

Question#:	1
Topic:	OIG Report
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: On June 3, 2019, the Department of Homeland Security Inspector General issued a report that “observed immediate risks or egregious violations of detention standards” at ICE holding facilities across the country. The Inspector General concluded that immigrants are held in inhumane facilities that have a “disregard for detainee health and safety.”

Has DHS conducted an immediate review of conditions at ICE detention facilities?

What steps have you taken to correct the violations found in this review?

What steps are being taken to ensure these conditions do not continue and never occur again?

Response: U.S. Immigration and Customs Enforcement (ICE) is committed to continually enhancing civil detention operations to promote a safe and secure environment for detainees and staff.

ICE uses a layered approach to monitor the conditions at its facilities, which includes processes to implement corrective actions in instances of non-compliance with ICE detention standards. In addition to annual contract inspections, ICE has increased the number of Office of Detention Oversight (ODO) follow-up inspections for monitoring ongoing compliance with ICE detention standards and for select facilities where egregious or numerous deficiencies have been identified.

Furthermore, ICE has enhanced the process for reviewing and verifying that its detention services contractors implement and maintain ICE-approved corrective action plans. ICE Enforcement and Removal Operations (ERO) now requires its field offices to provide corrective action plans certified by ICE ERO Assistant Field Office Directors or higher-level supervisors. Copies of all completed corrective action plans are provided to on-site Detention Services Managers, Nakamoto inspectors, ODO, and the Department of Homeland Security (DHS) Office for Civil Rights and Civil Liberties (CRCL).

On April 29, 2019, ICE ERO reviewed each of the issues outlined in the DHS Office of Inspector General (OIG) report and concurred with the recommendations. In addition, ICE agrees with several of the findings on which DHS OIG had not previously reported and has initiated corrective action. However, for other findings, ICE would like to provide additional context for clarification.

ICE ERO field offices have taken corrective action at each of the four facilities in the DHS OIG report. ICE is now conducting inspections to validate that the corrective actions have been completed, and that the facilities are now in compliance with ICE’s 2011 Performance-Based

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National Detention Standards (PBNDS). ICE completed its inspection at Adelanto and provided information on its findings to DHS OIG in March 2019. ICE has also completed an inspection at the LaSalle ICE Processing Center (LaSalle) and is in the process of submitting documentation to DHS OIG. Finally, ICE has scheduled an inspection at the Essex County Correctional Facility (ECCF) and will schedule an inspection at the Aurora ICE Processing Center this summer. An estimated completion date is September 30, 2019. As noted, ICE is providing documentation to DHS OIG as each facility is reviewed to ensure corrective actions have been completed.

Regarding ECCF, ICE ERO Newark has replaced the contract food service manager, and the contract food services staff has received training on safe and proper handling and storage of food. In addition to unannounced “spot inspections,” ICE ERO Newark jail liaison officers and the ECCF ICE Detention Service Manager conduct daily inspections of the food service to ensure continuity of compliance measures.

Regarding segregation practices at ECCF, ICE will ensure that ECCF policy complies with PBNDS 2011, that ECCF’s new policy to document any strip search is implemented, and that ECCF examines the staff and scheduling requirements that will provide a second, additional 1.5-hour period each day during which ICE detainees in the Special Housing Unit can recreate, shower, and use the telephones outside of their cells. Furthermore, ECCF management is investigating on- and off-site options to improve the outdoor recreation opportunities available.

Moreover, following the DHS OIG inspection, ECCF undertook an extensive cleaning and renovation of the ICE detainee housing units. Detainees were removed from the unit, needed repairs were completed, and all ceilings, walls, and floors were sanitized. All bathroom shower stalls were renovated by installing fiberglass wall inserts. To address air quality and health concerns, ECCF management contracted a certified environmental testing company to conduct air and surface testing. This began on March 27, 2019, and ECCF intends to continue to conduct quarterly testing. ECCF medical unit records show no instance of airborne contagion.

In addition, ECCF has added lotion and shampoo to the intake inventory for new detainees to ensure that every detainee is provided personal hygiene items. An update of the Detainee Handbook is underway to reflect detainees’ ability to request additional personal hygiene items.

Regarding LaSalle, ICE has taken immediate corrective action to address DHS OIG’s finding regarding packaged food labeling. These findings were resolved, and the facility underwent a PBNDS 2011 inspection and a GEO Corporate quality assurance/internal inspection from March 12-15, 2019.

ICE has also taken significant steps to address issues identified at the Adelanto ICE Processing Center (AIPC). The food service supervisors have verbally instructed service staff as to relevant

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sanitary regulations and now conduct daily checks to ensure all pans have covers. Regarding the use of restraints, AIPC uses the minimum number of restraints necessary in accordance with PBNDS 2011. Detainees in the Special Management Unit (SMU) are handcuffed on a case-by-case basis for the safety and security of the detainee and other staff outside the SMU.

ICE has corrected the issue regarding recreation time. All detainees in disciplinary segregation status receive at least one hour of outdoor recreation per day, seven days per week. Detainees in administrative segregation status receive a minimum of one hour of outdoor recreation every day, and additional day room time seven days per week. Furthermore, significant actions have been taken to address facility conditions at AIPC. Showers are inspected on a weekly basis, and any maintenance issues are immediately identified and reported. AIPC has assigned a dedicated staff member to monitor shower maintenance and sanitation.

Lastly, ICE has also taken steps to address DHS OIG's findings at the Aurora ICE Processing Center. ICE provided remedial counseling to the food service officer in question during the inspection, security staff were provided refresher training during shift briefings on restricted housing units (RHU), and the administrative captain now monitors the compliance of officers in the RHU via required daily security camera reviews.

Question#:	2
Topic:	Remain in Mexico I
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
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Question: As you know, the administration has required over 10,000 people, including children and families, to return to Mexico after appearing at ports of entry to apply for asylum. These families are now being forced to wait over a year before their hearings and the Justice Department has assigned only 4 judges to hear these cases. Border Patrol Union President Brandon Judd told CNN that this policy is "punishing people who are trying to follow the laws." Despite the long wait times and objections from Border Patrol, the administration stated this weekend that it is planning to expand the Remain in Mexico program.

What evidence do you have that Mexican border cities are safe places for vulnerable children from Central America to live for a year or more?

Why are asylum applicants not being allowed to remain in the United States?

Have you asked DOJ to assign more judges to hear these cases? If not, why not?

Response: Pursuant to the Migrant Protection Protocols (MPP), aliens arriving from Mexico who are amenable to the process, and who in an exercise of discretion the officer determines should be subject to the MPP process, are issued a Notice to Appear (NTA) and placed into section 240 removal proceedings. They are then transferred to await proceedings in Mexico. Aliens in the following categories are not amenable to MPP: unaccompanied alien children; citizens or nationals of Mexico; aliens processed for expedited removal; aliens in certain special circumstances; any alien who is more likely than not to face persecution or torture in Mexico; or other aliens at the discretion of the Port Director.

If an alien who is potentially amenable to MPP or has already been placed into MPP affirmatively states that he or she has a fear of persecution or torture in Mexico, or a fear of returning to Mexico, at any time while they are in the United States, that alien will then be referred to U.S. Citizenship and Immigration Services (USCIS) so that an asylum officer can assess the claim. If USCIS assesses that an alien who affirmatively states a fear of return to Mexico is more likely than not to face persecution on account of a protected ground or torture in Mexico, the alien may not be processed for MPP or must be removed from MPP, if already processed. Officers retain all existing discretion to process (or re-process) the alien for any other available disposition, including expedited removal, NTA, waivers, or parole.

Mexico is a sovereign country that decides on how best to ensure the safety and wellbeing of migrants in its territory. On June 7, 2019, the United States and Mexican governments issued a joint declaration in which the Government of Mexico (GOM) committed to provide third-

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country nationals placed into MPP with appropriate humanitarian protections, including immigration documentation and access to healthcare, education, and employment.

In order to address the ongoing security and humanitarian crisis at the Southwest Border, then Secretary Nielsen invoked authority under Section 235(b)(2)(C) of the *Immigration and Nationality Act* (INA) that allows for the return of certain aliens to a contiguous territory pending Section 240 removal proceedings before an immigration judge. The large influx of migrants, including family units and those who appear as family units, at the Southwest Border strain DHS's ability to carry out operations. MPP helps alleviate the stress this crisis has put on DHS by not transferring the individuals subject to MPP into ICE detention.

Department of Justice (DOJ) and DHS closely coordinate at the working and executive levels with the goal of ensuring that MPP cases move through the court process as quickly as practicable. Completion timelines could be shorter or longer depending on if the migrants apply for relief or protection from removal and how long it takes them to find counsel and prepare their applications. DHS defers to the DOJ on how to ensure that there is sufficient court capacity to process MPP cases, but we note that significantly more than four immigrations judges hear cases under MPP.

Question#:	3
Topic:	Asylum Seekers with Health Conditions
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
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Committee:	JUDICIARY (SENATE)

Question: Customs and Border Protection has promised on multiple occasions to exempt "vulnerable populations" from the "Remain in Mexico" policy. However, in March, an asylum applicant was forced to return to Mexico from San Diego after suffering an epileptic seizure in CBP custody. In April, a four-year-old with Guillain-Barre syndrome was detained in El Paso for two days under a bridge, and then sent back to Mexico.

Why aren't asylum seekers with serious health conditions being allowed to remain in the U.S. while their cases are pending?

Response: When U.S. Customs and Border Protection (CBP) agents or officers assess any alien for MPP amenability, they are mindful of the guiding principles listed below, and determinations are made on a case-by-case, individualized basis.

Aliens in the following categories are not amenable to MPP:

- Unaccompanied alien children¹,
- Citizens or nationals of Mexico,
- Aliens processed for expedited removal,
- Aliens in special circumstances:
 - Returning Lawful Permanent Residents (LPRs) seeking admission (subject to INA section 212)
 - Aliens with an advance parole document or in parole status
 - Known physical/mental health issues
 - Criminals/history of violence
 - Government of Mexico or U.S. Government (USG) interest,
- Any alien who is more likely than not to face persecution or torture in Mexico, or
- Other aliens at the discretion of the Port Director or Chief Patrol Agent.

Agents or officers should refer anyone who may have a medical concern for the appropriate medical screening. Also, in accordance with the CBP National Standards on Transportation, Escort, Detention, and Search (TEDS) policy, any alien in CBP custody who requires emergency medical assistance is promptly attended to by a CBP Emergency Medical Technician, and/or transported to the nearest medical facility for medical care by a licensed professional. If a subject is examined by medical staff and subsequently cleared for travel, the appropriate processing disposition will be applied.

¹ In some cases, children initially processed under MPP with their families later arrive at the border without a parent or legal guardian. Such children are treated as UACs and referred to ORR custody.

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Question: Are all asylum applicants being asked whether they fear that they will be harmed in Mexico, before deciding to leave them in Mexico? If not, why not?

Response: No. If an alien who is potentially amenable to MPP affirmatively states that he or she has a fear of persecution or torture in Mexico, or a fear of return to Mexico, whether before or after they are processed for the MPP, that alien will be referred to a USCIS asylum officer for screening following the affirmative statement of fear of persecution or torture in, or return to, Mexico, so that the asylum officer can assess whether it is more likely than not that the alien will face persecution or torture if returned to Mexico.

If USCIS determines that an alien who affirmatively states a fear of return to Mexico is more likely than not to face persecution on account of a protected ground or torture in Mexico, the alien will not be processed for MPP.

Individuals processed for MPP are issued an NTA and placed into removal proceedings under section 240 of the INA. The individuals are then returned to Mexico to await proceedings, consistent with section 235(b)(2)(C) of the INA. The GOM has noted publicly that individuals under MPP, “are accorded all rights and freedoms recognized in Mexico’s Constitution, the international treaties to which Mexico is a party, and its Migration Law.” Given that GOM has acceded to both the 1951 Convention relating to the Status of Refugees and its 1967 Protocol, and ratified the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, it is bound by *non-refoulement* obligations, as reflected in Mexico’s Law on Refugees, Complementary Protection, and Political Asylum and other migration laws.

Question#:	4
Topic:	Separations Since June 26
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
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Question: As you know, June 26 will be the one-year anniversary of the court order requiring reunification of the families who were separated under the Trump administration's zero tolerance policy last year. The HHS Inspector General found that hundreds of children were separated from their parents after June

The IG also found thousands of children may have been separated before the court order was entered.

How many children have been separated from their parents since June 26 of last year?

Response: From June 2018 through May 2019, up to the date of the hearing, the number is 785 children.

Question: What can a parent do if he or she believes CBP has made an improper decision to separate a family? How does the parent challenge that decision?

Response: There is appeal process for a parent/legal guardian to challenge the initial decision to separate their child. However, CBP has developed a tear sheet for use in the event of a separation. Separated parents/legal guardians are provided the tear sheet, which notifies the adult of the basis of separation, also provides an ICE email address to which additional information relating to the basis of separation can be submitted. If this information shows that the separation should not have occurred, ICE will work with HHS to reunify parent and child. CBP notes that it generally does not provide reasons to the adult if doing so would create a risk to the child's safety or would not otherwise be in the child's best interests, and will not do so in situations in which CBP suspects fraud, smuggling, and/or trafficking.

Additionally, CBP documents the reasons for the separation in its electronic systems of records, and provides information about the separation to both ICE ERO and the U.S. Department of Health and Human Services (HHS), Office of Refugee Resettlement (ORR). ICE and HHS make the final determination to reunify or maintain separation.

Question#:	5
Topic:	Paperwork Processing
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
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Question: NBC News reported last week that last July, 37 immigrant children were forced to wait for 23 to 39 hours in vans, before they could be reunited with their parents. Some of these children were as young as five years old. The reports indicate that these children were “waiting on paperwork” to be reunited with their parents. However, it was also reported ICE employees clocked out instead of processing the paperwork as needed.

What steps have you implemented to ensure that young children are not kept waiting in vans for over 24 hours to reunite with their parents? What is being done to ensure DHS employees process reunification paperwork promptly?

Response: The safety and well being of children remained our top priority, especially as we worked to comply with the court’s order as expeditiously as possible. ICE personnel and contractors worked long hours in order to ensure reunification, with some personnel working 24-hour days, and the efforts of ICE personnel undertook were note positively by the Court in *Ms. L*. This was an unprecedented effort involving multiple government agencies, and ICE coordinated with HHS and U.S. Customs and Border Protection (CBP) as quickly as possible in order to reunite parents who had been separated and to ensure that processes and procedures were streamlined going forward.

The massive, unprecedented effort between ICE and HHS ORR to reunify the families who were separated as a result of CBP’s enforcement initiative at the border occurred almost 2 years ago. Currently, CBP, ICE, and HHS ORR have dedicated staff who work together to review every separation that occurs to ensure that it meets the courts’ criteria. If upon review of additional information, a family needs to be reunified, then ICE and HHS ORR work together to arrange for reunification. Reunification could occur at an ICE Family Residential Center or the family could be released on a form of supervision.

Question#:	6
Topic:	Confiscating Medicine
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Dianne Feinstein
Committee:	JUDICIARY (SENATE)

Question: Pediatricians have reported that Border Patrol is confiscating essential medicine from children and that agents have prevented hundreds of immigrants from taking medicine for seizures, asthma, high blood pressure, and diabetes. Reports indicate that Border Patrol officials have required migrants to have a U.S. prescription for their medicines, even if they have never traveled to the U.S. before - and despite the fact that CBP detention facilities do not have doctors on site.

Is CBP, in fact, confiscating medicine? If so, what is being done to ensure the individual can see a doctor or nurse?

Response: Per USBP Policy, medications are not be left in the possession of the alien. They are secured separately, preferably with the alien's property.

All aliens who have non-U.S. prescribed medications are assessed by medical professionals at those locations with contracted medical providers. In locations without these providers, aliens in need of medical treatment or medications are transported to an appropriate medical facility to receive an assessment, and possible prescription medication, by local medical personnel.

The USBP follows the TEDS policy nationwide regarding medical care for all individuals in CBP custody, as well as the CBP Directive on Interim Enhanced Medical Efforts, signed by then-Commissioner Kevin K. McAleenan on January 28, 2019.

Question: If a U.S. prescription is required, and a doctor is not onsite at a Border Patrol facility how quickly can a prescription be obtained?

Response: Aliens in need of prescription medications that are held at Border Patrol facilities without contract medical providers are taken to a local treatment facility, such as an emergency room, as soon as practical. If these medical professionals then prescribe a medication, that script is sent to a pharmacy to be filled and made available to the alien shortly afterward.