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AUTHORITIES AND RESOURCES NEEDED TO PROTECT AND SECURE THE UNITED STATES

HEARING

BEFORE THE

COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED FIFTEENTH CONGRESS

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AUTHORITIES AND RESOURCES NEEDED TO PROTECT AND SECURE THE UNITED STATES

TUESDAY, MAY 15, 2018

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

The Committee met, pursuant to notice, at 2:30 p.m., in room 342, Dirksen Senate Office Building, Hon. Ron Johnson presiding.

Present: Senators Johnson, Portman, Lankford, Hoeven, Daines, McCaskill, Carper, Heitkamp, Peters, Hassan, and Harris.

OPENING STATEMENT OF CHAIRMAN JOHNSON

Chairman JOHNSON. This hearing will come to order. I want to welcome Secretary Kirstjen 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 the law enforcement officers killed in action, and just, really, honor the families for their service as well.

According to the National Law Enforcement Officer Memorial Fund, since 1791, 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 would be fitting and proper if we just recognized a moment of silence to honor those and their families.

[Moment of Silence.]

Thank you.

I would ask you to consent to my written statement be entered into the record.[1]

This title of this hearing is Authorities and Resources Needed to Protect and Secure the United States, and I know, Secretary Nielsen, you have testified before the Appropriations Committee, so obviously the Senators can ask any questions they want. But from my standpoint, because we are the authorizing Committee, I really want to concentrate on the authorities part of that hearing title. And, I would 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 and we are kind of known for a very bipartisan, nonpartisan approach to trying to find areas of agreement. And we did exactly that with the Department of Homeland Security (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

[1] The prepared statement of Senator Johnson appears in the Appendix on page 47.

have basically become obsolete, in many cases. I know in the omnibus, Section 72, the flexibility of reorganizing parts of your Department was actually taken away, which is important when we take a look at National Protection and Programs Division (NPPD), turning that into the Cybersecurity and Infrastructure Security Act (CISA).

These are the things that you need to do to do your job to keep this Nation safe. In cooperation with your Department we are working with a number of Members. I see two of them that are cosponsors right now, to the Preventing Emerging Threats Act of 2018, which a big part of that is really addressing countering unmanned aircraft systems (UAS), which is a growing threat. It is a real threat and it is confusing. There are conflicting authorities, no authorities from your standpoint in terms of addressing those, being able to take those out of the air. Again, it is a complex situation.

And, of course, I think it is 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 classic example of how that would actually work was in 2005. Under Secretary Michael 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—I think they 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, right now we have—unfortunately, you are forced to apprehend, process, and disperse, and that is a huge incentive for additional illegal immigration.

So those are the types of authorities that I want to hopefully discuss during this Committee. Those are the 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 will turn it over to my Ranking Member, Senator McCaskill.

OPENING STATEMENT OF SENATOR MCCASKILL

Senator MCCASKILL. Thank you, Mr. Chairman, and thank you, Secretary Nielsen, for being here.

I would like to talk about DHS' budget 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 is important to recognize all of the men and women in uniform across this country who protect us.

But it is interesting because when you look at the diagram of the staffing, it has been on a downward trajectory since President

Trump took office. In September 2016, there were 19,828 Border Patrol Agents along the borders, and in April 2018, it is actually down 400–500 staff, and that is in spite of the fact that there is an authorization for many more, as you are painfully aware of, I am sure. We have an authorization for 21,370.

So we are hundreds and hundreds lower than we were when President Trump took office, and we are many more under for what we are authorized, and we keep debating additional authorizations as if that is somehow going to solve the problem. And we have talked about this in various hearings, and I know everyone wants to point it to the polygraph, but it does not seem reasonable to me that that is the only reason. You cannot keep up with attrition right now. You cannot hire, and we have some outrageous contracts for recruitment.

One of the things I want to talk about today is, are we missing the boat here, in terms of improving pay and working conditions? I mean, many times people leave a job because they do not feel that they are getting adequate pay, or they are not being asked to perform in ideal working conditions. And I know that it is impossible to make this work always ideal, because in law enforcement you have to take what comes. But there is a real problem that clearly we are not getting at, and that is one of the things I want to talk about today.

The other thing I want to talk about today is the difference between Border Patrol Agents and Border Patrol Officers, and I do not think most Americans understand that we use those terms—and for most people, they probably think they are the same thing. I do not know how that happened. I do not know how we named them that way, but it is terribly misleading, because, of course, the officers are the ones that are the port of entries. The agents are the ones along the border.

Unlike Border Patrol Agents, we are not authorizing significantly new port officers. It is very clear, in a report I released from the minority staff of this Committee what is happening. We found that 88 percent of all the opioids seized over the past 5 years were seized at ports of entry (POEs), 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 is actually coming in through the ports. And 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.

So these are the areas I want to talk about, because your staffing demands are clearly not being met. We have to figure out this problem, because people can give speeches and talk about turning back illegal immigrants, and say that there are too many illegal immigrants coming across, and nobody is disagreeing with wanting to secure the border. But when you cannot 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 would like us to see if we could get to the bottom of that today.

And I would ask that my written statement be made part of the record.[1]

Chairman JOHNSON. Without objection.

It is the tradition of this Committee to swear in witnesses, so if you will stand and raise your right hand.

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

Secretary NIELSEN. I do.

Chairman JOHNSON. Please be seated.

Secretary Kirstjen Nielsen is the sixth Secretary for the Department of Homeland Secretary 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's degree from the Georgetown University School of Foreign Service and a JD from the University of Virginia School of Law. Secretary Nielsen.

TESTIMONY OF THE HONORABLE KIRSTJEN M. NIELSEN,[2] SECRETARY, U.S. DEPARTMENT OF HOMELAND SECURITY

Secretary NIELSEN. Thank you. 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 would like, if I could, to submit my full written testimony for the record.

Chairman JOHNSON. Without objection.

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 gaps that affect our ability to protect the American people.

I also wanted 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.

A lot has changed in 15 years. The threats have evolved, our enemies have adapted, and our adversaries are resurgent. In the meantime, our authorities have not kept pace. So today I want to highlight several areas where DHS requests 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 (CWMD) Office, providing authorities to help us

[1] The prepared statement of Senator McCaskill appears in the Appendix on page 48.
[2] The prepared statement of Ms. Nielsen appears in the Appendix on page 53.

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 flowing 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 have broken the law. The Attorney General (AG) has declared that we will 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 part way 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 is easier to get released into America if they claim asylum. They know that it is easier to get released if they are 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 past 5 years, family unit apprehensions are up nearly 600 percent compared to this time last year, and unaccompanied alien children (UAC) apprehensions are up more than 300 percent. In fact, 5 years ago, apprehensions of families and UACs were less than 1 out of every 10 apprehensions. Now they approach almost half, 40 percent.

Some say these increases are the result of spreading crime or failing economies in source countries, but in those places we are actually seeing economic growth and lower homicide rates. The reality is not that their economies are cratering, it is that ours is booming. America is the land of opportunity, and that is a pull factor for anyone.

But if we 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 its debilitating court rulings, a crushing backlog, and gaping loopholes allows illegal migrants to get into our country anyway, and for whatever reason they want. This gaming of the system is unacceptable. We need urgent action from Congress to close these dangerous legal loopholes that are making our country vulnerable.

I would also note, and it is 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 criminal organizations (TCOs). They are not humanitarian endeavors. Smugglers priorities have 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 country 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 have 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 information technology (IT) department and thought of as a nuisance. Now it is 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 its elevation of our cybersecurity and infrastructure security resilience mission. Transforming the National Protection and Programs Division, into a new operational component, the Cyber-security and Infrastructure Security Agency, is imperative to our success on the front lines of the digital battlefield. It will be a clearer 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's role as national risk manager for cybersecurity and critical infrastructure security. I ask and thank for the Committee's continued support in 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 Russia's brazen assassination attempt against a UK 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 our response to these threat streams and incidents. But the office still lacks critical authorities. While we currently have the ability to responds 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. Islamic State of Iraq and Syria (ISIS) has used armed drones to strike targets in Syria, and we are increasingly concerned that they will try the same tactics on our soil. We have also seen drones used to smuggle drugs across our borders and to conduct surveillance on sensitive government locations.

So today I would 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 (DOJ) 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 (DRF) for response and recovery to major disasters. This budget sustains and strengthens our most critical programs and capabilities. It emphasizes protecting our Nation from terrorism and countering threats, securing and managing our borders, enforcing our immigration laws, preserving and upholding the Nation's prosperity and economic security, security cyber space and critical infrastructure, and strengthening homeland security 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.

Chairman JOHNSON. Thank you, Secretary Nielsen. Before I turn questioning over to Senator McCaskill, I do want to put up and draw everybody's attention to a couple of charts. The first one is UAC Apprehensions.[1] The reason I am doing this is to make the point that regardless of what a particular law says, we, within our laws, our precedents, our legal loopholes, create incentives for people to come to this country illegally, and I think the first example was the Deferred Action on Childhood Arrivals (DACA).

Take a look at the number of children coming in here from Central America in 2009, 2010, 2011, and 2012. It was relatively minimal. And in June 2012, we had the Deferred Action on Childhood Arrivals, and you can see what happened afterwards. I do not have

[1] The chart referenced by Senator Johnson appears in the Appendix on page 61.

the figure year-to-date 2018, but I think we are on pace for an increase again over 2017.

The next chart[1] has 5½ years of apprehension history at the border, and again, nothing is definitive. This is not scientific. But it is pretty indicative that when President Trump came into office, obviously dedicated to securing our border, and Secretary Kelly, I think, said all the right things in terms of being dedicated and giving U.S. Customs and Border Protection (CBP) and U.S. Immigrations and Customs Enforcement (ICE) the authority to enforce the 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 gotten into the fabric of people's consciousness, and the result being people realize that they can still go up to the border, as an unaccompanied child, we apprehend them, we process them, we disperse them. We have only returned 3.5 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 hearings, that type of thing.

So that is the reality of our law. And so a deterrent fact worked for about a year, but until we actually change those laws, I think we are going to have a real tough time actually deterring illegal immigration.

With that I will turn it over to Senator McCaskill.

Senator MCCASKILL. Well, first I would not call the DACA recipients, the unaccompanied minors, "apprehensions." The vast majority of unaccompanied minors are walking across and saying "help us, please." I think "apprehension" is a weird word to use.

Chairman JOHNSON. Well, that is precisely my point, though. They can just walk in and turn themselves in.

Senator MCCASKILL. The second point I would make is that 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 was causing this, it seems to me we would see a decrease. And, by the way, DACA does not even apply to these kids. None of them are qualified for DACA, none of them.

So I think we have problems securing our borders and I do not 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, in 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?

Secretary NIELSEN. I do not have that exact figure, but yes, the majority——

Senator MCCASKILL. We got it from you.

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[1] The chart referenced by Senator Johnson appears in the Appendix on page 62.

Secretary NIELSEN [continuing]. The majority of drugs that we see are coming through the ports of entry.

Senator MCCASKILL. Well, about 90 percent. Eighty-five 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 this talking point that it is the people coming across the Southern Border that are bringing all the drugs, it is like fingernails on a blackboard, because it is just not accurate.

And here is the thing I do not 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 actual deployment into these ports. And according to your own staffing studies, you are short by over 4,000 officers at these ports.

Our citizens are dying from fentanyl every day. Our emergency rooms are overloaded. There is not a week that goes by that I do not talk to a parent in Missouri who has lost a child to a fentanyl overdose that is coming in, in this manner.

Can you explain why we are continuing to ask for more agents along the border when we cannot hire enough, but there are no requests for this critical need in our country?

Secretary NIELSEN. Yes. Senator, first I would just like to say it is a huge problem. It is one that we take seriously, the full Administration. Let me give you a short answer and a long answer.

The short answer is, it is not just the people at the ports. So what we have done is we have 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 and away, the best way to detect the drugs coming through the ports is through nonintrusive technology and through canines. So we have increased that and we continue to ask for additional resources.

What we have 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 are working much more in a forward-deployed fashion, through Joint Terrorism Task Forces (JTTFs), through what we have in Key West, which, as you know, Joint Interagency Task Force South (JIATF-South) is a multi, 20-, 30-country effort to identify and track the drugs before they ever reach our shores, before they ever reach the ports of entry. You mentioned in your opening remarks the vast increase in mail. We thank you for the International Narcotics Trafficking Emergency Response by Detecting Incoming Contraband with Technology (INTERDICT) Act. We are working with you on the Synthetics Trafficking and Overdose Prevention (STOP) Act. We need to do more there, absolutely, because that is the other way that fentanyl is getting in. So we are 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 U.S. Secret Service (USSS), because most of these drugs in marketplaces are on the dark web. So we have 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 are trying to do it in a layered approach so it is a system of systems approach.

Senator MCCASKILL. Is there a good answer as to why there were 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 cannot combat the attrition that you are having now? Is there a good reason as to why there would be that dichotomy?

Secretary NIELSEN. The good news I will mention quickly is that the attrition is down and we can talk more about hiring, because I know that was a concern of yours, in general. But I am happy to come in myself, or have folks come and walk you through the model.

The other part about drugs that I did not 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 canines—but the people, the actual TCO member 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 will be stopped. So, we need to stop the people and the drugs.

But in terms of the staffing model that you are discussing, I am happy to come talk to you about it in detail.

Senator MCCASKILL. Yes. If you look at your staffing in the United States, in terms of mail facilities, it is even worse. You have 17 officers covering two shifts in Cincinnati, screening almost 46 million import shipments in one year. I mean, that is just overwhelming.

I just think somebody has to get off the political speeches and get to the problem, and be pragmatic. 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 is 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 heartbreaking to me.

Secretary NIELSEN. Ma'am, I am not saying that. What I am suggesting is that what we find is the best way to identify those drugs is through technology and canines, and that is what we are increasing.

Senator MCCASKILL. But you have to have people to run both technology and canines. Every dog has a handler.

In fact, more than one handler.

Secretary NIELSEN But there is no suggestion that we have a lack of people to work with the canines or run the machines. So again, I am happy to walk you through, but I do want to make clear we are attacking the opioid crisis from many levels, with many capabilities.

Senator MCCASKILL. I have questions about the air marshals but I will hold those until the next round. Thank you, Secretary.

Chairman JOHNSON. Senator Hoeven.

OPENING STATEMENT OF SENATOR HOEVEN

Senator HOEVEN. Thank you, Chairman Johnson, and thank you, Secretary, for being here today and for the important work that you are doing every day.

I am going to follow up on some of the things we talked about at our DHS appropriation hearing, which you were at recently. I am pleased to co-sponsor 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 mange the UAS, unmanned aerial vehicles (UAV) and systems adequately, not only to protect privacy but also security. That is very important work.

And my first question is, while we are working with you to provide those authorities to track and disable threatening unmanned aircraft, and as you develop 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?

Secretary NIELSEN. Thank you. So we have learned quite a few lessons from the Department of Defense (DOD), which, as you know, has this authority already and uses it in theater. So we are looking at their testing models. The approach would absolutely be to go to the private sector. It often is at DHS. It does not make sense to reinvent the wheel when something already exists that could fill a need. So we are 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 are many centers of excellence, particularly those, as well, in your State. We are doing a lot of work there with the university as well, everything from intern programs to other capability-building exercises, to help get both the people and the technology.

Senator HOEVEN. So you hit the nail on the head there. That is where I am going. We are working with you on a time to get you out this summer to see what we are doing in counter-UAS, not only from the military standpoint but customs and border protection, as well as the private sector. And as 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 Jim Mattis was in front of our Defense Appropriations Committee we also talked about it in terms of the military, and in same way they are both seeking authority and developing some of these counter-UAS technologies.

So we appreciate your willingness to engage in that. We think it will be very helpful and productive.

Secretary NIELSEN. Well, thank you again for the bill.

Senator HOEVEN. You have an incredible Ops Center in California that is managing your unmanned aircraft along the border. And so I guess my question, does that Air and Marines Operations Center have sufficient capacity to handle all these far-flung UAS activities, and do you have backup? So both capacity and backup—that is another, I guess, area that I know you are going to continue to develop and grow. How is that going? Can we be of help there?

Secretary NIELSEN. Yes. Thank you. As you say, the Ops Center in California allows us to deploy, to understand and track where

we are using, and to help us with a model for when we need to use and where we need to use them.

At DHS we are 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 other 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 what it looked like before the hurricane, what it looked like after, to determine public assistance. So there are quite a few areas within DHS that we use it. We will continue to use this center. As you mentioned, redundancy, what we are looking at in addition to the underlying capability is making sure that we do have that redundancy. That is sort of that next phase that we are in now.

Senator HOEVEN. There is an incredible pilot shortage, both for manned and unmanned aircraft, and actually, I want to commend you, and Commissioner Kevin 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, a great young person, and, of course, they need the manpower, as we have talked about, but it also helps them get an education because they are working for CBP. Great program. I think it is a great way to help with the pilot shortage in the aviation industry, both manned 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, 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? I know you are short there. What can you do, and what are you doing to try to adjudicate these individuals?

Secretary NIELSEN. So as I continue to find out every day, our immigration process is very complex. As you well know, it involves many departments. What we have tried to do is look at it from an end-to-end approach. So in the example you just gave there are actually about three or four different processes that those groups would undertake. 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 that, for example, with the Department of Health and Human Services (HHS), to make sure that we are appropriately taking care of UACs in their custody.

And then there are other parts who, depending on if they are referred for prosecution we hand them over to the marshals. We want to make sure that that is 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.

Senator HOEVEN. Is that working?

Secretary NIELSEN. It does work. So it is a good combination. We do it on a case-by-case basis. There are lots of criteria that we look

at to determine when that is appropriate and when that is not appropriate. But again, I think it is some of the opening remarks perhaps the Chairman made, if you look at UACs, 66 percent of those who receive final orders, receive the final orders purely because they never showed up for court, and we find that we are 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 is a much more efficient process while we wait for the final adjudication.

Senator HOEVEN. Thank you, Madam Secretary, and thanks for the work you are doing. I know it is challenging work. We appreciate it. Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Carper.

OPENING STATEMENT OF SENATOR CARPER

Senator CARPER. Thanks. Again, Secretary Nielsen, welcome. Thank you for joining us today.

Secretary NIELSEN. Thank you, sir.

Senator CARPER. We have 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 do not 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 do not care if it is landscaping, I do not care if it is food processing, I do not care if it is someone working in financial services, but they are having a hard time getting people who actually come, can pass a drug test, who have the skills, and will come to work.

And you and I have talked a bit about how to address at least part of this challenge. In fact, I read a letter, I think, about a couple of dozen Senators who wrote to you and urged you to use the authority that we granted in the spending bill for the balance of this fiscal year (FY) to go ahead and issue additional H–2B visas. And I think the legislation we passed we authorized a doubling of that cap, to maybe another 69,000.

And I guess my question, this is not going to solve all of our problems, for all of the employers, as you know, but you have this authority. We hear, literally, this week, from companies and they are afraid they are going to lose their business because they do not have people come to work and do the jobs. They are seasonal jobs.

So let me just ask, what is the timeline for releasing additional H–2B visas and when will you announce the decision? How may additional visas does the Department plan to release?

Secretary NIELSEN. Thank you, sir. It is in final interagency process. As you know, it involves regulation, so the regulation should be ready here shortly.

Senator CARPER. Can I just say something?

Secretary NIELSEN. Yes.

Senator CARPER. I do not mean to be rude.

Secretary NIELSEN. No.

Senator CARPER. I do not mean to interrupt you. That is not good enough. I mean, these companies, they are highly seasonal. They need the folks now. They needed them a month ago. And whenever I talk to you about this it basically we are working this, we are going through the process, and so forth. They need the workers now.

Secretary NIELSEN. Yes. I understand that.

Senator CARPER. And if they were here they would tell you.

Secretary NIELSEN. I have been collecting evidence. I have asked everyone I talk to to give me examples so that I can, in turn, package it and send it back to Congress to say, next year, please put the ceiling in law. There is no need to tie it to an appropriations bill.

Senator CARPER. We gave you the authority to basically double——

Secretary NIELSEN. I understand, but——

Senator CARPER [continuing]. The number of visas you can issue.

Secretary NIELSEN [continuing]. If you all are——

Senator CARPER. You have the power. This Administration is not reluctant about using executive power.

Secretary NIELSEN. 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 appropriations cycle and we wait on whichever secretary is secretary to make a determination, does not give them the ability to plan and keep their businesses open.

So I would respectfully request, again, that Congress work with us to put this in law. We know it is a need. Let us just put it in law, and then everybody knows what it is, and the businesses can plan.

Senator 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 is plenty of need.

Secretary NIELSEN. But, sir——

Senator CARPER. Use that authority.

Secretary NIELSEN [continuing]. If you wanted 69,000 additional just put it in law and then there is no discretion and there is no timing, if it is already in law and everyone can plan to it. So as we discussed——

Senator CARPER. That is very disappointing——

Secretary NIELSEN. Well, it should not be, because I think we both want to help the companies, so I am telling you, in my experience, this is the best way to help them is to give them some predictability and not tie it——

Senator CARPER. If our roles were different and you were the Senate and I was the Secretary of the Department, we would issue those 69,000 visas. We would put a lot of people to work, and I will say, frankly, save a lot of businesses from going under.

Let me ask my second question. Thank you.

The decision to extend or terminate Temporary Protected Status (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 4 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?

Secretary NIELSEN. At the time, before Ambassador Nealon and then Deputy Secretary Duke left, yes, I did talk with them.

Senator CARPER. And can you give us some idea what was said?

Secretary NIELSEN. No. I cannot, sir. Those are predeliberative conversations.

Senator CARPER. Former Secretary Kelly also said, in an interview on National Public Radio (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." And those are his words from last week. Do you agree with General Kelly's remarks?

Secretary NIELSEN. I have said the same under oath.

Senator CARPER. OK.

We talked in this room, often times, about root causes, why people come here from Honduras, Guatemala, El 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 Colombia. I have not heard much about what is going on there lately, and maybe you can bring us up to speed. As you know, Plan Colombia has taken a long time, 20 years, but over time it has become very successful. And what is going on with Alliance for Prosperity and how are we doing there?

Secretary 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 governments 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.

Senator CARPER. When and where?

Secretary NIELSEN. In D.C., and we do not have the exact date because it will be around the Organization of American States, so it is a bit up to them as to which date works, so we are 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 is 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. So it allows them to stay in the 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 do not have that pull factor.

Senator 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.

Chairman JOHNSON. Senator Hassan.

OPENING STATEMENT OF SENATOR HASSAN

Senator HASSAN. Thank you, Mr. Chairman, 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 dominate their smuggling route, killing many innocent Mexicans and migrants. The cartels' success means that more and more drugs make their way into the United States, where Americans are dying from 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 cartels' business model. That means stopping the flow of both drug money and weapons that travel southbound into Mexico from the United States.

Unfortunately, as I saw on my trip, our southbound screening effort for traffic leaving the United States for Mexico pales in comparison to CBP's screening of traffic entering the United States. We are 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?

Secretary NIELSEN. No.

Senator HASSAN. And what more do you need and what actions will you take to address these shortfalls?

Secretary NIELSEN. So the ports, as you know, are very different——

Senator HASSAN. Right.

Secretary NIELSEN [continuing]. The infrastructure. So part of what we are doing is, I have had multiple conversations with the Government of Mexico on this exact issue. I have committed to them that we will decrease the flow of guns and money headed their direction. But part of the agreement with them is to how we can restructure the ports so that we have those secondary lanes so that we can pull people over when we suspect.

Senator HASSAN. Right.

Secretary NIELSEN. So we are doing more. We are working on agreements back and forth, and then we are working on some modeling and data that would lead us to a resource request to come to you.

Senator 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 southbound as well as northbound. 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 intended when we passed this bill and when the President signed it into law. Now that was, I think, in December.

So why are not the devices getting into the hands of these port officers, what accounts for the delay, and what are our plans to get more devices there?

Secretary NIELSEN. Well, first of all, that is unacceptable, so you have my commitment to look into it and get back to you this week. I am not aware that they do not have the devices. They need to be trained.

Senator HASSAN. Yes.

Secretary NIELSEN. They need the protective gear to, as you know, touch packages, and they also need the devices.

Senator HASSAN. Right. I saw one of the devices. The issue is they just do not have enough for them all to use, and I think our intent was to get——

Secretary NIELSEN. Absolutely. I will look into this.

Senator HASSAN [continuing]. 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 is going to have success against the drug cartels. While the Mexican government has to find the resources and the will to expand the 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 (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?

Secretary NIELSEN. Absolutely, and we actually do. We have graduated some already from training facilities. We are continuing to expand that. We also work with Semar and Sedena, parts of the military, which, as you know, play a huge role. We have 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.

Senator 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?

Secretary NIELSEN. We do offer courses for Mexican counterparts, yes, ma'am. I will get you the locations. I believe it is at FLETC, but if not it is a DHS-owned facility.

Senator HASSAN. OK. Well, thank you very much. I will have more questions for a second round but I am happy to yield now. Thank you.

Chairman JOHNSON. Senator Harris.

OPENING STATEMENT OF SENATOR HARRIS

Senator HARRIS. Thank you, Secretary Nielsen.

As I sit here today I am 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 at risk 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 4.

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 (ORR) 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 those children 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 policies such as routinely separating families are carried out in the best interest 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?

Secretary NIELSEN. I have not been directed to do that for purposes of deterrence, no.

Senator HARRIS. What purpose have you been given for separating parents from their children?

Secretary NIELSEN. So my decision has been that anyone who breaks the law will be prosecuted. If you are a parent or you are 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.

Senator HARRIS. At an April 26th hearing, I asked Under Secretary 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 have not been given that information. Can you provide that to me?

Secretary NIELSEN. I do not have it now but, yes, I will provide it to you.[1]

Senator HARRIS. OK. Can you do that by the end of next week?

Secretary NIELSEN. If we have the information, yes.

Senator 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 have not received that information. Do you have that today?

Secretary NIELSEN. No. You have not asked me for it so I do not have it, but I can give it to you.[2]

Senator HARRIS. No, I asked you for it. OK. So again, by the end of next week please.

Secretary NIELSEN. Can you explain a little more what you are looking for?

Senator HARRIS. Sure. So your agency will be separating children from their parents, and I would——

Secretary NIELSEN. No. What we will be doing is prosecuting parents who have broken the law, just as we do every day in the United States of America.

Senator HARRIS. I can appreciate that, but if that parent has a 4-year-old child, what do you plan on doing with that child?

Secretary NIELSEN. The child, under law, goes to HHS for care and custody.

Senator HARRIS. They will be separated from their parent. And so my question is——

Secretary NIELSEN. Just like we do in the United States every day.

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[1] The information requested by Senator Harris appears in the Appendix on page 129.

[2] The information requested by Senator Harris appears in the Appendix on page 134.

Senator HARRIS. So they will be separated from their parent. 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.

Secretary NIELSEN. I am happy to provide you with the training information.

Senator 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?

Secretary NIELSEN. The children are at HHS, but I am happy to work with HHS to get you an answer for that.[1]

Senator HARRIS. And I would like it to be broken down between what you doing for children over the age of 4 and what you are doing for children under the age of 4.

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, and 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 (AMA) and many child welfare advocates and professionals.

Last Tuesday, before Senate Appropriations, you testified that you are "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?

Secretary 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.

Senator 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 a day 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.

Secretary NIELSEN. But that is not what I just said, ma'am. If you are asking if we train and we take care of them and we work with HHS, we now have a memorandum of agreement (MOA) so that we can make sure that the children go to people who are actu-

[1] The information requested by Senator Harris appears in the Appendix on page 135.

ally family members and who are not traffickers and who will not abuse them.

Senator HARRIS. Right. So those are the policies I would like to see.

Secretary NIELSEN. OK.

Senator HARRIS. Thank you.

Chairman JOHNSON. Before I go to Senator Lankford, I think 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—prosecutors, law enforcement, local law enforcement does this every day. So let us consider maybe a drug dealer, single parent, with children in the home. That drug dealer is arrested. Is there any difference, really, in terms of how DHS handles somebody that you are going to prosecute, that you are going to detain, somebody who has entered the country through 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?

Secretary 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 being, in turn, placed in the hands of traffickers, criminals, etc.

Chairman JOHNSON. 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.

Secretary NIELSEN. In current policy, yes, sir.

Chairman JOHNSON. OK. Senator Daines.

OPENING STATEMENT OF SENATOR DAINES

Senator DAINES. Thank you, Mr. Chairman. Secretary Nielsen, it is 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 you are leading and 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 cannot wait once the, as we say, the rivers blow out. They clear up, we get on the rivers. But in the meantime we have flooding going on in Montana. We are facing severe flooding due to rapidly melting snowpack in our mountains, combined with some recent heavy rainfall. 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 mo-

bilized State resources, but more flooding is yet to come and Federal aid is going to be needed.

How is DHS assisting these affected 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?

Secretary NIELSEN. Yes. I cannot believe we are there again already, between that and hurricane season.

So what we are doing at the Federal Emergency Management Agency (FEMA) is we are trying to increase the capability and capacity, in general, toward resilience. So, in part, that means we are using things called integrated management teams. We are pushing people out into the communities to help them build their capacity for instant management. We have conducted various reviews on alert warning. We are 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 is a combination of on-the-ground capacity-building exercises, etc., and then funding, of course, when the thresholds are met.

Senator DAINES. Thank you, and I know we will be in touch with your team as we continue to, excuse the metaphor, 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 point out in your testimony, there is 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 2018, compared of April 2017. Securing our borders is crucial to protecting the American people and upholding the rule of law.

I am grateful to hear from you today in response to some of the questions. It is about the rule of law. It is what sets this great national apart, is freedom and the rule of law. You are 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 CBP's 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?

Secretary NIELSEN. Many things, as much as we can do within the law. So we are changing regulationss to the extent that we can to clarify particular issues. We are doing all this in the protection of UACs, like the memorandum of understanding (MOU) that I just mentioned. We are working with the border Governors. As you may know, I have had lots of conversations and I talk with them monthly—Governor Greg Abbott, Governor Doug Ducey, Governor Susana Martinez, Governor Jerry Brown—not just on the deployment of the National Guard but what else we can do with local communities, with border sheriffs, to make sure that when we identify 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 that do not 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 encounter. So we will continue to do all we can on our side.

Senator DAINES. Thank you. The issue of children came up in the last line of questioning and I want to probe that a bit more with you. I have introduced legislation with my colleague from New Hampshire, Senator Hassan. It is called the Homeland Security for Children Act, which would 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 is important to identify and integrate the needs of children into the policies and activities of the Department?

Secretary NIELSEN. I think it is our duty to protect them, to keep them in a safe environment, to provide for them when they are in our care, and to make sure that within that 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.

Senator DAINES. One thing I have seen, and I appreciate your response there, 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 do not always remember in the policies the importance of children and thinking about their unique needs.

Last, I want to talk about border wall contractors. A number of State and local governments are considering legislation that would require them to 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?

Secretary NIELSEN. So we continue to work with border Governors and government officials. 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 are also trying to work with them to explain and find out what the real concern is, because it is not always clear on its face what the concern is, other than they just do not agree with us enforcing the law.

Senator DAINES. Thank you, Secretary Nielsen. Thanks.

Chairman JOHNSON. Senator McCaskill has a question for you real quick.

Senator MCCASKILL. Yes. I just want to clarify something. The Chairman wanted to equate the process by which children are separated from their parents to a similar process when someone is arrested. Let us 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 handed them over to the social service agency, who then has primary responsibility, through social workers, placement, and 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 us compare and contrast what happens with DHS. DHS keeps the children for maybe 48 hours, and hands them off to HHS. HHS then tries to put them somewhere, and rarely does household visits for sponsors. And then they are done after they find a sponsor. There is no handing off to the State social service agencies. That is why nobody is showing up for the hearings, Secretary. It is because it is not like the State system.

I can assure you that if a child was supposed to show up somewhere that was in the State's care, the phone would ring, or the child abuse hotline would ring, or a teacher would be required to call in. That is not happening with these kids. That is why they are not coming to court. Nobody is paying any attention.

So I just could not 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 the truth. And there is still not a joint concept of operations (CONOPS), which was promised to Senator Portman and I at a hearing in 2016, as to how we are going to alleviate this problem.

So once you start taking these children, I do not think any record should reflect that somehow we are—you are confident, or anybody is confident that they are being placed in a safe and secure environment and being appropriately managed. Because, frankly, if they were, they would come to their hearings.

Secretary NIELSEN. Could I just respond to that?

Senator MCCASKILL. Sure.

Secretary NIELSEN. I think the comparison I was trying to make was in the separation of families. It is not something unique we do with illegal aliens when someone has broken the law.

Senator MCCASKILL. There is no question, you have to separate children from families when there has been a violation.

Secretary NIELSEN. Yes, ma'am. But having said that, I just want to say I could not agree with your concerns more, period. We are working with HHS. We have done this MOA. I will look into the CONOPS. I do know that we have 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 traffickers or an abuser. And, as you know, we have terrible instances of that occurring.

Senator MCCASKILL. Terrible.

Secretary NIELSEN. It is not acceptable.

Senator MCCASKILL. The fact that there is not a CONOPS, the fact that there is no joint concept of operations, and we are upping the number of children we are taking from families is outrageous.

Secretary NIELSEN. So there is a CONOPS. What I am suggesting is——

Senator MCCASKILL. [Off microphone.]

Secretary NIELSEN [continuing]. Yes, and I appreciate that and we will get it to you. We are 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 children, especially when that sponsor is not a parent.

Senator MCCASKILL. It is not being done now.

Secretary NIELSEN. Yes, so this is why we just signed this MOA. I could not agree more. We have to do more.

Chairman JOHNSON. I would completely agree the State is going to be better than the Federal Government in 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 do not know that, that DACA was used as a spark. They were told, once they get there they can stay. By the way, they have. 96.5 percent of unaccompanied children from Central America have stayed. They use social media. That is communicated down to Central America and more come. So it is 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.

OPENING STATEMENT OF SENATOR HEITKAMP

Senator HEITKAMP. Yes. I do not 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 U.S. Congress. So the wringing of hands about what is, in fact, the draw into this country, it is 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 are on the verge of having a very anti-American government elected in Mexico. It is going to make your job even harder. And so we can talk about why that is. I think we should just recognize it is going to happen. So we have to prepare for a relationship change that we are going to have, that is 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 about a month ago, and I think I said we are the worst foster parents in the world. We do not keep track of these kids. And we are begging you, if, in fact, this is going to be the outcome, where we are separating children, in some cases, infants, from their parents, we need to know where these kids are.

Secretary NIELSEN. I could not agree more.

Senator HEITKAMP. Well, that has not been——

Secretary NIELSEN. Again, in the last Administration there was no MOA to even screen or vet sponsors. I have put that in place.

Senator HEITKAMP. I am not talking about politics here.

Secretary NIELSEN. No. I am not either.

Senator HEITKAMP. I am talking about change.

Secretary NIELSEN. I am saying what we have done to improve the situation, because you are exactly right. We owe more to these children to protect them. So I am saying I agree. We have taken steps and we will continue to strengthen what our partners do to protect these children. They are not in our custody but I take it upon myself to work with my interagency partners to do this.

Senator HEITKAMP. And I would share Senator Harris' concern about making sure people are trauma-informed and trauma-trained, because what you are 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 us be good people and good Americans as it relates to how we treat children.

But I do not want to use my whole time. I want to talk a little bit about the Northern Border strategy. You probably figured this is going to come up. You are 5 months late in getting me the plan. When is that plan going to happen?

Secretary NIELSEN. It should be out this week.

Senator HEITKAMP. OK. Thank you. I will look forward to seeing it and thank you again. I think, again, we have such a hyper focus on the Southwest Border, a hyper focus on the open areas of the Southwest Border, and as Senator McCaskill pointed out, a lot of the drug traffic is coming through the points of entry. We know that that is a problem that we need to address.

And that brings me to the second thing I want to get at, which is technology, and understanding what that technology, what is available, what we are doing right now to train, what we are doing right now to provide resources. I want to associate myself with the remarks of my senior Senator, Senator Hoeven. We appreciate the work that is 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 airbase, along with a training center for training pilots, along with a lot of great law enforcement folks who are working to try and figure out how we can embed and use new technology. So I again invite you to come up to North Dakota to take a look.

Secretary NIELSEN. Yes. I am looking forward to it.

Senator HEITKAMP. Yes. And I think you will find some very interesting things up on the border.

One of the unique problems that we have in North Dakota, as you know, is hiring and retention. That is not just a problem in North Dakota but it is a problem across the agency. Senator McCaskill, I think, made a great point on retention. 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?

Secretary NIELSEN. Yes. This is, for obvious reasons, all the ones that Ranking Member McCaskill mentioned and you did as well, important, but it is also important just for basic morale, right? It is important for us to be able to do our job. So I do take this very seriously, and of my six priorities one is what I call Employees First, and this is a big chunk of that. What it is we can do to make them willing to continue to serve.

Senator HEITKAMP. Why do you think they are leaving now?

Secretary NIELSEN. I think, one of the things that we have found over the last year is the system was not built for mobility. So if you are in rural—it is not even rural—if you are in an area where there is 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 cannot allow you to move, you might just decide to leave. So one of the things we have built in is that mobility. We have also built in cross-training. We find that particularly in some of the areas, what you were trained to do is not necessarily what you do, because of the limited——

Senator HEITKAMP. One of the pieces of advice that Senator Tester used to provide, and I used to follow up on, is there are people who live up there.

Secretary NIELSEN. Absolutely.

Senator HEITKAMP. There are people who live on the northern tier. They like it.

Secretary NIELSEN. Yes.

Senator HEITKAMP. That is home. They hunt. They fish. They know exactly what they are doing. They have friends and family. We need to do better recruiting from the local people who live there, who have lived that lifestyle, because if you move someone in from Tennessee, let us say, and then an ICE position comes open in Tennessee, we will lose them from Border Patrol. And so we have seen this. We have talked to the folks up there. Very much would like to see you look at recruiting within the area, because those are folks who are used to that lifestyle.

Secretary NIELSEN. Really quickly on that one, we found that we were not very good at that, which is partly why we are working with Accenture. And I know the Ranking Member had some concerns that she mentioned at the front. I am happy to come 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 are saying.

Senator HEITKAMP. No, I think you would be more successful in terms of retention, and I am out of time. I will probably submit some additional questions for the record, and you probably know I am concerned and aware of some challenges we have with the border sheriffs. That is a critical relationship, both in the Northern Border and the Southern Border, and we want to follow up on some of the issues that we have had with the local law enforcement.

Secretary NIELSEN. Yes, and Mr. Chairman, do you mind if I just respond to that quickly?

Chairman JOHNSON. No. Fine.

Secretary NIELSEN. You and I had a brief conversation. I could not agree more. I spoke with the sheriff in Cochise County. I have met with a variety of sheriffs when I was in Texas. I met with the National Sheriffs Association last week.

Senator HEITKAMP. Good.

Secretary NIELSEN. I will continue to meet with them. But yes, we look to their expertise, their experience. They are a very important part of understanding the needs.

Senator HEITKAMP. And they can be an incredible resource for you in terms of intel if you have a relationship with them.

Secretary NIELSEN. Yes. I agree. Thank you.

Senator HEITKAMP. Thank you.

Chairman JOHNSON. No, 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 if those parents want to do it legally they can go right up to the port of entry, claim asylum, and then, basically have to make the case. But they are coming across illegally because they do not want to have to go through that process, the legal process.

So Secretary Nielsen, DHS is enforcing the laws, and if we do not like the laws we are going to have to try and change them. But again, it is not what DHS is doing to them. DHS is forced to react and is forced to follow the law.

Secretary NIELSEN. Yes, sir.

Chairman JOHNSON. Senator Peters.

OPENING STATEMENT OF SENATOR PETERS

Senator PETERS. Thank you, Mr. Chairman. Secretary Nielsen, thank you for being here.

Secretary NIELSEN. Good afternoon.

Senator PETERS. Secretary Nielsen, I think you are well aware that probably the most significant threat that we have to our national security comes from cyber attacks, and we are seeing these cyber attacks increase in frequency as well as in sophistication.

And 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 threat. And yet often times we operate in silos. Different agencies are doing their own thing and there is not any kind of communication between them. So there has 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 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 is why I was disappointed to hear reports that National Security Advisor John Bolton is considering eliminating the White House Cyber Coordinator position within the White House.

What impact would this change in leadership have, do you think, on the national cyber mission?

Secretary 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 are bringing all to bear, not just through sharing of capacity and capabilities but clarifying and reclarifying our roles and responsibilities from policy efforts.

So your underlying point is valid. It is top-of-mind for me, because no one entity has all 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 U.S. Coast Guard (USCG), within the Transportation Security Agency (TSA), and, of course, within NPPD. So we are trying to knit all that together so that we have best-in-class services through that collective defense model.

Senator PETERS. So you mentioned you were not aware of 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 cybersecurity? Is there ongoing communication coordination?

Secretary NIELSEN. Since Ambassador Bolton has come onto the job, he and I speak regularly. We spoke over the weekend about events that were emerging in Tennessee, for example, in the alleged cyber attack. So we continue 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 cybersecurity strategy. We released the DHS Cybersecurity Strategy today. We did that in close coordination with the National Security Council (NSC).

Senator PETERS. It has been reported that the United States may see increased cyber attacks from Iran in the coming weeks and month. Has the Department seen an increase in Iranian cyber attacks in the past week?

Secretary NIELSEN. We have not but we are looking. We have something, a posture that we call Shields Up. We are 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 activity.

Senator PETERS. So you are anticipating it may be a reality.

Secretary NIELSEN. We are anticipating it is a possibility and, therefore, we will be prepared.

Senator PETERS. I would discuss the Northern Border, pick up on Senator Heitkamp, coming from a Northern Border, up in Michigan. We have two of the Nation's busiest border crossings in Michigan, one up in Port Huron, with Canada, and Sarnia 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 Department has to keep us safe, 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, North America, the Gordie Howe Bridge. In fact, it has been funded by the Canadian government but looking for resources from the United States to make sure that our Customs plaza is fully funded. 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, at the same time, allowing commerce to move efficiently across that border?

Secretary NIELSEN. Yes. We would like to facilitate legal trade and travel, as you know. I am not as familiar with this but, yes, we would want to make sure that it allows legal trade and travel and facilitates that.

Senator PETERS. Well, I would like to have a further discussion with you——

Secretary NIELSEN. Happy to.

Senator PETERS [continuing]. 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 is one that I think we need to pursue, and I would 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. That is 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 is an incredibly problematic situation, to say the least, for the city of Port Huron. And it is a piece of critical infrastructure. Do you have any idea when that plaza will be completed, and is that something that you are prepared to talk about today?

Secretary NIELSEN. No, but we will get you an answer this week.

Senator PETERS. Well, I would appreciate that as well. We will follow up.

The other final piece of major infrastructure in Michigan is the Soo Locks, which 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 recession. You would have production facilities shut down, factories, mines. Auto parts would have difficulty being constructed. So it certainly fits the definition of critical infrastructure in no uncertain terms.

We had President Trump in our State recently, who made a statement that we are going to fix the Soo Locks, we are going to construct the additional lock that we have been looking for, for some time. Could you give us an update on that?

Secretary NIELSEN. Sure. So what we have done at DHS is look at the modeling, because, as you say, it is a concentrated point of dependency, and some might even argue it is a single point of failure when it comes to trade. So we are doing the modeling and then we are also working with our counterparts in Commerce, the Council of Economic Advisors at the White House, to make sure that we understand all the consequences.

It is critical infrastructure. We treat it as such, so we are continuing that voluntary relationship to make sure that we have the redundancy and resiliency built in. But I am happy to come give you more detailed brief about what specifically we are doing.

Senator PETERS. Well, I would like a brief on what has happened since the President's statement. We have the report from DHS, which clearly states that it is critical infrastructure——

Secretary NIELSEN. Yes.

Senator PETERS [continuing]. That could lead to 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 is something that we need to focus on, and look forward to meeting with your folks to talk further about it.

Secretary NIELSEN. Thank you.

Chairman JOHNSON. I agree, Senator Peters, on that one. Senator Portman.

OPENING STATEMENT OF SENATOR PORTMAN

Senator PORTMAN. Thank you, Mr. Chairman, and Secretary Nielsen, thank you for——

Secretary NIELSEN. Good afternoon.

Senator PORTMAN [continuing]. Being here today, and for being here at a critical time. You are 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 an authorization bill, again, for the first time in almost two decades. It is overdue, in my view, and I think there are a lot of positive things in that bill.

So we appreciate your working with us. I asked you earlier today, in a conversation, what you thought about it, and I think you are generally supportive of it.

Secretary NIELSEN. Yes, sir.

Senator PORTMAN. And I hope you will work with the Chairman 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 about earlier, in the cybersecurity space, also in chemical weapons, as well as some important requirements to combat the illicit opioids that are coming into our country.

We here, in my State of Ohio, have had epidemic levels of opioid addiction and overdoses and deaths, starting with prescription drugs and heroin, and now it is this synthetic heroin, or synthetic opioids, including fentanyl, carfentanil, and others. It is 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 is coming in through the U.S. mail system, primarily. That is what all the experts say, including testimony before the Committee and before our Permanent Subcommittee on Investigations (PSI). So our own United States mail system is providing the conduit for this poison. It is not coming over land from Mexico, as heroin was. At least the vast majority of it is not. Most of it is coming from China. We know where it is coming from. We know how it is 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 is from, what is in it, where it is going.

The post office, for the most part, does not have that, because we do not have a requirement on them. The requirement was put in place on the other carriers right after September 11, 2001 (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 has been 16 years and they are still studying it.

So our legislation, that many Members of this Committee have strongly supported—I see Senator Hassan here, for instance. She has been a big advocate for this, as have others—is just to say let us make the post office also give your people what they say they need, and they have 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 on 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 is guaranteed. If you send it through a private carrier, it is not.

And the bottom line is in this authorization legislation, we have some good things about helping with regard to working with the Chinese government, through 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 will work with us. What your people will tell you is it is like finding a needle in a haystack if you do not 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, 50 times more powerful than heroin, 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 is relatively inexpensive.

You are aware about the legislation because we have talked about it, the STOP Act. You are 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 have heard rumors that the House may move on something that is a watered-down version. They, by the way, have 270 cosponsors of our bill, and yet the committee there, the Ways and Means Committee, apparently is talking about giving the post office more time to do this, not having a requirement, ultimately, because there would be no penalties associated with it.

I guess I would ask you, are you willing to work with us and stick with us to ensure that we can require the post office to provide this information to your law enforcement folks so that we can stop more of this deadly poison from coming in?

Secretary NIELSEN. Yes, absolutely. You have my commitment and I know, as you know, you have that of Commissioner McAleenan as well.

Senator PORTMAN. And the Commissioner has been great 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 email that I got last week from a landscaper in Ohio. You and I have talked briefly about this issue. He says, "Rob, we have $8,000 in revenue per day. We are not able to capture over $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 on the labor force that he has relied on in the past.

Can you just tell us briefly what your commitment is—you and I have talked about this—with regard to the H–2B rule, getting it through on B, and then what you think ought to be done in terms of a legislative visa cap?

Secretary NIELSEN. Yes. The difficulty with the regulation process is it is the regulation process. I will just be honest. We go as fast as we can but the Administrative Procedure Act (APA) requires us to do certain things that take a while. What we have 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 regulation, the 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 is to take all of the information that the members have, which I am gathering—everyone I have 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 are not enough to package it up, give it back, and just put it in law." That will give the companies predictability, they will understand how many visas will be available, and they will understand when.

Right now, as you know, it is tied to the appropriations process, which it is anyone's guess when we can get that through. So it is very difficult on businesses.

Senator PORTMAN. Well, I would agree with your approach. My time is coming to an end. Just to say that meanwhile, right now, we need relief.

And then, finally, with regard to unaccompanied kids—and I do not 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 is not happening now for a lot of kids. So the memorandum of agreement is good. We want to get this joint operations concept in place in order to ensure these kids are protected.

Thank you, Mr. Chairman.

Chairman JOHNSON. Senator Portman, before I go into the second round of questions I kind of want to walk through. I will, by the way, reinforce what Senator Portman talked about, the H–2B visas. There is 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[1] 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, resulted in only 3.5 percent being returned, which, again, from my standpoint, when you come and you get to stay, that is a huge incentive for more to come.

But I want you to cover an example of UAC, 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 go through exactly what is the process—UAC show up, and let us say they do it legally.

Secretary NIELSEN. Sure. So a UAC, if they are unaccompanied, they come and they are put—OK, let me back up.

Chairman JOHNSON. Again, I want—the laws, the precedents, that actually——

Secretary NIELSEN. I understand.

Chairman JOHNSON [continuing]. Force you to do what you do.

Secretary NIELSEN. So if they are Mexican children, of Mexican origin, we can put them into expedited removal, if they had no legal reason to be here. So that means they have not claimed asylum, they do not have a legal visa, they are not part of the legal immigration system.

If they are other than Mexican, which is the phrase in the law—so that is, normally we talk about the Northern Triangle countries—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 we will help HHS vet the sponsors to help place the child in a safe place and safe care. So that is 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 is no valid reason to be here.

Chairman JOHNSON. Just quick talk about the laws, the legal precedent. DHS has to give up an unaccompanied child within 48 hours to HHS, and then HHS can only hold them for 20 days.

Secretary NIELSEN. Yes. So that is under the Flores Settlement, the combination of the Flores Settlement and the Trafficking Vic-

[1] The chart referenced by Senator Johnson appears in the Appendix on page 61.

tims Protection Act. The Trafficking Victims Protection Reauthorization Act is, in part, why we give them over to HHS.

Chairman JOHNSON. OK. Now family units.

Secretary NIELSEN. So family units, 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 are detained. If we do not believe they are a risk, on a case-by-case basis, we do other methods such as, we have an alternatives-to-detention process. The difficulty there is the backlog. So we have a 600,000-person backlog. We have had an increase of 1,700 percent in asylum claims over the last 10 or 15 years.

So what that means as they go through the system, is 80 percent of the people coming in pass that initial credible fear, but only 20 percent are actually granted asylum by a judge. So our concern is that there is just a lot of fraud. It does not 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 do not allow you to seek asylum for the sole purpose of family reunification.

Chairman JOHNSON. But of the family units that have come here since 2013, how many have been returned because they do not qualify for asylum?

Secretary NIELSEN. Again, if they are with the children we have to release the children, so that often means we release the parents as well.

Chairman JOHNSON. So a vast majority are still in this country.

Secretary NIELSEN. Yes, sir.

Chairman JOHNSON. OK. Now an adult with credible fear.

Secretary NIELSEN. So adult with credible fear, we process—well, it is interesting. We have ongoing litigation that prevents us, in some cases, from detaining them. In some cases we 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. If they claim asylum they go into the asylum bucket. Again, the problem with the asylum bucket is the backlog, and it is 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.

Chairman JOHNSON. OK. Thank you. Senator McCaskill.

Senator MCCASKILL. First of all, I think you are really working hard at trying to address some of the shortcomings, in terms of these children, and oversight, sometimes, is unpleasant. But it does not mean that any of us up here do not 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 is that, as you know, there has been a lot of coverage about morale at TSA and problems of drugs and drinking and inappropriate behavior. These are actual complaints that were investigated by the Office of the Inspector General (OIG) at Homeland Security, and this activity predated you, so I want to be clear about that.

But following this investigation by the Inspector General (IG), four charges were brought against a Senior Executive Service (SES) employee, including poor judgment for maintaining an inap-

propriate relationship; basically lying about an intimate and sexual relationship during the investigation; inappropriate conduct through violation of hiring practices, and there are more details there; unprofessional conduct by forwarding an email to a subordinate employee in which he referred to an assistant administrator with inappropriate language I will not use in this hearing.

So what was really most concerning about this OIG report—and I have the report here and I would like to make it part of the record,[1] just so we have it, Mr. Chairman, without objection, I hope.

Chairman JOHNSON. Without objection.

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 favorable treatment. And as you know, one of the biggest problems you have with morale is that 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 Professional Responsibility, and the current Chief Counsel.

So, imagine my surprise when I find out that we are working on this, and who is in charge? The Chief Counsel. And, by the way, the table of penalties required that this SES be removed, according to the table of penalties at TSA. Instead, they offered a suspension and permitted the employee to continue to receive the same salary that he was receiving.

The Chairman of this Committee, and I sent a letter[2] to you, in February, asking about what disciplinary actions have been taken against this senior leadership, that interfered in a disciplinary process involving a complaint by a whistleblower that has been investigated by the IG and found to be valid. And I am particularly worried that we have put the fox in charge of the henhouse if this Chief Counsel that was part of the problem, as cited in this report, is in fact the one that is supposedly now helping making sure this does not happen again.

So you are welcome to take this for the record, Secretary, if you do not have an answer for today, but this is why you have bad morale.

Secretary NIELSEN. I would like to get into more detail of it on the record—or excuse me, to return—to get back to you. But let me just say this. Whistleblowers need to be protected, period. The IG needs to be listened to. The IG serves an extraordinarily important function, particularly at a department the size of DHS. I would say that if a policy is such that a person who is part of the complaint is then put in charge of rectifying the situation, that is totally inappropriate, I will for sure look into that. You are right, that is not acceptable.

And accountability. You have 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

[1] The OIG report referenced by Senator McCaskill appears in the Appendix on page 66.
[2] The letter referenced by Senator McCaskill appears in the Appendix on page 63.

need to all hold them accountable as a community. It is as simple and as complicated as that. It needs to be done.

I am not as familiar with the particular one, but I can guarantee you I will look into it and get back to you.

Senator MCCASKILL. I would love that, and I should just tell you that the staff of this Committee has been talking to a number of whistleblowers from the Federal marshal program.

Secretary NIELSEN. Oh, I see. OK.

Senator MCCASKILL. These are all the air marshals. And you have trouble there. There are inequities that are occurring, there is favoritism that is occurring, there is abusive behavior that is occurring, and we have a string of whistleblowers that have been coming to us about various problems.

So if you would 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 would like your take on, now that you have been there a short period of time, but, nonetheless, long enough, I would like to know 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, or if we are putting marshals on too many flights. I have always questioned some of the procedures, because flying back and forth to D.C. on commercial airlines as often as I do, for many years it was really obvious who the marshals were. They were the two guys in jeans that got on first. And so if there was some effort to have them intermingle and be effective at detecting and shutting down threats it did not work.

It was like, OK, everybody is standing in line at Southwest, all of us. We were waiting to be herded on, standing by our stanchion. Well, there goes the marshals. They are going to load us pretty soon. And then I would say something, "Have the marshals gotten on yet?" and everybody would look at me like I had said a dirty word. They said, "Oh, what are you talking about?", like it was some secret.

So it 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.

Secretary NIELSEN. Yes. I appreciate that. What we are in the process of doing with the Administrator right now is actually looking at that full program. How should it work? Does it make sense? Is the modeling right? The example that you are using, 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.

Senator MCCASKILL. Should not they give them uniforms then?

Secretary NIELSEN. I am not disagreeing. I am just explaining as I understand it.

Senator MCCASKILL. Yes.

Secretary NIELSEN. But your point is valid, which is as long as we are resourcing this way, we want it to be effective.

So the Administrator and I are happy to come talk to you about it, our initial findings, and what we are looking at, but yes, it

needs to be looked at, from soup to nuts, to make sure that it is effective.

Senator MCCASKILL. And we will be glad, at the appropriate time, to share with you some of the whistleblower investigations that are ongoing, but I would like your specific response to that IG 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.

Chairman JOHNSON. Senator Hassan.

Senator 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 2019, the Office of Terrorism Prevention Partnerships is "dedicated to the mission of countering violent extremism (CVE) and the building of community partnerships necessary to support countering violent extremism efforts." That is 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?

Secretary NIELSEN. There is some field staff. I am happy to get you the specific numbers.

Just more broadly, very quickly, what we have done is we have put the office within the larger Office of Public Engagement, so we have actually force-multiplied the office-——

Senator HASSAN. Right.

Secretary NIELSEN [continuing]. 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.

Senator HASSAN. OK. Well, I would love to have our offices follow up——

Secretary NIELSEN. Happy to.

Senator HASSAN [continuing]. And get full information about that.

And as a follow-up to that, DHS co-leads the Interagency Task Force on Countering Violent Extremism, along with the Justice Department. The task force was created to help coordinate the government's ability to tackle home-grown 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?

Secretary NIELSEN. I do not know the specific number but happy to get back to you this week.

Senator HASSAN. OK. I would appreciate that greatly because, obviously, especially when it comes to home-grown terrorism, the name of the game is coordination and communication——

Secretary NIELSEN. Absolutely.

Senator HASSAN [continuing]. Among agencies 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 Seacoast 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 would 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 for review and reconsider their efforts to deport members of this community?

Secretary NIELSEN. We have asked them to review it. On the face of it, we do not have an instance—but I would love to work with both of you to get some actual facts—we do not have an instance that they have moved in any way from prioritization. Again, our prioritization, as you know, is criminals. We do not prioritize groups, nationalities, religious groups. So, yes, we are looking at it. We are particularly concerned, as you know, given the recent terrorist events in Indonesia, against Christians, Catholics, and in particular cases.

Senator HASSAN. And let me just be clear that these are people who regularly went in for their check-in at ICE on a regular basis, and all of a sudden, last year, they got tickets, leave, and if were not for a Federal District Court telling your Department that they could not deport these people, they would be deported. And these people are not criminals, so if 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 am 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 would 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——

Secretary NIELSEN. Yes.

Senator HASSAN [continuing]. In the near term.

Secretary NIELSEN. Yes, ma'am.

Senator HASSAN. OK. Thank you.

Last, I know there has 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 will 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

went to sponsors, sponsor families and the like, it was very clear that the Department does not, neither DHS or HHS, they do not coordinate at all with local authorities and with the States as we look at how we are going to address the needs of children, generally, who come to this country and are unaccompanied or separated from their families.

And do not support the separation of these children from their families. I will 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 is imperative that the Department and HHS work with the States. States have interstate compacts about how to protect children who are not with their families. It is important for local school districts, for instance, to know to expect these children at school, not only for the local districts' planning purposes but so that if these kids do not show up there is somebody, somewhere who knows to go look for them and find out what has happened to them.

So I just think to echo what you have 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.

Chairman JOHNSON. Senator Harris.

Senator HARRIS. Thank you. Secretary Nielsen, how many children have been separated from their parents at ports of entry since January 2017?

Secretary NIELSEN. As I understand, you have referenced 700 before, which I believe was an HHS number. Our figures are not the same as theirs, but we are happy to give you our numbers and explain why they differ.

Senator HARRIS. OK, great. And can you submit that by the end of next week, with the other information?

Senator MCCASKILL. Would you share that with the Committee? I think I have something——

Secretary NIELSEN. Of course.

Senator MCCASKILL. If you guys have different numbers of children, that is something that, just on its face, is rather alarming. So I would like to figure out why that is.

Secretary NIELSEN. Yes. I think it is, in part, because when HHS does the interview they do not ask the child why they are unaccompanied, so their numbers are different than ours, if you are asking at the border, for example. So it is not necessarily that they conflict. It is just they are asking different questions. But, yes, of course, we will provide that——

Senator HARRIS. Thanks.

Secretary NIELSEN [continuing]. And explain that.

Senator HARRIS. And again, I have asked these questions of Under Secretary McCament before so perhaps everyone is 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 those parents? And that would be that number that you are now going to bring to us. OK. And also, what timelines, in terms of the policy that you have, exist to establish a parental relationship, or to re-

unify families. I am hoping, and will assume, that your protocols would have such a goal in mind, or at least a timeframe.

Secretary NIELSEN. Yes, ma'am they do. Part of it is a voluntary DNA test, if it is 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 is not dispositive to an appropriate custodian.

But, yes, of course, that is our goal.

Senator 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.

Regarding detention conditions, Secretary, are you aware that multiple Federal oversight bodies, such as the OIG and the Government Accountability Office (GAO), have documented medical negligence of immigrants in the detention system, and, in particular, that ICE has reported 170 deaths in their custody since 2003? Are you familiar with that?

Secretary NIELSEN. No, ma'am.

Senator HARRIS. Are you aware that they also found that pregnant women, in particular, received insufficient medical attention while in custody, resulting in dehydration and even miscarriages?

Secretary NIELSEN. I do not believe that is a current assessment of our detention facilities.

Senator HARRIS. OK. Can you please submit to this Committee a current assessment——

Secretary NIELSEN. Yes, I am happy to.

Senator HARRIS [continuing]. On that point?

Secretary NIELSEN. 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 or once they enter their third trimester. We provide them separate housing. So, yes, we are happy to detail all of the things that we do to take good care of them.

Senator HARRIS. And did you submit that to the OIG in response to their findings?

Secretary NIELSEN. We have been, yes, of course, working in conjunction with the OIG. I am not sure exactly what the date is of the OIG report that you are referencing. But I will look into it after this.

Senator HARRIS. OK. And then also between fiscal year 2012 and March 2018, it is our understanding—before I go on, the OIG report is from December 2017, so it is very recent, 5 months ago.

Also, between fiscal year 2012 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?

Secretary NIELSEN. I am not familiar with that number, no.

Senator 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,[1] and what is the protocol in place in terms of what is being done to allow the victim to be in

[1] The information requested by Senator Harris appears in the Appendix on page 137.

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?

Secretary NIELSEN. I will. What I have done is I have talked to the International Committee of the Red Cross and I had them visit some of our detention facilities. I am sure they would be happy to come brief you on that. But their determination is that they saw nothing but appropriate detention, and, in fact, much better detention they, in their experience, have seen in other areas.

Senator HARRIS. I am sorry. Is this in response to the concern that you have received 1,448 allegations of sexual abuse in detention facilities?

Secretary NIELSEN. No, ma'am.

Senator HARRIS. OK.

Secretary NIELSEN. This is in response to my wanting to ensure that the detention centers are taking appropriate care of anybody who is detained.

Senator HARRIS. OK. Well, obviously, sexual abuse would not fall into that category.

Secretary NIELSEN. It would not.

Senator HARRIS. Yes.

Secretary NIELSEN. I guess what I am saying is that just happened. I do not know when these results are that you are talking about, so I will look into them, of course.

Senator HARRIS. Fiscal year 2012 through March 2018, this year.

Secretary NIELSEN. We will look into it.

Senator HARRIS. Thank you.

And regarding your treatment in facilities of pregnant women, in December 2014, 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 presumption of release in August 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 "much better care than when they are 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 are all criticized the harmful effects of immigration detention on the medical and mental health of pregnant women?

Secretary 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 health care. The questioning was whether or not they received adequate health care. I was saying yes, they do, and it is paid for. So if they are coming here and they are fleeing persecution and they do not have adequate funds and they are trying to get equivalent

care in the shadows, it was my discussion that we were providing care within the detention centers.

Senator HARRIS. So is it your intention to continue with ending a program that allowed for presumptive release for pregnant women?

Secretary NIELSEN. If you are in your third trimester, you will be released, but if you break the law you will be detained.

Senator HARRIS. So when, in the third trimester, exactly?

Secretary NIELSEN. When it begins.

Senator HARRIS. At the beginning of the third trimester?

Secretary NIELSEN. Yes, ma'am.

Senator HARRIS. And is there a directive that has gone out?

Secretary NIELSEN. Yes.

Senator HARRIS. Will you supply that to the Committee, please?

Secretary NIELSEN. Yes. It is the same policy we have 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.

Senator HARRIS. Thank you.

Chairman JOHNSON. As long as we are talking about UACs, still, and you are going to be providing some data, I have just got a couple of requests. In terms of family units, the best numbers I can come up with since 2013, about 225,000 family units. If you just take the minimum, one child, that is basically 450,000 additional individuals. You are saying about 700 we have seen separations of parent from is that from that 2013, or is that just currently in detention?

Secretary NIELSEN. I believe the HHS number was a year-long number.

Chairman JOHNSON. Year? OK. So, yes, I would kind of just like all that data together. As long as you are also providing that, I would like to know which of those separations are due because you simply are not aware—is that really the parent?

Secretary NIELSEN. Understood.

Chairman JOHNSON. Is there some question? So you are really taking that step to protect the child so we are not dealing with a human trafficking situation.

We had a whistleblower in May 2017, refer to a—I think it was in 2014, 18 self-admitted MS–13 members were apprehended and just released. At that PSI hearing, I brought some more information. I do not have it right here but it is actually a rather alarming number of MS–13 members that have been captured, and some of them have been deported.

Do you have DHS, or are you keeping more accurate figures on MS–13?

Secretary 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 6 months if their country is not willing to take them back. Many countries, such as China and Cuba are not willing to take them back. The criminals go back into the community. It was 1,700 released last year.

Chairman JOHNSON. OK. I was going to—that just—so that is—that was last year. Do you have that information going back a number of years?

Secretary NIELSEN. Happy to.

Chairman JOHNSON. OK. I would like that type of data.

Working on a piece of legislation, in terms of authorities on unidentified aircraft systems, this is a really complex issue. It really is. I guess I would 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 are being used in the battlefield, and they are dropping—again, I really do not want to put any ideas in people's heads.

But can you just talk about what you want to do? In working with DHS I was trying to at least get into discussion, kind of a more robust response, and again, I realize there is jurisdictional issues, that type of thing. But I just wanted to have you talk a little bit more of the complexities of the issue, and baseline, what you are asking for in terms of authority, what you absolutely need.

Secretary 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 authority. So what we have done is we have mimicked our request and then the bill this Committee has introduced.

Chairman JOHNSON. So, real quick, name the facilities the Department of Defense has. Is it just around their facilities? I mean, how limited is their capabilities?

Secretary NIELSEN. Theirs is limited as well, yes. So in, I would not say all of their—I defer to the Department of Defense, of course, but it does not cover all of their facilities, so it is very specific and limited cases, yes.

Chairman JOHNSON. So we have sports stadiums and we have a number of venues that simply have—there is no authority whatsoever—not local, not State, not Federal.

Secretary NIELSEN. Correct.

Chairman JOHNSON. OK.

Secretary NIELSEN. So soft targets is a big concern, and then, of course, the border. So we are already seeing them being used. I also do not want to put any ideas in people's minds, but we already see them being used in nefarious ways on the border.

Chairman JOHNSON. The Department of Energy has some authorities as well?

Secretary NIELSEN. Department of Energy does. DHS and DOJ are the two departments that are currently lacking any authority.

In terms of what we are doing, you are right. Because we lack authority, we have limitations on testing, we have limitations on research and development (R&D), we have limitations on purchasing and using. 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.

Chairman JOHNSON. I want to continue to work with you. I think this is absolutely crucial.

Senator MCCASKILL. I just need to correct something for the record. In a section of my books I had a whole section on the mo-

rale and whistleblower issues at the Federal marshal's program. Then I had a separate section on the IG report where there were problems with an SES employee that was manipulated by senior management. That was TSA.

Secretary NIELSEN. OK. Thank you.

Senator MCCASKILL. So I wanted to make sure we did not close the hearing without me explaining that I got them conflated as we were talking about it. I wanted to clarify that before we closed out the hearing.

Chairman JOHNSON. OK. Not a problem.

Let us quick turn to election security. We have held a briefing on this. We have certainly talked about this in other venues, during other hearings as well. From my standpoint there are three areas that are at risk. It is affecting the voter tally, I mean, the actual vote. 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 is my understanding, first of all, that the Department has all the authorities you believe you need to address all three. Is that correct?

Secretary NIELSEN. Yes, that is correct.

Chairman JOHNSON. Voter tallies, because election machines are not tied into the Internet, although there are some with Wi-Fi, they are disabled.

Secretary NIELSEN. Right. Our best practice that we recommend is do not connect to the Internet.

Chairman JOHNSON. They really are not, unless it is done through nefarious means or something. Correct?

Secretary NIELSEN. Yes.

Chairman JOHNSON. So it would be really very difficult to change the vote tally, for an outside actor, through cyber attack or something, to actually change the vote tally. Is that your understanding?

Secretary NIELSEN. That is my understanding. I think what is more likely is the counter-influence question. Would they change the minds of Americans through propaganda, etc? So that is something the Federal Bureau of Investigation (FBI) has lead on, and we are working on that.

Chairman JOHNSON. That would be the Facebook, where they are——

Secretary NIELSEN. Yes, sir.

Chairman JOHNSON [continuing]. OK, basically illegally campaigning. Voter files, that is a concern, but again, we have different controls and things in place. We know that. It would be disrupting an election and then that would turn it into, is this a legitimate election?

Secretary NIELSEN. What we recommend there is redundancy. If you do not use a paper ballot, then make sure that you have an audit function so that, at the end of the day, we can all assure ourselves that Americans have voted and their vote counts and it is counted correctly.

Chairman JOHNSON. One of the reasons I am pointing this out, and then I will 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 actor to both affect the voter file or the vote tally, we actually do the maligned actor's job for them. So I think it is very important that we are very honest in terms of what is the threat, in terms of the first two, so we do not affect the third.

Secretary NIELSEN. Sir, I agree with that. What we are doing at DHS, as you know, the responsibility, first and foremost, belongs to State and local election officials. We are working with them. We are 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 will do it again for the Senate. I think it is very important that everyone understands what we are doing, but also what the States are doing and, in some cases, they need to do, to make sure that they assure their public that they are doing everything they can.

Chairman JOHNSON. But again, you believe you have the authorities and resources——

Secretary NIELSEN. We have all the authorities we need.

Chairman JOHNSON [continuing]. To counter this?

Secretary NIELSEN. Yes.

Chairman JOHNSON. Senator McCaskill, do you have any further questions?

Well, then we will close out the hearing. Secretary Nielsen, again, thank you for your service. We certainly appreciate you taking the time here and your forthright answers to our questions.

The hearing record will remain open for 15 days, until May 30, at 5 p.m., for the submission of statements and questions for the record.

This hearing is adjourned.

[Whereupon, at 4:42 p.m., the Committee was adjourned.]

APPENDIX

Chairman Johnson's Opening Statement
"Authorities and Resources Needed to Protect and Secure the United States"
Tuesday, May 15, 2018

As prepared for delivery:

I would like to thank Secretary Nielsen for appearing before the Committee today to discuss the authorities and resources the Department of Homeland Security needs to protect and secure the United States.

Under the Trump Administration and Secretary Nielsen's leadership, the Department has dedicated itself to securing our border, enforcing immigration laws, and protecting the homeland. In spite of multiple impediments within law and legal precedent, progress has been made. Arrests of MS-13 gang members are up more than 80 percent since the start of this Administration. Apprehensions at the border are surpassing fiscal year 2016 levels, totaling over 50,000 in just the last two months. Last year marked another record year for maritime narcotics interdictions, with more than $6 billion worth of cocaine seized. And the Federal Emergency Management Agency led an unprecedented response to disasters that affected nearly fifteen percent of the nation's population.

This Committee has a tradition of working closely with the Department on a bipartisan basis to provide the authorities it needs to achieve its missions. Notably, last Congress, we passed reforms to strengthen the Department's "unity of effort" — a priority for former Secretary Jeh Johnson which the Trump Administration has supported and continued. This March, our committee passed a historic, bipartisan reauthorization bill. If passed, this bipartisan legislation would provide the authorities, resources, and guidance that the DHS workforce needs to protect our nation. It would also begin the process of addressing the organizational and jurisdictional challenges that have made authorizing DHS so difficult for the last 15 years.

The existing DHS authorization stems from an age before smart phones, social media, and unmanned aerial systems. Today's DHS needs the tools and resources to defeat a modern enemy and address emerging challenges. Our authorization bill provides those tools. The Countering Weapons of Mass Destruction Office and the Cybersecurity and Infrastructure Agency would help address emerging threats. Infrastructure mitigation programs would help create a more resilient nation. Improved performance metrics would help enable Congress to provide actionable guidance and reduce costs.

Additionally, we recently introduced legislation that gives the Department the authority to counter evolving security risks to the public posed by drones.

We know there is more work to be done. As mentioned above, laws, legal precedents, and loopholes still inhibit us from fully defending our borders. Today's discussion will focus on providing the DHS workforce the tools that it needs to execute its mission. I look forward to hearing Secretary Nielsen's testimony and continuing to work with her on actions to equip and empower the men and women of DHS. We thank them for their service and the protection they provide to our nation.

U.S. Senate Homeland Security and Governmental Affairs Committee

"Authorities and Resources Needed to Protect and Secure the United States"

May 15, 2018

Ranking Member Claire McCaskill

Opening Statement

Thank you, Secretary Nielsen, for appearing before us to discuss resources needed to protect and secure the United States. I want to thank you and the men and women of DHS for your service to our nation. I appreciate you appearing before us and being willing to talk about DHS's budget, authorities and policies—some of which are a matter of some controversy.

As we discuss FY 2019 budget priorities and resources for the Department, I think it is important to point out that one of the key functions of this committee is to provide oversight. We ask questions that are not easy; questions that may be uncomfortable, but that can ultimately lead to a safer United States for all Americans. In conducing oversight, my colleagues and I will continue to demand honest and professional answers from you and the components of your department. I have said it before, and I will say it again, I have never found any government agency that worked better with less oversight. I will continue to ask hard questions, and I hope that you will live up to your duty to answer them.

Today, I want to talk about a threat that continues to affect Americans across our country, and especially my home state of Missouri: the opioid epidemic. While the opioid epidemic is certainly a public health crisis, it is also a border security crisis. The border may seem far from many of the communities impacted by this epidemic, but lapses in the security of those borders have compromised our efforts to stop it from spreading.

As you know, DHS, and in particular its component Customs and Border Protection (or CBP), play a critical role in stemming the opioid epidemic by stopping illicit opioids, like fentanyl, before they can enter the United States. Understanding CBP's efforts to intercept opioids is critical to understanding how we can work to prevent more opioids from getting past their detection efforts.

Last week I released a report from the minority staff of this committee analyzing efforts taken by DHS to stem the opioid crisis. Mr. Chairman, I would ask that this report, "Combatting the Opioid Epidemic: Intercepting Illicit Opioids at Ports of Entry," be entered into the record.

This report's findings paint a grim picture. It shows that the amount of the illicit opioid fentanyl seized by CBP is increasing dramatically, and that despite this, DHS has failed to adequately resource the areas where it is most commonly seized.

The report found that 88% of all opioids seized over the past five years were seized at ports of entry as opposed to other locations along the border. In just five years, Port Officers alone seized over 25,000 pounds of heroin, morphine, prescription opiates, and fentanyl. It also found that across CBP, the amount of fentanyl being sized is increasing rapidly. At ports of entry, which seize 85% of all the fentanyl seized by CBP, the amount of fentanyl seized has doubled in just one year.

According to our investigation, CBP is facing fentanyl seizure increases on two major fronts, at land ports of entry on the southern border, and in mail facilities. Land ports of entry on the southern border simply do not have enough officers to address this. The two field offices that seized more than half of all of CBP's opioid seizures having staffing shortages so pronounced that CBP addressed it with its own mission name: QUOTE "Operation Overflow." For the last two years, this operation has diverted between 80 and 100 officers to temporarily make up staffing shortages at these critical border crossings. Mail facilities are similarly feeling staffing strains. Right now, although mail facilities have the largest number of individual CBP seizures of opioids, less than 400 Port Officers are there to inspect packages. The U.S. Postal Service alone sees more than 1.3 million packages every day; that is not to mention all of the packages coming in via fed ex

and UPS. We are facing an epidemic that is increasingly coming in through the mail, and we have only 400 overworked Port Officers to stop it.

What is not commonly known is that DHS differentiates between officers at ports of entry and officers in areas along the border. While DHS's budget prioritizes funding to support personnel along the border and in the interior of the United States, ports of entry have been completely left out. In its FY 2019 budget, DHS is requesting NO additional officers that will go to ports of entry. Across the United States, ports of entry are understaffed by over 4,000 positions. That is several thousand officers that could be preventing opioids from entering the United States. Even if CBP hires all of the authorized positions they are allotted, they would be 2,700 positions short of THEIR OWN ANALYSIS of what they need.

Right now Americans across the United States are being impacted by an epidemic that is growing in part because of our failure stop the threat before it crosses our border. Border security means security across the whole border and leaving ports of entry out creates gaps in our security. As I have said, there is no silver bullet to solving this epidemic. But we know where the vast majority of opioids are entering the United States. The very least we can do is provide our ports with the resources and staffing they need.

Secretary Nielsen, I thank you for appearing before us, and I look forward to your answers.

WRITTEN TESTIMONY

OF

KIRSTJEN M. NIELSEN
SECRETARY
U.S. DEPARTMENT OF HOMELAND SECURITY

FOR A HEARING ON

"AUTHORITIES AND RESOURCES NEEDED TO PROTECT AND SECURE THE UNITED STATES"

BEFORE THE

UNITED STATES SENATE
COMMITTEE ON HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS

Tuesday, May 15, 2018

Washington, DC

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

It is a privilege to appear before you today to discuss the Department of Homeland Security's (DHS) crucial missions and how the President's Fiscal Year (FY) 2019 Budget request for the Department will help secure our homeland. Today I want to cover two main subjects: (1) certain authorities we need in order to close security gaps; and (2) the resources required to execute our missions.

Authorities Needed to Protect and Secure the United States

First, I'd like to thank the Committee for its efforts in reporting out an authorization bill for the Department in March. We need this legislation. It includes vital provisions for protecting our country, and it will update our authorities. I cannot stress enough how important this is. The Department was established 15 years ago—before smart phones were a part of everyday life, and our authorities have not kept pace with evolving threats, adaptive enemies, and emboldened adversaries. I applaud this Committee for championing a DHS reauthorization, alongside the House Homeland Security Committee. Now we need quick passage.

The Committee's bill establishes the Cybersecurity and Infrastructure Security Agency (CISA), which will replace the National Protection and Programs Directorate as the focal point for defending civilian Federal networks, protecting critical infrastructure, and interfacing with state, local, private sector, and other partners to advance collective defense in cyberspace. We need CISA urgently. The authorization of the Agency will allow DHS to better engage with stakeholders to guard against threats from nation states, cyber criminals, and other nefarious actors in the digital battlespace. This includes enhancing election security nationwide, which is one of the primary reasons we need Congress to pass this bill as soon as possible.

The bill also establishes the Countering Weapons of Mass Destruction Office (CWMD) at DHS. Let me be clear: WMD threats are real and on the rise. Nation states continue to advance their chemical, biological, radiological, and nuclear programs. And as we've seen in recent months, they are not afraid to use such deadly weapons. At the same time, terrorists continue to pursue WMD agents for use in attacks, and groups like ISIS have already used chemical weapons on foreign battlefields. CWMD is the Department's nerve center for protecting our country against these dangers, and the reauthorization bill would make sure CWMD is made permanent and can keep pace with today's dynamic threat landscape.

In addition, the bill includes important provisions for Federal Emergency Management Agency (FEMA) to help reduce disaster costs through pre-disaster mitigation, which the Administration supports when paired with reductions to other Federal spending. The Administration looks forward to working with Congress to ensure that FEMA can best help disaster survivors while simultaneously protecting American taxpayers from escalating federal spending on disasters. As we head into hurricane season, it is important we get these measures put in place.

Going forward, a regular authorization process will enable Congress and DHS to more quickly address emerging challenges. Senate passage will go a long way in continuing to improve

morale by demonstrating Congress's commitment to the men and women of our Department and their mission.

We also hope to work with you in the coming weeks to advance the Administration's legislative proposal seeking authority to counter the growing threat posed by unmanned aircraft systems (UAS). We have already seen transnational criminals adopt this technology to move drugs across the border. Terrorist groups overseas have used drones to conduct attacks on the battlefield and have plotted to use them in terrorist attacks elsewhere. This is a very serious, looming threat that we are unprepared to confront. We are currently unable to effectively counter malicious use of drones because we are hampered by federal laws enacted long before UAS technology was available for commercial and consumer use.

The Administration's legislative proposal would authorize DHS and the Department of Justice (DOJ) to conduct limited counter-UAS operations to identify, track, and mitigate drone threats. These authorities would apply to a narrow set of important and prioritized missions, and it would allow DHS and DOJ not only to protect Americans against UAS threats but to protect our own personnel who perform law enforcement and protective missions. I am grateful for the cooperation we have received so far from the Chairman and Ranking Member in working to move these authorities forward.

Our legislation mirrors the existing statutory authority granted to Department of Defense (DOD) in the Fiscal Years (FY) 2017 and 2018 National Defense Authorization Acts (NDAA). DOD has been able to use these authorities to protect designated facilities and assets here in the United States. The legislative proposal contains robust measures designed to protect privacy and civil liberties. Specifically, the proposal limits the collection and retention of communications to and from the drone and ensures that such collection is undertaken only for the purpose of mitigating the threat caused by the UAS.

When it comes to critical needs, there is probably no issue more important for DHS right now than border security and immigration. It is my job to protect our borders and enforce our immigration laws. But it is also important for me to tell you when I *cannot* do my job. So I want to make clear to the Committee today that legal loopholes are preventing me from fully securing our borders and ensuring the integrity of our immigration system. Our laws are outdated. Our system is broken. And our borders are being exploited by illegal aliens, criminals, smugglers, and a range of nefarious actors. We are doing everything we can—within our authorities—to defend our country. But I implore Congress to act by closing dangerous loopholes and addressing this crisis once and for all. Any nation that cannot control its borders ceases to be a sovereign nation.

DHS will continue to work with Members of Congress to pass critical legislation to eliminate the loopholes that undermine border security and place our communities at risk. This includes terminating the *Flores* Settlement Agreement, amending the TVPRA, clarifying the statutory definitions of "unaccompanied alien children" and "special immigrant juvenile," passing legislation that clearly defines an "aggravated felony," and allowing DHS to promptly remove violent criminal aliens from our nation. These solutions will provide the essential tools that the men and women of DHS need to secure our borders and defend our communities.

Resources Needed to Protect and Secure the United States

On the resources side, the FY 2019 Budget request provides funding to advance all core DHS missions. It sustains and strengthens our most critical programs and capabilities and places emphasis on protecting our nation from terrorism and countering threats; securing and managing our borders and enforcing our immigration laws; preserving and upholding the nation's prosperity and economic security; securing cyberspace and critical infrastructure; and strengthening homeland security preparedness resilience. Throughout all of these missions, the budget also prioritizes my goal of putting our dedicated employees first—and maturing DHS operations.

The FY 2019 President's Budget for DHS requests $47.5 billion in net discretionary funding and an additional $6.7 billion for the Disaster Relief Fund (DRF) for response and recovery from major disasters.

This Budget would make crucial investments needed to secure our borders against threats and illegal entry. The request includes recruitment, hiring, and training of 750 additional U.S. Border Patrol Agents, 2,000 additional U.S. Immigration and Customs Enforcement (ICE) law enforcement officers, and more than 1,500 support staff needed to more robustly execute the Department's border security and immigration enforcement missions. It also funds construction and renovations at the Federal Law Enforcement Training Centers to meet increased training requirements for DHS.

Investments in our layered defense at the border would include 65 miles of new border wall construction in the highest-traffic zones along the southwest border, as well as priority tactical infrastructure, border security technology improvements, and aircraft acquisition. The Administration also reiterates the importance of addressing the unfunded border wall requests from the FY 2018 Budget in addition to the investments outlined in the FY 2019 Budget. These investments ensure DHS law enforcement personnel are supported with effective surveillance technology and equipment to improve their ability to detect and interdict illegal activity.

The FY 2019 President's Budget also includes funding for 52,000 detention beds, including 2,500 beds reserved for family units, to ensure that apprehended aliens who are subject to removal from the United States—such as illegal border crossers, criminal aliens, and national security threats—are detained in safe and secure detention facilities pending their removal. For apprehended aliens who are not considered a threat to our communities, but who may pose a diminished flight risk, the President's Budget would fund ICE's Alternatives to Detention Program to provide intensive supervision for up to 82,000 average daily participants through a combination of home visits, office visits, alert response and electronic monitoring. Proposed funding for removal operations will facilitate the complex coordination required to return aliens safely and expeditiously to their home countries and pay for transportation costs.

Unfortunately, some of these critical missions are impeded by jurisdictions that refuse to cooperate with DHS in the enforcement of federal law. This makes it more dangerous for federal agents and officers to do their jobs. And it creates a greater threat to public safety, and results in

greater expense to American taxpayers. I hope the Committee will work with DHS to help make sure jurisdictions around the country do not harbor criminal aliens or put the men and women of DHS at risk while they are doing their jobs to protect the public.

The Budget gives our frontline operators the tools and resources they need to more aggressively disrupt and dismantle transnational threats. It would advance the Administration's efforts to block terrorists, criminals, and other nefarious actors from reaching the United States and exploiting our immigration system. It would further integrate intelligence into DHS operations to make sure rapid changes in the threat environment are met with a near-real-time change in our response. And it proposes funding across the Department for initiatives that will help us keep pace with adaptive enemies and new threats.

For example, the Budget focuses on bolstering DHS activities to counter transnational criminal organizations (TCOs). TCOs are facilitating the illicit flow of opioids and other deadly substances into America. The drugs and violence they import are a threat to our communities and the American people, which is why we are focused on ramping up counter-TCO activities. The Budget bolsters the capacity of ICE/Homeland Security Investigations special agents to conduct transnational criminal investigations, and it provides funding to support law enforcement hiring and workload growth consistent with this mission, including $105 million for critical training, IT, facility support infrastructure, and wiretaps associated with ICE's proposed increased staffing and workload.

The Budget proposes essential funding to implement the President's executive orders to intensify vetting of U.S.-bound travelers and individuals in our immigration system. Since the beginning of last year, DHS has undertaken historic efforts to improve every phase of the vetting process so that we can be more confident in knowing who is coming into our country—and more capable of identifying nefarious actors. This includes making applications more rigorous, deepening background checks, tightening travel and arrival screening, and enforcing foreign government information-sharing requirements. The Budget will facilitate the stand-up of the newly announced National Vetting Center (NVC), which will become a central U.S. Government hub for fusing intelligence, law enforcement, and homeland security data to enhance the vetting process. A detailed implementation plan is currently under development to identify NVC capacity and operational needs that will inform future budget requests.

DHS is seeking to provide critical resources to the U.S. Coast Guard (USCG) to better defend the nation against transnational threats and support the response to natural disasters. USCG secures our maritime borders by operating up to more than 1,500 miles offshore to extend the Nation's security and to enforce laws. During the 2017 hurricane season, the USCG, working alongside the Federal Emergency Management Agency (FEMA), was prepared and immediately responded to the needs of our citizens and partner nations. Their unique blend of statutory authorities combines civil law enforcement, response, and prevention with military service capabilities, resulting in an extremely agile force capable of responding to any significant event or emergency.

The FY 2019 President's Budget requests $1.9 billion for the recapitalization of USCG assets. This funding provides for a new Offshore Patrol Cutter, four Fast Response Cutters, and the

Nation's first new heavy Polar Icebreaker in more than 40 years, providing an advanced command, control and communications platform capable of operating in the harshest environments. It also provides for timely and necessary sensor and service-life extensions to aircraft and improvements to shore infrastructure. These are the investments we need to be making to defend our territory, and I hope the Committee will support our requests.

Furthermore, we are also seeking important cybersecurity enhancements. This Committee knows that the dangers we face online are serious, and they emanate from hackers, TCOs, nation-states, and other nefarious actors, as I noted earlier. DHS is on the digital frontlines of this fight and is undertaking historic efforts to safeguard the Federal Government's civilian information technology systems and to work with all levels of government, international partners, and business sectors to share cybersecurity information and build resilient systems.

The President's Budget would continue investments in cybersecurity initiatives that protect federal networks and address identified vulnerabilities. More than $644 million is requested for DHS's Continuous Diagnostics and Mitigation program and the National Cybersecurity Protection System, which provide network monitoring, intrusion prevention, intrusion detection, and analytical capabilities to strengthen the cybersecurity of federal civilian departments and agencies.

The threat is real, and we know that a sophisticated adversary can put the foundations of our democracy at risk through cyberattacks, which is why our request for FY 2019 would also make sure DHS is positioned to counter malign foreign influence efforts by supporting state and local election officials in defending the integrity of election systems. The Budget also would provide $158 million to secure the Nation's interoperable emergency communications capabilities that enable first responders and government officials to continue to communicate in the event of natural and man-made disasters.

Moreover, DHS is seeking to ramp up "soft target" security efforts. From terrorist attacks to school shootings, we have seen public areas continue to be prime targets for violence. Our National Protection and Programs Directorate (NPPD) is helping to lead the charge on soft target security. The President's Budget would provide almost $12 million for the establishment of the Soft Target Security Program which would expand NPPD's capabilities to reduce the risks to these locations through a mix of technology integration, targeted threat information sharing, training, and improved standards for security. This program will provide a more comprehensive, innovative, and coordinated approach to address threats to soft targets—including schools, entertainment venues, major events, and public spaces.

Our wider transportation system also faces persistent and emerging threats, as terrorists adapt their tactics to target airlines, airports, and other transportation hubs. The President's Budget was built to confront these challenges. It would add 717 TSA screeners and 200 additional computed tomography systems in order to stay ahead of our enemies, especially by helping to better detect concealed explosives, threat devices, and suspicious passengers. This budget would also provide an increase of nearly $27 million for CBP's National Targeting Center to improve our capabilities to identify high-risk individuals and cargo both entering and exiting the United States in the air, land, and sea environments.

The President's Budget recognizes that *homeland security* is central to *economic security*. It would provide funding to ensure DHS components are able to facilitate lawful trade and travel, mitigate threats, hold violators accountable, counter foreign economic aggression, and advance America's economic interests. For instance, the Department is focused on maintaining a level playing field for the $2.4 trillion dollars of imports crossing our border each year, which is why the President's Budget includes funding to enhance the Automated Commercial Environment (ACE) and to put more attention on high-risk imports while facilitating the movement of smaller, legitimate shipments more quickly. The request also includes funding for additional attorneys, trade specialists, and financial specialists to provide adequate support for trade facilitation and enforcement activities.

The men and women of the U.S. Secret Service (USSS) also protect our Nation's financial infrastructure, and the FY 2019 Budget supports the USSS in its use of advanced technologies and task force partnerships to enforce counterfeiting laws and to safeguard the payment and financial systems of the United States from financial and computer-based crimes. The agency also protects our highest elected officials, visiting foreign dignitaries, select Federal facilities, and major events. The request would allow for an additional 450 USSS agents, officers, and professional staff and would fund critical protective infrastructure and technology upgrades.

Last year our country experienced one of the most costly and damaging seasons for natural disasters in recent history. DHS is committed to helping our communities in the wake of these catastrophic events, and FEMA will devote the resources and attention needed—in cooperation with state, local, tribal, and territorial governments across the country—to ensure we recover. The President's Budget supports the DRF, which sustains FEMA's response and recovery efforts and funds a variety of federal assistance programs that enable state and local governments to prevent, protect, respond, and recover from incidents of terrorism and other catastrophic events. The Budget also focuses on other efforts that will help create a "culture of preparedness" nationwide and make our nation more resilient to disasters.

The 2019 President's Budget is committed to ensuring that every American dollar is spent wisely, and DHS continues to identify efficiencies to meet this goal. The Budget funds the construction of a new headquarters building for FEMA at the St. Elizabeths campus, which will consolidate a wide range of DHS entities in a common location when complete. This will not only foster integrated decision making and collaboration, but it will provide for more efficient use of shared resources across the Department, while also reducing the Department's rent costs.

Closing

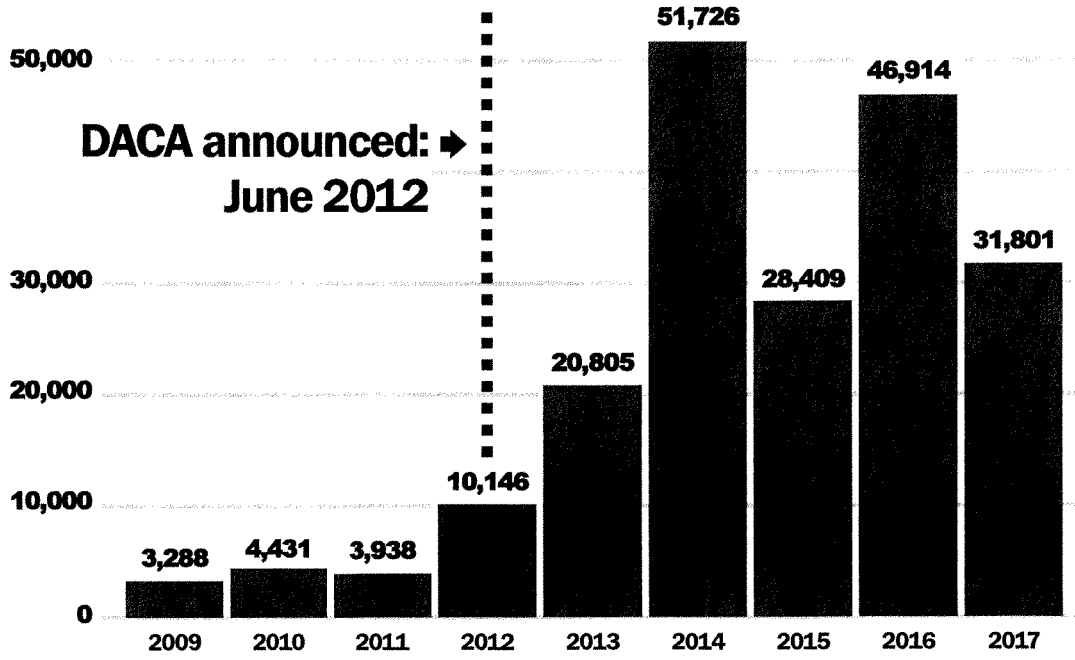
The DHS workforce is exceptional. Our dedicated professionals are on watch 24-hours-a-day, 365-days-a-year protecting Americans from threats by land, sea, air, and in cyberspace, while also promoting our Nation's economic prosperity. I have seen their courage and grit firsthand. And I have seen them take decisive action to protect us all from terrorists, transnational criminal organizations, rogue nation states, natural disasters, and more. Let's show them we have their backs by working together to secure the authorities *and* resources they need to do their jobs.

Thank you again for the opportunity to appear before you today and for your continued support of DHS. I remain committed to working with Congress, and I look forward to forging a strong and productive relationship to secure our homeland.

I am pleased to answer any questions.

UAC APPREHENSIONS

UNACCOMPANIED CHILDREN: HONDURAS, GUATEMALA, EL SALVADOR

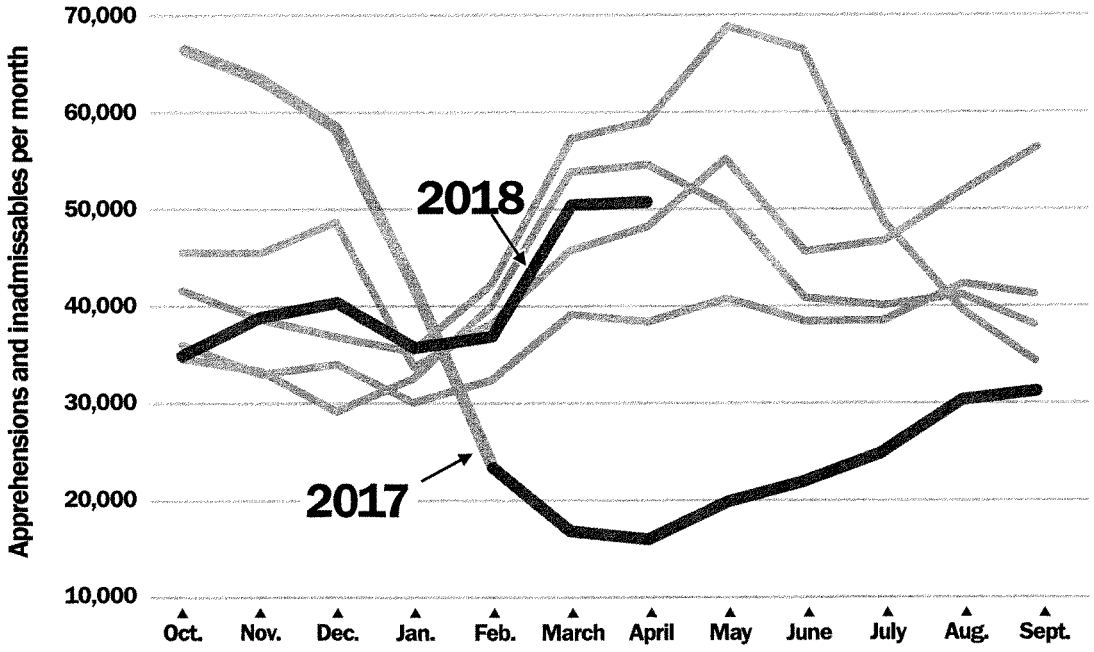


U.S. Border Patrol, U.S. Customs and Border Protection. Federal fiscal years.

RON JOHNSON U.S. SENATE

APPREHENSIONS

MONTH-BY-MONTH APPREHENSIONS AT SOUTHWEST BORDER, 2013-18



U.S. Customs and Border Protection. Federal fiscal years: October to September.

RON JOHNSON U.S. SENATE

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United States Senate
COMMITTEE ON
HOMELAND SECURITY AND GOVERNMENTAL AFFAIRS
WASHINGTON, DC 20510-6250

February 26, 2018

The Honorable David P. Pekoske
Administrator
Transportation Security Administration
601 South 12th Street
Arlington, VA 20598

Dear Mr. Pekoske:

The Department of Homeland Security Office of Inspector General (OIG) recently released a special review detailing how the Transportation Security Agency (TSA), under the previous Administration, failed to hold a Senior Executive Service (SES) employee accountable for misconduct.[1] This review found that TSA deviated from its personnel policy, allowing the SES employee to receive "unusually favorable treatment" in the disciplinary process.[2] We respectfully request information about how TSA will ensure that the agency uniformly carries out disciplinary actions against senior management.

In 2015, TSA's Office of Inspection (OOI) completed an investigation against the SES employee, resulting in four charges against him. The OIG found that following the investigation, senior leaders within TSA involved themselves in the adjudication of the SES employee's personnel mater, outside of normal protocols. Although TSA's table of penalties required that TSA remove the SES employee, these senior leaders halted the removal process and instead offered the SES employee a minor settlement. The settlement included a 14-day suspension, reassignment within TSA, and removal from the SES for one year. The settlement allowed the employee to continue to receive the same salary he received as an SES employee. The SES employee is still employed by TSA.[3]

While the OIG found that some TSA senior leaders protect themselves from discipline, other employees allege that senior leaders seek to silence dissent from line-level employees. The Program Manager of TSA's Office of the Chief Risk Officer testified in 2016 that "senior organizational leaders use retaliation as a means to silence those who would report violations, security concerns or operations issues by forcing employees into early retirement or

[1] Department of Homeland Security, Office of Inspector General, *Special Review: TSA's Handling of the 2015 Disciplinary Matter Involving TSES Employee* (OIG-18-35) (Jan. 8, 2018).

[2] *Id.*

[3] *Id.*

resignations."[4] In the 2017 Federal Employee Viewpoint Survey, fewer than half of non-TSA headquarters employees agreed that they could disclose a suspected violation of any law, rule, or regulation without fear of reprisal.[5] Only 35% of these employees responded that arbitrary action, personal favoritism, and coercion for partisan political purposes are not tolerated, and just over half, 56%, agreed that prohibited personnel practices are not tolerated.[6]

To better understand TSA's oversight and handling of claims of misconduct and retaliation, we request that you provide the following information:

1. Please describe TSA's actions since the release of OIG's review to ensure no undue influence by TSA senior leadership in the investigation, findings, or penalty processes of future disciplinary matters for SES employees;

2. Please describe the disciplinary actions taken by TSA to address OIG's findings regarding the senior leaders who involved themselves in the adjudication of the SES's personnel matter;

3. Please provide the number of complaints that TSA has received from employees alleging misconduct or retaliation by an SES official or TSA senior management for each year since 2013, including a description of the complaint and the resolution of each complaint;

4. Please provide the number of employees subject to adverse personnel actions for misconduct or retaliation for each year since 2013, and the action taken by TSA;

5. Please describe the responsibilities of the Office of Professional Responsibility (OPR), the Office of Inspection (OOI), and the Office of the General Counsel (OGC) as they relate to complaints of employee misconduct and retaliation;

6. Please provide the number of non-disclosure agreements (NDA) that TSA has required employees to sign relating to settlements or resolving complaints since 2013. Please include a copy of a representative NDA; and

7. Please provide the number of corrective actions for misconduct or retaliation issued by the Office of Special Counsel to TSA and those actions taken by TSA since 2013.

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[4] *Transportation Security Administration Management Practices: Hearing Before the H. Comm. on Oversight and Government Reform*, 114th Cong. 114-96 (2016) (statement of Dr. Mark Livingston).

[5] Transportation Security Administration, *2017 Federal Employee Viewpoint Survey: TSA Overall Results*.

[6] *Id.*

We request that you provide this information as soon as possible, but no later than March 19, 2018. Additionally, we request that you provide a briefing regarding the allegations stated in this letter and the information provided above as soon as possible, no later than March 19, 2018.

If you have any questions regarding this request, please contact Chris Boness with the Majority staff at Chris_Boness@hsgac.senate.gov or Hannah Berner with the Minority staff at Hannah_Berner@hsgac.senate.gov.

Sincerely,

Ron Johnson
Chairman

Claire McCaskill
Ranking Member

OFFICE OF INSPECTOR GENERAL

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SPECIAL REVIEW

TSA's Handling of the 2015 Disciplinary Matter Involving TSES Employee (Redacted)

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OFFICE OF INSPECTOR GENERAL
Department of Homeland Security

Washington, DC 20528 / www.oig.dhs.gov

January 8, 2018

MEMORANDUM FOR: The Honorable David P. Pekoske
Administrator
Transportation Security Administration

FROM: John V. Kelly
Acting Inspector General

SUBJECT: TSA's Handling of the 2015 Disciplinary Matter Involving TSES Employee

In April 2016, the House Committee on Oversight and Government Reform asked the Department of Homeland Security (DHS) Transportation Security Administration (TSA) (see Attachment A) to review the disciplinary process that resulted in the issuance of a notice of proposed removal in June 2015 to [redacted], former Assistant Administrator of TSA's [redacted] (referred to herein as "the TSES Employee").[1] Admiral Peter Neffenger, the TSA Administrator at the time of the congressional request, asked the DHS Office of Inspector General (OIG) to conduct an independent review of the matter (see Attachment B).

DHS OIG conducted a review to determine the extent to which TSA employees complied with relevant policies and followed standard procedure in the handling of the TSES Employee's disciplinary matter. DHS OIG interviewed nine witnesses over the course of its review, including individuals at TSA Headquarters, a senior management official at DHS Headquarters, and a former TSA employee. DHS OIG also

[1] DHS OIG has determined that, in light of the particular issues raised in this report, the public interest in disclosure outweighs the personal privacy interest of certain of the individuals referenced herein. Accordingly, because significant public benefit would result from disclosure of the information contained in this report, DHS OIG has left unredacted the names of certain individuals associated with this matter.

reviewed hundreds of records provided by TSA, including emails, policies, and other documents associated with this disciplinary matter.

DHS OIG's review determined that TSA senior leaders deviated from standard policy and practice in a number of key respects indicating that the TSES Employee received unusually favorable treatment in the resolution of his disciplinary matter. Our review specifically found that former Deputy Administrator Mark Hatfield, Chief Counsel Francine Kerner, and former Office of Professional Responsibility Assistant Administrator Heather Book each interfered with the disciplinary process in a way that circumvented the very TSA policies and procedures that were established to prevent favoritism in such circumstances.

I. Factual Findings

a. TSA's Office of Professional Responsibility (OPR)

i. *OPR's Mission*

TSA established the OPR in September 2010 to "provide greater consistency in misconduct penalty determinations and a more expedient and standardized adjudication process."[2] Among other things, OPR was tasked with reviewing and adjudicating all allegations of misconduct involving persons in the Transportation Security Executive Service (TSES) and J through M pay-bands, as well as Federal Security Directors (FSDs), Deputy FSDs, Assistant FSDs, and Deputy Assistant FSDs.[3] OPR was also tasked with tracking and monitoring misconduct cases across TSA "to ensure timely, fair, and consistent discipline throughout the agency ... ensuring that the disciplinary process treats all TSA employees the same regardless of title or position."[4]

ii. *OPR's Standard Process*

[2] Action Memo for Administrator John Pistole, *Office of Professional Responsibility*, September 2010.

[3] TSA Management Directive No. 1100.75-7, *Office of Professional Responsibility.*

[4] Action Memo for Deputy Administrator John Halinski, *Recommendation to expand the Office of Professional Responsibility's jurisdiction to include adjudication of discipline for all J-Band and Transportation Security Manager positions*, March 2014 (Halinski Action Memo).

Allegations involving misconduct by TSA employees in the TSES are first investigated by TSA's Office of Inspections (OOI). Upon completing its investigation, OOI prepares a Report of Investigation (ROI) setting forth its factual findings. OOI transmits the ROI and supporting materials to OPR to determine whether and what disciplinary action is warranted. OPR is divided into four separate units, each with its own Unit Chief. When OPR receives a new ROI from OOI, the matter is assigned to one of the four OPR units on a rotating basis. When a TSES employee's conduct is under review, the Unit Chief for the assigned unit acts as the Proposing Official.

The Proposing Official reviews OOI's factual findings. If the Proposing Official finds the information and materials provided by OOI insufficient to adjudicate the matter, he or she may ask OOI for additional investigation and/or information. The Proposing Official does not undertake an independent investigation of the facts. Upon review of the record, the Proposing Official will make a recommendation regarding appropriate disciplinary or corrective action, which is reflected in a draft Notice of Proposed Action (NPA). The NPA must include, among other things, the charge and specification for each charge (including a description of the evidence that supports each charge and a listing of all the documents relied upon to support the action); the proposed penalty; and a discussion of the *Douglas* mitigating and aggravating factors.[5]

The Proposing Official, in his or her discretion, may request a legal sufficiency review of the NPA by an attorney in TSA's Office of Chief Counsel (OCC). As part of the legal sufficiency review, the OCC attorney may consider whether there is sufficient evidence to sustain the action, whether there is a nexus between a government interest and the underlying misconduct, and whether the proposed penalty is reasonable.

The final NPA is delivered to the employee in person. The employee has seven days to present an oral or written response to the NPA, unless an extension is granted for good cause shown. Any written reply, including any supporting materials, is provided to the Deciding Official, who is listed by name in the NPA. For TSES employees, the OPR Assistant

[5] TSA Management Directive No. 1100.75-3, *Addressing Unacceptable Performance and Conduct.* The *Douglas* factors are a set of factors set forth by the Merit System Protection Board that federal agencies must consider when taking disciplinary action against employees.

Administrator or Deputy Assistant Administrator typically serves as the Deciding Official. The Deciding Official is "walled off" from the earlier stages of the process to ensure that he or she is not improperly influenced by OOI or the Proposing Official's view of the case.

The Deciding Official evaluates the charges and specifications as set forth in the NPA, the supporting documentation, the employee's oral and/or written reply, and the mitigating and aggravating *Douglas* factors. Based on this review, the Deciding Official drafts a decision indicating whether the Agency will impose the proposed, or any other, disciplinary action. The employee may appeal the decision to the Merit Systems Protection Board (MSPB).

On occasion, the Agency may enter into settlement negotiations with an employee to resolve a disciplinary action. Witnesses reported that, prior to OPR's creation, employees would often be presented a "last chance agreement" at the same time as the NPA. The employee could either accept the terms of the Agency-offered settlement agreement or receive the NPA and take his or her chances with the Deciding Official. In the typical case, the "last chance agreement" would allow the employee to voluntarily resign in lieu of being removed. This practice appears to have been discontinued.

In February 2013, TSA issued Management Directive No. 1100.55-9, *Settlement Agreements*, which modified the process for negotiating settlements with senior employees. In particular, the Directive requires that TSA's Executive Resources Council (ERC) be consulted on any settlement agreement to which a TSES employee is a party, and tasks the TSA OCC with coordinating such agreements with the ERC.

b. TSA's Handling of the TSES Employee's Disciplinary Matter

i. *Investigation of Complaint Against the TSES Employee*

From [redacted], the TSES Employee served in the TSES as the Assistant Administrator (AA) for TSA's [redacted]. In this role, he reported directly to TSA Deputy Administrator (DA) Mark Hatfield. On December 10, 2014, OOI received an anonymous complaint alleging (1) the TSES Employee was engaged in an inappropriate workplace relationship with a subordinate employee (referred to here as "Jane Doe"), and (2) he violated TSA hiring policies when he hired a colleague for a Competitive Service position outside the

competitive process. OOI began investigating the complaint on January 14, 2015.

OOI interviewed the TSES Employee on March 12, 2015. During the interview, investigators repeatedly asked the TSES Employee whether he had engaged in an intimate or sexual relationship with Jane Doe, including whether he ever sent her any communications of a sexual nature. The TSES Employee repeatedly denied having anything other than a professional relationship with Jane Doe, claiming the relationship was "non-romantic, non-sexual." However, when investigators confronted the TSES Employee with a personal email he sent to Jane Doe that contained sexually explicit statements, he admitted to having an "emotionally intimate" relationship with her that, he conceded, was inappropriate for the workplace.

OOI completed its investigation on March 27, 2015.

ii. *Referral of the TSES Employee's Matter to OPR*

On or around April 8, 2015, an OPR Unit Chief (UC) received OOI's ROI relating to the TSES Employee. Because the TSES Employee was a member of the TSES, per standard practice, the UC was assigned to be the Proposing Official and the OPR Acting Deputy Assistant Administrator (ADAA) was designated the Deciding Official. As the designated Deciding Official, the ADAA was walled off from any communications about the TSES Employee's case.

Based on the facts reflected in the ROI and supporting materials; the guidance provided in TSA Management Directive No. 1100.75-3, *Addressing Unacceptable Performance and Conduct*; and input from an OCC attorney in the Employment, Civil Rights, and Labor Policy division; the UC brought the following four charges against the TSES Employee:

(1) Poor Judgment. The UC concluded that the TSES Employee demonstrated poor judgment by maintaining an inappropriate relationship with Jane Doe, an employee he mentored and supervised. The TSES Employee's inappropriate communications to Jane Doe continued even after she asked him to cease contacting her for non-work related reasons.

(2) Lack of Candor. The UC concluded that the TSES Employee demonstrated lack of candor when, in his sworn testimony, he repeatedly denied having an intimate or sexual relationship with Jane Doe until confronted with a personal email he sent to Jane Doe that included sexually explicit comments. The TSES Employee ultimately admitted to having an "emotionally intimate" relationship with Jane Doe that he conceded was inappropriate for the workplace. The TSES Employee also asserted that he disclosed his relationship with Jane Doe to his supervisor and the counsel for OOI, a claim both individuals refuted.

(3) Inappropriate Conduct. The UC concluded that the TSES Employee engaged in inappropriate conduct by violating TSA hiring practices to promote a colleague to a Competitive Service position outside the competitive process. Specifically, when a posting for a K-Band Executive Advisor position in the TSES Employee's office was posted, he contacted an employee and told her to apply. The employee applied, but was not selected by HR for the Best Qualified list. After interviewing several individuals, the TSES Employee made no selection and closed the position. He then directed that the employee he previously contacted be non-competitively promoted to the Executive Advisor position.

(4) Unprofessional Conduct. The UC found that the TSES Employee engaged in unprofessional conduct by forwarding an email to a subordinate employee in which he referred to an Assistant Administrator as a "dick."

In determining the appropriate penalty to propose, the UC considered the nature of the misconduct reflected in the charges and its relationship to the TSES Employee's duties as AA [redacted]. As an AA and a member of TSA's senior leadership team, the TSES Employee was subject to a higher standard of conduct than lower-level employees. The UC considered the lack of candor offense especially serious when committed by a member of senior leadership — particularly one, like the TSES Employee, charged with [redacted]. The UC also found the TSES Employee's inappropriate relationship with Jane Doe, which he attempted to pursue even after she

told him his advances were making her uncomfortable, demonstrated a serious lack of judgment.[6]

Following standard OPR procedure, the UC next weighed these aggravating factors against several mitigating factors, including the TSES Employee's [redacted] years of federal service, [redacted] years of military service, exceptional performance rating, and lack of a disciplinary record. Nevertheless, after consulting TSA's Table of Offenses and Penalties (TOP) (May 15, 2014), she concluded that removal was warranted under the circumstances, a determination with which OCC concurred.

Specifically, based on TSA's "Guidelines on Using the Table of Penalties for Appropriate Discipline for Common Offenses" (TOP Guidelines), the aggravating factors — *e.g.*, the TSES Employee's high position within the Agency, the potential impact of his misconduct on the Agency's reputation, and his failure to report the misconduct — warranted applying the "Aggravated Penalty Range" listed in the TOP. For the lack of candor offense (E.2), the TOP recommends removal and does not list a separate aggravated penalty range.[7] Both the offensive language and failure to follow TSA policy offenses (B.5 and D.4, respectively) carry aggravated penalties up to removal.[8]

Accordingly, the UC drafted a Notice of Proposed Removal (NPR). Following standard procedure, she considered the TSES Employee's potential for rehabilitation in the NPR, and whether alternative sanctions would adequately address his misconduct. She stated: "Although your decision to engage in an inappropriate relationship while serving as a member of the senior leadership team at TSA showed poor judgment, your subsequent attempts to conceal your actions by being less than candid regarding multiple matters while being questioned by OOI has irretrievably undermined TSA's ability to trust you." Further, she found that "[p]romoting an employee to a K-Band position noncompetitively ... is inappropriate and another example of poor judgment." The UC concluded that "[t]he seriousness of your misconduct therefore supports

[6] Consideration does not appear to have been given to the legal liability to which the TSES Employee's misconduct potentially subjected TSA — *e.g.*, a sexual harassment claim.

[7] The "Mitigated Penalty Range" is a 14-day to 30-day suspension.

[8] The Aggravated Penalty Range for both B.2 and D.4 is a 15-day suspension to removal.

my conclusion that you lack any rehabilitative potential, and that no lesser penalty would serve to correct your behavior, deter such conduct in the future, or impress upon you the seriousness of your actions."

The UC believes she finalized the draft NPR sometime in late-May 2015.

iii. *Senior Management's Involvement in the TSES Employee's Case*

In the typical case, the final NPR would have been served on the TSES Employee and he would have been given an opportunity to present an oral or written reply, including any potentially mitigating information, to the OPR ADAA, the person originally designated to serve as the Deciding Official in the TSES Employee's case. However, at some point in early June 2015, DA Hatfield approached the Acting Administrator of TSA, General Francis Taylor,[9] to raise the issue of the TSES Employee's discipline. According to General Taylor, DA Hatfield was concerned that OPR was proposing the removal of a member of the TSES without first obtaining input from senior leadership.[10] DA Hatfield provided General Taylor a memorandum describing the TSES Employee's alleged misconduct.[11] General Taylor believed Hatfield was raising the matter to his attention because he had instructed Hatfield to keep him informed of any matters of major concern during his tenure as Acting Administrator.

After reviewing the information provided to him, General Taylor scheduled a meeting with DA Hatfield, OPR Assistant Administrator (AA) Heather Book, and Chief Counsel Francine Kerner. The meeting appears

[9] In June 2015, after the previous TSA Administrator retired from his position, Secretary Jeh Johnson requested that his Undersecretary for Intelligence and Analysis, General Francis Taylor, temporarily serve as the Acting Administrator of TSA until a replacement could be appointed and confirmed. General Taylor held this position for only a few weeks.

[10] Per standard OPR procedure at the time, senior leadership was not afforded an opportunity to provide "input" on disciplinary matters involving members of the TSES. OPR's process was structured this way to safeguard OPR's objectivity and independence, and to ensure that members of the TSES were treated fairly and consistently across the Agency.

[11] General Taylor could not locate a copy of the memorandum provided to him by DA Hatfield. Upon reviewing a copy of the NPR provided by DHS OIG, General Taylor could not say whether the memorandum Hatfield provided him was some version of the Notice, or some other document characterizing the TSES Employee's misconduct.

to have occurred on or around Friday, June 12, 2015. At the outset, General Taylor, who had been serving in the Acting Administrator role for approximately one week and was entirely unfamiliar with TSA's disciplinary policies and procedures, asked the group whether it was appropriate for him to weigh in on a disciplinary matter like the one before them. No one objected. Neither did any of the meeting attendants explain to General Taylor that his involvement would mark a significant deviation from standard process and historical practice.

General Taylor then asked each person at the meeting to share his or her thoughts about whether the TSES Employee's removal was warranted under the circumstances. According to Chief Counsel Kerner and AA Book, DA Hatfield supported a lesser penalty.[12] He believed the lack of candor charge was unfair because it was based on a trap set by the OOI investigators — *i.e.*, the investigators solicited a denial from the TSES Employee about sexually explicit communications with Jane Doe when the investigators had, in their possession, evidence of a sexually explicit communication. DA Hatfield also felt the TSES Employee's long history of exemplary service with TSA warranted mitigation of the penalty.

AA Book, on the other hand, voiced her strong support for the proposed removal. She informed General Taylor that, based on TSA's TOP, the lack of candor and inappropriate relationship offenses warranted removal. She also noted that, because Deciding Officials often reduce the penalty during the final stage of review, it is better for the proposal to put forward the highest supportable penalty.

Chief Counsel Kerner did not express a strong opinion either way at the meeting, telling General Taylor that removal was supported by the facts, but also suggesting that a lesser punishment would be appropriate.[13] She also described for General Taylor some of the litigation risks associated with proposing removal. Kerner told DHS OIG that, although she did not say so at the meeting, she personally agreed with DA Hatfield's position, particularly because she felt the OOI investigators had unfairly entrapped the TSES Employee. Kerner also indicated to DHS OIG that she felt sorry for the TSES Employee, who she believed

[12] DA Hatfield, who has retired from the federal service, refused DHS OIG's requests for an interview.

[13] Per the TOP Guidelines, "a demotion may always be considered as an option when the applicable penalty range includes removal."

behaved inappropriately, in part, because of mixed signals he received from Jane Doe.

Ultimately, based on the information DA Hatfield had previously provided to him about the TSES Employee's case and the input he received during the June 12, 2015 meeting, General Taylor concluded that the TSES Employee's offense relating to Jane Doe was a "crime of emotion" and an "affair of the heart" and, as such, did not warrant removal. He firmly believed that the TSES Employee should be penalized, but he considered "relief from command and reassignment" to be a sufficiently severe punishment to send a strong message to the TSES Employee and deter any future misconduct.

The meeting concluded without General Taylor specifying, or the group explicitly agreeing on, the next steps that should be taken in the matter. However, AA Book left the meeting with the understanding that DA Hatfield would be replacing the OPR ADAA as the Deciding Official and that — through some as-yet-unknown mechanism — the TSES Employee's penalty would end up being something less than removal. Chief Counsel Kerner similarly recalled that there was no direction given at the meeting as to how to implement the decision to lessen the TSES Employee's punishment.

On June 12, 2015, following the meeting with General Taylor, AA Book contacted the OCC attorney who previously had provided legal support to the UC on the TSES Employee's matter. AA Book asked the attorney to draft a revised Notice by the end of the day removing the lack of candor charge and proposing suspension instead of removal. The attorney found the request highly unusual given the quick turnaround time and the amount of work that had already gone into evaluating the legal sufficiency of the proposed removal. Nonetheless, the attorney completed and sent a draft of a proposed suspension to AA Book.

That same day, AA Book met with the ADAA to discuss the TSES Employee's case. AA Book asked the ADAA if he would take the UC's place as the Proposing Official and propose a 14-day suspension with a directed reassignment following the suspension. The ADAA told AA Book he was not comfortable with her request, in large part because it would require him to reach a particular conclusion about disciplinary action before having had the opportunity to independently and objectively

review the facts (as the designated Deciding Official, the ADAA had been walled off from the matter up to this point).[14]

AA Book also approached the UC to discuss with her the possibility of changing her recommendation from a proposed removal to a proposed 14-day suspension. The UC was unwilling to change the proposal, which she continued to feel was absolutely warranted given the serious misconduct at issue. Ultimately, AA Book abandoned her efforts to change the proposed penalty in the Notice. However, in the final version of the NPR, the ADAA was removed as the designated Deciding Official, and DA Hatfield was listed in his place.

iv. *TSA's Settlement With the TSES Employee*

On Monday morning, June 15, 2015, Chief Counsel Kerner met with Steve Colon, Assistant Chief Counsel for Administrative Litigation, OCC. Kerner discussed the TSES Employee's proposed removal with Colon, and explained that the Agency wanted to settle the matter by offering the TSES Employee a suspension and reassignment in lieu of removal.[15] Colon found the proposed approach odd because, at the time, the Agency did not typically offer settlements *sua sponte* to employees who engaged in misconduct. Nevertheless, Colon began working on draft settlement language.

Shortly thereafter, the ADAA was called into a meeting with Chief Counsel Kerner and Colon to discuss service of the NPR on the TSES Employee. Given that Colon typically handles settlements for the Agency, Colon's presence at the meeting immediately suggested to the ADAA that a settlement may be in the works. The ADAA found this "odd" given that the affected employee is the party who typically initiates settlement negotiations, not the Agency. Further, having reviewed the NPR, the ADAA felt the case against the TSES Employee was "solid" and did not understand why the Agency was rushing to settle the matter.

[14] Following his conversation with AA Book, the ADAA began keeping private, contemporaneous notes of the handling of the TSES Employee's case, which the ADAA characterized as extremely "odd."

[15] None of the witnesses was certain who made the decision to initiate a settlement with the TSES Employee, though the idea appears to have originated with Chief Counsel Kerner.

At 2:36 p.m. on June 15, 2015, the UC digitally signed the NPR. At 2:44 p.m., Chief Counsel Kerner emailed the TSES Employee. In the email, Kerner told the TSES Employee that she had spoken with DA Hatfield and "an agreement that would permit you to continue working at TSA can be reached." According to the TSES Employee, Kerner's email caught him off guard — at the time he received it, he had not seen the NPR and was not even aware that the Agency was considering his removal.

The ADAA delivered the NPR to the TSES Employee around 3:00 p.m. on June 15, 2015. At approximately 3:45 p.m. that same day, Colon met with the TSES Employee to propose the terms of a settlement to resolve the matter. The proposed terms included a 14-day suspension followed by the TSES Employee's reassignment to a new, as-yet-unspecified position. At 4:19 p.m., Colon emailed DA Hatfield and Chief Counsel Kerner to inform them that the TSES Employee agreed to the terms of the settlement in principle, but was unwilling to sign an agreement without first learning the details of his reassignment.

According to the TSES Employee, DA Hatfield initially verbally indicated to him that he (the TSES Employee) would be reassigned to a TSES position. An early draft of the settlement agreement, circulated at 4:58 p.m. on June 15, 2015, similarly reflects reassignment to a position within the TSES. On June 17, 2015, the TSES Employee emailed DA Hatfield indicating that he would agree to a settlement reassigning him to a TSES position in the DC commuting area. However, by 5:19 p.m. that same day, the draft settlement agreement was modified to reflect reassignment to a position in the lower L-Band pay level and banishment from the TSES for one year.

Though an apparent demotion, because of the TSES Employee's years of service at TSA, this offer permitted him to continue to receive the same salary he had been receiving as a member of the TSES. Witnesses could not recall what prompted this revision, though Colon recalled that DA Hatfield intended to find a position for the TSES Employee that would enable him to "save pay" — *i.e.*, continue to make what he was making as a TSES. Chief Counsel Kerner told DHS OIG she was not consulted on this point. Similarly, General Taylor reported that he was not consulted on this point. He further stated that he likely would not have approved the settlement had he known — in his opinion, a demotion should be a demotion in more than just name.

The revised agreement was emailed to the TSES Employee at 6:22 p.m. on June 17, 2015. On June 18, 2015, the TSES Employee returned a signed copy of the agreement to OCC. DA Hatfield signed the agreement on behalf of the Agency. The ADAA was asked to sign on behalf of OPR because AA Book, who would typically sign such agreements, was on leave. However, because the ADAA believed the case for the TSES Employee's removal was strong, he was not comfortable signing the settlement agreement, which he felt achieved an unjust result. Accordingly, the ADAA called AA Book while she was on leave and obtained her permission to sign the agreement in her name.

On June 29, 2015, following his 14-day suspension, the TSES Employee reported to his new position as Deputy Director for [redacted] in the TSA [redacted].[16] The new position, in which he continues to serve, is in the L-Band pay level (lower than TSES, but higher than a traditional GS-15), and he has continued to receive the same pay that he had been receiving as a member of the TSES.

II. Analysis

TSA's handling of the TSES Employee's disciplinary matter deviated from standard practice in several key respects. Initially, the matter proceeded along the normal course, with OOI investigating the allegations and OPR making a determination as to the appropriate charges to bring under the circumstances. As described above, the UC's actions as the Proposing Official followed standard procedure, and her analysis and conclusions were informed by the facts and guided by relevant TSA policies. Further, the proposed penalty (*i.e.*, removal) appears to have been warranted — if not required — by TSA's Table of Penalties.

However, the insertion of senior management, including DA Hatfield and General Taylor, into the process caused the process to go off course. Under normal circumstances, the TSES Employee should have been issued the NPR and allowed to provide an oral and/or written response to the ADAA, the designated Deciding Official. The TSES Employee would have been permitted to make his case as to why a lesser penalty was warranted. He could have provided mitigating evidence, which the ADAA would have been bound to consider. Based on historical precedent, the

[16] Although the TSES Employee did not receive the NPR until 3:00 p.m. on June 15, 2015, it appears that day was counted as the first day of his 14-day suspension.

TSES Employee's penalty may well have been reduced to something less than removal had the process been allowed to run the normal course.

Instead, senior leadership appears to have commandeered the process, resulting in decisions by the Agency that raise serious questions about the appropriateness of its actions in this matter, including:

- DA Hatfield's decision to circumvent the standard OPR process by involving General Taylor in the decision-making with respect to the TSES Employee's penalty;
- DA Hatfield's misleading suggestion to General Taylor that OPR had somehow exceeded its authority by proposing to remove a member of the TSES without senior leadership's input;
- The failure by DA Hatfield, Chief Counsel Kerner, and AA Book to inform General Taylor — who was serving in an acting capacity and was entirely unfamiliar with TSA's disciplinary policies and procedures — that his involvement in the process was a deviation from standard practice and extremely unusual;
- AA Book's decision to circumvent OPR's standard process by directing an OCC attorney to revise the NPR to remove the lack of candor charge and propose suspension instead of removal;
- AA Book's decision to circumvent and/or improperly influence OPR's standard process and objective, independent decision-making by asking the ADAA to take the UC's place as the Proposing Official and dictating to the ADAA what penalty he should propose (*i.e.*, a 14-day suspension with a directed reassignment following the suspension);
- AA Book's decision to circumvent and/or improperly influence OPR's standard process and objective, independent decision-making by attempting to dictate to the UC what penalty she should propose (*i.e.*, a 14-day suspension);
- AA Book's decision to circumvent and/or improperly influence OPR's standard process and objective, independent decision-making by replacing the ADAA with DA Hatfield as the designated Deciding Official;

- Chief Counsel Kerner's efforts to circumvent OPR's standard process by initiating settlement negotiations with the TSES Employee before he was even aware that the Agency was considering his removal;

- OCC's failure to comply with TSA Management Directive 1100.55-9, *Settlement Agreements*, which requires that TSA's Executive Resources Council (ERC) be consulted on any settlement agreement to which a TSES employee is a party, and tasks the TSA OCC with coordinating such agreements with the ERC;

- DA Hatfield's efforts to ensure that the TSES Employee could "save pay" despite his demotion; and

- Senior leadership's efforts to achieve, by settlement, what it had failed to accomplish through its unsuccessful efforts to circumvent and/or improperly influence OPR's standard process.

The above actions by senior leadership — including DA Hatfield, Chief Counsel Kerner, and AA Book — undermined the purpose and function of OPR, which was created to ensure fair, consistent disciplinary action against TSA senior management who engage in wrongdoing. In fact, OPR was originally established in response to widespread complaints about members of senior management receiving unfairly favorable treatment — the very concern being raised with respect to senior leadership's handling of the TSES Employee's disciplinary matter.

Chief Counsel Kerner proposed several justifications for the special-handling of the TSES Employee's case. First, she suggested that resolving the matter quickly via settlement saved the Agency money by ensuring the TSES Employee did not sit on paid administrative leave during the second phase of the disciplinary process (*i.e.*, review by the Deciding Official). However, the same argument could be made of any employee under OPR review. Based on DHS OIG's review of cases involving similarly situated TSA employees, senior leadership does not appear to regularly pursue such cost savings by circumventing OPR's standard process. Accordingly, DHS OIG does not find this justification compelling.

Second, according to Kerner, the TSES Employee was scheduled to testify before Congress on behalf of TSA [redacted]. Both Kerner and AA Book were concerned about the TSES Employee representing the

Agency before Congress if the Agency was considering his removal for lack of candor. According to Kerner, she felt that resolving the situation with the TSES Employee via a settlement would bring an expeditious end to the matter and ensure he did not testify. DHS OIG does not find this justification compelling. Allowing OPR's process to run its normal course would not have required that the TSES Employee be permitted to testify, nor would it have diminished the Agency's ability to keep the TSES Employee from testifying. In light of the proposed removal reflected in the NPR issued to the TSES Employee, the Agency could have instructed the TSES Employee to withdraw from the congressional testimony, which it did in any event. There is simply no reason why the circumstances necessitated immediate resolution via a rushed settlement.

Finally, Kerner raised broader concerns about the structure and operations of OOI and OPR generally. For instance, Kerner faulted OOI with failing to adequately develop mitigating factors. In particular, she noted that OOI does not always interview a subject's supervisors to find out what kind of employee she or he is. Other witnesses echoed this concern. With respect to OPR, Kerner opined that the Agency had not devoted sufficient resources to OPR to make it the mature function it needed to be to properly adjudicate matters within its jurisdiction. According to AA Book, DA Hatfield echoed this concern to her — in particular, he had issues with the notion that a non-SES OPR employee could decide the professional fate of a member of the TSES without the input of senior leadership.

DHS OIG does not find these justifications compelling. As a practical matter, consistent with its statutory authority, TSA's senior leadership may create, revisit, revise, and/or discontinue any TSA policy, procedure, practice, or program. However, operating outside of, or inconsistently with, existing policies and procedures subjects the Agency to risk. Among other things, employing a shadow disciplinary process for senior management fuels complaints about unjustly favorable treatment for high-level employees. Further, it subjects the Agency to litigation risk from employees who would claim their less favorable treatment evidences discrimination and/or retaliation. And it erodes the trust of the TSA workforce, Congress, and the public in the Agency. If TSA's senior leaders had legitimate concerns about existing disciplinary policies and procedures, they should have addressed those concerns through changes

from which all TSA employees could benefit, not just the TSES Employee.[17]

III. Conclusion

DHS OIG's review of TSA's handling of the TSES Employee's disciplinary matter uncovered significant deviations from policy and standard practice indicating that the TSES Employee received unusually favorable treatment. TSA should address these irregularities with the involved employees who still remain at TSA, and should take steps to advise TSA employees of all levels and positions of their obligation to comply with existing policies and standard procedures for all disciplinary matters, including matters involving members of the TSES. By so doing, TSA will be better positioned to accomplish its stated aim of "ensuring that the disciplinary process treats all TSA employees the same regardless of title or position."[18]

[17] While DHS OIG's investigation was ongoing, TSA began weighing options for modifying OPR's structure and standard procedure to address some of these concerns, including finding an appropriate and transparent way to include senior leadership in the adjudication of disciplinary matters involving members of the TSES. Among other things, TSA is reportedly considering having a supervisor in the subject's chain of command serve as the Deciding Official, rather than the OPR Assistant Administrator or Deputy Assistant Administrator.

[18] Halinski Action Memo.

Attachment A

JASON CHAFFETZ, UTAH
CHAIRMAN

ONE HUNDRED FOURTEENTH CONGRESS

ELIJAH E. CUMMINGS, MARYLAND
RANKING MINORITY MEMBER

Congress of the United States

House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM
2157 RAYBURN HOUSE OFFICE BUILDING
WASHINGTON, DC 20515–6143
Majority (202) 225-5074
Minority (202) 225-5051
http://oversight.house.gov

April 26, 2016

The Honorable Peter V. Neffenger
Administrator
Transportation Security Administration
601 12th Street, South
Arlington, VA 20598

Dear Administrator Neffenger:

We are writing to request information regarding (1) the process by which [redacted] currently the [redacted] in the Office of Security Operations (OSO), was disciplined in 2015 for misconduct, and (2) the process by which his security clearance was reviewed after this discipline was imposed. [redacted]

Concerns About [redacted] Settlement Agreement

On June 15, 2015, [redacted] of TSA's Office of Professional Responsibility (OPR) issued a Notice of Proposed Removal (NPR) recommending that [redacted] then [redacted] in the Office of Intelligence and Analysis (OIA), be terminated from his employment at TSA. This recommendation was based on the findings of a Report of Investigation (ROI) issued by TSA's Office of Inspections (OOI) on April 7, 2015. The NPR found [redacted]

Specifically, [redacted] found [redacted]

[redacted]

[1] Notice of Proposed Removal from [redacted] Unit Chief, Office of Professional Responsibility, Transportation Security Administration, to [redacted] Assistant Administrator, Office of Intelligence Analysis, Transportation Security Administration (June 15, 2015).
[2] *Id.*
[3] *Id.*

[redacted]

On April 15, 2016, Committee staff conducted a transcribed interview with [redacted] during which he explained that an "hour or less" after receiving this Notice of Proposed Removal on June 15, 2015, TSA officials presented him with a proposed settlement agreement that significantly reduced his disciplinary penalty.[10]

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[4] Transportation Security Administration, *Report of Investigation, Case Number: I150026* (Apr. 7, 2015), at Attachment 2.
[5] Notice of Proposed Removal from [redacted] Unit Chief, Office of Professional Responsibility, Transportation Security Administration, to [redacted] Assistant Administrator, Office of Intelligence Analysis, Transportation Security Administration (June 15, 2015).
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] H. Comm. on Oversight & Gov't Reform, Transcribed Interview of [redacted] Tr. at 255 (Apr. 15, 2016).

The settlement, which was signed on June 18, 2015, by [redacted], Mr. Hatfield, and Heather Book, the Assistant Administrator of OPR, rejected [redacted]'s recommendation for removal. Instead, it penalized [redacted] with a 14-day suspension, removal from the Senior Executive Service for one year, and a reduction in grade to the L Pay Band. The proposed settlement allowed [redacted] to continue receiving "the same total rate of pay in the L Pay Band as [redacted] currently makes in the TSES (save pay)."[11]

On April 21, 2016, Committee staff received a briefing from General Francis Taylor, who was serving Acting Administrator of TSA when Mr. Hatfield and Ms. Book agreed to the settlement with [redacted] instead of terminating his employment.[12] When asked how this settlement agreement came about, General Taylor explained he met with Mr. Hatfield, Ms. Book, and TSA's Chief Counsel, Francine Kerner, to discuss what penalty [redacted] should receive.

Of particular concern, General Taylor told Committee staff he never reviewed the Notice of Proposed Removal before TSA offered [redacted] a settlement agreement allowing him to remain employed by the agency. Instead, he reviewed only a summary memorandum provided by Mr. Hatfield. General Taylor also conceded he was not aware the settlement agreement allowed [redacted] to retain his current salary level.

It remains unclear how or why TSA officials found the discipline included in the settlement to be appropriate given the seriousness of the findings against [redacted] and why TSA officials presented the proposed settlement within an hour of [redacted] receipt of the recommended termination.

We request you seek an independent review of the process used to recommend and impose disciplinary action against [redacted] including the process by which disciplinary actions are settled and proposed disciplinary measures are reduced at TSA.

Concerns About [redacted]'s Security Clearance Review

Regardless of the final disciplinary penalty ultimately imposed by TSA officials against [redacted], the gravity of the investigative findings against him—particularly with respect to [redacted]—should have resulted in a review of his fitness to hold a security clearance to access classified national security information. As [redacted] wrote:

[redacted]

[11] Settlement Agreement and Release Between [redacted], Assistant Administrator, Office of Intelligence Analysis, Transportation Security Administration, and the Transportation Security Administration.
[12] Briefing by General Francis X. Taylor, Under Secretary for Intelligence and Analysis, Department of Homeland Security, to House Government Reform Committee (Apr. 21, 2016).
[13] Notice of Proposed Removal from [redacted] Unit Chief, Office of Professional Responsibility, Transportation Security Administration, [redacted] Assistant Administrator, Office of Intelligence Analysis, Transportation Security Administration (June 15, 2015).

Under Executive Order 12986, only individuals who exhibit "strength of character, trustworthiness, honesty, reliability, discretion, and sound judgment, as well as freedom from conflicting allegiances and potential for coercion" shall be granted access to classified information.[14]

When General Taylor briefed Committee staff on April 21, 2016, he stated that he assumed a review of [redacted] fitness to hold a security clearance would be conducted because it was a standard practice whenever disciplinary action was taken, but he had no knowledge of whether such a review happened in [redacted] case.[15]

In this case, the NPR issued on April 7, 2015, found [redacted] and this conclusion should have caused TSA officials to request a review of [redacted] security clearance. Yet, today [redacted] continues to hold the position of [redacted] within the Office of Security Operations, and he appears to continue to hold his security clearance.

Conclusion

In light of this information, we request that you provide information to the Committee as soon as possible regarding the process by which the recommendation for [redacted] termination was overruled and replaced with a much less severe penalty in less than one hour. We are also making a request of the Department of Homeland Security Inspector General to investigate the process by which [redacted] security clearance was reviewed following the ROI, and whether it was conducted under the proper procedures.

If you have any questions about this request, please contact Michael Ding of Chairman Chaffetz' staff at (202) 225-5074 or Lucinda Lessley with Ranking Member Cummings' staff at (202) 225-5501. Thank you for your cooperation with this matter.

Sincerely,

Jason Chaffetz
Chairman

Elijah E. Cummings
Ranking Member

cc: The Honorable John Roth, Inspector General
Department of Homeland Security

[14] Exec. Order No. 12968, 60 FR 40245 (Aug. 7, 1995).
[15] Briefing by General Francis X. Taylor, Under Secretary for Intelligence and Analysis, Department of Homeland Security, to House Government Reform Committee (Apr. 21, 2016).

U.S. Department of Homeland Security
601 South 12th Street
Arlington, VA 20598

APR 2 8 2016

Transportation Security Administration

MEMORANDUM FOR: John Roth
Inspector General
U.S. Department of Homeland Security

FROM: Peter V. Neffenger
Administrator
Transportation Security Administration

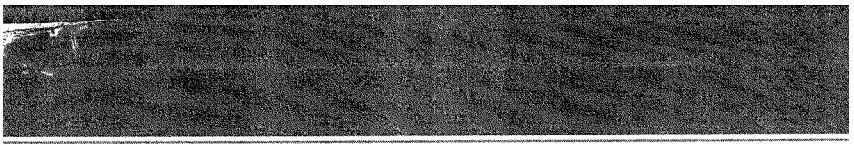
4/28/16

SUBJECT: Request for Review of Case Disposition Process and Determinations

As we discussed in our telephone conversation on April 27, 2016, I am requesting that your office conduct a formal review of the process employed and the determinations reached in the discipline of substantiated misconduct on the part of [redacted] The matters disposed of stem from a Report of Investigation completed by TSA's Office of Inspection in 2015. The TSA Office of Professional Responsibility case file is [redacted] which we will provide to you.

My intent is to ensure the propriety of our policy and to ensure appropriate case dispositions in this specific case as well as in cases involving executive-level personnel. I look forward to your findings and recommendations.

Thank you for your assistance. Please feel free to contact me if you have any questions.



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Department of Homeland Security
Office of Inspector General, Mail Stop 0305
Attention: Hotline
245 Murray Drive, SW
Washington, DC 20528-0305





CWS Statement to the U.S. Senate Homeland Security and Governmental Affairs Committee pertaining to its Hearing "Authorities and Resources Needed to Protect and Secure the United States" Tuesday, May 15, 2018

As a 72-year old humanitarian organization representing 37 Protestant, Anglican and Orthodox communions and 22 refugee resettlement offices across the country, Church World Service (CWS) urges the Subcommittee to affirm the importance of the U.S. refugee admissions program (USRAP) and uphold protections for asylum seekers, dreamers, and TPS holders. As the Subcommittee considers FY 2019 funding for the Department of Homeland Security (DHS), CWS urges the Subcommittee to exercise its responsibility of oversight by holding the agency accountable to humanitarian principles stipulated in U.S.[1] and international[2] law. DHS is responsible for the USRAP screening process, which is already the most robust and thorough in the world. Recent decisions to cut in half the number of officers interviewing refugees, as well as continued delays and interruptions to the USRAP are concerning and out of step with congressional intent regarding the authorization of the USRAP.[3] DHS decisions are also impacting the lives of our community members who are seeking asylum or who have Temporary Protected Status (TPS) and Deferred Action for Childhood Arrivals (DACA).

The administration has imposed multiple bans that have blocked refugees from entering the United States and left tens of thousands of vulnerable people in limbo. It has also decreased the number of refugees that will be resettled in the United States in Fiscal Year 2018 to a historic low, and is already failing to meet even that 45,000 cap this year. If admissions continue at the current pace, estimates are that only 20,000 refugees will be resettled in FY18. Resettlement is already the last resort for men, women, and children who cannot return to their home countries and cannot rebuild their lives in the country where they first fled. Although the refugee ban executive orders have come to an end, including the October 24th ban, which, save court intervention, denied protection to individuals from 11 countries and indefinitely suspended the ability for refugees to reunite with their spouse and young children, there has not been a corresponding increase in the number of refugee arrivals. Resettlement is the already the most difficult way to enter the United States, but these bans, alongside DHS and Department of State policy changes, have denied safety to tens of thousands of bona fide refugees and have reversed decades of U.S. leadership on refugee protection. We urge Congress to insist that the USRAP operate fully and in good faith, and to hold the administration accountable to meeting the 45,000 refugee admissions cap this year and setting the FY19 cap at 75,000. It is also inexcusable that the administration has reduced the number of USCIS officers who interview refugees, claiming that this is necessary in order to increase the number of officers interviewing asylum seekers. These positions are fee-funded and DHS has the resources to hire more asylum officers while maintaining capacity to interview refugees. We urge Congress to see that such trade-offs are not made, and that if additional funding is needed to adequately staff both the Refugee and Asylum Corps within DHS, those funds are provided.

In addition to preventing vulnerable populations from finding refuge in the United States, DHS has also failed to address its existing asylum backlog, with about 223,433 cases still awaiting adjudication at the end of 2016. There are approximately 72,000 asylum-seekers in detention, including families and children, in jail-like conditions with pending cases. A recent report by Human Rights First documents cases of asylum-seekers being turned away at ports of entry and details complaints that Customs & Border Protection (CBP) officers are coercing or pressuring applicants for admission, including asylum seekers, from withdrawing their applications. Life-saving programs such as the Central American Minors (CAM) program have been terminated, and there are approximately 6,000 children who had their applications deleted, not even receiving an interview. Since President Trump terminated the DACA program, which protected nearly 800,000 immigrant youth from deportation and allowed them to work and attend school, tens of thousands of DACA recipients have seen their protections expire and become vulnerable to deportation – despite court intervention.

This same fear is felt by our community members with TPS, especially those whose country designations have been terminated, including Sudan, El Salvador, Haiti, Nicaragua, Nepal, and Honduras. These terminations put more than 300,000 people who are legally living and working in the United States at risk of deportation, which is an affront to our American values, will cause irreparable harm to families and our economy, and will force TPS holders to either become undocumented or return to countries in turmoil. While we affirm DHS' decision to extend Syrian TPS for 18 months, we are also concerned by the decision to not re-designate TPS for Syrians, as it leaves those who arrived after August 1st, 2016 in limbo. As we push forward, we urge our political leaders to value human rights and protect TPS holders through both administrative and legislative solutions.

We implore Congress and DHS to do everything possible to actively protect refugees, asylum seekers, and other vulnerable populations. As a faith-based organization, we hope that Congress and DHS will find the compassion and love that we have learned from Leviticus 19:33-34, which reminds us: "Any immigrant who lives with you must be treated as if they were one of your citizens. You must love them as yourself, because you were immigrants in the land of Egypt; I am the LORD your God."

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[1] Immigration and Nationality Act § 208, 8 U.S.C. § 1157.
[2] The Convention on the Rights of the Child, Articles 2, 3, 6 and 22. www.ohchr.org/en/professionalinterest/pages/crc.aspx; The Universal Declaration of Human Rights, Article 14. www.un.org/en/documents/udhr/index.shtml#a14; United Nations General Assembly, Declaration on Territorial Asylum, 14 December 1967, A/RES/2312(XXII). www.refworld.org/docid/3b00f05a2c.html; United Nations High Commissioner for Refugees, A Framework for the Protection of Children www.unhcr.org/50f6cf0b9.html; United Nations High Commissioner for Refugees, Convention and Protocol Relating to the Status of Refugees. www.unhcr.org/3b66c2aa10.html.
[3] Immigration and Nationality Act § 207, 8 U.S. Code § 1157

NTEU
The National Treasury Employees Union

STATEMENT OF ANTHONY M. REARDON
NATIONAL PRESIDENT
NATIONAL TREASURY EMPLOYEES UNION
HEARING ON THE
AUTHORITIES AND RESOURCES NEEDED TO PROTECT
AND SECURE THE UNITED STATES
BEFORE THE SENATE COMMITTEE ON HOMELAND SECURITY
AND GOVERNMENTAL AFFAIRS

May 15, 2018

Chairman Johnson, Ranking Member McCaskill, distinguished members of the Committee, thank you for the opportunity to provide this testimony on "Authorities and Resources Needed to Protect and Secure the United States." As President of the National Treasury Employees Union (NTEU), I have the honor of leading a union that represents over 25,000 Customs and Border Protection (CBP) Officers and trade enforcement specialists stationed at 328 land, sea and air ports of entry across the United States and 16 Preclearance stations.

Any discussion of resources to protect and secure the homeland must include the hiring of new personnel at the ports of entry. CBP Office of Field Operations (OFO) is the largest component of CBP responsible for border security –including anti-terrorism, immigration, anti-smuggling, trade compliance, and agriculture protection—while simultaneously facilitating lawful trade and travel at U.S. ports of entry that are critical to our Nation's economy. CBP OFO has a current need to hire 2,516 additional CBP Officers and 721 Agriculture Specialists to achieve the staffing target as stipulated in CBP's own FY 2018 Workload Staff Model (WSM) and Agriculture Resource Allocation Model (AgRAM.) According to CBP's Congressional Affairs Office, as of May 4, 2018, CBP OFO has 23,147 CBP Officers onboard at the ports of entry—1,328 short the authorized staffing level of 24,475.

Trade and travel volume continue to increase every year, but CBP OFO staffing is not keeping pace with this increase. New and expanded federal inspection facilities are being built at the air, sea and land ports, yet CBP OFO staffing is not expanding. For example, in June, a new federal inspection terminal will open at the San Diego Airport. Inspection volume will increase from 300 air passengers an hour to 1,000 air passengers an hour. Currently, there are a total of 53 frontline Officers split between the airport and seaport. CBP needs to hire and assign an additional 38 officers to the airport alone to staff this new inspection facility. At the San Ysidro land port, 12 new pedestrian lanes and 8 new vehicle lanes come on line in June. There are no new CBP Officers assigned to this port and beginning on April 1, 2018, 150 CBP Officers have been sent from other short-staffed ports to the seriously short-staffed ports of Nogales and San Ysidro for 90-day temporary duty assignments.

To address CBP OFO staffing shortages and to address the ever-increasing volume of trade through the ports of entry in the future, Ranking Member McCaskill and others recently introduced **S. 2314, the *Border and Port Security Act*, stand-alone legislation that would authorize the hiring of 500 additional CBP Officers and additional OFO trade operations staff annually** until the staffing gaps in CBP's various Workload Staffing Models are met. NTEU strongly supports this CBP Officer and Agriculture Specialist-only staffing authorization bill and urges every member of Congress to support this bill.

NTEU also asks Committee members to request from the Senate Appropriations Committee up to $100 million in Fiscal Year (FY) 2019 direct appropriations for the hiring of 500 CBP Officers, 100 CBP Agriculture Specialists, and additional needed non-uniformed Trade Operations and support staff.

The President's FY 2019 budget request does support the hiring of new CBP Officers to meet the current staffing need of 2,516, **but seeks to fund these new positions by increasing user fees.** The President's budget proposal only provides appropriated funding to hire 60 new CBP Officer positions at the National Targeting Center. The President's request seeks no appropriated funding to address the current CBP Officer staffing shortage of 2,516 additional CBP Officers as stipulated by CBP's own FY 2018 WSM or to fund the additional 721 CBP Agriculture Specialists as stipulated by CBP's own FY 2108 AgRAM.

User Fees: As in the past, the Administration's budget proposes significant realignment of user fees collected by CBP. Currently, 33 percent of a CBP Officer's compensation is funded with a combination of user fees, reimbursable service agreements, and trust funds. The FY 2019 budget proposes to reduce OFO appropriated funding by realigning and redirecting user fees, including redirecting the Electronic System for Travel Authorization (ESTA) fee that would require a statutory change. The FY 2019 budget proposal would redirect approximately $160 million in ESTA fees from Brand USA to CBP. Rather than redirecting the ESTA fees to fund the additional 2,516 CBP Officer new hires needed to fully staff CBP Officer positions in FY 2019 and beyond, as stipulated by CBP's WSM, the budget would in fact reduce CBP's appropriated funding by $160 million. Therefore, while the budget proposes to increase the number of CBP Officer positions funded by ESTA user fees by 1,093, it decreases appropriated funding by $160 million, and reduces the number of CBP Officer positions funded by appropriations by 1,093 positions.

Once again, the President's budget includes CBP Officer staffing numbers that are dependent on Congress first enacting changes to statutes that determine the amounts and disbursement of these user fee collections. To accomplish the ESTA fee change in the President's budget, Congress must amend the Travel Promotion Act of 2009 (P.L. 111–145). The President's request also proposes fee increases to the Immigration and Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA) user fees, not a direct up-front appropriation, to fund CBP Officer new hires as stipulated by the WSM. However, **Immigration and COBRA user fees cannot be increased without Congress first enacting legislation**. A proposal to increase user fees has been part of the Administration's annual budget submission since FY 2014 to fund the hiring of new CBP Officers. **These user fee increase proposals are again in the**

FY 2019 budget request, even though the Committees with jurisdiction have never shown any interest or even held a hearing to discuss this long-standing legislative proposal and the Administration has not pressed upon these Committee Chairs to do so.

Opioid Interdiction: CBP OFO is the premier DHS component tasked with stemming the nation's opioid epidemic--a crisis that is getting worse. In a report released on May 10, 2019, by the Senate Homeland Security and Governmental Affairs Committee Minority titled "Combatting the Opioid Epidemic: Intercepting Illicit Opioids at Ports of Entry", CBP Officers at the ports of entry were found to "play a key role in stopping opioids and that CBP has significant shortages of Port Officers that may be compromising efforts to seize additional opioids before they can reach U.S. communities."

The smuggling of fentanyl and other opioids has increased markedly. According to the report, "between 2013 and 2017, approximately 25,405 pounds, or 88% of all opioids seized by CBP, were seized at ports of entry. The amount of fentanyl seized at the ports of entry increased by 159% from 459 pounds in 2016 to 1,189 pounds in 2017."

The scourge of synthetic opioid addiction is felt in every state and is a threat to the nation's economic security and well-being. The majority of fentanyl is manufactured in other countries such as China, and is smuggled primarily through the ports of entry along the southwest border and through international mail and express consignment carrier facilities (e.g. FedEx and UPS).

CBP Officers are, "in the majority of cases, the last line of defense in preventing illicit opioids from entering the United States...CBP's current shortage of over 4,000 Port Officers is directly influencing operations and staffing these positions could increase CBP's ability to interdict opioids." **According to CBP, over the last three years, there were 181 CBP employees assigned to the five Postal Service International Service Centers and 208 CBP employees assigned to the Private Express Carrier Facilities.**

According to the report, on average, CBP Officers only inspect 100 of the 1.3 million inbound international packages that arrive daily by international mail. In 2016, 65 million packages arrive via express carriers, which are required by law to provide advanced electronic data. However, this data can be incomplete. "For example, from 2014 and 2016, CBP issued over five thousand penalties for incomplete manifest information and assessed over $26 million in fines. However, express shippers successfully negotiated penalties down to just over $4 million."

In the past year, the FedEx hub in Memphis processed 38 million imports and 48 million exports--equaling 86 million in total package volume. There are approximately 24 CBP Officers in total screening all 86 million shipments, and on average, about 15 CBP Officers are working the main overnight FedEx "sort" shift. Considering the volume at the FedEx hub, NTEU has been told that the port requires a minimum of 60 CBP Officers to facilitate the flow of legitimate freight and ensure successful interdiction of these synthetic chemicals. NTEU's CBP OFO appropriation request supports both the critical need at the air, sea and land ports of entry, but also at international postal and express consignment hubs.

Lastly, the nation's busiest land port of entry San Diego, along with the Tucson area land ports, account for "57% of all opioids seized by ports of entry, including 75% of all fentanyl and 61% of all heroin seized." These two land ports are also the most critically understaffed. According to CBP, "these long-term staffing shortfalls continue to stretch the limits of operational, enforcement and training capabilities at the ports of entry." To address these shortfalls, CBP solicits non-supervisory Officers to serve in Temporary Duty (TDY) assignments. Since November 1, 2015 between 80 and 200 CBP Officers per quarter have been TDYed to the San Diego and Tucson land ports. The continuing lack of CBP Officer staffing at these ports of entry results in forced overtime shifts, multiple deployments away from home, and low morale.

Agriculture Specialist Staffing: Despite CBP's release of its risk-based AgRAM that documents an ongoing shortage of CBP Agriculture Specialists--by 721--at the ports of entry, the budget request includes no direct appropriation to hire these critical positions needed to fulfill CBP's agriculture quarantine inspection (AQI) mission of pest exclusion and safeguarding U.S. agriculture and natural resources from the risks associated with the entry, establishment or spread of animal, plant pests and pathogens. NTEU's appropriations request includes a direct appropriation to begin to hire the 721 Agriculture Specialists as stipulated in their FY 2018 AgRAM.

CBP Trade Operations Staffing: CBP has a dual mission of safeguarding our nation's borders and ports as well as regulating and facilitating international trade. CBP employees at the ports of entry are the second largest source of revenue collection for the U.S. government. In 2017, CBP processed more than $2 trillion in imports and collected approximately $40 billion in duties, taxes, and other fees. Since CBP was established in March 2003, however, there has been no increase in non-uniformed CBP trade enforcement and compliance personnel even though inbound trade volume grew by more than 24 percent between FY 2010 and FY 2014. Additionally, CBP trade operations staffing has fallen below the statutory floor set forth in the Homeland Security Act of 2002 and stipulated in the FY 2017 CBP Resource Optimization Model for Trade Positions. NTEU strongly supports the funding through direct appropriations of 140 additional positions at the CBP Office of Trade to support implementation of Trade Enhancement and Facilitation Act (P.L. 114-125) requirements.

Hiring Contract: A funding proposal of concern to NTEU is a $297 million contract that CBP recently awarded to Accenture Federal Services "to manage the full life cycle of the hiring process from job posting to processing" of 7, 500 CBP Border Patrol, Air and Marine, and OFO new hires. NTEU has seen reports that the 5-year contract cost is approximately $39,600 per hire—nearly the same as the starting salary of a CBP Officer. NTEU strongly believes that these federal funds would be better spent actually hiring new CBP employees using CBP's in-house human resources department rather than in contracting out to a private sector consultant "to augment our internal hiring capabilities."

The best recruiters are likely current CBP Officers. Unfortunately, morale continues to suffer because of staffing shortages and a threatened pay freeze, and the Administration's proposed cuts to retirement, health care, and workers' compensation programs. In addition to being overworked due to excessive overtime requirements, temporary duty assignments are a

major drag on employees, especially those with families. Based on their experiences, many Officers are reluctant to encourage their family members or friends to seek employment with CBP. I have suggested to CBP leadership that they look at why this is the case.

NTEU strongly believes that addressing OFO hiring shortages by funding needed new CBP Officer and Agriculture Specialist to fill the FY 2018 staffing gap will do more to improve morale and encourage peer-to-peer recruitment than funding a private contractor to help recruit and hire new CBP employees.

Increasing CBP Officer staffing at the ports-of-entry is an economic driver for the U.S. economy. According to the Joint Economic Committee (JEC), "every day 1.1 million people and $5.9 billion in goods legally enter and exit through the ports of entry" and finds that border delays cost the U.S. economy upwards of $5 billion each year. CBP estimates that the annual hiring of an additional 500 CBP Officers at the ports of entry would increase yearly economic activity by $1 billion and result in an additional 16,600 jobs per year to the U.S. economy.

Thank you for the opportunity to submit this statement on the CBP OFO resources needed to secure and protect the U.S. on behalf of the men and women represented by NTEU at the nation's ports of entry. **NTEU asks that the Homeland Security and Governmental Affairs Committee members seek up to $100 million from the Senate Appropriations Committee for direct appropriated funding for new CBP Officers, Agriculture Specialists and support staff to build on the CBP OFO staffing advances made in the FY 2018 Omnibus measure.**

Post-Hearing Questions for the Record
Submitted to the Honorable Kirstjen M. Nielsen
From Senator Claire McCaskill

"Authorities and Resources Needed to Protect and Secure the United States"

May 15, 2018

Question#:	1
Topic:	Nominations and Political Appointments
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: What date do you expect the Senate will receive the Trump Administration's nominee for the Deputy Secretary of the Department of Homeland Security (DHS)? Please describe the consequences of this position remaining unfilled for months.

What date do you expect the Senate will receive the Trump Administration's nominee for the Federal Emergency Management Agency (FEMA) Deputy Director? Please describe the consequences of this position remaining unfilled for months.

What date do you expect the Senate will receive the Trump Administration's nominee for Immigration and Customs Enforcement (ICE) Director? Please describe the consequences of this position remaining unfilled for months.

Please describe your efforts to encourage the White House to fill politically appointed positions in DHS.

Response: As these are all Presidential appointments, we defer these questions to the White House.

Question#:	2
Topic:	Accenture Contract
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: I sent a letter on January 3, 2018 requesting the contract file for a $300 million contract with Accenture Services, LLC. Under the contract the federal government will spend $40,000 to hire one officer. I asked again about this contract file during our DHS reauthorization roundtable in February. DHS has provided some information from the file, but DHS has still not provided the cost to hire analysis or cost audit that was done to justify the recruiting contract.

Please provide the cost to hire analysis, and the date the audit was performed and completed.

Response: U.S. Customs and Border Protection (CBP) commissioned an analysis of Fiscal Year 2017 hiring data to establish a true baseline of the cost for the government to hire frontline employees. This analysis provides a convenient comparison of the per capita prices in the Accenture contract, but was not designed to compare government and Accenture costs.

Question: Were any other cost to hire or cost analyses performed in preparation for this contract? If so, please provided these analyses as well as their dates of performance and completion.

Response: Yes. As is the norm and required for contract actions, the government prepared an Independent Government Cost Estimate (IGCE) prior to releasing the solicitation. The IGCE then serves as the basis of comparison when reviewing and evaluating contract proposals. The price for the contract we awarded reconciled well with the IGCE, differing by less than 3% when comparing Accenture's total per-hire price to the IGCE. This was briefed to your staff on April 27, 2018.

Question: Does DHS's Fiscal Year (FY) 2019 Proposed Budget account for Customs and Border Protection's (CBP) obligations under the contract?

Response: The FY 2019 Budget includes the total funding requirements for all surge and attrition hires. The funding request was developed at the requirements level and is not preassigned to the specific execution vehicle.

Question: Is DHS planning or considering any other new contracts for the hire of law enforcement personnel? If so, please provide a description of the contract and requirement.

Question#:	2
Topic:	Accenture Contract
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Response: No, CBP is not considering additional hiring contracts at this time and we do not have plans to award contracts similar to the Accenture contract.

Immigration Customs and Enforcement (ICE) currently utilizes OPM to assist with their hiring needs. However, ICE is developing requirements in the event there is a need to acquire these services via contract in the future. Any such future contract action would be coordinated in advance with the DHS Headquarters Chief Human Capital Officer.

Question#:	3
Topic:	DHS Hiring and Recruiting
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: How much does DHS annually spend on hiring and recruiting activities? Please provide a detailed breakdown by DHS component, including the amount spent on contractors?

Response: The following tables show planned and actual costs associated with recruitment activities taking place within the named Components. Recruiting costs are not being calculated for DHS HQ elements, with the exception of the National Protection and Programs Directorate and the Office of Intelligence and Analysis pending the implementation of a tracking system.

The costs in the table are for recruitment only, as DHS does not currently track costs uniquely associated with job applicants throughout the recruitment cycle and up to the point of being hired. Further, salary costs for staff time involvement and contract costs in recruitment are not included. Lastly, marketing and advertising costs are captured separately. DHS recognizes the value of being able to capture these types of data. DHS is researching solutions that may provide this data and make it more readily available in the future, to assist with assessing return on investment for recruitment, outreach, and marketing efforts.

FY18 Recruiting Costs													
	October	November	December	January	February	March	April	May	June	July	August	September	Total
CBP	$289,592	$195,311	$2,144,075	$88,282	$273,460	$263,039	$298,106	$104,713	$112,819	$81,587	$116,596	$128,823	$4,096,403
FEMA	$319,308	$400,900	$2,225	$0	$3,425	$400	$1,250	$0	$0	$0	$0	$0	$727,508
FLETC	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0	$0
I&A	$525	$0	$0	$0	$400	$2,300	$1,870	$0	$1,500	$1,350	$0	$0	$7,945
ICE	$1,345	$425	$0	$11,331	$14,246	$38,865	$31,708	$18,001	$20,096	$10,201	$3,601	$7,551	$157,370
NPPD	$1,929	$500	$0	$0	$0	$0	$0	$18,300	$0	$0	$0	$0	$20,729
TSA	$78,394	$87,916	$268,589	$70,351	$241,957	$343,073	$171,468	$12,764	$2,495	$1,734	$575	$599	$1,279,915
USCG	$0	$0	$0	$0	$15,000	$0	$0	$0	$0	$0	$0	$0	$15,000
USCIS	$1,344	$3,272	$0	$3,041	$1,550	$0	$0	$0	$0	$0	$0	$0	$9,207
USSS	$142,841	$110,188	$74,948	$83,884	$93,780	$200,527	$11,768	$13,025	$2,504	$3,100	$0	$0	$736,563
TOTAL	**$835,278**	**$798,511**	**$2,489,837**	**$256,888**	**$643,818**	**$848,204**	**$516,170**	**$166,803**	**$139,414**	**$97,972**	**$120,772**	**$136,973**	**$7,050,640**

Question#:	3
Topic:	DHS Hiring and Recruiting
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

FY17 Recruiting Costs	
CBP	$4,710,785
FEMA	$33,945
FLETC	$25,132
I&A	$9,660
ICE	$44,065
NPPD	$13,813
TSA	$565,305
USCIS	$5,036
USSS	$447,067
TOTAL	$5,854,808

Question#:	4
Topic:	UACs Referred
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: Please provide the number children referred to the Department of Health and Human Services (HHS) since January 1, 2018. How many of these minors were accompanied by a parent, guardian, or family member when they were apprehended?

Response: Based on existing federal law, including the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008, DHS policy states that a family unit is comprised of an alien parent or legal guardian and their children. If an inadmissible child arrives with a non-custodial adult relative, such as an aunt, uncle, grandparent, or adult sibling, the child is treated as an Unaccompanied Alien Child (UAC). DHS does not maintain statistics on UACs that were accompanied by a non-parent or legal guardian family member.

The U.S. Border Patrol (USBP) apprehended 21,010 juveniles from January 1, 2018, through May 31, 2018, who were referred to Department of Health and Human Services (HHS) Administration for Children and Families (ACF) Office of Refugee Resettlement (ORR). Of the 21,010 juveniles referred to ORR, a certain number of them resulted from family separations, including family separations performed under the zero tolerance policy. DHS is unable to determine how many juveniles resulting from family separations were referred to ORR from January 1, 2018 to April 19, 2018. Starting April 19, 2018, a systems change was implemented that allows separations to be tracked in CBP's database. Between April 19 and May 31, 2018, CBP separated 1,991 children from their parents or legal guardians and referred them to ORR.

Additionally, of the 21,010 juveniles referred to ORR, 608 were children of other children (under 18) who were also referred to ORR.

In addition to the 21,010 juveniles that USBP transferred to ORR, the CBP Office of Field Operations (OFO) transferred 215 juveniles to ORR between January 1, 2018 and May 31, 2018.

Question: How many were unaccompanied?

Response: Of the 21,010 juvenile apprehensions from USBP from January 1, 2018, through May 31, 2018, referred to ORR, 20,402 were UACs (not necessarily at time of apprehension), and the other juveniles are the children of children.

From the 215 from OFO mentioned above, there were 20 minors accompanied by a parent, guardian, or family member.

Question#:	4
Topic:	UACs Referred
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: You have said that immigrants crossing between ports of entry are committing a crime and will be referred to prosecution. This "zero tolerance" policy has the effect, as you noted, of separating criminally-charged immigrant adults from any accompanying children. However, once any given criminal proceeding and jail sentence is over, there is no requirement to maintain separation between a parent and his or her children.

How many children has DHS separated from accompanying parents since January 1, 2018?

Response: U.S. Border Patrol separated 848 family members (409 families) between, October 2017 and April 2018.

Question: What is the average length that these children have remained separated from their parents?

Response: DHS defers to HHS.

Question: How many children remain separated from their parents even after the parents' criminal proceeding is over and any jail sentence has been served?

Response: That data is not available because of the following possible variables: the parents may not claim that they have children in DHS custody following their release; the children may age out while awaiting their parents time served period; the children may be sponsored by another parent or qualifying relative who may take custody while their parent is adjudicated for criminal violations.

Question: How does DHS's process of separating a child from a parent charged with criminal violation of immigration laws differ, if at all, from a state process of separating a child from a parent charged with criminal violation of state laws?

Response: The answer to this question may vary for each of the four immigration law enforcement offices within DHS, which includes CBP Office of Field Operations, CBP U.S. Border Patrol, ICE Enforcement and Removal Operations, and ICE Homeland Security Investigations. For OFO and USBP, a child is separated from a parent when the parent is charged with a criminal offense and the parent is detained for judicial proceedings. This process is not dissimilar to state/local prosecutorial and separation processes. DHS is referring for prosecution all single adults that break our immigration laws.

Question#:	4
Topic:	UACs Referred
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

For ICE ERO, a child is separated from a parent in cases where ERO determines that an adult may pose a risk to the child, or when an adult is charged with a crime and transferred to a criminal detention setting.

In accordance with the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), except in exceptional circumstances, DHS treats children separated from their parents as unaccompanied alien children (UAC) and is required to transfer the custody of the UAC to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) within 72 hours after determining that such alien child is unaccompanied.

Question: Does DHS currently have a Memorandum of Agreement (MOA) or Memorandum of Understanding (MOU) with the Department of Defense (DOD) for the care or detention of UACs on military bases or other DOD facilities? If so, please provide the agreement.

Response: DHS does not have statutory authority for the care and custody of UAC's. *See* 8 U.S.C. § 1232(b)1); 6 U.S.C. § 279(a). Therefore, DHS respectfully defers to the Department of Health and Human Services Office of Refugee Resettlement to respond to this inquiry.

Question: If not, does DHS plan to enter into such an agreement?

Response: DHS does not plan to enter into such an agreement because the Department does not have statutory authority for the care and custody of unaccompanied alien children. *See* 8 U.S.C. § 1232(b)(1); 6 U.S.C. § 279(a).

Question#:	6
Topic:	H-2B Visas
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: In your testimony, you asked Congress to work with the Department to adjust the annual cap on H-2B visas. You said this adjustment would give small businesses the "stability and predictability" they need to operate effectively. The annual H-2B cap is currently set at 66,000 visas. Based on your analysis of this issue, what do you think the annual H-2B visa cap should be, and do you support an exemption to this cap for workers who have participated in the program previously?

Response: DHS believes that Members of Congress have the best information regarding the appropriate number of H-2B visas needed to support American businesses without harming American workers.[1] This is because congressional representatives have the best understanding of their constituencies and the needs of their local employers. Setting the H-2B cap based on such knowledge would surely result in greater stability and predictability for businesses.

DHS desires to work together with Congress to limit H-2B visas to employers with truly temporary needs, and to find solutions to most effectively allocate available H-2B visas throughout the year. Congress placed limitations on H-2B visas to protect American workers, but it also clearly could not have been Congress's intent for the lawful administration of the program to put American employers out of business.

We note that in addition to the statutory cap of 66,000 H-2B visas, section 205 of Div. M of the *Consolidated Appropriations Act, 2018*, Pub. L. 115-141 (FY 2018 Omnibus), provides the Secretary of Homeland Security with discretion, after consultation with the Secretary of Labor, to increase the FY 2018 H-2B cap under prescribed circumstances.[2] On May 31, 2018, the Departments of Homeland Security and Labor published a temporary final rule implementing section 205.[3] This rule authorizes up to an additional 15,000 H-2B workers for those American businesses that attest that they are likely to suffer irreparable harm if they do not receive all of the workers they requested. As the Fiscal Year 2018 Omnibus did not address returning workers, this rule does not distinguish between new or returning workers, as such DHS does not have a position on the advisability of an H-2B returning worker exemption.

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[1] *See* Testimony of DHS Secretary Nielsen, House Committee on Appropriations, Subcommittee on Homeland Security, FY 2019 Budget Hearing – Department of Homeland Security (April 11, 2018) (https://appropriations.house.gov/calendararchive/eventsingle.aspx?EventID=395210).

[2] *See* Immigration and Nationality Act (INA) § 214(g)(1)(B).

[3] *See* Exercise of Time-Limited Authority To Increase the Fiscal Year 2018 Numerical Limitation for the H-2B Temporary Nonagricultural Worker Program, 83 Fed. Reg. 24905 (May 31, 2018)

Question#:	6
Topic:	H-2B Visas
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

On June 6, 2018, USCIS announced that in the first five business days of filing, it received petitions for more beneficiaries than the 15,000 H-2B visas available under the FY 2018 supplemental cap. Accordingly, USCIS was required by regulation to use a computer-generated selection process, commonly known as a lottery, to randomly select the number of petitions required to meet, but not exceed, the increased cap for FY 2018.[4] The lottery included all H-2B cap-subject petitions received between May 31, 2018 and June 6, 2018. USCIS randomly selected petitions from more than 1,800 petitions that requested approximately 29,000 beneficiaries. USCIS rejected and returned all unselected petitions with their filing fees, as well as any cap-subject petitions received after June 6.

As with the essentially identical provision authorizing DHS to augment the H-2B statutory cap in FY 2017, the Department did not ask for, and does not wish to have, this discretionary authority to increase the number of H-2B visas. These visas were authorized only to help truly needy seasonal employers stay in business and thereby protect the jobs of their American workers.

DHS is finalizing a congressionally mandated report that details options for addressing the issue of late-season H-2B petitioners that are currently unable to obtain visas. This report will include suggestions on how the program can better serve our national interests.

[4] *See* 8 CFR 214.2(h)(8)(ii)(B), https://www.uscis.gov/news/alerts/uscis-completes-lottery-temporary-increase-fy-2018-h-2b-cap .

Question#:	7
Topic:	National Security Letters
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: A national security letter (NSL) is similar to an administrative subpoena. NSLs require the production of certain types of information from third-party custodians including telephone companies, internet service providers, consumer credit reporting agencies, banks, and other financial institutions.

Have any DHS components issued NSLs or other administrative demands for information in the past 5 years? If so, which components?

How many NSLs or other administrative demands for information were issued each year for the past five years?

How many of those sought information about an American citizen?

Response: The Department of Homeland Security (DHS) personnel working with the Federal Bureau of Investigation (FBI), such as with FBI Joint Terrorism Task Forces, may issue NSLs pursuant to FBI's authority. DHS defers to FBI for a response.

Question#:	8
Topic:	Russian Interference Assessment
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Question: On May 22, 2017, a CNN reporter asked you, "Do you have any reason to doubt the January 2017 intelligence community assessment that said it was Vladimir Putin who tried to meddle in this election to help President Trump win?"

You responded, "I do not believe that I've seen that conclusion. ... That the specific intent was to help President Trump win? I'm not aware of that."

DHS spokesman Tyler Houlton released the following statement explaining your response, "The intelligence assessment language is nuanced for a reason. The secretary agrees with that assessment. But the question asked by the reporter did not reflect the specific language in the assessment itself, so the secretary correctly stated she had not seen the conclusion as characterized by the reporter."

However, the intelligence assessment is quite direct in this assertion. The declassified January 6, 2017 report from the Office of the Director of National Intelligence says in no uncertain terms:

We assess Russian President Vladimir Putin ordered an influence campaign in 2016 aimed at the US presidential election. Russia's goals were to undermine public faith in the US democratic process, denigrate Secretary Clinton, and harm her electability and potential presidency. We further assess Putin and the Russian Government developed a clear preference for President-elect Trump. We have high confidence in these judgments.

We also assess Putin and the Russian Government aspired to help President-elect Trump's election chances when possible by discrediting Secretary Clinton and publicly contrasting her unfavorably to him. All three agencies agree with this judgment. CIA and FBI have high confidence in this judgment; NSA has moderate confidence.

In your pre-hearing questionnaire for your nomination to be Secretary of the Department of Homeland Security, you were asked whether you agreed with this Intelligence Community assessment. In response, you stated, "I have no reason to disagree with earlier assessments of the Intelligence Community." Had you seen the above assessment from the Intelligence Community when you answered that question?

Have you now read the assessment of the Intelligence Community, or at least the above excerpt?

Question#:	8
Topic:	Russian Interference Assessment
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Claire McCaskill
Committee:	HOMELAND SECURITY (SENATE)

Do you agree with the Intelligence Community assessment that Russia interfered in the 2016 presidential election to help President Trump win?

Response: Secretary Nielsen had previously reviewed the 2017 Intelligence Community Assessment and agrees with it – as stated on several occasions. The Russian government unequivocally worked to undermine our democracy during the 2016 election. Russian goals included undermining faith in the US democratic process and harming a candidate's electability and potential presidency. Importantly, there is evidence that they targeted both major political parties. Their intent was to sow discord in the American electoral process. However, we have no evidence that any ballots were changed or counted incorrectly as a result of Russian interference.

The intelligence assessment language is nuanced for a reason. Secretary Nielsen agrees with that assessment. But the question asked by the reporter did not reflect the specific language in the assessment itself, so Secretary Nielsen correctly stated that she had not seen the conclusion as characterized by the reporter.

The Department is well aware of the threat posed by Russian election interference, and the Secretary welcomes any opportunity to be transparent with Congress and the American people about efforts to ensure the integrity of our elections.

Post-Hearing Questions for the Record
Submitted to the Honorable Kirstjen M. Nielsen
From Senator Rob Portman

"Authorities and Resources Needed to Protect and Secure the United States"

May 15, 2018

Question#:	9
Topic:	FEMA Report
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: S. 2971, The National Urban Search and Rescue Response System Act of 2016 (Public Law No: 114-326) required a report to Congress by June 2017 from the FEMA Administrator on the development of a plan including implementation steps and timeframes, to finance, maintain, and replace System equipment for use by Urban Search and Rescue Task Force Teams. What is the status of this report?

Response: This report was transmitted on May 30, 2018

Question#:	10
Topic:	Coast Guard Budget
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Rob Portman
Committee:	HOMELAND SECURITY (SENATE)

Question: Coast Guard provided documents about its multi-mission,. In its 5yr Capital Investment Plan for the Medium Range Recovery (MRR) helicopter, MH-60T, the FY19 Base Budget amount is $0, but $41M total FY20-22. In the President's Budget, the FY19 amount is $25M, but only $25M total FY19-27.

What is the Coast Guard's strategy for the MH-60T sustainment program, now that FY18 funds for the analyze/select phase of the Service Life Extension Project have been received?

Response: The U.S. Coast Guard is currently in the analyze/select phase of the acquisition process. The Coast Guard will complete an alternatives analysis to evaluate the technical approaches available to extend the service life of the MH-60T fleet into the mid-2030s.

Question: What total investment does the Coast Guard forecast over the next five years for this program?

Response: The 2019 to 2023 Capital Investment Plan includes $110M for the MH-60T sustainment program.

Question: When will the Coast Guard provide an updated Capital Investment Plan to reflect the latest President's Budget?

Response: The Coast Guard delivered the FY 2019-2023 Capital Investment Plan Report to Congress on May 18, 2018.

Question: How does the Coast Guard plan to leverage new U.S. technologies for this and other aircraft service life extension programs?

Response: The Coast Guard is constantly reviewing new technologies for possible integration into our existing aircraft. The Coast Guard may leverage new technologies as part of the MH-60T sustainment program if these technologies are necessary to extend the service life of the aircraft and represent the best value to the Government.

Post-Hearing Questions for the Record
Submitted to the Honorable Kirstjen M. Nielsen
From Senator Heidi Heitkamp

"Authorities and Resources Needed to Protect and Secure the United States"

May 15, 2018

Question#:	11
Topic:	CBP Retention
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: Over the years, I have heard a lot of discussion in various hearing and briefings about the need to improve hiring at DHS. The Administration's FY19 budget request continues that trend - there is a request for 2,750 more Border Patrol and ICE Agents, as well as funding increases for CBP recruitment and applicant processing. The Homeland Security and Governmental Affairs Committee has also previously discussed CBP's recent $297-million contract with Accenture to provide a surge hiring capability. On that front, I hope the Secretary knows that this committee will be paying close attention to that contract and its outcome. I also worry that focus on this contract and how it could improve hiring takes away needed emphasis on improving DHS and CBP retention. I worry there has not been enough of a focus on the retention side of the personnel equation. I think you will agree that attrition is a critical challenge for DHS, and especially CBP.

Has CBP determined the root cause for it high attrition rate? If so, what has been identified?

Response: The current CBP attrition rate of 4.3 percent compares favorably with average nationwide law enforcement attrition of just over 6 percent. For Border Patrol Agents (BPA) specifically, agents continue to cite the inability to relocate to a more desirable location as a primary reason for leaving the agency. Furthermore, in FY 2018 to date, approximately 20 percent of all separating BPAs have left for ICE, an agency whose field offices are primarily located in major metropolitan areas.

In order to better identify the reasons behind attrition, CBP is developing an improved exit survey for those departing the agency. We will pilot the survey in July 2018, with full implementation planned beginning October 1, 2018.

Question#:	11
Topic:	CBP Retention
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: What incentives or programs will DHS use to maintain its best and brightest employees?

Response: CBP continues to utilize multiple group incentives, including retention incentives for all Officers eligible to retire in the next year, as well as recruitment incentives for several hard-to-fill locations, including Pembina and Portal, North Dakota. In addition, CBP's Operational Mobility Program for BPAs has been effective, with close to 400 BPAs having accepted relocation during the program's first cycle alone, and over 130 of them receiving relocation incentives. The FY 2018 attrition rate for BPAs as of April 2018 is 4.2 percent, down from 4.6 percent in FY 2017.

Question: Are there any statutory barriers that prevent DHS from applying programs or incentives to the problem of retention? If so, what are they?

Response: There are no statutory barriers preventing CBP from authorizing a retention incentive under 5 CFR 575 Subpart C to current employees.

Question#:	12
Topic:	HSI Online Operations
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: As time goes by, the Internet becomes increasingly intertwined with various aspects of our life. While there is plenty to say regarding the value and benefits society can achieve through access to the internet, we must not forget about the bad actors and how they can leverage the internet to engage in illegal activities, such as human trafficking, the sale and distribution of illicit narcotics, and child sexual exploitation. That is why I appreciate the efforts of the U.S. Immigration and Customs Enforcement's Homeland Security Investigations (HSI), which plays a critical role in both assisting and investigating various crimes, including those relating to cybercrimes.

Since joining the Senate, one of my top priorities has been to find ways to improve the federal government's capabilities to combat human trafficking online. Secretary Nielsen, in your view, how effective have HSI operations been in investigating and combatting human trafficking online? How effective have HSI operations been in investigating other cybercrimes?

Response: The efforts of U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) to combat illicit online activity have been extensive and very successful through major shutdowns and significant disruption of online markets/websites that facilitate illicit activity and services. For example, ICE HSI special agents successfully worked with the FBI and the European Police (EUROPOL) on shutting down an online black-market website designed to buy and sell illegal drugs and other unlawful goods over the Internet in 2016. Many of these successes have been the result of significant multi-year investigations that required traditional and modern investigative techniques that are imperative in combating online crime, particularly with respect to the Darknet. ICE HSI plays a critical role by investigating online criminal activity in dark web marketplaces, as most of the illicit items sold on these markets fall within HSI's investigative jurisdiction and mission priorities of protecting public safety and national security, together with strengthening cybersecurity.

Question: Does DHS have a strategy in place regarding any additional resources HSI may require to investigate cybercrimes?

Response: The key components of the ICE HSI strategy for combating the migration of crime into the cyber world include additional personnel, training, and equipment. We are recruiting and hiring increasing numbers of special agents and support personnel with specialized skills in computer sciences, thus prioritizing the training of our federal workforce, as well as our state and local partners. These personnel also provide the tools,

Question#:	12
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skillset, and specialized knowledge to successfully manage modern investigative techniques.

The proliferation of anonymized hidden services on the dark web that facilitate criminal activity have necessitated a significant shift in cyber investigative strategies. To penetrate the anonymity these platforms, ICE HSI has established itself as the leader in federal law enforcement through the development of online investigative techniques and long-term strategies. ICE HSI leverages its vast and unique authorities in both the virtual and physical worlds to identify, attack, and disrupt the illicit supply chain; identify and apprehend criminal activities conducted with virtual/cryptocurrency; and dismantle transnational criminal organizations that use the Darknet to evade detection by law enforcement. In addition, ICE HSI is in the process of deploying a specialized VPN-based mesh network between field offices and the HSI Cyber Crimes Center to allow transfer of cybercrime material, forensics, and child exploitation data for faster assimilation and real-time analytics. This network will facilitate the transfer of data for investigative purposes that would otherwise not be allowed on a government network, including sensitive evidentiary material, malware, and other computer code for analysis. ICE HSI anticipates full implementation of this network to cost approximately $24 million dollars.

Question: Do you anticipate HSI will require additional resources, and are there steps Congress could take to enhance HSI's cybercrime efforts?

Response: ICE HSI identifies many technical challenges associated with cybercrime and the exploitation of cryptocurrencies. To succeed in investigating, disrupting, and dismantling criminal organizations that operate primarily within the cyber domain, Congress can ensure that ICE HSI has the resources to obtain the latest advanced technology, analytical software, and increased personnel to utilize those tools. Such tools are often proprietary and involve regular license renewal costs. In addition, computer hardware and circuit upgrades to unattributed networks for investigative purposes will allow special agents to combat cybercriminals that operate via the Darknet.

Question#:	13
Topic:	Counter-UAS Strategies
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Question: As you may know I am an original co-sponsor, along with the Chairman and Ranking Member, on the "Preventing Emerging Threats Act of 2018", this proposed legislation would provide DHS with the authorities to pursue Counter-UAS strategies to protect the homeland from the unauthorized exploitation of unmanned aircraft systems.

We know that criminal organizations, including drug traffickers, are using drones to support their illegal activities along our borders. How will this legislation help DHS and DOJ combat smuggling operations facilitated by drones, and what other actions does DHS need to take over the next five years to be prepared to meet this threat?

Response: This legislation would provide the Department of Homeland Security (DHS) and Department of Justice (DOJ) the necessary legal authorities to protect "covered facilities and assets" when there is a security risk posed by a drone, as well as provide necessary CUAS authorities for additional important mission sets. Covered facilities/assets will be designated by DHS and DOJ through a risk-based assessment, and in this case directly relates to CBP's mission for security operations, as outlined in the Administration's legislative proposal and the Preventing Emerging Threats Act of 2018 (S.2836). With the proposed legislative authority, DHS and DOJ would have the ability to mitigate UAS threats, and provide DHS and DOJ the capabilities to: detect, identify, monitor, and track UAS; warn the operator; disrupt control of it; seize it; and use reasonable force to disable or destroy it if necessary. We believe that the number of unauthorized UAS encounters and illicit actions facilitated by UAS within the United States will continue to rise and it is necessary to take immediate action to mitigate any threats or malicious use of these drones.

Question: Why is it important for DHS and DOJ to have the same basic authority as DOD to counter UAS activity that attempts to interfere with DHS activities or break the law? Are there overlapping missions or operations that could be impacted if the Departments had unequal legal standing to operate Counter- UAS systems?

What authorities does DHS need to accomplish the mission of countering the UAS threat?

Response: DHS is in need of legislative authority to counter the growing threat posed by unmanned aircraft systems (UAS). Specifically, DHS needs Counter-UAS (CUAS) authorities to detect, track, and mitigate threats from small UAS. Without this mandate, DHS is unable to develop and operate many types of CUAS technologies. Consistent with the authorities exercised by the Department of Defense (DOD) and Department of

Question#:	13
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Energy (DOE), under the proposed draft legislation, DHS and Department of Justice (DOJ) officers would be exempt from potential criminal penalties for performing their duties to protect the homeland pursuant to the authorities granted in this legislation. In order for the legislation to be effective, it must remove uncertainty found in existing law that could place operators of this capability in legal jeopardy. That is why the Administration favors a clear approach that would completely eliminate uncertainty by covering all parts of Title 18. Congress took that approach in each of the last two NDAAs with respect to DOD and DOE's employment of CUAS activity.

This approach ensures that security personnel in DOJ and DHS do not receive fewer protections than their colleagues in DOD and DOE while performing the same type of activity. DHS and DOJ personnel deserve the same protections as their DOD and DOE counterparts. Providing different protections for DOJ and DHS could also make joint operations more difficult. This approach helps to avoid a negative inference: i.e., if one law has a categorical exclusion, and another does not, a court could interpret that as Congressional intent to open up liability for some provisions.

Operationally, differing authorities and CUAS technologies may lead to security gaps in areas of joint responsibility. Not only could an authority gap cause different capabilities, but also significantly impair our ability to create a common operating picture where we can share critical threat data among participants in joint operations or joint areas of responsibility. The DOD legislation limits the personnel authorized to exercise this authority to employees with assigned duties that include safety, security, or protection of personnel, facilities, or assets. The proposed legislation contains this same limitation. As a result, both provide for the same ability for the appropriate personnel to conduct force protection/security operations, utilizing unique capabilities, to counter threats posed by UAS. The legal framework governing any peacetime domestic use of force to counter a nefarious UAS must comply with the Fourth Amendment's prohibition against unreasonable searches and seizures, regardless of whether the use of force is by DOD, DHS, or DOJ. Thus, any federal effort to counter UAS that involves or requires a "seizure" of property or persons must adhere to the Fourth Amendment's general reasonableness requirement.

The purpose of the legislative proposal is to close the existing loophole that prevents federal law enforcement from addressing the current UAS threat. To that end, the legislation is narrowly tailored to authorize only enumerated actions ("detect, identify, monitor," etc.) toward a UAS that are "necessary to mitigate the threat" posed by that UAS. This does not remove liability for independent criminal acts. It protects only CUAS operators acting in the course of their assigned duties to protect their teams and the public

Question#:	13
Topic:	Counter-UAS Strategies
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Heidi Heitkamp
Committee:	HOMELAND SECURITY (SENATE)

Additionally, as a result of the rapidly developing UAS and counter UAS technologies, a categorical exclusion of Title 18 will ensure that both military and law enforcement personnel are not inappropriately restrained or constrained from employing capabilities to counter the existing and future security threats posed by UAS. The legislative proposal contains many limitations that do not exempt out all of Title 18 and is narrowly tailored to authorize only enumerated actions ("detect, identify, monitor," etc.) toward a UAS that are "necessary to mitigate the threat" posed by that UAS. This does not remove liability for independent criminal acts. It protects only CUAS operators acting in the course of their assigned duties to protect their teams and the public.

As described in the Administration's proposal and the draft bill, covered facilities and assets are those (1) within the United States; (2) that are identified by DHS and DOJ through a risk-based assessment; and (3) that directly relate to one of the following missions:

- United States Coast Guard and U.S. Customs and Border Protection security operations, including securing facilities, aircraft and vessels;
- United States Secret Service protection operations;
- Federal Protective Service protection of federal facilities;
- U.S. Marshals/DOJ protection of its facilities and court personnel;
- Bureau of Prisons protection of its high-risk facilities;
- Security for Special Events: National Special Security Events designated by the President at the request of the Secretary of DHS; or Special Event Assessment Rating Events
- When a state governor or attorney general requests assistance for a mass gathering event that would not otherwise fall into the security for special event category above;
- Active federal law enforcement investigations, emergency responses, or security operations carried out by DHS or DOJ; and
- Reacting to a known national security threat that could involve unlawful use of a drone.

Post-Hearing Questions for the Record
Submitted to the Honorable Kirstjen M. Nielsen
From Senator Maggie Hassan

"Authorities and Resources Needed to Protect and Secure the United States"

May 15, 2018

Question#:	14
Topic:	CVE Task Force
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: As you know, in 2016, the Interagency Task Force on Countering Violent Extremism (hereafter referred to as "the Task Force") was created in order to "coordinate government efforts and partnerships to prevent violent extremism in the United States." In written testimony before a HSGAC subcommittee on July 6, 2016, the then-Director of the Task Force stated-

"The Task Force is hosted and currently led by DHS, and the leadership will rotate every two years between a DHS and a Department of Justice (DOJ) executive. The Task Force includes participation from over 10 departments and agencies across the federal government."

According to the press releases from DOJ and DHS, additional staffing would be "provided by representatives from the FBI, National Counterterrorism Center and other supporting departments and agencies."

During our HSGAC hearing on May 15, 2018, I asked you to identify which agencies have currently detailed staff to the Task Force. You were not in possession of this information at the hearing, and promised to follow up. Your staff provided my office with the following response-

"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."

And upon request to clarify what "contribution of time" meant in terms of these three agencies participation, your staff provided the following-

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"'Time' as referenced pertains to staff from the respective agencies participating in task force activities as needed, but the task force does not have dedicated staff on detail to DHS from those agencies."

For further clarification, can you please answer the following:

Given that leadership of the Task Force was to rotate between DHS and DOJ every two years, has DOJ assumed leadership of the Task Force for 2018 and 2019?

Response: No, DOJ has not assumed leadership of the Task Force. We defer to DOJ for further comment on this. However, it is also important to note that the Task Force is only one piece of a larger expansion of USG-wide terrorism prevention efforts, and each agency's contributions to the Task Force alone do not adequately represent the level of effort focused on the challenge.

Question: As the agency co-chairing the Task Force, does DOJ currently have a dedicated staff member detailed to the Task Force? If so, how many are detailed to the Task Force.

Response: DOJ does not currently have a full-time dedicated staff member detailed to the Task Force. One DOJ representative attends weekly interagency check-in teleconferences, and maintains contact and coordination with members of the Task Force as needed. As previously noted, contributions to the Task Force alone do not adequately represent the level of effort focused on terrorism prevention. We defer to DOJ for further comment on this.

Question: Does the Federal Bureau of Investigation currently have a dedicated staff member detailed to the Task Force? If so, how many are detailed to the Task Force.

Response: FBI does not currently have a full-time dedicated staff member detailed to the Task Force. Two FBI representatives attend weekly check-in teleconferences, and maintain contact and coordination with members of the Task Force as needed. As previously noted, contributions to the Task Force alone do not adequately represent the level of effort focused on terrorism prevention We defer to FBI for further comment on this.

Question: Does the National Counter Terrorism Center currently have a dedicated staff member detailed to the Task Force? If so, how many are detailed to the Task Force.

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Response: NCTC does not currently have a full-time dedicated staff member detailed to the Task Force. One NCTC representative attends weekly check-in teleconferences, and several members of the NCTC Directorate of Strategic Operational Planning maintain contact and coordination with members of the Task Force as needed. They also participate regularly in other interagency efforts associated with terrorism prevention and counter terrorism. We defer to NCTC for further comment on this.

Question: Does the State Department currently have a dedicated staff member detailed to the Task Force? If so, how many are detailed to the Task Force.

Response: The U.S. Department of State does not have a full-time dedicated staff member detailed to the Task Force. However, they are a close and continuing contributor to terrorism prevention efforts. For additional details, we defer to the State Department.

According to the then-Director of the Task Force's 2016 testimony, more than 10 agencies actively participated in the Task Force in 2016. According to DHS's correspondence with my office, only three agencies (beside DHS) currently provide "time" to the Task Force, which is defined as "participation in Task Force activities as needed."

Question: Can you give an estimate of roughly how much "time" each of these agencies provide on a weekly basis to the Task Force?

Response: Task Force representatives attend a weekly check-in teleconference, in which participants deliver updates about current and planned terrorism prevention initiatives and activities that affect individual agencies, as well as interagency coordination. Representatives may also participate in other meetings or briefings, such as with international delegations, amounting roughly to 1-5 hours per week. DHS continues to contribute four staff members who provide part-time support to the Task Force. This includes the Acting Director, a Senior Advisor, two staff members for the Research and Analysis Line of Effort, and a Presidential Innovation Fellow for the Communications and Digital Line of Effort. However, it is also important to note that the Task Force is only one piece of a larger expansion of USG-wide terrorism prevention efforts, and each agency's contributions to the Task Force alone do not adequately represent the level of effort focused on the challenge.

Question: To clarify, if 10 agencies participated in the Task Force in 2016, does this mean that only four agencies currently participate? If not, please provide details about the activities of the other six agencies with respect to their participation in the Task Force.

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Response: As originally chartered, the Task Force was staffed with full-time dedicated representatives from four agencies (DHS, DOJ, NCTC and FBI). These continue to be the core members involved in weekly meetings. Additional agencies have participated in full Task Force meetings, including from the Departments of State, Health and Human Services, Defense, Education, Labor and U.S. Agency for International Development. These full Task Force meetings are held approximately every six months with all 10 agencies to update partners of plans, activities, and achievements.

DHS has recently completed a comprehensive review of its terrorism prevention programs, both internally and with the assistance of an external consultant. DHS is now developing a new framework for future terrorism prevention efforts in response to those reviews, which will more effectively leverage the full range of DHS tools, capabilities and resources to prevent acts of terrorism from occurring in the homeland. Once the Department has completed an internal review, we anticipate engaging with our interagency partners for further discussions.

In advance of the outcome of that review, we would like to once again reiterate that the Task Force is only one piece of a larger expansion of USG-wide terrorism prevention efforts, and each agency's contributions to the Task Force alone do not adequately represent the level of effort focused on the challenge.

Question#:	15
Topic:	Task Force Progress
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: According to testimony from July 2016 from the then-Director of the Interagency Task Force on Countering Violent Extremism (CVE), the Task Force's duties primarily include-

"developing intervention programs; synchronizing federal CVE outreach and engagement; managing CVE communications and leveraging digital technologies to engage, empower, and connect CVE stakeholders; and coordinating and prioritizing federal CVE research and establishing feedback mechanisms to increase the relevance of CVE findings."

Additionally, the Department's current website for the Task Force reiterates these key missions and also articulates the goal of the Task Force as having to "coordinate investments in and dissemination of research and analysis, enhance engagement and technical assistance to diverse stakeholders, support the development of innovative intervention models, and cultivate communications and digital strategies."

Can you please detail for me the following activities and progress made by the Task Force in the nearly seven months since you were sworn in as Secretary? In responding, can please provide me with following pieces of information?

the number of intervention programs developed by the Task Force;

Response: The Interventions line of effort accomplished three main goals:

- Provided briefings to the private sector on establishing intervention teams around the country that led to the establishment of intervention programs in a number of cities;
- Provided technical assistance, consultation and research for locally-driven programs; and
- Supported training for DHS staff, US Attorney's nationwide as well as for law enforcement, mental health and social service providers in Massachusetts.

Additionally the DHS Office of Terrorism Prevention Partnerships (OTPP), as a member of the Task Force, has expanded local capacity to provide interventions across the United States. In Colorado, California and elsewhere, OTPP field staff are supporting efforts to construct intervention models and capacity. For example, OTPP personnel have been instrumental in the launch of the Colorado Community Resilience Collaborative, a

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statewide network of service providers accepting referrals for counseling those at-risk of radicalization to violence. The CVE grant program provided additional mechanisms to build intervention capacity. This included awards to address the potential for radicalization to violence and recidivism amongst the prison population in California and Massachusetts, the construction of intervention capacity in the form of a hotline for referrals in Houston, and the consolidation of an intervention model in Las Vegas.

Question: the number of feedback mechanisms established by the Task Force to increase the relevance of CVE findings;

Response: Relevant terrorism prevention research and analytical findings have been distributed in the following four ways:

- Through monthly/bimonthly meetings with federal partners from 14 U.S. government departments and agencies; a total of 18 meetings have been held from June 2016-June 2018;
- Integrating terrorism prevention research findings into training materials, to include content on international as well as domestic terrorist threats;
- Instituted a process for developing, coordinating and implementing all federal training, exercises and tools to ensure that content meets established goals, is evidence-based and meets interagency civil rights and civil liberties standards; and
- Addressed information gaps by producing five public reference aids on topics such as Homegrown Violent Extremism, Violent White Supremacist Extremists, ISIS and al-Qai'da Messaging, American Foreign Fighters, and Common Myths about terrorism prevention.

In addition, the CVE task force continues to update the Community Awareness Briefing with the most up-to-date findings, and deliver the briefing to communities.

- Developed and launched a version of the Community Awareness Briefing (CAB) designed to focus on domestic terrorist movements, ensuring that current and future deliveries of the CAB will address all forms of terrorist movements.
- Developed in conjunction with the United Kingdom a Social Media Community Awareness Briefing on Terrorism Prevention for tech companies and content moderators on the topic of terrorists' use of the internet.

Question: the number of activities taken to enhance engagements and technical assistance to the eight different groups of CVE stakeholders specified on the Task Force

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website; and

Response: The Engagement and Technical Assistance line of efforts accomplished the following activities:

- Hosted weekly meetings with 75 practitioners in roughly 15 cities around the country to coordinate engagement and share information (Summer 2016-February 2018);
- Published two public resources: *A Guide to Developing a Local Framework to Prevent and Counter Violent Extremism and Promote Community Resilience* as well *as Guidance for Federal Coordination with Local CVE Efforts*;
- Maintained an interagency list of relevant federal training on terrorism prevention related topics and developed training materials for the Community Resilience Exercise with domestic terrorism examples;
- With NCTC, led a train-the-presenter for all domestic DHS terrorism prevention field staff, for US Attorney's offices, and for law enforcement, mental health and social services providers in Massachusetts; and
- In partnership with the DHS Office for Civil Rights and Civil Liberties, OTPP and FLETC, reviewed and coordinated on the development of the Law Enforcement Awareness Briefing (LAB) on Terrorism Prevention Partnerships, a new training program designed to be delivered *by* state and local law enforcement *to* state and local law enforcement with a focus on smaller and mid-size agencies.
- Developed and launched a version of the Community Awareness Briefing (CAB) designed to focus on domestic terrorist movements, ensuring that current and future deliveries of the CAB will address all forms of terrorist movements.
- Developed in conjunction with the United Kingdom a Social Media Community Awareness Briefing on Terrorism Prevention for tech companies and content moderators on the topic of terrorists' use of the internet.
- Through OTPP's CVE grant program, funded 10 programs across the country to conduct training and engagement efforts between all relevant terrorism prevention stakeholders

Question: the number of communications and digital strategies cultivated by the Task Force.

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Response: Four noteworthy efforts by the Communications and Digital Strategy line of effort include:

- Developed the first ever interagency website for federal terrorism prevention resources. Since its launch in January 2017, the site has received more than 45,000 visitors (as of May 2018);
- Created and led the Digital Forum on Terrorism Prevention, an event that was co-sponsored with tech partners to increase communication and develop technical solutions to prevent terrorism (September 2017 in Washington, DC and February 2018 in Silicon Valley);
- Created a Digital Marketing Academy on Terrorism Prevention to educate stakeholders on running digital campaigns through a seven module online course;
- Developed in conjunction with the United Kingdom a Social Media Community Awareness Briefing on Terrorism Prevention for tech companies and content moderators on the topic of terrorists' use of the internet; and
- Delivered presentations at two meetings of the Global Internet Forum to Counter Terrorism.

Question#:	16
Topic:	Task Force Performance
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Margaret Wood Hassan
Committee:	HOMELAND SECURITY (SENATE)

Question: Are you currently satisfied with the performance of the Task Force and the interagency staffing model of the Task Force? Do you believe that the Task Force is sufficiently resourced and staffed to better empower local partners to prevent violent extremism in the United States? If not, what steps will you take over the next six months to improve the effectiveness of the Task Force?

Response: The CVE Task Force accomplished its original mission of coordinating and prioritizing CVE/terrorism prevention activities across the federal government.

Over the next several months, and following the release of the National Counter Terrorism Strategy, DHS, DOJ, FBI, and NCTC, depending on approval and alignment with national strategies, may convene a joint group to review and revise the TPTF's mission statement, priorities, and lines of effort via an NSC process with the goal of shifting TPTF from an outputs-focused mission to an outcomes-focused mission. DHS has recently completed a comprehensive review of its terrorism prevention programs, both internally and with the assistance of an external review by the RAND Corporation. DHS is now developing a new framework for future terrorism prevention efforts in response to those reviews, which will more effectively leverage the full range of DHS tools, capabilities and resources to prevent acts of terrorism from occurring in the homeland.

However, it is also important to note that the Task Force is only one piece of a larger expansion of USG-wide terrorism prevention efforts, and each agency's contributions to the Task Force alone do not adequately represent the level of effort focused on the challenge.

In addition to the terrorism prevention work being done at the Task Force level, the DHS Office of Terrorism Prevention Partnerships (OTPP) has undertaken a robust array of efforts aimed at expanding the Department and USG's terrorism prevention capabilities. As referenced earlier, this includes efforts to expand local capacity to provide interventions across the United States via both the direct efforts of OTPP field staff as well as through the administration of grant award programs.

DHS is working actively with the tech sector companies through the Global Internet Forum to Combat Terrorism (GIFCT) to encourage participating companies to quickly identify and remove terrorist content from social media platforms and to encourage smaller companies to engage in these efforts as well. Of note, OTPP has taken the lead on the planning and development of the next Digital Forum on Terrorism Prevention,

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tentatively scheduled for November 2018, with the OTPP regional director in Los Angeles serving as the event director.

In addition, OTPP and DHS have begun to expand our terrorism prevention efforts to address a number of issues that have recently emerged, including challenges related to the reintegration of returning families of foreign fighters. DHS has begun building on our work in terrorism prevention to help address these challenges in the following ways:

- First, DHS has access to a network of clinical experts with specialized experience helping children who are exposed to the type of violence they may have been exposed to in the conflict zone. We can offer support to local authorities and communities by connecting them with these specialists.
- Secondly, DHS has relationships with a wide variety of non-profit organizations that can work at the community level to provide needed services. Some of these non-profits have received grant funding from DHS to develop terrorism prevention and intervention programs.
- Lastly, DHS is working to develop a set of protocols and best practices that will allow us to move quickly to provide this support when needed.

Further, returning foreign fighters also present a new challenge to prison and probation authorities, and that is another issue that DHS and OTPP will examine with DOJ as the interagency continue to build out its terrorism prevention capabilities within existing authorities.

Aside from the OTPP efforts outlined above, DHS is holistically leveraging the full range of its tools, capabilities and resources to prevent acts of terrorism from occurring in the homeland.

- Office for Civil Rights and Civil Liberties (CRCL) – Designs and conducts training to raise awareness of domestic and international terrorism, including the Community Awareness Briefings (CAB), the Community Resilience Exercise (CREX), and the Law Enforcement Awareness Briefing (LAB). Also engages key community stakeholders through standing roundtables in numerous cities across the United States.
- Federal Emergency Management Agency (FEMA) – Provides extensive training and funding for training to State and Local Law Enforcement on counter-terrorism, resilience, and terrorism prevention.
- Federal Law Enforcement Training Center (FLETC) – Provides training to federal, state and local law enforcement on terrorism prevention.

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- Intelligence & Analysis (I&A) – Publishes extensive analysis on terrorism and terrorism prevention for distribution to state and local law enforcement as well as other stakeholders.
- Joint Counterterrorism Assessment Team – Publishes and distributes resources on terrorism and terrorism prevention to state and local law enforcement and other relevant stakeholders.
- Policy – Serves a coordinating and priority-setting function for the Department's terrorism prevention efforts.
- Science and Technology (S&T) - Provides support to the Department by funding external academic research on terrorism prevention and counter terrorism and conducts evaluations of grants.
- United States Secret Service (USSS) – Conducts research on mass attacks and other topics relevant to terrorism and developed the Threat Assessment model, which focuses on helping schools become more resilient to all forms of threats.

While the efforts of the CVE Task Force and DHS are described above, it is important to also highlight that the Administration continues to review and refine the USG's approach to counterterrorism and terrorism prevention writ large. As a part of that effort, interagency coordination and USG efforts have significantly increased on a number of related issues, including intelligence and information sharing, community engagement and public awareness campaigns, law enforcement training and outreach, soft target security, and private sector engagement.

The Administration will continue to maintain a holistic, forward leaning posture as we align our efforts to address the evolving threat landscape.

Post-Hearing Questions for the Record
Submitted to the Honorable Kirstjen M. Nielsen
From Senator Kamala Harris

"Authorities and Resources Needed to Protect and Secure the United States"

May 15, 2018

Question#:	17
Topic:	Separations at the Border
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: At the May 15, 2018 hearing and the Permanent Subcommittee on Investigation's April 26, 2018 hearing, DHS officials, including you, committed to get me information about the separation of parents and children at the border. Please provide the following information:

The number of children that came into HHS custody from DHS at the border since January 2017 and broken down by month. Please include the reasons why the DHS number differs from the HHS number.

Response: The below chart shows the number of juveniles encountered by the U.S. Border Patrol (USBP) from January 1, 2017, through May 31, 2018, referred to Department of Health and Human Services (HHS) Agency for Children and Families (ACF) Office of Refugee and Resettlement (ORR):

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Month	Year	Total
JAN	2017	4,229
FEB	2017	1,745
MAR	2017	919
APR	2017	859
MAY	2017	1,339
JUN	2017	1,859
JUL	2017	2,430
AUG	2017	2,857
SEP	2017	2,909
OCT	2017	3,007
NOV	2017	3,817
DEC	2017	4,026
JAN	2018	3,105
FEB	2018	3,028
MAR	2018	4,062
APR	2018	4,312
MAY	2018	6,503

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The below chart shows the number of juveniles encountered by the Office of Field Operations from January 1, 2017, through May 31, 2018, referred to Department of Health and Human Services (HHS) Agency for Children and Families (ACF) Office of Refugee and Resettlement (ORR):

OFO Southwest Border UACs

Jan 2017 to May 2018

Fiscal Year (FY yy)	Fiscal Month (FY yy-mm	Event Subjec
FY 17	FY 17-04 (JAN)	603
FY 17	FY 17-05 (FEB)	271
FY 17	FY 17-06 (MAR)	154
FY 17	FY 17-07 (APR)	140
FY 17	FY 17-08 (MAY)	220
FY 17	FY 17-09 (JUN)	262
FY 17	FY 17-10 (JUL)	410
FY 17	FY 17-11 (AUG)	485
FY 17	FY 17-12 (SEP)	657
FY 18	FY 18-01 (OCT)	653
FY 18	FY 18-02 (NOV)	726
FY 18	FY 18-03 (DEC)	934
FY 18	FY 18-04 (JAN)	720
FY 18	FY 18-05 (FEB)	648
FY 18	FY 18-06 (MAR)	1,104
FY 18	FY 18-07 (APR)	1,047
FY 18	FY 18-08 (MAY)	825

Question: The number of children under four that came into HHS custody from DHS at the border since January 2017 and broken down by month.

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Response: The below chart shows the number of juveniles under 4 years old apprehended by the USBP from January 1, 2017, through May 31, 2018, and referred to ORR:

Month	Year	Under 4 Years Old
JAN	2017	56
FEB	2017	22
MAR	2017	7
APR	2017	14
MAY	2017	14
JUN	2017	27
JUL	2017	48
AUG	2017	49
SEP	2017	57
OCT	2017	41
NOV	2017	60
DEC	2017	59
JAN	2018	39
FEB	2018	35
MAR	2018	56
APR	2018	75
MAY	2018	71

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Committee:	HOMELAND SECURITY (SENATE)

The below chart shows the number of juveniles under 4 years old apprehended by the OFO from January 1, 2017, through May 31, 2018, and referred to ORR:

OFO Southwest Border UACs Under 4 Years of Age
Jan 2017 to May 2018

Fiscal Year (FY yy)	Fiscal Month (FY yy-mm	Event Subjec
FY 17	FY 17-04 (JAN)	11
FY 17	FY 17-05 (FEB)	6
FY 17	FY 17-06 (MAR)	12
FY 17	FY 17-07 (APR)	2
FY 17	FY 17-08 (MAY)	3
FY 17	FY 17-09 (JUN)	4
FY 17	FY 17-10 (JUL)	9
FY 17	FY 17-11 (AUG)	10
FY 17	FY 17-12 (SEP)	6
FY 18	FY 18-01 (OCT)	17
FY 18	FY 18-02 (NOV)	10
FY 18	FY 18-03 (DEC)	21
FY 18	FY 18-04 (JAN)	21
FY 18	FY 18-05 (FEB)	12
FY 18	FY 18-06 (MAR)	27
FY 18	FY 18-07 (APR)	27
FY 18	FY 18-08 (MAY)	17

Question: The number of children who have been separated from adults who say that they are the child's parents and are seeking asylum since January 2017 and broken down by month.

Response: The below chart shows the number of juveniles apprehended and separated by the U.S. Border Patrol from April 19 through May 31 of 2018 in a family unit with an adult with a credible fear disposition:

APR 19th - 30th	10
MAY 1st - 31st	657

Prior to April 19, 2018, such data was not recorded.

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The below chart shows the number of juveniles apprehended and separated by the Office Field Operation from April 19 through May 31 of 2018 in a family unit with an adult with a credible fear disposition:

Month	Year	Total
April 19th -30th	2018	9
May	2018	39

Prior to April 19, 2018, such data was not recorded.

Question: The length of separation of child and adults that are separated by DHS in which the adults say that they are the child's parents or guardians and are seeking asylum since January 2017.

Response: Any children separated from their parents or legal guardians are referred to HHS; DHS does not track the length of time children remain in HHS custody.

Question: The number of child separations that resulted in trafficking charges since January 2017.

Response: DHS does not maintain data on this request.

Question: The training and procedures that CBP Officers receive and use to carry out family separations. Please include Form 93 and the training provided to CBP Officers on using Form 93.

Response: In accordance with the *Trafficking Victims Protection Reauthorization Act of 2008* (TVPRA), CBP screens all UACs for trafficking concerns using the CBP Form 93. The completed form becomes a part of the A-file or voluntary return packets.

CBP also complies with its National Standards on Transport, Escort, Search, and Detention (TEDS) policy.

CBP recognizes the importance of thoroughly training our frontline officers. CBP Officers receive training on the proper processing, treatment, and referral of aliens who express a fear of return. This training begins in the CBP Field Operations Academy, and is reinforced through post-academy training, and the periodic issuance of memoranda and policy reminders/musters.

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Question: After a child is separated from a parent, what timeline objectives exist to re-establish the relationship and reunify the family.

Response: Under the Homeland Security Act of 2002 and the TVPRA, the Department of Health and Human Services is responsible for the care and placement of UACs who are in federal custody. This includes the responsibility of reunifying UACs with parents or legal guardian. DHS defers to HHS to respond to this question.

Question: What is DHS doing to ensure sustained communication between parents and children in cases of separation. Please provide this information for children over the age of four and children under the age of four.

Response: CBP provides an information sheet to all parents (in English and their native language) explaining the separation process and how they may contact O R R to be reunified with their children upon completion of the parent's criminal and administrative proceedings.

In the event the parent or legal guardian is in U.S. Immigration and Customs Enforcement (ICE) custody and the child(ren) is/are in ORR custody, the two agencies work together to establish multiple options for communication between the parent/guardian and the child. ICE Enforcement and Removal Operations (ERO) officers and ORR staff and contractors work together to schedule communications via telephone, Skype, or using Face Time.

During recent court ordered reunification process, all parents were able to place free phone calls to the children from whom they had been separated. Parents were not charged for these calls, although the frequency of these calls depended on logistical factors, including the number of phones available, and the number of facilitators available to receive calls at ORR facilities.

Furthermore, ICE ERO notes that is has created posters in multiple languages that explain to a parent/guardian how to request an opportunity to communicate with his or her child. ICE ERO officers in adult detention facilities, working with the ICE ERO Field Office Juvenile Coordinators, identify the Department of Health and Human Services (HHS) facility where the child is housed and coordinate with HHS possible times for the parent/guardian to communicate with the child. Whenever possible the communication is conducted via video, but at a minimum is conducted telephonically.

Question#:	18
Topic:	Zero-Tolerance Policy Effect
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: A Vox story that ran on May 8 questioned statistical claims DHS cited internally about the alleged deterrent effect of a zero-tolerance policy on family border crossings, particularly data about apprehensions of families during a late 2017 pilot in the El Paso Border Sector.

Please provide me all statistics and research studies DHS relied on to make its decision to implement this policy?

Response: The "zero-tolerance policy" (ZTP) for offenses under 8 U.S.C. § 1325(a) was adopted by way of a memorandum announced by the Department of Justice (DOJ) on April 6, 2018. DHS, along with the Department of Health and Human Services (HHS), is involved in the ZTP's implementation in a partner capacity. DHS subsequently issued a memorandum directing CBP to refer to DOJ all adults amenable for prosecution under 8 U.S.C. § 1325(a), including those presenting as part of a family unit.

ZTP builds on an existing 2017 memorandum issued by DOJ titled "Renewed Commitment to Criminal Immigration Enforcement", and further implements the President's 2017 Executive Order 13767, "Border Security and Immigration Enforcement Improvements", which directs executive departments and agencies to "deploy all lawful means to secure the Nation's southern border, to prevent further illegal immigration into the United States, and to repatriate illegal aliens swiftly, consistently, and humanely."

While DHS does not comment publicly on internal memoranda, it does note that in announcing the increase in prosecutions, the U.S. Attorney General publicly stated that the decision was based on the recent rise in apprehensions and inadmissible aliens at the southwest border. Specifically, the Attorney General referenced publicly available DHS figures showing a 203 percent increase in illegal border-crossings from March 2017 to March 2018—the largest month-to-month increase since 2011—and a 37 percent increase from February 2018 to March 2018. Elsewhere, DOJ has stated it has implemented the new policy following the success of similar previous policies, such as Operation Streamline; a highly successful initiative that reduced apprehension rates at the Del Rio, Texas sector when it was introduced in 2005. Moreover, DHS has noted previously its success in reducing family unit apprehension rates, in particular, following its increase in family residential center capacity in 2014. It is the Attorney General's and DHS's belief that increasing prosecution rates for crimes committed at our border will lead to a reduction in the underlying criminal behavior.

Question#:	19
Topic:	Sexual Abuse Victims
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Between FY12 and March 2018, ICE received 1,448 allegations of sexual abuse in detention facilities. Only a small percent of these claims has been investigated by DHS OIG. In addition, on April 11, 2018, The Intercept reported that ICE received 1,224 complaints about sexual assault in detention facilities in an early time period, between 2010 and September 2017.

What procedures does DHS follow to ensure that individuals who file sexual abuse complaints, particularly complaints implicating detention facility staff, are protected while ICE conducts an investigation?

Response: U.S. Immigration and Customs Enforcement (ICE) detention standards and the U.S. Department of Homeland Security (DHS) final rule titled, "*Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities*," 79 Fed. Reg. 13100 (Mar. 7, 2014), codified at 6 C.F.R. part 115 *et seq.* (DHS Prison Rape Elimination Act (DHS PREA)) require alleged perpetrators be separated from alleged victims pending the outcome of an investigation. Staff, contractors, and volunteers suspected of perpetrating sexual abuse are removed from all duties requiring detainee contact pending the outcome of an investigation. Additionally, DHS PREA standards also specifically require facilities to conduct a review of the allegations, conduct monitoring activities for 90 days following an allegation, and to prohibit retaliation for reporting sexual abuse. Alleged victims may also request alternative housing should they feel unsafe in their post-allegation housing assignment.

Question: During the hearing, you committed to getting me an analysis of (1) what plans you have to investigate these cases of sexual abuse; (2) what protocols are in place to allow the victim to be in a safe place during and pending any investigation; and (3) what services a victim receives to treat the trauma of being a victim of sexual abuse, including medical care. Please provide that analysis.

What counseling and mental health care are provided to these individuals?

Response: ICE does not tolerate sexual abuse or assault in its detention facilities, and takes every allegation seriously. We assess every sexual abuse allegation reported to the agency and coordinates with internal and external stakeholders to ensure a prompt, thorough, and objective investigative response. Detention facilities are required to notify ICE of all sexual abuse or assault allegations, as well as notify local law enforcement of any allegations involving potentially criminal behavior. ICE detention standards and DHS Prison Rape Elimination Act (PREA) standards require facilities to immediately

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refer alleged victims for medical and mental health evaluations and to provide victim services information and access to contact these organizations. These referrals inform the immediate treatment plan for alleged victims. Ongoing medical treatment is prescribed as medically necessary and mental health treatment is available for sexual abuse victims who desire continued therapy. These requirements ensure alleged victims' medical and mental health needs are addressed immediately post incident and that care continues as appropriate. Additionally, classification and/or risk assessments conducted at intake allow those at risk of victimization to be identified and appropriately placed. Facilities also utilize available community resources and services to provide valuable expertise and support in the areas of crisis intervention, counseling, and addressing victims' needs. Detainees receive information about local organizations that can assist sexual abuse victims, including mailing addresses and telephone numbers (including toll-free hotline numbers where available). If local victim assistance providers are not available, facilities provide contact information for national organizations that provide legal advocacy and confidential emotional support services. Finally, detainees with previous trauma have opportunities to report this during facility and medical intake (and anytime during their stay), and are referred for appropriate medical and mental health evaluation and treatment, even when the victimization did not occur in ICE custody. ICE monitors these requirements as part of its sexual abuse and assault prevention and intervention oversight.

ICE policy, detention standards, and DHS PREA standards require an administrative or criminal investigation for each allegation of sexual abuse or assault that occurs in ICE custody. DHS PREA standards also require prevention and responsive planning, hiring procedures, the training and education of employees and detained individuals, assessment for risk of sexual victimization and abusiveness, regular reporting, written procedures for both criminal and administrative investigations, the provision of medical and mental health care, and compliance audits, among other things.

Question: Are individuals who file sexual abuse complaints that ICE determines are "unsubstantiated" returned to situations where they are placed in direct contact with individuals they have accused of abuse?

Response: After a sexual abuse complaint is received, the alleged perpetrator(s) are separated from the alleged victim(s) pending the outcome of an investigation. Alleged victim(s) are assessed for post-allegation housing needs and alleged detainee perpetrator(s) are typically placed in administrative segregation pending the outcome of the investigation. Facilities operating under the DHS PREA standards must assess a detainee's risk of victimization at intake, again between 60 and 90 days after intake, and at any other time when warranted based upon the receipt of additional, relevant information or following an incident of victimization. The use of administrative

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segregation to protect detainees vulnerable to sexual abuse or assault, is restricted to those instances where reasonable efforts have been made to provide other appropriate housing and/or no other viable housing options exist, is used for the least amount of time practicable, and is used only as a last resort. Any such housing assignment shall not ordinarily exceed a period of 30 days. Vulnerable detainees in administrative segregation receive access to programs, visitation, counsel, and other services available to the general population to the maximum extent possible. Also, detainees at risk of victimization may request "protective custody" and will be assessed on a case-by-case basis. ICE has also created an oversight mechanism to review detainees' placement in administrative segregation for reasons related to sexual victimization. Detainees may also request alternative housing placements should they find themselves in a housing unit with a previous perpetrator after an investigation has closed. In these cases, facilities will reassess the detainee and determine an appropriate course of action on a case-by-case basis.

Question#:	20
Topic:	Pregnant Women
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: In August 2016, ICE adopted a policy for a presumption of release for pregnant women in recognition of the clear health risks posed by detaining pregnant women in jail-like conditions. On December 14, 2017, ICE issued a new directive that terminated the August 2016 directive and ended the policy of presumptive release for pregnant women apprehended of transferred to ICE. This decision was made despite that the American College of Obstetricians and Gynecologists, the American Academy of Family Physicians, and American Academy of Pediatricians have all criticized harmful effects of immigration detention on the medical and mental health of pregnant women; the DHS Office of Inspector General and Office of Civil Liberties have receive complaints about inadequate medical care of pregnant women in ICE custody, including dehydration and miscarriages; and multiple federal oversight bodies, including DHS' Office of Inspector General, ICE's Advisory Committee on Family Residential Centers, and the GAO, have documented medical negligence in the immigration detention system.

At the May 8, 2018 Senate Appropriations Subcommittee on Homeland Security hearing, you testified that "the reason [pregnant women] are detained is because they illegally crossed our border. If they went to a port of entry, that would not be a crime." You then encouraged such women to "go to a port of entry and make an asylum claim."

Given your argument that pregnant women must be detained to be criminally prosecuted for illegal entry, will you issue a directive that provides pregnant women at ports of entry who are found to have credible fear following an asylum claim with presumptive release?

Response: U.S. Immigration and Customs Enforcement (ICE) currently adheres to the Directive entitled, *Parole for Arriving Aliens Found to Have a Credible Fear of Persecution or Torture* to ensure transparent, consistent, and considered ICE parole determinations for arriving aliens seeking asylum in the United States. This policy would apply to pregnant detainees pursuing asylum and other humanitarian relief while in detention. The policy does not prohibit any pregnant detainees from seeking asylum or any other lawful form of relief from removal. Under this policy, aliens arriving at U.S. ports of entry who have been subsequently determined by a U.S. Citizenship and Immigration Services asylum officer or immigration judge to have a credible fear of persecution or torture will be considered for parole based on a case-by-case determination. Pregnant detainees not eligible for parole, who have a positive credible or reasonable fear determination, will be reviewed on a case-by-case basis. Not all pregnant aliens will be detained, but only those whose detention is necessary to effectuate removal, as well as those deemed a flight risk or danger to the community.

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Question: Will you also do so for pregnant women who have overstayed a visa?

Response: ICE adheres to the Directive entitled, *Identification and Monitoring of Pregnant Detainees*, which 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.

Question#:	21
Topic:	DACA
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On September 5, 2017, this Administration announced that it was ending DACA. Since January 2018, several federal courts have ordered DHS to continue to accept DACA renewals while the legality of this termination is determined. When this Administration announced the end of the DACA program, there were 36,455 initial applications pending. Of those that have been processed, 19% have been denied. From 2012 through 2016, the denial rate for initial applications was 6%.

Can you explain why DHS is now rejecting more initial applications if it is abiding by court orders requiring it to process DACA applications as before?

Response: The DACA guidelines set forth in the 2012 policy memo and archived USCIS DACA FAQs have not changed. USCIS is not currently accepting new initial DACA filings from those who have never received a prior grant of deferred action under DACA. Below is a table reflecting the denial rate of initial DACA requests by fiscal year (FY)[5]. The denial percentage has been calculated by taking the total number of filings that were denied during a fiscal year and dividing it by the total number of cases that were adjudicated during that same fiscal year. While the table does reflect an increase in the denial rate of initial DACA requests adjudicated in FY 2018, it appears that the FY 2018 denial rate is only slightly above the denial rates for FY 2015, FY 2016 and FY 2017.

Fiscal Year	Total Adjudications	Approved	Denied	Denial Rate
2012	1,680	1,680	0	**0.00%**
2013	481,316	470,348	10,968	**2.28%**
2014	157,088	136,101	20,987	**13.36%**
2015	109,699	90,629	19,070	**17.38%**
2016	64,104	52,708	11,396	**17.78%**
2017	56,548	47,298	9,250	**16.36%**
2018	19,133	15,294	3,839	**20.06%**
Grand Total	**889,568**	**814,058**	**75,510**	**8.49%**

It is important to note that the quality and content of requests submitted to USCIS can vary, so denial rates can fluctuate accordingly. The slightly higher FY 2018 denial rate may be attributed to an increase in the adjudication of cases that required a Request for

[5] This data may be found on the USCIS website at: https://www.uscis.gov/tools/reports-studies/immigration-forms-data

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Evidence or Notice of Intent to Deny due to background check issues and/or DACA guideline-related issues. In particular, the denial rate may increase if this population of cases contained a higher percentage of pending filings that have background check and/or DACA guideline-related issues. USCIS emphasizes that it continues to adjudicate DACA requests under the 2012 guidelines and in accordance with policies and procedures that were in place before DACA was rescinded on September 5, 2017. Additionally, DHS is fully complying with all DACA-related court orders.

Question: Will you provide me with data on DACA from the start of the program through today that includes- the number of initial and renewal DACA applications approved and denied by month, reasons for denials, and length of time to adjudicate each application?

Response: Please see the attached spreadsheet for data on DACA initial requests from 2012 to the present and renewal requests from 2014 to the present. The data does not include reasons for denials because USCIS does not track that information for DACA requests. USCIS systems generally do not collect information on reasons for denials.

Question: In prior statements, the Administration has stated that USCIS retains discretion in DACA adjudications, even when an applicant meets the guidelines. What is DHS' position today? Can you describe in what circumstances someone who meets all the eligibility requirements for renewing or filing an initial application for DACA status would not be granted favorable discretion?

Response: Deferred action is a discretionary determination to defer removal action of an individual as an act of prosecutorial discretion. Per former DHS Secretary Janet Napolitano's 2012 memo, the DACA guidelines should be satisfied before an individual is considered for an exercise of prosecutorial discretion and no individual should receive deferred action unless they first pass a background check. The 2012 memo states that requests for deferred action are to be decided on a case-by-case basis and DHS cannot provide any assurance that relief will be granted in all cases. Since the beginning of DACA, the instructions to the Form I-821D have informed requestors the following:

"Even if you satisfy the threshold criteria for consideration of DACA, USCIS may deny your request if it determines, in its unreviewable discretion, that an exerciser of prosecutorial discretion is not warranted in your case."

The authority to exercise prosecutorial discretion is also reflected in USCIS's archived DACA FAQs 28 and 51, which state "USCIS retains the ultimate discretion to determine whether deferred action is appropriate in any given case if the guidelines are met." For

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example, if the DACA requestor is believed to have submitted false statements or attempted to commit fraud in a prior application or petition, USCIS has denied DACA even when all the DACA guidelines, to include public safety considerations, have been met. As another example, when USCIS learned that a DACA requestor falsely claimed to be a U.S. citizen and it was discovered that they had prior undisclosed removals, as an exercise of discretion, USCIS denied the request even though those issues are not specifically articulated in the DACA threshold criteria.

While USCIS has exercised discretion to deny DACA requests even when a requestor has met all the DACA guidelines, such determinations are generally rare. USCIS is not aware of any DACA requests being denied where the requestor met all the DACA guidelines but lacked other factors that make the grant of deferred action inappropriate.

Question#:	22
Topic:	Detention Bed Funding Cap
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: The FY17 appropriations report states that, "for the past several years, the agency's forecast for required number of detention beds and its cost estimates have resulted in budget requests that missed the mark by wide margins." You were provided a funding cap to use no more than 40,500 beds in the FY18 budget.

Do you plan to adhere to this cap?

Response: U.S. Immigration and Customs Enforcement's (ICE) Fiscal Year (FY) 2018 budget provides funding for 40,520 Average Daily Population (ADP), including 2,500 family beds and 38,020 adult beds. ICE's ADP is likely to increase this fiscal year due to enhanced immigration enforcement, as well as increased numbers of families arriving at the southwest border. In anticipation of the increased need for both adult and family bed space, ICE's FY 2019 budget request is for 52,000 beds, including nearly $4.9 billion to expand detention capacity in support of an adult ADP of 49,500 and a family bed ADP of 2,500, for a total of 52,000 beds. ICE regularly examines the use of detention space in order to ensure that it meets current and projected needs.

Question#:	23
Topic:	ICE Exceeding Budget
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: GAO issued a report on April 18 that found a number of inconsistences and errors in ICE's calculations for its congressional budget justifications.
What have you done to address these issues and ensure ICE is not exceeding what is provided to it by Congress?

Response: U.S. Immigration and Customs Enforcement (ICE) appreciates the Government Accountability Office's (GAO) work on this important topic and acknowledgement that predicting detainee population is a complex challenge. ICE is committed to continuously improving its budget formulation processes and documentation. As part of our response to GAO, ICE is improving the review process of our annual budget submissions to eliminate any potential inconsistencies in budget calculations and display tables. The ICE Budget Office will more effectively document its review process and decision points during various stages in the ICE budget formulation process, including those related to decisions regarding the Average Daily Population (ADP).

Lastly, ICE is adopting the use of the *"GAO Cost Estimating and Assessment Guide: Best Practices for Developing and Managing Capital Program Costs"* to ensure the budget estimating process incorporates standardized best practices and complies with GAO's standards of well-documented, comprehensive, accurate and credible estimates.

Question#:	24
Topic:	Detention Facility Costs
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Additionally, a November 6, 2017 detention facilities matrix provided through a FOIA request, shows that fully 51% of those detained by ICE present no safety risk. An ICE adult immigration detention costs the American taxpayer $161 per person per day whereas ICE Alternatives to Detention range in cost from just 17 cents to $17 per person per day, according to a calculation by the ACLU based on ICE's FY14 Congressional Budget Justification.

Given this, why is the agency looking to dramatically expand detention beds as opposed to using less costly and more humane alternatives to detention?

Response: Detention is a necessary tool U.S. Immigration and Customs Enforcement (ICE) uses to accomplish its important mission and effectuate removal. Further, with increased enforcement activity, additional detention capacity will be necessary to implement Executive Order 13768, *Enhancing Public Safety in the Interior of the United States*.

Thus, the Fiscal Year (FY) 2019 Budget requests funding for 52,000 detention beds and associated transportation costs and provides ICE's best assessment of custody operations and transportation requirements developed nearly two years out from anticipated budget enactment. These levels will ensure ICE has sufficient resources to maintain custody of immigration law violators, ensure compliance with court procedures, and efficiently use transportation networks to remove priority individuals. This level is based on ICE's detention bed modeling tool and operational factors including increased interior enforcement efforts, high levels of U.S. Citizenship and Immigration Services credible fear approvals, an aggressive posture on probation and parole, and increases in the number of alien records enrolled in the National Crime Information Center database.

Specifically, the budget includes nearly $4.9 billion to expand detention capacity to support an average daily adult population of 48,879 and an average daily family population of 2,500, for a total of 51,379 beds. The budget also includes an increase of $129 million for transportation costs associated with the increased detention population, and an increase of $57.4 million for the contract Alternatives to Detention (ATD) program to sustain 79,000 average daily participants.

ICE is already placing aliens on its ATD program, when appropriate. ICE continues to work with the U.S. Department of Justice's Executive Office for Immigration Review to ensure that cases are adjudicated as promptly as possible.

Question#:	25
Topic:	Ports of Entry Budget
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On May 1, 2081, CBP stated that it had exceeded port capacity at San Ysidro in California, leaving vulnerable asylum seekers to wait in Mexico facing difficult conditions or return home to perilous circumstances. Ports of entry are critical sites not only for processing of asylum seekers but also for efforts to interdict traffickers and illicit cargo that threaten harm to our nation. Your proposed FY19 budget asks for billions in dollars in new funding for ICE, the Border Patrol, and a wall but, it provides no new funds for CBP Office of Field Operations personnel who staff the ports.

Why does your budget request neglect resources to sufficiently staff the ports of entry?

Response: CBP is always concerned about having the right mix of resources at and between our nation's ports of entry. While the Workload Staffing Model shows a need for additional CBP officers, we have remained focused on filling current vacancies before asking for appropriated funding for more staffing. By effectively using targeted, monthly, port-specific, entry-level vacancy announcements, CBP has closed, or nearly closed, staffing gaps along the southern and northern border. Major southern border ports such as El Paso, San Ysidro, Brownsville, Hidalgo, and Eagle Pass are either at their authorized staffing level, or are projected to be within the next month. The Port of Laredo is over 93 percent staffed and has 18 trainees scheduled to enter on duty in the month of June. Additionally, the Port of Otay Mesa, California, was recently included on the May CBP Officer vacancy announcement to help close their staffing gaps.

The Arizona border ports and the Port of Calexico, California, have proven to be exceptionally difficult locations for hiring. Therefore, CBP requested, and received approval, to increase the recruitment incentive for these ports from 25 percent to 33 percent for a three-year service period. Although it is too early to see the impact of this increase in recruitment incentive, it is expected that the focused recruiting initiative and increased recruitment incentive will result in increased staffing in these difficult-to-hire ports.

Question: Will you re-consider your budget request to ensure that ports of entry have sufficient personnel to process those fleeing persecution or a fear of persecution to ensure compliance with U.S. and international law?

Response: Maintaining appropriate levels of workforce staffing both along the border and at all ports of entry is critical to CBP's law enforcement capabilities. As operational demands continue to grow, we remain committed to ensuring that each of our frontline

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components is staffed to operational requirements and can effectively adapt to the changing needs of the country.

CBP mitigates staffing challenges by employing the Resource Optimization Strategy (ROS) to: 1) identify staffing requirements accurately through the Workload Staffing Model (WSM) and Agriculture Resource Allocation Model (AgRAM); 2) to reduce those staffing requirements by transforming business processes; and, 3) developing strategies to fund the required staff. At the end of FY 2017, the WSM identified a need for an additional 2,668 CBP officers and the AgRAM identified a need for an additional 723 Agriculture Specialists. While growth in trade and travel continue to increase, CBP has been able to save over 425 officer positions through business transformation and continues to explore biometric and automated solutions to relieve administrative burden on our frontline staff. CBP will continue to focus on filling current staffing requirements and utilize the ROS to identify future needs.

With support from Congress, CBP is making investments in our capability and capacity to hire across all frontline positions, focusing on efforts to attract qualified candidates, and expedite their progress through the hiring process. As a result of these and other improvements, the total number of officer applicants increased by 89 percent between FY 2015 and FY 2017, including a 45 percent increase from FY 2016 to FY 2017. This led to a 21 percent increase in officer hiring totals between FY 2016 and FY 2017.

Building on this momentum, CBP recently added three additional officer basic training classes to the Fiscal Year 2018 and Fiscal Year 2019 training schedule to accommodate the increased number of trainees entering on duty. In addition, CBP continues to utilize multiple group incentives, including retention incentives for all officers eligible to retire in the next 12 months, as well as recruitment incentives for several hard-to-fill locations. Recently, the Office of Personnel Management approved CBP's request to increase the recruitment incentive from 25 percent to 33 percent for a three-year service period for the land ports of entry in Arizona and at Calexico, California. It is expected that more applicants will accept these locations, thereby closing the staffing gap at a number of key southern border ports. Lastly, CBP is further focusing recruitment efforts on key airports, i.e. Los Angeles, JFK, and San Francisco. Although staffing levels remain at over 90 percent of the authorized positons filled, CBP continues to work to close the staffing gap.

Question#:	26
Topic:	Fingerprint Information MOA
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: DHS and HHS released a memorandum of agreement (MOA) between ICE, CBP, and ORR dated April 13 that took effect on May 13, 2018 that outlines requirements for these agencies to share fingerprints and personal information about unaccompanied children, their sponsors, and adult members of sponsor households.

Will the MOA be used by ICE for purposes of targeting sponsors and prospective sponsors of unaccompanied children for immigration enforcement?

Response: The purpose of the memorandum of agreement (MOA) is to implement processes to share information related to unaccompanied alien children (UAC) at the time of referral from U.S. Immigration and Customs Enforcement (ICE) or U.S. Customs and Border Protection (CBP) to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), to include the vetting of potential sponsors and adult members of potential sponsors' household. In addition, the MOA sets forth a process by which the U.S. Department of Homeland Security (DHS) will provide HHS with information necessary to conduct suitability assessments for sponsors from appropriate law enforcement and immigration databases, as required by law.

Question: ICE will now be given information from ORR on other adults living in a sponsor's home. Will ICE use this information for enforcement purposes?

Response: This information may be used to ascertain the criminal and immigration histories of those adults with whom the UAC will be placed. Any information provided to ICE in the course of its duties may be used for enforcement purposes.

Question: What consent does DHS seek and what representations does it make to unaccompanied children and their sponsors, including prospective sponsors, about uses and confidentiality of personal information provided to CBP, ICE, and ORR?

Response: Since CBP and ICE are components of DHS, there is no need for them to seek consent from unaccompanied children or their sponsors to share information within DHS. ORR, not DHS, is responsible for providing any required notice to UACs and their sponsors related to the uses and confidentiality of information provided to ORR.

Question#:	27
Topic:	Special Immigrant Juvenile
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: The New York Times reported that in a denial of a Special Immigrant Juvenile, or S.I.J application, USCIS stated, "once a person attains the age of 18, the family courts lack jurisdiction over the person's custody." Under the 10th Amendment, the powers not delegated the federal government are reserved to the states. Of course, one of those powers is family law and another one is obviously the inherent ability of states to define their own state court jurisdictions. USCIS in the past has clearly acknowledged such state powers. States, encouraged by Federal law, have extended their juvenile and family court jurisdictions in many cases to age 21. In such states, judges with social welfare expertise may determine guardianship for youth over the age of 18 who have been abused, abandoned, or neglected.

Do you agree, that if the NYT reporting is accurate, that USCIS now necessarily precludes vulnerable youth in this category from humanitarian S.I.J. classification?

Response: USCIS relies on federal immigration law to determine eligibility for Special Immigrant Juvenile (SIJ) classification.

The statute requires, in part, that a state court make a ruling that reunification with a parent is not viable due to abuse, neglect, abandonment, or a similar basis under state law. This is a legal conclusion that must be reached in accordance with the relevant state child welfare laws and requires that the court have the authority to order a child to return to the custody of his or her parent, if warranted.

USCIS understands that in some states, courts have jurisdiction to appoint guardians to individuals who are over the age of 18. However, a qualifying juvenile court order for the purpose of SIJ eligibility requires that the court issuing the order also has the authority to make custody and care determinations, including that parental reunification is no longer viable. The power and authority to make these determinations must be established by the state court order and/or supplemental evidence submitted with an SIJ petition. In some cases, USCIS is receiving court orders where the court has jurisdiction to appoint a guardian of a person over the age of majority, but not the authority to make the other required legal determinations. In those cases, USCIS generally determines that the petitioner does not have a qualifying juvenile court order.

The burden is on the petitioner to establish that the court order is a qualifying juvenile court order for the purposes of eligibility for SIJ classification. Children with a qualifying juvenile court order containing the requisite rulings are eligible to petition for SIJ classification up until the age of 21, as specified in the regulations.

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Topic:	Special Immigrant Juvenile
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Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Will you provide me with complete monthly data on approvals and denials of S.I.J. petitions over the last two years, including data on petitioner's age and state of residence?

Response: Please see the attached spreadsheet for data on approved and denied SIJ petitions grouped by petitioner state. As soon as we have verified the data showing beneficiary age at receipt date, we will provide it to the committee.

Question: Will you provide me with the number of cases since January 2017 in which USCIS has rescinded S.I.J. status from children on the basis of the agency's reevaluation of a state court guardianship determination?

Response: Please see the attached spreadsheet for data on approved and denied SIJ petitions grouped by revocation month.

Question#:	28
Topic:	UAC Designations
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Key provisions of the President's Executive Order on Border Security and DHS implementing guidance propose new procedures that could result in continuous reviews of all unaccompanied alien child designations. While children designated as unaccompanied are given the opportunity to first present their asylum claims in a non-adversarial interview with an asylum officer specially trained in child-appropriate interviewing techniques, those children not designated unaccompanied can be placed in expedited removal proceedings, meaning they are summarily deported. On May 9, 2018, the Washington Post reported that DHS is considering implementing new regulations that would redefine the process for determining whether a child who crosses the border alone is "unaccompanied."

What is the basis for changing the process for defining whether a child who crosses the border alone is unaccompanied?

What is the status of the development and implementation of any such new interpretations or procedures?

Response: Section 462 of the *Homeland Security Act of 2002* defines an unaccompanied alien child (UAC) as those aliens under the age of 18, lacking lawful immigration status, and either with no parent or legal guardian in the United States, or without a parent or legal guardian in the country who is available to provide care and physical custody of the child. When encountered, these minors are referred to the Department of Health and Human Services (HHS) for placement. When UACs turn 18 and age out of HHS's UAC program, DHS can choose to detain them or release them pending completion of their immigration proceedings.

DHS's current UAC policy is guided by Executive Order 13767, which states that DHS personnel must "ensure that unaccompanied alien children are properly processed, receive appropriate care and placement while in the custody of the Department of Homeland Security, and, when appropriate, are safely repatriated in accordance with law." Elsewhere, DHS is currently drafting a new regulation related to its involvement in the processing and administration of UACs. According to the spring 2018 Uniform Agenda, "[t]he proposed rule will codify the substantive terms of the [Flores Settlement Agreement or 'FSA'] and enable the U.S. Government to seek termination of the FSA and litigation concerning its enforcement… [t]hrough this rule, ICE will create a pathway to ensure the humane detention of family units while satisfying the goals of the FSA… [t]he rule will also implement related provisions of the TVPRA." Due to this proposed rulemaking still being in the draft stage, further details are unavailable at this time.

Question#:	29
Topic:	Changes to Flores
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: On May 9, 2018, the *Washington Post* reported that DHS is considering implementing draft regulations that would weaken important child-welfare protections, including the *Flores Agreement.* These draft regulations would reportedly change the standard for how long migrant children can be detained by DHS before being transferred to a family residential facility, how long migrant families can be held at a family residential facility, and provide DHS greater authority to delay snack and meal times.

What is the policy purpose and evidentiary record for these changes?

What is the status of the development and implementation of any such new interpretations or procedures?

Response: The Department of Homeland Security (DHS) is in the process of drafting a Notice of Proposed Rulemaking to implement the relevant and substantive terms of the *Flores* Settlement Agreement. Policy decisions relating to this rule are still under consideration.

In 1985, a class-action suit challenged the policies of the former Immigration and Naturalization Service (INS) relating to the detention, processing, and release of alien children; the case eventually reached the U.S. Supreme Court. The Court upheld the constitutionality of the challenged INS regulations on their face and remanded the case for further proceedings consistent with its opinion. In January 1997, the parties reached a comprehensive settlement agreement, referred to as the Flores Settlement Agreement (FSA). The FSA was to terminate five years after the date of final court approval; however, the termination provisions were modified in 2001, such that the FSA does not terminate until 45 days after publication of regulations implementing the agreement.

Since 1997, intervening statutory changes, including passage of the Homeland Security Act (HSA) and the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), have significantly changed the applicability of certain provisions of the FSA. The proposed rule will codify the substantive terms of the FSA and enable the U.S. Government to seek termination of the FSA and litigation concerning its enforcement. Through this rule, ICE will create a pathway to ensure the humane detention of family units while satisfying the goals of the FSA. The rule will also implement related provisions of the TVPRA.

Question#:	30
Topic:	Pre-Disaster Mitigation Grant Program
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: Last year, Americans experienced the most costly set of natural disasters in our nation's history. The National Oceanic and Atmospheric Administration has estimated that natural disasters caused over $300 billion worth of damage in 2017. A recent study by the National Institute of Building Sciences found that investing one dollar ($1) in pre-disaster mitigation efforts saved six dollars ($6) in reduced future loses. Last month, FEMA Administrator Long was in front of this very committee and spoke about the importance of investing in pre-disaster mitigation. Unfortunately, his comments, and the reality that we must prepare our communities for future disasters, are in direct conflict with the proposed DHS budget, which cuts the FEMA Pre-Disaster Mitigation Grant Program by 61 percent.

How can FEMA and DHS adequately address our nation's vulnerability to these devastating natural disasters by slashing the funds that are meant to reduce the impacts on our communities from wildfires, hurricanes, and earthquakes?

Response: The Pre-Disaster Mitigation Program (PDM) supports the Department's goal of strengthening capacity at all levels of society to withstand threats and hazards. PDM accomplishes this by providing Federal funding to states, local, tribal, and territorial communities (SLTT) for eligible planning and project activities. PDM supports the development of hazard mitigation planning and/or project applications that implement physical measures to avoid and/or reduce damage associated with natural disasters.

The objective supports FEMA's first overall goal in the 2018-2022 Strategic Plan which is to "build a culture of preparedness." FEMA intends to work towards encouraging and empowering every segment of our society, from individual to government, industry to philanthropy, with the information it needs to prepare for the inevitable impacts of future disasters. FEMA's priority is to incentivize investments that reduce risk, including pre-disaster mitigation in order to advance this culture of preparedness. This includes investing in resilient mitigation projects to lessen the increasing costs of disasters. Buying down the risk prior to a disaster pays off – either by lowering the cost of the disaster or eliminating the need for a presidentially-declared disaster altogether because of the reduced impact.

FEMA's implementation of a $39 million PDM program in FY 2019 would largely consist of satisfying the statutory allocations (1% of the appropriation, or $360,000 per state/territory) totaling about $24 million, plus a 10% Tribal set aside for Tribes to receive the same allocation amount. This would leave about $11 million for a national competition. PDM is one of three hazard mitigation-related grant programs offered by

Question#:	30
Topic:	Pre-Disaster Mitigation Grant Program
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

FEMA. FEMA's Hazard Mitigation Grant Program (HMGP) is funded out of the Disaster Relief Fund and the Flood Mitigation Assistance (FMA) grant program is run on an annual appropriation similar to PDM. Both offer opportunities to SLTT to avoid and/or reduce damage associated with natural disasters.

Question#:	31
Topic:	Clearances for State Election Officials
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: When Undersecretary of the National Protection and Programs Directorate-designee Chris Krebs came before the HSGAC for his confirmation hearing, I asked him about the number of state election officials who are still waiting to receive a security clearance. At that time, 15 state election officials have requested a security clearance but are still waiting to receive one.

Do you have a timeline for when all of these officials should expect to receive a clearance?

Response: The Department of Homeland Security (DHS) is authorized to make available the process and application for security clearances to state, local, tribal, and territorial government officials, as well as the private sector. As such, DHS has been working with state chief election officials to help them obtain security clearances in an expedited manner and has expanded the offer of security clearances to two additional officials in each state.

There are many factors that contribute to the amount of time it takes to issue a security clearance, including the requirement for election officials to submit complete and accurate application materials. Because of the number of variable factors involved, there is no definitive answer to this question. Some persons have more complex backgrounds than others and, consequently, more time is required to conduct a complete investigation. Poorly completed security clearance applications can result in significantly longer application processing.

DHS also has the ability to provide one-day read-ins for classified information on a need to know basis. For example, in partnership with the Office of the Director of National Intelligence and the Federal Bureau of Investigation, DHS recently gathered all state chief election officials at an intelligence community facility and provided one-time read-ins to a classified threat briefing. This was the first such gathering in our history.

Question#:	32
Topic:	Phasing Out Paperless Voting Machines
Hearing:	Authorities and Resources Needed to the Protect and Secure the United States
Primary:	The Honorable Kamala D. Harris
Committee:	HOMELAND SECURITY (SENATE)

Question: I share the concern of election security experts that paperless electronic voting machines are insecure. It needs to be an election cybersecurity priority to encourage states to get rid of these insecure machines and I think we need to do more to communicate the importance of this to the states.

Is DHS working at all with the Election Assistance Commission to help craft guidance to states about the need to get rid of these machines? About how they should use their money as much as they can to start phasing these machines out and not to acquire more of them? If not, would you be willing to publish guidance like this, either working with the EAC, or on your own?

Response: DHS and the Election Assistance Commission (EAC) have worked through the Election Infrastructure Subsector's Government Coordinating Council to provide voluntary guidance to the election community regarding possible considerations for the use of newly available election funding, as well as support for procurement decisions regarding use of the funding. States that have these machines indicate that they are pursuing new systems that are auditable as new funding becomes available. Additionally, DHS provides local and regional support through Cybersecurity Advisors and Protective Security Advisors, all of whom are available to assist election officials in discussing their unique implementation challenges and security concerns.

This report displays the number of DACA Approval and Denials by month and the average processing time for completions in that month by completion type.

United States Citizenship and Immigration Services (USCIS)
I-821D, Consideration of Deferred Action for Childhood Arrivals
Approvals and Denials
Approximate Count of Completions and Average Processing Time by Month
August 15, 2012 - June 7, 2018

	DACA - Initial				DACA - Renewal			
	Approvals		Denials		Approvals		Denials	
Completion Month	Count of Completions (Rounded)	Average Processing Time (in Days)	Count of Completions (Rounded)	Average Processing Time (in Days)	Count of Completions (Rounded)	Average Processing Time (in Days)	Count of Completions (Rounded)	Average Processing Time (in Days)
September-12	1,680	30						
October-12	28,060	50	10	70				
November-12	47,770	60	10	80				
December-12	47,730	80	70	90				
January-13	49,020	100	160	130				
February-13	45,340	110	240	150				
March-13	46,890	120	790	170				
April-13	45,080	150	1,010	190				
May-13	52,040	160	1,380	200				
June-13	34,860	150	1,530	220				
July-13	29,670	160	2,040	230				
August-13	25,130	150	2,090	250				
September-13	19,000	160	1,680	250				
October-13	19,510	160	1,760	260				
November-13	16,350	140	1,570	260				
December-13	11,920	140	1,310	260				
January-14	11,360	180	1,710	280				
February-14	9,370	180	1,240	280				
March-14	10,850	190	1,360	280				
April-14	9,930	190	990	290				
May-14	7,660	200	1,140	320				
June-14	10,090	190	1,490	340	D	20		
July-14	10,680	170	2,240	390	30	30	D	40
August-14	9,260	180	3,040	430	270	70		
September-14	9,210	180	3,240	460	21,940	70	D	70
October-14	12,000	160	2,560	370	44,050	70	D	70
November-14	6,960	160	1,540	370	36,510	70	10	80
December-14	10,740	150	2,160	420	43,260	70	40	100
January-15	11,190	130	2,070	380	23,880	80	90	120
February-15	5,890	130	1,370	350	17,540	90	90	130
March-15	6,730	140	1,370	310	52,580	90	140	130
April-15	5,770	170	1,950	330	52,460	80	330	120
May-15	5,840	170	1,440	330	48,750	70	250	140
June-15	6,350	150	1,530	330	33,870	70	290	130
July-15	6,780	160	1,140	340	23,500	80	290	140
August-15	6,520	160	1,070	340	19,680	110	470	140
September-15	6,050	150	1,000	320	23,450	80	280	160
October-15	5,000	160	1,010	290	21,540	70	340	150

November-15	4,190	170	1,070	300	8,700	70	300	170
December-15	4,270	170	1,150	310	12,040	80	270	150
January-16	4,020	170	880	310	6,900	70	280	210
February-16	4,400	170	860	320	9,680	80	240	220
March-16	5,050	170	790	320	9,330	80	200	230
April-16	4,400	170	670	330	1,200	110	210	270
May-16	4,480	190	1,010	310	7,600	90	230	340
June-16	4,220	200	1,310	320	6,610	100	260	320
July-16	3,590	190	960	340	520	180	210	330
August-16	4,800	190	960	330	30,200	90	170	380
September-16	3,630	210	670	310	27,690	110	230	270
October-16	5,290	210	750	330	37,960	110	240	280
November-16	4,470	210	690	330	26,650	100	200	260
December-16	8,500	180	590	310	41,550	60	230	310
January-17	9,980	160	880	340	35,970	60	310	260
February-17	4,020	210	760	320	35,100	50	380	240
March-17	3,350	220	1,020	360	33,640	50	420	240
April-17	2,340	260	960	370	31,570	60	300	270
May-17	2,050	260	1,020	340	32,480	70	320	230
June-17	1,730	260	750	360	33,600	70	360	220
July-17	1,780	260	540	410	28,910	80	430	240
August-17	1,860	270	590	400	35,520	80	450	220
September-17	2,290	250	360	400	41,450	70	390	230
October-17	2,200	290	510	400	49,410	50	370	230
November-17	1,700	310	630	410	35,200	60	270	260
December-17	1,640	310	680	450	8,900	100	160	210
January-18	2,840	310	700	410	4,810	120	490	230
February-18	3,190	300	700	450	17,450	90	810	230
March-18	3,350	300	660	440	25,710	90	400	190
April-18	3,290	330	370	510	20,780	60	270	190
May-18	2,700	330	1,050	530	26,210	60	320	200
June-18	380	380	200	480	6,540	40	50	220
Grand Total	**820,300**	**140**	**76,990**	**330**	**1,193,150**	**70**	**12,410**	**220**

Please note:

1) The report reflects the most up-to-date data available at the time the report is generated.

2) Cases with multiple decisions are reflected in the month of the most recent decision.

3) Processing time is represented by the number of elapsed days between the received date and the final adjudication date.

4) Totals may not sum due to rounding.

5) Counts with fewer than 10 completions are notated with the letter "D."

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