

<b>Question#:</b>	40
<b>Topic:</b>	Surveillance
<b>Hearing:</b>	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
<b>Primary:</b>	The Honorable Kamala D. Harris
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** On March 6, 2019, NBC News reported that CBP had compiled a list of 59 journalists, lawyers, and immigration advocates, who were subjected to additional questioning and searches at San Diego-area checkpoints. Since then, at least one more journalist and four more American immigration lawyers have been held for questioning along the border in Arizona and Texas.

As detailed in a letter to you dated May 10, 2019 from Senators Udall, Blumenthal, Warren, and myself, reports suggest that there are ongoing efforts to expand collection and retention of social media belonging to individuals that are critical of the administration's immigration policies as well as DHS and related agency actions. Specifically, they are reportedly being targeted with enhanced inspections at the border due to their work reporting on the border or representing immigrant clients. CBP officers reportedly asked reporters to reveal their sources by identifying activists and organizers, which raises First Amendment concerns; lawyers have had agents read through sensitive legal documents, which could violate attorney-client privilege.

Are you aware of these reports and did you have knowledge of this surveillance prior to March 6, 2019?

Were you—in any way—involved in approving this surveillance, including identifying people to be stopped for questioning at San Diego checkpoints?

**Response:** DHS cannot speak to then-Acting Secretary McAleenan's personal knowledge of the reports.

DHS is aware of the media reports from March 6, 2019 regarding alleged surveillance of journalists, lawyers, and immigration advocates. DHS opened a DHS Office of Inspector General investigation into the alleged activity and looks forward to the results of the investigation.

<b>Question#:</b>	41
<b>Topic:</b>	Surveillance Standards
<b>Hearing:</b>	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
<b>Primary:</b>	The Honorable Kamala D. Harris
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** On June 10, 2019, John P. Sanders, Chief Operating Officer and Senior Official, sent a letter to me in response to the letter my colleagues and I sent to you requesting information regarding DHS' surveillance activities. The letter states that "[a] number of journalists and photographers were identified by Mexican Federal Police as possibly assisting migrants in crossing the border illegally and/or as having some level of participation in the violent incursion events."

What standards and definitions does DHS apply to the determination that a particular individual engaged in such activities and is therefore subject to enhanced surveillance?

How were these standards and definitions applied to the individuals addressed in NBC's March 6 report?

**Response:** CBP officers and agents are law enforcement officers who make decisions regarding whether to document or distribute information regarding potential violations of federal law in light of their extensive training. Moreover, we note that the attached May 2019 guidance, *Information Regarding First Amendment Protected Activities*, provides further clarity on relevant DHS policy.

CBP does not target journalists, lawyers, or activists. All persons and merchandise transiting the border are subject to inspection. As the Supreme Court has explained, "searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border." *United States v. Ramsey*, 431 U.S. 606, 616 (1977). In addition to the long-standing Supreme Court precedent recognizing border search authority, numerous federal statutes explicitly authorize searches of people and things entering the United States. *See e.g.*, 8 U.S.C §§ 1182, 1357; 19 U.S.C. §§ 482, 1461, 1496, 1581, 1582. As part of the inspection process, CBP Officers must verify the identity of persons, determine the admissibility of travelers, and look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items.

<b>Question#:</b>	42
<b>Topic:</b>	Surveillance Documentation
<b>Hearing:</b>	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
<b>Primary:</b>	The Honorable Kamala D. Harris
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Will you commit to providing my office with all written materials related to surveillance of journalists, lawyers, and activists at the border?

**Response:** CBP does not target journalists, lawyers, or activists. All persons and merchandise transiting the border are subject to inspection. As the Supreme Court has explained, “searches made at the border, pursuant to the long-standing right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border.” *United States v. Ramsey*, 431 U.S. 606, 616 (1977). In addition to the long-standing Supreme Court precedent recognizing border search authority, numerous federal statutes explicitly authorize searches of people and things entering the United States. *See e.g.*, 8 U.S.C §§ 1182, 1357; 19 U.S.C. §§ 482, 1461, 1496, 1581, 1582. As part of the inspection process, CBP Officers must verify the identity of persons, determine the admissibility of travelers, and look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items. Occasionally, CBP may inconvenience law-abiding persons in our efforts to detect, deter, and mitigate threats to our homeland caused by few individuals involved in illicit activities. CBP relies on the patience, cooperation, and understanding of travelers to ensure the effective protection of our borders.

**Question:** The June 10 response from John P. Sanders references a memorandum you recently signed that is dated May 17, 2019 and relates to First Amendment Protected Activities. Will you commit to including that memorandum—and any related materials—in the documents you provide to my office?

**Response:** Yes, please see the attached May 17, 2019 memorandum on First Amendment Protected Activities, the February 6, 2014, CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs, and the June 3, 2011, CBP Directive No 2130-021, Roles and Responsibilities of U.S. Customs and Border Protection Component Offices and Employees Regarding Civil Rights and Civil Liberties Matters.

**Question:** The June 10 response also states that CBP “has memorialized its commitment to nondiscrimination in its policies.” Will you commit to providing my office copies of all policies references in this statement?

**Response:** Yes, CBP.gov at the following link, <https://www.cbp.gov/about/ethics-standards-conduct>, has a comprehensive listed of CBP’s policies on ethics and standards

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of conduct. The CBP Policy on Nondiscrimination in Law Enforcement Activities and all other Administered Programs may be accessed at the link:

<https://www.cbp.gov/about/eo-diversity/policies/nondiscrimination-law-enforcement-activities-and-all-other-administered>. CBP Directive No 2130-021, Roles and Responsibilities of U.S. Customs and Border Protection Component Offices and Employees Regarding Civil Rights and Civil Liberties Matters may be accessed at the link: <https://www.cbp.gov/sites/default/files/assets/documents/2020-Feb/cbp-directive-2130-021.pdf>. Additionally, the CBP Policy on Zero Tolerance of Sexual Abuse and Assault may be accessed at the link: <https://www.cbp.gov/about/care-in-custody/cbp-policy-zero-tolerance-sexual-abuse-and-assault> and CBP Directive No. 2130-030, Prevention, Detection and Response to Sexual Abuse and/or Assault in CBP Holding Facilities is attached.

Per CBP Directive 51735-013A, Standards of Conduct, listed at the link above, states the following addressing nondiscrimination and bias:

- Bias-Motivated Conduct.
  - Employees will not act or fail to act on an official matter in a manner which improperly takes into consideration an individual's race, color, age, sexual orientation, religion, sex, national origin, or disability,
  - Employees will not make abusive, derisive, profane, or harassing statements or gestures, or engage in any other conduct, evidencing hatred or invidious prejudice to or about another person or group on account of race, color, religion, national origin, sex, sexual orientation, age, or disability,
  - Employees will not engage in sexual harassment. Sexual harassment is defined as unwelcome sexual advances, requests for sexual favors, and other verbal or physical conduct of a sexual nature when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual's employment, (2) submission to such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile, or offensive working environment.

Per the CBP Transportation, Escort, Detention, and Search (TEDS) policy (implemented in 2015):

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- CBP employees must speak and act with the utmost integrity and professionalism. CBP employees must conduct themselves in a manner that reflects positively on CBP at all times,
- CBP has a zero tolerance policy prohibiting all forms of sexual abuse of individuals in CBP custody, including in detention facilities, during transport, and during processing,
- CBP employees must treat all individuals with dignity and respect. CBP employees will perform their duties in a non-discriminatory manner, with respect to all forms of protected status under federal law, regulation, Executive Order, or policy, with full respect for individual rights including equal protection under the law, due process, freedom of speech, and religion, freedom from excessive force, and freedom from unreasonable searches and seizures,
- Without compromising officer/agent safety, officers/agents should remain cognizant of an individual's religious beliefs while accomplishing an enforcement action in a dignified and respectful manner.

<b>Question#:</b>	43
<b>Topic:</b>	Surveillance and Harassment Allegations
<b>Hearing:</b>	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
<b>Primary:</b>	The Honorable Kamala D. Harris
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**Question:** CBP recently released a statement saying that CBP has received the allegations of surveillance and harassment, is reviewing them, and "requests additional information from NBC News so [it] can conduct a thorough review of the facts." Has CBP sent an official request to NBC requesting the further information regarding these allegations? If so, will you provide a copy of that request to my office?

**Response:** On average, since the beginning of FY19, roughly 2,200 people a day along our southwest border are apprehended or deemed inadmissible by CBP agents and officers. With the varying terrains, the threats of smugglers and traffickers, along with continued large caravans and groups of migrants seeking illegal entrance into our country, our agents encounter various challenging obstacles throughout the day.

Recent mobilization of large caravans of Central Americans traveling through Mexico to reach our southwest border, has added increased and new challenges to an already complicated and dangerous mission.

Criminal events, such as the breach of the border wall in San Diego, involving assaults on law enforcement and a risk to public safety, are routinely monitored and investigated by authorities. These activities could result in a more thorough review of those seeking entrance into our country. It is protocol following these incidents to collect evidence that might be needed for future legal actions and to determine if the event was orchestrated. CBP and our law enforcement partners evaluate these incidents, follow all leads garnered from information collected, conduct interviews and investigations, in preparation for, and often to prevent future incidents that could cause further harm to the public, our agents, and our economy.

<b>Question#:</b>	44
<b>Topic:</b>	Expanding Detention
<b>Hearing:</b>	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
<b>Primary:</b>	The Honorable Kamala D. Harris
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** On May 20, Carlos Gregorio Hernandez Vasquez died in CBP's custody after being diagnosed with the flu. Carlos was 16 years old, and he is the sixth child to die after arriving at the border since December. Carlos had been held at a facility that has since stopped accepting detainees after a large number of people came down with flulike symptoms.

You asserted that in order to prevent such tragedies, Congress should change our immigration laws to reflect the President's priorities-including expanding the ability of DHS to keep children and families in custody. On June 11, 2019, you told this Committee that you support proposals to extend the permissible length of time for detention of children. However, detention is costly and it puts children's lives and wellbeing at risk.

Six children have died after being detained. Why is DHS focused on expanding detention, rather than exploring alternatives-like case management programs-that cost less and have better outcomes?

**Response:** ICE takes very seriously the health, safety, and welfare of those in our custody. ICE is committed to ensuring that everyone in our custody receives timely access to medical services and treatment. Comprehensive medical care is provided from the moment detainees arrive and throughout the entirety of their stay. All ICE detainees receive a medical intake screening, which addresses mental health, within 12 hours of arriving at each detention facility, a full health assessment within 14 days of entering ICE custody or arrival at a facility, and access to daily sick call and 24-hour emergency care.

Recently, ICE detention levels have been driven by the record number of CBP apprehensions along the SWB. ICE notes that it previously requested funding for FY 2019 to support an average daily population of 52,000 aliens as of September 21, 2019 ICE was detaining more than 51,000 single adults, with several thousand additional single adults in CBP custody awaiting processing or transfer to ICE. With the surge in CBP apprehension rates, ICE is focusing on expanding its detention capacity to avoid releasing individuals who are subject to mandatory detention, particularly criminal aliens and those who pose a flight or public safety risk.

ICE's Alternatives to Detention (ATD) program is a tool that was designed to complement ICE's immigration enforcement efforts by offering increased supervision to monitor compliance for a thoroughly vetted group of aliens who are not currently detained. However, it is important to note that ATD is not a substitute for detention,

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which is typically necessary in order to remove aliens who have received a final order of removal, as more than 85 percent of ICE removals in FY 2019 involved detention, along with 82 percent in FYs 2017 and 2018. Additionally, ATD is not suitable for many aliens, including those who are subject to mandatory detention under U.S. immigration laws, those with a criminal history, and those who are unlikely to comply with the terms of the program.

In FY 2019, there were more than 96,000 aliens enrolled in ATD, more than 51,000 in detention, and more than 3 million on ICE's non-detained immigration docket, including more than 1 million aliens who have already been issued a final order of removal by an IJ. While ICE has expanded its use of ATD from approximately 23,000 participants in FY 2014 to more than 96,000 as of the end of FY 2019, this expansion has come with a number of challenges, including particularly high levels of absconders among recently enrolled family units.

While ATD participants comply with hearing and program requirements at moderate levels, non-compliance rates increase sharply among aliens who have already been ordered removed or for recent arrivals with no community ties, including the many family units who are being apprehended by CBP while attempting to cross the SWB.

Many such families claim a fear of returning to their countries, and, due to court decisions, ICE generally is unable to hold these aliens in detention for more than approximately 20 days. Thus, families are being released on ATD in record numbers, due not only to insufficient family detention space, but also the limitations imposed on ICE's detention authority under the FSA and judicial decisions interpreting it. In FY 2019<sup>7</sup>, the absconder rate for family units stands at 26.9 percent, more than double the 12.2 percent absconder rate for non-family unit participants, demonstrating the growing challenges such enrollments create for immigration enforcement and the need for ATD to be appropriately resourced in order to support additional participants.

ICE also notes that while ATD can complement other immigration enforcement efforts when used appropriately on a vetted and monitored population of participants, the program was not designed to facilitate ICE's mission of removing aliens with final orders, and the agency lacks sufficient resources to locate and arrest the significant number of participants who abscond. In addition, cases on the non-detained immigration court docket often take years to complete, while detained cases are prioritized and ICE's average length of stay for an alien in detention is approximately 30 days. As a result of these differing case timelines, as well as additional costs related to ATD absconders and

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<sup>7</sup> As of September 30, 2019.



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other program violators, daily rate comparisons of ATD and detention cannot fully capture the costs related to aliens in each group, and the costs of ATD may exceed those of detention in many cases. For these reasons, enrolling more aliens in the ATD program without adding other appropriate resources, such as additional fugitive operations officers, IJs, and support personnel, will contribute to existing large-scale problems in the U.S. immigration system rather than addressing them.

<b>Question#:</b>	45
<b>Topic:</b>	Expedited Pilot Program
<b>Hearing:</b>	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
<b>Primary:</b>	The Honorable Kamala D. Harris
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In June 2017, DHS terminated the Family Case Management Program, a successful program that used case workers to help families meet their legal obligations as they moved through our complicated system. The program had a 99% success rate and cost far less than detention.

You stated in your testimony that, based on an "expedited pilot with family units," 90% of 7,000 cases assessed received orders of removal in absentia.

Were the "family units" assessed participants in the Family Case Management Program?

How did DHS determine which family units would be assessed as part of the pilot?

Did DHS assess whether these individuals still had caseworker support or were otherwise represented at the time of their missed hearings?

Did DHS assess the reasons why these individuals may have missed their hearings?

Of the 7,000 cases referenced, in your statistic, how many cases had been completed at the time of DHS' assessment?

The statistic you cited references only hearings during which orders of removal were issued. Did DHS assess the rate at which individuals attended hearings during which such orders were NOT issued?

Will you commit to providing my office with the data you referenced during the hearing, as well as any related materials?

**Response:** From January 2016 to June 2017, ICE ERO ran the FCMP, a community-based ATD pilot initiative that employed specially-trained case managers to encourage compliance with immigration obligations for alien families. In June 2017, after completing a top-down review of the pilot year, ICE terminated the program in order to invest those resources into pre-existing and more cost-effective ICE ATD programs. Additionally, as instructed by Congress, ICE has recently incorporated many of the FCMP case management principles into its traditional ATD program. These principles were incorporated into the current ATD ISAP III through a contract modification known as ECMS, which will provide similar services at approximately 50 locations nationwide (much broader geographic availability than the 5 sites where FCMP operated).

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Between FY 2016 and the present, ICE has expanded the number of aliens enrolled in traditional ATD from 47,000 to more than 100,000 and has been able to enroll more participants in part because it was able to reinvest the money that would have been spent on a much smaller number of FCMP enrollees. FCMP cost \$38.47 per family, per day (or roughly \$16.73 per individual), while traditional ATD ISAP III costs approximately \$4.40 per individual, per day, and ECMS costs approximately \$7 per family, per day. During the FCMP pilot, the program enrolled approximately 950 heads-of-household (HoH), costing more than \$17 million during the pilot period, and resulted in only 15 removals from the United States, as opposed to more than 2,700 from ATD ISAP III during the same period. Additionally, ICE notes that widely reported “compliance rates” above 90 percent refer to whether an alien attended a specific, scheduled check in or court hearing, and do not describe success across the entire immigration process.

Additionally, although compliance rates for FCMP were in the high 90th percentile (similar to other forms of ATD), because the program ran for such a short time this only represents the fact that most participants appeared only for their first court hearing (and possibly second). It does not speak to whether participants would have been successful over the long term, as typically those who are enrolled in ATD become far more likely to abscond as their cases near conclusion.

During the FCMP pilot, only 65 participants finished the program for any reason and 41 of these were absconders. As of June 2019, two years after the program was terminated, nearly 800 of the approximately 950 former FCMP HoH enrollees have active cases still pending and remain in the United States. Specifically, more than 150 of the active cases are subject to a final order of removal. Of those, over 50 percent were ordered removed in absentia after failing to appear for their hearing.

Prior to September 2018, ICE identified ten cities with the largest volume of family units in immigration proceedings: Atlanta, Baltimore, Chicago, Denver, Houston, Los Angeles, Miami, New Orleans, New York, and San Francisco. Thereafter, ICE requested that DOJ EOIR develop dockets in these cities’ immigration courts to track family unit cases more precisely. Starting in September 2018, each of these immigration courts created a family unit docket with the goal of adjudicating them within a year of initiation. As of August 9, 2019, there have been approximately 57,735 cases placed on the family unit docket under this initiative. DOJ EOIR is the best source for immigration court data and statistics, including statistics regarding in absentia orders in cases involving migrants apprehended at the southern border.

However, based on ICE’s informal tracking of these cases as of August 2019, DOJ EOIR has conducted over 87,000 hearings. The majority have been master calendar hearings

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(preliminary hearings to resolve issues of removability, obtain counsel, and/or submit applications and evidence for relief), but several individual hearings have also been held and completed. Overall, DOJ EOIR has completed over 16,000 family unit cases. In 13,048 of those cases (approximately 81 percent), the aliens failed to appear in court as required and the Immigration Judge (IJ) ordered them removed from the United States in absentia. IJs have granted relief from removal in only 562 cases (3.5 percent). Of those, 327 cases (2.03 percent) were grants of voluntary departure, and 229 cases (1.42 percent) were grants of asylum and other types of protection from removal. The remaining 15,518 cases (96 percent) were orders of removal, including the in absentia orders of removal referenced above.

Recognizing the difficult policy and legal issues at play (including limited family detention space and limitations on detaining accompanied minors posed by judicial interpretations of the FSA), ICE is nevertheless exploring enforcement options related to the family units who failed to appear for their immigration court hearings and were ordered removed in absentia.

<b>Question#:</b>	46
<b>Topic:</b>	ICE OIG Report
<b>Hearing:</b>	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
<b>Primary:</b>	The Honorable Kamala D. Harris
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** On June 3, the DHS Inspector General issued a report identifying substandard treatment and care of immigrants held at four detention facilities, including Adelanto ICE Processing Center in California. That same facility was the subject of a Management Alert issued on September 27, 2018, which "identified serious issues relating to safety, detainee rights, and medical care that require ICE's immediate attention."

To your knowledge, has ICE conducted an assessment of its provision of medical care to detainees?

If ICE has not already done so, in light of the violations documented in the Inspector General report and internally acknowledged by ICE, are you willing to conduct such an assessment?

Will you commit to providing my office with a report detailing the results of that assessment?

To your knowledge, has ICE conducted an assessment of its provision of medical care to detainees?

If ICE has not already done so, in light of the violations documented in the Inspector General report and internally acknowledged by ICE, are you willing to conduct such an assessment?

Will you commit to providing my office with a report detailing the results of that assessment?

**Response:** On June 3, 2019, the DHS OIG released the report, "Concerns about ICE Detainee Treatment and Care at Four Detention Facilities."

Prior to the June 3, 2019, OIG report, ICE ERO and ICE Health Service Corps (IHSC) division's Field Medical Coordinators assigned to the Los Angeles area of responsibility conducted a site visit during the week of May 20-24, 2019. The site visit evaluated the facility for compliance with ICE Performance-Based National Detention Standards 2011 and evaluated the quality of medical care provided using established tools IHSC developed in conjunction with DHS CRCL medical experts. A formal report was completed and as a result of the findings, a corrective action plan was requested from the facility to address the PBNDS 2011 deficiencies.

<b>Question#:</b>	47
<b>Topic:</b>	Interfere with Medical Care
<b>Hearing:</b>	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
<b>Primary:</b>	The Honorable Kamala D. Harris
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**Question:** On June 10, 2019, the New York Times reported that doctors who treat immigrants brought to hospitals by ICE and CBP have encountered patients who are shackled to their beds and kept from using the bathroom by agents. Doctors also report facing pressure to quickly discharge patients and to certify that the patients can be held in crowded detention facilities.

Do you believe that it is acceptable for Border Patrol agents or ICE officers to interfere with the medical care that doctors provide to patients in private hospitals?

**Response:** ICE ERO oversees the civil immigration detention of one of the most highly transient and diverse populations of any detention or correctional system in the world. ICE takes very seriously the health, safety, and welfare of those in its care. Comprehensive medical care is provided from the time detainees arrive in ICE custody throughout their entire stay, and includes treatment at a hospital when required. At no time during a detainee's visit to a hospital or medical care facility outside of an ICE detention facility do ICE officers or its contractors interfere with medical professionals providing care to detainees in ICE custody. CBP adheres to the same standards that are mentioned by ICE previously. USBP agents do not interfere with medical care while aliens are under the care of medical professionals and are considered patients.