

<b>Question#:</b>	1
<b>Topic:</b>	President's Comments
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** President Trump recently said "We have people coming into the country...These aren't people. These are animals." While the President claims he was directing these comments at hardened criminal gangs, the fact is, it is just another episode where this President deployed dehumanizing rhetoric against immigrants. Now the White House is doubling down with an inflammatory press release about MS-13 describing immigrants as "animals" ten times.

The President has a history of linking immigration with crime and terrorism; he even launched his campaign by calling Mexicans rapists. How do you believe his latest comments will be received in immigrant communities? And, critically, how will that impact the trust between law enforcement authorities and immigrant communities - the very communities we partner with to identify and prosecute MS-13 members?

**Response:** The Department of Homeland Security (DHS) and its component agencies are committed to upholding public safety, national security, and the integrity of the U.S. immigration system. DHS does this professionally, humanely, and in accordance with the laws passed by Congress.

In addition, DHS and its components are committed to maintaining and strengthening relationships with state and local law enforcement, as well as members of local communities, and continue to collaborate with these partners in order to ensure that individuals who may pose a threat to our communities, such as gang members, are prevented from doing additional harm.

<b>Question#:</b>	2
<b>Topic:</b>	Gang Affiliation
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Trust is further eroded when ICE targets minors as alleged gang members with little or no evidence of their gang affiliation. A recent class action lawsuit asserts that 30 out of 35 teenagers rounded up by ICE last year were subsequently released from detention by judges because of insufficient evidence of their gang membership. Last year, a high-security detention center intended for criminal aliens publicly complained that ICE was sending too many teenagers into its custody without providing any verifiable evidence of their gang membership.

Since President Trump took office, how many immigrants has ICE arrested and detained as alleged gang members who ultimately were released due to insufficient evidence of their gang affiliation?

**Response:** U.S. Immigration and Customs Enforcement (ICE) is unable to statistically report on the number of immigrants who have been arrested and detained as alleged gang members and who Immigration Judges released citing insufficient evidence of gang affiliation. Such releases may occur for a variety of reasons and are not necessarily due to ICE discovering that an individual was not a member of a gang. For example, the individual may be the subject of an ongoing criminal investigation and state or local law enforcement officials may decline to allow ICE to share the gang-related data. Additionally, gang membership is not a basis for a charge of inadmissibility or removability under the Immigration and Nationality Act (INA).

In FY 2017, ICE Enforcement and Removal Operations (ERO) arrested over 5,200 suspected gang members, and has arrested 4,907 in FY 2018 (as of the end of August 18, 2018)<sup>1</sup>. ICE Homeland Security Investigations (HSI) has arrested over 3,000 suspected gang members during this time, though HSI criminal arrests may include non-immigrants.

**Question:** ICE's metrics for determining gang membership seem overbroad, such as “frequenting an area notorious for gangs” and even wearing certain sports teams’ hats. What is ICE doing to reduce the number of innocent immigrant minors it is sweeping up in its efforts to target criminal gangs?

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<sup>1</sup> ERO Arrests include all ERO Programs. Suspected gang members are identified through data entered in all the ICE systems of record including: alert codes indicating gang affiliation, charges or convictions for gang activity, and gang information entered via the Crime Entry Screen, the Criminal Affiliations section in EAGLE, or the Gang Affiliations section in EARM.

<b>Question#:</b>	2
<b>Topic:</b>	Gang Affiliation
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Response:** ICE conducts targeted enforcement actions, focusing its enforcement resources on individuals who pose a threat to national security, public safety, and border security, including gang members. ICE considers an individual to be a suspected gang member if he or she admits gang affiliation, is convicted pursuant to violations associated with Title 18 U.S.C. § 521, is convicted of any other federal or state law punishing or imposing civil consequences for gang-related activity or association, or meets established criteria. Because many suspected gang members do not have a gang-specific criminal conviction as described above, law enforcement must frequently make a determination based on available information and the totality of the circumstances. ICE seeks to make accurate determinations of suspected gang membership, and to update individual cases, when appropriate.

Again, it is important to remember gang membership is not a basis for a charge of inadmissibility or removability under the INA. Administrative arrests of foreign-born gang members stem from other violations of the INA. These aliens are afforded due process during removal proceedings, including requests for bond from an Immigration Judge.

However, while gang membership is not currently a removable offense, ICE notes that all persons present in the United States in violation of U.S. immigration laws, including gang members, may be subject to immigration arrest, detention, and if subject to a final order of removal, removed from the United States.

<b>Question#:</b>	3
<b>Topic:</b>	Pregnant Women
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In March, ICE announced that it would reverse the Obama administration's presumption of release policy for pregnant detainees. This reversal is alarming given well-documented reports of substandard medical care, pregnancy complications, and, tragically, even miscarriages for detainees in ICE custody. On its website about this policy reversal, ICE claims that it will detain pregnant women who are "deemed a flight risk or danger to the community."

What documented examples do you have of pregnant detainees who posed a genuine flight risk or a danger to the community? Without compromising the privacy or safety of such detainees, please provide all relevant details demonstrating how their actions constituted a flight risk or a danger to the community.

**Response:** U.S. Immigration and Customs Enforcement (ICE) detains pregnant females whose cases reveal that they represent either a flight risk or a danger to the community. Specific examples of such cases are aliens who do not have ties to the community; aliens with prior convictions for violent crimes or driving under the influence; aliens who have not been able to satisfactorily provide identity documentation; and aliens with final orders of removal and who have not historically abided by the terms of their orders of supervision.

**Question:** How many pregnant women are currently detained in ICE custody? Have any of them suffered medical complications or miscarriages since ICE announced its policy change?

**Response:** As of April 7, 2018<sup>2</sup>, there were 35 pregnant detainees in custody.<sup>3</sup> Based on a review of records, of the 35 pregnant detainees in custody on April 7, 2018, one was considered a high- risk due to advanced maternal age. Also during this time period, one detainee that had a positive urine pregnancy test, was found to have a very low human chorionic gonadotropin (HCG) level in serum. This level did not correlate with her self-reported estimated gestational age. Follow-up bloodwork demonstrated consistently low levels of HCG. In addition, she had a regular menstrual period indicating that she probably had a miscarriage just prior to custody.

<sup>2</sup> ICE completed its analysis of this information on April 11, 2018; however, the "in-custody" run date is April 7, 2018."

<sup>3</sup> Please note that this information is based on information collected for medical, rather than statistical reporting purposes. While ICE has sought to provide the most accurate information available, data may be subject to manual-entry errors.

<b>Question#:</b>	4
<b>Topic:</b>	Citizens Arrested
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Since 2012, ICE has wrongfully arrested and detained nearly 1,500 individuals who are U.S. citizens. Despite a mandate that ICE must review an individual's claim of citizenship within 48 hours, U.S. citizens have been detained for much longer periods of time - in one instance, for more than three years. In the year since President Trump took office, ICE arrests have surged by 40 percent, raising real concerns that U.S. citizens are being wrongfully apprehended in higher numbers.

Since 2012, how many U.S. citizens have been mistakenly arrested and detained by ICE each year?

**Response:** U.S. Immigration and Customs Enforcement (ICE) does not statistically track such information.

**Question:** Is it still ICE's policy to conclude its review of an individual's citizenship claim within 48 hours? What are you doing to enforce that policy so that U.S. citizens are not languishing in ICE detention facilities?

**Response:** It is ICE policy to carefully and expeditiously investigate and analyze the potential U.S. citizenship of individuals encountered by ICE. ICE officers, agents, and attorneys handle such matters with the utmost care and view them as being of the highest priority. While some claims may be easily resolved, many require additional investigation and substantial legal analysis, particularly in light of the complexity of U.S. citizenship and nationality law. ICE's policy pertaining to claims of U.S. citizenship, remains in effect and has not changed.

If an individual in ICE custody claims U.S. citizenship, or if there is indicia of U.S. citizenship present in a case, an officer immediately examines the merits of the claim, and notifies and consults with his or her local ICE Office of Chief Counsel. These claims are thoroughly investigated and adjudicated by ICE within two business days, absent extraordinary circumstances. ICE officers and attorneys have been trained on this policy, and management and supervisors ensure that the policy is successfully implemented.

<b>Question#:</b>	5
<b>Topic:</b>	ICE Reports
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In the FY 2018 Consolidated Appropriations Act, Congress imposed two public reporting deadlines that ICE has now failed to meet. First, responding to your own Office of Inspector General's December 2017 conclusion that problems at ICE facilities "undermine the protection of detainees' rights, their humane treatment, and the provision of a safe and healthy environment," Congress required ICE to publish basic information about its detention facilities - including average daily population and governing standards - on a monthly basis.

The first deadline for that requirement was April 23, 2018; ICE has thus far failed to post any required information. Second, Congress instructed ICE to publish all reviews of in-custody deaths of detainees within one month of such tragic incidents. Mr. Gourgen Mirimaniyan died in ICE custody on April 10, 2018; ICE was supposed to release its review of his death by May 10, 2018. We are still waiting to see that review.

What is the status of ICE's work on both these reports that are required by law? When can this Committee and the public expect to see these reports?

**Response:** U.S. Immigration and Customs Enforcement (ICE) acknowledges that the April 2018 deadline for public reporting was not met as required in the House Report accompanying the *Consolidated Appropriations Act, 2018*, H. Rept. 115-239.

On August 30, 2018, following a lengthy, but imperative process to ensure the reports' compliance with Section 508 of the Rehabilitation Act of 1973, as amended, ICE published the annual detention inspection reports completed in May, June, and August, 2018 via ICE's Information Library at [www.ice.gov](http://www.ice.gov).

ICE remains committed to providing Congress and the public with accurate and responsive information. As required in *Consolidated Appropriations Act, 2018*, ICE anticipates posting its first detainee death related reports in October, 2018 and is working with various internal stakeholders to determine what information may be released within 30 days of a death.

<b>Question#:</b>	6
<b>Topic:</b>	MS-13 Members
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Would a UAC, who is obviously a member of MS-13, be released by ICE to HHS? Are there any categories of aliens for which the TVPRA doesn't apply?

**Response:** Consistent with the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), except in exceptional circumstances, the Department of Homeland Security (DHS) is required to transfer the custody of any unaccompanied alien child (UAC) to the Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR) within 72 hours of determining that such child is a UAC, if the UAC is from a non-contiguous country. This transfer includes UACs identified as gang members or associates. However, if a UAC is from a contiguous country (i.e., Canada or Mexico), the UAC is screened for trafficking indicators, fear of return, and whether the child is able to make an independent decision whether to voluntarily return to his or her country of origin. If not trafficking indicators exist, if the child expresses no fear of return, if the child can make independent decisions as to whether to voluntarily return to Canada or Mexico, and if the child is a national or habitual of Mexico and Canada, the UAC may be repatriated immediately by U.S. Customs and Border Protection.

The UACs from contiguous countries who do not want to voluntarily return to their country of origin are placed in removal proceedings pursuant to Section 240 of the Immigration and Nationality Act and they are transferred to the care and custody of ORR.

<b>Question#:</b>	7
<b>Topic:</b>	Operation Matador and Raging Bull Arrestees
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Regarding the MS-13 arrestees from the two ICE operations (Matador and Raging Bull), are those individuals currently in removal proceedings? If not, what is their current status?

**Response:** Operation Matador and Operation Raging Bull arrestees are in various stages of their respective criminal and/or immigration proceedings. Non-United States Citizen (USC) MS-13 members who have been criminally arrested have had immigration detainers entered against them so that they should be released to ICE upon conclusion of their criminal proceedings. Subsequently, immigration proceedings against those non-U.S. citizen MS-13 members will be initiated through the Department of Justice's Executive Office for Immigration Review (EOIR), or their prior orders of removal, if any, will be reinstated.

Removal proceedings or reinstatement of prior order of removals have been initiated or executed for Operation Matador and Operation Raging Bull arrestees that were administratively arrested for violations of civil immigration law. A number of the arrestees have been removed while all other arrestees remain within the jurisdiction of the EOIR.