

Question#:	36
Topic:	Financial Aid to Central America
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: In April 2019, President Trump announced that he is cutting off financial aid to Guatemala, Honduras, and El Salvador for their failure to stem the flow of Central American migrants traveling to the U.S.-Mexico border. Ironically, this funding is critical in addressing the root causes of forced migration. For instance, this aid plays an important role in preventing violence, combatting hunger and poverty, and bolstering the justice systems on those countries.

Do you believe that financial aid to Guatemala, Honduras, and El Salvador plays an important role in curbing forced migration?

Has the Department of Homeland Security (DHS) conducted an analysis on how the rescission of financial aid to Guatemala, Honduras, and El Salvador will impact the situation at the U.S.-Mexico border?

If DHS has conducted such an analysis, please provide it to the Senate Judiciary Committee when responding to these questions for the record.

If DHS conducted such an analysis, was it provided to President Trump prior his decision to cut off funding to those Central American countries?

How do you believe the cancellation of financial aid to those Central American countries will impact the situation at the U.S.-Mexico border?

Do you believe there will be an increase in migrants from Guatemala, Honduras, and El Salvador who come to the U.S.-Mexico border as a result of President Trump's decision?

Response: DHS has not conducted such an analysis of U.S. foreign assistance to El Salvador, Guatemala, and Honduras. DHS defers to DOS and USAID regarding U.S. foreign assistance in the region and impact of cancellation of financial assistance.. DHS is supportive of the administration's goal of ensuring foreign assistance is applied effectively to meet the purposes of the legislation and the appropriation.

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Topic:	AAP Policy Statement
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
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Question: Dr. Julie M. Linton, Co-Chair of the Immigrant Health Special Interest Group at the American Academy of Pediatrics, testified before the Senate Judiciary Committee on March 6, 2019, regarding the detention of migrant children and conditions of confinement. She authored the American Academy of Pediatrics' policy statement titled, "Detention of Immigrant Children."

Have you read that policy statement? If not, please explain why.

The policy statement indicates that "expert consensus has concluded that even brief detention can cause psychological trauma and induce long-term mental health risks for children."

Do you agree or disagree that "brief detention can cause psychological trauma and induce long-term mental health risks for children"?

Are you aware of any evidence that suggests otherwise?

Is DHS contemplating prohibiting the detention of migrant youth? If not, please explain why.

What is DHS doing to ensure that migrant children do not experience psychological trauma or long-term mental health challenges?

Response: CBP recognizes that brief detention can cause psychological trauma. Within the guiding principles in TEDS, CBP uses the least restrictive setting possible for all minors. CBP would like to politely remind the readers that we maintain and operate short-term hold facilities and that we do everything in our power to properly transfer aliens, children, and family groups out of our custody as fast as possible to the most appropriate partner agencies. The large numbers of arriving UAC and family units have challenged the existing capabilities of federal departments and agencies responsible for processing, transporting, and sheltering them, thereby creating an urgent humanitarian situation requiring a unified and coordinated federal response. DHS takes seriously its responsibility to provide appropriate care for those in its custody, particularly when it comes to children, many of whom have recently endured a hazardous journey to the Southwest Border (SWB).

Children are subject to different custody protocols depending upon whether they are UAC or part of a family unit. Under the Homeland Security Act of 2002 and the

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TVPRRA, responsibility for the apprehension, temporary detention, transfer, and repatriation of UAC belongs to DHS; responsibility for coordinating and implementing the care and placement of UAC belongs to HHS Office of Refugee Resettlement (ORR). CBP takes temporary custody of UAC apprehended at the border, while ICE handles custody transfer and repatriation responsibilities, apprehends UAC in the interior of the country, and represents the government in removal proceedings. DHS, consistent with the TVPRRA, is required to notify HHS ORR within 48 hours of apprehension or discovery of a UAC and is required to transfer the custody of UAC to HHS ORR within 72 hours, absent exceptional circumstances, after determining that such individual is a UAC.

Additionally, families who are detained in ICE custody are placed in one of ICE's FRCs, which were developed in consultation with non-governmental organizations (NGOs) with relevant expertise and designed with the particular needs of children in mind. ICE strongly believes the services they provide are appropriate, and, in fact, as detailed in the June 2017 DHS OIG report,⁵ FRCs were found to be "clean, well-organized, and efficiently run," and the agency was found to be "addressing the inherent challenges of providing medical care and language services and ensuring the safety of families in detention." Additionally, the medical, mental health, and educational services offered have been positively reviewed by experts from the DHS Office of Civil Rights and Civil Liberties (CRCL).

ICE maintains a Juvenile and Family Residential Management Unit (JFRMU), which addresses issues related to both families and UAC who enter ICE custody, even if such a stay in custody is limited to transportation between CBP and HHS (as is the case for UAC). JFRMU develops policies sensitive to the various vulnerabilities and needs of these populations, and coordinates closely with CBP, HHS, and NGOs to ensure appropriate care is provided.

⁵ "Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities," 6/2/2017, https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf?utm_source=E-mail+Updates&utm_campaign=e1d1c3e779-EMAIL_CAMPAIGN_2017_06_16&utm_medium=email&utm_term=0_7dc4c5d977-e1d1c3e779-45096257

Question#:	38
Topic:	Credible Fear Interviews
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
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Question: In May 2019, the White House asked Congress for an additional \$4.5 billion to address a "humanitarian and security crisis" at the U.S.-Mexico border. As part of that request, the Trump Administration is seeking to train Border Patrol agents to conduct credible fear interviews, which is typically done by a U.S. Citizenship and Immigration Services employee. According to press reports, Stephen Miller has pushed this proposal because he believes that those agents will be "tougher on asylum seekers" and fewer individuals will pass the initial screening.

Has Customs and Border Protection (CBP) started training its Border Patrol agents to conduct credible fear interviews? If so, how many agents have been trained?

Response: As of 6/21/19, ten BPAs have been trained to conduct CF interviews and another 25 are being trained.

Question: Do you believe that taking Border Patrol agents away from their task of protecting the border would have a negative impact on border security? If not, please explain why.

Response: Until enough statistical data is collected regarding the pilot program, this question cannot be answered effectively at this time.

Question: Do you agree with Stephen Miller that Border Patrol agents will be "tougher on asylum seekers" and fewer people will make it through the initial screening?

Response: Border Patrol Agents will undergo training comparable to that of other asylum officers and their decisions will be reviewed by USCIS supervisory asylum officers.

Question#:	39
Topic:	Solitary Confinement
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
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Question: Recently, a former DHS employee came forward and disclosed that Immigration and Customs Enforcement (ICE) was placing thousands of immigrants in its custody in solitary confinement "for reasons that have nothing to do with violating any rules."⁸ According to news reports, "Only half of the cases involved punishment for rule violations. The other half were unrelated to disciplinary concerns - they involve the mentally ill, the disabled or others who were sent to solitary largely for what ICE described as safety reasons."⁹ In some cases, disabled immigrants who were in need of a wheelchair or a cane were placed in solitary confinement.

Under what circumstances do you believe it is appropriate to place a disabled immigrant in solitary confinement?

Under what circumstances do you believe it is appropriate to place an immigrant suffering from a mental illness in solitary confinement?

Is DHS conducting a thorough review of ICE's use of solitary confinement? If so, what does that review look like?

ICE's own policy on solitary confinement states that the "[p]lacement of detainees in segregated housing is a serious step that requires careful consideration of alternatives. . . . In particular, placement in administrative segregation due to a special vulnerability should be used only as a last resort and when no other viable housing options exist."¹¹

Do you believe solitary confinement should only be used "as a last resort when no other viable housing options exist"?

Please explain how ICE did not violate its own policy?

What will you do to ensure that ICE is adhering to its own policy on solitary confinement?

Response: ICE places vulnerable populations in administrative segregation, which is distinct from disciplinary segregation, as a last resort to ensure the safety of the detainee or others when no other housing options exist, or at the request of the detainee ("protective custody").⁶ Placement into segregated housing must be in compliance with

⁶ Detainee-requested administrative segregation ("protective custody") is not unusual. As of July 2019, approximately half of placements in administrative segregation are the result of requests from detainees.

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applicable ICE detention standards. Specifically, the ICE Performance-Based National Detention Standards (PBNDS) state that placement in segregation should occur only when necessary and all ICE detainees should be provided with appropriate accommodations and professional assistance for special conditions (as needed) such as medical, therapeutic, or mental health treatment. Detainees with serious mental illness may not be automatically placed in a Special Management Unit based on such mental illness. An individualized assessment must be made in each case. If separation from the general population is necessary, every effort should be made to place detainees with serious mental illness in a setting where appropriate treatment can be provided.

Also pursuant to PBNDS 2011, *Rev.* 2016, a detainee's disability or need for assistive devices or equipment may not provide the sole basis for the facility's decision to place the detainee apart from the general population. Further, all ICE detention facilities are required to comply with Section 504 of the Rehabilitation Act of 1973 and provide physical access to programs and activities in the least restrictive setting possible and in the most integrated setting appropriate to the needs of the detainee with a disability.

ICE provides several levels of oversight to ensure detainees in our custody reside in safe, secure, and humane environments, and under appropriate conditions of confinement. In 2013, ICE issued Directive 11065.1, Review of the Use of Segregation for ICE Detainees (Segregation Directive), requiring agency reporting, review, and oversight of every facility decision to place a detainee in segregated housing for over 14 days, and immediate reporting and review of segregation placements when heightened concerns exist based on a detainee's health or other factors. ICE utilizes the Segregation Review Management System (SRMS) to store, track, review, and manage data associated with segregation placements for detainees with special vulnerabilities. SRMS delivers oversight and trend analysis capabilities that identifies potential issues and informs future policy decisions. Further, multidisciplinary teams review certain segregation cases across ICE's detention facilities to promote compliance with ICE detention standards and the Segregation Directive.

ICE's Office of Professional Responsibility (OPR) also conducts independent reviews of ERO segregation practices through its facility compliance inspections and oversight of the Self-Inspection Program (SIP). Specifically, ICE OPR routinely reviews facility segregation issues during their facility compliance inspections, compares those findings with case management records, and brings any discrepancies to the attention of facility management, local ICE ERO field office personnel, and ICE headquarters. In FY 2019, ICE OPR also supplemented ICE ERO's SIP workbook to include a section that enables ICE ERO to assess its compliance with the ICE Segregation Directive and corresponding national detention standards. Any practices identified by SIP to be out of compliance are

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provided to ICE headquarters to address with ICE ERO field office leadership for a timely remedy.