

Question#:	1
Topic:	PREA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: In 2003, Congress unanimously passed the Prison Rape Elimination Act (PREA) which requires prisons, jails, and juvenile facilities across the country to enact policies designed to prevent sexual assault. The 2013 Leahy-Crapo VAWA reauthorization extended these requirements to all immigration detention facilities under the authority of the Department of Homeland Security.

Can you talk about what new standards the Department has implemented to ensure the detection, prevention, and punishment of rape and sexual assault in DHS facilities?

Can you also comment on reports that ICE policy does not prohibit housing individuals in immigration detention with criminals who have already been convicted and are serving time? There was a recent case in Minnesota where an 18-year-old held by immigration authorities was assaulted by his cell mate, a registered sex offender serving a federal sentence. Does DHS have plans to change this policy?

Response: The Department of Homeland Security (DHS) PREA final rule, “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” 79 Fed. Reg. 13100 (March 7, 2014) became effective on May 6, 2014. The standards establish robust safeguards against sexual abuse and assault of individuals in DHS custody, including with respect to screening, training, detainee education, reporting, response, medical care, investigative protocols, discipline, monitoring, and oversight. These requirements consolidate and build upon existing DHS policies and procedures for preventing and responding to incidents of sexual abuse and assault. Many of the PREA requirements applicable to U.S. Customs and Border Protection (CBP) entities and employees became applicable as of the effective date; other PREA requirements applicable to detention facilities will be implemented by the end of FY14.

On May 6, 2014, CBP Commissioner Gil Kerlikowske issued the CBP Zero Tolerance Policy prohibiting all forms of sexual abuse of individuals in CBP custody, including detention facilities, during transport, and during processing. In addition to setting forth the prohibition against all forms of sexual abuse and assault the policy also established an upper-level, CBP wide position of Prevention of Sexual Abuse Coordinator (PSA Coordinator). The PSA Coordinator is based in the CBP Privacy and Diversity Office, and has oversight over CBP’s efforts to comply with the final rule adopting Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities. The PSA Coordinator will be responsible for ensuring that CBP conducts annual reviews of all sexual abuse investigations and incident reports to assess and improve sexual abuse intervention, prevention, and response efforts.

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On May 22, 2014, ICE issued a revised version of its Directive on “Sexual Abuse and Assault Prevention and Intervention” (SAAPI Directive), incorporating additional requirements from PREA that are applicable to the agency. The original SAAPI Directive, promulgated in May 2012, established a zero-tolerance policy with respect to sexual abuse and assault of individuals in ICE custody. It delineated duties of agency employees for timely reporting, coordinating response and investigation, and effective monitoring of all incidents of sexual abuse or assault of individuals in ICE custody; together, these protocols already met many of the agency’s requirements with respect to the PREA standards. Pursuant to the original Directive, ICE has developed and deployed new comprehensive sexual assault prevention training for all ICE employees who may have contact with detainees, and distributed new detainee awareness and education materials to all detention facilities. ICE has also designated a full-time agency-wide Prevention of Sexual Assault (PSA) Coordinator to oversee efforts to improve prevention and response practices, and designated at least one PSA Coordinator in each Enforcement and Removal Operations (ERO) Field Office to ensure field compliance with ICE sexual assault policies. Among other things, the revisions to the Directive outline procedures by which ICE will make victim services available to victims of sexual assault, and establish requirements relating to accommodation of detainees with disabilities or limited English proficiency.

ICE is also finalizing a new policy on the use of ERO hold rooms, integrating requirements from the PREA standards specifically applicable to ICE holding facilities. In addition, ICE has delivered comprehensive specialized training for medical care and mental health care staff and law enforcement investigators, and distributed new detainee awareness and education materials to field offices. Also, in addition to training originally established in the SAAPI Directive, ICE will be retooling training on sexual abuse prevention and intervention issues for agency employees who may have contact with detainees, in order to incorporate new training topics required by PREA.

Furthermore, ICE’s 2008 and 2011 Performance-Based National Detention Standards (PBNDS) and Family Residential Standards, which accomplish most of the safeguards enumerated in the PREA standards for detention facilities, currently apply to facilities housing approximately 94 percent of ICE’s average detainee population (calculated excluding those detainees who are held in Department of Justice (DOJ)-contracted facilities, and are therefore covered by DOJ PREA regulations). ICE is revising PBNDS 2011 to incorporate the additional PREA requirements for detention facilities, and will pursue implementation of these new standards at all dedicated detention facilities within 18 months, if not sooner. Although not required by PREA, ICE will also proactively pursue options for incorporating the standards at a number of other detention facilities.

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Many facilities typically house both criminal inmates and civil ICE detainees with varying criminal backgrounds within each population. Therefore, the most appropriate method of ensuring the safety and security of the facility population as a whole is by housing detainees pursuant to individualized risk assessments that are not based solely on whether they are detained for civil or criminal purposes. ICE requires personnel to assess each individual's risk level and appropriate custody classification upon intake. This system incorporates objective, documented criteria such as criminal history, escape history, institutional disciplinary history, documented violent episodes or incidents, and history of victimization. Consequently, low-risk detainees are not permitted to be housed with anyone with a history of violence deemed to be a threat to the detainee population.

Question#:	2
Topic:	TVPA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: The Trafficking Victims Protection Act (TVPA), originally passed in 2000, created two new visa categories to help victims of crime by allowing them to remain in the United States to assist law enforcement. The U visa ensures that victims of domestic violence or sexual assault will not be deported before they can participate in holding their abusers accountable. The T visa assists trafficking victims who were brought to the United States for labor or sexual exploitation. I was proud to lead the reauthorization of the TVPA last year and expand eligibility in both of these categories. I know that you share my belief that victims must feel free to come forward and seek justice regardless of their immigration status.

Can you tell this Committee how many T visas and U visas have been granted since their creation in 2000?

Response: Please see chart:

U.S. Citizenship and Immigration Services						
Form I-914 - Application for T Nonimmigrant Status, Form I-918 - Petition for U Nonimmigrant Status						
Approvals						
Fiscal Year 2002-2014 (May)						
FISCAL YEAR	Victims (T-1)	Family of Victims (T-2,3,4,5)	I-914 Total Approvals	Victims (U-1)	Family of Victims (U-2,3,4,5)	I-918 Total Approvals
	Approved	Approved		Approved	Approved	
2002	17	9	26			
2003	283	51	334			
2004	163	106	269			
2005	113	73	186			
2006	212	95	307			
2007	287	257	544			
2008	243	228	471			
2009	313	273	586	5,825	2,838	8,663
2010	447	349	796	10,073	9,315	19,388
2011	557	722	1,279	10,088	7,602	17,690
2012	674	758	1,432	10,122	7,421	17,543
2013	848	975	1,823	10,030	8,198	18,228
2014	372	464	836	10,020	8,085	18,105

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Question: What efforts in the Department undertaking to assist victims of abuse, including trafficking?

Response: The U.S. Customs and Border Protection (CBP) Border Patrol apprehends thousands of individuals attempting to enter the U.S. unlawfully each year, and takes reports of abuse or trafficking very seriously. If a detainee reports abuse, trafficking, or if there is any reasonable belief that a substantial risk of abuse or trafficking exists, CBP makes all efforts to ensure the detainee’s safety. When issues arise, Border Patrol personnel notify supervisory staff and a determination is made about the individual’s need for medical attention. All detainees are treated with the dignity and respect that should be afforded to all individuals.

In addition, CBP trains its frontline officers and agents to detect and identify persons who may potentially be victims of trafficking. To ensure the health, welfare, and safety of this vulnerable group, CBP immediately separates adults from children, unless a family relationship can be established. The process requires that officers and agents complete a form titled Unaccompanied Alien Child Screening Addendum (CBP Form 93) sheet with specific questions designed to help determine whether the person appears to be a potential victim of human trafficking. The form is a tool that assists officers in asking certain questions in identifying victims of human trafficking. Completion of this form was required under Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) for Unaccompanied Alien Children who are citizens or habitual residents of contiguous countries; and it becomes a part of the child’s case file. Even though the TVPRA only mandates that UAC from contiguous countries (Mexico and Canada) be interviewed, as a manner of practice, the CBP Form 93 is completed for all UAC.

For its part, through its Victim Assistance Program (VAP), U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) staff personnel respond to the needs of those victimized by a wide range of crimes, including human trafficking, financial crime, child pornography, child sex tourism, white collar crime, and human rights abuses. HSI’s VAP has four full-time forensic interviewers that have the ability to conduct sensitive, age-appropriate, legally defensible interviews to assist in prosecuting offenders. Additionally, HSI’s VAP provides guidance to DHS investigative field offices regarding any victim-related issues they may encounter while also establishing training protocols, providing technical assistance, and continually monitoring compliance with federal crime victim statutes.

The Department has 26 full-time Victim Assistant Specialists located in 24 field offices in addition to approximately 250 specially trained special agent Victim Assistance Coordinators worldwide. These trained individuals provide a critical resource to DHS-

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led investigations and criminal prosecutions by ensuring that victims have access to the rights and services to which they are entitled by law, as well as the assistance they need so that they can participate actively and fully in the criminal justice system process.

Question: Just last month you said you were “surprised” to learn that courthouses were not on the list of “sensitive locations,” like schools, hospitals and houses of worship where immigration officers may not carry out immigration enforcement actions except in exigent circumstances.

What actions are you taking to change this policy to ensure that victims will feel safe in coming forward to seek the protection of our justice system?

Response: As Secretary Johnson has testified before, conducting immigration enforcement actions at courthouses is unique. While courthouses are not included in ICE’s October 24, 2011 policy memorandum, *Enforcement Actions at, or Focused on, Sensitive Locations*, ICE has issued operational guidance to its officers and agents regarding enforcement actions at courthouses. This guidance allows law enforcement officers to make targeted arrests of individuals who are ICE’s top civil enforcement priorities because they pose a danger to national security or a risk to public safety. Additionally, this guidance specifies that enforcement actions at or near courthouses will take place only against specific, targeted aliens, rather than other individuals who may be “collaterally” present, and that, wherever practical, enforcement actions will take place outside of public areas of the courthouse. ICE’s enforcement actions are designed to be mindful of any potential state and local impact, including the impact on individuals who need the protection of our legal system; therefore, all priority arrests planned on courthouse grounds are coordinated beforehand with courthouse personnel. The Department is continuing to review existing immigration enforcement practices and procedures including those applicable to courthouse enforcement, to ensure that our resources are strategically focused on our enforcement priorities.

Question#:	3
Topic:	preclearance
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: I understand the Department is working to station more U.S. officials in Canada to prescreen passengers before they arrive at the Canadian border. These preclearance operations help to expedite legitimate trade and tourism with Canada – which is Vermont's largest trading partner – while also saving money and enhancing security. I am working with the Department on how we can help pave the way for expanded preclearance operations in Canada, and look forward to our ongoing collaboration on this issue.

From your perspective, what are the greatest benefits of expanding U.S. preclearance operations in Canada?

Response: Preclearance and pre-inspection helps to facilitate travel and trade while enhancing the security of both countries. CBP currently conducts preclearance of commercial air passengers at eight airports in Canada. As well as assisting in identifying terrorists, criminals, and other national security threats prior to boarding aircraft bound for the United States, they provide economic opportunities to air carriers and tourism stakeholders. Additionally the air preclearance locations support tourism and trade by relieving congestion at U.S. “gateway” airports and reduce airline delays. “Domestic” style arrivals at U.S. airports provide smoother and more efficient transfers.

Under the Beyond the Border Action Plan released in December, 2011, U.S. Customs and Border Protection (CBP) partnered with the Canada Border Services Agency, Public Safety Canada, and Transport Canada on a phased approach to the cargo pre-inspection pilot. Phase II of the pilot was implemented in February 2014 at the Peace Bridge crossing in Buffalo, New York/Fort Erie, Ontario. Phase II will last one year and will test feasibility and the program’s ability to reduce wait times and border congestion by conducting the CBP’s primary inspection of cargo in Canada. At the end of Phase II, the pilot will be evaluated to determine the benefits of conducting pre-inspection activities in Canada. Expansion of the pre-inspection concept may be considered based upon, among other things, its ability to reduce wait times and border congestion while ensuring continued safety and security at our borders.

The Department of Homeland Security and Public Safety Canada also are engaged in ongoing discussions to negotiate and conclude a new agreement that would provide for preclearance in the land, marine, and rail environments, and update the existing 2001 United States-Canada Air Transport Agreement. This is another key initiative included in the Beyond the Border Action Plan. Once a new agreement is in place and all legal and operational conditions have been achieved CBP will be in a position to consider whether to expand its preclearance operations. CBP carefully analyzes each request for expanding pre-inspection or preclearance service, particularly in these times of limited

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budgets and resources, to ensure such an operation would be cost effective and is within the legal construct of the bi-lateral agreement with Canada.

Question#:	4
Topic:	border searches
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: The Department Homeland Security maintains it has the authority to conduct suspicion-less searches of Americans’ phones, tablets and laptops when they cross the border into the country, based on the “border search” exception to the Fourth Amendment. But these electronic devices that we all carry around with us contain enormous amounts of very personal information about our everyday lives. This is a very real concern for Vermonters who cross regularly into Canada to visit friends and family.

What is DHS doing to limit the use of these warrantless, but extremely intrusive, searches?

Response: At the border (or its functional equivalent, such as at an international airport), U.S. Customs and Border Protection (CBP) and U.S. Immigration and Customs Enforcement (ICE) are responsible for ensuring compliance with customs, immigration and other laws, and both have broad authority to conduct border searches of persons and things upon their entry into or exit out of the country. This authority stems from a long-standing and well recognized exception to the probable cause and warrant requirements of the Fourth Amendment and is premised on the Government’s interest in protecting its citizens from the entry of persons and items harmful to U.S. interests. There are also numerous statutory provisions reflecting the authority of ICE and CBP to conduct border searches in connection with the inspection of persons, merchandise, baggage, conveyances, and containers, including computers and other electronic devices, entering the United States. *See, e.g.*, 19 U.S.C. §§ 482 (search of vehicles and persons), 1461 (inspection of merchandise and baggage), 1496 (examination of baggage), 1499 (examination of merchandise), 1581 (boarding vessels), 1582 (search of persons and baggage), 1583 (examination of outbound mail), 1589a (enforcement authority of customs officers), and 1595 (searches and seizures); 8 U.S.C. § 1357 (powers of immigration officers).

CBP and ICE issued separate directives governing the border search of information in electronic devices in 2009, and each continues to operate in accordance with the policies outlined in their respective Directive. CBP’s and ICE’s policies regulating the conduct of border searches of electronic devices are CBP Directive 3340-049 and ICE Directive 7-6.1. These directives have been made available to the public, and provide nationwide policy guidance to both CBP and ICE personnel.

In addition, both directives have internal audit mechanisms, and CBP is currently conducting an in-depth audit of officer reporting on electronic device searches. If any deficiencies are detected by the audit, CBP will conduct additional onsite training at any location necessary. ICE Special Agents have separate, mandatory training on border searches which highlight the procedures outlined in the ICE directive.

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CBP utilizes a risk management approach in determining when to conduct border searches of electronic devices. Once CBP detains, seizes, or retains electronic devices and turns such devices over to ICE for analysis and investigation, the ICE policy immediately applies. ICE Special Agents must comply with all applicable laws and internal ICE policy whether CBP conducts the initial border search or whether a device is turned over to ICE by CBP for analysis and investigation. Border searches of electronic devices are conducted on a small percentage of travelers encountered by CBP and ICE.

Question#:	5
Topic:	I-130 Application Backlog
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Stand-alone immigration applications for the immediate relatives of United States citizens, called “I-130 applications,” have been seriously backlogged, causing very long waits. I understand that USCIS needed to prioritize processing the DACA applications.

What is the Department’s plan to alleviate the backlog for these other highly deserving applications where the immediate relatives of U.S. citizens sometimes have to wait almost a year to receive an adjudication of their petitions?

Response: USCIS has worked diligently to eliminate the backlog of stand-alone I-130 immediate relative petitions. Between August 2012 and October 2013, over 163,000 stand-alone I-130s were shipped to field offices for adjudication. In October 2013, USCIS began transferring from the National Benefits Center to the four Service Centers stand-alone I-130s filed on behalf of an immediate relative of a U.S. citizen. Currently, USCIS field offices have just over 1,100 cases from the original backlog left to adjudicate, and all of these cases are currently in the process of being worked. As of June 2014, processing times have been reduced to within the processing goal of 5 months or less at three of the centers and to 5.5 months at the fourth.

Question: What changes to the process is the Department considering to ensure that the backlog does not increase again once it is eliminated?

Response: USCIS continues to prioritize this important workload and routinely monitors adjudication rates to avoid large backlogs developing. USCIS will reallocate resources as needed to address any filing surges that may arise.

Question#:	6
Topic:	UAC
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Once detained, unaccompanied minors are placed into removal proceedings and many have no legal representation. The Senate’s comprehensive immigration reform bill would give the Attorney General authority to grant unaccompanied children a lawyer to ensure that these young people get relief if they are so entitled.

I applaud the efforts of Judge Katzmann, the chief judge of the Second Circuit who has worked hard to secure private funding to hire lawyers for immigrants in need. And I know the Administration has made efforts to expand AmeriCorps to meet this growing need. But we need a permanent solution that does not rely on private donations or the preferences of a particular administration.

Do you agree that providing young children with legal assistance streamlines the process for judges who are better able to identify meritorious claims and make informed decisions? How has representation for immigrants been shown to impact the efficiency and capacity of immigration proceedings? Do you believe legislative reform is necessary to address this issue?

Response: Competent legal representation in removal proceedings can assist respondents and potentially increase efficiency in the process. To assist in the efficient and effective adjudication of immigration court proceedings involving unaccompanied children, the Department of Justice’s Executive Office for Immigration Review and the Corporation for National and Community Service are jointly sponsoring a program that would provide grants that would enable grantees to provide legal services to unaccompanied children. Additionally, HHS funds legal representation for unaccompanied children in certain limited circumstances. HHS is also working to enhance its legal services programs. DHS would refer you to these agencies for additional background on these efforts.

Question#:	7
Topic:	Haji Gulalai
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Earlier this year, the Washington Post revealed that a former senior official of Afghanistan’s National Directorate of Security (NDS) had secretly relocated to the United States several years ago. According to the article, Haji Gulalai was able to obtain asylum despite being responsible for administering and overseeing abhorrent acts of cruelty and torture against prisoners detained at NDS facilities. Reports by the United Nations have also documented systemic mistreatment and torture of prisoners by the NDS throughout Afghanistan during Mr. Gulalai’s tenure as head of the detention and interrogation division.

These allegations are deeply alarming and raise troubling questions about how Mr. Gulalai was permitted to enter the United States and receive asylum. It would be particularly disturbing if Mr. Gulalai received preferential treatment, given that thousands of Afghan nationals have been denied special immigrant visas to enter the United States despite risking their lives to work in support of U.S. military efforts.

Please provide a detailed account of how Mr. Gulalai entered the United States; including when and how his family was permitted to enter the country.

Was the Department of Homeland Security aware of the allegations against Mr. Gulalai when he was admitted to the United States?

What is Mr. Gulalai’s current immigration status?

Response: We will be happy to brief your staff regarding Mr. Gulalai and his status.

Question#:	8
Topic:	human trafficking victims
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Richard Blumenthal
Committee:	JUDICIARY (SENATE)

Question: What is DHS doing to identify human trafficking victims and ensure they receive visa benefits guaranteed under the TVPA?

I want to thank the Department of Homeland Security for its efforts to combat human trafficking in our communities and around the world. DHS' Blue Campaign represents an impressive effort to raise public awareness and enhance cooperation between federal, state, and local law enforcement and human trafficking victim services. That cooperation is particularly important, as non-governmental partners are tremendous sources of knowledge and intelligence for law enforcement, and is crucial to supporting victims of this horrific crime. I have a few questions on what DHS is doing internally with regard to victim services.

I am proud to cosponsor a bipartisan bill encourage state child welfare agencies to screen children for sex and labor trafficking victimization at intake. Has DHS implemented such intake screening procedures in its detention facilities, both for adults and juveniles, to help identify victims of trafficking? If so, what improvements can DHS make in the implementation of these screening procedures?

Can you describe DHS' current approach to granting continued presence for victims of trafficking?

The DHS fact sheet on continued presence states that "[continued presence] applications should be submitted immediately upon identification of a victim regardless of whether or not the victim has cooperated." Is DHS policy and procedure consistent with this statement?

Response: The U.S. Department of Homeland Security (DHS) has created the Blue Campaign to coordinate and enhance the efforts of its various components to combat human trafficking. DHS uses a victim-centered approach to combat human trafficking, which places equal value on the identification and stabilization of victims and the investigation and prosecution of suspected traffickers. Victims are crucial to investigations and prosecutions. DHS also provides immigration benefits to non-citizen victims. DHS can help victims through DHS victim assistance resources or can help connect victims to services in their community.

DHS is responsible for investigating human trafficking, arresting suspected traffickers, and protecting victims. U.S. Immigration and Customs Enforcement (ICE) is the lead DHS law enforcement agency that investigates human trafficking crimes and is also responsible for determining whether an individual should be granted Continued Presence. U.S. Citizenship and Immigration Service (USCIS) is the DHS agency responsible for

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determining whether an individual is eligible for T nonimmigrant status as authorized under the TVPRA.

DHS criminal investigators and victim assistance personnel provide on-site victim assistance. They also help operational planners with victim issues routinely encountered in complex cases that feature large numbers of rescued victims. DHS also regularly trains domestic and international law enforcement personnel on human trafficking and coordinates outreach, training, and services with other federal, state, and local agencies, faith-based organizations, and non-governmental victim service providers on identifying trafficking indicators. This training has been critical in allowing these partners to help victims report those crimes committed against them to appropriate law enforcement agencies.

Regarding intake screening procedures at detention facilities, ICE utilizes a Risk Classification Assessment (RCA) module nationwide to provide an initial recommendation on whether to detain or release an alien, custody classification level if detained, or level of community supervision if released. These data help to identify vulnerable populations, including adult victims of human trafficking, early in the process, so that ICE may make more informed classification decisions based on risk level. ICE Officers completing the RCA are instructed to ask each alien being processed if “Since entering the United States, has someone intimidated, deceived, obligated, or forced you into prostitution or labor against your will?” If the alien answers positively, the claim is investigated further by ICE.

With respect to individuals in detention, DHS authorizes their continued presence in the United States where an appropriate law enforcement agency identifies them as victims of a severe form of trafficking who are potential witnesses in the investigation or prosecution of the trafficker. When such requests are received, they are first vetted with ICE Special Agents in Charge and the corresponding U.S. Attorney’s Office. Once these reviewers determine that the presence of the victim of human trafficking is needed, DHS may grant Continued Presence. DHS may also release these individuals under appropriate supervision consistent with its enforcement priorities, while they await their next hearing date before an immigration judge.

To be eligible for Continued Presence, a person needs to be identified as a victim of human trafficking and a potential witness in the investigation or prosecution of the trafficker. Cooperation with law enforcement, however, is not required for Continued Presence to be granted. Individuals who are eligible for Continued Presence are permitted to lawfully remain in the United States for one year (with renewal possible), which includes the period during any ongoing investigation of the human trafficking-related crimes and conclusion of any civil action the victims may institute. Individuals

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may also self-petition for T nonimmigrant status with USCIS. Individuals are granted T nonimmigrant status for 4 years and those who remain in T nonimmigrant status for 3 years may be eligible to adjust status to lawful permanent resident.

Question#:	9
Topic:	CBP IA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Richard Blumenthal
Committee:	JUDICIARY (SENATE)

Question: In your testimony you mentioned your focus on the issue of use of force by agents and officers in the field. I share concerns that many have raised about the seemingly systemic lack of transparency and accountability of CBP with regard to agent conduct. With a new CBP internal affairs chief starting this month, the agency has the opportunity to ensure that all of its agents and officers engage in appropriate conduct in the field.

I am especially concerned about the use of force and abusive conduct by agents and officers in the field as they encounter unaccompanied children. This is a very vulnerable population, with children fleeing their home countries alone, often to escape extreme violence. On the day of the hearing, I saw a complaint documenting 116 children who allegedly suffered abuse – ranging from physical abuse, to denial of adequate food or water, to sexual assault – when they were being apprehended or held by CBP.

With more children coming in contact with CBP agents, I hope any changes to CBP’s internal review policy for investigating complaints will give attention to the uniquely vulnerable population of unaccompanied minors. I invite you to discuss any efforts that you have been considering or that are underway to ensure that unaccompanied children are treated humanely when they encounter CBP or other DHS agencies.

Please detail any efforts that you have been considering or that are underway to ensure the unaccompanied children have the ability to report allegations of abuse or mistreatment when they are in the custody of CBP, without fear of retaliation.

Response: U.S. Customs and Border Protection (CBP) has several avenues for the reporting and receipt of allegations of abuse or mistreatment including reporting via telephone or email to the Department of Homeland Security’s (DHS) Office of Inspector General (OIG), Office of Civil Rights and Civil Liberties, U.S. Immigration and Customs Enforcement’s (ICE) Office of Professional Responsibility (OPR), CBP’s Office of Internal Affairs (IA), and the ICE/CBP Joint Intake Center. OIG contact information in English and Spanish is generally posted within CBP holding facilities and detainees may file complaints using that information. CBP makes it clear to all individuals that they can file a complaint without fear of retaliation and any allegations of retaliation are documented and investigated by the appropriate internal investigative agency.

The DHS Office for Civil Rights and Civil Liberties (CRCL) also receives and investigates complaints, whether directly from children or from their representatives, family members, advocacy organizations, or other channels, involving the apprehension, care, and custody of unaccompanied children.

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Once a complaint or allegation is received and documented, it is referred to the appropriate investigative entity to be fully and completely investigated. The complaint mentioned involving 116 children resulted in 116 individual cases being opened and CBP/IA, ICE/OPR, and the DHS/OIG conducting investigations into each allegation. Any future allegation involving unaccompanied children received will likewise be fully investigated.

Additionally, CBP was recently given the authority to conduct its own internal criminal investigations through the designation of CBP/IA special agents as general schedule series 1811 criminal investigators. This will allow for better transparency and accountability in these as well as other issues involving allegations of employee misconduct. Also, CBP is developing new protocols in responding to allegations of use of force. This will include cross-component, CBP/IA lead use of force response teams and the establishment of use of force review boards that will look at all use of force incidents to include continuous review of policy, tactics, and training.

DHS is committed to providing a safe and secure environment for unaccompanied children and to quickly and safely transfer them to the Department of Health and Human Services' (HHS) care and custody, consistent with legal requirements. DHS is also working in tandem with HHS to accelerate processing and placement for these children. We are developing ways to expedite background checks for sponsors of children, integrate CBP and HHS information sharing systems, and increase capacity to transport and place children. Additionally, DHS and HHS are increasing Spanish-speaking case management staff, increasing staff handling incoming calls from parents or guardians, and surging staff to manage the intake of CBP referrals to track shelter bed capacity and facilitate shelter designations.

DHS makes every effort to provide appropriate care for unaccompanied children. Some of the steps include designating certain facilities for children only to protect them from unrelated adults, and to provide a secure environment. We have taken steps along the southwest border to ensure children have access to showers and clean clothes, providing three meals daily with access to drinks and snacks. As a result of the recent influx of children along the border, we have deployed Federal Emergency Management Agency Corps to assist with the general care of children, contracted with food service providers to ensure those children receive adequate and timely meals, and contracted with medical care providers, as well as providing recreational activities when possible.

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Question: Additionally, what efforts are underway to ensure that legitimate complaints that are filed in the future will result in prompt intervention to remove the children from the abusive situation while they are in the custody of CBP?

Response: When an allegation of alleged abuse or mistreatment is received through the above reporting process, immediate steps are taken to investigate the claim, determine the status of the complainant's case, and if applicable they are removed from the location where the abuse or mistreatment is alleged to have occurred. Any allegation of sexual abuse of a detainee in a CBP holding facility is handled in accordance with the DHS Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities, codified at 6 CFR Part 115. Among other requirements, when agency personnel have a reasonable belief that a detainee is subject to a substantial risk of imminent sexual abuse, they are required to take immediate action to protect the detainee. Moreover, the first law enforcement staff member to respond to a report, or his or her supervisor, is required to separate the alleged victim and abuser and preserve and protect, to the greatest extent possible, any crime scene until appropriate steps can be taken to collect any evidence. In addition, agency personnel are required to report immediately any knowledge, suspicion, or information regarding an incident of sexual abuse.

Question#:	10
Topic:	displaced children
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Starting in 2000, I recognized the need to provide protections to unaccompanied immigrant children entering the U.S. I introduced the Unaccompanied Alien Child Protection Act, and I was very pleased when President Bush signed it into law in 2008. Over the years, custody of these children was ultimately transferred from DHS to the Department of Health and Human Services' Office of Refugee Resettlement, where they were provided with shelter. For those children deemed ineligible for immigration relief, Congress has mandated their safe repatriation to their country of origin.

Sadly, there is an unprecedented increase in unaccompanied children seeking protection in the United States happening right now. From 2004 to 2011, about 6,800 unaccompanied minors arrived per year, then in 2012, about 13,000 arrived, and in 2013, over 24,000 arrived. It is expected that as many as 90,000 unaccompanied minors will arrive at our southern border in fiscal year 2014. The majority of these children are coming from Honduras, Guatemala, and El Salvador.

Across the board, it is my understanding that the population is younger than in prior years, and that there are more young girls making the long and dangerous journey than ever before, sometimes arriving pregnant after being raped either in their home country or on their journey to the U.S.

Governmental agencies such as the United Nations High Commissioner for Refugees' (UNHCR), and non-governmental organizations, such as the Women's Refugee Commission, Kids in Need of Defense, and the Vera Institute for Justice, have been studying these migration patterns and their causes for years. The consensus in their reports is that the primary factor causing the increased migration is increased violence by organized armed criminal actors in their home countries such as drug cartels and gangs or State actors.

Thank you for your leadership in working to ensure the necessary resources to address this emergency, and in coordinating a unified federal response led by FEMA to the increase of unaccompanied children at the southern border. I am appreciative of your efforts to recognize and treat them as the vulnerable children that they are.

While FEMA's management of this emergency situation is welcomed, will DHS consult with experts who have been working with displaced children and are experienced with providing appropriate care?

Response: On June 2nd, President Obama directed the Secretary of Homeland Security to establish an interagency Unified Coordination Group to coordinate the assets of the

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entire federal government to address the humanitarian aspects of the situation. This group includes DHS and all of its components, the Departments of Health and Human Services (HHS), Defense, Justice, State, and the General Services Administration, and the American Red Cross.

The Secretary of Homeland Security designated FEMA Administrator Fugate to serve as the Federal Coordinating Official for the U.S. Government-wide response to the recent influx of unaccompanied children entering the United States. FEMA has served as the lead coordinator to maximize the federal support that can be provided to CBP, ICE, and HHS and the Department of Defense, the lead agencies. These agencies are jointly addressing the immediate needs of unaccompanied children. As the influx of unaccompanied children is currently being managed and the inflow rates are reducing, FEMA is transitioning the established FEMA managed task forces back to the responsible agencies. In addition, FEMA is developing a UAC surge management plan that captures the lessons learned of the coordination effort and incorporates them into the plan to assist Federal agencies to address any future surges across the borders of the United States of unaccompanied children.

Question#:	11
Topic:	funding
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: For the Fiscal Year 2015 Homeland Security Appropriations bill, Senator Boxer and I requested that CBP receive funding for potable water and food; access to bathroom facilities and hygiene items; sleeping arrangements for those held overnight; adequate climate control; access to language-appropriate forms and materials; medical care for pregnant women and those with special needs; and access to facilities by nongovernmental organizations.

Considering that there is an urgent need for such basic minimums of care right now, since these children are being held in Customs and Border Protection's (CBP) custody prior to being released to more long-term shelters, what steps is DHS taking to ensure that these children receive basic minimums of care at all CBP facilities that hold children in custody?

Response: The Department of Homeland Security (DHS) is ensuring that the children's nutritional and hygienic needs are met while in our custody; that children are provided regular meals and access to drinks and snacks during the day; that they receive constant supervision; and that children who exhibit signs of illness or disease are given proper medical care. We have also made clear that all individuals will be treated with dignity and respect, and any instances of mistreatment reported to us will be investigated.

DHS is also working in tandem with HHS to accelerate processing and placement for these children. We are developing ways to expedite background checks for sponsors of children, integrate CBP and HHS information sharing systems, and increase capacity to transport and place children. Additionally, DHS and HHS are increasing Spanish-speaking case management staff, increasing staff handling incoming calls from parents or guardians, and surging staff to manage the intake of CBP referrals to track shelter bed capacity and facilitate shelter designations.

Throughout the Rio Grande Valley Sector, we are conducting public health screening for all those who come into our facilities for any symptoms of contagious diseases or other possible public health concerns. We are also working to ensure individuals with other medical needs have access to appropriate services.

To support these efforts, the American Red Cross has established its Restoring Family Links program in Nogales, and Save the Children is providing training to FEMA Corp staff working in the RGV and Nogales border stations. Catholic Charities, Save the Children and other non-governmental organizations are providing support to family units.

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Question: What about when they are in the care of Immigration and Customs Enforcement (ICE) and in Department of Defense facilities?

Response: ICE is responsible for providing the majority of transports of unaccompanied children from CBP facilities to HHS' Office of Refugee Resettlement (ORR) facilities located throughout the country. ICE considers unaccompanied children to be a particularly vulnerable population that must be treated with special consideration and care. During the limited time that ICE maintains physical custody of unaccompanied children pending transfer to ORR, minors are provided meals regularly and have access to drinks and snacks throughout the day. Additionally, ICE has provided supplies such as diapers, baby formula, seasonal clothing, blankets, bottles, and baby shampoo to assist with the needs of these minors.

With regard to the care of unaccompanied children at Department of Defense facilities, DHS defers to HHS.

Question#:	12
Topic:	ORR 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: I unfortunately learned recently of several allegations of serious sexual abuse of children in the custody of the Office of Refugee Resettlement (ORR) in the past few years. These children were allegedly abused by the very staff charged with their protection and care, which deeply concerns me.

Considering the various federal agencies that will have custody of these children throughout the processing of their immigration court cases, what steps are you taking to ensure that sexual abuse of these unaccompanied minors while in DHS custody is prevented?

Response: Generally, unaccompanied children are in Immigration and Customs Enforcement (ICE) custody for a very limited amount of time until they are transferred to ORR. However, while UAC are in ICE custody, ICE makes every effort to maintain sufficient supervision and continuous monitoring.

The Department of Homeland Security (DHS) Prison Rape Elimination Act of 2003 (PREA) final rule, "Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities," 79 Fed. Reg. 13100 (March 7, 2014) became effective on May 6, 2014. The standards establish robust safeguards against sexual abuse and assault of individuals in DHS custody, including with respect to screening, training, detainee education, reporting, response, medical care, investigative protocols, discipline, and monitoring and oversight. These requirements consolidate and build upon existing DHS policies and procedures for preventing and responding to incidents of sexual abuse and assault. Many of the PREA requirements applicable to U.S. Customs and Border Protection entities and employees became applicable as of the effective date; other PREA requirements applicable to detention facilities will be implemented by the end of FY 2014.

Question#:	13
Topic:	abuse
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: In 2008, Congress passed an amendment I authored to the Violence Against Women Reauthorization Act of 2013 to allow prosecution of those who sexually abuse an unaccompanied alien child in federal custody, regardless of which federal agency has authority over the minor.

If sexual abuse incidents occur, what mechanisms for reporting is DHS putting in place?

Response: Although the Department of Homeland Security (DHS) is not responsible for the long-term custody, care, and placement of unaccompanied children, which is the responsibility of the Department of Health and Human Services (HHS), such children can temporarily be in DHS custody as a result of being apprehended or transported by U.S. Customs and Border Protection or U.S. Immigration and Customs Enforcement (ICE). Should an incident of abuse occur while in CBP or ICE custody it would be handled in accordance with the appropriate procedures and the Department’s “Standards to Prevent, Detect, and Respond to Sexual Abuse and Assault in Confinement Facilities,” which became effective on May 6, 2014.

In accordance with *ICE Directive 11062.2, “Sexual Abuse and Assault Prevention and Intervention,”* which also covers individuals who are being transported by ICE, and was reissued in May 2014, all ICE employees must immediately report any knowledge, suspicion, or information regarding an incident of sexual abuse or assault of an individual in ICE custody to a supervisor or a designated official. Furthermore, the Field Office Director must ensure that facilities are aware of their obligation to report allegations of sexual abuse and assault to ICE and the appropriate law enforcement agency. Once the ICE field office receives a report of sexual abuse or assault from the facility, the field office is required to timely report the allegation to ICE headquarters.

In addition to the reporting requirements, the Directive requires that the ICE field office ensure that the alleged victim in ICE custody is provided immediate protection from the alleged abuser and that the facility place the victim in the least restrictive housing option possible. Additionally, every alleged victim is provided emergency medical and mental services and ongoing care, as appropriate, to include a referral for a forensic medical exam.

The Directive also requires that ICE offer victim services to all victims of sexual abuse and assault, and specifies steps that must be taken to accommodate detainees with disabilities or limited English proficiency. ICE would also inform the HHS Office of Refugee Resettlement of the allegation received, if the child is in their custody or being transferred to their custody

Question#:	14
Topic:	ORR 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: I understand that, in most instances, ORR is required to report the child abuse to state or local authorities. In some instances, however, ORR is required to make its report to the FBI and the FBI determines whether to pursue the case.

Is there any consideration of making that reporting process more uniform?

Response: ICE defers to ORR.

Question: How would DHS hold such violators accountable for their abuse?

Response: Depending on the circumstances, a number of different entities could be best suited to handle the investigation, whether it is another law enforcement agency, either federal or state/local; the ICE Office of Professional Responsibility; or a foreign government or other foreign entity. Additionally, if the violator is not a citizen or national of the United States, and has been convicted of child abuse, the Department of Homeland Security may be able to move forward with removal proceedings against such an abuser under the Immigration and Nationality Act provisions rendering perpetrators of child abuse removable, such as 8 U.S.C. § 1227(a)(2)(E).

Question#:	15
Topic:	human smugglers
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: It is my understanding that Mexican transnational criminal organizations are becoming increasingly involved in these operations – by taxing human smugglers who assist migrants in crossing the border and/or using minors as drug mules to transport illicit substances.

How specifically will the inter-agency Unified Coordination Group that was just created to deal with the influx of unaccompanied minors entering the United States address the increasing involvement of Mexican transnational criminal organizations?

Response: The Unified Coordination Group (UCG) is working closely with stakeholders to address the full range of challenges involved in the current influx, including the involvement of transnational criminal organizations. In particular, the UCG is engaged with U.S. Immigration and Customs Enforcement (ICE), which is the Department of Homeland Security’s primary investigative arm with regard to transnational criminal organizations. Within ICE, Homeland Security Investigations (HSI) coordinates with U.S. Customs and Border Protection, Department of State, Department of Justice, foreign law enforcement and intelligence partners, and the Intelligence Community at large to attack human smuggling organizations (HSOs) by investigating, disrupting, and dismantling those criminal travel networks that present possible threats to U.S. national security or of humanitarian concern. In order to support and expand ICE’s current efforts to curb human smuggling in the southwest border, ICE has taken – and plans to take on – various operational, investigative, and intelligence initiatives, including Operation Torrent Divide and Operation Funnel Catch.

ICE initiated Operation Torrent Divide to counter and diminish the increased levels of organized criminal activity and of illicit migration taking place in the Rio Grande Valley area of Texas. ICE has deployed an additional 60 personnel to HSI’s Special Agents in Charge offices in San Antonio and Houston in order to reinforce their existing human smuggling investigative efforts. Additionally, ICE has provided intelligence, tactical, and operational support to these field offices in order to augment ongoing surge operations already underway. These operations will initially be geared to disrupting human smuggling organizations. The information derived from such operations will then be used to expand these cases into long-term investigations aimed at dismantling the networks and those associated with these activities both domestically and internationally.

Concurrently with Operation Torrent Divide, HSI is executing Operation Funnel Catch, a nationwide financial initiative to complement human smuggling investigations through proactive financial investigations. Operation Funnel Catch will target the money laundering trend known as “interstate funnel accounts.” This emerging trend provides an efficient and difficult to detect method for human smuggling organizations to move illicit

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proceeds rapidly through the exploitation of financial institutions located within the interior of the United States to the states bordering the Republic of Mexico. These are accounts that are opened at large U.S. financial institutions by straw account holders in states that border Mexico and are used as funnels where cash moves through quickly with little or no leftover balance. Cash deposits made anonymously, usually by a friend or family member in destination states and then immediately withdrawn by the human smuggling organization in the source state, challenge the ability of law enforcement to seize any substantial amounts of illicit funds. Utilization of interstate funnel accounts by human smuggling organizations exploits the U.S. banking system, enables organizations to move money rapidly across great distances at minimal cost, and allows for anonymity of the depositors since the cash deposits are usually under the \$10,000 reporting limit.

Funnel Catch will enhance ICE's effectiveness to attack transnational criminal organizations engaged in illicit financial activity associated with human smuggling violations. ICE offices will effect seizure warrants and disrupt human smuggling financial networks by discovering straw accounts and intercepting their criminal proceeds.

The HSI Extraterritorial Criminal Travel Strike Force and Illicit Pathways Attack Strategy programs were designed to leverage the expertise of dedicated investigative, analytical, and prosecutorial resources to identify the most significant extraterritorial human smuggling organizations operating throughout the world that are involved in smuggling special interest aliens into the United States. Through aggressive investigation, all HSO members, including upper-echelon leadership, are targeted for arrest and prosecution, organizational vulnerabilities are identified, and assets are seized.

The ultimate goal of these programs and investigations is to dismantle criminal travel networks and human smuggling organizations that can or do facilitate the illicit movement of foreign nationals to the United States.

ICE has offices strategically situated in Central America to help these governments combat transnational organized crime (TOC) in the region, including offices in Guatemala, Honduras, El Salvador and Panama. These offices work collaboratively with their foreign law enforcement partners to jointly address the threats that transnational organized criminal organizations pose with regard to human and contraband smuggling. The law enforcement efforts in this region are further enhanced by the close partnerships ICE has developed through the establishment of Transnational Criminal Investigations Units (TCIUs) in all the aforementioned countries. The TCIUs are comprised of vetted and trained foreign law enforcement personnel who work with ICE to provide a proactive means of combating TOC threats.

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ICE is complementing these and other initiatives with ICE resources abroad to better support Mexico and Central American countries with capacity building and enforcement operations, particularly Mexico's Southern Border region where most migrants from Central America are making their way into North America.

ICE is aggressively pursuing these and other initiatives as part of a whole of government approach to conducting comprehensive investigations that will result in significant disruption and dismantlement of organizations engaged in this activity, and ultimately erode their enabling networks.

Question#:	16
Topic:	The kidnapping of 276 young girls
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: The kidnapping of 276 young girls in Nigeria by Boko Haram has shone a spotlight on the problem of international human trafficking. An article in a recent TIME Magazine demonstrates that these 276 girls are only the “tip of the iceberg.” The article cites the following statistics. I am astounded by the number of trafficking victims.

21-30 million people are in some sort of involuntary servitude — the highest number in history.

Victims from 136 different countries have been found in 118 other countries.

China, India, and Pakistan have the most slaves, but Mauritania and Haiti have a higher prevalence of slavery.

Sex trafficking represents from 22 to 58% of trafficking, depending on the report.

The profit margin on each woman trafficked is 70%.

From 2007 to 2010, 16% of the countries studied by the U.N.’s office of Drugs and Crime did not record a single conviction for any kind of trafficking.

What steps is DHS taking to combat human trafficking?

Response: DHS has created the Blue Campaign to coordinate and enhance the efforts of its various components to combat human trafficking. DHS uses a victim-centered approach to combat human trafficking, which places equal value on the identification and stabilization of victims and the investigation and prosecution of suspected traffickers. Victims are crucial to investigations and prosecutions. DHS can provide immigration benefits to non-citizen victims who do not have legal status in the United States. DHS can help victims through DHS victim assistance resources or can help connect victims to services in their community.

The Blue Campaign has created a suite of materials to raise public awareness and to educate the public about victim identification, case investigations, and resources available to victims. The materials may be ordered or downloaded and offer messages tailored to non-governmental and faith-based organizations, law enforcement officials, attorneys, judges, first responders, healthcare professionals, school officials and others.

The Blue Campaign has also created a public service announcement for television and radio entitled “Out of the Shadows,” which is designed to raise awareness and understanding concerning human trafficking within communities. The television public

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service announcement has aired approximately 5,000 times nationwide through donated airtime since being launched in mid-February 2014. The Blue Campaign has also placed human trafficking awareness posters nationwide at transportation hubs such as major airports and truck stops.

The Blue Campaign has continued to form private sector partnerships with companies such as Western Union and Amtrak, allowing for the training of their workforce to identify and report human trafficking. DHS has also partnered with government organizations such as the National Association of Counties and National League of Cities to deliver webinar training, share resources and co-brand materials for raising awareness through county and local governments. These partnerships also allow for the co-branding of Blue Campaign awareness materials such as posters and public service announcements, which are currently on display in Amtrak and Western Union facilities throughout the country.

The Blue Campaign assists in distributing a web-based interactive human trafficking training for law enforcement, available through the DHS Federal Law Enforcement Training Center. It also distributes two videos explaining to law enforcement authorities how immigration relief in the form of Continued Presence and T and U nonimmigrant status can be beneficial to their investigation. Each video is eight minutes in length and includes a subject matter expert panel.

DHS continues to mandate that all employees who are likely to encounter victims of human trafficking take specialized human trafficking training. DHS component agency TSA has adopted a policy that mandates its screening and law enforcement workforce complete this type of training annually. Immigration and Customs Enforcement Homeland Security Investigations (ICE HSI) has created an Advanced Human Smuggling/Human Trafficking training course for its personnel. In collaboration with the Department of Justice and Department of Labor, DHS and ICE have also created an advanced human trafficking training course for the anti-trafficking coordination teams as well as for state and local task forces, including victim services providers.

ICE HSI is the lead agency within DHS for investigating human trafficking. In FY 2013 alone, ICE received 248 human trafficking tips to its 24-hour tip line, initiated 1,025 human trafficking investigations, attained 816 criminal convictions related to such trafficking, and seized assets worth more than \$1.8 million from those found guilty of those offenses. ICE HSI has designated 39 specially trained human trafficking subject matter experts – at least one in every Special Agent in Charge field office.

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To assist in the complicated needs of trafficking victims, the ICE HSI Victim Assistance Program has 26 full-time Victim Assistance Specialists in 24 of its local investigative offices and more than 250 Victim Assistance Coordinators. These professionals are responsible for assessing victims' needs for all victims linked to an HSI investigation, working to integrate victim assistance considerations at the beginning and throughout the duration of the criminal investigation. They ensure that potential human trafficking victims are rescued, transferred to safe locations, and provided with referrals for medical, mental health, and legal assistance, including for possible immigration benefits, case management, and other services.

In recognition of the needs and unique challenges of interviewing trafficked minors, as well as other child and special needs victims, ICE established a Forensic Interviewing Program. The four full-time Forensic Interview Specialists, when requested, conduct developmentally-appropriate, legally-defensible, victim- and culturally-sensitive forensic interviews for ICE human trafficking investigations, domestically and internationally. Interviews are conducted in English and Spanish, or in any other language through an interpreter.

DHS provides short-term immigration benefits in the form of Continued Presence, which benefits law enforcement by allowing a victim to remain in the U.S. during an investigation, as well as long-term immigration benefits in the form of T nonimmigrant status, for the victims of trafficking specifically, and U nonimmigrant status, for victims of certain qualifying crimes, including human trafficking. To be eligible for T nonimmigrant status, the victim must have complied with any reasonable request for assistance in the investigation or prosecution of the human trafficking (with exceptions for cases involving minor victims or victims who are unable to cooperate due to physical or psychological trauma), and must meet other requirements. To be eligible for U nonimmigrant status, the victim must have been, must be, or must be likely to be helpful to law enforcement in the investigation or prosecution of the crime, and must meet other requirements. Both T and U nonimmigrant status generally allow victims to remain in the United States for four years with work authorization, with the ability to seek adjustment of status to lawful permanent residence after three years; and allow victims to apply for derivative visas for certain qualifying family members. Over 5,000 T visas for principal applicants have been granted since 2002, and 10,000 U visas for principal applicants, the maximum number allowed by the authorizing statute, have been granted in each of the past five years.

USCIS conducts in-person and web-based trainings and presentations on combating human trafficking and on immigration relief options for victims. USCIS conducts webinar trainings on a bi-monthly basis for federal, state, and local law enforcement

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authorities focused on issues unique to law enforcement’s role, rights, and responsibilities in providing a law enforcement certification for T nonimmigrant status applications and U nonimmigrant status petitions. These events explain and address questions related to the T and U nonimmigrant status programs, while also explaining the certification process in general.

USCIS and ICE Victim Assistance Program and Law Enforcement Parole Section has developed a comprehensive training module on Continued Presence, T and U nonimmigrant status, and DHS resources available to federal, state, and local law enforcement authorities.

The U.S. Customs and Border Protection Office of Public Affairs conducts a public awareness campaign aimed at children and their families from Guatemala, Honduras, and El Salvador. The campaign uses multiple formats (print, radio, television, and more) to promote awareness of the dangers posed to children, including human trafficking, in attempting to illegally immigrate to the United States.

CBP also works with the Department of Transportation on the Blue Lightning Initiative, which includes a training module and pocket guide that educates airline employees on how to identify human trafficking in airports or during flights and how to notify law enforcement. This voluntary, advanced reporting allows CBP to research and formulate an appropriate response, including coordination with other federal agencies as needed. Since its June 2013 launch, the Blue Lightning Initiative has expanded to five participating airlines.

DHS Center for Faith-based & Neighborhood Partnerships conducts outreach to faith-based communities and non-profit organizations. The outreach includes capacity-building initiatives and conducting training presentations during workshops and conferences. The Center distributes Blue Campaign materials customized to the specific needs and interests of faith-based and non-profit constituencies.

Question: What challenges do you face in seeking to investigate international trafficking rings, where jurisdictional issues arise?

Response: U.S. Immigration and Customs Enforcement Homeland Security Investigations (HSI) serves as the lead agency within DHS for investigating human trafficking. ICE is committed to its Trafficking in Persons Strategy, which aims to

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aggressively target human traffickers globally through outreach, coordination, and coalition building.

- Outreach – Special Agents in Charge and Attachés conduct outreach and provide training to educate federal, state, local, and foreign law enforcement agencies and non-governmental organizations (NGOs) regarding available expertise in human trafficking investigations, the provision of Continued Presence as a means for short-term immigration benefits for victims of trafficking, and to establish channels for human trafficking leads. International outreach efforts focus on awareness and increasing the host governments’ efforts to combat human trafficking at potential source and transit countries. These efforts have resulted in outreach to more than 230,000 contacts on human trafficking.
- Coordination – Domestically, ICE coordinates and deconflicts human trafficking investigations as well as establishes protocols for information exchange.
- Coalition building – Internationally, ICE develops and builds on existing partnerships with foreign governments, law enforcement, and NGOs to form long-term strategic relationships that foster information exchange and collaboration in human trafficking cases.

Internationally, ICE, in coordination with its Attaché offices around the world, conducts capacity building training with foreign law enforcement, prosecutors, and victim service providers with the goal of the training to enhance both the United States and the host country’s ability to more effectively prevent human trafficking from occurring around the world. Since the program’s initiation in 2008, ICE has conducted 70 such training sessions around the world.

Question#:	17
Topic:	human trafficking cases
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Both the FBI and the Department of Homeland Security have jurisdiction over human trafficking cases. How does each agency ensure that you are not duplicating the other agency's work?

How do you work with state and local authorities to combat trafficking, if at all?

What steps does DHS take to identify victims of human trafficking that it comes across in its investigations?

Overall, do you have sufficient funding to investigate human trafficking? If you had more funding, could you perform more investigations?

Response: The Department of Homeland Security (DHS) and the Federal Bureau of Investigation share investigative authority over human trafficking. In cases of concurrent jurisdiction, both Department of Justice and DHS investigators coordinate activities to ensure that they do not duplicate one another's work. Such coordination and de-confliction take place across multiple levels as part of interagency task forces, intelligence fusion centers, regional working groups, and even informally between field personnel of each Department. For human trafficking investigations, the efforts of the Human Smuggling and Trafficking Center (HSTC) are particularly noteworthy for providing an inter-agency, all-source intelligence fusion platform for investigations involving human smuggling and human trafficking.

DHS also works with state and local law enforcement partners through regional task forces to combat trafficking within state jurisdictions. Standardized training efforts with state and local partners through such DHS components such as the Federal Law Enforcement Training Center provides opportunities to coordinate and train state and local partners. For example, the HSTC is conducting a pilot project with several state fusion centers to collaborate human trafficking intelligence development at state levels.

As law enforcement professionals, we are constantly aware of the need to identify victims of human trafficking encountered in investigations. Ongoing training and guidance to all DHS criminal investigatory personnel reinforce this imperative. Our Victim Assistance Program specializes in forensic interviewing of victims, which can help identify victims of trafficking encountered in the course of investigations.

While additional funding would certainly provide the Department with the capacity to pursue additional human trafficking investigations, we are committed to attaining the best investigative results possible within the current budget environment.

Question#:	18
Topic:	Humane Treatment of Immigrants
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: As previously mentioned, Congress mandated the safe repatriation of children to their countries of origin. Unfortunately, I understand that due to the violence in Honduras, El Salvador, and Guatemala, as well as in Mexico, that mothers also have been coming to the U.S. with their children seeking protection.

What is DHS doing to provide basic minimums of care to these families while in detention?

Response: Until recently, U.S. Immigration and Customs Enforcement (ICE) had only one residential facility dedicated to providing for the care and custody of family units. However, due to the significant increase in the number of family units being apprehended along the southwest border, the U.S. Department of Homeland Security (DHS) has been working to expand its capacity to house these aliens.

As a result, now, in addition to the Berks County Residential Center ICE had in Leesport, Pennsylvania, ICE has established a temporary facility for family units on the Federal Law Enforcement Training Center's campus at Artesia, New Mexico, and has modified the ICE Karnes Civil Detention Center in Texas for use as a family residential center. The establishment of the temporary facility at Artesia and the modified residential center in Karnes County will help ICE to increase its capacity to house and expedite the removal of family units in a manner that complies with federal law. In addition, ICE has been exploring possible additional locations to house family groups at existing facilities that are not currently in ICE's inventory and working with other Federal partners to construct a new family residential center in Texas, funding permitting.

Of note, DHS is ensuring that after apprehension, families are housed in residential facilities that adequately provide for their safety, security, medical, and educational needs as prescribed by ICE's Family Residential Standards. ICE ensures that family detention facilities operate in an open environment, which includes play rooms, social workers, regularly re-stocked refrigerators, classrooms with state-certified teachers, and bilingual teachers. Residents at these facilities are provided three meals per day and are given access to milk, juice, and snacks 24 hours a day. They are medically screened upon arrival by a licensed nursing staff that is on site 24 hours per day, seven days per week; they receive mental health screenings upon admission; and they are provided ongoing medical and mental health care, as needed. Residents are provided an opportunity for indoor and outdoor recreation, social and legal visitation, and specialized on-site cultural activities. As in all of its facilities, ICE provides residents with access to telephones and the services of a chaplain, who engages representatives of other denominations to provide

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Primary:	The Honorable Dianne Feinstein
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additional religious services. ICE continues to improve its services at each of these facilities to ensure that the same level of services is available at all locations wherever possible. The OIG continues to evaluate the detention facilities and improve conditions related to food and sanitation in facilities.

Question: For families from non-contiguous countries of origin, what steps is DHS taking to ensure their safe repatriation to their country of origin?

Response: ICE works closely with foreign governments and non-governmental organizations to assure the safe and humane reintegration of family units into their home country. ICE promptly involves foreign ministry and consular officials in the planning and repatriation processing of family units to their countries of origin. ICE provides consular notification rights as soon as possible and communicates any exigent circumstances to the consular officer, as well as to receiving authorities to accommodate any special needs. ICE supports consular access to foreign nationals upon request, and also allows consular officials to chaperone repatriation flights upon request.

For some family units from non-contiguous countries of origin, ICE arranges for repatriation via charter flight or commercial air. In the case of a commercial air flight an ICE officer may meet such families at the airport to witness their departure.

Upon arrival in their home country, families are processed through repatriation reception centers where foreign governments and non-governmental organizations provide a multitude of services and assistance to the returnees. The services may range from currency exchange, medical consultation, providing a meal upon arrival, and providing transportation to the family's hometown.

Question: For those families from Mexico, I understand that many are returned to Mexico in the middle of the night, often to border cities in Mexico with high levels of criminal activity. Will DHS reconsider this practice, and if so, what alternatives exist to more safely repatriate those families to Mexico?

Response: ICE Enforcement and Removal Operations (ERO) and U.S. Customs and Border Protection (CBP) are engaged in a number of initiatives to ensure that Mexican nationals are removed safely and in coordination with Mexican government officials. Absent extenuating circumstances, ERO and CBP conduct removals along the border in accordance with local repatriation agreements, which specify the designated ports of entry (POEs) and the hours of operation during which Mexican nationals may be

Question#:	18
Topic:	Humane Treatment of Immigrants
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
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repatriated. Such removals are coordinated with the Government of Mexico to ensure the safety and well-being of its nationals or citizens.

For those individuals removed to the interior of Mexico through the Interior Repatriation Initiative, family units are processed through repatriation reception centers where Mexican government and non-governmental organizations provide a multitude of services and assistance to the aliens. The services range from medical consultation, providing a meal upon arrival, and providing transportation to the family's hometown.

ICE is currently engaged in initiatives such as the Repatriation Technical Working Group, Repatriation Strategy and Policy Executive Coordination Team and the Interior Repatriation Initiative, and coordinates local repatriation agreements, to ensure that Mexican nationals, including family units, are removed safely and in coordination with Mexican government officials. ERO continues to seek improvements to the repatriation process, including the potential renegotiation of Local Repatriation Agreements.

Question: There have been reports that many migrants are repatriated without being provided with their personal belongings, such as wallets, cell phones and identification. What steps can DHS take to change this practice?

Response: Pursuant to ICE's detention standards, ERO makes every effort to ensure that these individuals have their property and money returned to them prior to departure. Individuals may make use of the grievance process to declare any funds or personal property believed to be missing; upon receipt of such an inquiry, ICE will investigate the matter in an effort to identify whether any property that was inventoried has in fact not been returned to the individual(s).

CBP's Office of Field Operations has clear procedures established in both its Secure Detention Directive and Personal Property Directive regarding the inventory, accounting, storage, transfer, abandonment, and return of personal property of individuals placed into CBP custody. These procedures include the return of personal property when the person is allowed to withdraw an application for admission, or immediately ordered removed from the United States.

CBP's Office of the Border Patrol has clear procedures established in its Hold Rooms and Short Term Custody Policy stating that all personal belongings will be secured and subsequently returned to the individual upon transfer to another agency or repatriation.

Question#:	19
Topic:	drought and fire preparedness
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Secretary Johnson, California is facing a historic drought. For the first time in 15 years, 100% of California is in moderate to exceptional drought according to the U.S. Drought Monitor. The risks of a severe wildfire season threatening public safety and infrastructure is deeply concerning. It is my view that being prepared for the impacts of drought is critical. These include major wildfires, communities running out of drinking water, and unemployment which will certainly impact migrant and low income agricultural workers.

California’s Department of Forestry & Fire Protection reports that since January 1, California has had 2,118 fires on state lands. The average for this period that California normally experiences is 1,255. Clearly, we are facing the risk of a serious fire season in California as we move into the warmer months. I am deeply concerned for California and the West during this year. Therefore I am interested in knowing how your Department is preparing to respond to the disaster conditions California is facing.

Secretary Johnson, what actions will the Federal Emergency Management Agency (“FEMA”) be taking to ensure federal resources - such as Fire Management Assistance Grants – will be readily available to California when a major wildfire occurs?

FEMA just announced that there is an additional \$40 million in pre-disaster mitigation funding. To what extent will your Department work with California to fund projects to mitigate impacts from drought and wildfire, which are eligible for this funding but have traditionally been under-represented in grants your Department awards?

I continue to have concerns that the Stafford Act does not work well for drought disasters. As you know, drought is an eligible disaster mentioned in the law, but since the Stafford Act became law, 8 states – including California in 2009 – have sought a federal disaster declaration for drought, and all 8 states were denied. Mr. Secretary, will you be prepared to work with California if the disaster conditions get severe enough that the Governor requests a federal disaster declaration?

Response: While a drought is eligible for a major disaster declaration under the Stafford Act, such declarations have been rare because FEMA’s disaster assistance programs are largely focused upon repairing physical damage to structures, which is rare in drought events. The most significant impact of severe drought is typically economic, as a result of agricultural losses. Other federal agencies, such as the U.S. Department of Agriculture generally have the more appropriate programs and expertise to deal with severe drought.

With respect to the wildfire threat created by severe drought, FEMA’s primary vehicle for providing assistance for wildfires is the Fire Management Assistance Grant (FMAG)

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Program. The FMAG Program provides grant funding to state, local, and Indian tribal governments for mitigation, management, and control of fires burning on publicly or privately owned forest or grasslands which threaten such destruction as would constitute a major disaster. Eligible activities may include associated emergency work and fire management assistance. FMAG declarations operate on a 24-hour real-time basis, and FEMA stands ready to provide assistance to the State of California when a fire or fire complex threatens such destruction as would constitute a major disaster.

FEMA also administers mitigation programs which could be utilized by state, tribal and local governments to reduce wildfire risk. The Hazard Mitigation Grant Program (HMGP) provides funds to states, territories, Indian Tribal governments, local governments, and eligible private non-profits (PNPs) following a Presidential major disaster declaration. The Pre-Disaster Mitigation (PDM) Program, subject to the availability of appropriations, provides funds annually to states, territories, Indian Tribal governments, and local governments. For FY 14 PDM Program, each state receives a set-aside of \$250,000 for their highest priority applications. Eligible applicants can submit up to 10 applications, not more than 2 of which can be project applications. The remainder must be planning grant applications. Eligible projects are selected by FEMA according to the business rules posted with the Funding Opportunity Announcement. PDM is a competitive grant program, and all projects outside the initial set-aside must compete nationally for funding. FEMA received applications for over three times the available funding in previous years. When the additional \$40 million was identified, we elected to apply it toward the anticipated over-submittals for FY 2014 PDM funds. This will allow FEMA to award funding for additional projects without extending the application period or revise business rules after the application period had opened.

Over the past several years, three PDM and one HMGP wildfire mitigation projects have been submitted within the State of California. FEMA continues to work with the State of California and local applicants to finalize the necessary environmental reviews to award funds to these projects.

Question#:	20
Topic:	Maritime Cargo Containers
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: As you may know, section 1701 of the Implementing Recommendations of the 9/11 Commission Act of 2007 (P.L. 110-53) requires that all maritime cargo containers entering the United States be scanned by nonintrusive imaging and radiation detection equipment operating at foreign ports by July 1, 2012. It is my understanding that while this requirement exists, the Department is still testing technologies capable of providing this essential capability for homeland security. California ports receive about 40% of the nation's inbound cargo traffic, with the majority of these containers arriving at ports in regions identified as high-risk Tier I Urban Areas under the Urban Area Security Initiative. This includes the Port of Los Angeles and the Port of Long Beach in Southern California and the Port of San Francisco and Port of Oakland in Northern California.

Given the importance of securing our ports from nuclear materials, I would appreciate the Department's urgent attention to assessing technologies with the capability to scan containers and vehicles accurately for nuclear and radiological material.

What progress has the Department made in developing passive imaging systems that could meet the statutory requirements of 100% scanning of inbound maritime cargo at foreign ports?

Response: The Department of Homeland Security (DHS) is reviewing efforts to implement the 100 percent scanning mandate, including identifying obstacles to implementation and potential paths to achieving the goal. As Secretary Johnson stated in his May 5, 2014 letter to Congress extending the implementation deadline by two years, the Department has found that the conditions and supporting evidence cited in the 2012 deadline extension continue to prevail and preclude full scale implementation of the provision at this time. That letter noted that, in particular, systems to scan containers would have a significant and negative impact on trade capacity and the flow of cargo and cannot be purchased, deployed, or operated at ports overseas because ports do not have the physical characteristics to install such systems. However, DHS has met with numerous vendors over the last year to assess current and emerging technology that could efficiently and effectively scan cargo, in particular transshipped cargo. In addition to ongoing monitoring of technology, DNDO initiated its Nuclear and Radiological Imaging Platform (NRIP) project in 2012 in an effort to characterize the ability of emerging technologies to detect radiological and nuclear materials, while clearing benign conveyances, regardless of shielding or cargo clutter levels. Three vendors were competitively awarded contracts for the NRIP project. DNDO also is funding over ten basic and applied research projects that involve less mature technologies to address the challenge of detecting shielded nuclear material. In addition to these activities focused on passive systems, DHS' Science and Technology Directorate and CBP continue to assess the capabilities of active Non-Intrusive Inspection (NII) systems. These systems

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provide an image of the container's contents and help officers identify anomalies or other indicators that would trigger additional scrutiny. DHS remains committed to exploring next generation capabilities that could support ongoing efforts to address the 100% scanning law.

Question#:	21
Topic:	border tunnels
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: It is my understanding that the Sinaloa cartel, formerly headed by Joaquin “El Chapo” Guzman, is responsible for the vast majority of illegal cross border tunnels, both in California and across the Southwest border as a whole. Two bills which I authored were signed into law in 2006 and 2012 to provide law enforcement with additional tools to investigate illegal tunnel activity and prosecute those responsible. With the passage of these measures, and through close collaboration with trusted partners in Mexico, it is my hope that we can successfully combat tunneling operations at the Southwest border.

Given the arrest of El Chapo Guzman, how do you see the illegal border tunnel threat evolving?

Response: U.S. Customs and Border Protection (CBP) does not expect the illegal border tunnel threat to change given the arrest of El Chapo Guzman. Mexican Transnational Criminal Organizations (TCOs) will continue to use tunnels to transport illegal narcotics into the United States to circumvent law enforcement.

Increased resources and effectiveness of our enforcement efforts at and between the ports of entry are likely to continue to push illicit border activity underground. The dynamics of illicit cross-border activities over the next decade may change as threats converge, new threats emerge, and criminal actors adapt to our enforcement actions at the border. Accordingly, our focus is on enhancing our capabilities and ensuring that we have tools that will lead to increased subterranean domain awareness, and increasing the probability of illicit tunnel detection, interdiction, and resolution.

Question: Will his arrest disrupt the Sinaloa Cartel’s tunneling operations, particularly in the greater San Diego-Tijuana area?

Response: The arrest of Chapo Guzman will have minimal impact on the Sinaloa Cartel’s tunneling operations. Mexican TCOs, and specifically the Sinaloa Cartel, will likely continue to exploit the greater San Diego-Tijuana area in order to employ this highly effective method of smuggling.

Increased resources and effectiveness of our enforcement efforts at and between the ports of entry are likely to continue to push illicit border activity underground. The dynamics of illicit cross-border activities over the next decade may change as threats converge, new threats emerge, and criminal actors adapt to our enforcement actions at the border. Accordingly, our focus is on enhancing our capabilities and ensuring that we have tools

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Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Dianne Feinstein
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that will lead to increased subterranean domain awareness, and increasing the probability of illicit tunnel detection, interdiction, and resolution.

Question: Do you feel that law enforcement now has the tools it needs to fully address the problem of cross-border smuggling tunnels?

Response: The U.S. Department of Homeland Security (DHS) continues to invest significant resources to improve the department's ability to fully address the cross-border tunnel threat. The CBP Office of Border Patrol, the CBP Office of Laboratory and Scientific Services, the CBP Office of Technology, Innovation, and Acquisition, and DHS's Science and Technology Directorate are partnering to 1) identify commercially available off-the-shelf technologies and 2) develop new technology to detect illicit cross-border tunnels while under construction or while in use. This includes working closely with other federal agencies with experience and expertise in the area of tunnel detection and tunnel exploitation (e.g., Defense Intelligence Agency, National Geospatial Intelligence Agency, Defense Threat Reduction Agency, and Combating Terrorism Technical Support Office Technical Support Working Group).

Question#:	22
Topic:	Tucson Sector
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Flake
Committee:	JUDICIARY (SENATE)

Question: As I am sure you are aware, with apprehensions in excess of 300,000 for most years since 2000, the Tucson Sector was the busiest border patrol sector on the southern border. I am certain you can appreciate the frustration of Arizonans when they learned that this administration has been this transferring and then purposely releasing illegal aliens from the Rio Grande Valley in Texas into Arizona.

To your knowledge, were illegal aliens shipped into Texas or California for processing or detention when the Yuma sector in Arizona was being overrun and the Tucson Sector was setting annual records for apprehensions year after year?

Response: CBP has routinely transferred detainees from one facility to another to prevent overcrowding and to disrupt smuggling cycles, and it has transferred detainees from its facilities in Arizona to neighboring states and Texas for these reasons.

Question: Prior to utilizing the processing capacity available in the Tucson Sector, did you investigate whether existing state and local facilities were available in Texas?

Response: The U.S. Border Patrol carefully considered all existing options for expanding hold room capacity, including facilities in and near the South Texas area. However, due to the significant numbers we were experiencing at the time, the unique requirements of unaccompanied children, and our need to be able to co-locate several agencies to respond to this population, the Nogales Processing Center was the most viable option.

Question#:	23
Topic:	UACs in the Tucson Sector
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Flake
Committee:	JUDICIARY (SENATE)

Question: It is my understanding that the facility in Nogales is believed to have the capacity for holding 1,500 unaccompanied alien children. It is also my understanding that there are plans for the Nogales facility to be at maximum capacity shortly.

How long can we expect unaccompanied children to be flown into the Tucson Sector from the Rio Grande Valley?

Response: The Department of Homeland Security (DHS) is working to build additional capacity to process unaccompanied children entering at the Rio Grande Valley. Meanwhile, the Department of Defense (DoD) has provided space at Lackland Air Force Base in Texas for the Department of Health and Human Services (HHS) to house the children before HHS can place them. DoD is also providing facilities at Fort Sill, Oklahoma and Ventura, California for the same purpose. DHS, its Federal Emergency Management Agency, and HHS are working to continue to identify additional facilities to house and process the influx of children. DHS is also working in tandem with HHS to expedite processing and placement for these children. We are developing ways to expedite background checks for sponsors of children, integrate CBP and HHS information sharing systems, and increase capacity to transport and place children.

Question: How many personnel deployed in the Tucson Sector are currently involved in dealing with unaccompanied children in the Nogales facility?

Response: Currently, a total of 121 Border Patrol Agents, 15 U.S. Customs and Border Protection (CBP) Officers, and 22 U.S. Immigration and Customs Enforcement's (ICE) Enforcement and Removal Operations Agents are detailed to the Nogales Placement Center. Seventy of these Border Patrol Agents have been detailed from stations within the Tucson Sector.

Question: What additional resources have been deployed to the Tucson Sector to deal with the additional duties associated with managing the unaccompanied children detention?

Response: Through a coordinated effort, the Federal Emergency Management Agency (FEMA), CBP, and other agencies, many resources were deployed to assist with the duties of managing the detention of UAC.

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Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Flake
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Question: Can you assure Arizona residents, unequivocally, that the administration’s actions of flying illegal aliens from Texas into the state of Arizona have not reduced one millimeter of border security in the Tucson or Yuma sectors?

Response: To ensure border security is maintained throughout the Arizona corridor, the Joint Field Command, which has command and control of assets in the corridor, deploys resources to mitigate imminent and emerging threats, moving assets to fill gaps and eliminate vulnerabilities. The transfer of immigrants between Border Patrol sectors occurs on a regular basis to allow CBP to manage flows and processing capability.

Question: At any point in this response have officers been removed from the line due to the arrival of unaccompanied children in the Tucson sector?

Response: The Tucson Sector continues to maintain a sufficient balance of personnel to provide coverage along the International Border. Personnel requirements at the Nogales Placement Center have been met by shifting resources from other areas – supplemented through the effective use of overtime funding to ensure that line operations are not left vulnerable.

Question: The Tucson Sector has the capacity to process illegal aliens as a direct result of the sector’s history of record setting apprehensions and illegal crossings. What is being done to increase the capacity of the Texas border patrol sectors to enable them to process the apprehensions there?

Response: CBP is currently conducting Operation Trifecta, by which additional personnel throughout the nation are deployed to the Rio Grande Valley Sector (South Texas), as well as identifying large capacity holding facilities to support and augment resources already in place.

With respect to unaccompanied children, DHS is working to build additional capacity to process unaccompanied children entering at the Rio Grande Valley. Meanwhile, DoD has provided space at Lackland Air Force Base in Texas for HHS to house the children before HHS can place them. DoD is also providing facilities at Fort Sill, Oklahoma and Ventura, California for the same purpose. DHS, FEMA, and HHS are working to

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Hearing:	Oversight of the Department of Homeland Security
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DHS is also building additional detention capacity for adults traveling with children who cross the border illegally in the Rio Grande Valley. For this purpose, DHS is establishing a temporary facility for adults with children on the Federal Law Enforcement Training Center's campus at Artesia, New Mexico. The establishment of this temporary facility will allow ICE to increase its capacity to house and expedite the removal of adults with children in a manner that complies with federal law. Artesia is one of several facilities that DHS will rely on to increase our capacity to hold and process the removal of the increasing number of adults with children illegally crossing the southwest border.

Question#:	24
Topic:	Handling of UACs
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Jeff Flake
Committee:	JUDICIARY (SENATE)

Question: It is my understanding that more than 47,000 unaccompanied children have been apprehended so far this year. I also understand that in round numbers DHS is currently holding 3,000 and Health and Human Services currently has nearly 7,000 in custody and has been releasing or discharging an average of 255 per day in recent weeks.

While the placement of unaccompanied children falls to the Department of Health and Human Services, are you aware of efforts to ensure that these children are not placed back with individuals that were actively involved in their illegal entry into the country?

I believe that HHS seeks to place unaccompanied children who have entered the country illegally in the least restrictive status that is in their best interest. As the head of the agency charged with ensuring we have secure borders, have you considered how this undermines your mission?

Response: While the Department of Health and Human Services (HHS) is solely responsible for the placement of unaccompanied children in its custody with sponsors, U.S. Immigration and Customs Enforcement (ICE) is the lead U.S. law enforcement agency responsible for fighting human smuggling and we are engaged in increased activities to disrupt and dismantle the human smuggling organizations that lure these individuals into the dangerous journey from Central America. The William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 requires, subject to certain qualifications including safety and suitability assessments, that HHS place children in its custody in the least restrictive setting that is in the best interest of the child. We otherwise defer to HHS with respect to its authorities, protocols, and policies.

Question#:	25
Topic:	GSA
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

Question: The General Services Administration and Immigration Services recently decided to move Minnesota's immigration field office to a location that is largely inaccessible to public transportation, in violation of federal guidelines.

Will GSA and Immigration Services halt construction on this facility?

Response: On May 1, 2014, GSA and USCIS participated in a stakeholder discussion regarding concerns about the proposed Bloomington facility. Shortly after the engagement, GSA placed a temporary hold on further construction on that building until such time that they were able to review and reevaluate options.

Question: My understanding is that Immigration and Customs Enforcement is vacating an office near the current Immigration Services field office. Could the field office move to the vacating ICE facility?

Response: Immigration and Customs Enforcement (ICE) is vacating space that is in the same building as the current USCIS facility. While USCIS can work with GSA to occupy some of the space that ICE is vacating, the lease for that facility expires in 2017 so it would be a short-term solution to USCIS space needs. It is USCIS' experience that a typical time period from market survey to occupancy of a space takes up to 2-2 ½ years. Therefore, it would still be necessary that USCIS work with GSA to solicit for new space that would be occupied at the expiration of the current lease. USCIS is having ongoing discussions with GSA about this strategy as an option to provide USCIS with an opportunity for interim growth while awaiting a new market survey should that be the ultimate direction.

Question: Is there another federal government tenant that could occupy the building at the new location?

Response: It is my understanding that GSA is researching this possibility with other federal entities.

Question#:	26
Topic:	BOSS
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

Question: DHS is developing a facial recognition program, called the Biometric Optical Surveillance System (BOSS), which raises serious privacy concerns. This program reportedly began in the military and was transferred to DHS several years ago as a potential tool for law enforcement to identify faces in large crowds. Although the BOSS program is still in development, DHS tested the system at a public hockey game in Washington State last year. This program could be beneficial, but it's easy to see how such a system could be used at peaceful political rallies or protests. I am concerned that facial recognition systems are being deployed without adequate oversight or privacy protections.

The FBI is also developing a facial recognition system. When I held a hearing on this system in 2012, the FBI told me they only collect facial images—or “faceprints”—from known criminals. It appears that BOSS has bigger ambitions. DHS says Customs and Border Protection has collected faceprints at border crossings. And according to documents released last year under a Freedom of Information Act request, DHS also wants to collect faceprints at airports from passengers enrolled in the Global Entry program.

What is the status of the BOSS program?

What privacy safeguards have you put in place to ensure that this program protects privacy and doesn't stifle free speech?

Are there any limits to whose faceprints can be collected under this program?

Do you share faceprints with the FBI or other law enforcement entities?

Response: The Biometric Optical Surveillance System (BOSS) was a United States Special Operations Command congressionally-funded 3D face recognition program transferred to the Department of Homeland Security's (DHS) Science and Technology Directorate (S&T) in June, 2010. S&T funded Electronic Warfare Associates, Inc. (EWA) to perform research and develop BOSS. S&T also funded Pacific Northwest National Laboratories to run independent testing of BOSS using only test volunteers (not the public). A Privacy Impact Assessment (DHS/S&T STIDP/PIA-008(b)) was signed December, 2012 and was active at the time of testing to safeguard the test volunteers. All test data was destroyed and not shared outside of S&T. Through this testing, it was determined that BOSS was not ready for operational deployment to DHS end users. No further funding was applied to the BOSS program.

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Topic:	BOSS
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

The BOSS Privacy Impact Assessment is available at
http://www.dhs.gov/sites/default/files/publications/privacy/PIAs/privacy_pia_st_stdpboss_dec2012.pdf

Question#:	27
Topic:	reduced staffing
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Al Franken
Committee:	JUDICIARY (SENATE)

Question: Last spring, the Transportation Security Administration reduced staffing at the Minneapolis-St. Paul Airport, creating significant congestion at checkpoints. The situation became so bad that airport officials told all passengers to arrive at least 2.5 hours before their flights. A TSA spokesperson blamed across-the-board budget cuts at airports nationwide, and said they “offset” the congestion by increasing the number of passengers selected for expedited screening through the Pre-Check program.

Does TSA have sufficient resources not only to protect our nation’s airports, but to keep them functioning smoothly?

Response: TSA allocates staffing based on a goal of screening passengers in 10 minutes or less, and the agency constantly strives to effectively utilize its resources to protect our nation’s airports while simultaneously providing a smooth screening experience for passengers.

Minneapolis-St. Paul (MSP) airport officials’ guidance to passengers to arrive 2.5 hours before flights was due to a multitude of factors, including a shortage of parking at Terminal 1, a space-constrained airline ticketing/check-in lobby, and several similarly space-constrained security checkpoints. TSA’s reduction in staffing at MSP, as at other airports, was due to more efficient operations and did not occur at the cost of passengers’ time or security.

Question: Do you think sending more passengers through expedited Pre-Check screening is a safe way to deal with checkpoint congestion?

Response: Risk-based approaches, such as TSA Pre✓™, enable TSA to better focus resources on those passengers who could pose the greatest risk — including those on terrorist watch lists — while providing expedited screening to travelers TSA has assessed as low risk. The goal of our intelligence-driven, risk-based approach is to provide the most effective security in the most efficient manner. TSA is confident that while the implementation of TSA Pre✓™ is resulting in improved efficiency, it is not resulting in decreased security.

Question#:	28
Topic:	Deferred Action for Childhood Arrivals
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: On June 5, 2014, the Department announced the process for individuals to renew their status or initially apply under the Deferred Action for Childhood Arrivals (DACA) program. The documents published by the Department, specifically the Frequently Asked Questions (FAQ), prove that the agency is loosening the education requirements and is not routinely verifying documentation provided by applicants.

What is the agency doing to prevent fraud and abuse by applicants who may use a diploma mill to substantiate their education?

Response: U.S. Citizenship and Immigration Services (USCIS) is dedicated to the prevention of fraud and safeguarding the integrity of our legal immigration system. If there is a DACA request which appears to include documents that may not be legitimate, USCIS further investigates the validity of the document. Moreover, if an individual knowingly misrepresents or fails to disclose facts in an attempt to receive DACA, the individual will be treated as an immigration enforcement priority to the fullest extent permitted by law, and will be subject to criminal prosecution and/or possible removal from the United States. While a diploma may be used to meet the educational requirements for deferred action, evidence of education is only part of the requested documentation, which also includes proof of identity, age, immigration status on June 15, 2012, continuous residence since 2007, or military service. DACA requestors must also pass a comprehensive background check and appear in person for biometric services. In addition, the decision whether to grant DACA to an individual is entirely discretionary.

Question: How many DACA applications have been denied or terminated because of evidence that contradicts an applicant's education background?

Response: USCIS tracks the numbers of all DACA approvals, denials, and terminations. USCIS does not track the specific reason a DACA request is denied or terminated. For additional data on requests for consideration of DACA, please see: <http://www.uscis.gov/tools/reports-studies/immigration-forms-data/data-set-deferred-action-childhood-arrivals>.

Question#:	28
Topic:	Deferred Action for Childhood Arrivals
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Why doesn't the Department routinely verify data or evidence provided by applicants but instead tell applicants that they may do it (see FAQ21)?

Response: USCIS administers a large number of immigration programs. In order to detect fraud in these programs, USCIS provides training to all Immigration Services Officers (ISOs) at several points in their careers. Fraud detection training is provided during BASIC training. This training is updated and augmented through required formal fraud detection training that is required for all USCIS officers. It is not necessary for USCIS to produce specific training products for every program that it administers. There are fraud indicators that are common to all applications and requests. While not providing an exhaustive list of these indicators, some of the most common are evidence of "white out" on photocopies, font discrepancies on original or copied documents, inconsistencies in dates/addresses/names/experiences/entries/departures/etc. between documents and forms, and "evidence" of events that were not possible on the dates/times claimed. It is not necessary that officers be familiar with how or where documents are produced to employ these common fraud indicators—it is necessary for them to be aware of the potential for alterations, inconsistencies, and implausible situations.

For DACA in particular, USCIS has employed the same techniques as described above since the inception of the program. In the most recent round of DACA FAQs, USCIS added a new FAQ (#21) specifically on this point as a deterrent factor to put DACA requestors on notice that USCIS can and does conduct independent investigations to authenticate documents when appropriate. When ISOs detect any suspect documents, they refer the matter to the Fraud Detection and National Security Directorate where further vetting of the document's authenticity occurs. This further vetting may include verification of information contained in the document against online public or government information, contacting the educational institution, the Better Business Bureau or the state government where the institution is located.

Question: Please provide the definition of an "alternative" education program, as stated in FAQ33, and why this was included?

Response: An alternative school or program addresses the needs of students that typically cannot be met in a regular school program, such as a current individualized program (IEP), as required by the Individuals with Disabilities Education Act, for a student with disability. We continue to work collaboratively with the Department of Education on this issue, and, as with all programs, are continually evaluating whether this and other areas need additional guidance for our recipients and adjudicators.

Question#:	28
Topic:	Deferred Action for Childhood Arrivals
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Please explain how adjudicators will assess whether an education program, including literacy or English as a Second Language program, will be assessed as “effective”?

Response: In assessing the “demonstrated effectiveness” of certain educational programs, adjudicators are tasked with considering the following:

- The duration of the program’s existence;
- The program’s track record in assisting students in obtaining a regular high school diploma, GED, or a recognized equivalent certificate, or passing a GED or recognized equivalent exam;
- Receipt of awards or special achievement or recognition, that indicate the program’s overall quality; and/or
- Any other relevant information indicating the program’s overall quality.

This, and additional information, is further detailed in DACA FAQ #33.

Question: Please provide any guidance that adjudicators are receiving about the education requirements.

Response: Guidance on the DACA educational guideline is provided to all Service Center personnel performing adjudicative review of DACA cases. Understanding that we always continue to build and improve on our DACA training materials, such materials include, but are not limited to:

- DACA FAQs (<http://www.uscis.gov/humanitarian/consideration-deferred-action-childhood-arrivals-process/frequently-asked-questions>)
- DACA Standard Operating Procedures (SOP) (“Chapter 8: Adjudication of the DACA Request., Section C: Determining if Guidelines are Met.”)
- Training Materials (such as audio-visuals presentations, collaborative training sessions, and practice cases)
- Internal DACA FAQs (Covering “Graduation from University/College,” “In School vs. Graduated from School,” and “In School at the Time of Filing, but not at the Time of Adjudication.”)

Question#:	28
Topic:	Deferred Action for Childhood Arrivals
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
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Question: Are there discussions taking place within the Department or within the White House to expand the DACA program? If so, how?

Response: The Administration has encouraged the Congress to pass the broader and urgently needed Comprehensive Immigration Reform bill. The Department and the Administration stand ready to support and work with the Congress on meaningful reform.

Question#:	29
Topic:	Release of Criminal Aliens
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In 2013, U.S. Immigration and Customs Enforcement (ICE) released from its custody 36,007 individuals who had been convicted of a crime and were awaiting the outcome of deportation proceedings. According to ICE, “In some of the releases . . . , ICE was required by law to release the individuals from custody, pursuant to decisions by the Supreme Court and other courts.” However, it appears that the vast majority of the 36,007 releases were not so required. In fact, “Only a small share of these criminal aliens (fewer than 3,000) were released in accordance with a 2001 Supreme Court decision, *Zadvydas v. Davis*.”

The *Zadvydas* decision prohibits the indefinite detention of aliens who have been ordered removed from the U.S. Specifically, the *Zadvydas* Court held that once an alien has been ordered removed, detaining that alien beyond six months is presumptively unreasonable. Significantly, the Court held that this presumption can be rebutted if a “significant likelihood of removal in the reasonably foreseeable future” can be shown.

Of the 36,007 individuals released from ICE custody in 2013, 116 individuals had been convicted of a total of 193 homicides. On May 12, 2014, ICE reportedly claimed that court decisions and orders accounted for the release of individuals convicted of 75% percent of these homicides. Two days later, ICE revised that figure to 72%. So, by its own admission, ICE voluntarily released convicted criminals who accounted for the remaining 28% even though it had the discretion to detain them and keep them off the streets.

Such a serious breach of public safety requires accountability and answers for the American people.

A. For each homicide convict whose release in 2013 was “mandatory,” please provide the name of the judge and court of jurisdiction that ordered the release.

B. If there was no court order, please explain how the release can properly be called “mandatory” rather than discretionary.

C. If your answers to Question (A) or (B) relies on the 6-month rule announced by the *Zadvydas* Court, please explain how each release can be called “mandatory” in light of the following language from the *Zadvydas* decision:

After this 6–month period, once the alien provides good reason to believe that there is no significant likelihood of removal in the reasonably foreseeable future, the Government must respond with evidence sufficient to rebut that showing This 6–month presumption, of course, does not mean that every alien not removed must be released

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after six months. To the contrary, an alien may be held in confinement until it has been determined that there is no significant likelihood of removal in the reasonably foreseeable future.

Specifically, for each homicide convict whose release in 2013 was “mandatory”:

Please explain in detail the steps ICE took to rebut the 6-month presumption prior to the “mandatory” release. If no steps were taken, please explain why not.

Please explain the basis for ICE’s ultimate determination that there was no significant likelihood of removal in the reasonably foreseeable future.

Please indicate whether DHS asked the State Department to leverage its visa sanction authority against the country which refused to take back the alien in question. If not, please explain why not.

Response: As indicated in U.S. Immigration and Customs Enforcement’s (ICE’s) August 15, 2014 response to your letter to Secretary Johnson dated June 9, 2014, ICE released 36,007 criminal aliens from ICE custody. ICE had no discretion over the releases of many of these individuals. In general, the various types of releases from custody include bond, order of recognizance, order of supervision, alternatives to detention, and parole.

Individuals released from ICE custody at ICE’s discretion were released either due to eligibility for bond (pursuant to Section 236 of the *Immigration and Nationality Act*) or for reasons such as deteriorated health or advanced age. In cases where the decision to release an alien from ICE custody is not based on discretion, an alien may be released pursuant to a Federal court order or due to the U.S. Supreme Court’s decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001). In response to your inquiry regarding the names of the judges and courts of jurisdiction that ordered the releases, ICE does not keep records of this information.

Ensuring that our enforcement policies and procedures are best suited to protect national security and public safety is paramount. To make certain that we are doing everything we can in this regard, DHS is instituting new procedures requiring that an appropriate senior-level supervisor must approve before ICE releases potentially dangerous individuals.

Furthermore, release may be mandatory under *Zadvydas* if the alien is subject to a final order of removal but is either stateless and no country will accept the alien, or the alien’s

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Hearing:	Oversight of the Department of Homeland Security
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country of nationality refuses to issue a travel document and no third country will accept the alien. Under such circumstances and where the presumptive six month period has elapsed, ICE generally must release an alien if it determines that there is no significant likelihood of removal in the reasonably foreseeable future, irrespective of the alien's criminal background. However, there are limited exceptions for continued post-order detention where the alien is specially dangerous or where the alien's release would present a significant threat to national security or a significant risk of terrorism.

Question#:	30
Topic:	criminal aliens released
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: For each discretionary release, please explain why the convicted criminal alien in question was released.

For each homicide convict released, please indicate what conditions were imposed upon the release in order to protect public safety. If none, then please explain why precautionary conditions were not imposed.

For each homicide convict released, please provide:

- the immigration status of the convict;
- the zip code of the convict's last known address; and
- the name and location of the detention facility from which the convict was released.

Response: As indicated in U.S. Immigration and Customs Enforcement's (ICE) August 15, 2014 response to your letter to Secretary Johnson dated June 9, 2014, of the 169 ICE detainees with a homicide-related conviction who were released from ICE custody in FY 2013, 131 have been issued a final order of removal. Of the remaining 38 aliens who have not been issued a final order of removal, one was granted voluntary departure by an immigration judge and subsequently departed within the permitted timeframe. Further, 154 of the 169 were released pursuant to court order or due to *Zadvydas*.

ICE system records indicate the following zip codes as those associated with the detainees:

10006	10027	10304	10453	10455	10456
10463	10474	11213	11214	11236	11385
11429	11433	13205	16146	18103	19142
21117	22304	22312	27707	28174	28212
28215	30045	30093	30126	30263	30303
30337	30340	32305	32765	33010	33012
33018	33028	33032	33034	33055	33125
33128	33133	33162	33169	33172	33173
33351	33406	33444	33463	33467	33712
34114	40203	43222	44070	48340	50320
51106	53218	55125	55408	55443	56001

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Topic:	criminal aliens released
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
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56201	60544	62794	70065	70816	73844
77072	77078	77433	77450	85007	85326
85730	87121	89506	90005	90013	90019
90032	90044	90057	90211	90255	90731
91020	91201	91205	91334	91335	91506
91606	91709	91733	91744	91766	91767
91768	91770	92057	92084	92301	92562
92614	92683	92804	92835	92840	92880
93030	93206	93701	94112	94509	94544
94608	95112	95116	95132	95205	95670
95823	95824	96145	97024	97266	98168
99502	99507				

The following list includes ICE facilities that served as the location of final book-out for criminal aliens with homicide-related convictions who were placed in a non-custodial setting in fiscal year 2013, according to data generated from ICE system records. Thus, while aliens may have been in multiple facilities while in ICE custody, this list comprises the final locations of the aliens immediately prior to release. As such, this list is inclusive of locations that are not utilized for the long-term housing of aliens (e.g., hold rooms).

- Alabama
 - Etowah County Jail

- Arizona
 - Eloy Federal Contract Facility
 - Florence Service Processing Center
 - Florence Staging Facility
 - Tucson INS Hold Room

- California
 - Adelanto Correctional Facility
 - California City Correctional Center
 - El Centro Service Processing Center
 - Fresno Hold Room
 - Los Angeles Custody Case
 - Sacramento County Jail

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Hearing:	Oversight of the Department of Homeland Security
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- Sacramento Hold
- San Bernardino Hold Room
- San Diego Contract Detention Facility - CCA
- Santa Ana DRO Hold Room
- SFR Hold Room

- Colorado
 - Denver Contract Detention Facility

- Florida
 - Baker County Sheriff's Office
 - Columbia Kendal Hospital
 - Glades County Detention Center
 - Krome North Service Processing Center
 - Monroe County Detention Center
 - Tampa Hold Room
 - Wakulla County Jail

- Georgia
 - North Georgia Detention Center
 - Stewart Detention Center
 - Atlanta District Hold Room

- Illinois
 - INS Airport Hold

- Kansas
 - Rice County Detention Center

- Louisiana
 - South Louisiana Detention Center

- Massachusetts
 - Plymouth County Correctional Facility
 - Suffolk County House of Corrections

- Maryland
 - Howard County Detention Center

Question#:	30
Topic:	criminal aliens released
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
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- Michigan
 - Calhoun County Correctional Center

- Minnesota
 - Freeborn County Adult Detention Center
 - Sherburne County Jail

- North Carolina
 - Charlotte Hold Room

- New Jersey
 - Bergen County Jail
 - Essex County Jail
 - Hudson County Correctional Center
 - NEW/INS OS Hold Room

- New York
 - Buffalo (Batavia) Service Processing Center
 - NYC Field Office
 - Orange County Jail

- Ohio
 - Butler County Jail

- Oklahoma
 - Tulsa County Jail

- Oregon
 - Portland District Office

- Pennsylvania
 - York County Prison

- Texas
 - Dallas Field Office Hold Room
 - El Paso Service Processing Center
 - Houston Contract Detention Facility

Question#:	30
Topic:	criminal aliens released
Hearing:	Oversight of the Department of Homeland Security
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- South Texas Detention Complex
- Virginia
 - Washington Field Office
- Washington
 - Northwest Detention Center
 - Seattle Field Office Hold Room
- Wisconsin
 - Kenosha County Detention Center

Question#:	31
Topic:	Zadvydas Decision
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing, we discussed the 2001 U.S. Supreme Court decision in *Zadvydas v. Davis*. I asked if you would support legislation that narrows the impact of that decision and allows the government to hold criminal aliens longer than six months. You said, “Senator, it’s my understanding that the case concerns a construction of the Constitution so I don’t know whether a legislative fix is appropriate, but I think looking at legislation is worthwhile. When I read the case I was struck by the fact that there might be room for greater space in the exception for detaining people who are true threats to public safety. So, I’m interested in having our lawyers be sure we’re interpreting it properly and I’d be willing to think about legislation.”

We also discussed whether you had any plans to recommend to Secretary of State John Kerry to deny visas to those countries that refuse to cooperate and have not accepted their citizens back. In the case of Guayana, following the denial of visas, they accepted 115 out of the 116 citizens that the United States wanted to deport. This is clearly an effective tool that is not being utilized by the administration.

Please provide me with an update of the Department’s review of legislative options to the fix *Zadvydas* decision.

Please provide me with an update of the Department’s review of their interpretation of the *Zadvydas* decision, especially in regards to the possibility of detaining those aliens who are ‘true threats to public safety’ longer than six months.

In the hearing, you stated that you were discussing with your staff whether denying visas to recalcitrant countries is a tool that should be utilized more often. Please notify me in writing when you and your staff reach a decision on this matter.

Please also provide me with data and the reasons why these recalcitrant countries won’t take their citizens back.

Response: The Department of Homeland Security (DHS) continues to review the viability of legislation to address the consequences on DHS operations resulting from the decision of the U.S. Supreme Court in *Zadvydas v. Davis*, 533 U.S. 678, 701 (2001). DHS continues to review the viability of efforts to increase detention authority consistent with this decision.

As the Committee is aware, in April 2011, in an effort to improve interagency efforts to address the issue of countries that delay or refuse the return of their nationals, U.S. Immigration and Customs Enforcement (ICE) and the Department of State’s (DoS) Bureau of Consular Affairs signed a Memorandum of Understanding (MOU) establishing

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mechanisms by which DoS and DHS could work together to ensure that other countries accept the return of their nationals in accordance with international law. The MOU established the following steps in attempts to gain compliance for countries that systematically refuse or delay repatriation of their nationals:

- Issue a demarche or series of demarches at increasingly higher levels;
- Hold joint meetings with the Ambassador to the United States, the Assistant Secretary for Consular Affairs, and the Director of ICE;
- Provide notice of the U.S. Government’s intent to formally determine the country is not accepting the return of its nationals, and that the U.S. Government intends to exercise visa sanctions under section 243(d) of the Immigration and Nationality Act (INA) to gain compliance;
- Consider visa sanctions under section 243(d) of the INA; and
- Call for an inter-agency meeting to pursue withholding of aid or other funding.

The imposition of visa sanctions under section 243(d) of the INA is a significant step with potentially serious implications. DHS continues to deliberate whether and when the exercise of such authority would be appropriate and beneficial to U.S. interests.

Although the majority of the countries in the world adhere to their international obligation to accept the timely return of their citizens, ICE has confronted unique challenges with those countries that are uncooperative in repatriating their citizens.

Despite ICE’s continued efforts, a number of factors constrain ICE’s ability to improve the level of repatriations to those nations, including limited diplomatic relations with some countries; the countries’ own internal bureaucratic processes, and foreign governments who do not view repatriation as a priority.

ICE is developing a standardized framework to designate countries as uncooperative with U.S. repatriation efforts and to prioritize those nations in the context of agency priorities. Through this analysis, which includes the number of criminal aliens from a particular country with a final order of removal, ICE will consider the distinct circumstances of each country and prioritize its responses to those countries presenting the most significant burdens.

Some progress has been made, and we are working to continue in our efforts in this regard. The U.S. Government will continue to engage all nations who deny or

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unreasonably delay the acceptance of their nationals, as we seek to achieve the ultimate goal of effecting the timely repatriation of all aliens subject to final orders of removal.

Question#:	32
Topic:	Reduction in Detention Beds
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The law currently requires ICE to maintain 34,000 detention beds daily. The President’s budget called for a reduction in detention beds, asking for only enough to detain 30,500 on a daily basis.

In light of the outrageous situation in which 36,000 criminal aliens have been released, do you agree with the President’s budget request to reduce the funding for detention beds? Please explain the rationale if you agree with the budget request to reduce detention bed space.

Response: The President’s budget funds 30,539 detention beds. This avoids approximately \$185 million in detention and removal costs for non-mandatory and low-priority aliens who may be placed on alternatives to detention (ATD) while allowing U.S. Immigration and Customs Enforcement (ICE) to detain priority aliens.

ICE continues to implement efficiencies that assist with identifying, detaining, and removing those individuals who are enforcement priorities, while exercising discretion appropriately. Examples of this include implementing nationwide the risk classification assessment (RCA), a pilot program in which ICE works with the Executive Office for Immigration Review to expedite priority cases that are not subject to detention, and further expansion of ATD.

The President’s budget provides a \$2 million increase for ATD, which is an important part of our enforcement efforts. Detention and ATD, however, are only part of the overall enforcement strategy. Thus, the Department of Homeland Security continues to work with the Department of Justice to increase immigration court efficiencies to ensure removal hearings are completed efficiently.

Question#:	33
Topic:	EB-5 visa program
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: I have been told, and internal reports suggest, that the EB-5 visa program is being used to facilitate terrorist travel, economic espionage, money laundering, and investment fraud. The Inspector General said that the program cannot be managed effectively, and that there is some question about the economic benefit it provides.

In 2012, the Department’s Office of Intelligence and Analysis completed a classified analysis of the EB-5 Immigrant Investor Program. On November 1, Senator Coburn and I asked for this report. When will you give us access to it?

Response: The Department has provided the document to Senate security.

Question: Has DHS ever conducted any sample file reviews or in-depth audits to estimate the fraud level in the EB-5 program—for example, through a Benefits Fraud & Compliance Assessment? If so, what were the results? If not, why not?

Response: While not a Benefit Fraud and Compliance Assessment (BFCA), in late 2012 the California Service Center performed an assessment of the EB-5 background and security checks. The review found that the regime of security checks that was in place at the time was essential to ensuring the integrity of the program. The review further found that enhanced security checks with the Federal Bureau of Investigation (FBI), the Department of the Treasury Financial Crimes Enforcement Network (FinCEN), and other government agencies might open lines of inquiry relevant to the eligibility of individuals seeking EB-5 benefits. These findings helped shape the design and operations of the newly formed Fraud Detection and National Security EB-5 (FDNS EB-5) office.

Question: What percentage of I-924 applications were referred to ICE’s Forensic Document Laboratory or HSI’s Forensic Laboratory each year from 2010 until now?

Response: The Homeland Security Investigations (HSI), Forensic Laboratory (FL) provides a broad range of forensic, intelligence and investigative support to ICE, DHS and many other U.S. and foreign law enforcement agencies. Personnel from the HSI FL routinely provide training to USCIS officers at the training facility in Dallas and at other locations on request.

The HSI FL is dedicated to the examination of travel and identity documents. The majority of the documents accompanying an I-924 application are business-related

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documents, such as business plans and economic analysis reports, rather than original travel and identity documents that would be appropriate for forensic examination, and for this reason, applications are not routinely referred for forensic document analysis.

To enhance its ability to detect fraudulent travel and identity documents, however, the FDNS EB-5 office has arranged for the HSI FL to provide training to the Immigrant Investor Program Office (IPO) on detecting fraudulent documents, including training on document examination and document fraud. The lab's focus is on identity documents and civil documents as these documents have some level of standardization and contain physical security features that are intended to assist with their verification. The class will focus on basic counterfeiting and discuss what may be identified from a physical examination of documentary evidence as opposed to source verification of the documentation. The training will also cover methods on detecting alterations in any document. This training will aid in the detection of altered documents of any type.

USCIS/FDNS/EB-5 routinely refers cases to HSI, SEC, FBI, Department of State and other entities for investigation based upon the nature of the activity to be investigated. FDNS has a formal Request to Investigate process in place with HSI. This process requires that referrals be sent to the appropriate regional HSI Benefit Fraud Unit (BFU). When a Request to Investigate is accepted by the regional office, the BFU then assigns it to the appropriate HSI office to conduct the investigation.

Question: What percentage of I-526 applications were referred to ICE's Forensic Document Laboratory or HSI's Forensic Laboratory each year from 2010 until now?

Response: Original travel and identity documents appropriate for ICE examination are not submitted with the I-526 petition. Some of the documents that accompany a typical I-526 petition include: business-related documents, such as business plans and economic analyses; documents that establish a petitioner's source of funds; and a Targeted Employment Area letter from a state government.

Question: What percentage of I-829 applications were referred to ICE's Forensic Document Laboratory or HSI's Forensic Laboratory each year from 2010 until now?

Response: Adjudication of the I-829 involves the review and verification of business-related documents such as invoices, receipts, bank statements, tax returns, contracts,

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business licenses, payroll and personnel documents, and other evidence. Because FL expertise is in identity and travel-related documents, it would be extremely rare for USCIS to refer I-829 supporting documents to that facility. Rather, USCIS will work with external organizations, such as other U.S. government agencies, as it reviews information submitted in support of an I-829.

Question: I understand the USCIS director occasionally receives updates on the number of pending security concerns for all cases (not just EB-5). For each quarter from the beginning of 2011 through the present, please list the number of pending security concerns under examination, the number that were newly received in that quarter, and the number that remained after security concerns were closed through the quarter.

Response: The table below provides the USCIS national security monthly and quarterly workload for the period beginning October 2010 and continuing through Q2 2014. During the life cycle of the system that tracks this information several major changes were made to the manner in which the national security related data was recorded, as reflected in the chart below. In April 2011, USCIS began to focus on the subjects of the applications and petitions. From April 2011 through the end of Q2, 2014 (March 31, 2014), the figures represent the number of national security concerns measured by subjects.

The number of cases preliminarily identified as national security concerns is a fluid number. This is because such matters are worked initially by specially trained immigration professionals who review these applications or petitions and move quickly to communicate with the various law enforcement and national security agencies who have declared an interest in the matter. Thus, increases of agency filing volumes will bring an increase in the number of initially reported matters which require national security “deconfliction” with the law enforcement and Intelligence Communities.

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Period	Known or Suspected Terrorist (KST) and Non-KST workload FY 2011 ¹						Total Forms Received by USCIS ²
	Data Type	Begin Pending	Received ³	Closed ⁴	Adjusted ⁵	End Pending	
2010-Oct	Receipts	4,856	949	153	-692	4,960	434,007
2010-Nov	Receipts	4,960	759	787	-337	4,595	476,159
2010-Dec	Receipts	4,595	873	514	-324	4,630	369,397
2011-Jan	Receipts	4,630	728	363	-475	4,520	382,268
2011-Feb	Receipts	4,520	503	164	778	5,637	376,226
2011-Mar	Receipts	5,637	644	381	-524	5,376	517,907
2011-Apr	Subjects	5,413	129	685	0	4,857	474,626
2011-May	Subjects	4,857	319	409	-28	4,739	465,893
2011-Jun	Subjects	4,739	551	906	13	4,397	528,391
2011-Jul	Subjects	4,397	401	1,073	92	3,817	451,491
2011-Aug	Subjects	3,824	445	512	-1	3,756	505,471
2011-Sep	Subjects	3,756	388	406	4	3,742	431,266
2012-Q1	Subjects	3,743	1,252	1,933	2	3,064	1,346,373
2012-Q2	Subjects	3,064	1,554	1,627	-1	2,990	1,908,891
2012-Q3	Subjects	2,990	1,589	2,116	-55	2,408	1,520,676
2012-Q4	Subjects	2,408	1,624	1,741	131	2,422	1,531,517
2013-Q1	Subjects	2,422	1,418	1,224	4	2,620	1,718,599
2013-Q2	Subjects	2,620	1,543	1,890	61	2,334	1,491,897
2013-Q3	Subjects	2,334	1,546	1,499	6	2,387	1,911,506
2013-Q4	Subjects	2,387	1,979	1,782	18	2,602	1,751,331
2014-Q1	Subjects	2,602	1,488	1,553	-13	2,524	1,319,035
2014-Q2	Subjects	2,524	1,523	1,315	-2	2,730	1,480,048

¹ Reports were monthly until FY 2012.

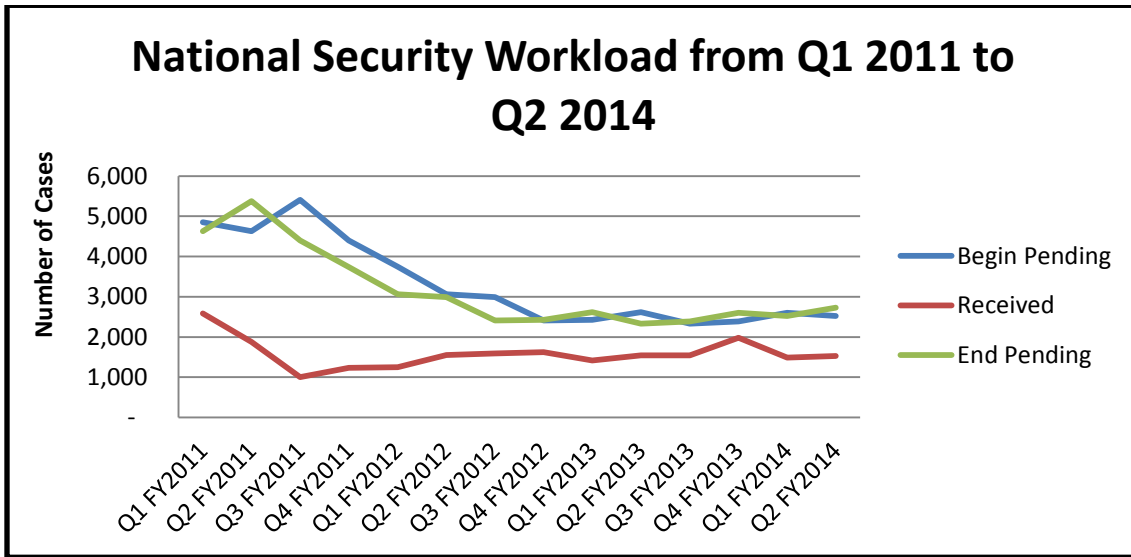
² Data from Performance Analysis System (PAS). Provided by Office of Performance and Quality (OPQ)

³ From Oct 2010-April 2011, information on all received National Security (NS) Concerns is not available. Concerns that were Non-NS at the time the report was run but were initiated as KST or Non-KST were not included in these reports.

⁴ For receipt data, closed concerns are forms that were either approved or denied. For subject data, closed concerns includes concerns with a status of closed and KSTs or Non-KSTs that became Non-NS.

⁵ Includes cases where the case type was improperly recorded and then fixed, cases were deleted for improper entry, or cases were merged with pre-existing cases.

Question#:	33
Topic:	EB-5 visa program
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)



Question#:	34
Topic:	FDNS
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Fraud Detection and National Security, under direction of U.S. Citizenship and Immigration Services, has conducted Benefits Fraud and Compliance Assessments in the past.

Please provide a list of programs that have been the subject of such an assessment.

Response: USCIS Benefit Program BFCAs:

- I-360 Religious Worker
- Form I-90 Replacement of lost, stolen and destroyed Forms I-551
- I-140, Immigrant Petition for Alien Worker), Employment based BFA final report (EW3 & E31)
- H-1B
- I-130 Marriage Based Petitions
- I-130 Family Based Petitions for Yemeni Nationals
- I-589 Asylum
- I-129 L-1A Intra Company Transfer

Question: Are there other programs slated to be assessed by FDNS?

Response: The BFCAs program was reconstituted in the USCIS Office of Policy and Strategy (OP&S) in FY11. OP&S evaluated past study methodologies to identify deficiencies and future improvements. OP&S continues to develop refined methodologies to assess fraud in immigration benefit types. For example, OP&S is currently conducting an exploratory study on marriage-based immigration benefit fraud detection. The study is investigating the methods, tools, and decision-making rules Immigration Service Officers and FDNS Immigration Officers use to detect different types of fraud. This study will complement prior BFCAs methodologies and, along with additional internal agency analysis, help USCIS to augment its ability to more accurately measure fraud within certain benefit categories and thus bolster its anti-fraud initiatives.

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Topic:	FDNS
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: If so, please describe their projected workload and completion dates. If not, why not?

Response: In FY15, the exploratory study on marriage-based immigration benefit fraud detection will conclude. Also in FY15, USCIS OP&S will begin design work for a new pilot BICA for marriage-based immigration benefits. These initiatives will help serve as a basis for a more comprehensive, ongoing agency benefit fraud assessment effort.

Question#:	35
Topic:	Hands Off List
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: On February 3, 2014, I wrote you asking about some internal DHS emails I received which raised some disturbing questions about DHS policies regarding admitting individuals with potential ties to terrorism into the United States. The May 2012 email chain between ICE personnel stated: “The NTC Watch Commander advised that the subject has sued CBP twice in the past and that he’s one of the several hands off passengers nationwide. . . . Apparently his records were removed in December 2010 and the DHS Secretary was involved in the matter.” I have previously disclosed the identity of the individual in question to the Department.

What is the current watchlist status of this individual?

Response: As directed by Homeland Security Presidential Directive 6 (Integration and Use of Screening Information), the Terrorist Screening Center (TSC) has combined the 12 previously existing terrorist watchlists and created the United States government's single consolidated Terrorist Screening Data Base (TSDB). The TSDB is maintained by the Terrorist Screening Center (TSC), which was created by the Attorney General and is administered by the Federal Bureau of Investigation. Every day, the TSC provides updated information on known and suspected terrorists to screeners and law enforcement personnel. In addition, TSC makes the final decision on whether a person meets the minimum requirements for inclusion into the TSDB. Therefore, all questions related to the terrorist watchlist status of an individual should be referred to the U.S. Department of Justice for response.

Question: Why was this individual removed from the watchlist in December 2010?

Response: As directed by Homeland Security Presidential Directive 6 (Integration and Use of Screening Information), the Terrorist Screening Center (TSC) has combined the 12 previously existing terrorist watchlists and created the United States government's single consolidated Terrorist Screening Data Base (TSDB). The TSDB is maintained by the TSC, which was created by the Attorney General and is administered by the Federal Bureau of Investigation. Every day, the TSC provides updated information on known and suspected terrorists to screeners and law enforcement personnel. In addition, TSC makes the final decision on whether a person meets the minimum requirements for inclusion into the TSDB. Therefore, all questions related to terrorist watchlist status of an individual should be referred to the U.S. Department of Justice for response.

Question#:	35
Topic:	Hands Off List
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Was Secretary Napolitano involved in the matter?

If so, please describe the nature, extent, and reasons for the involvement of the DHS Secretary or her staff in the removal of the individual from the watchlist.

Response: To the best of our knowledge, Secretary Napolitano was not involved in the matter.

Question: What role would the Secretary typically play in removing someone from the terrorist watchlist?

Response: The Department of Homeland Security (DHS) has a role in coordinating with the National Counterterrorism Center and the TSC to nominate, review, and/or recommend the removal or status change of persons designated for the U.S. Government's consolidated watchlist for terrorism screening information. These determinations are based on the authorities of DHS nominating, screening, and vetting agencies, and on the totality of information identified during the nomination, encounter, review, and redress processes established in accordance with the U.S. Government Watchlisting Guidance. The TSC maintains an on-going process to review every record in the watchlist to ensure that it is thorough, accurate, and current. If the TSC determines that the watchlisting standards are not met for an individual record, TSC will remove the record in coordination with the nominating agency. The TSC is the final arbiter of whether terrorist identifiers are removed from the watchlist.

Question: I understand that on June 7, 2010, CBP issued a memo stating that "CBP personnel are not permitted to independently create terrorist related lookouts for known or suspected terrorists in any CBP screening database. Additionally, the remarks section of any TECS lookout created by CBP personnel may not include references to terrorism or extremism." Was the removal of this individual's information connected in any way with the issues discussed in this CBP memo?

Response: As directed by Homeland Security Presidential Directive (HSPD) 6 (regarding the Integration and Use of Screening Information), the Terrorist Screening Center (TSC) has combined the 12 previously existing terrorist watchlists and created the United States government's single consolidated Terrorist Screening Data Base (TSDB). The TSDB is maintained by the TSC, which was created by the Attorney General and is administered

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by the Federal Bureau of Investigation. Every day, the TSC provides updated information on known and suspected terrorists to screeners and law enforcement personnel. In addition, TSC makes the final decision on whether a person meets the minimum requirements for inclusion into the TSDB. Therefore, all questions related to the terrorist watchlist status of an individual should be referred to the U.S. Department of Justice for response.

Question: What prompted the need to “reemphasize and expand” this policy in June 2010 with the issuance of this memo?

Response: HSPD-6 and other relevant HSPDs established a consolidated U.S. Government terrorist watchlist maintained by the TSC. CBP issued the 2010 memo to remind personnel that CBP may nominate individuals to the terrorist watchlist and that the terrorist watchlist is maintained by the TSC. CBP’s policy ensures that information regarding known or suspected terrorists is being properly submitted for possible inclusion on the TSDB and to ensure that CBP does not create its own terrorist watchlist.

Question: I understand that the June 2010 memo was preceded by a 2007 CBP memo. Please provide a copy of this memo.

Response: The 2007 CBP memo and June 2010 memo provided consistent guidance to the field regarding nominating individuals to the Terrorist Screening Database (TSDB), in compliance with HSPD 6.

Question: If a CBP officer obtains valuable information regarding extremist ties but does not have enough information to make a nomination to the Terrorist Screening Center, why would CBP object to that information being included in the remarks section of a TECS lookout?

Response: CBP officers are expected to create lookouts when, for example, there is information available of any possible violation of the laws enforced by CBP and to provide a description of the possible violation. Prior to 9/11, various agencies were using their own terrorist watchlists and information was not being consistently shared among the agencies. Where information was shared, it was not supported by common

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technological infrastructures because individual agencies developed and implemented interfaces with other federal agency watch lists systems on an ad hoc basis. The situation was further complicated by a lack of policies and procedures to govern the sharing, and there was no way of ensuring that consistent data was on each agency's watchlist. HSPD 6 and other relevant HSPDs attempted to remedy that situation by creating a consolidated U.S. government terrorist watchlist to ensure information regarding known and suspected terrorists was being shared consistently among the relevant agencies. CBP's policy ensures that information about known or suspected terrorists is being properly submitted for possible inclusion on the terrorist watch list and to ensure that CBP does not create its own terrorist watchlist, thus repeating the previously identified problem.

Question: What is CBP's statutory authority for giving such guidance?

Response: CBP has many authorities related to their mission at the border (e.g., 8 U.S.C. §§ 1103, 1182, 1225, 1357; 19 U.S.C. 482, 1461, 1467, 1496, 1499, 1581, and 1582). CBP issued guidance to ensure compliance with HSPD-6 and other relevant HSPDs.

Question: Does CBP have regulations that address this issue? If so, what are they, and what is the authority for issuing the regulations? If not, why not?

Response: CBP has many authorities related to their mission at the border (e.g., 8 C.F.R. Parts 103, 235, 287; 19 C.F.R. Parts 122, 123, 148, 162). CBP issued guidance to ensure compliance with HSPD-6 and other relevant HSPDs.

Question: How many terrorist-related lookouts for known or suspected terrorists were removed from any CBP screening database as a result of the June 2010 CBP memo?

Response: No known or suspected terrorist lookouts were removed as a result of the memo.

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Question: How many terrorist-related lookouts for known or suspected terrorists were removed from any CBP screening database as a result of the 2007 CBP memo?

Response: No known or suspected terrorist lookouts were removed as a result of the memo.

Question#:	36
Topic:	Interviews of Individuals at the Border
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: During the hearing, many members discussed an internal summary prepared by agents in the field concerning the recent surge of unaccompanied children. The document, while it does not have any author or official seal, was apparently done to summarize interviews of individuals crossing the border along the McAllen, Rio Grande City and Weslaco stations. Interviews were done by intelligence analysts and border patrol agents. The main task, it says, was “to determine the factors compelling the OTMs (other than Mexicans) to migrate to the U.S.” 230 subjects were interviewed from several countries.

When asked why they chose this time to migrate, an overwhelming majority said it was to take advantage of the “new” U.S. law that grants a “free pass” to unaccompanied children and female adults traveling with minors. These “free passes” refer to a Notice To Appear document, saying they are issued and then released on their own recognizance pending a hearing. Specifically, it states, “A high percentage of the subjects interviewed stated their family members in the U.S. urged them to travel immediately, because the United States Government was only issuing immigration “free passes” until the end of June 2014.” The document states that “the issue of permisos” was the main reason provided by 95% (+/-) of the interviewed subjects.

Are agents in the field instructed to do such interviews?

If so, do they report to headquarters?

Response: DHS officers and agents screen unaccompanied children to determine if they have been a victim of trafficking or have a fear of persecution if they are returned to their home country. DHS is required to complete this screening within 48 hours of determining the child is unaccompanied. As part of this screening, agents and officers will conduct interviews of such children however these interviews are intended to identify related protections concerns.

In response to the current influx of unaccompanied children coming to the southwest border, DHS is stressing that Deferred Action for Childhood Arrivals (DACA) does not apply to children who arrive now or in the future in the United States, and that to be considered for DACA, individuals must have continually resided in the United States since June 2007. Secretary Johnson has personally issued an open letter to the parents of those who are sending their children from Central America to the United States, to be distributed broadly in Spanish and English, to highlight the dangers of the journey, and to emphasize there are no free passes at the other end. We are also making clear that the “earned path to citizenship” contemplated by the Senate bill passed last year would, if

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enacted in the present form, not apply to individuals who cross the border now or in the future; only to those who have been in the country for the last two and a half years.

Question: Please provide any memos or summaries of these interviews to the committee.

Response:

FOR OFFICIAL USE ONLY/LAW ENFORCEMENT SENSITIVE

[The FOUO/LES response has been sent separately.]

FOR OFFICIAL USE ONLY/LAW ENFORCEMENT SENSITIVE

Question#:	37
Topic:	Martinez v. Holder
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Petitioner Martinez, a former MS-13 gang member from El Salvador, argued during removal proceedings that based on the threat to his life at the hands of that gang, he should be eligible for what is known as “withholding of removal” pursuant to 8 U.S.C. § 1231(b)(3). The Fourth Circuit’s decision in *Holder v. Martinez* suggests that his status as a former gang member might be a “protected ground” entitling him to remain in the country instead of being removed. As a result of this decision, even members of the most violent and dangerous gangs may simply renounce their membership as a ruse to remain here.

Do you believe that individuals who are former gang members should be entitled to withholding of removal due to those ties, as *Holder v. Martinez* allows?

If not, what do you believe should be done about this decision? Did you urge that it should be appealed? Would you support any action to overturn it, including legislation if necessary?

Response: Generally, a basic matter, the Department of Homeland Security (DHS) agrees with those tribunals, such as the First Circuit, the Ninth Circuit, and the Board of Immigration Appeals, which have ruled that the protected ground of “membership in a particular social group” should not be predicated on criminal acts or associations. *See Arteaga v. Mukasey*, 511 F.3d 940, 945-46 (9th Cir. 2007); *Matter of E-A-G-*, 24 I&N Dec. 591, 595-596 (BIA 2008); *see also Matter of W-G-R-*, 26 I&N Dec. 208, 215 n.5 (BIA 2014) (citing *Arteaga* and *E-A-G-*) and *Cantarero v. Holder*, 734 F.3d 82 (1st Cir. 2013) (concluding that the BIA’s view on this issue was reasonable and expressly disagreeing with the Sixth and Seventh Circuit cases cited below).

The Fourth Circuit is not the only circuit to suggest that former gang membership might qualify an applicant for asylum or statutory withholding of removal based on the protected ground of membership in a “particular social group.” *See Urbina-Mejia v. Holder*, 597 F.3d 360 (6th Cir. 2010); *Ramos v. Holder*, 589 F.3d 426 (7th Cir. 2009). But rather than address this important issue in piecemeal fashion, cabined by the facts of individual cases like *Martinez*, DHS believes that the rulemaking process represents the best method to build a more comprehensive framework for the adjudication of particular social group cases, including those tied to gang membership. To that end, we continue to work with our partners at the Department of Justice to fashion a regulation that will help ensure appropriate analysis of all asylum and withholding claims.

Question#:	38
Topic:	DHS Drone Operations 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: U.S. Customs and Border Protection (CBP) employs a fleet of ten modified Predator B unmanned aerial vehicles (UAVs), and has ordered another fourteen, to augment its capabilities to patrol America's borders.

Does DHS have any plan or intention to arm its drones with any type of weapons, even non-lethal ones?

Response: U.S. Customs and Border Protection's (CBP) Office of Air and Marine (OAM) currently operates nine MQ-9 unmanned aircraft system (UAS) aircraft from four sites across the country. During a January 28, 2014, Southern California maritime border security mission, the tenth aircraft was ditched in the Pacific Ocean when a faulty generator rendered the aircraft unable to safely return to land. The manufacturer has since corrected the failed component and a redundant capability is now installed on all CBP UAS operated beyond 45 minutes of a landing site. CBP has not planned nor been funded for the procurement of any additional UAS aircraft. No weapons have ever been carried on a CBP UAS, and there are no plans to arm CBP UAS.

Question: Do you believe DHS has the authority to do so?

Response: As noted, no weapons have ever been carried on a CBP UAS and there are no plans to arm CBP UAS. Accordingly, this is not a legal authority that CBP OAM has explored.

Question#:	39
Topic:	DHS Drone Operations 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: According to one media report, DHS has lent the use of its drones to other federal, state and local law enforcement agencies nearly 700 times in three years. In one reported instance, DHS provided the use of a drone to a local sheriff to investigate the conduct of a farmer in North Dakota who had allegedly stole his neighbor's cattle and engaged in an armed standoff with police.

Does DHS have any formal guidelines or regulations that limit the use of its drones to situations where there is a specific federal interest? If not, do you think it should?

Response: U.S. Customs and Border Protection (CBP) does not loan unmanned aircraft system (UAS) to other agencies; CBP UAS are operated by CBP Office of Air and Marine (OAM) pilots, and in some circumstances, U.S. Coast Guard pilots. While no CBP UAS been flown by an agency outside DHS, CBP does fly missions in support of other law enforcement agencies.

CBP's annual appropriations have consistently included provision of UAS support to other federal, state, and local law enforcement agencies. The Consolidated Appropriations Act of 2014, Pub. L. No. 113-76 (2014), provides for "the interdiction of narcotics and other goods; the provision of support to Federal, State, and local agencies in the enforcement or administration of laws enforced by the Department of Homeland Security; and at the discretion of the Secretary of Homeland Security, the provision of assistance to Federal, State, and local agencies in other law enforcement and emergency humanitarian efforts..." Additionally, OAM policy requires that CBP UAS operations are flown in support of authorized DHS/CBP border and homeland security missions, for training purposes, or when flying a mission in support of another federal, state, or local agency.

OAM personnel only conduct CBP UAS operations in support of authorized DHS/CBP border and homeland security missions, for training purposes, or when flying a mission in support of another federal, state or local agency. The North Dakota incident cited in your question was supported due to the repeated armed threats to law enforcement officers at that location. CBP's support to state and local agencies (which includes both law enforcement and humanitarian response efforts) accounts for a small portion of UAS flight operations.

Question#:	40
Topic:	DHS Drone Operations 3
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Department of Justice Inspector General recently recommended that the FBI develop privacy guidelines for its use of drones, given the unique Fourth Amendment concerns they present.

Especially since DHS's drones are apparently being used in the interior of the country, and not merely to patrol the border, do you think DHS should also develop privacy guidelines for its drones?

Response: The Department of Homeland Security (DHS) and U.S. Customs and Border Protection (CBP) published a Privacy Impact Assessment (PIA) for Aircraft Systems on September 9, 2013. This document addresses the privacy guidelines for the operation of all CBP aircraft (including unmanned aircraft system) and the sensor, image, and data collection technology employed by those aircraft during operation in any of the mission contexts for which CBP assigns its aircraft to operate. To the extent that a new CBP mission is assigned or an existing mission is modified beyond the context discussed in the current PIA, CBP and DHS have stated in the PIA that the document will be updated to review and analyze the privacy implications of any changes to technology or mission operation.

DHS published the Robotic Aircraft for Public Safety Privacy Impact Assessment (PIA) on November 16, 2012. The program tests and evaluates Small Unmanned Aircraft Systems (SUAS) for potential use by first responders and law enforcement in scenarios such as wildfire response, hazardous materials disaster management, crime scene situational awareness, and law enforcement tactical operations support. Privacy protections were built into the program to minimize the collection and use of personal information from project participants and members of the public.

The Robotic Aircraft for Public Safety PIA was the first PIA in the world to be published addressing the use of unmanned aircraft. Up until that time, no other government or private organization had published an unmanned aircraft PIA. The PIA reflects DHS's efforts to provide transparency to the public about its unmanned aircraft activities, and explains how privacy protections are built into the program.

The Robotic Aircraft for Public Safety PIA is available at:

https://www.dhs.gov/sites/default/files/publications/privacy/PIAs/privacy_pia_st_raps_no_v2012.pdf

The DHS Privacy Office uses a number of existing tools provided by statute, Departmental directive, or policy guidance to identify privacy risks in DHS programs, and mechanisms for mitigating or managing those risks. These tools include the Privacy

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Act of 1974⁶ (Privacy Act), the Electronic Government Act of 2002⁷ (e-Government Act), the Homeland Security Act of 2002, as amended⁸ (Homeland Security Act); universally recognized Fair Information Practice Principles⁹; and relevant DHS guidelines¹⁰ and Policy Memoranda.¹¹ Together, these authorities and policies, along with the Constitution, govern the collection, use, sharing, and retention of personally identifiable information by the Department. When considered as a whole, these tools provide privacy “guidance” for DHS use of unmanned aircraft systems just as they do for any other system or program operated by DHS. The source or platform DHS uses to obtain personally identifiable information is not relevant. Thus, if CBP were to obtain personally identifiable information through the sensor on an unmanned aircraft, that information would be treated no differently under the Fair Information Practice Principles, Privacy Act, or e-Government Act than information provided in an online or “hard” form, say, in connection with an application for immigration or other benefits.

Out of an abundance of caution, and concern that the privacy toolbox could not address all civil rights and civil liberties questions related to DHS use of unmanned aircraft systems, DHS established the Privacy, Civil Rights and Civil Liberties Working Group on Unmanned Aircraft Systems in September 2012. The Working Group is charged with advising the Secretary on policies and procedures needed to ensure that protections for privacy, civil rights, and civil liberties are designed and integrated into DHS and DHS-funded unmanned aircraft systems programs both current and forthcoming. This Working Group drafted a paper recommending privacy, civil rights, and civil liberties best practices, based on the lessons learned from CBP’s operation of unmanned aircraft systems over the years. The paper is currently at the DHS front office; approval and submission to OMB is pending.

⁶ 5 U.S.C. § 552a. See also *Privacy Policy Guidance Memorandum 2007-01 (as amended January 12, 2007)* (requiring DHS components to handle non-U.S. person data held in mixed systems, which contain data on U.S. persons and non-U.S. persons, in accordance with the Fair Information Practice Principles and administrative protections as set forth in the Privacy Act.)

⁷ Pub. L. No. 107-347. See 44 U.S.C. Ch. 35, Subchapter III, “Information Security;” 44 U.S.C. § 3501 note.

⁸ 6 U.S.C. § 142.

⁹ *Privacy Policy Guidance Memorandum 2008-1*, available at: <http://www.dhs.gov/privacy-policy-guidance>.

¹⁰ Directive 047-01, *Privacy Policy and Compliance (July 7, 2011)*; Instruction 047-01-001, *Privacy Policy and Compliance (July 25, 2011)*; available at: <https://www.dhs.gov/department-homeland-security-management-directives>.

¹¹ *Privacy Policy Guidance Memorandum 2008-02; Privacy Policy Guidance Memorandum 2007-01 (as amended January 12, 2007)*, available at: <http://www.dhs.gov/privacy-policy-guidance>.

Question#:	41
Topic:	Material Support to Terrorists 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: On February 5, 2014, you used your discretion to exempt a category of activities deemed to be material support to undesignated terrorist organizations or to individual terrorists. It is concerning for several reasons.

- First, the three elements that form the basis of the exemption are extremely broad, including “certain routine commercial transactions”, “certain routine humanitarian assistance” or “substantial pressure that does not rise to the level of duress” with no definitions as to what the exemption will encompass.
- Second, since “undesignated terrorist organizations” include terrorist organizations prior to the date they are designated, applying the broad categories of material support may include exempting support to a group recently designated, such as Al-Nusrah Front in Syria or providing support to al-Qa’ida in Iraq prior to its designation date.
- Third, from a national security and counterterrorism policy perspective, what is the rationale for the United States to allow more individuals whom admittedly provided material support to a group that would qualify as an undesignated terrorist organization or an individual terrorist into the United States.

In your prepared statement, you said that the “cornerstone of our mission at the Department has been, and should continue to be, counterterrorism—that is, protecting the nation against terrorist attacks. Without a doubt, these threats come from individuals seeking admission to our country.

At least two individuals associated with the now designated terrorist organization, al-Qa’ida in Iraq and who were ultimately linked to attacks against US troops fighting in Iraq, were admitted into our country as refugees. These two men are now serving hefty prison terms as a result of the U.S. prosecuting them on a terror plot they were involved in while in the United States.

These cases to me highlight that we must be more vigilant, not less, when evaluating persons who are seeking admission to the United States.

Why did you use such broad categories of material support that you determined are exempted—for example, what does “certain routine commercial transactions” mean?”

Would an individual who admitted to transferring \$100 a month over the course of a year to an individual associated with al-Nusrah (“al nooz-rah”) Front in Syria prior to its

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designation as a terrorist organization be eligible for an exemption under your authority?

There is already an exemption for material support provided under duress to certain groups. What is the rationale behind now including “substantial pressure that does not rise to the level of duress”? Can you provide examples?

Since this exemption authority was announced, provide the number of aliens who are currently under consideration for application of the exemption by USCIS.

Response: The U.S. Department of Homeland Security has not yet considered any individuals under these recently signed exemption authorities. The administration, through the interagency process, is in the process of developing guidelines for implementation of the exemptions. These guidelines contain definitions of key terms such as “routine commercial transactions” and “substantial pressure.” Once they are finalized, we are happy to share these implementation agreements with you in your oversight capacity, and to discuss how they would apply to your specific questions above. The implementation agreements will assist adjudicators in applying the exemptions to individual case adjudications, though every adjudication will require an assessment of the totality of the circumstances of the material support provided by the applicant. And no individuals will be considered for an exemption unless and until all background and security checks have cleared.

Question#:	42
Topic:	Material Support to Terrorists 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: As I mentioned in the hearing, 116 of those released were convicted of homicide, including one convicted of willfully killing a public official. The administration claims that 72% of these were released in accordance with a court order. I've asked for evidence to prove this.

Will you provide this evidence to me?

I'd like to know how the release of these murderers occurred and whether you have made any effort to relocate them?

In the case of releases that were completely voluntary and at the discretion of DHS, will the department please explain to me those decisions and specific cases in detail?

Response: As you are aware, U.S. Immigration and Customs Enforcement's (ICE) custody and release determinations are made either as a matter of discretion¹² or as a matter of controlling law. In cases where the decision to release an alien from ICE custody is not based on discretion, an alien may be released pursuant to an individual Federal court order or in accordance with legal precedent, such as the U.S. Supreme Court's decision in *Zadvydas v. Davis*, 533 U.S. 678 (2001) (limiting detention of aliens with final orders of removal to that period of time when removal is significantly likely in the reasonably foreseeable future) and *Rodriguez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) (requiring the government to provide bond hearings to certain aliens who have been held in immigration detention for six months or longer).

In fiscal year 2013, 169 aliens with homicide related convictions were released from ICE custody. Of that number, 154 were released from ICE custody due to court order or due to *Zadvydas*. ICE has identified 15 criminal aliens with homicide-related convictions who appear to have been released from custody based on ICE's custodial discretion either due to eligibility for bond (pursuant to Section 236 of the *Immigration and Nationality Act*) or for compelling reasons such as health or age.

¹² See memoranda from John Morton, former ICE Director, *Superseding Guidance on Reporting and Investigating Claims to United States Citizenship* (Nov. 19, 2009); *Guidance Regarding the Handling of Removal Proceedings of Aliens with Pending or Approved Applications or Petitions* (Aug. 20, 2010); *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011); and *Prosecutorial Discretion: Certain Victims, Witnesses, and Plaintiffs* (June 17, 2011). These policy memoranda can be viewed at <http://www.ice.gov>.

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Please find further information regarding the 15 individuals below. Following review of the information available on the cases, it appears:

- Six individuals were released on bond under the *Immigration and Nationality Act's* discretionary (non-mandatory) detention provision at Section 236(a).
- Seven additional individuals were not subject to mandatory detention under the *Immigration and Nationality Act* due to the nature of their homicide-related conviction (e.g., involuntary manslaughter) or the date of their conviction. These individuals were released on Orders of Release on Recognizance and subject to appropriate conditions of release/reporting requirements. Department of Homeland Security records indicate that one alien departed the United States in December 2013 after an immigration judge granted voluntary departure, and for at least three of these individuals, their releases involved humanitarian factors (sole caretaker of a sick spouse and elderly/sick parents; primary caretaker of five children; and advanced age at 91 years old).
- One individual was released due to a grant of deferred action for law enforcement purposes; his case was subsequently administratively closed by an immigration judge.
- One individual was released on an Order of Supervision as the individual was/has been unable to obtain medical clearance for removal due to a deteriorating medical condition.

ICE continues to manage all pending cases in removal proceedings and after issuance of a final order of removal. Any alien who fails to depart the United States following the issuance of a final order of removal, deportation, or exclusion becomes a “fugitive alien.” ICE locates and arrests “fugitive aliens” consistent with its enforcement priorities.

Please note that the individual referenced in your question as having been convicted of willfully killing a public official had in fact been convicted of a different offense. The information relating to a conviction for willfully killing a public official was a data entry error in ICE’s case management system.

Question#:	43
Topic:	Intellectual Property Rights
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Patrick J. Leahy
Committee:	JUDICIARY (SENATE)

Question: Over the past several years, the National Intellectual Property Rights Coordination Center (IPR Center) and its partner agencies have collaborated on combatting the growing problem of illegal sales of counterfeit goods and digital content theft online. The IPR Center has actively worked to protect consumers through its enforcement and public education efforts. The Department of Commerce estimates that more than 40 million American jobs and two-thirds of our exports depend on intellectual property. Further, the total global economic value of counterfeit and pirated products has been estimated to be as much as \$650 billion every year. The efforts of the IPR Center and its partner agencies help protect and preserve these jobs and economic benefits, as well as ensure consumers can access safe and innovative products and services. Will you continue to make intellectual property protection a priority at the Department?

Response: The Department of Homeland Security is committed to protecting intellectual property as an ongoing priority and will provide the funding and resources necessary to ensure that this critical mission continues. The enforcement of intellectual property law remains a priority for both U.S. Immigration and Customs Enforcement Homeland Security Investigations and U.S. Customs and Border Protection.

Question#:	44
Topic:	Rodriquez v. Robbins
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: As you know, the Ninth Circuit in *Rodriquez* found that the mandatory detention statute for criminal aliens and aliens in expedited removal proceedings, 8 U.S.C. sections 1226(c) and 1225(b), which provides that the Attorney General “shall” take into custody certain categories of aliens who are in immigration proceedings, does not mean what it says. Rather, the Ninth Circuit found, contrary to the plain language of the statutes, that aliens who are not subject to final orders of removal are entitled to a bond hearing after six months of detention. Further, the court found that after six months of detention, the burden is on the government to show by clear and convincing evidence that the alien’s continued detention is justified by a risk of flight or a danger to the community. This decision is contrary to the plain language of the statutes and the Supreme Court’s decision in *Demore v. Kim*, 538 U.S. 510 (2003). Moreover, the result of this decision is that more criminal aliens are being released into our communities. As the *Rodriquez* court noted, since this bond hearing requirement was put into place by the district court, two-thirds of the aliens who obtained a bond hearing were released.

What was DHS’s recommendation to the Department of Justice as to whether the government should see *en banc* review of the *Rodriquez* decision and/or a writ of certiorari to the U.S. Supreme Court? Please explain the reason for DHS’s position in this case.

Response: The deadlines to seek rehearing or certiorari for the Ninth Circuit’s April 16, 2013 decision in *Rodriquez v. Robbins*, 715 F.3d 1127 (9th Cir. 2013) have passed. However, that decision involved only a preliminary injunction on certain legal claims made by the plaintiffs in the case, and the government has subsequently filed appeal of the district court’s permanent injunction addressing all claims, which was entered on August 6, 2013. The government’s brief on appeal was filed on July 8, 2014, arguing that the district court erred in requiring bond hearings at six months for all detained aliens, in ruling that the burden shifts to the government to establish flight risk or danger to the community by clear and convincing evidence, and in ruling that immigration judges must consider alternatives to detention. The Department of Homeland Security supports the appeal. However, in light of the pending litigation, we are not in a position to further elaborate on issues of legal strategy.

Question#:	45
Topic:	cyber threats 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: As we discussed, DHS is the lead federal agency responsible for working with state and local government agencies, including state and local law enforcement agencies, to help them protect their own information systems against cyber threats. Could you explain, in detail, how DHS carries out this mission? Given the limited resources that many local law enforcement agencies have to respond to cyber attacks, is DHS planning to expand its efforts in this area, particularly with respect to small police departments?

Response: DHS coordinates the national protection, prevention, mitigation of, and recovery from significant cyber and communications incidents; disseminates domestic cyber threat and vulnerability analysis across various sectors; and investigates cybercrimes under DHS’s jurisdiction. DHS components actively involved in cybersecurity include National Protection and Programs Directorate (NPPD), the United States Secret Service (Secret Service), the U.S. Coast Guard, U.S. Customs and Border Protection, Immigration and Customs Enforcement Homeland Security Investigations (ICE-HSI), the DHS Office of the Chief Information Officer, the DHS Office of Intelligence and Analysis, and the Science and Technology Directorate, among others. In all of its activities, DHS coordinates its cybersecurity efforts with public, private sector, and international partners.

The Secret Service and ICE-HSI partner through a network of 35 Electronic Crimes Task Forces (ECTFs) with state and local law enforcement agencies to prevent, detect, and investigate various forms of cyber crimes, including potential terrorist attacks against critical infrastructure and financial payment systems. The Secret Service also trains state and local law enforcement officials, prosecutors, and judges on digital evidence handling and cyber crime investigations through the National Computer Forensics Institute (NCFI)¹³ in Hoover, AL. Since opening in 2008, NCFI has held over 150 cyber and digital forensics courses in 16 separate subjects and trained and equipped more than 3,400 state and local officials, including more than 2,300 police investigators, 840 prosecutors, and 230 judges from all 50 states and three U.S. territories. These NCFI graduates represent more than 1,500 agencies nationwide. NCFI has the capacity to train up to 2,000 law enforcement officials annually; however, it currently operates at less than 50% capacity with the resources provided in the FY 14 budget. These cyber investigative resources are especially critical to assist small police departments in accomplishing their mission, as you note.

In addition to DHS’s cyber investigative resources, NPPD assists the governments of US states and territories to obtain advanced security tools to protect their own networks.

¹³ More information available at: <http://www.ncfi.usss.gov/>.

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Topic:	cyber threats 1
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Sheldon Whitehouse
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DHS recently forged a cooperative agreement with the Center for Internet Security (CIS) Multi-State Information Sharing and Analysis Center¹⁴ to provide state-of-the-art managed security services to US states and territories in conjunction with their use of the NIST Cybersecurity Framework.¹⁵ As part of this agreement, CIS will provide Managed Security Services, funded by DHS, to states and territories in 2014. These services include intrusion detection, intrusion prevention, netflow analysis, and firewall monitoring. While states and territories must retain full authority and ownership over their networks and manage those networks commensurate with risk, these DHS-enabled services and the implementation of the Framework are critical tools for our state and local partners to achieve better cybersecurity.

¹⁴ More information available at: <http://msisac.cisecurity.org/>.

¹⁵ Available at: <http://www.nist.gov/cyberframework/>.

Question#:	46
Topic:	cyber threats 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: During your testimony, we discussed the need for a “common strategy” among the different agencies with responsibility for addressing the cyber threat. Please explain how responsibility for cyber investigations is currently divided among the different components within DHS that have responsibility in this area. How we can improve our current structures – both within DHS and across the government – so that we are in a position to effectively combat the cyber threats we face now as well as the threats we will face in the years ahead?

Response: The Department of Homeland Security is the nation’s largest law enforcement agency, employing more than 46% of all federal law enforcement officers, and DHS executes its law enforcement responsibilities in close coordination with the Department of Justice, in particular the Criminal Division and U.S. Attorney’s Offices. The United States Secret Service (Secret Service) and Immigration and Customs Enforcement Homeland Security Investigations (ICE-HSI) are the primary DHS agencies that investigate cyber crime, and closely coordinate their cyber investigative efforts with DHS’s National Cybersecurity and Communications Integration Center (NCCIC), a 24x7 cyber situational awareness, incident response, and management center for the Federal Government, intelligence community, and law enforcement.

The Secret Service is assigned specific authority to investigate all violations under the principal computer hacking law—the Computer Fraud and Abuse Act,¹⁶ and has broad authority to investigate crimes related to the theft of payment card data, fraudulent use of sensitive personal identity information, and other criminal violations related to the U.S. financial system.¹⁷

ICE-HSI authority to enforce customs-related violations is broad, encompassing the investigation of crimes involving money laundering; the sale and distribution of narcotics and controlled substances; and child exploitation; the export and import of illegal arms and controlled commodities; and the smuggling and sale of other prohibited items. Included under ICE-HSI purview is cyber-enable crime and the use of cyberspace to engage in any of the aforementioned illicit activities.

Since 1997, the ICE-HSI Cyber Crimes Center (C3) has operated as a cyber center of excellence to support, coordinate and deconflict transnational cyber investigations with headquarters counterparts of the Federal Bureau of Investigation (FBI) and the Secret Service, as well other domestic and international partners. ICE-HSI and the Secret

¹⁶ See 18 U.S.C. §1030(d)(1).

¹⁷ See 18 U.S.C. §§1029(d) & 3056(b).

Question#:	46
Topic:	cyber threats 2
Hearing:	Oversight of the Department of Homeland Security
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Service also partner through the Secret Service’s network of 35 Electronic Crimes Task Forces to prevent, detect, and investigate various forms of cyber crimes, including potential terrorist attacks against critical infrastructure and financial payment systems.

DHS law enforcement agencies routinely coordinate their criminal investigations, including investigations of cyber crimes, with other external law enforcement agencies. This coordination is most commonly conducted directly among the relevant local offices of the various federal, state, local, tribal, territorial, or foreign law enforcement agencies interested in a particular criminal case. Federal criminal investigations are always conducted in conjunction with relevant U.S. Attorneys’ Offices. As appropriate, federal investigations are coordinated through International Organized Crime Intelligence and Operations Center (IOC-2); federal cyber crime cases are often coordinated by the Department of Justice’s Computer Crime and Intellectual Property Section (CCIPS). DHS law enforcement agencies also routinely partner with foreign and international law enforcement agencies through their international field offices. Finally, the Science and Technology Directorate supports a Law Enforcement Working Group, to coordinate cyber security R&D support to DHS and other Federal law enforcement agencies.

DHS is committed to creating a safer, more secure, and resilient cyber environment in collaboration with our public, private, and international partners. Law enforcement capabilities are an essential part of the national effort to reduce cyber threats, and should be conducted in a coordinated manner. We are continually assessing how to adapt our current law enforcement structures to best counter cyber threats.