Senator

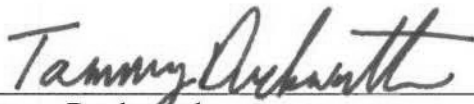



Mazie K. Hirono
United States Senator



Edward J. Markey
United States Senator


Cory A. Booker
United States Senator


Tammy Duckworth
United States Senator


Tina Smith
United States Senator

Page 109

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 110

Withheld pursuant to exemption

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of the Freedom of Information and Privacy Act

Page 111

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Page 112

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of the Freedom of Information and Privacy Act

Page 113

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of the Freedom of Information and Privacy Act



**Homeland
Security**

Privacy Office, Mail Stop 0655

May 3, 2021

**SENT VIA E-MAIL TO: foia@americanoversight.org,
hart.wood@americanoversight.org
JYenouskas@goodwinlaw.com**

Austin R. Evers
Executive Director
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

Re: **18-cv-02840 (2019-HQLI-00018)**
American Oversight v. DHS
Third Interim Release, Consultation Documents

Dear Mr. Evers:

On August 31, 2020 DHS released its third interim release of records to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), received on October 4, 2018.

For that production, DHS reviewed 301 pages of which 207 pages were released in full or withheld in part or in full pursuant to FOIA exemptions (b)(5), (b)(6), and (b)(7)(e), while 41 pages were non-responsive to the request. DHS also located and sent 53 pages to other agencies for consultation.

The 53 pages sent for consultation have now been returned and are being released. Fifteen pages are withheld in part pursuant to FOIA exemption (b)(5), while 38 pages are released in full. The 53 pages are Bates stamped DHS-001-02840-001960 to DHS-001-02840-002012.

If you have any questions regarding this release, please contact Assistant United States Attorney, Michael A. Tilghman II, Civil Division, United States Attorney's Office for the District of Columbia, by email at michael.tilghman@usdoj.gov.

Sincerely,

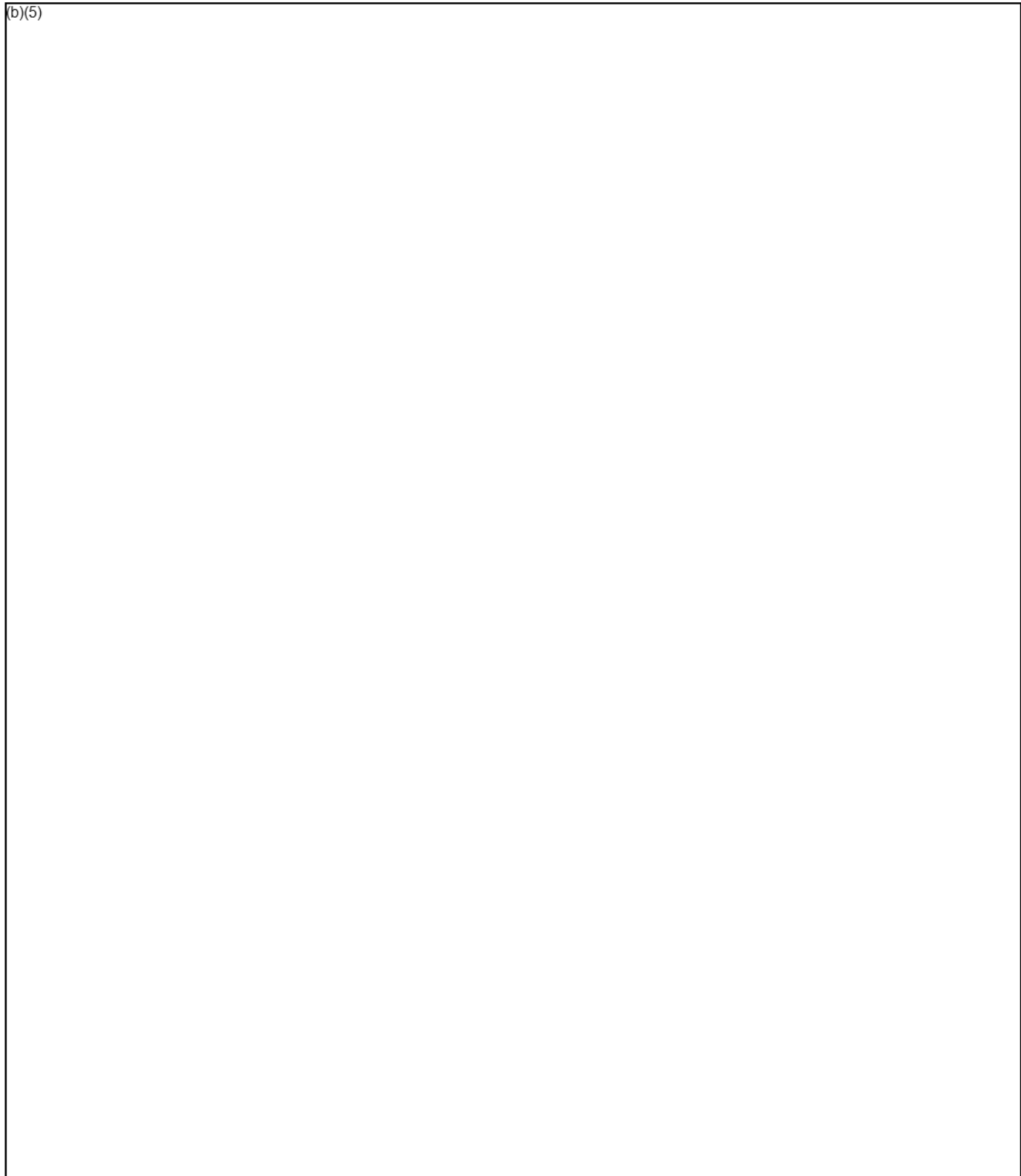
A handwritten signature in black ink that reads "Eric A. Neuschafer". The signature is written in a cursive style with a large initial "E".

Eric A. Neuschafer
Senior Director, FOIA Litigation, Appeals, Policy, and
Training (Acting)

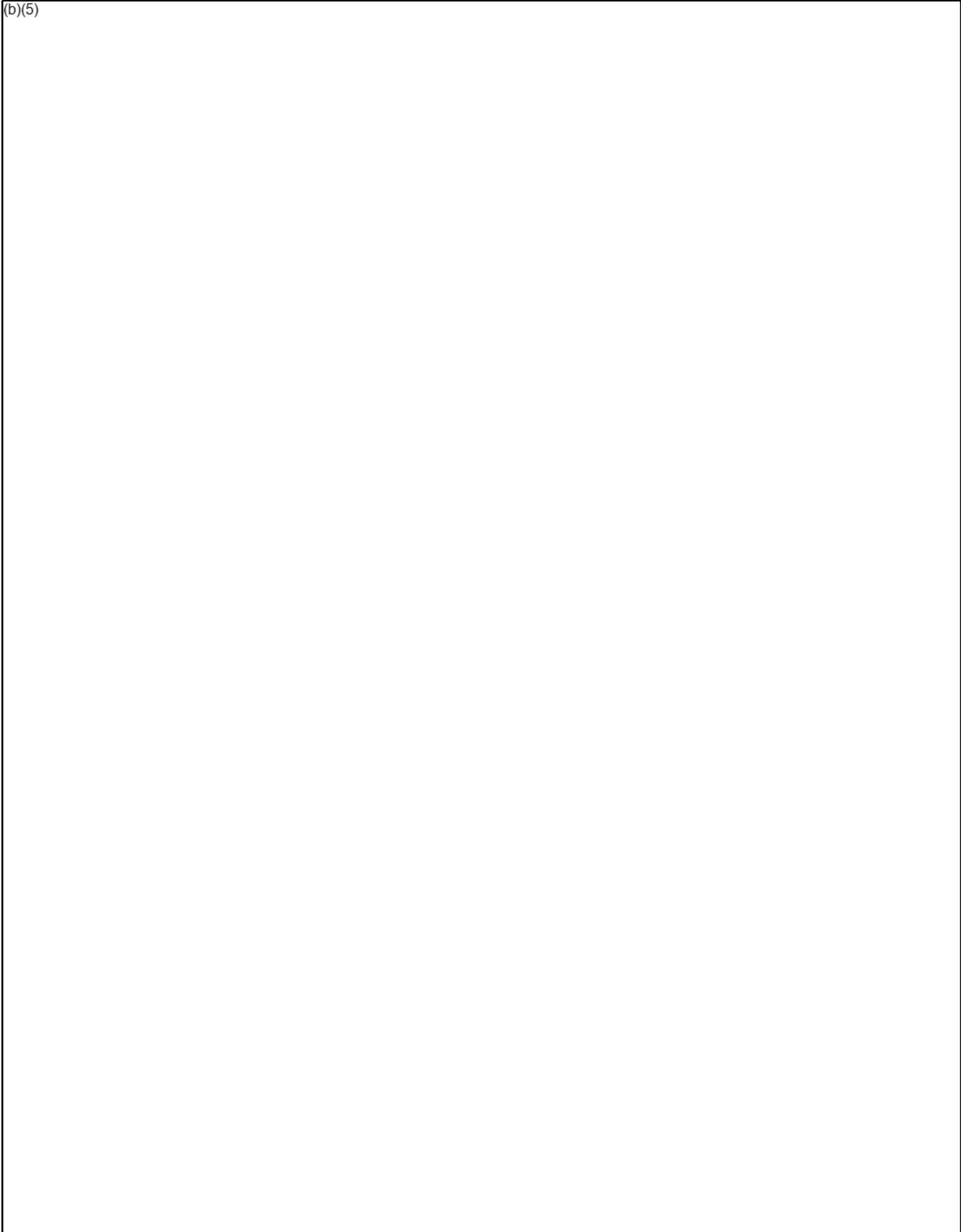
Enclosed: 53 pages

MEETING WITH POTUS
Tuesday, June 19, 2018

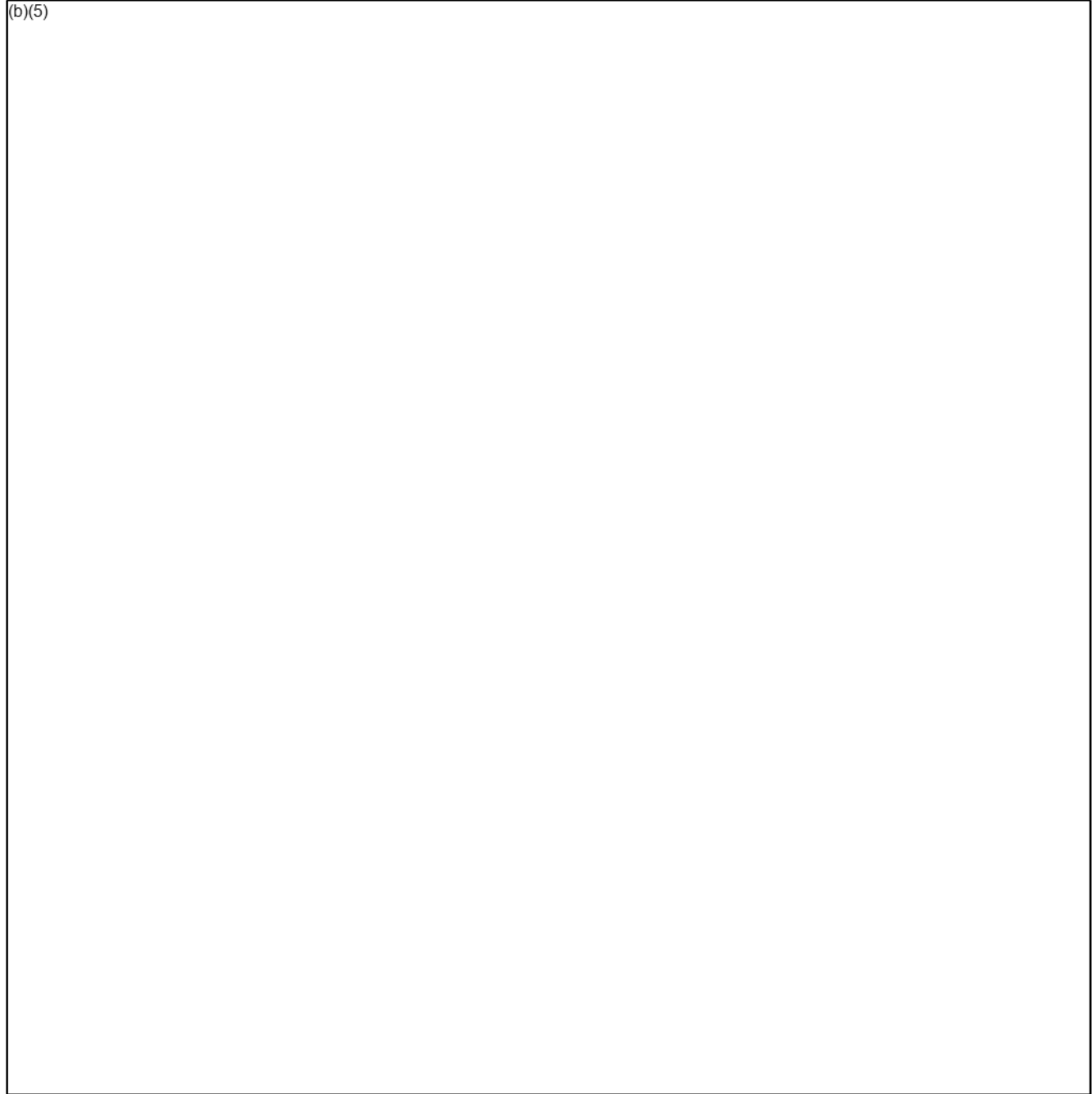
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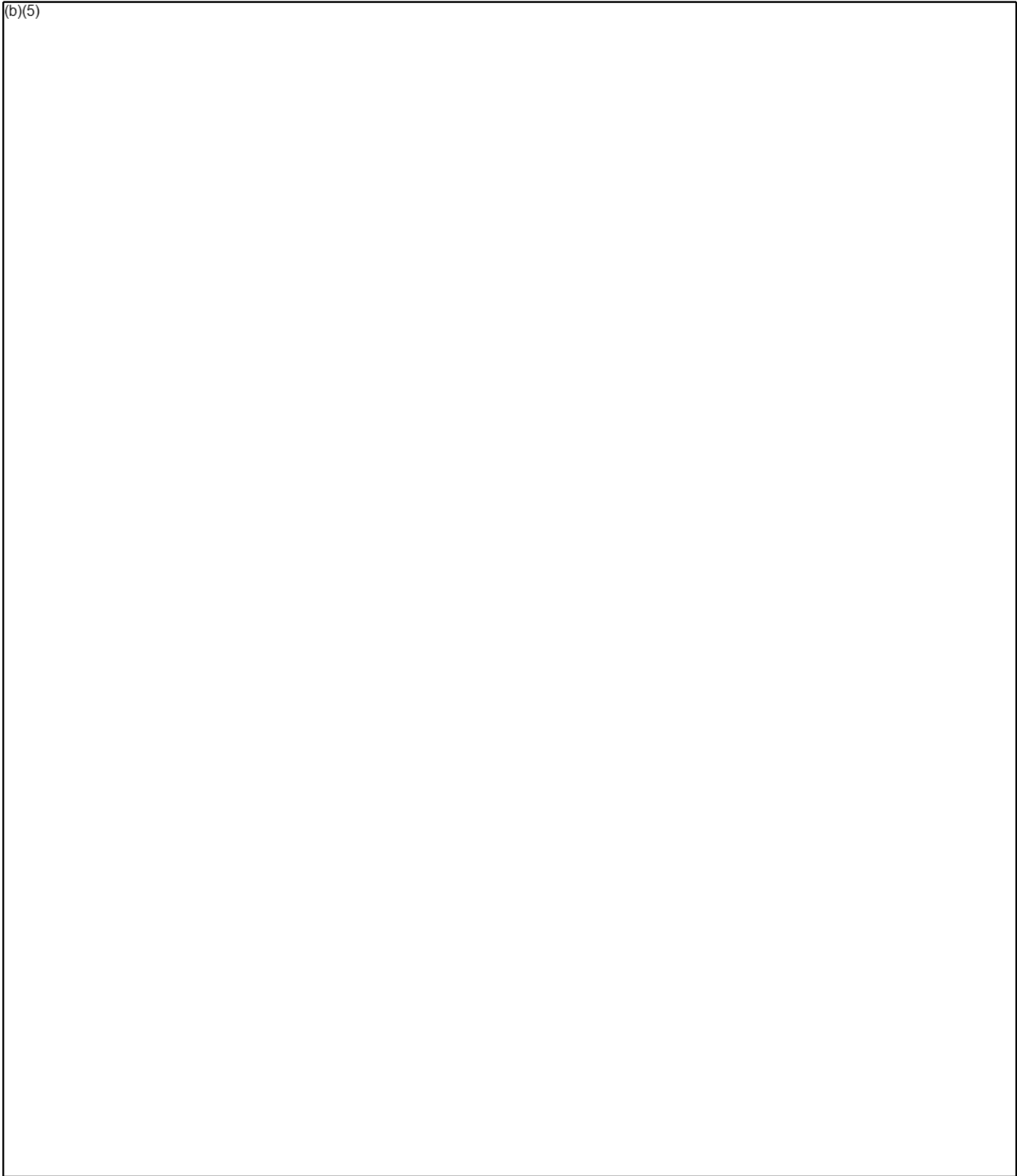


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MEETING WITH POTUS
Tuesday, June 19, 2018

(b)(5)



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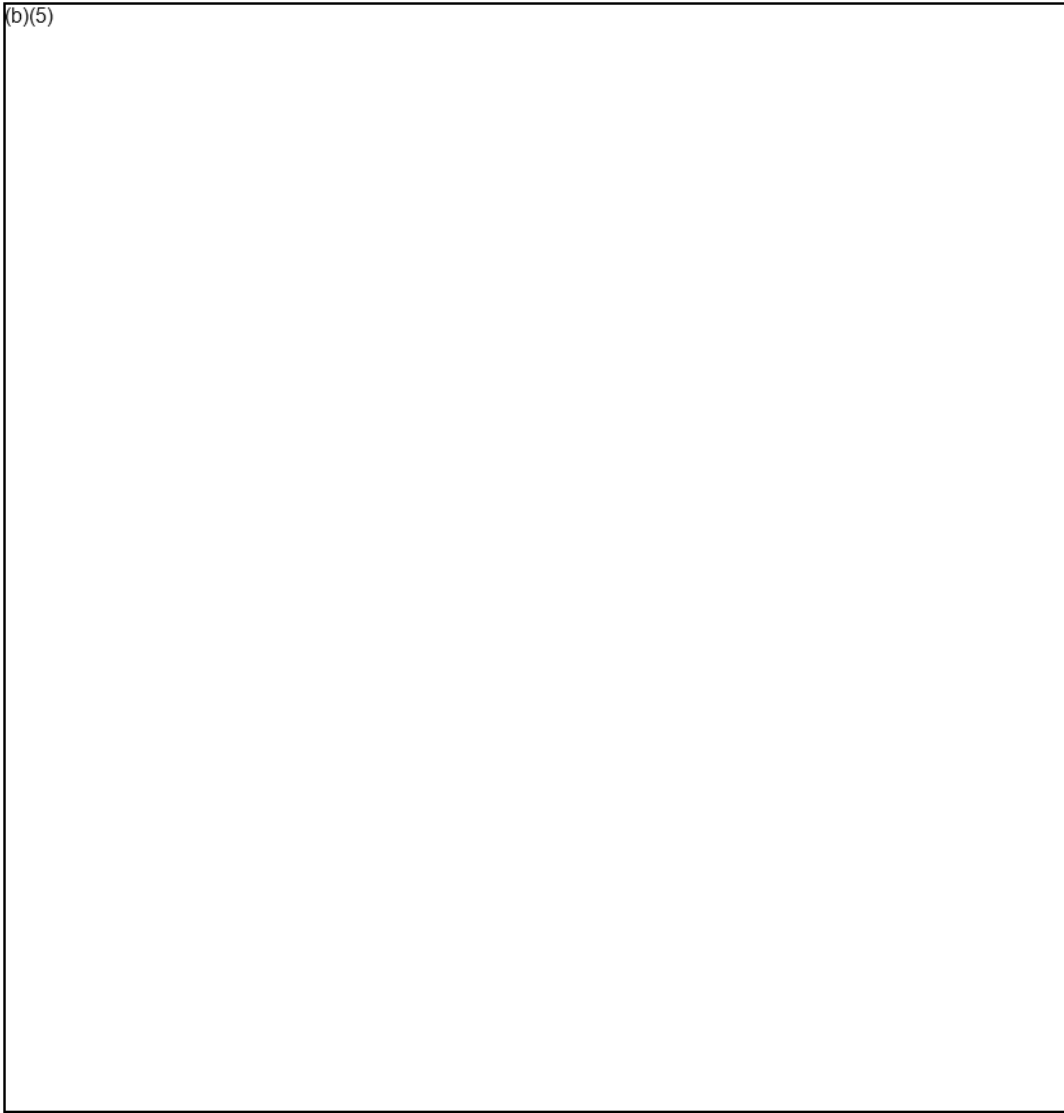
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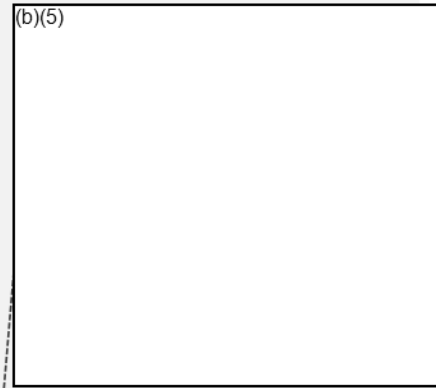
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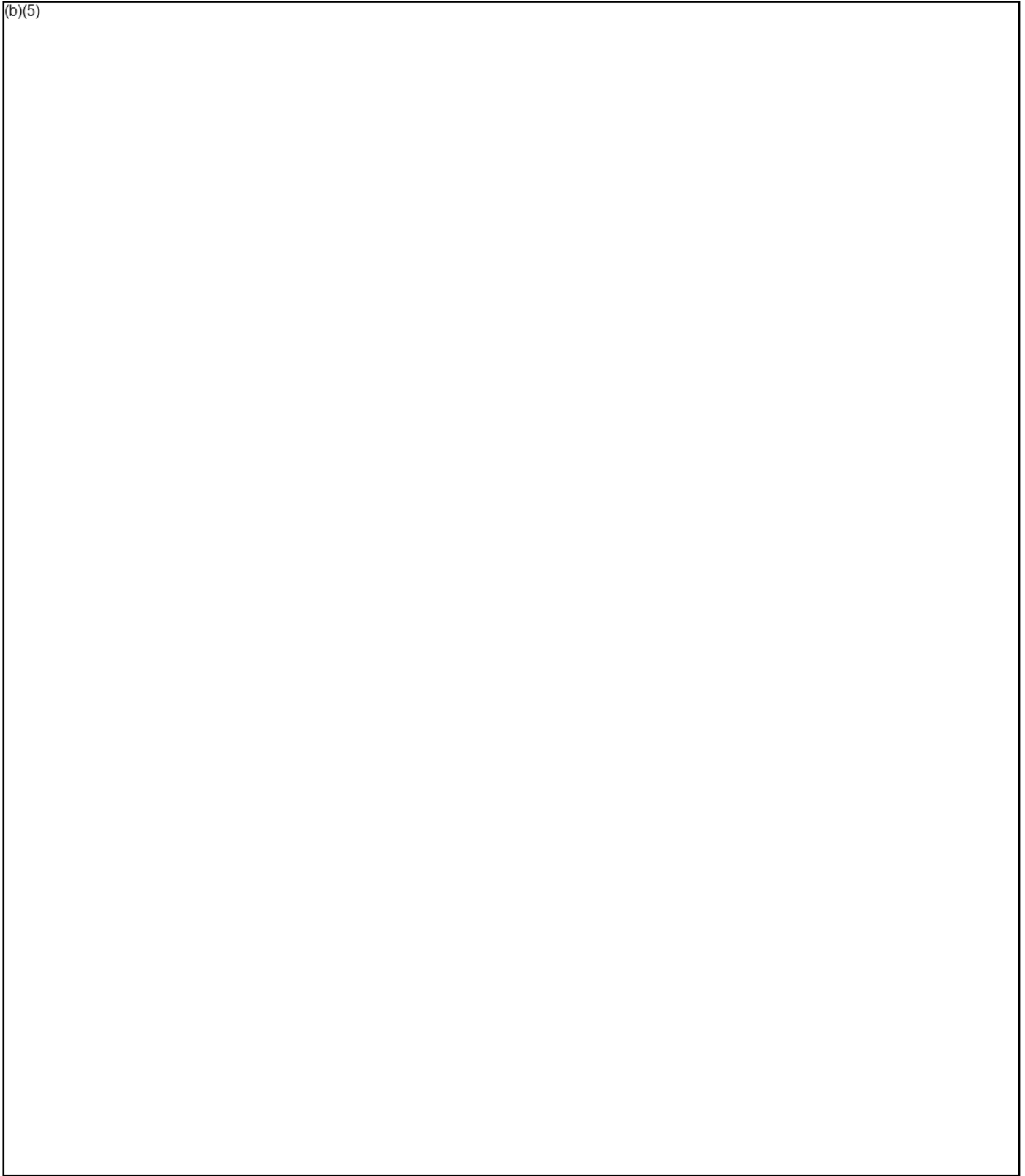


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~~FOR OFFICIAL USE ONLY~~ ATTORNEY-CLIENT PRIVILEGED
DELIBERATIVE ATTORNEY WORK PRODUCT

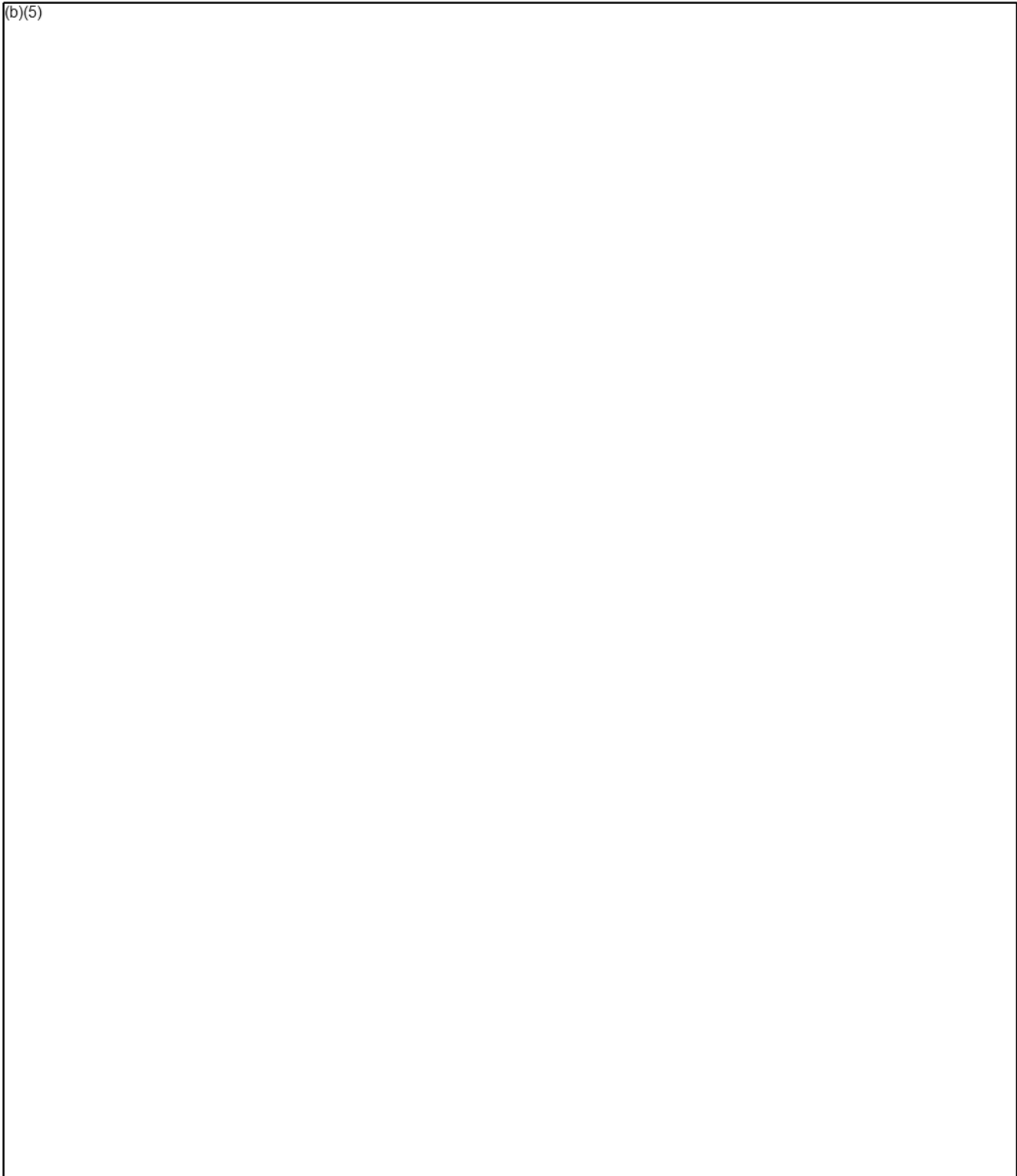
**IMMIGRATION PC MEETING
July 3, 2018**

(b)(5)



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DELIBERATIVE ATTORNEY WORK PRODUCT

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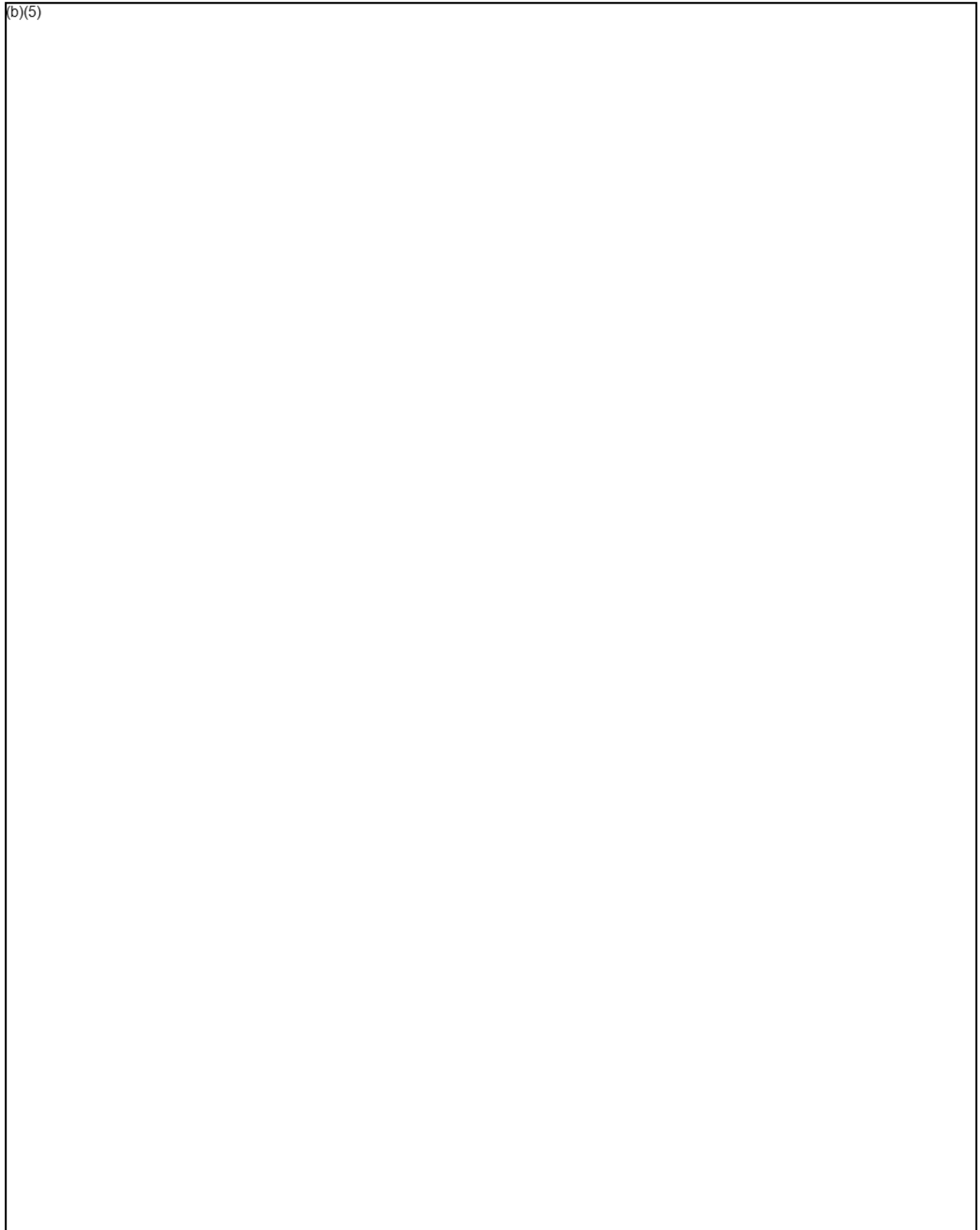
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IMMIGRATION PC MEETING

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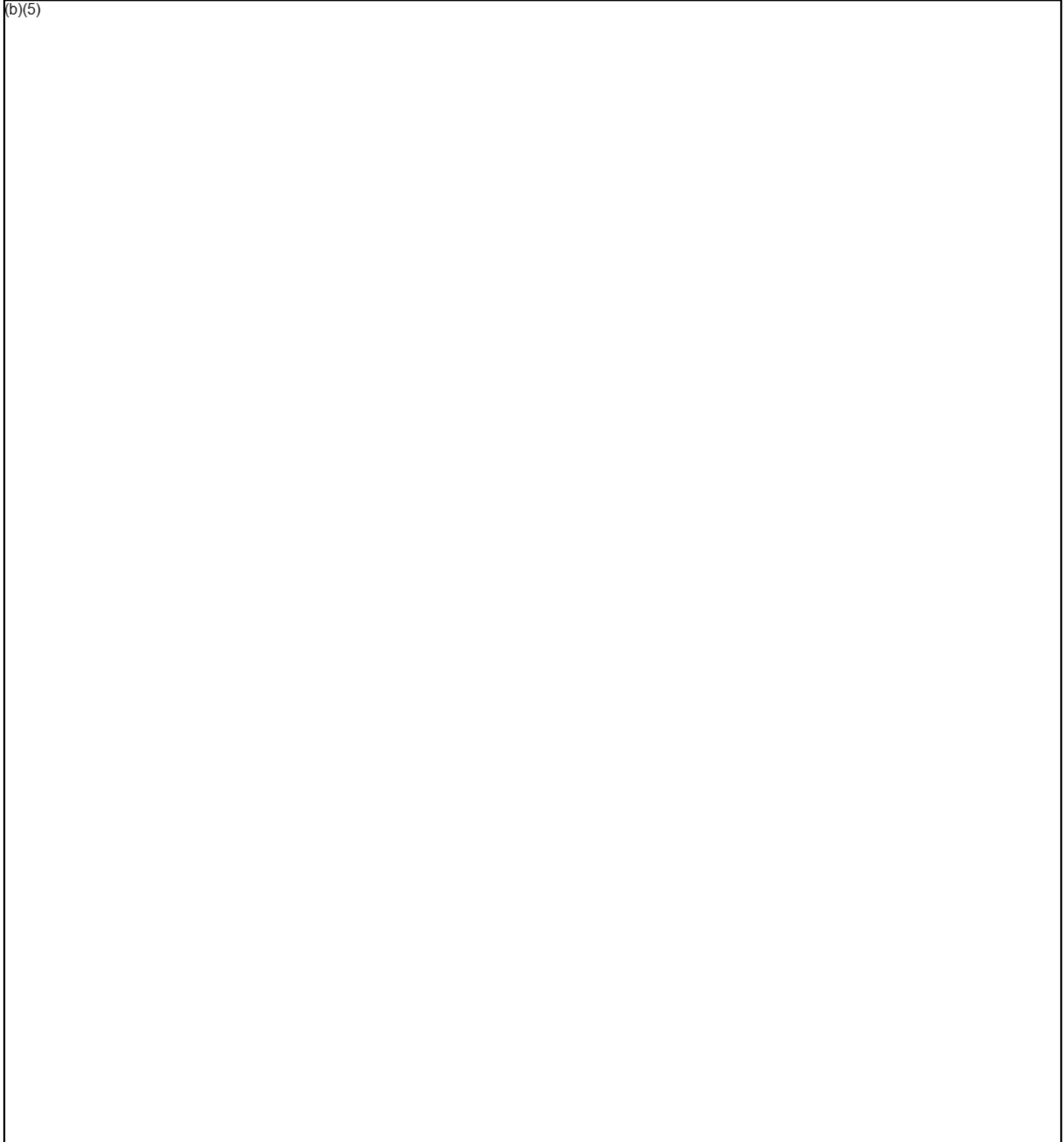




THE WHITE HOUSE

Immigration Principals Meeting
July 3, 2018

(b)(5)

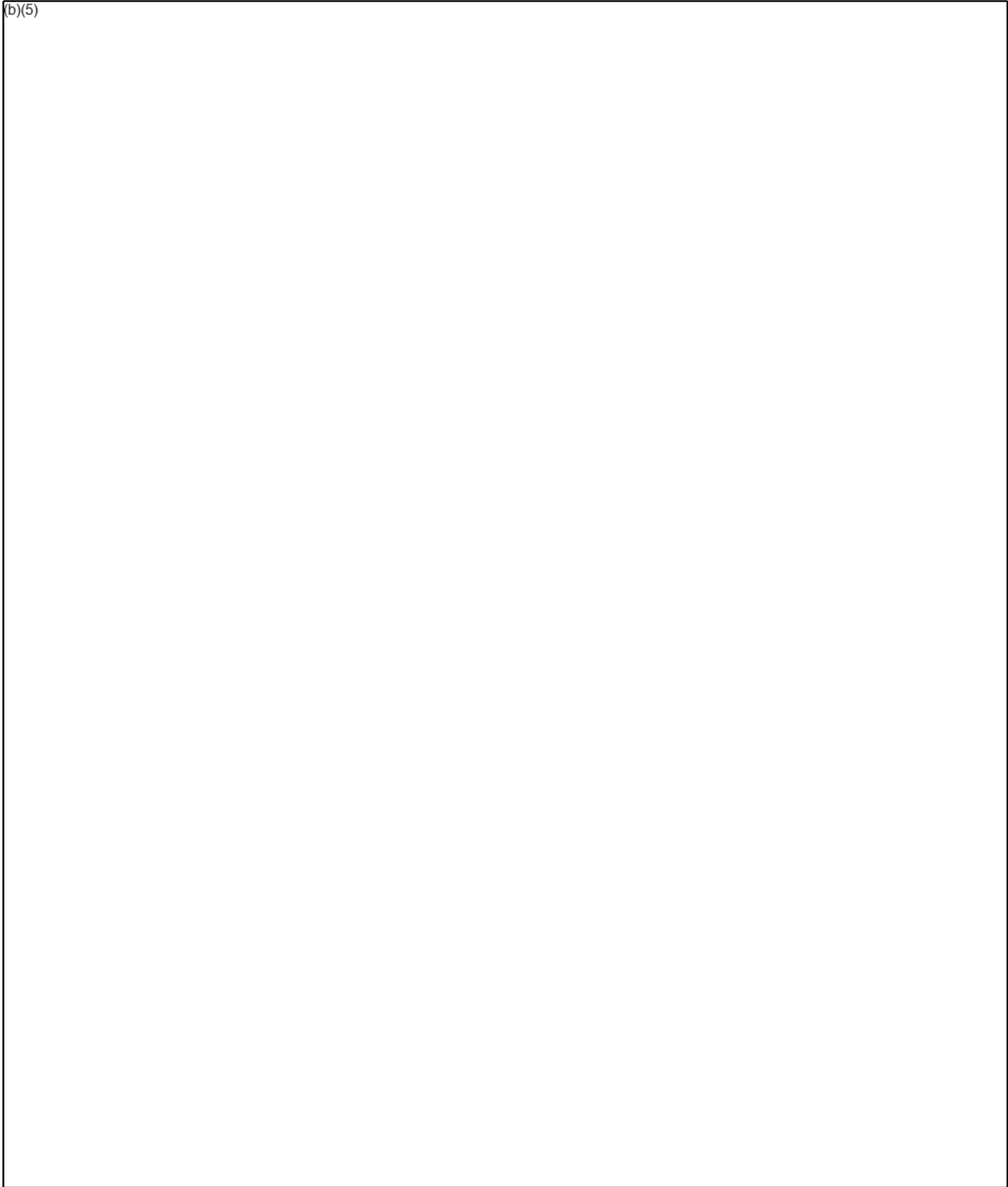


DRAFT//DELIBERATIVE PROCESS



THE WHITE HOUSE

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THE WHITE HOUSE

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EXECUTIVE ORDERS

Affording Congress an Opportunity to Address Family Separation

Issued on: June 20, 2018

By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, it is hereby ordered as follows:

Section 1. Policy. It is the policy of this Administration to rigorously enforce our immigration laws. Under our laws, the only legal way for an alien to enter this country is at a designated port of entry at an appropriate time. When an alien enters or attempts to enter the country anywhere else, that alien has committed at least the crime of improper entry and is subject to a fine or imprisonment under section 1325(a) of title 8, United States Code. This Administration will initiate proceedings to enforce this and other criminal provisions of the INA until and unless Congress directs otherwise. It is also the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources. It is unfortunate that Congress's failure to act and court orders have put the Administration in the position of separating alien families to effectively enforce the law.

Sec. 2. Definitions. For purposes of this order, the following definitions apply:

(a) "Alien family" means

(i) any person not a citizen or national of the United States who has not been admitted into, or is not authorized to enter or remain in, the United States, who entered this country with an alien child or alien children at or between designated ports of entry and who was detained; and

(ii) that person's alien child or alien children.

(b) "Alien child" means any person not a citizen or national of the United States who

(i) has not been admitted into, or is not authorized to enter or remain in, the United States;

(ii) is under the age of 18; and

(iii) has a legal parent-child relationship to an alien who entered the United States with the alien child at or between designated ports of entry and who was detained.

Sec. 3. Temporary Detention Policy for Families Entering this Country Illegally. (a) The Secretary of Homeland Security (Secretary), shall, to the extent permitted by law and subject to the availability of appropriations, maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings involving their members.

(b) The Secretary shall not, however, detain an alien family together when there is a concern that detention of an alien child with the child's alien parent would pose a risk to the child's welfare.

(c) The Secretary of Defense shall take all legally available measures to provide to the Secretary, upon request, any existing facilities available for the housing and care of alien families, and shall construct such facilities if necessary and consistent with law. The Secretary, to the extent permitted by law, shall be responsible for reimbursement for the use of these facilities.

(d) Heads of executive departments and agencies shall, to the extent consistent with law, make available to the Secretary, for the housing and care of alien families pending court proceedings for improper entry, any facilities that are appropriate for such purposes. The Secretary, to the extent permitted by law, shall be responsible for reimbursement for the use of these facilities.

(e) The Attorney General shall promptly file a request with the U.S. District Court for the Central District of California to modify the Settlement Agreement in *Flores v. Sessions*, CV 85-4544 ("*Flores* settlement"), in a manner that would permit the Secretary, under present resource constraints, to detain alien families together throughout the pendency of criminal proceedings for improper entry or any removal or other immigration proceedings.

Sec. 4. Prioritization of Immigration Proceedings Involving Alien Families. The Attorney General shall, to the extent practicable, prioritize the adjudication of cases involving detained families.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,

June 20, 2018.

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Ms. L.; et al.,
Petitioners-Plaintiffs,
v.
U.S Immigration and Customs
Enforcement (“ICE”); et al.,
Respondents-Defendants.

Case No.: 18cv0428 DMS (MDD)

**ORDER GRANTING PLAINTIFFS’
MOTION FOR CLASSWIDE
PRELIMINARY INJUNCTION**

Eleven weeks ago, Plaintiffs leveled the serious accusation that our Government was engaged in a widespread practice of separating migrant families, and placing minor children who were separated from their parents in government facilities for “unaccompanied minors.” According to Plaintiffs, the practice was applied indiscriminately, and separated even those families with small children and infants—many of whom were seeking asylum. Plaintiffs noted reports that the practice would become national policy. Recent events confirm these allegations. Extraordinary relief is requested, and is warranted under the circumstances.

On May 7, 2018, the Attorney General of the United States announced a “zero tolerance policy,” under which all adults entering the United States illegally would be subject to criminal prosecution, and if accompanied by a minor child, the child would be

1 separated from the parent.¹ Over the ensuing weeks, hundreds of migrant children were
2 separated from their parents, sparking international condemnation of the practice. Six days
3 ago on June 20, 2018, the President of the United States signed an Executive Order (“EO”)
4 to address the situation and to require preservation of the “family unit” by keeping migrant
5 families together during criminal and immigration proceedings to the extent permitted by
6 law, while also maintaining “rigorous[]” enforcement of immigration laws. *See* Executive
7 Order, *Affording Congress an Opportunity to Address Family Separation* § 1, 2018 WL
8 3046068 (June 20, 2018). The EO did not address reunification of the burgeoning
9 population of over 2,000 children separated from their parents. Public outrage remained
10 at a fever pitch. Three days ago on Saturday, June 23, 2018, the Department of Homeland
11 Security (“DHS”) issued a “Fact Sheet” outlining the government’s efforts to “ensure that
12 those adults who are subject to removal are reunited with their children for the purposes of
13 removal.”²

14 Plaintiffs assert the EO does not eliminate the need for the requested injunction, and
15 the Fact Sheet does not address the circumstances of this case. Defendants disagree with
16 those assertions, but there is no genuine dispute that the Government was not prepared to
17 accommodate the mass influx of separated children. Measures were not in place to provide
18 for communication between governmental agencies responsible for detaining parents and
19 those responsible for housing children, or to provide for ready communication between
20 separated parents and children. There was no reunification plan in place, and families have
21 been separated for months. Some parents were deported at separate times and from
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23
24 ¹ *See* U.S. Att’y. Gen., *Attorney General Sessions Delivers Remarks Discussing the*
25 *Immigration Enforcement Actions of the Trump Administration* (May 7, 2018),
26 [https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-](https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions)
discussing-immigration-enforcement-actions.

27 ² *See* U.S. Dep’t of Homeland Sec., *Fact Sheet: Federal Regulations Protecting the*
28 *Confidentiality of Asylum Applicants* (June 23, 2018),
[https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-](https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification)
reunification.

1 different locations than their children. Migrant families that lawfully entered the United
2 States at a port of entry seeking asylum were separated. And families that were separated
3 due to entering the United States illegally between ports of entry have not been reunited
4 following the parent's completion of criminal proceedings and return to immigration
5 detention.

6 This Court previously entered an order finding Plaintiffs had stated a legally
7 cognizable claim for violation of their substantive due process rights to family integrity
8 under the Fifth Amendment to the United States Constitution based on their allegations the
9 Government had separated Plaintiffs from their minor children while Plaintiffs were held
10 in immigration detention and without a showing that they were unfit parents or otherwise
11 presented a danger to their children. *See Ms. L. v. U.S. Immigration & Customs Enf't*, 302
12 F. Supp. 3d 1149, 2018 WL 2725736, at *7-12 (S.D. Cal. June 6, 2018). A class action
13 has been certified to include similarly situated migrant parents. Plaintiffs now request
14 classwide injunctive relief to prohibit separation of class members from their children in
15 the future absent a finding the parent is unfit or presents a danger to the child, and to require
16 reunification of these families once the parent is returned to immigration custody unless
17 the parent is determined to be unfit or presents a danger to the child.

18 Plaintiffs have demonstrated a likelihood of success on the merits, irreparable harm,
19 and that the balance of equities and the public interest weigh in their favor, thus warranting
20 issuance of a preliminary injunction. This Order does not implicate the Government's
21 discretionary authority to enforce immigration or other criminal laws, including its
22 decisions to release or detain class members. Rather, the Order addresses only the
23 circumstances under which the Government may separate class members from their
24 children, as well as the reunification of class members who are returned to immigration
25 custody upon completion of any criminal proceedings.

26 ///

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I.

BACKGROUND

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3 This case started with the filing of a Complaint by Ms. L., a Catholic citizen of the
4 Democratic Republic of the Congo fleeing persecution from her home country because of
5 her religious beliefs. The specific facts of Ms. L.’s case are set out in the Complaint and
6 this Court’s June 6, 2018 Order on Defendants’ motion to dismiss. *See Ms. L.*, 2018 WL
7 2725736, at *1-3. In brief, Ms. L. and her then-six-year-old daughter S.S., lawfully
8 presented themselves at the San Ysidro Port of Entry seeking asylum based on religious
9 persecution. They were initially detained together, but after a few days S.S. was “forcibly
10 separated” from her mother. When S.S. was taken away from her mother, “she was
11 screaming and crying, pleading with guards not to take her away from her mother.” (Am.
12 Compl. ¶ 43.) Immigration officials claimed they had concerns whether Ms. L. was S.S.’s
13 mother, despite Ms. L.’s protestations to the contrary and S.S.’s behavior. So Ms. L. was
14 placed in immigration custody and scheduled for expedited removal, thus rendering S.S.
15 an “unaccompanied minor” under the Trafficking Victims Protection and Reauthorization
16 Act (“TVPRA”), Pub. L. No. 110-457 (Dec. 23, 2008), and subjecting her to the “care and
17 custody” of the Office of Refugee Resettlement (“ORR”).³ S.S. was placed in a facility in
18

19
20 ³ The TVPRA provides that “the care and custody of all unaccompanied alien children,
21 including responsibility for their detention, where appropriate, shall be the responsibility
22 of” HHS and its sub-agency, ORR. 8 U.S.C. § 1232(b)(1). An “unaccompanied alien
23 child” (“UAC”) is a child under 18 years of age with no lawful immigration status in the
24 United States who has neither a parent nor legal guardian in the United States nor a parent
25 nor legal guardian in the United States “available” to care for them. 6 U.S.C § 279(g)(2).
26 According to the TVPRA, a UAC “may not be placed with a person or entity unless the
27 Secretary of Health and Human Services makes a determination that the proposed
28 custodian is capable of providing for the child’s physical and mental well-being. Such
determination shall, at a minimum, include verification of the custodian’s identity and
relationship to the child, if any, as well as an independent finding that the individual has
not engaged in any activity that would indicate a potential risk to the child.” 8 U.S.C. §
1232(c)(3)(A).

1 Chicago over a thousand miles away from her mother. Immigration officials later
2 determined Ms. L. had a credible fear of persecution and placed her in removal
3 proceedings, where she could pursue her asylum claim. During this period, Ms. L. was
4 able to speak with her daughter only “approximately 6 times by phone, never by video.”
5 (Am. Compl. ¶ 45.) Each time they spoke, S.S. “was crying and scared.” (*Id.* ¶ 43.) Ms.
6 L. was “terrified that she would never see her daughter again.” (*Id.* ¶ 45.) After the present
7 lawsuit was filed, Ms. L. was released from ICE detention into the community. The Court
8 ordered the Government to take a DNA saliva sample (or swab), which confirmed that Ms.
9 L. was the mother of S.S. Four days later, Ms. L. and S.S. were reunited after being
10 separated for nearly five months.

11 In an Amended Complaint filed on March 9, 2018, this case was expanded to include
12 another Plaintiff, Ms. C. She is a citizen of Brazil, and unlike Ms. L., she did not present
13 at a port of entry. Instead, she and her 14-year-old son J. crossed into the United States
14 “between ports of entry,” after which they were apprehended by U.S. Border Patrol. Ms.
15 C. explained to the agent that she and her son were seeking asylum, but the Government,
16 as was its right under federal law, charged Ms. C. with entering the country illegally and
17 placed her in criminal custody. This rendered J. an “unaccompanied minor” and he, like
18 S.S., was transferred to the custody of ORR, where he, too, was housed in a facility in
19 Chicago several hundred miles away from his mother. Ms. C. was thereafter convicted of
20 misdemeanor illegal entry and served 25 days in criminal custody. After completing that
21 sentence, Ms. C. was transferred to immigration detention for removal proceedings and
22 consideration of her asylum claim, as she too had passed a credible fear screening. Despite
23 being returned to immigration custody, Ms. C. was not reunited with J. During the five
24 months she was detained, Ms. C. did not see her son, and they spoke on the phone only “a
25 handful of times[.]” (*Id.* ¶ 58.) Ms. C. was “desperate” to be reunited with her son, worried
26 about him constantly and did not know when she would be able to see him. (*Id.*) J. had a
27 difficult time emotionally during the period of separation from his mother. (*Id.* ¶ 59.) Ms.
28 C. was eventually released from immigration detention on bond, and only recently reunited

1 with J. Their separation lasted more than eight months despite the lack of any allegations
2 or evidence that Ms. C. was unfit or otherwise presented a danger to her son.⁴

3 Ms. L. and Ms. C. are not the only migrant parents who have been separated from
4 their children at the border. Hundreds of others, who have both lawfully presented at ports
5 of entry (like Ms. L.) and unlawfully crossed into the country (like Ms. C.), have also been
6 separated. Because this practice is affecting large numbers of people, Plaintiffs sought
7 certification of a class consisting of similarly situated individuals. The Court certified that
8 class with minor modifications,⁵ and now turns to the important question of whether
9 Plaintiffs are entitled to a classwide preliminary injunction that (1) halts the separation of
10 class members from their children absent a determination that the parent is unfit or presents
11 a danger to the child, and (2) reunites class members who are returned to immigration
12 custody upon completion of any criminal proceedings absent a determination that the
13 parent is unfit or presents a danger to the child.

14 Since the present motion was filed, several important developments occurred, as
15 previously noted. First, on May 7, 2018, the Government announced its zero tolerance
16 policy for all adult persons crossing the border illegally, which resulted in the separation
17 of hundreds of children who had crossed with their parents. This is what happened with
18 Ms. C., though she crossed prior to the public announcement of the zero tolerance policy.
19

20
21 ⁴ As stated in the Court’s Order on Defendants’ motion to dismiss, Plaintiffs do not
22 challenge Ms. C.’s initial separation from J. as a result of the criminal charge filed against
23 her. Plaintiffs’ only complaint with regard to Ms. C. concerns the Government’s failure to
reunite her with J. after she was returned to immigration custody.

24 ⁵ The class is defined to include: “All adult parents who enter the United States at or
25 between designated ports of entry who (1) have been, are, or will be detained in
26 immigration custody by the [DHS], and (2) have a minor child who is or will be separated
27 from them by DHS and detained in ORR custody, ORR foster care, or DHS custody absent
28 a determination that the parent is unfit or presents a danger to the child.” (*See* Order
Granting in Part Mot. for Class Cert. at 17.) The class does not include parents with
criminal history or communicable disease, or those apprehended in the interior of the
country or subject to the EO. (*See id.* at 4 n.5.)

1 She is not alone. There are hundreds of similarly situated parents, and there are more than
2 2,000 children that have now been separated from their parents.

3 When a parent is charged with a criminal offense, the law ordinarily requires
4 separation of the family. This separation generally occurs regardless of whether the parent
5 is charged with a state or federal offense. The repercussions on the children, however, can
6 vary greatly depending on status. For citizens, there is an established system of social
7 service agencies ready to provide for the care and well-being of the children, if necessary,
8 including child protective services and the foster care system. This is in addition to any
9 family members that may be available to provide shelter for these minor children.
10 Grandparents and siblings are frequently called upon. Non-citizens may not have this kind
11 of support system, such as other family members who can provide shelter for their children
12 in the event the parent is detained at the border. This results in immigrant children going
13 into the custody of the federal government, which is presently not well equipped to handle
14 that important task.

15 For children placed in federal custody, there are two options. One of those options
16 is ORR, but it was established to address a different problem, namely minor children who
17 were apprehended at the border without their parents, *i.e.*, true “unaccompanied alien
18 children.” It was not initially designed to address the problem of migrant children detained
19 with their parents at the border and who were thereafter separated from their parents. The
20 second option is family detention facilities, but the options there are limited. Indeed, at the
21 time of oral argument on this motion, Government counsel represented to the Court that
22 the “total capacity in [family] residential centers” was “less than 2,700.” (Rep. Tr. at 9,
23 May 9, 2018, ECF No. 70.) For male heads of households, *i.e.*, fathers traveling with their
24 children, there was only one facility with “86 beds.” (*Id.* at 43.)

25 The recently issued EO confirms the government is inundated by the influx of
26 children essentially orphaned as a result of family separation. The EO now directs “[h]eads
27 of executive departments and agencies” to make available “any facilities ... appropriate”
28 for the housing and care of alien families. EO § 3(d). The EO also calls upon the *military*

1 by directing the Secretary of Defense to make available “any existing” facility and to
2 “construct such facilities[,]” if necessary, *id.* § 3(c), which is an extraordinary measure.
3 Meanwhile, “tent cities” and other make-shift facilities are springing up. That was the
4 situation into which Plaintiffs, and hundreds of other families that were separated at the
5 border in the past several months, were placed.

6 This situation has reached a crisis level. The news media is saturated with stories of
7 immigrant families being separated at the border. People are protesting. Elected officials
8 are weighing in. Congress is threatening action. Seventeen states have now filed a
9 complaint against the Federal Government challenging the family separation practice. *See*
10 *State of Washington v. United States*, Case No. 18cv0939, United States District Court for
11 the Western District of Washington. And the President has taken action.

12 Specifically, on June 20, 2018, the President signed the EO referenced above. The
13 EO states it is the Administration’s policy “to maintain family unity, including by detaining
14 alien families together where appropriate and consistent with law and available resources.”
15 *Id.* § 1.⁶ In furtherance of that policy, the EO indicates that parents and children who are
16 apprehended together at the border will be detained together “during the pendency of any
17 criminal improper entry or immigration proceedings” to the extent permitted by law. *Id.* §
18 3. The language of the EO is not absolute, however, as it states that family unity shall be
19 maintained “where appropriate and consistent with law and available resources[,]” *id.* § 1,
20 and “to the extent permitted by law and subject to the availability of appropriations[.]” *Id.*
21 § 3. The EO also indicates rigorous enforcement of illegal border crossers will continue.
22 *Id.* § 1 (“It is the policy of this Administration to rigorously enforce our immigration
23 laws.”). And finally, although the Order speaks to a policy of “maintain[ing] family unity,”
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26 ⁶ The Order defines “alien family” as “any person not a citizen or national of the United
27 States who has not been admitted into, or is not authorized to enter or remain in, the United
28 States, who entered this country with an alien child or alien children at or between
designated ports of entry and who was detained[.]” *Id.* § 2(a)(i).

1 it is silent on the issue of reuniting families that have already been separated or will be
2 separated in the future.” *Id.*

3 In light of these recent developments, and in particular the EO, the Court held a
4 telephonic status conference with counsel on June 22, 2018. During that conference, the
5 Court inquired about communication between ORR and DHS, and ORR and the
6 Department of Justice (“DOJ”), including the Bureau of Prisons (“BOP”), as it relates to
7 these separated families. Reunification procedures were also discussed, specifically
8 whether there was any affirmative reunification procedure for parents and children after
9 parents were returned to immigration detention following completion of criminal
10 proceedings. Government counsel explained the communication procedures that were in
11 place, and represented, consistent with her earlier representation to the Court, that there
12 was no procedure in place for the reunification of these families.⁷

13 The day after the status conference, Saturday, June 23, DHS issued the Fact Sheet
14 referenced above. This document focuses on several issues addressed during the status
15 conference, *e.g.*, processes for enhanced communication between separated parents and
16 children, but only “for the purposes of removal.” It also addresses coordination between
17 and among three agencies, CBP, ICE, and HHS agency ORR, but again for the purpose of
18 removal. The Fact Sheet does not address reunification for other purposes, such as
19 immigration or asylum proceedings, which can take months. It also does not mention other
20 vital agencies frequently involved during criminal proceedings: DOJ and BOP.

21 At the conclusion of the recent status conference, the Court requested supplemental
22 briefing from the parties. Those briefs have now been submitted. After thoroughly
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25 ⁷ The Court: “Is there currently any affirmative reunification process that the government
26 has in place once parent and child are separated? Government counsel: I would say ...
27 when a parent is released from criminal custody and taken into ICE custody is the practice
28 to reunite them in family detention[?] And at that [previous hearing] I said no, that that
was not the practice. I think my answer on that narrow question would be the same.” (Rep.
Tr. at 29-30, June 22, 2018, ECF No. 77.)

1 considering all of the parties’ briefs and the record in this case, and after hearing argument
2 from counsel on these important issues, the Court grants Plaintiffs’ motion for a classwide
3 preliminary injunction.

4 **II.**
5 **DISCUSSION**

6 Plaintiffs seek classwide preliminary relief that (1) enjoins Defendants’ practice of
7 separating class members from their children absent a determination that the parent is unfit
8 or presents a danger to their child, and (2) orders the government to reunite class members
9 with their children when the parent is returned to immigration custody after their criminal
10 proceedings conclude, absent a determination that the parent is unfit or presents a danger
11 to the child. Injunctive relief is “an extraordinary remedy that may only be awarded upon
12 a clear showing that the plaintiff is entitled to such relief.” *Winter v. Natural Res. Def.*
13 *Council, Inc.*, 555 U.S. 7, 22 (2008). To meet that showing, Plaintiffs must demonstrate
14 “[they are] likely to succeed on the merits, that [they are] likely to suffer irreparable harm
15 in the absence of preliminary relief, that the balance of equities tips in [their] favor, and
16 that an injunction is in the public interest.” *Am. Trucking Ass’ns v. City of Los Angeles*,
17 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20).⁸

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20 ⁸ The Ninth Circuit applies separate standards for injunctions depending on whether they
21 are prohibitory, *i.e.*, whether they prevent future conduct, or mandatory, *i.e.*, “they go
22 beyond ‘maintaining the status quo[.]’” *Hernandez v. Sessions*, 872 F.3d 976, 997 (9th
23 Cir. 2017). The standard set out above applies to prohibitory injunctions, which is what
24 Plaintiffs seek here. To the extent Plaintiffs are also requesting mandatory relief, that
25 request is “subject to a higher standard than prohibitory injunctions,” namely that relief
26 will issue only “when ‘extreme or very serious damage will result’ that is not capable of
27 compensation in damages,” and the merits of the case are not ‘doubtful.’” *Id.* at 999
28 (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879
(9th Cir. 2009)). The Ninth Circuit recognizes that application of these different standards
“is controversial[.]” and that other Circuits have questioned this approach. *Id.* at 997-98.
This Court need not, and does not, address that discrepancy here. Suffice it to say that to
the extent some portion of Plaintiffs’ requested relief is subject to a standard higher than

1 Before turning to these factors, the Court addresses directly Defendants’ argument
2 that an injunction is not necessary here in light of the EO and the recently released Fact
3 Sheet. Although these documents reflect some attempts by the Government to address
4 some of the issues in this case, neither obviates the need for injunctive relief here. As
5 indicated throughout this Order, the EO is subject to various qualifications. For instance,
6 Plaintiffs correctly assert the EO allows the government to separate a migrant parent from
7 his or her child “where there is a *concern* that detention of an alien child with the child’s
8 alien parent would pose a risk to the child’s welfare.” EO § 3(b) (emphasis added).
9 Objective standards are necessary, not subjective ones, particularly in light of the history
10 of this case. Furthermore, the Fact Sheet focuses on reunification “at time of removal[,]”
11 U.S. Dep’t of Homeland Sec., *supra*, note 2, stating that the parent slated for removal will
12 be matched up with their child at a location in Texas and then removed. It says nothing
13 about reunification during the intervening time between return from criminal proceedings
14 to ICE detention or the time in ICE detention prior to actual removal, which can take
15 months. Indeed, it is undisputed “ICE has no plans or procedures in place to reunify the
16 parent with the child other than arranging for them to be deported together after the parent’s
17 immigration case is concluded.” (Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex.
18 31 ¶ 11.) Thus, neither of these directives eliminates the need for an injunction in this case.
19 With this finding, the Court now turns to the *Winter* factors.

20 **A. Likelihood of Success**

21 “The first factor under *Winter* is the most important—likely success on the merits.”
22 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). While Plaintiffs carry the burden
23 of demonstrating likelihood of success, they are not required to prove their case in full at
24 the preliminary injunction stage but only such portions that enable them to obtain the
25 injunctive relief they seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

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28 the traditional standard for injunctive relief, Plaintiffs have met their burden for the reasons
set out below.

1 Here, the only claim currently at issue is Plaintiffs’ due process claim.⁹ Specifically,
2 Plaintiffs contend the Government’s practice of separating class members from their
3 children, and failing to reunite those parents who have been separated, without a
4 determination that the parent is unfit or presents a danger to the child violates the parents’
5 substantive due process rights to family integrity under the Fifth Amendment to the United
6 States Constitution. To prevail on this claim, Plaintiffs must show that the Government
7 practice “shocks the conscience.” In the Order on Defendants’ motion to dismiss, the Court
8 found Plaintiffs had set forth sufficient facts to support that claim. *Ms. L.*, 2018 WL
9 2725736, at *7-12. The evidence submitted since that time supports that finding, and
10 demonstrates Plaintiffs are likely to succeed on this claim.

11 As explained in the Court’s Order on Defendants’ motion to dismiss, the “shocks the
12 conscience” standard is not subject to a rigid list of established elements. *See County of*
13 *Sacramento v. Lewis*, 523 U.S. 833, 850 (1998) (stating “[r]ules of due process are not ...
14 subject to mechanical application in unfamiliar territory.”) On the contrary, “an
15 investigation into substantive due process involves an appraisal of the totality of the
16 circumstances rather than a formalistic examination of fixed elements[.]” *Armstrong v.*
17 *Squadrino*, 152 F.3d 564, 570 (7th Cir. 1998).

18 Here, each Plaintiff presents different circumstances, but both were subjected to the
19 same government practice of family separation without a determination that the parent was
20 unfit or presented a danger to the child. *Ms. L.* was separated from her child without a
21 determination she was unfit or presented a danger to her child, and *Ms. C.* was not reunited
22 with her child despite the absence of any finding that she was unfit or presented a danger
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25 ⁹ In their supplemental brief, Defendants assert Plaintiffs are raising new claims based on
26 events that transpired after the Complaints were filed, *e.g.*, the announcement of the zero
27 tolerance policy and the EO. The Court disagrees. Plaintiffs’ claims are not based on these
28 events, but are based on the practice of separating class members from their children. The
subsequent events are relevant to Plaintiffs’ claim, but they have not changed the claim
itself, which remains focused on the practice of separation.

1 to her child. Outside of the context of this case, namely an international border, Plaintiffs
2 would have a high likelihood of success on a claim premised on such a practice. *See D.B.*
3 *v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (citing cases finding due process violation
4 where state action interfered with rights of fit parents); *Heartland Academy Community*
5 *Church v. Waddle*, 595 F.3d 798, 808-811 (8th Cir. 2010) (finding removal of children
6 from religious school absent evidence the students were “at immediate risk of child abuse
7 or neglect” was violation of clearly established constitutional right); *Brokaw v. Mercer*
8 *County*, 235 F.3d 1000, 1019 (7th Cir. 2000) (citing *Croft v. Westmoreland County*
9 *Children and Youth Services*, 103 F.3d 1123, 1126 (3d Cir. 1997) (“courts have recognized
10 that a state has no interest in protecting children from their parents unless it has some
11 definite and articulable evidence giving rise to a reasonable suspicion that a child has been
12 abused or is in imminent danger of abuse.”))

13 The context of this case is different. The Executive Branch, which is tasked with
14 enforcement of the country’s criminal and immigration laws, is acting within its powers to
15 detain individuals lawfully entering the United States and to apprehend individuals illegally
16 entering the country. However, as the Court explained in its Order on Defendants’ motion
17 to dismiss, the right to family integrity still applies here. The context of the family
18 separation practice at issue here, namely an international border, does not render the
19 practice constitutional, nor does it shield the practice from judicial review.

20 On the contrary, the context and circumstances in which this practice of family
21 separation were being implemented support a finding that Plaintiffs have a likelihood of
22 success on their due process claim. First, although parents and children may lawfully be
23 separated when the parent is placed in criminal custody, the same general rule does not
24 apply when a parent and child present together lawfully at a port of entry seeking asylum.
25 In that situation, the parent has committed no crime, and absent a finding the parent is unfit
26 or presents a danger to the child, it is unclear why separation of Ms. L. or similarly situated
27 class members would be necessary. Here, many of the family separations have been the
28 result of the Executive Branch’s zero tolerance policy, but the record also reflects that the

1 practice of family separation was occurring before the zero tolerance policy was
2 announced, and that practice has resulted in the casual, if not deliberate, separation of
3 families that lawfully present at the port of entry, not just those who cross into the country
4 illegally. Ms. L. is an example of this family separation practice expanding beyond its
5 lawful reach, and she is not alone. (*See, e.g.*, Pls.’ Reply Br. in Supp. of Mot. for Class
6 Cert., Exs. 22-23, 25-26) (declarations from parents attesting to separation at border after
7 lawfully presenting at port of entry and requesting asylum); Pls.’ Supp. Mem. in Supp. of
8 Classwide Prelim. Inj., Ex. 32 ¶¶ 9, 10b, 11a (listing parents who were separated from
9 children after presenting at ports of entry)).

10 As set out in the Court’s prior Order, asylum seekers like Ms. L. and many other
11 class members may be fleeing persecution and are entitled to careful consideration by
12 government officials. Particularly so if they have a credible fear of persecution. We are a
13 country of laws, and of compassion. We have plainly stated our intent to treat refugees
14 with an ordered process, and benevolence, by codifying principles of asylum. *See, e.g.*,
15 The Refugee Act, PL 96-212, 94 Stat. 102 (1980). The Government’s treatment of Ms. L.
16 and other similarly situated class members does not meet this standard, and it is unlikely
17 to pass constitutional muster.

18 Second, the practice of separating these families was implemented without any
19 effective system or procedure for (1) tracking the children after they were separated from
20 their parents, (2) enabling communication between the parents and their children after
21 separation, and (3) reuniting the parents and children after the parents are returned to
22 immigration custody following completion of their criminal sentence. This is a startling
23 reality. The government readily keeps track of personal property of detainees in criminal
24 and immigration proceedings. Money, important documents, and automobiles, to name a
25 few, are routinely catalogued, stored, tracked and produced upon a detainees’ release, at
26 all levels—state and federal, citizen and alien. Yet, the government has no system in place
27 to keep track of, provide effective communication with, and promptly produce alien
28 children. The unfortunate reality is that under the present system migrant children are not

1 accounted for with the same efficiency and accuracy as *property*. Certainly, that cannot
2 satisfy the requirements of due process. *See Santosky v. Kramer*, 455 U.S. 745, 758-59
3 (1982) (quoting *Lassiter v. Dept. of Soc. Services of Durham County, N.C.*, 452 U.S. 18,
4 (1981)) (stating it is “‘plain beyond the need for multiple citation’ that a natural parent’s
5 ‘desire for and right to the companionship, care, custody, and management of his or her
6 children’ is an interest far more precious than any property right.”) (internal quotation
7 marks omitted).

8 The lack of effective methods for communication between parents and children who
9 have been separated has also had a profoundly negative effect on the parents’ criminal and
10 immigration proceedings, as well as the childrens’ immigration proceedings. *See United*
11 *States v. Dominguez-Portillo*, No:EP-17-MJ-4409-MAT, 2018 WL 315759, at *1-2 (W.D.
12 Tex. Jan. 5, 2018) (explaining that criminally charged defendants “‘had not received any
13 paperwork or information concerning the whereabouts or well-being of” their children). In
14 effect, these parents have been left “‘in a vacuum, without knowledge of the well-being and
15 location of their children, to say nothing of the immigration proceedings in which those
16 minor children find themselves.” *Id.* at *14. This situation may result in a number of
17 different scenarios, all of which are negative – some profoundly so. For example, “[i]f
18 parent and child are asserting or intending to assert an asylum claim, that child may be
19 navigating those legal waters without the benefit of communication with and assistance
20 from her parent; that defendant, too, must make a decision on his criminal case with total
21 uncertainty about this issue.” *Id.* Furthermore, “‘a defendant facing certain deportation
22 would be unlikely to know whether he might be deported before, simultaneous to, or after
23 their child, or whether they would have the opportunity to even discuss their
24 deportations[.]” *Id.* Indeed, some parents have already been deported without their
25 children, who remain in government facilities in the United States.¹⁰

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28 ¹⁰ *See, e.g.,* Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 32 ¶ 16k, Ex. 36 ¶ 7a;
Nelson Renteria, *El Salvador demands U.S. return child taken from deported father*,

1 The absence of established procedures for dealing with families that have been
2 separated at the border, and the effects of that void on the families involved, is borne out
3 in the cases of Plaintiffs here. Ms. L. was separated from her child when immigration
4 officials claimed they could not verify she was S.S.’s mother, and detained her for
5 expedited removal proceedings. That rendered S.S. “unaccompanied” under the TVPRA
6 and subject to immediate transfer to ORR, which accepted responsibility for S.S. There
7 was no further communication between the agencies, ICE and ORR. The filing of the
8 present lawsuit prompted release and reunification of Ms. L. and her daughter, a process
9 that took close to five months and court involvement. Ms. C. completed her criminal
10 sentence in 25 days, but it took nearly eight months to be reunited with her son. She, too,
11 had to file suit to regain custody of her son from ORR.

12 These situations confirm what the Government has already stated: it is not
13 affirmatively reuniting parents like Plaintiffs and their fellow class members for purposes
14 other than removal. Outside of deportation, the onus is on the parents, who, for the most
15 part, are themselves in either criminal or immigration proceedings, to contact ORR or
16 otherwise search for their children and make application for reunification under the
17 TVPRA. However, this reunification procedure was not designed to deal with the present
18 circumstances. (*See* Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 33 ¶¶ 6-9.)
19 Rather, “ORR’s reunification process was designed to address the situation of children who
20 come to the border or are apprehended outside the company of a parent or legal guardian.”
21 (*Id.* ¶ 6.) Placing the burden on the parents to find and request reunification with their
22 children under the circumstances presented here is backwards. When children are
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26 REUTERS (June 21, 2018, 4:03 PM), [https://www.reuters.com/article/us-usa-immigration-el-salvador/el-salvador-demands-us-return-child-taken-from-deported-father-](https://www.reuters.com/article/us-usa-immigration-el-salvador/el-salvador-demands-us-return-child-taken-from-deported-father-idUSKBN1JH3ER)
27 [idUSKBN1JH3ER](https://www.reuters.com/article/us-usa-immigration-el-salvador/el-salvador-demands-us-return-child-taken-from-deported-father-idUSKBN1JH3ER); Miriam Jordan, *‘I Can’t Go Without My Son’: A Deported Mother’s*
28 *Plea*, N.Y. TIMES (June 17, 2018), [https://www.nytimes.com/2018/06/17/us/immigration-](https://www.nytimes.com/2018/06/17/us/immigration-deported-parents.html)
[deported-parents.html](https://www.nytimes.com/2018/06/17/us/immigration-deported-parents.html).

1 separated from their parents under these circumstances, the Government has an affirmative
2 obligation to track and promptly reunify these family members.

3 This practice of separating class members from their minor children, and failing to
4 reunify class members with those children, without any showing the parent is unfit or
5 presents a danger to the child is sufficient to find Plaintiffs have a likelihood of success on
6 their due process claim. When combined with the manner in which that practice is being
7 implemented, *e.g.*, the lack of any effective procedures or protocols for notifying the
8 parents about their childrens' whereabouts or ensuring communication between the parents
9 and children, and the use of the children as tools in the parents' criminal and immigration
10 proceedings, (*see* Pls.' Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 29 ¶¶ 8, 14), a
11 finding of likelihood of success is assured. A practice of this sort implemented in this way
12 is likely to be "so egregious, so outrageous, that it may fairly be said to shock the
13 contemporary conscience," *Lewis*, 523 U.S. at 847 n.8, interferes with rights "implicit in
14 the concept of ordered liberty[.]" *Rochin v. Cal.*, 342 U.S. 165, 169 (1952) (quoting *Palko*
15 *v. State of Conn.*, 302 U.S. 319, 325 (1937)), and is so "brutal' and 'offensive' that it
16 [does] not comport with traditional ideas of fair play and decency." *Breithaupt v. Abram*,
17 352 U.S. 432, 435 (1957).

18 For all of these reasons, the Court finds there is a likelihood of success on Plaintiffs'
19 due process claim.

20 **B. Irreparable Injury**

21 Turning to the next factor, Plaintiffs must show they are "likely to suffer irreparable
22 harm in the absence of preliminary relief." *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th
23 Cir. 2017) (quoting *Winter*, 555 U.S. at 20). "It is well established that the deprivation of
24 constitutional rights unquestionably constitutes irreparable injury." *Id.* (quoting
25 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks
26 omitted). As explained, Plaintiffs have demonstrated the likelihood of a deprivation of
27 their constitutional rights, and thus they have satisfied this factor.

1 The injury in this case, however, deserves special mention. That injury is the
2 separation of a parent from his or her child, which the Ninth Circuit has repeatedly found
3 constitutes irreparable harm. *See Leiva–Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir.
4 2011); *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (identifying “separated
5 families” as an irreparable harm).

6 Furthermore, the record in this case reflects that the separations at issue have been
7 agonizing for the parents who have endured them. One of those parents, Mr. U., an asylum
8 seeker from Kyrgyzstan, submitted a declaration in this case in which he stated that after
9 he was told he was going to be separated from his son he “felt as though [he] was having
10 a heart attack.” (Reply in Supp. of Mot. for Class Cert., Ex. 21 ¶ 4.) Another asylum-
11 seeking parent from El Salvador who was separated from her two sons writes,

12 The separation from my sons has been incredibly hard, because I have never
13 been away from them before. I do not want my children to think that I
14 abandoned them. [My children] are so attached to me. [One of my children]
15 used to sleep in bed with me every night while [my other child] slept in his
16 own bed in the same room.... It hurts me to think how anxious and distressed
they must be without me.

17 (Reply in Supp. of Mot. for Class Cert., Ex. 24 ¶ 9.) And another asylum-seeking parent
18 from Honduras described having to place her crying 18-month old son in a car seat in a
19 government vehicle, not being able to comfort him, and her crying as the officers “took
20 [her] son away.” (Reply in Supp. of Mot. for Class Cert., Ex. 25 ¶ 7.) There has even been
21 a report that one father committed suicide in custody after being separated from his wife
22 and three-year-old child. *See Molly Hennessy-Fiske, Honduran Migrant Who Was*
23 *Separated From Family is Found Dead in Texas Jail in an Apparent Suicide*, L.A. TIMES
24 (June 9, 2018, 5:35 PM), [http://www.latimes.com/nation/la-na-border-patrol-suicide-](http://www.latimes.com/nation/la-na-border-patrol-suicide-20180609-story.html)
25 [20180609-story.html](http://www.latimes.com/nation/la-na-border-patrol-suicide-20180609-story.html).

26 The parents, however, are not the only ones suffering from the separations. One of
27 the *amici* in this case, Children’s Defense Fund, states,
28

1 there is ample evidence that separating children from their mothers or fathers
2 leads to serious, negative consequences to children’s health and development.
3 Forced separation disrupts the parent-child relationship and puts children at
4 increased risk for both physical and mental illness.... And the psychological
5 distress, anxiety, and depression associated with separation from a parent
6 would follow the children well after the immediate period of separation—
7 even after eventual reunification with a parent or other family.

8 (ECF No. 17-11 at 3.) Other evidence before the Court reflects that “separating children
9 from parents is a highly destabilizing, traumatic experience that has long term
10 consequences on child well-being, safety, and development.” (ECF No. 17-13 at 2.) That
11 evidence reflects:

12 Separation from family leaves children more vulnerable to exploitation and
13 abuse, no matter what the care setting. In addition, traumatic separation from
14 parents creates toxic stress in children and adolescents that can profoundly
15 impact their development. Strong scientific evidence shows that toxic stress
16 disrupts the development of brain architecture and other organ systems, and
17 increases the risk for stress-related disease and cognitive impairment well into
18 adult years. Studies have shown that children who experience such traumatic
19 events can suffer from symptoms of anxiety and post-traumatic stress
20 disorder, have poorer behavioral and educational outcomes, and experience
21 higher rates of poverty and food insecurity.

22 (ECF No. 17-13 at 2.) And Martin Guggenheim, the Fiorello LaGuardia Professor of
23 Clinical Law at New York University School of Law and Founding Member of the Center
24 for Family Representation, states:

25 Children are at risk of suffering great emotional harm when they are removed
26 from their loved ones. And children who have traveled from afar and made
27 their way to this country to seek asylum are especially at risk of suffering
28 irreversible psychological harm when wrested from the custody of the parent
or caregiver with whom they traveled to the United States.

(Mem. in Supp. of Classwide Prelim. Inj., Ex. 17 ¶ 16.) All of this evidence, combined
with the constitutional violation alleged here, conclusively shows that Plaintiffs and the

1 class members are likely to suffer irreparable injury if a preliminary injunction does not
2 issue.

3 **C. Balance of Equities**

4 Turning to the next factor, “[t]o obtain a preliminary injunction, a plaintiff must also
5 demonstrate that ‘the balance of equities tips in his favor.’” *Hernandez*, 872 F.3d at 995
6 (quoting *Winter*, 555 U.S. at 20). As with irreparable injury, when a plaintiff establishes
7 “a likelihood that Defendants’ policy violates the U.S. Constitution, Plaintiffs have also
8 established that both the public interest and the balance of the equities favor a preliminary
9 injunction.” *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014).

10 Plaintiffs here assert the balance of equities weighs in favor of an injunction in this
11 case. Specifically, Plaintiffs argue Defendants would not suffer any hardship if the
12 preliminary injunction is issued because the Government “cannot suffer harm from an
13 injunction that merely ends an unlawful practice[.]” *Rodriguez v. Robbins*, 715 F.3d 1127,
14 1145 (9th Cir. 2013); *see also Arizona Dream Act Coalition*, 757 F.3d at 1069 (quoting
15 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)) (stating balance of equities favors
16 “‘prevent[ing] the violation of a party’s constitutional rights.’”). When the absence of harm
17 to the Government is weighed against the harms to Plaintiffs set out above, Plaintiffs argue
18 this factor weighs in their favor. The Court agrees.

19 The primary harm Defendants assert here is the possibility that an injunction would
20 have a negative impact on their ability to enforce the criminal and immigration laws.
21 However, the injunction here—preventing the separation of parents from their children and
22 ordering the reunification of parents and children that have been separated—would do
23 nothing of the sort. The Government would remain free to enforce its criminal and
24 immigration laws, and to exercise its discretion in matters of release and detention
25 consistent with law. *See* EO §§ 1, 3(a) & (e) (discussing *Flores v. Sessions*, CV 85-4544);
26 *see also Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439-40 (9th Cir. 1986)
27 (stating “prudential considerations preclude[] interference with the Attorney General’s
28 [exercise of] discretion” in selecting the detention facilities where aliens are to be

1 detained). It would just have to do so in a way that preserves the class members’
2 constitutional rights to family association and integrity. *See Rodriguez*, 715 F.3d at 1146
3 (“While ICE is entitled to carry out its duty to enforce the mandates of Congress, it must
4 do so in a manner consistent with our constitutional values.”) Thus, this factor also weighs
5 in favor of issuing the injunction.

6 **D. Public Interest**

7 The final factor for consideration is the public interest. *See Hernandez*, 872 F.3d at
8 996 (quoting *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009)) (“When, as
9 here, ‘the impact of an injunction reaches beyond the parties, carrying with it a potential
10 for public consequences, the public interest will be relevant to whether the district court
11 grants the preliminary injunction.”) To obtain the requested relief, “Plaintiffs must
12 demonstrate that the public interest favors granting the injunction ‘in light of [its] likely
13 consequences,’ i.e., ‘consequences [that are not] too remote, insubstantial, or speculative
14 and [are] supported by evidence.’” *Id.* (quoting *Stormans*, 586 F.3d at 1139). “Generally,
15 public interest concerns are implicated when a constitutional right has been violated,
16 because all citizens have a stake in upholding the Constitution.” *Id.* (quoting *Preminger*
17 *v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)).

18 This case involves two important public interests: the interest in enforcing the
19 country’s criminal and immigration laws and the constitutional liberty interest “of parents
20 in the care, custody, and control of their children[,]” which “is perhaps the oldest of the
21 fundamental liberty interests recognized by” the Supreme Court. *Troxel v. Granville*, 530
22 U.S. 57, 65 (2000). Both of these interests are valid and important, and both can be served
23 by the issuance of an injunction in this case.

24 As stated, the public’s interest in enforcing the criminal and immigration laws of this
25 country would be unaffected by issuance of the requested injunction. The Executive
26 Branch is free to prosecute illegal border crossers and institute immigration proceedings
27 against aliens, and would remain free to do so if an injunction were issued. Plaintiffs do
28 not seek to enjoin the Executive Branch from carrying out its duties in that regard.

1 What Plaintiffs do seek by way of the requested injunction is to uphold their rights
2 to family integrity and association while their immigration proceedings are underway. This
3 right, specifically, the relationship between parent and child, is “constitutionally
4 protected,” *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978), and “well established.”
5 *Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1079 (9th Cir. 2011). The public interest in
6 upholding and protecting that right in the circumstances presented here would be served
7 by issuance of the requested injunction. *See Arizona Dream Act Coalition*, 757 F.3d at
8 1069 (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (“[I]t is
9 clear that it would not be equitable or in the public’s interest to allow the state ... to violate
10 the requirements of federal law, especially when there are no adequate remedies
11 available.”)) Accordingly, this factor, too, weighs in favor of issuing the injunction.

12 III.

13 CONCLUSION

14 The unfolding events—the zero tolerance policy, EO and DHS Fact Sheet—serve to
15 corroborate Plaintiffs’ allegations. The facts set forth before the Court portray reactive
16 governance—responses to address a chaotic circumstance of the Government’s own
17 making. They belie measured and ordered governance, which is central to the concept of
18 due process enshrined in our Constitution. This is particularly so in the treatment of
19 migrants, many of whom are asylum seekers and small children. The extraordinary remedy
20 of classwide preliminary injunction is warranted based on the evidence before the Court.
21 For the reasons set out above, the Court hereby GRANTS Plaintiffs’ motion for classwide
22 preliminary injunction, and finds and orders as follows:

- 23 (1) Defendants, and their officers, agents, servants, employees, attorneys, and all those
24 who are in active concert or participation with them, are preliminarily enjoined from
25 detaining Class Members in DHS custody without and apart from their minor
26 children, absent a determination that the parent is unfit or presents a danger to the
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1 child, unless the parent affirmatively, knowingly, and voluntarily declines to be
2 reunited with the child in DHS custody.¹¹

3 (2) If Defendants choose to release Class Members from DHS custody, Defendants, and
4 their officers, agents, servants, employees and attorneys, and all those who are in
5 active concert or participation with them, are preliminary enjoined from continuing
6 to detain the minor children of the Class Members and must release the minor child
7 to the custody of the Class Member, unless there is a determination that the parent
8 is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and
9 voluntarily declines to be reunited with the child.

10 (3) Unless there is a determination that the parent is unfit or presents a danger to the
11 child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited
12 with the child:

13 (a) Defendants must reunify all Class Members with their minor children who are
14 under the age of five (5) within fourteen (14) days of the entry of this Order; and

15 (b) Defendants must reunify all Class Members with their minor children age five
16 (5) and over within thirty (30) days of the entry of this Order.

17 (4) Defendants must immediately take all steps necessary to facilitate regular
18 communication between Class Members and their children who remain in ORR
19 custody, ORR foster care, or DHS custody. Within ten (10) days, Defendants must
20 provide parents telephonic contact with their children if the parent is not already in
21 contact with his or her child.

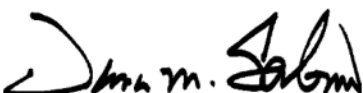
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25 ¹¹ “Fitness” is an important factor in determining whether to separate parent from child. In
26 the context of this case, and enforcement of criminal and immigration laws at the border,
27 “fitness” could include a class member’s mental health, or potential criminal involvement
28 in matters other than “improper entry” under 8 U.S.C. § 1325(a), (*see* EO § 1), among other
matters. Fitness factors ordinarily would be objective and clinical, and would allow for the
proper exercise of discretion by government officials.

- 1 (5) Defendants must immediately take all steps necessary to facilitate regular
2 communication between and among all executive agencies responsible for the
3 custody, detention or shelter of Class Members and the custody and care of their
4 children, including at least ICE, CBP, BOP, and ORR, regarding the location and
5 well-being of the Class Members' children.
- 6 (6) Defendants, and their officers, agents, servants, employees, attorneys, and all those
7 who are in active concert or participation with them, are preliminarily enjoined from
8 removing any Class Members without their child, unless the Class Member
9 affirmatively, knowingly, and voluntarily declines to be reunited with the child prior
10 to the Class Member's deportation, or there is a determination that the parent is unfit
11 or presents a danger to the child.
- 12 (7) This Court retains jurisdiction to entertain such further proceedings and to enter such
13 further orders as may be necessary or appropriate to implement and enforce the
14 provisions of this Order and Preliminary Injunction.

15 A status conference will be held on **July 6, 2018**, at **12:00 noon**, to discuss all
16 necessary matters. A notice of teleconference information sheet will be provided in a
17 separate order.

18 **IT IS SO ORDERED.**

19 Dated: June 26, 2018

20 
21 Hon. Dana M. Sabraw
22 United States District Judge
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20
21 **UNITED STATES DISTRICT COURT**
22 **FOR THE CENTRAL DISTRICT OF CALIFORNIA**
23

24 JENNY LISETTE FLORES; *et al.*,) Case No. CV 85-4544-DMG
25)
26 Plaintiffs,) **DEFENDANTS' NOTICE OF**
27) **COMPLIANCE**
28)
29 v.)
30)
31 JEFFERSON B. SESSIONS III,)
32)
33 Attorney General of the)
34 United States; *et al.*,)
35)
36 Defendants.)
37)
38)

1 The Government’s June 21, 2018, ex parte application explained that the
2 Flores Agreement—as interpreted by this Court and the Ninth Circuit—put the
3 Government in the difficult position of having to separate families if it decides it
4 should detain parents for immigration purposes. Defendants wish to inform the
5 Court that, following the filing of our application to this Court, a federal district
6 court in the Ninth Circuit held that such separation likely violates substantive due
7 process under the Fifth Amendment. *Ms. L v. U.S. Immigration and Customs*
8 *Enforcement*, No. 18-428 (S.D. Cal. June 26, 2018) (attached as exhibit). The *Ms.*
9 *L* court certified a class and entered a class-wide preliminary injunction requiring
10 reunification—both for parents released into the interior of the United States and
11 for parents in DHS custody— and barring future separations for families in DHS
12 custody.
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18 Defendants are submitting this notice of compliance to explain how the
19 government is applying the Flores Agreement in light of this injunction. To
20 comply with the *Ms. L* injunction barring parents in DHS custody from being
21 separated from their children, the Government will not separate families but detain
22 families together during the pendency of immigration proceedings when they are
23 apprehended at or between ports of entry. As explained below, we believe that the
24 Flores Agreement permits the Government to detain families together to comply
25 with the nationwide order in *Ms. L*. We nevertheless continue to believe that an
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1 amendment of the Flores Agreement is appropriate to address this issue. Until that
2 amendment, this submission sets out the Government’s interpretation and
3 application of the Agreement in light of *Ms. L*.
4

5 **A.** There are many legitimate justifications for detaining arriving aliens
6 under the immigration laws, including well-established rules that allow arriving
7 aliens at the border to be detained pending a determination of whether they may
8 legally be admitted to the United States. Such detention, which Congress has made
9 mandatory in many circumstances under 8 U.S.C. § 1225(b), is essential to
10 protecting our southwest border, discouraging families that are not entitled to
11 remain in this country from making the dangerous journey to the border, and
12 returning families promptly when they are not entitled to relief in this country. *See*
13 *Jennings v. Rodriguez*, 138 S. Ct. 830, 843 (2018); *cf. Demore v. Kim*, 538 U.S.
14 510, 526 (2003) (discussing the Supreme Court’s “longstanding view that the
15 Government may constitutionally detain deportable aliens during the limited period
16 necessary for their removal proceedings”).
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22 We have explained over a period of years that one impact of the *Flores*
23 requirements, if applied to minors that come into DHS custody accompanied by
24 their parents, would be the separation of parents from their children. In construing
25 the Flores Agreement, over the government’s objection, to apply to children taken
26 into custody with their families, the Ninth Circuit understood that the separation of
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1 parents from their children was a direct consequence of its holding. *Flores v.*
2 *Lynch*, 828 F.3d 898, 908-09 (9th Cir. 2016). But the Ninth Circuit also made
3 clear that neither the Flores Agreement nor court rulings applying it impose any
4 legal barrier on the critical authority of DHS to detain adults who come into
5 immigration custody at the border with their children. *Flores*, 828 F.3d at 908-09.
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8 The *Ms. L* court reached the same conclusion in considering the situation of
9 the separation of accompanied children from their parents, this time from the point
10 of view of the parents, who were not parties to the *Flores* case or the Settlement
11 Agreement. The *Ms. L* court issued class-wide relief requiring that, in most
12 circumstances, parents be kept with their children during the pendency of
13 immigration proceedings. Notably, like the Ninth Circuit, the court in *Ms. L*
14 recognized the authority of DHS to detain parents in immigration custody pending
15 resolution of their immigration cases. As the court emphasized, even in light of the
16 court’s injunction requiring families to be kept together and reunified, the
17 “Government would remain free to enforce its criminal and immigration laws, and
18 to exercise its discretion in matters of release and detention consistent with law.”
19 Order at 20; *see also id.* at 3 (“Order does not implicate the Government’s
20 discretionary authority to enforce immigration laws . . . including its decision to
21 release or detain class members.”). Thus, while the Government must keep
22 families together when it chooses to exercise its discretion to detain or release a
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1 parent under the INA, the court cited the *Flores* in explaining that the Government
2 otherwise remains “free” to exercise “discretion in matters of release and
3 detention.” *Id* at 20 (citing *Flores*); *see id.* at 7 (for “children placed in federal
4 custody, there are two options,” the first option is separating the family and placing
5 the child alone in ORR custody and “the second option is family detention”).
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7
8 **B.** Reading the Flores Agreement together with the subsequent nationwide
9 order in *Ms. L*, we understand the courts to have provided that minors who are
10 apprehended with families may not be separated from their parents where it is
11 determined that continued detention is appropriate for the parent. The Flores
12 Agreement allows this result for two reasons.
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15 *First*, the Agreement’s express terms accommodate court orders like the one
16 recently issued in *Ms. L*. Paragraph 12A of the Flores Agreement provides for the
17 release of minors to a parent (or others) when possible under Paragraph 14 or,
18 alternatively, transfer to an appropriate facility with a licensed program under
19 Paragraph 19. *See Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016) (“Settlement
20 creates a presumption in favor of releasing minors and requires placement of those
21 not released in licensed, non-secure facilities that meet certain standards”). But
22 these provisions include exceptions to releasing or transferring minors to
23 accommodate a ruling like that in *Ms. L* requiring families to be kept together, and
24 those exceptions permit family detention in these circumstances.
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1 *Release provision.* In Paragraph 14, the Flores Agreement specifies that a
2 minor should be “release[d] from its custody *without unnecessary delay*” to a
3 parent or other relative. Flores Agreement ¶ 14 (emphasis added). The court’s
4 order in *Ms. L*, which requires that the minor be kept with the parent, makes delay
5 necessary in these circumstances. The minor cannot be released under Paragraph
6 14 without separating him or her from their parent, as such a separation would
7 violate the injunction issued in *Ms. L*. See *Ms. L* Order at 22 (DHS is “enjoined
8 from detaining Class Members in DHS custody without and apart from their minor
9 children”). Under those circumstances, the release of the minor from custody must
10 be “delay[ed]” pursuant to the Agreement during the period the parent is detained
11 by DHS. Flores Agreement ¶ 14. Indeed, the court’s order in *Ms. L* envisions that
12 a parent would be “reunited with the child *in DHS custody*” and that a child would
13 be released only “[*if Defendants choose to release Class Members [i.e., parents]*
14 *from DHS custody*” or if a parent consents. Order at 23 (emphasis added). This
15 application of the Flores Agreement is also consistent with another aspect of
16 Paragraph 14 of the Agreement – which sets placing the minor with “a parent” as
17 the first “order of preference.” Flores Agreement ¶ 14; *id.* ¶ 18 (requiring
18 “continuous efforts . . . *toward family reunification* and . . . release”) (emphasis
19 added); see *Flores*, 828 F.3d at 903 (“[t]he settlement creates a presumption in
20 favor of release *and favors family reunification*”) (emphasis added).
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1 *Transfer provision.* The Flores Agreement also permits transfer of a child to
2 a licensed program under Paragraph 19. *See* Flores Agreement ¶ 12A. Under
3 Paragraph 12A, during an influx DHS is required to transfer a minor for placement
4 in a licensed program “as expeditiously as possible.” *Id.* ¶ 12A.3. But the
5 obligation to transfer applies “except . . . as otherwise required by any court decree
6 or court-approved settlement.” *Id.* ¶ 12A.2. Here, the court decree in *Ms. L*
7 prohibits the transfer of the minor to a licensed program, because such a transfer
8 would separate the child from his or her parent. *Ms. L* Order at 22. A transfer
9 therefore cannot occur consistent with that court decree.¹

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13 ***Second***, both *Ms. L* and *Flores* expressly envision that adults who arrive at
14 the United States with children are properly subject to detention – a critical aspect
15 of border enforcement. Given that express conclusion in each decision, it would be
16 remarkable to read the orders together as mandating the opposite conclusion – that
17 detention may never occur. Doing so would undermine the express holdings in
18 both cases. *Ms. L*, for its part, held that DHS would retain the same authority to
19 detain the parent as it had before – it simply required that such detention be of the
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25 ¹ The issue regarding how the Flores Agreement licensing provisions apply to
26 family detention centers is the subject of ongoing litigation. But to the extent that
27 family detention centers are treated as licensed consistent with the Flores
28 Agreement, a transfer under this provision could occur consistent with *Ms. L*. We
have also asked this Court to modify the Agreement to permit the transfer of
families together to family residential centers without requiring a state license.

1 family as a unit. *See Ms. L* Order at 3 (“Order does not implicate the
2 Government’s discretionary authority to enforce immigration laws . . . including its
3 decision to release or detain class members”); *id.* at 22 (DHS may “choose to
4 release” class members).
5

6 Likewise, the Ninth Circuit ruling in *Flores* held that the “settlement does
7 not require the government to release parents.” *Flores*, 828 F.3d at 908; *see also*
8 *Bunikyte v. Chretoff*, 2007 WL 1074070, at *16 (W.D. Tex. 2007) (rejecting
9 argument that Flores Agreement required release of both minors and parents). As
10 the Ninth Circuit explained, providing rights to minors under the agreement “does
11 not mean that the government must also make a parent available” by releasing the
12 parent with the child. *Flores*, 828 F.3d at 908; *id.* at 909 (“parents were not
13 plaintiffs in the *Flores* action, nor are they members of the certified class,” and the
14 settlement “therefore provides no affirmative releases rights for parents”). Because
15 the Flores Agreement does not require the release of parents, and *Ms. L* requires
16 DHS to keep parents and children together when the parents are in detention, the
17 rulings work together to permit detention of parents with their minor children with
18 whom they are apprehended.
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20 **C.** No other aspect of the Flores Agreement or *Ms. L* require the United
21 States to release all individuals held in border-related detention when they arrive at
22 the border with children. Instead, other aspects of the rulings lead to the opposite
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1 conclusion. The *Ms. L* ruling addresses reunification of children with their parents,
2 and specifically requires reunification “when the parent is returned to immigration
3 custody” after a release from criminal custody. Order at 10; *see id.* at 11 (court
4 order provides for “reunification during intervening . . . ICE detention prior to
5 actual removal, which can take months”). But this aspect of the *Ms. L* ruling
6 would make little sense if that reunification would necessitate an immediate release
7 of the parents from immigration custody under the Flores Agreement.
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10 The *Ms. L* decree also provides that the parent may consent to the release of
11 the child without the parent. Order at 23 (parent may “affirmatively, knowingly,
12 and voluntarily decline[] to be reunited with the child in DHS custody”). This
13 authority permits the continued operation of the provisions of the Flores
14 Agreement governing release of the child – albeit with the accompanying parent’s
15 consent before they go into effect. Relying on a parent’s consent in these
16 circumstances where the family is together makes sense, particularly because
17 plaintiffs in this case have always agreed that detention of the family together is
18 permissible if the parent consents. *See Flores*, Transcript at 37-38 (April 24,
19 2015) (in response to question whether the “agreement allows[s] for an
20 accommodation to . . . a parent who wishes to remain in the [family residential]
21 facility,” “the plaintiffs’ positions is . . . a class member is entitled to waive those
22 rights” and that waiver may “parents speak for children all the time”) (relevant
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1 pages attached as exhibit); *see also*

2 <https://www.npr.org/2018/06/22/622678753/the-history-of-the-flores-settlement->
3 [and-its-effects-on-immigration](https://www.npr.org/2018/06/22/622678753/the-history-of-the-flores-settlement-) (June 22, 2018) (last visited June 29, 2018)

4
5 (counsel for plaintiffs explaining that “choice” to remain in family detention “is
6 not something the Flores settlement itself addresses or prevents”). That is a
7 preference expressed by other plaintiffs who have challenged family separation.²

8
9 This aspect of the *Ms. L* order – allowing release of the child with the consent of
10 the parent – would make little sense if the Government was under an affirmative
11 obligation to release the entire family together.
12

13 **D.** Accordingly, for the reasons explained, the Flores Agreement permits
14 the Government to detain families together given the nationwide order in *Ms. L*
15 that bars the separation of families in DHS custody. To comply with the *Ms. L*
16 injunction, the government will not separate families but detain families together
17 during the pendency of immigration proceedings when they are apprehended at or
18 between ports of entry and therefore subject to the *Ms. L* injunction.
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23 ² *See Mejia-Mejia v. ICE*, No. 18-1445, Complaint ¶ 4 (D.D.C. filed June 19,
24 2018) (“If, however, the government feels compelled to continue detaining these
25 parents and young children, it should at a minimum detain them together in one of
26 its immigration family detention centers”); *Padilla v. ICE*, NO. 18-928 (W.D.
27 Wash), Complaint ¶ 12 (“If, however, the government insists on continuing to
28 detain these parents and children, it must at a minimum detain them together in one
of its immigration family detention centers.”).

1 DATED: June 29, 2018

Respectfully submitted,

2
3 CHAD A. READLER
Acting Assistant Attorney General

4
5 /s/ August E. Flentje
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CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2018, I served the foregoing pleading on all
counsel of record by means of the District Clerk’s CM/ECF electronic filing
system.

/s/ August E. Flentje
August E. Flentje
Attorney for Defendants

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**Homeland
Security**

Privacy Office, Mail Stop 0655

May 28, 2021

SENT VIA E-MAIL TO: foia@americanoversight.org,
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JYenouskas@goodwinlaw.com
ASun@goodwinlaw.com

Austin R. Evers
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Re: **18-cv-02840 (2019-HQLI-00018)**
American Oversight v. DHS
12th Interim Release

Dear Mr. Evers:

This is the 12th interim release of records to your Freedom of Information Act (FOIA) request to the Department of Homeland Security (DHS), received on October 4, 2018.

For this production, DHS reviewed 306 pages of which 45 pages are withheld either in part or in full pursuant to FOIA exemption (b)(5) and (b)(6). DHS has also located and sent 10 pages to other agencies for consultation. An additional 251 pages were non-responsive to the original request. The 45 pages for release are Bates stamped DHS-001-02840-002013 to DHS-001-02840-002057.

If you have any questions regarding this release, please contact Assistant United States Attorney, Michael A. Tilghman II, Civil Division, United States Attorney's Office for the District of Columbia, by email at michael.tilghman@usdoj.gov.

Sincerely,

A handwritten signature in black ink that reads "Eric A. Neuschaefter".

Eric A. Neuschaefter
Senior Director, FOIA Litigation, Appeals, Policy, and
Training (Acting)

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From:	Waldman, Katie (b)(6)
Subject:	Politico: Bipartisan angst mounts over administration's border policy
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Bipartisan angst mounts over administration's border policy

Politico

Adam Cancryn & Andrew Hanna

July 11, 2018 – 4:42 PM

<https://www.politico.com/story/2018/07/11/trump-administration-border-policy-congress-679758>

House Republicans joined Democrats on a key spending panel Wednesday to signal growing frustration with the Trump administration's muddled efforts to reunify migrant children.

The House Appropriations Committee during a marathon budget session unanimously adopted a proposal levying steep financial penalties on HHS Secretary Alex Azar's office if he fails to explain how he plans to reunify the more than 2,000 migrant children under his agency's care with their parents.

The panel also endorsed language prohibiting officials from separating migrant siblings, and banning the forced medication of kids housed by the health agency and its contractors.

A separate amendment that also garnered unanimous support would mandate an inspector general's report on the administration's role in family separation and reunification. Those proposals would all be added to the House's bill funding health, labor and education agencies for fiscal 2019.

"This manufactured crisis is, in my view, government-sanctioned child abuse," said Connecticut Democrat Rosa DeLauro, who has been among the most vocal lawmakers in calling for greater oversight of the reunification efforts. "We are abdicating our responsibility, our moral responsibility, on this issue."

But Republicans balked at other measures that would apply more pressure on the administration while throwing their weight behind a controversial amendment overriding judicial precedent and allowing long-term detention of migrant children at the border.

That amendment would permit detention of asylum-seeking families at the border for longer than 20 days — a maneuver that would revive parts of the Trump administration's "zero-tolerance" border policy and defy a decades-old settlement

agreement, yet conform with President Donald Trump’s executive order aimed at ending family separations.

“This is a vexing problem that several administrations have wrestled with,” said Rep. Tom Cole of Oklahoma, saying the amendment is aimed at keeping families together during immigration proceedings.

Democrats criticized the amendment for cribbing from a hard-line immigration bill that failed to pass the House last month, arguing it would codify indefinite detention of asylum seekers.

“The solution to family separation is not jailing families together,” said Rep. Barbara Lee of California. “These policies are a disgrace and another stain on this country.”

A federal judge on Monday rejected a Trump administration request to overturn the legal agreement prohibiting long-term detention of migrants. And the measure is unlikely to survive in the Senate, where the 60-vote threshold requires support from some Democrats.

Senate appropriators have already passed their own spending bill free of such controversial amendments.

Yet while avoiding direct criticism of Trump, Republicans on the panel largely signed off on Democrats’ condemnations of the administration’s decision to separate migrant families as a policy.

“This is Congress’ chance to say, ‘No, we’re not going to stand for that,’” Rep. Mark Pocan of Wisconsin said while proposing language stating congressional opposition to splitting up migrant families and urging their immediate reunification.

“I do agree very much with the sentiment,” Cole said before the committee voiced unanimous support. “This is not a policy we should be pursuing.”

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1	HSGAC 5/15/18	McCaskill	S1 offered to "come in myself or have folks come and walk you through the [staffing] model." (Re: why DHS has not made any requests for additional port officers.)	CBP	5/25/2018	5/29/2019	(b)(6)	COMPLETED: CBP-OCA contacted with McCaskill's staff numerous times (5/22-5/24) about this get back and spoke for the final touchbase on 5/29. The staff verbally concurred that they are good with the information CBP already provided the office on 5/9, and that another briefing is not necessary at this time. CBP provided an attachment detailing the breakdown of previous contact to ESEC on 5/29.
2	HSGAC 5/15/18	Hassan	S1 promised to look in to why CBP officers have not received the fentanyl screening devices authorized under the INTERDICT Act, and to "get that to you this week."	CBP	5/18/2018	5/22/2018	(b)(6)	COMPLETED: Because of the timing of the FY 2018 full year enacted appropriations, the \$30.5 million for Opioid Detection and Labs was not available until the week of 5/14. Acquisitions are currently underway. To date, OFO has purchased a total of 92 Gemini presumptive testing devices. The San Ysidro Port of Entry purchased two devices on their own, which raises the overall available number of devices to 94. As of 5/22, 84 devices have been deployed to major International Mail Facilities, Express Consignment Facilities, and Ports of Entry (POE). Ten instruments have been utilized for training purposes. These ten instruments will soon be refurbished and deployed to the field. OFO anticipates purchasing and deploying an additional 150-250 devices over the next 2 years. CBP provided the chart to ESEC on 5/22.
3	HSGAC 5/15/18	Harris	S1 promised the "training and procedures [that] are being given to CBP officers as it relates to how they are instructed to carry out family separation."	CBP	5/25/2018	6/6/2018	(b)(6)	COMPLETED: CBP/OCA, CBP/OCC and DHS/OLA agree that a briefing on how Border Patrol Agents receive training on UACs is the best approach in answering this get back. CBP-OCA contacted Harris' staff (Sergio Gonzales and Jonathan Bertran-Harris) on 5/29 to set up this briefing and had a meeting call with Harris' staff on 6/5 to discuss this get-back. CBP-OCA confirmed this call on 6/6 and sent ESEC a copy of their list of follow up items requested by Harris' staff in the call.
4	HSGAC 5/15/18	Heitkamp	Requested a copy of the Northern Border Strategy (S1: "should be out this week").	PLCY	5/18/2018	5/30/2018	(b)(6)	COMPLETED: DHS produced an updated Northern Border Strategy in January 2018. The Strategy incorporates findings from the Threat Analysis and assigns Component responsibilities at the sub-objective level. The Strategy is with S1 for signature and will transmit to the Hill once finalized. DHS-OLA actively communicates with Heitkamp's staff about the rollout of this Strategy.
5	HSGAC 5/15/18	Heitkamp	S1 offered to "speak to you both [Heitkamp and McCaskill]" about the Accenture contract, especially re: recruiting locals for the Northern Border.	CBP	5/25/2018	5/29/2018	(b)(6)	COMPLETED: CBP-OCA discussed this getback with Heitkamp and McCaskill's staff and they informed CBP that they are happy with the information, recent briefings and telecons they've received on this topic, and requested an update on a follow up briefing later this summer. CBP provided an attachment detailing the breakdown of previous contact to ESEC on 5/29.
6	HSGAC 5/15/18	Peters	S1 promised to "have a further discussion" with Sen. Peters re: fully funding and staffing the Gordie Howe Bridge customs plaza (Detroit-Windsor). (S1 or staff.)	CBP	5/25/2018	6/1/2018	(b)(6)	COMPLETED: CBP-OCA emailed Peters' staff on 5/22 and 5/23, and a telecom on 5/24. CBP received the data on 5/31 and transmitted the information to the staff on 6/1. Email correspondence was provided to ESEC on 6/1.
7	HSGAC 5/15/18	Peters	S1 promised Sen. Peters an answer for when the Blue Water Bridge plaza (Port Huron) will be completed "this week".	CBP	5/18/2018	6/1/2018	(b)(6)	COMPLETED: CBP is aware of the importance of the operation at Port Huron and the future Gordie How Bridge. The Detroit Field Office continues to work with CBP HQ to ensure adequate staffing at all currently operating facilities. CBP HQ and the Detroit Field Office are currently assessing the plan for the anticipated needs of CBP's future Gordie Howe Bridge operation. CBP sent the information to Peters' staff on 6/1. Email correspondence was provided to ESEC.
8	HSGAC 5/15/18	HSGAC	S1 promised the number of children separated from their parents at ports of entry since January of 2017, and to explain why DHS and HHS numbers differ. (McCaskill: share that with the committee.)	CBP / OLA	5/25/2018	6/5/2018	(b)(6)	COMPLETED: CBP-OCA passed Harris' staff information responsive to the request made by the Senator on 5/29: Number of children separated from their parents at ports of entry since January of 2017. Ranking Member McCaskill's staff agreed to be briefed on this getback concerning the numbers of children on 6/4. DHS, CBP, ICE, and HHS representatives briefed the staff on 6/5, and had the appropriate SMEs on hand to explain: 1.) how their respective agencies capture this data; 2.) how they share it, and 3.) why it differs between DHS and HHS. OLA confirmed that the briefing information was shared with the Committee.
9	HSGAC 5/15/18	Johnson	Sen. Johnson requested a number for how many family separations are the result of DHS not being aware of who the parent is?	CBP	5/25/2018		(b)(6)	
10	HSGAC 5/15/18	Hoeven	Invited S1 to visit North Dakota this summer and see "what we're doing in counter UAS."	FO	5/25/2018	5/17/2018	(b)(6)	COMPLETED: ESEC forwarded to S1 Scheduler to coordinate with OLA.
11	HSGAC 5/15/18	Heitkamp	Invited S1 to visit North Dakota.	FO	5/25/2018	5/17/2018	(b)(6)	COMPLETED: ESEC forwarded to S1 Scheduler to coordinate with OLA.
12	HSGAC 5/15/18	Harris	S1 promised the "percentage of cases [that] exist in your agency where a child has been separated from a parent or guardian since October 2017, wherein the case resulted in trafficking charges." (Same getback as one made by Undersecretary James McCament on 4/26/18.)	PLCY	5/25/2018		(b)(6)	
13	HSGAC 5/15/18	Harris	S1 requested a copy of the DHS-HHS UAC MOA.	PLCY	5/25/2018	5/21/2018	(b)(6)	COMPLETED: OLA provided a copy to HSGAC-PSI immediately prior to the 4/26 hearing, so it would have been shared with Senator Harris and her staff prior to that hearing. OLA confirmed this transmittal on 6/4.
14	HSGAC 5/15/18	McCaskill	S1 promised a copy of the UAC Joint Concept of Operations.	PLCY	5/25/2018	6/6/2018	(b)(6)	COMPLETED: According to the DHS Office of Legislative Affairs (OLA), the Joint Concept of Operations (JCO) is scheduled to be delivered by July 31, 2018. DHS-OLA provided an interim briefing to the Subcommittee staff on the JCO on 6/5. The JCO is actively being reviewed and edited (ICE and CRCL added input to the JCO that is currently being adjudicated). DHS and the Department of Health and Human Services (HHS) continue to work collaboratively on the JCO, and look forward to sharing it with Congress as soon as possible.

15	HSGAC 5/15/18	Peters	S1 promised a briefing on "a brief on what has happened [with the Soo Locks] since the president's statement."	NPPD	5/25/2018	6/4/2018	(b)(6)	<p>COMPLETED: NPPD spoke with Senator Peter's office and the US Army Corps of Engineers (USACE) on 5/22/2018 and determined that the update on what the government had done on the Soo Locks modernization project would be more appropriately briefed by the USACE. NPPD directly connected Peter's office to USACE for coordination moving forward.</p> <p>USACE POC: Jennifer A. Greer Chief, Future Directions Branch U.S. Army Corps of Engineers 202-761-4113 (Desk) Jennifer.A.Greer@usace.army.mil</p>
16	HSGAC 5/15/18	McCaskill	Sen. McCaskill is "particularly worried" that the Chief Counsel of the Federal Air Marshal Program, who was cited by the IG whistleblower report, is the person "supposedly now helping making sure this does not happen again." S1 guaranteed that she would look into this IG investigation.	OGC	5/25/2018		(b)(5)	
17	HSGAC 5/15/18	McCaskill	S1 offered to "come talk to you [McCaskill]" about initial findings re: the effectiveness of the Federal Air Marshal program. (S1 also offered to have the Administrator come talk to the RM.)	TSA	5/25/2018	6/4/2018		<p>COMPLETED: TSA reached out to Senator McCaskill's staff and scheduler on both 5/17 and 5/18, noting the following potential dates based on the Administrator's availability: 6/5, 6/14 and 6/27. The Senator's scheduler indicated they would get back to TSA if any of those dates will work.</p>
18	HSGAC 5/15/18	Hassan	S1 promised the specific number of field staff in the Office of Terrorism Prevention.	OPE	5/25/2018	6/4/2018		<p>COMPLETED: OTPP has two Federal staff serving as Regional Directors, based in California and Colorado. Since its establishment as the Office of Community Partnerships in 2015, OTPP has worked directly with communities through a federal field staff presence in two cities—Los Angeles and Denver. The field staff work with local stakeholders (e.g., government officials, law enforcement officers, and civil society leaders) to develop community-specific approaches to prevent terrorism. In FY17, OTPP utilized reprogrammed contract monies to trial an expansion of the field staff program to a total of 14 municipalities by employing 16 contractors. The trial affirmed the approach of working through communities; several communities demonstrated clear progress in developing and implementing terrorism prevention efforts. In FY18, the field staff program has returned to two federal regional directors who are expanding their programs beyond the confines of Los Angeles and Denver to other localities (e.g., San Diego, CA and Fort Collins, CO) as well as helping implement more statewide approaches to terrorism prevention in California and Colorado. OLA confirmed this information transmitted to Hassan's staff on 6/4.</p>
19	HSGAC 5/15/18	Hassan	S1 promised the number of different federal agencies providing staff to this Interagency Task Force on countering violent extremism.	OPE	5/18/2018	5/21/2018		<p>COMPLETED: Currently, three agencies, DOJ, FBI, and NCTC contribute time to the interagency task force on countering violent extremism and participate in the weekly coordination meeting. Additionally, DHS is actively looking at options to elevate and expand interagency action on terrorism prevention—including through the task force—and would be willing to brief your staff at the appropriate time.</p>
20	HSGAC 5/15/18	Hassan	S1 committed to finalizing an answer on the issue of New Hampshire Indonesian deportations in the near term.	ICE	5/25/2018		(b)(5)	
21	HSGAC 5/15/18	Harris	S1 promised what steps are being taken so that the separated parent and child can sustain communication, "broken down between what [DHS is] doing for children over the age of four and what [DHS is] doing for children under the age of four."	ICE	5/25/2018		(b)(5)	
22	HSGAC 5/15/18	HSGAC (Harris)	S1 promised information about the average length of separation has been for children separated from their parents.	ICE	5/25/2018	6/4/2018		<p>COMPLETED: ICE does not statistically track the requested information. Parents who are separated from their children due to criminal prosecutions are in DOJ custody by the Bureau of Prisons. Children will be treated as UACs and in HHS custody. Therefore, the length of separation is dependent on sentencing by a judge due to the prosecution. OLA to transmitted response to the Hill on 6/4.</p>
23	HSGAC 5/15/18	HSGAC (Harris)	Sen. Harris requested what timelines, in terms of DHS policy, exist to establish a parental relationship or to reunify families.	ICE	5/25/2018		(b)(5)	
24	HSGAC 5/15/18	HSGAC (Harris)	Information on how many of those cases where children who have been separated from their parents at points of entry resulted in trafficking charges.	ICE	5/25/2018		(b)(5)	

25	HSGAC 5/15/18	HSGAC (Harris)	S1 promised the current assessment of detention conditions in DHS / ICE detention facilities (especially with regards to pregnant women).	ICE	5/25/2018		(b)(6)	(b)(5)
26	HSGAC 5/15/18	HSGAC (Harris)	S1 promised to look into whether the current assessment of DHS / ICE detention facilities was submitted to OIG in response to the findings of the Dec. 2017 OIG report.	ICE	5/25/2018	6/4/2018		COMPLETED: ICE did provide the required 90-day response to OIG-18-32 "Concerns about ICE Detainee Treatment and Care at Detention Facilities." On March 9, 2018, ICE was informed that OIG will be conducting another series of five unannounced inspections, and expects to complete its fieldwork in May 2018, and issue a draft report by June 2018. ICE response to OIG in attachment. OLA to transmitted response to the Hill on 6/4.
27	HSGAC 5/15/18	HSGAC (Harris)	S1 promised 1) an analysis of what is going on with the 1,448 allegations of sexual abuse in ICE detention facilities between FY12 and March 2018, and 2) what plan S1 has to "investigate those cases of sexual abuse and 3) what is the protocol in place in terms of what is being done to allow the victim to be in a safe place during and pending any investigation, what kind of services are these victims getting in terms of treating their trauma [and what] medical attention they may need as a result of what might be the sexual abuse?"	ICE	5/25/2018			(b)(5)
28	HSGAC 5/15/18	HSGAC (Harris)	S1 promised the DHS / ICE policy regarding the detention of pregnant women, including the third trimester release directive.	ICE	5/25/2018	6/4/2018		COMPLETED: The Directive entitled, "Identification and Monitoring of Pregnant Detainees" was revised for consistency with the President's January 25, 2017 Executive Order 13768, Enhancing Public Safety in the Interior of the United States, to allow ICE officers and agents to exercise discretion when determining whether to arrest or detain a pregnant individual. The current policy allows for the exercise of discretion to be made on a case-by-case basis and in a manner that no longer exempts a category of aliens from enforcement of the nation's immigration laws. A copy of the new directive is provided. In terms of third trimester release, pregnant women are generally not detained for long periods during their third trimester. There are instances where an individual is encountered or presents themselves to a border patrol agent or ICE officer and is later determined to be in their third trimester. These individuals are usually released within a few days or weeks, depending on the circumstances of their case. OLA to transmitted response to the Hill on 6/4.
29	HSGAC 5/15/18	Johnson	S1 Promised the number of MS-13 members who were apprehended and released as a result of <i>Zadvydas</i> , "going back a number of years."	ICE	5/25/2018			(b)(5)
30	HSGAC 5/15/18	Hassan	S1 promised the locations (i.e. DHS facilities) where DHS trains Mexican federal law enforcement.	FLETC	5/25/2018	6/4/2018		COMPLETED: In FY 2016, FLETC has trained 17 Mexican federal law enforcement officers in advanced training programs at the International Law Enforcement Academies in San Salvador, El Salvador, and Roswell, New Mexico. Response transmitted to the Hill on 6/4.

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14	HSGAC 5/15/18	McCaskill	S1 promised a copy of the UAC Joint Concept of Operations.	PLCY	5/25/2018			(b)(5)

15	HSGAC 5/15/18	Peters	S1 promised a briefing on "a brief on what has happened [with the Soo Locks] since the president's statement."	NPPD	5/25/2018		(b)(6)	(b)(5)
16	HSGAC 5/15/18	McCaskill	Sen. McCaskill is "particularly worried" that the Chief Counsel of the Federal Air Marshal Program, who was cited by the IG whistleblower report, is the person "supposedly now helping making sure this does not happen again." S1 guaranteed that she would look into this IG investigation.	OGC	5/25/2018			
17	HSGAC 5/15/18	McCaskill	S1 offered to "come talk to you [McCaskill]" about initial findings re: the effectiveness of the Federal Air Marshal program. (S1 also offered to have the Administrator come talk to the RM.)	TSA	5/25/2018			
18	HSGAC 5/15/18	Hassan	S1 promised the specific number of field staff in the Office of Terrorism Prevention.	OPE	5/25/2018			
19	HSGAC 5/15/18	Hassan	S1 promised the number of different federal agencies providing staff to this Interagency Task Force on countering violent extremism.	OPE	5/18/2018	5/21/2018		COMPLETED: Currently, three agencies, DOJ, FBI, and NCTC contribute time to the interagency task force on countering violent extremism and participate in the weekly coordination meeting. Additionally, DHS is actively looking at options to elevate and expand interagency action on terrorism prevention—including through the task force—and would be willing to brief your staff at the appropriate time.
20	HSGAC 5/15/18	Hassan	S1 committed to finalizing an answer on the issue of New Hampshire Indonesian deportations in the near term.	ICE	5/25/2018			(b)(5)
21	HSGAC 5/15/18	Harris	S1 promised what steps are being taken so that the separated parent and child can sustain communication, "broken down between what [DHS is] doing for children over the age of four and what [DHS is] doing for children under the age of four."	ICE	5/25/2018			
22	HSGAC 5/15/18	HSGAC (Harris)	S1 promised information about the average length of separation has been for children separated from their parents.	ICE	5/25/2018			
23	HSGAC 5/15/18	HSGAC (Harris)	Sen. Harris requested what timelines, in terms of DHS policy, exist to establish a parental relationship or to reunify families.	ICE	5/25/2018			
24	HSGAC 5/15/18	HSGAC (Harris)	Information on how many of those cases where children who have been separated from their parents at points of entry resulted in trafficking charges.	ICE	5/25/2018			
25	HSGAC 5/15/18	HSGAC (Harris)	S1 promised the current assessment of detention conditions in DHS / ICE detention facilities (especially with regards to pregnant women).	ICE	5/25/2018			
26	HSGAC 5/15/18	HSGAC (Harris)	S1 promised to look into whether the current assessment of DHS / ICE detention facilities was submitted to OIG in response to the findings of the Dec. 2017 OIG report.	ICE	5/25/2018			

27	HSGAC 5/15/18	HSGAC (Harris)	S1 promised <u>1</u>) an analysis of what is going on with the 1,448 allegations of sexual abuse in ICE detention facilities between FY12 and March 2018, and <u>2</u>) what plan S1 has to "investigate those cases of sexual abuse and <u>3</u>) what is the protocol in place in terms of what is being done to allow the victim to be in a safe place during and pending any investigation, what kind of services are these victims getting in terms of treating their trauma [and what] medical attention they may need as a result of what might be the sexual abuse?"	ICE	5/25/2018		(b)(6)	(b)(5)
28	HSGAC 5/15/18	HSGAC (Harris)	S1 promised the DHS / ICE policy regarding the detention of pregnant women, including the third trimester release directive.	ICE	5/25/2018			
29	HSGAC 5/15/18	Johnson	S1 Promised the number of MS-13 members who were apprehended and released as a result of <i>Zadvydus</i> , "going back a number of years."	ICE	5/25/2018			
30	HSGAC 5/15/18	Hassan	S1 promised the locations (i.e. DHS facilities) where DHS trains Mexican federal law enforcement.	FLETC	5/25/2018			