Question#:	7
Topic:	DNA Testing
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: I have long advocated for agency-wide compliance, especially for the Department of Homeland Security (DHS), with the DNA Fingerprint Act of 2005. I understand Immigration and Customs Enforcement (ICE) is running a pilot program to identify fraudulent claims of family units. From your testimony, you indicated that, of those claimed family units who were Rapid DNA tested, about 15% were found to be fraudulent claims of families.

Will required DNA testing allow DHS to discern legitimate family units from individuals attempting to defraud the government, and in doing so, protect the safety and health of minor migrant children?

Within this pilot program, what percentage of claimed family units recanted their claim before an actual Rapid DNA test was performed?

Within the pilot program, what total percentage of claimed family units were determined to be fraudulent claims?

What are your plans to expand the Rapid DNA testing for all claimed family units?

Response: The Rapid DNA testing conducted by ICE Homeland Security Investigations (HSI) through the pilot program Operation Double Helix was able to identify with 99.5 percent accuracy (standard percentage of accuracy of all DNA testing services across the industry) whether a claimed biological parent/child relationship was valid. By ensuring the validity of these relationships, the Department of Homeland Security believes the health and safety of migrant children will be protected simply by keeping children together with their actual parents.

During the initial pilot phase of Operation Double Helix, a total of 84 claimed family units were tested utilizing the Rapid DNA technology. Of those tested, 16 claimed family units were identified as fraudulent. Of those 16, half of them recanted their claimed familial relationship prior to DNA testing. In total, approximately 19 percent of all claimed family units were identified as fraudulent.

Currently, ICE HSI, in conjunction with ICE ERO and CBP, are conducting the second phase of Operation Double Helix which commenced in mid-July 2019 at seven Southwest Border locations. This second phase will continue throughout the rest of FY 2019. The goal is to utilize Rapid DNA as a precise and focused investigative tool to identify suspected fraudulent families and vulnerable children who may be potentially exploited in this activity.

Question#:	8
Topic:	ICE Underfunding
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: In February, Congress passed the Consolidated Appropriations Act of 2019, which funded the Department of Homeland Security and a number of other agencies. It's my understanding that this law cut funding to DHS, limited its enforcement abilities, and cut detention space.

How have ICE missions been affected by underfunding?

How have ICE missions been affected by the reassignment of interior enforcement resources to assist with the Southwest border crisis?

Response: The record number of CBP apprehensions at the southern border impacted ICE's interior enforcement efforts due to the limited number of adult beds available to ICE. Recent border crossers apprehended by CBP generally are subject to mandatory detention under the INA, which reduced the number of beds available for ICE to conduct interior enforcement activities.

As of June 2019, ICE was holding over 53,000 aliens in custody, which exceeded what Congressional funding could support by 8,000. As of June 15, 2019, book-ins to ICE detention from CBP apprehensions increased more than 86 percent over the same time period from the last fiscal year, while book-ins from ICE arrests decreased 11 percent.

ICE ERO had over 300 personnel in temporary duty (TDY) status or reassigned to support Southwest Border (SWB) operations. This includes ICE ERO personnel in TDY status at SWB field offices and reassigned personnel within those offices directly supporting SWB operations. As ICE's detained population increased, ICE ERO officers were redeployed across the country to assist in managing operations for its detained dockets. However, these reassignments came with significant impact to ICE's interior enforcement and public safety efforts. Specifically, as of June 15, 2019, ICE ERO administrative arrests of criminal aliens declined more than 14 percent over the same time period last fiscal year.

ICE HSI initiated a multi-point strategy to support SWB operations. These strategies included a DNA testing pilot to deter and detect fraud, a foreign deployment initiative to support information sharing with Central American partners, and a deployment initiative to support the temporary details of more than 200 special agents and support staff to SWB operations. Each part of the strategy required funding and support from pre-existing ICE HSI budget allocations and investigative support programs. The dynamic nature of SWB operations forced ICE HSI to divert resources from its anticipated mission set, thus depriving routine mission needs while

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SWB operations were covered. This was most clearly manifested in ICE HSI inability to fully support some non-SWB investigations to the best of its abilities.

Similarly, the ICE HSI staffing ratio required an increase in non-Law Enforcement Officer (LEO) staffing to meet both operational and strategic staffing requirements. However, staffing ratios prevent fully supported investigative efforts due to the lack of analytical positions and mission support professionals that would work in unison with special agents (LEOs).

From ICE's perspective, it was and still is critical that we receive sufficient resources to execute our core public safety mission within the interior of the United States. The Department of Homeland Security (DHS) cannot secure the border without strong interior enforcement.

In addition, DOJ Executive Office for Immigration Review's (EOIR) continued expansion of the number of immigration judges without sufficient funding for ICE to increase attorneys and support staff in the Office of the Principal Legal Advisor (OPLA) is highly problematic. If EOIR continues to expand without concurrent increase in ICE appropriations, OPLA will eventually be unable to meet its immigration court litigation responsibilities. OPLA is confronting attorney and support staff shortages, while EOIR steadily increases its Immigration Judge (IJ) corps. At the beginning of FY 2019, ICE was understaffed by 285 attorneys and 78 legal support staff, relative to EOIR authorized staffing level of 484 IJs. This represented a need for an additional 93 litigation teams to adequately staff EOIR courtrooms. In February 2019, EOIR received appropriations for 50 IJ teams—300 positions including staff (bringing the total number of funded IJ positions to 534)—while OPLA received $7.4 million in funding for only 50 attorney positions and facility requirements related to DOJ EOIR courtroom expansion.

In June 2019, the Senate passed a FY 2019 emergency supplemental appropriation bill providing EOIR $45 million to fund 30 additional IJ teams of which $10 million was for courtroom space and equipment. In lieu of appropriated funding to hire permanent attorney and support staff to match EOIR expansion, OPLA was ultimately allotted only $2.14 million for temporary duty costs associated with the Special Immigration Office of Principal Legal Advisor Trial Attorney (SIOTA) initiative as part of a total of $69.7 million ICE received in the supplemental for temporary duty, overtime, and other personnel costs including reimbursements. The SIOTA initiative used temporary reimbursable details from other government agencies and DHS Components to ensure government and public interests were represented in immigration court. The supplemental bill did not provide ICE with funding to hire permanent attorneys or support staff in FY 2019 to reduce ICE's ongoing staffing deficit relative to EOIR. As a consequence of the FY 2019 EOIR and ICE appropriations and the emergency supplemental, the OPLA staffing deficit grew from 363 positions (93 litigations teams) to 614 positions (157 litigation teams). Though the funding for the 30 IJs in the FY 2020 supplemental expired at the end of the fiscal year, EOIR received an additional 100 IJ teams as part of the FY 2020 Consolidated

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Appropriations Act, increasing the authorized IJ level to 634. The Act provided ICE 169 attorneys and support staff positions; still disproportionate to the new EOIR IJ level, increasing ICE's staffing deficit to 719 positions (184 litigation teams).

The resource disparity between ICE and EOIR means that ICE will soon reach a point where ICE will not have attorneys to appear before the new immigration courts, causing severe delays in immigration court dockets and undermining the integrity of the immigration system. ICE will not be capable of managing the existing court docket and backlog with EOIR. In addition, DHS priority cases will not receive the attention and urgency required (i.e., bond hearings, criminal alien cases, cases involving terrorist or human rights abusers), and immigration fraud perpetrated by aliens in removal proceedings will be detected less often. Further, without an ICE attorney present in the courtroom, IJs are less likely to have all the relevant facts presented to them to enable the IJ to make a proper decision. When ICE believes a case has been erroneously decided, ICE will not have the resources to appeal these or other cases. ICE will not have the resources to correct and appeal these errors. ICE will also have limited resources to respond to the ongoing SWB activities and/or be able to meet any number of other legal and operational support requirements resulting from increased immigration enforcement activity.

Congress acknowledged OPLA's dire need for additional attorneys by providing funding, which was used in support of the OPLA SIOTA initiative. However, the temporary SIOTA detailed attorneys were insufficient to address OPLA's increasing staffing shortfall, particularly when their temporary details end. Cosequently, OPLA was in the process of drawing down the SIOTA initiative. Further, OPLA's ability to provide day-to-day support to ICE operational components will be severely degraded as ICE personnel assigned to direct support roles will be recalled to appear in immigration court. For instance, OPLA will be required to end the very successful Special Assistant United States Attorneys (SAUSA) program and recall ICE HSI-embedded attorneys to fill immigration court attorney requirements. SAUSAs have already been recalled due to staffing shortages to cover immigration court in a number of ICE OPLA field locations such as Baltimore, Maryland; El Paso, Texas; Seattle, Washington; Minneapolis-St. Paul, Minnesota; Miami, Florida; and Eloy, Arizona. The number of attorneys assigned as full-time SAUSAs has declined significantly from the beginning of FY 2018 from 27 to eight SAUSAs by May 31, 2020. SAUSAs have played a key role in the support of prosecuting violations of criminal immigration and customs laws. Without additional resources, the only way for ICE to ensure that it can prosecute cases on the detained docket is by pulling in embeds, SAUSAs, and managers to cover court. In addition, on a case-by-case basis, ICE OPLA may not send attorneys to prosecute the non-detained immigration court cases so as to be able to cover the detained docket. Currently, OPLA resources are extremely scarce, as OPLA is detailing attorneys and support staff from across the country to cover EOIR dockets in response to the surge in SWB arrests and the cases filed by DHS components due to those arrests. ICE OPLA offices are also sending staff to these locations without supplemental funding. In addition, EOIR

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will be constructing 150 courtrooms through FY 2021 including two locations in FY 2020 where OPLA does not have a precence: Sacramento and Van Nuys, California. The current strains on OPLA resources are untenable and will lead to further backlogs in immigration courts and present critical challenges to the integrity and justice of the immigration system.

Question#:	9
Topic:	Funding Limitations
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: With the strains of the border crisis and funding limitations, are all the agencies involved in responding to the current migrant flows able to respond and effectuate their individual roles and responsibilities?

Response: DHS is taking a unified approach—involving all Operational Components and Headquarters elements—to manage the unprecedented volume and composition of migrants attempting to enter the United States, while still aiming to fulfill the Department's humanitarian and security missions. Addressing this emergency is not only a security imperative, but a moral imperative.

The Department appreciates the recent passage of emergency supplemental appropriations, which will give us resources needed to respond to this crisis.

Question: Please explain areas where agencies are performing duties that are normally assigned to another agency.

Response:

- The Department is taking a unified approach to respond to the crisis at our southwest border including:
- The Transportation Security Administration (TSA) has assigned volunteers from across the workforce, including from the Federal Air Marshals, to temporary duty assignments on the border including transportation support, hospital watch, distribution of meals, personal property management, and legal support.
- The U.S. Secret Service (USSS) has mobilized non-law enforcement personnel to the border for volunteer service.
- U.S. Coast Guard (USCG) members and personnel from around the country have deployed to Texas, New Mexico, and Arizona to perform key functions such as translation services, and assisting with the care and processing of arriving migrants, including families and unaccompanied alien children.
- ICE HSI has assigned hundreds of personnel to help address the ongoing crisis at the Southern Border. Special agents, forensic interview specialists, personal property inventories, food preparation and distribution, supply replenishment, transportation, document examiners, and victim assistance specialists have been deployed to the border to lead our efforts to combat human smuggling, human trafficking, and the use of fraudulent documents by fraudulent families.

Question: Please explain agencies' divergent responsibilities and the effects on their primary missions.

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Response: The emergency supplemental funding for DHS will support ongoing surge operations, and provide critical humanitarian assistance for migrants crossing the SWB. This supplemental will ensure that the Department can avoid negative impacts to other DHS missions due to insufficient funding.

Question#:	10
Topic:	Child Recycling
Hearing:	The Secure and Protect Act: A Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: The Consolidated Appropriations Act of 2019 also prohibited the Department of Health and Human Services from sharing sponsor information for unaccompanied alien children (UAC) to ICE. I'm concerned that this prohibition will prevent ICE from supplying HHS with information on potential sponsors' backgrounds, including but not limited to criminal or gang affiliation, and any violent criminal history. Without this vital information, I worry such a prohibition could facilitate placing children in the hands of criminals and/or smugglers, increasing the likelihood of child recycling. I recently received a briefing from ICE and CBP leadership about the phenomenon of "child recycling," or trafficking the same children back and forth across our border to help unrelated adults gain entry. Additionally, Senator Blackburn and I introduced a bill that would require information-sharing to take place between HHS and ICE.

Is it true that Flores, the TVPRA, and other loopholes have incentivized child smuggling, and child "recycling"? How can we stop this practice?

Response: It should be noted that, as interpreted by the courts, the *Flores* Settlement Agreement (FSA) does not apply only to unaccompanied alien children (UAC). In *Flores v. Lynch*, 828 F.3d 898 (9th Cir. 2016), the U.S. Court of Appeals for the Ninth Circuit held that the FSA applies to minors in immigration custody, including minors accompanied by their parents. Under the FSA, as interpreted by the courts, DHS generally must release minors from custody as expeditiously as possible. The policies set forth in the FSA encourage aliens to bring their own children (or children whom they claim to be their own) with them when they make the dangerous journey to the United States, thinking they will be released if they are traveling with those children. The human smugglers are aware of this loophole and take full advantage of it. The recent interpretation of the FSA incentivizes smugglers to place children into the hands of adult strangers, so they can pose as families and be released from immigration custody after crossing the border, creating another safety issue for these children. In addition, the policies set forth in the Trafficking Victims Protection Reauthorization Act of 2008 encourage UAC to enter the United States illegally and encourage the parents of UAC to hire smugglers to bring their children to the United States because they cannot be removed expeditiously and are promptly released into the interior while their case is pending.

Question: How many children have been rescued in dangerous situations by Border Patrol and ICE agents from strangers, smugglers, and traffickers?

Response: ICE HSI has initiated two ongoing national operations that address the issue of human smugglers utilizing family units to facilitate their smuggling activities. These operations are Double Helix and Noble Guardian. Double Helix is only in effect at 11 locations along the Southwest Border and its activities are initiated based on referrals from CBP. While this

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operation maintains numbers on family fraud units, it does not represent all possible instances of family unit fraud, and the numbers relating to it have only been captured since July 2019, after the date of this hearing. ICE HSI has no way of tracking or measuring overall numbers in the U.S. relating to family unit fraud, and is therefore unable to provide a number of children rescued in dangerous situations as a result of this operation. Separately, Operation Noble Guardian is a joint effort involving ICE HSI, ICE ERO, and CBP that focuses on children who entered as part of a family unit that was released into the interior of the United States and are later identified flying back to their country of citizenship in the Northern Triangle (El Salvador, Guatemala, and Honduras), usually without the adult that they were apprehended with. Operation Noble Guardian specifically focuses on sending leads to ICE HSI and ERO field offices for outbound airport alien interdiction surrounding the departure of identified children. If the adult family member the child made entry with is encountered and the child departs, the adult family member is then administratively arrested for custody redetermination since they no longer belong to a family unit.

As of June 2019, Operation Noble Guardian efforts have resulted in the rescue of six children.

Question: How does limiting information sharing between HHS and ICE jeopardize the safety of unaccompanied children?

Response: The information provided by HHS regarding sponsor applicants can be used to assist with identifying potential smuggling and trafficking routes and locations. Additionally, the information can be used to identify sponsors exhibiting behavior that is indicative of membership in a smuggling or trafficking organization, sexual predation, or gang recruitment.

Question: Would legislation that required information-sharing improve the government's ability to provide a safe and secure home for the unaccompanied alien child?

Response: From DHS's perspective, legislation that supports information-sharing is vital in order to improve and facilitate public safety tools while prioritizing the agency's immigration enforcement mission. ICE entered into a memorandum of agreement on April 13, 2018, to ensure that the signatories share relevant information concerning UAC. Section 224 of the (FY) 2019 Consolidated Appropriations Act places restrictions on how the Secretary of Homeland Security may use information provided by the Secretary of HHS pertaining to sponsors, potential sponsors, or members of a household of a sponsor or potential sponsor of UAC. Specifically, the Secretary of Homeland Security may not place in detention, remove, refer for a decision whether to initiate removal proceedings, or initiate removal proceedings against such individuals with only limited exceptions. Unfortunately, this prevents ICE from fulfilling its public safety mission which jeopardizes the safety of minors involved.

Question#:	11
Topic:	Safe Third Country Agreement
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Charles E. Grassley
Committee:	JUDICIARY (SENATE)

Question: Last October, Senator Lee and I wrote a letter to the administration urging a Safe Third Country Agreement with Mexico. Since then, I've raised this issue a number of times and with Mexican officials.

Can you explain what a Safe Third Country Agreement would do, and why it would be a good policy for America?

Response: 8 USC § 1158(a)(1) states that "any alien who is physically present in the United States or who arrives in the United States (whether at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum." Further, 8 USC § 1158(a)(2)(A) states that the above does not apply if "an alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or…last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the [Secretary] finds that it is in the public interest for the alien to receive asylum in the United States."

Briefly, an agreement under 8 USC § 1158(a)(2)(A) would create a relationship between the United States and a country or countries where individuals could seek, and potentially receive, protection in another country, which would limit the likelihood of migrants seeking to intentionally manipulate a particular country's immigration system by making non-meritorious asylum claims. The result is that inviduals with protection claims cannot "country shop" but still have access to a full and fair asylum process.