

| | |
|-------------------|--|
| Question#: | 1 |
| Topic: | Enforcement Memo |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: In our exchange during the hearing, I referenced your September 30, 2021, memorandum entitled "Guidelines for the Enforcement of Civil Immigration Law."

That memo says that in determining whether an illegal immigrant poses a threat to public safety, DHS personnel should undertake "an assessment of the individual and the totality of the facts and circumstances."

Outside of considering the aggravating factors and mitigating factors you list in the memo, are there any other standardized inquiries or actions that DHS personnel will be required to take in order to satisfy your "totality of the facts and circumstances" standard?

Response: On June 10, 2022, the U.S. District Court for the Southern District of Texas issued a Final Judgment vacating Secretary Mayorkas's September 30, 2021 memorandum, *Guidelines for the Enforcement of Civil Immigration Law* (Mayorkas Memorandum), and remanded the matter to the U.S. Department of Homeland Security (DHS) for further consideration. *Texas v. United States*, No. 6:21-00016 (S.D. Tex. June 10, 2022). The Mayorkas Memorandum was vacated on June 25, 2022. In the absence of the Mayorkas Memorandum, U.S. Immigration and Customs Enforcement (ICE) officers and agents will make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

When operating pursuant to the Mayorkas Memorandum, ICE officers took into account a host of factors before conducting an enforcement action. When identifying noncitizens for possible arrest, ICE officers generated intelligence-driven leads to identify noncitizens who presented threats to national security, border security, or public safety. By generating these intelligence-driven leads, ICE officers were able to undertake intensive reviews and analyses of a subject's immigration status, criminal history, and other relevant factors before initiating enforcement action. ICE Enforcement and Removal Operations carefully applied its lead-generating capabilities to determine whether an enforcement action was appropriate.

ICE officers routinely apply prosecutorial discretion when making apprehension and removal decisions, as do law enforcement officers in different agencies and offices throughout the country. For example, ICE officers may determine that prosecutorial discretion is appropriate in cases where a noncitizen has a serious medical condition, is the primary caregiver of minor children, or other compelling humanitarian considerations are present.

Question: Your memo repeatedly references "enforcement actions." To what, specifically, does that phrase refer? Is it arrests? Is it removals? Is it issuing a detainer? Is it issuing a Notice to

| | |
|-------------------|--|
| Question#: | 1 |
| Topic: | Enforcement Memo |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Appear? Please provide a full list of what you consider to be "enforcement actions" covered by your memo.

Response: Enforcement actions include, but are not limited to, decisions on whether or not to issue a detainer or assume custody of a noncitizen subject to a previous detainer; issue, reissue, serve, file, or cancel a charging document; stop, question, or arrest a noncitizen for an administrative violation of civil immigration laws; detain or release from custody subject to conditions; grant deferred action or parole; or when and under what circumstances to execute final orders of removal.

On June 10, 2022, the U.S. District Court for the Southern District of Texas issued a Final Judgment vacating Secretary Mayorkas's September 30, 2021 memorandum, *Guidelines for the Enforcement of Civil Immigration Law* (Mayorkas Memorandum), and remanded the matter to DHS for further consideration. *Texas v. United States*, No. 6:21-00016 (S.D. Tex. June 10, 2022).

| | |
|-------------------|--|
| Question#: | 2 |
| Topic: | Parole Termination |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: With respect to Afghan evacuees, please provide a list of the specific forms of conduct, including criminal conduct, which would result in an Afghan evacuee's parole being terminated.

More specifically, would any of the following categories of offenses cause an Afghan evacuee's parole to be terminated?

Murder

Assault

Driving Under the Influence

Rape

Domestic Violence

Response: Operations Allies Welcome (OAW) evacuees paroled into the United States for urgent humanitarian reasons were assigned robust conditions of parole, including requirements to comply with public health directives and local, state, and federal laws. Parole may be terminated through the issuance of a Notice to Appear (NTA) and the placement of a noncitizen into removal proceedings. The discretionary decision to issue an NTA and terminate parole is a function of the nature of the underlying conduct, including acts of criminal behavior.

Any criminal behavior, including but not limited to murder, assault, driving under the influence, rape, and domestic violence, may lead to the termination of the noncitizen's parole.

| | |
|-------------------|--|
| Question#: | 3 |
| Topic: | Bahrullah Noori |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: What is the current status of Bahrullah Noori, who was housed at Fort McCoy and has been charged with three counts of attempting to engage in sexual acts with a minor, while using force in one case?

Response: Bahrullah Noori is in United States Marshals Service custody at the Dane County Jail in Madison, Wisconsin and is currently pending a jury trial with the U.S. District Court, Western District of Wisconsin, for which an evidentiary hearing is scheduled on October 25, 2022. The U.S. Department of Justice (DOJ) and the Federal Bureau of Investigation (FBI) led investigation and prosecution, and DHS respectfully defers questions about this case to the U.S. Department of Justice.

Question: Has his parole been terminated? If not, why not?

Response: Bahrullah Noori's parole was terminated on September 15, 2021.

Question: When will he be removed?

Response: Bahrullah Noori is a noncitizen who has not yet been placed into removal proceedings pending the completion of ongoing criminal proceedings as referenced above. ICE officers may initiate removal proceedings of noncitizens who are found to be in violation of the Immigration and Nationality Act. In accordance with U.S. immigration law, if a noncitizen has a final order of removal, ICE may remove the noncitizen from the United States.

Question: To where will he be removed?

Response: As noted above, Bahrullah Noori has not been placed into removal proceedings, so it would be premature and speculative to answer this question.

| | |
|-------------------|--|
| Question#: | 4 |
| Topic: | Mahommad Immaad |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: What is the current status of Mahommad Haroon Imaad, who was housed at Fort McCoy and is accused of striking and choking his wife? His wife also stated that, since arriving at the military base, he had hit, strangled, and raped her.

Has his parole been terminated? If not, why not?

Response: Mahommad Haroon Imaad was paroled into the United States at Washington Dulles International Airport on August 25, 2021 as part of OAW and his parole was terminated on November 21, 2021 when an NTA was issued.

Question: When will he be removed?

To where will he be removed?

Response: DHS respectfully defers to the DOJ's Executive Office for Immigration Review.

| | |
|-------------------|--|
| Question#: | 5 |
| Topic: | Ghader Heydari |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: What is the current status of Ghader Heydari, an Afghan national who was flown out of Kabul and transferred, via Germany, to the United States? After being placed in ICE custody upon arrival at Dulles Airport, it was revealed during routine screening that he was a previously-deported convicted felon.

Response: As of November 2021, Ghader Heydari was in ICE custody.

Question: Has he been removed?

To where will he be removed?

Response: As of November 2021, removal efforts had not commenced as Ghader Heydari was awaiting a hearing before an immigration judge.

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Fort Bliss Assault |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: What is the current status of a group of male Afghan evacuees housed at Fort Bliss who assaulted a female U.S. service member at the base on September 19th?

Has their parole been terminated?

When will they be removed?

To where will they be removed?

Response: We respectfully refer you to the FBI for details regarding that investigation.

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Child Brides |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: During a September 14th Senate Foreign Relations Committee hearing, Secretary of State Blinken acknowledged "a handful" of cases in which male Afghans were believed to have made it to the United States with child brides. Secretary Blinken said the U.S. government has "separated people" in those cases.

What are the criteria applied by DHS in determining whether to separate such couples?

In those cases where separations occurred, was the parole of the men terminated?

Response: The U.S. Department of State (DOS) conducts this determination. DHS respectfully defers to DOS for this question.

| | |
|-------------------|--|
| Question#: | 8 |
| Topic: | SIV Benefits |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: Prior to the passage of the Continuing Resolution affording Afghan evacuees access to refugee resettlement benefits, were SIV applicants whose applications had not yet been approved deemed eligible to receive such benefits [under Section 602(b)(8) of the Afghan Allies Protection Act of 2009?

Response: Prior to the passage of the Continuing Resolution affording Afghan evacuees access to refugee resettlement benefits, only applicants accorded Special Immigrant Visa (SIV) status were eligible to receive benefits under Section 602(b)(8) of the Afghan Allies Protection Act of 2009. Afghan evacuees accorded SIV status included those who were admitted or adjusted to lawful permanent residence as an Afghan SIV and Afghan parolees who completed the final steps of SIV processing after entry into the United States.

| | |
|-------------------|--|
| Question#: | 9 |
| Topic: | Afghans Removed |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: If an Afghan national's SIV application is denied, or if he or she commits an act that violates the terms and conditions of their parole or SIV status, and the Afghan national is then ordered removed, to which country would the individual be removed? I would assume removal back to Afghanistan would not be an option.

Response: If an Afghan national has a valid Afghan passport and it is possible to remove them, then an Afghan national may be removed to Kabul, Afghanistan. However, when the removal to Afghanistan is not feasible, ICE may coordinate with DOS or directly with third countries to accept an Afghan national.

Question: If an Afghan national's SIV application is denied, will the alien's parole be immediately terminated?

Response: Denial of an SIV application does not necessarily result in the automatic termination of parole.

Parole may be terminated for failure to meet conditions of parole and parole automatically terminates upon issuance of an NTA, unless otherwise specified. *See* 8 C.F.R. § 212.5(e). However, the reasons for the denial of the petition may be relevant to any subsequent determination to re-authorize or terminate parole. An SIV applicant in the United States whose petition has been approved by either USCIS or DOS may apply for adjustment of status to lawful permanent resident. If the application for adjustment of status is denied, the applicant generally maintains the immigration status they had before filing the adjustment of status application. If USCIS determines the applicant violated the terms of their previous immigration status or parole, then action may be taken on a case-by-case basis to terminate or revoke that status. If USCIS determines the previous status has expired or has been terminated, then USCIS will decide whether to initiate removal proceedings or refer the case to ICE or another law enforcement agency for any additional action.

| | |
|-------------------|--|
| Question#: | 10 |
| Topic: | Haitians Who Fail to Show Up |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: Are Haitian nationals who were paroled into the United States from the Del Rio encampment with an NTA or NTR, and who then fail to show up as directed at their hearing or at an ICE office, priorities for arrest and removal?

Response: When noncitizens fail to comply with instructions to report to an ICE field office within the given timeframe for further processing or fail to attend their immigration court hearing, they may become a priority for further enforcement action. As with any noncitizen in the United States without lawful status, ICE will make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

| | |
|-------------------|--|
| Question#: | 11 |
| Topic: | Mounted Border Patrol Incident |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: Regarding the mounted Border Patrol incident, you're well aware that the photographer who took the now infamous photograph has said publicly that Border Patrol agents were not whipping anyone. Knowing that, why did you still appear at a White House press briefing, even after he'd made that fact clear, and state that his photographs "conjured up the worst elements of our nation's ongoing battle against systemic racism?"

Response: In order to correct any misunderstanding, please see Secretary Mayorkas' direct response to a reporter's question at the White House press briefing.

SECRETARY MAYORKAS: First of all, the images, as I expressed earlier—the images horrified us in terms of what they suggest and what they conjure up, in terms of not only our nation's history, but, unfortunately, the fact that that page of history has not been turned entirely. And that means that there is much work to do, and we are very focused on doing it.

But I will not prejudge the facts. I do not, in any way, want to impair the integrity of the investigative process. We have investigators who are looking at it independently. They will draw their conclusions according to their standard operating procedures, and then the results of that investigation will be determined by the facts that are adduced.¹

As you can clearly see from the quotation above, Secretary Mayorkas explicitly declined to prejudge any conclusion of what did or did not occur and judiciously deferred to the independent investigation that was underway and the conclusions it would reach. That investigation concluded that there were failures at multiple levels of the agency, a lack of appropriate policies and training, and unprofessional and dangerous behavior by several individual Agents. The investigation included over 30 interviews and the review of numerous videos, photographs, and documents related to the incident. Those interviewed included U.S. Border Patrol (USBP) management officials, USBP Agents, Texas Department of Public Safety troopers, and others who were present during the incident, as well as USBP personnel associated with the Horse Patrol Program. The investigation also included the review of court filings by the migrants involved in this incident and videos and photos of the incident as captured by CBP Air and Marine Operations and members of the media who were present during the incident. The

¹ [Press Briefing by Press Secretary Jen Psaki and Secretary of Homeland Security Alejandro Mayorkas, September 24, 2021 - The White House.](#)

| | |
|-------------------|--|
| Question#: | 11 |
| Topic: | Mounted Border Patrol Incident |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Redacted Report of Investigation has been made public, consistent with our commitment to transparency and accountability.²

² [CBP Office of Professional Responsibility - Del Rio Horse Patrol Unit Investigation Report | U.S. Customs and Border Protection.](#)

| | |
|-------------------|--|
| Question#: | 12 |
| Topic: | Incident Investigation |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: Similarly, even after the photographer made clear no whipping had occurred, President Biden said "I promise you those people will pay." Can you understand how, in light of the President's comments and your comments, the Border Patrol agents involved, as well as in general, have reason to believe the investigation will not be conducted in a fair and objective manner?

It's pretty clear both you and President Biden made inappropriate public conclusions about your own employees before an investigation had fully examined the facts.

Response: CBP's Office of Professional Responsibility (OPR) conducted an investigation into this incident and released its report on July 8, 2022. OPR conducts its investigations with integrity and independence, free from outside influence. Its investigation of the horse patrol activity in Del Rio that occurred on September 19, 2021, adhered to these standards.

The redacted report can be found at: <https://www.cbp.gov/document/report/cbp-office-professional-responsibility-del-rio-horse-patrol-unit-investigation>.

| | |
|-------------------|--|
| Question#: | 13 |
| Topic: | Public Apology |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: If the investigation ultimately clears the Border Patrol agents involved and confirms what the photographer himself has already said about "whipping," will you commit to ensuring that they receive a public apology on behalf of DHS for the way they have been portrayed and discussed in recent weeks?

Response: CBP's OPR conducted a full investigation of the U.S. Border Patrol's Horse Patrol Unit activity in Del Rio, Texas, on September 19, 2021 and released the report on July 8, 2022.

The investigation identified a number of organizational and management issues with respect to lack of command and control and insufficient policy guidance and training of Border Patrol Agents. The investigation also found that at least one Border Patrol Agent displayed dangerous behavior and used inappropriate and denigrating language and that several Agents used force or the threat of force to drive migrants back to the Rio Grande River, despite the fact that the migrants were well within the territorial boundary of the United States. The investigation concluded that there is no evidence that any migrants were struck by reins and no evidence that any migrants were forced to return to Mexico or denied entry into the United States.

CBP is committed to a thorough investigation of the actions of its employees and making referrals for discipline if warranted, consistent with protections for the privacy and due process rights of the agents involved. The disciplinary process is underway, and proposed disciplinary actions are pre-decisional.

| | |
|-------------------|--|
| Question#: | 14 |
| Topic: | Title 42 Exemption |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: If the implementation of Title 42 expulsions are, as you have repeatedly said, a "public health imperative," then what is the logic in expelling 5,000 Haitians from Del Rio under Title 42, but exempting from Title 42 and letting into the United States more than twice as many (app. 13,000) people?

Response: In Fiscal Year 2021, 62 percent of all undocumented noncitizens encountered at the border were expelled.

However, there are elements outside of DHS's control when it comes to expulsions, including transportation and resource constraints. Foreign governments are also part of this equation. Many imposed stringent requirements (to include COVID testing requirements) to accept U.S. expulsions. In addition, there were also limitations on foreign governments' internal resource constraints to accept U.S. expulsions which further limited DHS's ability to remove individuals from the United States.

Question: How was the U.S. public health protected if the exemptions to Title 42 vastly overwhelmed the number of times expulsions were actually carried out?

Response: DHS's ability to expel individuals under Title 42 is limited by requirements established by foreign governments for such expulsions and the availability of aircraft to conduct expulsions for individuals who cannot be expelled back to their country of transit.

| | |
|-------------------|--|
| Question#: | 15 |
| Topic: | March 19th Letter |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: I and a number of my colleagues on the Senate Judiciary Committee sent you a letter on March 19th relating to the crisis at the southern border. At this time, I have no record of a response to that letter. Will you commit to providing a full and complete written response to that letter no later than December 7, 2021?

Response: A letter was submitted to Congress on February 24, 2022.

| | |
|-------------------|--|
| Question#: | 16 |
| Topic: | August 10th Letter |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: I sent you a letter on August 10th related to the transfer of certain Afghan nationals to military bases in the United States. At this time, I have no record of a response to that letter. Will you commit to providing a full and complete written response to that letter no later than December 7, 2021?

Response: A letter was submitted to Congress on July 7, 2022.

| | |
|-------------------|--|
| Question#: | 17 |
| Topic: | August 31st Letter |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: I sent you a letter on August 31st related to the resettlement of Afghan evacuees in the United States. At this time, I have no record of a response to that letter. Will you commit to providing a full and complete written response to that letter no later than December 7, 2021?

Response: A letter was submitted to Congress on July 7, 2022.

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | TVPRA Reforms |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: In June 2014, when you were serving as Deputy Secretary of Homeland Security during the Obama-Biden Administration, President Obama sent a letter to congressional leadership detailing the steps that the Obama-Biden Administration was taking in response to the 2014 surge of UACs at the border and requesting assistance from Congress "to ensure that we have the legal authorities to maximize the impact of our efforts."

Specifically, he requested that Congress take action "providing the DHS Secretary additional authority to exercise discretion in processing the return and removal of unaccompanied minor children from non-contiguous countries like Guatemala, Honduras, and El Salvador."

President Obama's request was a reference to the need to amend Section 235 of the William Wilberforce Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA) to ensure that UACs from non-contiguous countries such as Guatemala, Honduras, and El Salvador are treated in the same manner as those from contiguous countries such as Mexico or Canada. The TVPRA currently treats UACs differently based on their country of origin.

Do you agree that Congress, as requested by President Obama during the Obama-Biden Administration in 2014, should take action to amend Section 235 of the TVPRA in order to ensure that UACs from non-contiguous countries are subject to the same procedures that are currently in place for UACs from Mexico?

Response: DHS welcomes reforms to the asylum and border management system that modernize processing, account for the historic challenges we are currently facing, and achieve a safe, orderly, and lawful process without sacrificing our values. DHS stands ready to provide technical assistance on matters that will ensure safe, orderly, and humane migration management.

Question: If so, will you commit to working with me and other members of the Senate Judiciary Committee to ensure that we enact TVPRA reforms that the Administration will support in order to reduce the surge of UACs to the southern border?

Response: DHS will continue to support the Administration's goals of addressing irregular migration while supporting a system of border management that is orderly, safe, and humane. As stated above, DHS stands ready to provide technical assistance on matters that will ensure safe, orderly, and human migration management.

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | Drug Interdiction |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: Lethal drugs like fentanyl and methamphetamine are pouring across the southwest border. The Drug Enforcement Administration has stated that Mexican cartels supply most of the drugs in the U.S. and that these criminal organizations "are the greatest drug trafficking threat to the United States." This strong statement is backed up by hard facts.

According to the most recent available data, CBP has seized over 10,000 pounds of fentanyl substances so far this fiscal year. Given that a mere two milligrams of fentanyl can be deadly, this is enough to kill over 2 billion people. That's more than 1/4 of the entire world.

Federal agents are on the front lines detecting and collecting these drugs. But this goes to show that too much is being made in Mexico and it's too easy to get the drugs into the U.S.

Do you agree that DHS needs to do more to stop drugs from entering our country in the first place?

Response: DHS seeks to disrupt the flow of fentanyl entering the United States through Mexico and combat the transnational criminal organizations (TCOs) responsible for fueling the deadly overdose epidemic. As the principal investigative component of DHS, Homeland Security Investigations (HSI) conducts federal criminal investigations at every location in the illicit drug supply chain: internationally, where TCOs operate and manufacture illegal drugs; at our Nation's physical border where smugglers attempt to exploit America's legitimate trade, travel, and transportation systems; in our communities, where criminal organizations earn substantial profits from selling synthetic drugs; and on the dark net, where increasingly tech-savvy TCOs have replaced hand-to-hand drug sales with anonymous cryptocurrency purchases. In addition to combating narcotics smuggling, HSI attacks the criminal networks that source and smuggle U.S.-origin firearms and ammunition to Mexico, fueling violence and enabling cartels to flourish.

DHS also seeks to prevent drug trafficking through the mail by robust enforcement of the Synthetics Trafficking and Overdose Prevention Act. CBP operates within major international mail facilities to inspect international mail and parcels arriving from more than 180 countries. Additionally, CBP and the U.S. Postal Service are working to increase the amount of advance electronic data received on international mail. This advance information enables ICE and other agencies to identify networks of foreign suppliers and domestic importers that are responsible for smuggling fentanyl into the United States.

| | |
|-------------------|--|
| Question#: | 20 |
| Topic: | Scheduling Fentanyl |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: Permanently scheduling fentanyl substances classwide is essential for your law enforcement officers at the border to identify the drugs once they're seized. Controlling these drugs will also deter bad actors from importing and trafficking them. Congress has extended the authority to schedule fentanyl drugs until January. We must permanently schedule them to protect the American public, including your officers at the border.

Do you agree that permanently controlling fentanyl related substances is critical to protect DHS law enforcement officers and to deter Mexican cartels?

Response: Yes. DHS supports all efforts to protect our citizens and our workforce from the dangers posed by illicit narcotics.

| | |
|-------------------|--|
| Question#: | 21 |
| Topic: | Tracking Flow of Drugs |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

Question: Iowa doesn't border Mexico. But drug cartels still spread their drugs all over the country. As I heard from Jeffrey Stamm - the Director of the Midwest HIDTA - at a Senate Drug Caucus Hearing in Iowa last month, it's becoming increasingly easy for criminal organizations to get drugs from point A to point B. The influence and power of drug cartels makes every state a border state.

How does DHS track the flow of illicit drugs as they enter the country, and how will you stop them from reaching communities in all states, including Iowa?

Response: DHS employs a multi-layered approach to mitigating and countering threats of all types, including narcotics trafficking, through use of our extensive liaison networks, domestic and foreign partnerships, personnel, and technology deployments, such as Non-Intrusive Inspection capabilities. Moreover, the increased production and trafficking of synthetic opioids through and from Mexico has prompted the interagency to implement a whole-of-government approach to combating these threats.

To address these threats, CBP and ICE work together to combat cartels—including Sinaloa and CJNG—from sending drug mules through the border. For example, CBP's use of advanced analytics and targeting capabilities at the National Targeting Center allows CBP and its partners to identify critical logistics, financial and communication nodes, and areas of weakness in the illicit opioid trafficking networks. This information is shared with ICE HSI, which employs a suite of comprehensive criminal investigative techniques to detect drug mules transferring illicit narcotics across the Southwest Border. These investigative techniques include the use of confidential informants, sources of information, physical surveillance and authorized electronic surveillance, defendant and witness interviews, and special agents embedded with host country law enforcement. HSI investigates land border narcotics seizures and contraband smuggling events as part of its strategy to disrupt and dismantle the capabilities of transnational criminal organizations and target sources of supply. Information resulting from these investigations is further shared with CBP to assist in locating and interdicting these smuggling attempts.

Recent DHS Office of Intelligence and Analysis reporting indicates that Mexico-based drug traffickers involved in both drug and human smuggling rarely exploit migrants to smuggle fentanyl into the United States, likely because they want to protect valuable fentanyl shipments from U.S. law enforcement interdiction. When drug traffickers do use migrants for drug trafficking, seizures and reports suggest they smuggle low-value drugs like marijuana. Drug traffickers more commonly use migrants to distract law enforcement from more lucrative drug smuggling. Analysts continue to believe most of the smuggled fentanyl moves through U.S. ports of entry. HSI is the principal investigative arm of DHS, responsible for investigating TCOs

| | |
|-------------------|--|
| Question#: | 21 |
| Topic: | Tracking Flow of Drugs |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Charles E. Grassley |
| Committee: | JUDICIARY (SENATE) |

and their drug smuggling and distribution networks. HSI works closely with other DHS components, such as U.S. Customs and Border Protection, to identify and outline TCO threats in our communities and to develop plans and strategies to disrupt and dismantle TCOs at every level. Additionally, HSI partners with federal, state, local, and tribal agencies to combat TCOs through partnerships and participation in task forces focused on threats specific to certain communities. HSI participates in large task force operations such as the Organized Crime and Drug Enforcement Task Force (OCDETF) and High Intensity Drug Trafficking Area task forces and partners with other state, local, and tribal-led task forces to address local and regional threats.

In Iowa, HSI has three field offices located in Cedar Rapids, Des Moines, and Sioux City, each staffed with HSI special agents and support personnel. These offices regularly participate in drug enforcement task forces and/or form close partnerships with state and local agencies in narcotics investigations. Specifically, in Iowa, HSI special agents are assigned to or participate in the Tri-County Drug Task Force, the Johnson County Drug Task Force, and the Mid-Iowa Narcotics Enforcement Task Force; several other drug investigations are being conducted in partnership with state and local police departments and law enforcement agencies and are designated under OCDETF.

| | |
|-------------------|--|
| Question#: | 22 |
| Topic: | Final Approval |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Patrick J. Leahy |
| Committee: | JUDICIARY (SENATE) |

Question: Thanks in large part to the passage of the Promoting Travel, Commerce, and National Security Act of 2016 (P.L. 114-316) - which ensures full implementation of the U.S.-Canada preclearance agreement and enables both countries to move forward with expanding preclearance locations in Canada within all modes of transportation - land, marine, rail and air -- the United States and Canada have the opportunity to increase commerce and tourism between our countries by opening cost recovery preclearance facilities at airports and rail stations in Canada. Preclearance is a special customs and immigration procedure that allows travelers coming into the United States to pass through U.S. Customs and Border Protection (CBP) inspections prior to leaving the foreign country. If a passenger is cleared through the preclearance process they can enter the country freely upon arrival.

The expansion of preclearance facilities between the United States and Canada at Montreal Central Station in Montreal, Canada and at Billy Bishop Toronto City Airport (Billy Bishop) in Toronto, Canada remains a priority of mine. The construction of preclearance facilities at both of these locations will have direct, positive, and sustaining economic impacts on downtowns in Vermont. While the U.S. and Canada have agreed to move forward with these facilities using the new cost-recovery model, whereby the host facility funds the placement of CBP officers at the facility, there are a handful of actions that are needed to speed up their implementation.

For Billy Bishop Airport, CBP still needs to approve the design concepts of their facility. In recent meetings between my office and CBP staff, your agents have expressed the prioritization of the expansion of preclearance facilities in high trafficking areas rather than regions that will have significant economic impact due to direct foreign investment from frequent international travel. Prior to the international travel restrictions imposed to combat the COVID-19 pandemic, more than \$2 billion per day of trade passed between the United States and Canada. This trade will expand with preclearance at the airport and grow as the economies recover from the pandemic. Having market-to-market flights from downtown Toronto to the United States will help renew that activities and support both economies. Additionally, an expanded CBP presence in Toronto will enhance the U.S.'s national security interests as well.

For Montreal Central Station, CBP has expressed to my office that while the agency is interested in constructing a preclearance facility at the location there are outstanding items that remain. First, track corridor issues still exist including track upgrades that are necessary for this expansion. Second, CBP has stated that since rail is an untried mode of travel to put in the preclearance environment, CBP agents do not have the operational capabilities necessary to sufficiently train agents for rail-related preclearance activities at the moment.

| | |
|-------------------|--|
| Question#: | 22 |
| Topic: | Final Approval |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Patrick J. Leahy |
| Committee: | JUDICIARY (SENATE) |

With the recent reopening of travel between the United States and Canada, it is my hope that the uptick in international tourism between the two countries will help reduce the budgetary shortfall at CBP that resulted from the COVID-19.

From your perspective, what actions are still needed to secure final approval for the construction of preclearance facilities at Billy Bishop and Montreal Central Station?

Response: Officials with Billy Bishop Toronto City Airport (BBTCA) have continued with steps to accommodate a preclearance operation at the airport, facilitated by both the Government of Canada (GoC) and CBP.

CBP has had ongoing dialogue for many years with BBTCA about preclearance including but not limited to facility requirements, cost sharing Memorandum of Understanding (MoU) discussions, staffing projections, and technology usage in establishing preclearance operations at the airport.

One of the most challenging aspects of expanding Preclearance is securing support from airport operators to engage in cost-sharing. In the case of Billy Bishop, the airport operator has clearly and affirmatively expressed willingness to share costs; however, the cost sharing model puts a significant amount of the burden for Operational Expenses on the airport operator. The feasibility of this business model is currently under consideration by BBTCA.

Montreal Rail discussions have continued, but remain at the initial stages, and there remains significant operational and security challenges that must be overcome first.

A consideration for operationalizing a new location in Canada is the lack of mutually agreeable airport employee vetting protocols on airport employee vetting with the GoC, which is an element of the Land, Rail, Marine, and Air Transport Preclearance Agreement (LRMA). This presents a major operational challenge for CBP. For example, CBP does not receive confirmation from GoC when applicants with CBP derogatory information are granted access to preclearance areas. Canada's vetting outcomes are focused on transportation security and not toward border controls, leaving a gap in eligibility and denial determinations.

CBP is exploring several creative solutions to address this issue, including local vetting with airport-designated access controls, or, as a final option, redeploying officers from inspectional duties to rove the preclearance area.

An additional concern for considering new locations as well as impacts on existing preclearance locations is the a bill pending before Canadian parliament, which would amend its Customs Act and Preclearance Act, 2016, to raise the threshold for border officials to search electronic

| | |
|-------------------|--|
| Question#: | 22 |
| Topic: | Final Approval |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Patrick J. Leahy |
| Committee: | JUDICIARY (SENATE) |

devices. If enacted, this would have significant impacts on CBP's enforcement capabilities, creating a risk that could lead to CBP requiring mitigation measures resulting in additional steps for travelers bound for the United States.

| | |
|-------------------|--|
| Question#: | 23 |
| Topic: | Considering Economic Impact |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Patrick J. Leahy |
| Committee: | JUDICIARY (SENATE) |

Question: While I recognize the need to efficiently enforce international trafficking as your agency continues to fill vacancies and account for the agency's loss in user fees from the pandemic, will the Department consider regions of direct, significant economic impact instead of enforcement as it relates to preclearance activities?

Response: CBP has to focus on evaluating any future operations based on the strategic value of the location, and the national security and law enforcement benefits of said location to determine whether establishing a new Preclearance operation is beneficial to CBP and the U.S. government.

CBP Preclearance has seen a significant impact to staffing at some locations due to the drop in traveler volume over the last two years. As travel restrictions ease and travel resumption increases, CBP is focusing on how best to manage existing and future operations efficiently.

| | |
|-------------------|--|
| Question#: | 24 |
| Topic: | Staffing Levels |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Patrick J. Leahy |
| Committee: | JUDICIARY (SENATE) |

Question: What level of staffing is necessary for the CBP to be able to station agents at preclearance facilities in Canada?

Response: CBP typically has more than 600 officers and agriculture specialists stationed at 16 Preclearance locations in 6 countries to include Canada, which has Preclearance locations in Calgary, Toronto, Edmonton, Halifax, Montreal, Ottawa, Vancouver, Victoria, and Winnipeg.

Due to COVID related travel impacts, CBP's permanent staffing across all preclearance locations is at approximately 83 percent of normal levels. As travel volumes resume, CBP has worked diligently with stakeholders to prioritize locations with higher returning travel volumes for staff deployments. In Canada specifically, CBP is targeting a return to pre-COVID staffing levels at existing operations, after which airport operators are able to seek additional preclearance services on a reimbursable basis, as authorized under the LRMA Agreement. If preclearance is operationalized at BBTCA additional staffing would be required to support the operation; however the exact number of CBP personnel required is contingent upon mutual agreement between CBP and the airport operator on the proposed scope and hours of operation.

| | |
|-------------------|--|
| Question#: | 25 |
| Topic: | Preclearance at Billy Bishop |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Patrick J. Leahy |
| Committee: | JUDICIARY (SENATE) |

Question: Are you and your staff committed to adding preclearance at Billy Bishop? With this commitment, the airport can proceed to prepare the facility for staffing when CBP is able to turn attention to the operation.

Response: CBP understands the significant interest to operationalize Preclearance at BBTCA. CBP and the GoC have signed an agreement on Cost Recovery to be applied as MoUs with the existing airport operators and expansion locations.

BBTCA has been engaged with CBP on Preclearance since 2011. The airport is now at a stage where it must determine the viability of supporting Preclearance operations, though CBP understands the airport is undertaking preparations to build a facility. If BBTCA determines that it can support Preclearance operations, then CBP has committed to working with BBTCA to operationalize preclearance, contingent upon the successful resolution of CBP's employee vetting requirements and other operational concerns in Canada.

| | |
|-------------------|--|
| Question#: | 26 |
| Topic: | Talks with Montreal Central Station |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Patrick J. Leahy |
| Committee: | JUDICIARY (SENATE) |

Question: Will you and your staff commit to continuing to engage in talks with Montreal Central Station as it relates to the construction of a preclearance facility at the train station?

Response: CBP will continue to discuss planning for the Montreal Rail Preclearance operation. While CBP appreciates that the Montreal Central Station could potentially accommodate a Preclearance operation at their location, CBP still would need to properly evaluate the feasibility, security, and enforcement benefits of that location in relation to the agency priorities.

| | |
|-------------------|--|
| Question#: | 27 |
| Topic: | Rail Train Operations |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Patrick J. Leahy |
| Committee: | JUDICIARY (SENATE) |

Question: What resources does the CBP need to be able to train agents for operations in a rail environment going forward?

Response: CBP works closely with CBSA on training requirements related to the Land, Rail, Marine and Air Transport Preclearance Agreement (LRMA), where the host party provides training to the inspectional party. Training on rail operations would be incorporated into this training, as required, if operations in Montreal were to proceed. Additionally, CBP conducts rail operations throughout the country, therefore, CBP would be equipped with proper training resources in the rail environment should operations be established in Montreal.

| | |
|-------------------|--|
| Question#: | 15 |
| Topic: | UAC Report |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Dianne Feinstein |
| Committee: | JUDICIARY (SENATE) |

Question: When I was the Ranking Member of the Senate Judiciary Committee, the Department of Homeland Security committed to informing the Committee if any unaccompanied children passed away while in government care.

Would you be willing to commit to providing my office and the Committee with a report if an unaccompanied child passes away in government care?

Response: Under H. Rept. 116-458, DHS FY 2022 Appropriation Bill, CBP is required to notify Congress any time an individual dies while in CBP custody. CBP's Notification and Review Procedures for Certain Deaths and Deaths in Custody, dated May 26, 2021, require that CBP's Office of Congressional Affairs notify the chairperson and ranking member of the Senate Judiciary Committee (and other committees with oversight authority) each time an individual dies in custody. CBP has been making these notifications since the issuance of that policy. These notifications are sent in the form of a detailed summary of the facts and circumstances surrounding any such deaths. To the extent any child, including an unaccompanied child, dies while in CBP custody, the Committee will be notified.

Question: Would you be willing to provide my staff with a report when an unaccompanied child reports sexual abuse in government care?

Response: CBP Office of Professional Responsibility (OPR) would be happy to meet with your staff to discuss procedures in place to receive and investigate allegations of sexual abuse involving unaccompanied children in custody and explore what additional information may be needed to meet your oversight needs.

| | |
|-------------------|--|
| Question#: | 16 |
| Topic: | Border Wait Times |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Dianne Feinstein |
| Committee: | JUDICIARY (SENATE) |

Question: I was encouraged by your decision to reopen the land ports of entry along the U.S.-Mexico border to vehicular and pedestrian non-essential travel. As non-essential travel resumes, it is expected that wait times to enter the U.S. from Mexico will increase.

Travelers entering the U.S. through ports of entry in California already experience the longest wait times along the U.S.-Mexico border. How does the Department plan to decrease those wait times?

Response: CBP is continually assessing its capabilities and will continue to dedicate its finite resources to the processing of inbound traffic with an emphasis on trade facilitation to ensure economic recovery. Maintaining border security while facilitating efficient processing is a delicate balance. CBP's border security mission remains the number one priority. We have a duty to the American public to remain steadfast in this mission, interdicting illegal narcotics, currency, weapons, and terrorists while ensuring lawful trade and travel continues. CBP has continued to work diligently during the past year to continue advancing port of entry technology to provide a smoother, more efficient inspection process as part of its commitment to innovating CBP operations that are secure, straightforward, and efficient. Travelers are also encouraged to apply for our trusted traveler programs.

Travelers can use the CBP One mobile application to access CBP services. The CBP One I-94 form features provide a mobile app version of CBP's I-94 website, providing a more convenient way for travelers to apply for and pay for an I-94 up to seven days prior to arrival.

In addition to CBP One, CBP's Simplified Arrival is an enhanced international arrival process that uses facial biometrics to automate the manual document checks that are already required for admission into the United States, and provides travelers with a secure, touchless travel experience. A CBP Officer (CBPO) will review and query the travel document, which will retrieve the traveler's passport or visa photo from government holdings. The new photo of the traveler will be compared to the photo previously collected.

Lastly, the CBP Workload Staffing Model (WSM) serves to ensure informed optimal CBPO staffing at the POEs are identified through a thorough and validated data analysis process. The WSM identifies the personnel required to accomplish the critical current mission and it also captures future staffing requirements for new or enhanced facilities, technology deployments, and anticipated growth in trade and travel.

| | |
|-------------------|--|
| Question#: | 17 |
| Topic: | Assault Weapons Seized |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Dianne Feinstein |
| Committee: | JUDICIARY (SENATE) |

Question: As I noted during the hearing, TSA has seized 4,495 firearms at security checkpoints this year—a new record in the agency's 20-year history. Then just days after the hearing a firearm discharged at a security gate at Atlanta's Hartsfield-Jackson International Airport, bringing national attention to this troubling issue.

Please provide a list of the make and model of each assault weapon seized by the agency during this year.

Response: From January 1, 2021, until November 16, 2021, no assault-style weapons were detected at TSA checkpoints. Additionally, TSA continues to work closely with local Law Enforcement who in turn makes determinations related to arrest and confiscation. TSA continues to screen approximately 4.9 million carry-on bags daily for firearms and other dangerous items. We continue to operate advanced technology to screen passengers and their luggage to detect firearms to ensure the protection of passengers.

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | Border Patrol Critical Incident Teams |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Dianne Feinstein |
| Committee: | JUDICIARY (SENATE) |

Question: Secretary Mayorkas, I appreciate your commitment to transparency and accountability. To that end please provide additional information regarding the Border Patrol Critical Incident Teams that were raised at the hearing and are the subject of a letter that the Judiciary Committee received from the Southern Border Communities Coalition, dated October 27, 2021.

Describe the purpose and responsibilities of the Border Patrol Critical Incident Teams.

Response: When Critical Incident Teams (CITs) were initially implemented, U.S. Border Patrol (USBP) recognized, in some locations and situations, other federal or local agencies with primary jurisdiction over a critical incident were unable to respond to certain scenes (especially in remote locations) or did not have the training, technical ability, or personnel to properly process incident scenes.

Additionally, other federal or state and local agencies would not provide information on critical incidents until their reports were completed. As a result, this role transitioned into CITs completing administrative reports that were separate and independent of criminal reports completed by their counterpart agencies. The administrative reports provided Sector Chief Patrol Agents (CPAs) with pertinent and vital information following a critical incident. Over time, certain CITs obtained the training and skills to process and document incident scenes and evidence, to include advanced photography skills, forensic mapping, and traffic collision investigation and reconstruction. Eventually, these teams honed their skills to a point that outside agencies began relying on them for scene processing and evidence collection, to include the FBI, the Drug Enforcement Administration, ICE Homeland Security Investigations, and state and local agencies.

On February 2, 2022, CBP took steps to ensure USBP CITs provided specialized scene processing or evidence collection capabilities strictly under the clear command and control of an OPR incident commander when responding to serious use of force incidents, CBP-involved deaths, and other critical incidents involving serious injuries or deaths. Effective October 1, 2022, OPR will assume full responsibility for the critical incident response function.

Question: What is the specific statutory authority under which the Border Patrol Critical Incident Teams, in all of their variations, operate to engage in use-of-force investigations?

Response: All federal agencies have the responsibility to investigate critical incidents involving their personnel to determine what happened and ensure accountability. Like all executive agencies, CBP has the authority, pursuant to 5 U.S.C. § 7513 and Office of Personnel

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | Border Patrol Critical Incident Teams |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Dianne Feinstein |
| Committee: | JUDICIARY (SENATE) |

Management (OPM) regulations, to propose disciplinary actions, if appropriate, based on employee misconduct. In addition, under 28 U.S.C. Chapter 171, CBP has the authority to consider and potentially settle tort claims. CBP cannot make decisions about whether an employee should be disciplined, or a tort claim should be settled, without first conducting an investigation. In addition, under 6 U.S.C. § 211(j)(3), OPR has the authority to investigate criminal matters and conduct research and analysis regarding the misconduct of officers and agents. Inherent in that authority is the ability to utilize agency resources, such as the CIT, to assist with investigations.

Finally, as general matter, under 5 U.S.C. § 301, the head of an Executive department may prescribe regulations for the government of their department, the conduct of its employees, the distribution and performance of its business, and the custody, use, and preservation of its records, papers, and property. Since USBP CITs were not conducting criminal investigations, effecting arrests or searches, serving warrants or subpoenas, or using force, the authority conveyed by § 301 was applicable. The CIT duties and responsibilities fit well within the authority of an agency head to operate an agency, which includes the ability to assign employees to determine what went wrong in any given instance and how to do things better.

Question: What are the job requirements for people accepted to Border Patrol Critical Incident Team positions?

Response: The name, structure, job requirements, capabilities, and utilization of USBP CITs varied by each sector. Generally, USBP CIT members were Border Patrol agents who had specialized training and skills to process and document incident scenes and evidence to complete administrative reports.

Going forward the critical incident function will be handled by OPR Special Agents. OPR special agents are required to coordinate and complete highly complex, difficult and sensitive criminal, civil and administrative investigations involving alleged misconduct, criminal activity and/or corruption by CBP employees and related entities.

Question: What trainings are provided to Border Patrol Critical Incident Team members?

Response: The training USBP CIT members receive varied depending upon the needs and requirements of each sector team. Some of the advanced training these agents received includes basic and advanced accident investigations, evidence technician, crime scene investigations, crime scene photography, shooting reconstruction, latent print processing, death investigations, and investigation and interview techniques.

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | Border Patrol Critical Incident Teams |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Dianne Feinstein |
| Committee: | JUDICIARY (SENATE) |

All CBP OPR special agents are required to complete the Federal Law Enforcement Training Center's 11-week Criminal Investigator Training Program and advanced training through the Special Agent Training Program.

Question: What is the chain of command for Border Patrol Critical Incident Teams and what documentation exists to establish any relationship between Border Patrol Critical Incident Teams and the Customs and Border Protection Office of Professional Responsibility? Please provide documentation, including memoranda, policy directives, and formal delegation forms.

Response: Historically, USBP CITs were decentralized to individual sectors and have been managed at the discretion of each sector CPA.

CBP's OPR has primary responsibility for investigating serious use of force incidents, CBP-involved deaths, and other critical incidents involving serious bodily injuries or deaths. Beginning in 2015, CBP made substantial policy changes that increased OPR's oversight of critical incidents and use of force incidents with the introduction of CBP's Use of Force Incident Teams (UFITS), which fall under OPR's purview. The July 2015, CBP Directive 4510-038, Response to Use of Force Incidents, states Border Patrol will "provide qualified employees, including personnel from Critical Incident Teams or specialized teams, to be trained and participate as members of the Use of Force Incident Team (UFIT)" and it also states, "evidence processing as well as the creation of reports should be coordinated with the UFIT incident commander and be included in the final UFIT report." This ensures there is clear command-and-control, and all evidence collection is completed under the direction of the UFIT incident commander.

| | |
|-------------------|--|
| Question#: | 1 |
| Topic: | Threats to Elections |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Richard Blumenthal |
| Committee: | JUDICIARY (SENATE) |

UNCLASSIFIED//FOR OFFICIAL USE ONLY

Question: (U) There was a torrent of domestic disinformation and foreign interference attempts during the last Presidential election. These attacks fundamentally sought to undermine confidence and participation in our democratic process. It is easy now to forget that in the weeks before Election Day, foreign adversaries were spreading false reports about hacked voting systems and directly threatening voters. Regrettably, some public figures continue to spread disinformation about voting and continue to cast false doubt on the outcome of the last election.

(U) We are less than a year away from an important midterm election. If the experiences from last year are any indication, there is a substantial risk of foreign interference and domestic disinformation. Has DHS begun planning for how it will address election security threats and disinformation about voting during the midterm elections?

(U) What does that planning look like?

(U) Will you commit that DHS will keep Congress apprised of threats to our elections and build on the initiatives from the last election?

Response: (U) The U.S. Department of Homeland Security (DHS) remains committed to keeping Congress apprised of threats and risks to our election infrastructure and continuing to build upon our work in previous election cycles.

(U) Throughout the 2022 election cycle, the Cybersecurity and Infrastructure Security Agency (CISA) will work closely with the interagency, state, local, tribal, and territorial election officials, and the private sector to address risks to election infrastructure in three primary areas: cybersecurity, physical security, and mis, dis, and mal-information (MDM).

Examples:

- (U) Provide guidance and expertise to help election officials secure critical infrastructure. CISA provides a suite of no-cost and voluntary cyber hygiene services to help protect the election infrastructure subsector. CISA also supports election officials with incident response planning, including hosting tabletop exercises.
- (U) Work with the Intelligence Community, including the DHS Office of Intelligence and Analysis (I&A), to share timely and actionable intelligence with the election community and maintain open channels of information sharing about threats and risks to election infrastructure, which includes multiple classified and unclassified threat briefings which are highlighted below.

UNCLASSIFIED//FOR OFFICIAL USE ONLY

| | |
|-------------------|--|
| Question#: | 1 |
| Topic: | Threats to Elections |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Richard Blumenthal |
| Committee: | JUDICIARY (SENATE) |

UNCLASSIFIED//FOR OFFICIAL USE ONLY

- (U) Expand efforts to build resilience against malign foreign influence campaigns that seek to undermine public confidence in our democratic process and elections. This includes continued public education efforts like planned pre-election joint Federal Bureau of Investigation (FBI)-CISA public service announcements on foreign influence and updates to CISA’s Election Security Rumor vs Reality website, which debunks common mis, dis, and mal-information (MDM) narratives that relate broadly to the security of election infrastructure.
- (U) Additional efforts include supporting the Joint Election Infrastructure Subsector Government Coordinating Council and Subsector Coordinating Council Mis/Disinformation Working Group, including by developing and amplifying its Rumor Control Page Start-Up Guide and the MDM Planning and Incident Response Guide for Election Officials.

(U//FOUO) Similarly, DHS’s Office of Intelligence & Analysis (I&A) works with U.S. Intelligence Community (IC) partners to generate insightful analysis on foreign influence and cyber threats to election infrastructure. Since 2016, I&A’s Cyber Mission Center has been and will continue to support national-level intelligence production and threat information sharing on the targeting of U.S. elections, including IC Assessments and Sense of the Community Memoranda. I&A efforts focus on the security of cyber and physical election infrastructure and foreign media manipulation. These threats manifest mainly through malicious cyber activities targeting election systems and through foreign use of covert social media and proxies to spread mis-, dis-, and mal-information. In terms of physical threats to the elections, I&A focuses on what it assesses to be the primary threat: domestic violent extremists potentially targeting election infrastructure and personnel in the lead up to and following the midterm elections.

(U//FOUO) DHS is currently extensively engaged at the national, state, and local levels, including engagements with Congress and election officials. At the federal level, DHS has embedded representatives working together across DHS, FBI, and throughout the IC. At the state level, DHS regional/field personnel, in coordination with CISA as the Sector Risk Management Agency for Election Infrastructure, are engaged with state election officials through outreach at the network of state and major urban area fusion centers, with a focus on accurate, timely reporting of threat information to and from DHS’s state-level partners. DHS has continued to expand the level of engagement at national, state and local levels, increasing its partnerships associated with elections and the election community.

| | |
|-------------------|--|
| Question#: | 2 |
| Topic: | Secure Election Systems |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Richard Blumenthal |
| Committee: | JUDICIARY (SENATE) |

Question: While I am alarmed by recent disinformation and legal attacks on the right to vote, I also care that our election systems are secure against meddling and inference. In Connecticut, UConn hosts the Center for Voting Technology Research ("VoTeR Center"), which partners with our Secretary of the State and others to do testing of machines and research regarding election security. What is DHS planning to do to partner with, and provide support to, programs such as UConn's Voter Center that support states in their efforts to secure their elections systems?

Response: CISA offers an array of voluntary, no-cost support and services directly to state and local election officials and private sector election technology and service providers. CISA works closely with these stakeholders through our Election Infrastructure Government and Subsector Coordinating Councils to ensure they have the necessary information and tools to successfully manage risk and build resilience into the nation's election infrastructure. CISA's Protective Security Advisors and Cybersecurity Advisors, which are stationed throughout the country, are also available to these entities to perform assessments, offer education and awareness briefings, provide expert guidance and risk advice, and other resources and services as necessary. CISA also funds the Election Infrastructure Information Sharing and Analysis Center (EI-ISAC), which enables rapid communication, information sharing, and situational awareness across the Election Infrastructure community. Membership in the EI-ISAC is voluntary, no-cost, and open to all state, local, tribal, and territorial organizations that support election officials in the United States.

| | |
|-------------------|--|
| Question#: | 3 |
| Topic: | Access to Asylum |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Richard Blumenthal |
| Committee: | JUDICIARY (SENATE) |

Question: Under the Trump Administration's watch, we saw the asylum backlog before the immigration courts more than double, from approximately half a million undecided cases to nearly 1.3 million. Today, as the backlog continues to grow, 1.4 million cases are pending before the immigration courts.

The Biden Administration has repeatedly promised to ensure humane access to asylum at the border, however the continuation of the Trump Administration's disastrous Return-to-Mexico policy and the use of Title 42 to summarily exclude potential asylum seekers undermines this promise. One former senior official recently declared that these policies together created an "an unacceptably high risk that a great many people deserving of asylum will instead likely be returned to countries where they fear persecution, death, or torture."

What actions is the administration going to take to ensure the humanitarian treatment of asylum applicants at the border and to ensure fair access to our asylum application process to those arriving at the border with credible claims?

Response: On October 29, 2021, after a comprehensive review, DHS issued a new memorandum terminating the Migrant Protection Protocols (MPP) program that will be implemented as soon as practicable, pending the issuance of a final judicial decision to vacate the injunction resulting from Texas v. Biden. DHS recognized that MPP likely contributed to reduced migratory flows. However, in doing so, it also imposed substantial and unjustifiable human costs on migrants who were exposed to harm while waiting in Mexico.

On June 30, 2022, the U.S. Supreme Court affirmed that the Secretary has the discretionary authority to terminate MPP. On August 8, 2022, the U.S District Court for the Northern District of Texas lifted the injunction that required DHS to reimplement MPP in good faith. Individuals are no longer being newly enrolled in MPP, and individuals currently in MPP in Mexico are disenrolled when they return for their next scheduled court date. Individuals disenrolled from MPP will continue their removal proceedings in the United States. Noncitizens who are placed in expedited removal and assert a fear of persecution, torture or return to their home country or an intention to apply for asylum are referred by U.S. Customs and Border Protection (CBP) or U.S. Immigration and Customs Enforcement (ICE) to U.S. Citizenship and Immigration Services (USCIS) for a non-adversarial credible fear interview with an asylum officer. Noncitizens have the right to consult with a person of their choosing, including a legal representative, and may have a consultant present at the interview, and the Administration is continually identifying ways to increase access to counsel for noncitizens undergoing this process. If a noncitizen establishes a significant possibility that they could establish eligibility for asylum or related protection in a full hearing, they are issued a Notice to Appear (NTA) before the immigration court, where they

| | |
|-------------------|--|
| Question#: | 3 |
| Topic: | Access to Asylum |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Richard Blumenthal |
| Committee: | JUDICIARY (SENATE) |

may apply for protection or relief. Alternatively, a noncitizen may have an asylum merits interview before a USCIS asylum officer.

| | |
|-------------------|--|
| Question#: | 4 |
| Topic: | Asylum Backlog |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Richard Blumenthal |
| Committee: | JUDICIARY (SENATE) |

Question: The USCIS Asylum Division has its own backlog to deal with, with approximately 400,000 affirmative asylum cases awaiting resolution. Of these cases, 94 percent have not yet received an interview, while the remaining 6 percent have been interviewed but are awaiting a final decision. Many of these applicants have meritorious claims, with individuals who have faced torture and other traumas and now find themselves waiting indefinite periods of time, often separated from their families, as their applications await processing.

What more can DHS do to speed the processing of these applications?

How does USCIS plan to respond to the potential influx of affirmative asylum applicants from Afghan refugees that may further burden the system?

How does DHS intend to respond to and remedy the Trump Administration's under resourcing of USCIS and to help build back our domestic refugee resettlement infrastructure after years of the Trump Administration's neglect?

Does USCIS need more resources from Congress to address the backlog?

Response: The welcomed assistance in Fiscal Year (FY) 2022 of appropriated funding from Congress provided needed support for the agency's affirmative asylum backlog reduction efforts. These appropriated positions are exclusively dedicated to adjudicating asylum claims within the affirmative asylum backlog, focusing on the longest pending cases. The FY 2023 President's Budget Request includes \$256 million to continue supporting USCIS' efforts in reducing case backlogs, to include the affirmative asylum backlog.

USCIS is exploring ways to meaningfully streamline the asylum interview and decision-making process through technology tools in its asylum case management system and process changes to support efficient adjudications, while ensuring the integrity and security of its programs. For example, USCIS created the Global Interview Notes and Assessment tool, which streamlines and facilitates interview note-taking and can be expanded to support other adjudicative functions within the case management system.

USCIS is utilizing a portion of our fee-funded Asylum Division staff positions and appropriated funding to prioritize asylum applications filed by certain Afghan citizens and nationals, or those with no nationality who last habitually resided in Afghanistan, within the timeframe required under the Extending Government Funding and Delivering Emergency Assistance Act. Through FY 2022, USCIS received more than 8,500 asylum applications filed by Afghan parolees, approximately 77 percent of which were received in the third quarter of FY 2022. Receipt

| | |
|-------------------|--|
| Question#: | 4 |
| Topic: | Asylum Backlog |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Richard Blumenthal |
| Committee: | JUDICIARY (SENATE) |

volumes are expected to remain high in the first quarter of FY 2023. During this period, we will assign more staff to complete these adjudications within the Congressionally mandated timeframes. In addition, USCIS developed Afghan-specific training and streamlining tools to support consistent and efficient decision making. We are prioritizing circuit rides to interview these applicants in strategic locations, in addition to the 11 asylum offices.

| | |
|-------------------|--|
| Question#: | 1 |
| Topic: | MPP Reimplementation |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: On August 24, 2021, the Supreme Court declined to stay an order from the U.S. District Court for the Northern District of Texas. The order directed the Biden Administration to "enforce and implement MPP [the Migrant Protection Protocols] in good faith until such time as it has been lawfully rescinded in compliance with the APA and until such time as the federal government has sufficient detention capacity to detain all aliens subject to mandatory detention under Section 1225, without releasing any aliens because of a lack of detention resources."

What has the Department of Homeland Security done to make a good faith effort to comply with the court order and reinstitute MPP?

Please provide an update on the status of your conversations with the Mexican government regarding their cooperation with your re-implementation of MPP.

Response: On June 30, 2022, the Supreme Court affirmed that the Secretary of Homeland Security has the discretionary authority to terminate the Migrant Protection Protocols (MPP). On August 8, 2022, the U.S. District Court for the Northern District of Texas lifted the injunction that required the U.S. Department of Homeland Security (DHS) to reimplement MPP in good faith. Individuals are no longer being newly enrolled in MPP, and individuals currently in MPP in Mexico are disenrolled when they return for their next scheduled court date. Individuals disenrolled from MPP will continue their removal proceedings in the United States.

Prior to the lifting of the injunction, DHS worked to ensure the safe and orderly reimplementation of MPP in good faith. The reimplementation began in the El Paso, Texas, sector on December 6, 2021, and DHS expanded the program across the Southwest Border. Those enrolled and processed into MPP were returned at four ports of entry (POEs): El Paso, Texas; San Diego, California; Brownsville, Texas; and Laredo, Texas.

| | |
|-------------------|--|
| Question#: | 2 |
| Topic: | Settlement Discussions |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: Last month, the Wall Street Journal and the Washington Post reported that the Department of Homeland Security, along with the Departments of Justice and Health and Human Services, were in negotiations to settle lawsuits brought against the government by illegal immigrants. Many of these illegal immigrants placed their children with smugglers who separated them from their families. These settlements would include payments to illegal immigrants of \$450,000 per individual, on average.

Do you dispute the reporting by the Wall Street Journal and the Washington Post that the Department of Homeland Security was involved in these settlement discussions?

Response: DHS respectfully defers to the U.S. Department of Justice (DOJ), as they represent DHS in these cases, which are still in litigation.

| | |
|-------------------|--|
| Question#: | 3 |
| Topic: | Incentivize Illegal Crossings |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: Do you think that providing financial compensation to people who break our laws and enter the United States illegally will incentivize more illegal crossings?

Response: We do not have a policy of providing financial compensation to noncitizens who are unlawfully present in the United States or those noncitizens who seek to unlawfully enter the United States.

| | |
|-------------------|--|
| Question#: | 4 |
| Topic: | Died in the Line of Duty |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: To your knowledge, is it the policy of the Biden Administration that the U.S. government should pay illegal immigrants more than it pays the families of soldiers who have died in the line of duty?

To your knowledge, is it the policy of the Biden Administration that the U.S. government should pay illegal immigrants more than it pays the families of law enforcement officers who have died in the line of duty?

Response: No.

| | |
|-------------------|--|
| Question#: | 5 |
| Topic: | Eliminate Pull Factors |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: In September, Axios reported that the Foreign Minister of Panama expressed frustration with the failure of the U.S. to deal with the pull factors leading thousands of migrants to gather in Panama to join caravans. Similarly, Reuters reported that Mexican officials claimed "the cartels changed their modus operandi from the day Biden took office and were now operating with unprecedented levels of sophistication." The official noted that migrants had become a cartel commodity as valuable - or more valuable - than drugs. What is the Department of Homeland Security doing to eliminate pull factors that are contributing to these developments in Mexico, Panama, and throughout Central America?

Response: Migration is a hemispheric challenge, one not limited to the United States. Displacement and migration are at a high point throughout the world, higher than any time since World War II. In our hemisphere, violence, authoritarian regimes, corruption, food insecurity, climate change, the COVID-19 pandemic, and dire economic conditions all contribute to the increase in migration. As a result, we are experiencing historic levels of encounters at our border.

We are deterring irregular migration south of our border, in partnership with the U.S. Department of State (DOS), other federal agencies, and nations throughout the Western Hemisphere, to ensure that we are sharing the responsibility throughout the region:

New Bilateral Arrangements on Migration and Protection: On April 19, the U.S. government signed a Bilateral Arrangement on Migration and Protection with the Government of Panama, similarly detailing our collaborative commitments to improve migration management, expand stabilization efforts, and increase access to legal pathways and protection for those in the region. DHS and DOS are actively engaged with other countries in the region to advance similar bilateral arrangements, such as the Los Angeles Declaration on Migration and Protection that was signed at Summit of the Americas in June 2022.

Partnership with the Government of Mexico: The Biden-Harris Administration continues to maintain a close partnership with the Government of Mexico to stem irregular migration, which includes creating viable legal pathways, facilitating lawful trade and travel, and combating the shared dangers of transnational organized crime.

In-Region Messaging: DHS coordinates closely with DOS to track trends, share research, and coordinate messaging to counter disinformation that smugglers use to victimize vulnerable migrants. Our approach has included paid advertising on radio and digital platforms and press conferences and media interviews in source and transit countries. These messages counter disinformation propagated by human smugglers and warn migrants of the dangers of being exploited and facing death at the hands of unscrupulous criminal organizations.

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Title 42 Expulsions |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: On November 16, you testified that of the 1.7 million people who have crossed our southern border illegally this fiscal year, approximately 965,000 people were subject to expulsion under Title 42 and that all 965,000 were in fact expelled from the United States. Can you confirm the number of Title 42 expulsions in FY 2021? Please break down the number by country to which each expulsion was effectuated.

Response: Of the 1.7 million people who have crossed the Southern Border illegally, approximately 1,063,526 people were expelled under Title 42 in Fiscal Year (FY) 2021. Please see the table below for a breakdown of expulsions by nationality:

| Citizenship | Title 42 Expulsions |
|--------------|---------------------|
| MEXICO | 582,537 |
| GUATEMALA | 173,616 |
| HONDURAS | 167,374 |
| EL SALVADOR | 56,759 |
| ECUADOR | 54,674 |
| HAITI | 10,136 |
| CUBA | 7,204 |
| NICARAGUA | 3,291 |
| BRAZIL | 2,490 |
| VENEZUELA | 1,270 |
| OTHER | 4,175 |
| Total | 1,063,526 |

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Title 8 Removals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: On November 16, you testified that 40,000 people were removed from the United States under Title 8. Can you confirm the number of Title 8 removals in FY 2021? Please break down the number by country to which each removal was effectuated.

Response: Please refer to the below chart.

| U.S. Immigration and Customs Enforcement | |
|--|---------------|
| Removals in FY 2021 by Country of Citizenship | |
| Total | 59,011 |
| AFGHANISTAN | 14 |
| ALBANIA | 10 |
| ALGERIA | 6 |
| ANDORRA | - |
| ANGOLA | 8 |
| ANGUILLA | - |
| ANTIGUA-BARBUDA | 3 |
| ARGENTINA | 80 |
| ARMENIA | 25 |
| ARUBA | 2 |
| AUSTRALIA | 12 |
| AUSTRIA | 2 |
| AZERBAIJAN | 3 |
| BAHAMAS | 94 |
| BAHRAIN | 1 |
| BANGLADESH | 29 |
| BARBADOS | 7 |
| BELARUS | 4 |
| BELGIUM | 5 |
| BELIZE | 42 |
| BENIN | 5 |
| BERMUDA | 3 |
| BHUTAN | - |

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Title 8 Removals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

| | |
|----------------------------|-------|
| BOLIVIA | 42 |
| BOSNIA-HERZEGOVINA | 26 |
| BOTSWANA | - |
| BRAZIL | 1,935 |
| BRITISH VIRGIN ISLANDS | 3 |
| BRUNEI | - |
| BULGARIA | 4 |
| BURKINA FASO | 9 |
| BURMA | 6 |
| BURUNDI | 4 |
| CAMBODIA | 1 |
| CAMEROON | 84 |
| CANADA | 136 |
| CAPE VERDE | 29 |
| CAYMAN ISLANDS | 2 |
| CENTRAL AFRICAN REPUBLIC | 1 |
| CHAD | - |
| CHILE | 252 |
| CHINA, PEOPLES REPUBLIC OF | 138 |
| CHRISTMAS ISLAND | - |
| COLOMBIA | 748 |
| COMOROS | - |
| CONGO | 6 |
| COSTA RICA | 91 |
| CROATIA | 5 |
| CUBA | 95 |
| CYPRUS | - |
| CZECH REPUBLIC | 14 |
| CZECHOSLOVAKIA | 2 |
| DEM REP OF THE CONGO | 56 |
| DENMARK | 3 |
| DJIBOUTI | - |
| DOMINICA | 9 |

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Title 8 Removals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

| | |
|--------------------|-------|
| DOMINICAN REPUBLIC | 1,289 |
| EAST TIMOR | - |
| ECUADOR | 1,471 |
| EGYPT | 40 |
| EL SALVADOR | 2,872 |
| EQUATORIAL GUINEA | 1 |
| ERITREA | 6 |
| ESTONIA | 4 |
| ESWATINI | - |
| ETHIOPIA | 23 |
| FIJI | 2 |
| FINLAND | 1 |
| FRANCE | 23 |
| FRENCH GUIANA | - |
| FRENCH POLYNESIA | - |
| GABON | 3 |
| GAMBIA | 18 |
| GEORGIA | 12 |
| GERMANY | 30 |
| GHANA | 56 |
| GREECE | 7 |
| GRENADA | 3 |
| GUADELOUPE | 1 |
| GUATEMALA | 7,778 |
| GUINEA | 25 |
| GUINEA-BISSAU | - |
| GUYANA | 79 |
| HAITI | 353 |
| HONDURAS | 4,904 |
| HONG KONG | 3 |
| HUNGARY | 23 |
| ICELAND | 2 |
| INDIA | 292 |

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Title 8 Removals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

| | |
|---------------|-----|
| INDONESIA | 23 |
| IRAN | 10 |
| IRAQ | 32 |
| IRELAND | 10 |
| ISRAEL | 22 |
| ITALY | 65 |
| IVORY COAST | 12 |
| JAMAICA | 406 |
| JAPAN | 6 |
| JORDAN | 61 |
| KAZAKHSTAN | 16 |
| KENYA | 33 |
| KIRIBATI | - |
| KOREA | 21 |
| KOSOVO | 13 |
| KUWAIT | 1 |
| KYRGYZSTAN | 8 |
| LAOS | - |
| LATVIA | 12 |
| LEBANON | 10 |
| LESOTHO | - |
| LIBERIA | 44 |
| LIBYA | 2 |
| LIECHTENSTEIN | - |
| LITHUANIA | 9 |
| LUXEMBOURG | - |
| MACAU | 1 |
| MACEDONIA | - |
| MADAGASCAR | - |
| MALAWI | 2 |
| MALAYSIA | 3 |
| MALDIVES | - |
| MALI | 10 |

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Title 8 Removals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

| | |
|---------------------------------|--------|
| MALTA | - |
| MARSHALL ISLANDS | - |
| MARTINIQUE | - |
| MAURITANIA | 7 |
| MAURITIUS | - |
| MEXICO | 31,761 |
| MICRONESIA, FEDERATED STATES OF | - |
| MOLDOVA | 7 |
| MONACO | - |
| MONGOLIA | 5 |
| MONTENEGRO | 5 |
| MONTENEGRO - RAPS | - |
| MONTSERRAT | - |
| MOROCCO | 20 |
| MOZAMBIQUE | - |
| NAMIBIA | - |
| NAURU | - |
| NEPAL | 23 |
| NETHERLANDS | 9 |
| NETHERLANDS ANTILLES | - |
| NEW CALEDONIA | - |
| NEW ZEALAND | 4 |
| NICARAGUA | 964 |
| NIGER | 6 |
| NIGERIA | 78 |
| NORTH KOREA | 1 |
| NORTH MACEDONIA | 4 |
| NORWAY | 2 |
| OMAN | - |
| PAKISTAN | 68 |
| PALAU | 5 |
| PALESTINE | - |

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Title 8 Removals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

| | |
|-----------------------|-----|
| PANAMA | 34 |
| PAPUA NEW GUINEA | - |
| PARAGUAY | 8 |
| PERU | 287 |
| PHILIPPINES | 81 |
| PITCAIRN ISLANDS | - |
| POLAND | 44 |
| PORTUGAL | 28 |
| QATAR | 2 |
| REUNION | - |
| ROMANIA | 209 |
| RUSSIA | 80 |
| RWANDA | 4 |
| SAMOA | 6 |
| SAN MARINO | - |
| SAO TOME AND PRINCIPE | - |
| SAUDI ARABIA | 29 |
| SENEGAL | 17 |
| SERBIA | 10 |
| SERBIA - RAPS | - |
| SERBIA AND MONTENEGRO | - |
| SEYCHELLES | - |
| SIERRA LEONE | 28 |
| SINGAPORE | 2 |
| SLOVAKIA | 9 |
| SLOVENIA | 2 |
| SOLOMON ISLANDS | - |
| SOMALIA | 47 |
| SOUTH AFRICA | 25 |
| SOUTH KOREA | 50 |
| SOUTH SUDAN | 22 |
| SPAIN | 128 |
| SRI LANKA | 75 |

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Title 8 Removals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

| | |
|--------------------------|----|
| ST. HELENA | - |
| ST. KITTS-NEVIS | 2 |
| ST. LUCIA | 16 |
| ST. PIERRE AND MIQUELON | - |
| ST. VINCENT-GRENADINES | 11 |
| STATELESS | - |
| SUDAN | 4 |
| SURINAME | 6 |
| SWAZILAND | - |
| SWEDEN | 14 |
| SWITZERLAND | 2 |
| SYRIA | - |
| TAIWAN | 9 |
| TAJIKISTAN | 3 |
| TANZANIA | 10 |
| THAILAND | 25 |
| TOGO | 10 |
| TONGA | - |
| TRINIDAD AND TOBAGO | 48 |
| TUNISIA | 6 |
| TURKEY | 35 |
| TURKMENISTAN | - |
| TURKS AND CAICOS ISLANDS | 1 |
| TUVALU | - |
| UGANDA | 7 |
| UKRAINE | 44 |
| UNITED ARAB EMIRATES | 1 |
| UNITED KINGDOM | 73 |
| UNKNOWN | 13 |
| URUGUAY | 21 |
| USSR | - |
| UZBEKISTAN | 21 |
| VANUATU | - |

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Title 8 Removals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

| | |
|------------|-----|
| VENEZUELA | 176 |
| VIETNAM | 33 |
| YEMEN | 6 |
| YUGOSLAVIA | 1 |
| ZAMBIA | 7 |
| ZIMBABWE | 1 |

| | |
|-------------------|--|
| Question#: | 8 |
| Topic: | Referred to HHS |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: On November 16, you testified that 125,000 unaccompanied minors were referred to the Department of Health and Human Services in FY 2021. Can you confirm the number of unaccompanied minors referred to HHS?

Response: In FY 2021, U.S. Customs and Border Protection (CBP) referred approximately 122,029 unaccompanied minors to the U.S. Department of Health and Human Services (HHS) Nationwide.

Question: How many of those 125,000 unaccompanied minors are still in the United States?

Response: DHS respectfully defers to HHS to respond to this question.

| | |
|-------------------|--|
| Question#: | 9 |
| Topic: | FY 2021 Releases |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: On November 16, you testified that 375,000 people were released into the United States. Can you confirm the number of illegal immigrants released into the United States in FY 2021?

Response: All individuals released from CBP custody are screened and vetted prior to release. In FY 2021, CBP released approximately 341,763 undocumented noncitizens who were encountered at the Southwest Border, pending the outcome of their immigration proceedings. CBP screens and vets all individuals encountered at and between ports of entry against law enforcement and counterterrorism data, to include the Terrorist Screening Dataset (TSDS), to detect potential threats to national security and public safety. All individuals ages 14 to 79 encountered by CBP at the borders have their full 10-print fingerprints, a facial photograph, and biographic information collected during processing. When CBP encounters an individual with a record in the TSDS, DHS coordinates with the Department of Justice and other interagency partners to first confirm that the encountered individual is a valid match with the TSDS record and then determine the appropriate actions. These individuals may be referred, as appropriate, for continued detention, prosecution, and/or removal.

Question: How many of those released were given Notices to Appear (NTAs)?

Response: CBP issued approximately 191,166 Notices to Appear (NTAs) nationwide during FY 2021.

U.S. Immigration and Customs Enforcement (ICE) Enforcement and Removal Operations (ERO) FY 2021 ICE Final Releases arrested by CBP as well as those arrested by CBP with a Notice to Appear (NTA) – Please refer to the below tables.

Noncitizens Encountered by CBP in FY 2021 with ICE Final Releases in FY 2021¹

| |
|--------------|
| Total |
| 137,059 |

¹ Please note the quality of this data is heavily contingent upon ERO officers having up-to-date docket cases. A noncitizen may have multiple releases; only the most recent release is included in this report. FY 2021 data is historical and remains static. An ICE Final Release is defined as a Final Bookout that reflects one of the following release reasons: Bonded Out, Order of Recognizance, Order of Supervision, Paroled, or Prosecutorial Discretion. All case statuses are included.

| | |
|-------------------|--|
| Question#: | 9 |
| Topic: | FY 2021 Releases |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

**Noncitizens Encountered by CBP in FY 2021 with
ICE Final Release Issued a Notice to Appear²**

| |
|--------------|
| Total |
| 75,691 |

²For noncitizens issued multiple NTAs, the NTAs with the latest create date are being reported on. The 75,691 with a Notice to Appear are a subset of the 137,059 reported in the first table.

| | |
|-------------------|--|
| Question#: | 10 |
| Topic: | Recidivists |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: On November 16, you testified that there were approximately 230,000 migrants remaining from the 1.7 million that were unaccounted for, or recidivists. Can you provide the number of recidivists who crossed our border in FY 2021? Of those who were not recidivists, what happened to this group? Approximately how many people who attempted to illegally enter the United States in FY 2021 are still here in the United States?

Response: The 1.7 million figure refers to total number of encounters, not total number of individuals encountered at the border. Of the 1.7 million encounters in FY 2021, 1.1 million were unique encounters and 600,000 were repeat encounters (previously encountered one or more times in the prior 12 months).

For all 1.7 million encounters in FY 2021:

- 1,062,000 encounters (62 percent of the total) resulted in Title 42 expulsions;
- 545,000 encounters remain in Title 8 removal proceedings (32 percent of the total);
- 68,000 encounters (4 percent of the total) resulted in Title 8 removals or returns; and
- 11,000 encounters have been granted relief (1 percent of the total);
- Based on available data.

Many of the repeat encounters were expelled more than once under Title 42 authority; some were placed in Title 8 removal proceedings following one of their repeat encounters.

| | |
|-------------------|--|
| Question#: | 11 |
| Topic: | Domestic Cybersecurity Framework |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: In light of President Biden's recent commitment to join the Paris Call for Trust and Security in Cyberspace, does the administration have plans to adopt a set of multilateral cybersecurity standards or to join an international cybersecurity agreement?

Does the administration have plans adopt a domestic cybersecurity framework/strategy that would resemble the EU's cyber diplomacy toolkit? If yes, how does the Administration plan to coordinate with other agencies and departments, such as the Department of Defense, to develop such a strategy?

Response: The Administration's decision to join the Paris Call for Trust and Peace in Cyberspace in November 2021 signaled the Administration's resolve to promote international core principles for the safety of cyberspace, uphold established global norms in cyberspace, and to renew America's engagement with the international community, including on cyber issues. This represents one of a number of multilateral and multistakeholder commitments that the United States has made to a safe, secure, reliable and interoperable cyberspace. The Administration is also in the process of drafting a National Cybersecurity Strategy.

| | |
|-------------------|--|
| Question#: | 12 |
| Topic: | Standardized Responses |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: Are there plans to create a set of standardized responses to cybersecurity attacks that would both identify critical infrastructure and outline the levels of response to an attack?

How will these responses convey the seriousness of protecting our cyber interests to hostile state and non-state actors?

Response: The Administration has well-established procedures to respond to cyber incidents. This includes law enforcement, such as the U.S. Secret Service, investigating suspected violations of Computer Fraud and Abuse Act and arresting those who engage in such crimes. The range of consequences, including arrests, public attribution, sanctions and other responses, have been used in responses to cyber incidents attributed to foreign governments by this and previous Administrations.

| | |
|-------------------|--|
| Question#: | 13 |
| Topic: | Afghans Vetted |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: On Aug. 29, 2021, the Department of Homeland Security was charged with the resettlement of the 50,000 Afghan refugees who have been brought into the United States.

What percentage of Afghan refugees were vetted before boarding a plane to leave Afghanistan?

Response: Before Afghan evacuees were approved to travel and enter the United States, Afghan evacuees underwent a rigorous and multi-layered screening and vetting process that began overseas before individuals were permitted to board a plane to the United States. This process included national security and criminal records checks conducted by intelligence, law enforcement, and counterterrorism professionals from DHS, U.S. Department of Defense (DoD), Federal Bureau of Investigation (FBI), National Counterterrorism Center (NCTC), and other Intelligence Community (IC) partners.

Upon evacuation from Afghanistan and before being cleared to travel to the United States, Afghan evacuees were brought to international transit points where the U.S. government collected and reviewed biometric (e.g., facial images and fingerprints) and biographic (e.g., name, date of birth, and ID number) information.

Afghans under the age of 14 and over the age of 79 were not biometrically enrolled; however, their biographic information was collected for processing, consistent with vetting procedures for all other foreign populations. Biometric data was compared against DoD, DHS, and FBI repositories. Biographic information was vetted by NCTC, the FBI, and other IC partners.

Only those evacuees who cleared these comprehensive checks were approved for onward travel to the United States. Those who did not clear these checks remained outside the United States, where they were subject to additional vetting and screening.

As with other arrivals at U.S. ports of entry (POE), Afghan evacuees completed a primary inspection upon arriving at a POE. This inspection was conducted by CBP officers and included additional biographic and biometric checks. Those evacuees who were identified by CBP as requiring further review were referred to secondary inspection, where additional reviews of information were conducted by CBP and other federal partners as warranted. Only those evacuees who cleared POE processing were permitted to enter the United States. Those who did not clear this processing were given an opportunity to voluntarily withdraw their application for admission to the United States and were subsequently returned to a third country transit site for further vetting. Those who did voluntarily withdraw their applications were placed into removal proceedings.

| | |
|-------------------|--|
| Question#: | 14 |
| Topic: | Vetting Process |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

Question: Given incidents with refugees with national security concerns being brought to the United States and refugees who have committed violent crimes since arriving in the United States, do you believe the vetting process in place to be sufficient?

Response: DHS worked closely with our partners in DoD, FBI, the IC, and DOS to conduct vetting on Afghan evacuees prior to their arrival in the United States. DHS also ensures that all parolees are undergoing continuous vetting. DHS also works closely with law enforcement partners to take appropriate action if an individual who is in the United States temporarily or paroled into the United States commits a crime. As part of the conditions of parole, Afghan parolees are required to abide by Federal, State and local laws.

Question: Please describe what steps the Department of Homeland Security takes to ensure a thorough vetting process.

Response: As previously noted, Afghan evacuees underwent a rigorous and multi-layered screening and vetting process that began overseas before individuals were permitted to board a plane to the United States. This process included national security and criminal records checks conducted by intelligence, law enforcement, and counterterrorism professionals from DHS, DoD, FBI, NCTC, and other IC partners.

Upon evacuation from Afghanistan and before being cleared to travel to the United States, Afghan evacuees were brought to international transit points where the U.S. government collected and reviewed biometric (e.g., facial images and fingerprints) and biographic (e.g., name, date of birth, and ID number) information.

Afghans under the age of 14 and over the age of 79 were not biometrically enrolled; however, their biographic information was collected for processing, consistent with vetting procedures for all other foreign populations. Biometric data was compared against DoD, DHS, and FBI repositories. Biographic information was vetted by NCTC, the FBI, and other IC partners.

Only those evacuees who cleared these comprehensive checks were approved for onward travel to the United States. Those who did not clear these checks remained outside the United States, where they were subject to additional vetting and screening.

As with other arrivals at U.S. POEs, Afghan evacuees completed a primary inspection upon arriving at a POE. This inspection was conducted by CBP officers and included additional biographic and biometric checks. Those evacuees who were identified by CBP as requiring further review were referred to secondary inspection, where additional reviews of information

| | |
|-------------------|--|
| Question#: | 14 |
| Topic: | Vetting Process |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Lindsey O. Graham |
| Committee: | JUDICIARY (SENATE) |

were conducted by CBP and other federal partners as warranted. Only those evacuees who cleared POE processing were permitted to enter the United States. Those who did not clear this processing were given an opportunity to voluntarily withdraw their application for admission to the United States and were subsequently returned to a third country transit site for further vetting. Those who did voluntarily withdraw their applications were placed into removal proceedings.

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | Apprehensions |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Question: On September 30, 2021, DHS published new Guidelines for the Enforcement of Civil Immigration Law ("Guidelines"). The Guidelines establish three categories of aliens that are priorities for apprehension and removal: threats to national security, threats to public safety, and threats to border security. An alien poses a threat to border security and is "a priority for apprehension and removal . . . if (a) they are apprehended at the border or port of entry while attempting to unlawfully enter the United States; or (b) they are apprehended in the United States after unlawfully entering after November 1, 2020." (emphasis added).

Does the second use of the word "apprehended" mean that an alien must be apprehended by another law enforcement agency before he or she will be considered a priority for apprehension and removal by U.S. Immigration and Customs Enforcement?

Response: The U.S. District Court for the Southern District of Texas vacated the Guidelines issued by Secretary Mayorkas. *See Texas v. United States*, --- F. Supp. 3d ---, 2022 WL 2109204 (S.D. Tex. June 10, 2022), *cert. granted*, --- S. Ct. ----, 2022 WL 2841804 (2022) (Mem.). Accordingly, effective June 25, 2022, U.S. Immigration and Customs Enforcement (ICE) ceased to follow the Guidelines.

As with any noncitizen in the United States without lawful status, ICE officers make enforcement decisions on a case-by-case basis to focus on the greatest threats to the homeland in a professional and responsible manner informed by their experience as law enforcement officers.

ICE officers may arrest noncitizens subject to removal, including those already arrested by or in the custody of another law enforcement agency (whether at the federal, state, local, or tribal level). ICE's close coordination and working relationships with its law enforcement agency partners allow ICE to fulfill its critical mission.

Question: Under the Guidelines, would ICE prioritize apprehension and removal of an alien who evades apprehension by another law enforcement agency and disappears into the interior?

Response: As noted above, the Guidelines are not currently in effect. ICE prioritizes apprehension and removal of individuals who pose the greatest threats to the homeland.

Question: Excluding those aliens who were issued a Notice to Appear and detained, how many aliens has ICE apprehended and removed under the border security category since you took office as Secretary of Homeland Security?

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | Apprehensions |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Response: On February 18, 2021, Acting ICE Director Tae Johnson issued interim enforcement and removal guidance entitled, *Interim Guidance: Civil Immigration Enforcement and Removal Priorities*. The ICE interim guidance, which remained in effect until November 29, 2021 (when the Guidelines for Enforcement of Civil Immigration Law became effective), directed ICE officers and agents to focus ICE’s limited civil immigration enforcement and removal resources on cases presumed to be national security, border security, and public safety priorities. In accordance with the interim priorities, between February 18, 2021, and September 30, 2021, ICE removed 10,294 noncitizens that fell under the “border security” category.

| | |
|-------------------|--|
| Question#: | 20 |
| Topic: | Priorities for Removal |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Question: The Guidelines establish that an alien who "poses a current threat to public safety, typically because of serious criminal conduct, is a priority for removal." The Guidelines explicitly reject bright lines or categories, and require an "assessment of the individual and the totality of the facts and circumstances" in each case. Are there any facts and circumstances that would cause each of the following aliens not to be a priority for removal under the Guidelines?

An alien who has been convicted of recently receiving and possessing child pornography

An alien who has been convicted of receiving and possessing child pornography four years ago but has not committed any such acts since that time

An alien who committed an act of domestic violence 10 years ago, and is currently a caregiver to a young child

An alien who is convicted of receiving stolen goods

An alien who is convicted of embezzlement

An alien who is convicted of peeping or spying into a dwelling or enclosure

An alien who uses a computer or computer network to invade the privacy of another person

An alien who is convicted of credit card theft or forgery

An alien who is convicted of financially exploiting an incapacitated adult

An alien who influences, obstructs, impedes, or endeavors to influence, obstruct, or impede the due administration of justice

An alien who has received multiple convictions for driving a motor vehicle while intoxicated, but has not committed any such acts in the past year

An alien who 5 years ago was convicted for possessing a firearm as a convicted felon

An alien who has been convicted of distributing a controlled substance, but was not in possession of a firearm at the time of the offense

| | |
|-------------------|--|
| Question#: | 20 |
| Topic: | Priorities for Removal |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Response: On June 10, 2022, the U.S. District Court for the Southern District of Texas issued a final judgment vacating the Department's September 30, 2021 memorandum, Guidelines for the Enforcement of Civil Immigration Law (Mayorkas Memorandum). Based on that, effective June 25, 2022, ICE ceased to follow the Mayorkas Memorandum. In the absence of the Mayorkas Memorandum, ICE makes enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

| | |
|-------------------|--|
| Question#: | 21 |
| Topic: | Charges Declined |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Question: Rachael Rollins, President Biden's nominee to be the U.S. Attorney for the District of Massachusetts, has published a list of 15 charges for which her default is to decline prosecution. The list is available here: <https://rollins4da.com/policy/charges-to-be-declined/>. Would any of the offenses in Ms. Rollins' list make an alien a priority for apprehension and removal by U.S. Immigration and Customs Enforcement under the Guidelines?

Response: On June 10, 2022, the U.S. District Court for the Southern District of Texas issued a final judgment vacating the Department's September 30, 2021 memorandum, Guidelines for the Enforcement of Civil Immigration Law (Mayorkas Memorandum). Based on that, effective June 25, 2022, ICE ceased to follow the Mayorkas Memorandum. In the absence of the Mayorkas Memorandum, ICE makes enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

| | |
|-------------------|--|
| Question#: | 22 |
| Topic: | Removing Aliens |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Question: As of October 29, 2021, CBP had released 137,820 aliens into the interior with either a Notice to Report or on parole with Alternatives to Detention. Only 17.86 percent of these aliens had received charging documents at that time. If these aliens fail to report within the reporting timeframe, does ICE intend to locate and remove them?

Response: It should be noted that CBP ceased the use of Notices to Report (NTRs) by November 1, 2021. When noncitizens who were issued an NTR and fail to subsequently comply with instructions to report to an ICE field office within the given timeframe for further processing, they may become subject to further enforcement action. As a result, as with any noncitizen in the United States without lawful status, ICE will make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

Question: Has ICE allocated resources for this task?

Response: Yes. Beginning on November 7, 2021, ERO commenced three phases of Operation Horizon. The focus of Operation Horizon was to address the backlog of cases requiring the issuance and filing of charging documents with DOJ's Executive Office for Immigration Review on those noncitizens released with an NTR or on parole by CBP. Resources were allocated for this operation, including the use of 1945 Act premium pay to allow volunteer ICE personnel to work after hours and on weekends to limit interruptions to regular scheduled operations during the workweek.

| | |
|-------------------|--|
| Question#: | 23 |
| Topic: | Parole Reentry |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Question: In the text of H.R. 5376 recently passed by the U.S. House of Representatives, aliens who have been unlawfully present in the United States for at least ten years would be eligible for parole under INA § 212(d)(5) and travel authorization. If an alien who receives parole and a travel authorization under this provision were to be the beneficiary of an immigrant visa petition by his or her U.S. citizen spouse or child over the age of 21, would U.S. Customs and Border Protection permit him or her to reenter the United States after traveling abroad for a visa interview at a U.S. embassy or consulate, notwithstanding the 10-year bar established under INA § 212(a)(9)(B)?

Response: DHS's response to this question would be dependent on the facts and circumstances of the individual case in question, as decisions to issue parole are made on a case-by-case basis.

| | |
|-------------------|--|
| Question#: | 24 |
| Topic: | Cases Referred |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Question: How many illegal reentry cases has DHS referred for prosecution under 8 U.S.C. § 1326 since you took office as Secretary of Homeland Security? Please break down figures by month and by Border Patrol Sector.

Response: Please see Attachment A

Question: How many criminal improper entry cases has DHS referred for prosecution under 8 U.S.C. § 1325(a) since you took office as Secretary of Homeland Security? Please break down figures by month and by Border Patrol Sector.

Response: Please see Attachment B

Question: Do you believe that § 1325(a) and § 1326 prosecutions have a deterrent effect on illegal entries and reentries?

Response: 8 USC § 1325(a) and § 1326 prosecutions are an important part of USBP's Consequence Delivery System. This system applies consequences in a data-driven manner to discourage repeat attempts at unauthorized entry by leveraging the most effective consequence for unauthorized entry. USBP's ability to prosecute is contingent upon the prosecutorial guidelines of each U.S. Attorney's Office.

Attachment A

**USBP Nationwide Encounters Referred to Prosecution for 8 USC 1326 by Sector
February 2, 2021 through August 25, 2022**

Data includes T8 Deportable Migrants and T42 Encounters Only

Data Source: EID (Unofficial) FY21 as of End of Year Date; Prosecution Data, FY22TD as of 9/22/22

| FY | Month | SBO | | | | | | | | | SBO Total | NBO | | | | | | | NBO Total | CBO | | | CBO Total | Nationwide Total | |
|-------------------------|--------------------|--------------|--------------|------------|--------------|--------------|--------------|--------------|--------------|--------------|---------------|----------|----------|----------|-----------|-----------|----------|----------|--------------|-----------|------------|----------|--------------|---------------------|---------------|
| | | BBT | DRT | ELC | EPT | LRT | RGV | SDC | TCA | YUM | | BLW | BUN | DTM | GFN | HLT | HVM | SPW | | SWB | MIP | NLL | | | RMY |
| FY2021 | Feb | 84 | 39 | 21 | 53 | 114 | 218 | 32 | 152 | 22 | 735 | | | | | | | 1 | 1 | 6 | 1 | | 7 | 743 | |
| | Mar | 98 | 70 | 20 | 80 | 122 | 264 | 69 | 142 | 19 | 884 | | | | 3 | | | 1 | 4 | 13 | | 5 | 18 | 906 | |
| | Apr | 103 | 76 | 37 | 72 | 168 | 318 | 51 | 194 | 27 | 1,046 | | | | 1 | 3 | | | 4 | 1 | 1 | 4 | 6 | 1,056 | |
| | May | 129 | 91 | 39 | 89 | 189 | 339 | 95 | 227 | 53 | 1,251 | | | | 1 | | | | 1 | 4 | | 4 | 8 | 1,260 | |
| | Jun | 93 | 77 | 24 | 80 | 145 | 307 | 71 | 176 | 54 | 1,027 | | | | 1 | | | 1 | 2 | 6 | | | 6 | 1,035 | |
| | Jul | 84 | 67 | 28 | 92 | 115 | 230 | 90 | 144 | 27 | 877 | | | | | | | | 0 | 1 | | 1 | 2 | 879 | |
| | Aug | 52 | 105 | 35 | 111 | 94 | 259 | 70 | 160 | 39 | 925 | | | | | 1 | | | 1 | 5 | | 6 | 11 | 937 | |
| | Sep | 49 | 108 | 38 | 90 | 94 | 249 | 42 | 197 | 20 | 887 | | | | | | | | 0 | 5 | | 3 | 8 | 895 | |
| | FY2022TD to Aug 25 | Oct | 73 | 138 | 25 | 87 | 83 | 310 | 33 | 260 | 37 | 1,046 | | | 1 | | | | 1 | 15 | 1 | | 16 | 1,063 | |
| Nov | | 60 | 116 | 21 | 96 | 73 | 278 | 51 | 215 | 43 | 953 | | | | | | | 3 | 3 | 7 | | | 7 | 963 | |
| Dec | | 42 | 118 | 16 | 71 | 59 | 230 | 34 | 177 | 35 | 782 | | | | 1 | | 1 | 5 | 7 | 17 | | | 17 | 806 | |
| Jan | | 33 | 114 | 22 | 83 | 55 | 247 | 64 | 231 | 106 | 955 | | | | | | | | 0 | 3 | | 1 | 4 | 959 | |
| Feb | | 47 | 114 | 19 | 112 | 91 | 230 | 53 | 274 | 172 | 1,112 | | | | 1 | | | 1 | 2 | 5 | | 5 | 10 | 1,124 | |
| Mar | | 93 | 139 | 23 | 120 | 122 | 263 | 43 | 351 | 192 | 1,346 | | | | 1 | 1 | | 1 | 3 | 6 | | 4 | 10 | 1,359 | |
| Apr | | 175 | 170 | 25 | 178 | 101 | 253 | 63 | 311 | 147 | 1,423 | 2 | | | | 2 | | 1 | 3 | 8 | 7 | 1 | 4 | 12 | 1,443 |
| May | | 163 | 128 | 20 | 196 | 75 | 272 | 45 | 289 | 158 | 1,346 | | | | 1 | | | | 3 | 4 | 8 | 2 | 5 | 15 | 1,365 |
| Jun | | 120 | 124 | 25 | 136 | 73 | 247 | 45 | 373 | 181 | 1,324 | | | | | 1 | | | 3 | 4 | 6 | 1 | 4 | 11 | 1,339 |
| Jul | | 79 | 123 | 28 | 121 | 67 | 261 | 59 | 570 | 161 | 1,469 | | | | 1 | | | | 2 | 3 | 5 | 1 | 2 | 8 | 1,480 |
| Aug | 36 | 108 | 14 | 126 | 52 | 237 | 41 | 434 | 89 | 1,137 | | | | 3 | | | | 4 | 7 | 4 | | 7 | 11 | 1,155 | |
| 8 USC 1326 Total | | 1,613 | 2,025 | 480 | 1,993 | 1,892 | 5,012 | 1,051 | 4,877 | 1,582 | 20,525 | 2 | 0 | 1 | 11 | 10 | 1 | 2 | 28 | 55 | 124 | 8 | 55 | 187 | 20,767 |

Attachment B

**USBP Nationwide Encounters Referred to Prosecution for 8 USC 1325(a) by Sector
February 2, 2021 through August 25, 2022**

Data includes T8 Deportable Migrants and T42 Encounters Only

Data Source: EID (Unofficial) FY21 as of End of Year Date; Prosecution Data, FY22TD as of 9/22/22

| FY | Month | SBO | | | | | | | | SBO Total | NBO | | | | | | | NBO Total | CBO | | | CBO Total | Nationwide Total | | |
|----------------------------|-------|------------|----------|-----------|------------|-----------|-----------|------------|--------------|--------------|--------------|----------|----------|----------|----------|----------|----------|--------------|------------|------------|----------|--------------|---------------------|----------|--------------|
| | | BBT | DRT | ELC | EPT | LRT | RGV | SDC | TCA | | YUM | BLW | BUN | DTM | GFN | HLT | HVM | | SPW | SWB | MIP | | | NLL | RMY |
| FY2021 | Feb | 5 | | 2 | 1 | | | 7 | | 1 | 16 | | | | | | | 2 | 2 | | | 0 | 18 | | |
| | Mar | 1 | | 3 | 1 | | | 8 | | | 13 | | | 2 | | | | 3 | 5 | | | 0 | 18 | | |
| | Apr | 2 | | 9 | 9 | | | 13 | 2 | 1 | 36 | | | | | | | 5 | 5 | | | 0 | 41 | | |
| | May | 2 | | 5 | 2 | 5 | 4 | 8 | 1 | 1 | 28 | | | 1 | | | | 2 | 3 | | | 0 | 31 | | |
| | Jun | | | 2 | 7 | 1 | 2 | 8 | | | 20 | | | | | | | 2 | 2 | | | 0 | 22 | | |
| | Jul | 4 | | 5 | 12 | 4 | 4 | 19 | 4 | 1 | 53 | | | | | | | | 0 | | | | 0 | 53 | |
| | Aug | 7 | | 2 | 10 | 7 | 3 | 14 | 11 | 2 | 56 | | | | | | | 3 | 3 | | | 0 | 59 | | |
| | Sep | 2 | | 4 | 8 | 7 | 5 | 6 | 45 | | 77 | | | | | | | 2 | 2 | | | 0 | 79 | | |
| | Oct | 6 | | 1 | 10 | 5 | 2 | 8 | 67 | 3 | 102 | | | | | | | | 0 | 1 | | | 1 | 103 | |
| FY2022TD to Aug 25 | Nov | 6 | | | 5 | 7 | | 7 | 37 | 5 | 67 | | | | | | 1 | 1 | | | 0 | 68 | | | |
| | Dec | 13 | | 1 | 6 | 2 | 2 | 6 | 56 | 4 | 90 | | | | 1 | | | 7 | 8 | 2 | | 2 | 100 | | |
| | Jan | 13 | | 4 | 4 | 2 | | 6 | 71 | 41 | 141 | | | | | | | 2 | 2 | | | 0 | 143 | | |
| | Feb | 26 | | 4 | 9 | 4 | 2 | 14 | 135 | 87 | 281 | | | | | | | 3 | 3 | | | 0 | 284 | | |
| | Mar | 21 | | 2 | 13 | 2 | 1 | 7 | 131 | 100 | 277 | | | | | | | 12 | 15 | | | 0 | 292 | | |
| | Apr | 12 | | 5 | 14 | | 4 | 10 | 138 | 72 | 255 | 1 | | 3 | | | | 13 | 14 | | | 0 | 269 | | |
| | May | 24 | | 1 | 22 | 1 | 4 | 7 | 125 | 63 | 247 | | | | | | | 21 | 21 | | | 0 | 268 | | |
| | Jun | 13 | | 2 | 18 | 2 | 4 | 8 | 224 | 99 | 370 | | | | | | | 37 | 37 | | | 0 | 407 | | |
| | Jul | 43 | | 3 | 24 | 3 | 2 | 8 | 385 | 79 | 547 | | | | 2 | | | 40 | 42 | | | 0 | 589 | | |
| Aug | 19 | | | 13 | | | 6 | 315 | 48 | 401 | | | | 1 | | | 33 | 34 | | | 0 | 435 | | | |
| 8 USC 1325(a) Total | | 219 | 0 | 55 | 188 | 52 | 39 | 170 | 1,747 | 607 | 3,077 | 1 | 3 | 0 | 6 | 1 | 0 | 0 | 188 | 199 | 3 | 0 | 0 | 3 | 3,279 |

| | |
|-------------------|--|
| Question#: | 25 |
| Topic: | Detained Pending Trial |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Question: Is DHS recommending that aliens charged with illegal reentry under 8 U.S.C. § 1326 be detained pending trial due to flight risk or danger to the public? Does the Department of Justice agree that such aliens should be detained pending trial?

Response: DHS respectfully defers to DOJ, as individuals who are criminally charged under this provision are in the custody of DOJ.

Question: Are you aware of any guidance that DOJ intends to put out to U.S. Attorneys with respect to detention of defendants in illegal reentry cases?

Response: DHS respectfully defers to DOJ.

| | |
|-------------------|--|
| Question#: | 26 |
| Topic: | Reports to CBP |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable John Cornyn |
| Committee: | JUDICIARY (SENATE) |

Question: Is DHS undertaking any efforts to implement and/or test information-sharing platforms that would allow state and local law enforcement officers to push reports on alien and contraband smuggling to CBP? If so, what is the status of those efforts?

Response: The Department has several information solutions geared to specific mission profiles for Federal, State and Local partners. Each platform is developed to perform a distinct function and with consideration to its data, sensitivity, and the system's users. Systems like HSIN – which promotes sharing data for a wide population of users – is geared for general law enforcement information sharing. For active law enforcement actions, such as reports on alien smuggling, DHS has different systems and mechanisms for sharing action-specific data.

| | |
|-------------------|--|
| Question#: | 1 |
| Topic: | Settlement Agreements |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Secretary Mayorkas, in the Department of Homeland Security Oversight hearing, you insisted that you know nothing about the payments being negotiated between families legally separated at the border and the Department of Homeland Security. Have you participated in any discussions about these settlement agreements whether within the Department of Homeland Security, with the Department of Justice, or with the White House? If yes, please tell us the nature of these discussions and whether they have included discussing the impact these payments will have on encouraging other immigrants to come to our southern border?

Response: It is longstanding practice for Administrations of both parties not to disclose internal deliberations, including any discussions with the White House. Furthermore, we do not comment on any on-going litigation matters.

| | |
|-------------------|--|
| Question#: | 2 |
| Topic: | Non-Citizens Vote |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Would these payments constitute vote-buying? If not, why not?

Should non-citizens who have crossed our borders illegally be allowed to vote in state and local elections?

Response: Since this matter is subject to current litigation, the U.S. Department of Homeland Security (DHS) cannot comment on on-going litigation.

| | |
|-------------------|--|
| Question#: | 3 |
| Topic: | Workforce Plan |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Secretary Mayorkas, in the Oversight Hearing, you said you had a plan for maintaining a functioning Border Patrol workforce in the coming months, should significant portions of your workforce suddenly become unable to work. You said you would share with us the details of that plan. Please do so here.

Response: Maintaining and deploying the U.S. Border Patrol (USBP) workforce is handled at the local level with decisions made by sector and station Border Patrol leadership to determine how to best deploy their available workforce. In the field, USBP shifts human resources to maximize the organization's ability to predict, prevent, detect, identify, classify, track, respond, and resolve border security threats.

To ensure compliance with an applicable preliminary nationwide injunction, which may be supplemented, modified, or vacated depending on the course of ongoing litigation, U.S. Customs and Border Protection (CBP) will take no action to implement or enforce the COVID-19 vaccination requirement pursuant to Executive Order 14043 on Requiring Coronavirus Disease 2019 Vaccination for Federal Employees. Therefore, at this time, no disciplinary actions, including removals, will be considered for any Federal employee.

| | |
|-------------------|--|
| Question#: | 4 |
| Topic: | Agents Accused |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: In another personnel failure, the Biden Administration bowed to open borders advocacy groups and liberal media by failing to defend U.S. Border Patrol agents falsely accused of whipping illegal immigrants-in fact President Biden himself was characteristically quick to condemn the actions of these agents. Please provide us with an update on the status of the employment of these individuals and what efforts are being made by the Department of Homeland Security to compensate them for defamation of character.

Response: CBP Office of Professional Responsibility (OPR) conducted a full and independent investigation of the U.S. Border Patrol’s (USBP) Horse Patrol Unit activity in Del Rio, Texas, on September 19, 2021 and released the report on July 8, 2022. The independent investigation concluded that there were failures at multiple levels of the agency, a lack of appropriate policies and training, and unprofessional and dangerous behavior by several individual Agents. The investigation included over 30 interviews and reviewed numerous videos, photographs, and documents related to the incident finding no evidence that agents struck any person with horse reins. Those interviewed included USBP management officials, USBP Agents, Texas Department of Public Safety troopers and others who were present during the incident, as well as USBP personnel associated with the Horse Patrol Program. The investigation also reviewed documentation including court filings by the migrants involved in this incident as well as videos and photos of the incident captured by CBP Air and Marine Operations (AMO) and members of the media who were present during the incident. The full Report of Investigation containing 511 pages has been made public, consistent with our commitment to transparency and accountability.¹

¹ [CBP Office of Professional Responsibility - Del Rio Horse Patrol Unit Investigation Report | U.S. Customs and Border Protection.](#)

| | |
|-------------------|--|
| Question#: | 5 |
| Topic: | Non-Citizens In-and-Out |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Secretary Mayorkas, how many non-citizens come in and out of this country legally every year?

Response: Prior to the COVID-19 pandemic the United States granted an average of 180 million nonimmigrant admissions per year. (This number counts total entries, not unique individuals. Many nonimmigrants enter multiple times over the course of a year.) With the start of the pandemic in March 2020, total nonimmigrant admissions fell to 86 million in Fiscal Year (FY) 2020 and to 35 million in 2021.

CBP reports on nonimmigrant overstays in its annual Entry/Exit Overstay Report. In FY 2019 and FY 2020, CBP reported total overstay rate of 1.21 percent and 1.48 percent, respectively, for in-scope travelers covered by the report (which are a subset of all nonimmigrant admissions), meaning more than 98 percent of in-scope travelers departed on time both years. FY 2021 overstay data are not yet available.

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Visa Overstays |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Most interested groups estimate 185 million people come into and out of the United States legally each year. However, 60 percent of those who come here legally overstay their visas and remain here illegally.

What is the capacity of the Department of Homeland Security for making sure visitors leave in accordance with the terms of their visas?

Response: Identifying a visa overstay requires coordination between different agencies whose systems do not always directly or automatically interface with one another. The overstay identification process is conducted using arrival and departure data collected by CBP and immigration benefit data, such as extensions of stay granted by U.S. Citizenship and Immigration Services (USCIS). This information is consolidated to generate a complete history for individuals who traveled, and were subsequently admitted, to the United States. However, there are major physical, logistical, and operational obstacles to identifying an individual's specific departure data. For example, CBP does not always track departure data for land ports of entry. DHS continues to improve its data collection and systems to better identify overstays, as well as to continue to notify travelers enrolled in the Visa Waiver Program in advance of the end date of their period of authorized admission in the United States.

CBP reports on nonimmigrant overstays in its annual Entry/Exit Overstay Report. In FY 2019 and FY 2020, CBP reported total overstay rate of 1.21 percent and 1.48 percent, respectively, for in-scope travelers covered by the report (which are a subset of all nonimmigrant admissions), meaning more than 98 percent of in-scope travelers departed on time both years. FY 2021 overstay data are not yet available.

Question: What efforts are being made under your leadership to remove visa overstays?

Response: Currently, U.S. Immigration and Customs Enforcement (ICE) does not have the resources to apprehend and remove every noncitizen eligible for removal from the United States. As such, ICE officers are instructed to review a noncitizen's entire criminal and administrative record along with other key sources of information to determine whether a noncitizen currently represents a danger to the United States, and thus, warrants the use of ICE's limited resources to pursue an enforcement action. As a result, as with any removable noncitizen present in the United States, ICE will make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by ICE officers' experience as law enforcement officers.

Question: How many visa overstays have been removed since January 20, 2021?

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Visa Overstays |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Response: Please refer to the below table for visa overstays removals for FY 2021 and FY 2022, year-to-date (YTD).

FY 2021 (after January 20, 2021) through FY 2022 YTD

ICE Removals of Visa Overstays²

| Fiscal Year | Removals |
|--------------------|-----------------|
| Total | 1,860 |
| 2021 | 780 |
| 2022 (YTD) | 1,080 |

²FY 2022 YTD ICE Removals data are updated through August 27, 2022. FY 2021 data is historical and remains static. ICE Removals include Returns. Returns include Voluntary Returns, Voluntary Departures, and Withdrawals Under Docket Control. ICE Removals include noncitizens processed for Expedited Removal (ER) or Voluntary Return (VR) that are turned over to ERO for detention. Noncitizens processed for ER and not detained by ERO or VR after June 1, 2013 and not detained by ERO are primarily processed by the USBP. CBP should be contacted for those statistics. Starting in FY 2009, ICE began to “lock” removal statistics at the end of each FY and counted only the noncitizens whose removal or return was already confirmed. Noncitizens removed or returned in that FY but not confirmed until after the end of that FY were excluded from the locked data and thus from ICE statistics. To ensure an accurate and complete representation of all removals and returns, ICE will include the removals and returns confirmed after the end of that FY into the next FY.

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Too Many to Supervise |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Or is it the case, that 185 million people coming and going is too many for the Department of Homeland Security to supervise?

Response: Noncitizens who enter the United States for travel or other purposes and are not subject to “supervision” by the DHS. If a nonimmigrant visitor overstays their visa, they may be subject to DHS enforcement as applicable on a case-by-case basis.

| | |
|-------------------|--|
| Question#: | 8 |
| Topic: | Detained |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Secretary Mayorkas, how many of the 1.7 million illegal crossers encountered this year have been detained as required by law?

Response: ICE detains noncitizens, including certain noncitizens subject to mandatory detention requirements, to secure their presence for immigration proceedings and/or removal from the United States.

In FY 2021, there were 211,450 book-ins to ICE custody. As of December 26, 2021, there were 21,061 noncitizens in ICE detention facilities. Custody decisions are made case-by-case based on different factors and detention capacity is limited by factors including bedspace availability and safety limitations. Where detention is mandated by statute, ICE will detain the noncitizen absent a court order prohibiting detention, or other legal impediment.

| | |
|-------------------|--|
| Question#: | 9 |
| Topic: | Resources Necessary |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Will you please supply Congress with a detailed list of the resources necessary to regain control of our southern border?

Response: The FY 2023 President’s Budget request includes the following requests for investments in Modern Border Security Technology and Noncitizen Processing and Care:

Modern Border Security Technology

- \$63.2M for Border Enforcement Coordination Network (BECN): Supports the modernization of IT systems, equipment, and services that support the planning, detection, classification, and analysis of illegal border activity, providing program confluence and database architecture enhancement.
- \$60.2M to fund three unmissionized aircraft, which will be the base aircraft for the first three Land Interdiction Multi-Role Enforcement Aircraft (MEA), as well as procure long lead time materials for the acquisition of the second and third Land Interdiction MEAs.
- \$36.7M for Common Operating Picture (COP): Funds maturation, testing, training, and transitioning to Initial Operational Capability (IOC) status for the COP installation at Douglas, Arizona USBP facility and three additional USBP locations. IOC is tentatively scheduled for the 4th quarter of FY 2023.
- \$13.5M for Integrated Surveillance Towers (IST): Establishes a program to consolidate all surveillance towers into a single program. Also supports the sustainment of 723 towers across the Northern and Southern Borders of the United States.
- \$13M for Aircraft Sensor Upgrades: Replaces obsolete, out-of-production, difficult, and expensive-to-support aircraft sensor integrated mission systems.

Noncitizen Processing and Care

- \$129.5M for Medical Services at the Border: Funds contracted medical support to individuals in CBP custody at approximately 63 locations. Additionally, this funding supports the transition of responsibility for paying off-site medical claims for migrants in CBP custody from ICE to CBP (\$31.5M), and the establishment of the Office of the Chief Medical Officer (\$28.8M).
- \$26M for Unified Immigration Portal (UIP): Supports completion of Phase 4 for UIP which will enable completion of core capabilities that are necessary to prepare the program to achieve Full Operational Capability, expected in the 4th quarter of FY 2023. Requested funding will also support the deployed Phases 1-3 of UIP.

| | |
|-------------------|--|
| Question#: | 9 |
| Topic: | Resources Necessary |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

- \$23M for Border Patrol Processing Coordinators: Funds the hiring of 300 additional Border Patrol Processing Coordinators.
- \$17.7M for the Transportation Program: Funds transportation of non-citizens at the Southwest border.

Finally, the FY 2023 President's Budget also requests \$60M to construct two new Border Patrol stations, \$65.3M to hire 300 additional BPAs, \$29.5M for Border Patrol Training, \$10M to continue Resiliency efforts in CBP and \$4.2M to hire 33 Intelligence Specialists for USBP.

| | |
|-------------------|--|
| Question#: | 10 |
| Topic: | Anduril Program |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Has the Department of Homeland Security employed the program of record, Anduril? I understand the Anduril program has been approved and made available for DHS purchase and would use drone technology and autonomous watch towers with real-time archiving to allow us to target our people and resources to vulnerable crossing points. This was approved during the Trump administration, the technology is made entirely in the United States, and would help the Department of Homeland Security achieve operational control of the border. If the Department of Homeland Security has not employed the use of this program of record during a time of unprecedented chaos on our southern border, please provide an explanation for this delay on the use of this cost-effective solution.

Response: The USBP Program Management Office Directorate (PMOD) fielded 201 Anduril Autonomous Surveillance Towers (ASTs) along the southwestern border from September 24, 2019 to present (November 18, 2022). AST became a Program Of Record in April 2020 and was consolidated into Integrated Surveillance Towers (IST) March 2022. During 3QFY2022, the AST Program received additional Procurement funding which enabled the purchase of 74 additional towers. These towers will be deployed over the next 18 months along the southwest border, bringing the total number of ASTs to 278. On average, the ASTs are credited with 2,000 interdictions per week.

| | |
|-------------------|--|
| Question#: | 11 |
| Topic: | MPP Reinstating |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Secretary Mayorkas, the Department of Homeland Security was ordered by a Federal Court to reinstate the Migrant Protection Protocols in good faith. Since that time, we have seen no meaningful efforts by the Department to reinstate these protocols.

Has the Department of Homeland Security reinstated the Migrant Protection Protocols? If not, why not?

Response: On June 30, 2022, the Supreme Court affirmed that the Secretary has the discretionary authority to terminate the Migrant Protection Protocols (MPP). On August 8, 2022, the U.S. District Court for the Northern District of Texas lifted the injunction that required DHS to reimplement MPP in good faith. Individuals are no longer being newly enrolled in MPP, and individuals currently in MPP in Mexico are disenrolled when they return for their next scheduled court date. Individuals disenrolled from MPP will continue their removal proceedings in the United States.

Prior to the lifting of the injunction, DHS worked to ensure the safe and orderly reimplementations of MPP in good faith. The reimplementations began in the El Paso, Texas, sector on December 6, 2021, and DHS expanded the program across the Southwest Border. Those enrolled and processed into MPP were returned at four ports of entry: El Paso, Texas; San Diego, California; Brownsville, Texas; and Laredo, Texas.

| | |
|-------------------|--|
| Question#: | 12 |
| Topic: | Compliance with Other Aspects |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: What efforts has the department made to comply with the other aspects of the court's injunction?

Response: On June 30, 2022, the Supreme Court affirmed that the Secretary has the discretionary authority to terminate the Migrant Protection Protocols (MPP). On August 8, 2022, the U.S. District Court for the Northern District of Texas lifted the injunction that required DHS to reimplement MPP in good faith. Individuals are no longer being newly enrolled in MPP, and individuals currently in MPP in Mexico are disenrolled when they return for their next scheduled court date. Individuals disenrolled from MPP will continue their removal proceedings in the United States.

Prior to the lifting of the injunction, DHS worked to ensure the safe and orderly reimplementation of MPP in good faith. The reimplementation began in the El Paso, Texas, sector on December 6, 2021, and DHS expanded the program across the Southwest Border. Those enrolled and processed into MPP were returned at four ports of entry: El Paso, Texas; San Diego, California; Brownsville, Texas; and Laredo, Texas.

Question: What percentage of the 1.5 million aliens who have crossed our southern border illegally during this administration are currently being held in detention?

Response: As of December 26, 2021, there were 21,061 noncitizens in ICE detention facilities. In FY 2021, there were 211,450 book-ins to ICE custody.

| | |
|-------------------|--|
| Question#: | 13 |
| Topic: | Adjudicating Asylum |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: The Department of Homeland Security in conjunction with the Department of Justice recently issued a proposed rule drastically changing the processes associated with adjudicating asylum. I strongly oppose this rule, which, in my view violates the directives given to these two agencies by Congress. Of great concern to me is the expansion of the use of the parole authority, which in expedited removal should be extraordinarily limited, and even outside of expedited removal is limited to two circumstances and is to be determined on a case-by-case basis.

How is the proposed rule's aggrandizement of the parole authority consistent with the directives given to your agency and the Department of Justice by Congress? Specifically, how does it adhere to the limited ability given by Congress to grant parole on a case-by-case basis?

Response: In the proposed rule, the Departments proposed to revise parole considerations prior to a credible fear determination. *See Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 86 FR 46906, 46910 (Aug. 20, 2021). On March 29, 2022, the Departments published an interim final rule (“IFR”), which responded to comments received in response to the proposed rule and adopted the proposed rule with changes. *See Procedures for Credible Fear Screening and Consideration of Asylum, Withholding of Removal, and CAT Protection Claims by Asylum Officers*, 87 FR 18078. The Departments provided a detailed discussion of how the rule is consistent with the parole statute, 8 U.S.C. § 1182(d)(5).

| | |
|-------------------|--|
| Question#: | 14 |
| Topic: | Holding Space |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: Is a failure to be prepared with enough holding space an emergency situation which would allow for mass parole, or is the Department actively taking steps to develop more holding space based on the current rate of illegal immigration in to this country?

Response: The CBP Office of Field Operations (OFO) examines all persons who are present at a port of entry for identity, citizenship, and admissibility. Noncitizens who appear to be inadmissible to the United States and are not expelled under Title 42 are processed in accordance with Title 8 of the U.S. Code. All CBP facilities are designated by law as short-term holding facilities, where noncitizens are held for the shortest amount of time necessary to process, and repatriate or transfer. The use of parole is governed by section 212(d)(5)(A) of the INA and implemented in accordance with the statute and regulations, including 8 C.F.R. § 212.5.

U.S. Border Patrol prepares based on indications, warnings, and emergent traffic trends by erecting multiple temporary soft-sided facilities to absorb the overflow resultant of mass migration activities. These facilities serve as a temporary solution and are intended to expedite the safe and humane processing of undocumented noncitizens. These facilities are not intended for undocumented noncitizen long-term holding.

The CBP Office of Facilities and Maintenance continues to execute a multi-pronged effort to address CBP and interagency (DHS Chief Readiness Officer, ICE, USCIS, Federal Emergency Management Agency, the U.S. Department of Justice (DOJ), and the U.S. Department of Health and Human Services (HHS) requirements for Southwest Border infrastructure, to include holding and processing modifications/expansions.

| | |
|-------------------|--|
| Question#: | 15 |
| Topic: | Mandatory Bars to Immigration |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: If the Department of Homeland Security were genuinely interested in increasing the functionality of expedited removal, the mandatory bars to immigration would be applied in the first instance—even in the initial screening with an immigration officer. Can you please tell me whether applying mandatory bars in the first instance would be required under the new rule? If no, why not?

Response: In the notice of proposed rulemaking, the Department proposed to return to the language in the regulations to reflect the existing and two-decade long practice of not applying the mandatory bars to asylum and withholding of removal to the credible fear screening determination, with limited exception. *See* 86 FR at 46906, 45914. That policy determination is reflected in the interim final rule. *See* 87 FR at 18092-94.

| | |
|-------------------|--|
| Question#: | 16 |
| Topic: | Limiting Principle |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: The proposed rule completely ignores the rights and interests of the American people. Is every person on this earth who can qualify for asylum entitled to asylum in this country? If so, in your mind, what is the limiting principle?

Response: Our immigration laws require that we process asylum claims in support of humanitarian relief and remove individuals who do not qualify. We are enforcing those laws. At the same time, we are making the asylum process more timely and fair. DHS issued an asylum rule that is the most significant improvement to the asylum process in decades. More efficient processing of asylum claims means that those deserving of protection will receive it more quickly and those whose claims are denied will be removed more quickly. When fully implemented and resourced, the timeframe for hearing and deciding these asylum claims will shrink from several years to several months.

| | |
|-------------------|--|
| Question#: | 17 |
| Topic: | Asylees Accepted |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Mike Lee |
| Committee: | JUDICIARY (SENATE) |

Question: How many asylees can America accept in any given year without creating undue burdens on its people, states, and institutions?

Response: The rule would not have substantial direct effects on the States, on the relationship between the National Government and the States, or on the distribution of power and responsibilities among the various levels of government. *See* 86 FR at 46939; 87 FR at 18193. The Departments determined the rule is within the purview and authority of the Departments and does not directly affect States. *See id.* The rule's primary consequences are to authorize a new procedure by which asylum claims originating in expedited removal and credible fear screening process may be adjudicated and to authorize a revision to the regulations governing parole of noncitizens in expedited removal.

To the extent that States and local communities bear social or economic costs associated with noncitizens entering the United States without documentation and seeking asylum, those are not costs associated with the rule. This rule is not expected to create any significant new incentives that would drive increased irregular migration. To the contrary, by reducing the amount of time an individual can expect to remain in the United States with a pending asylum claim, the rule dramatically reduces a critical incentive for noncitizens not in need of protection to exploit the system. *See* 87 FR at 18194.

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | NTR's Issued |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Please provide detailed data for each of the following questions. For each subquestion, please specifically identify the answer for fiscal year 2021, fiscal year 2022 to date, and calendar year 2021 to date.

Identify the total number of illegal aliens encountered by U.S. Border Patrol at the Southwest border that were issued a Notice to Report.

Response: Please refer to the below chart.

USBP Encounters at the Southwest Border

FY 2021, FY 2022 to YTD, and Calendar Year 2021

| USBP Outcome Category | FY 2021 | FY22TD (Thru Nov. 2021) | Calendar Year 2021 (Thru Nov.2021) |
|-------------------------|---------|-------------------------|------------------------------------|
| Notice to Report (NTR)* | 94,501 | 0 | 94,500 |

*CBP discontinued releasing family unit noncitizens with NTRs on October 15, 2021.

*Any USBP Bag and Baggage or Released with Custodial Redetermination of Notice to Report (NTR)/Prosecutorial Discretion (PD). Note: NTR data based on Final Bookout/Manifest dates.

Question: Of this total number of aliens who were issued an NTR, how many were released into the United States?

Response: Please refer to the below chart. Noncitizens who received NTRs were further instructed to report to an ICE field office within a specified timeframe of arriving at their destination. CBP has discontinued the use of NTRs.

| USBP Outcome Category | FY 2021 | FY22TD (Thru Nov. 2021) | Calendar Year 2021 (Thru Nov.2021) |
|-------------------------|---------|-------------------------|------------------------------------|
| NTR* Released into U.S. | 94,501 | 0 | 94,500 |

*CBP discontinued releasing family unit noncitizens with NTRs on October 15, 2021.

*Any USBP Bag and Baggage or Released with Custodial Redetermination of NTR/PD. Note: NTR data based on Final Bookout/Manifest dates.

Question: Of this total number of aliens who were issued an NTR, how many have voluntarily reported to an Immigration & Customs Enforcement (ICE) office?

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | NTR's Issued |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Response: Please refer to the below table for the number of noncitizens who were released by CBP with a NTR and checked into an ICE field office.

PD/NTR Releases that checked into an ICE Field Office³

| Timeframe of Releases | FY 2021 | FY22TD (Oct 2021- Nov 2021) | Calendar Year 2021 (Jan 2021- Dec 2021) |
|--|---------|-----------------------------|---|
| Total Releases | 75,586 | N/A* | 75,586 |
| *CBP discontinued releasing family unit noncitizens with NTRs on October 15, 2021. | | | |

Question: Identify the number of illegal aliens encountered by U.S. Border Patrol that reported to an ICE office after being issued an NTR that were subsequently issued a Notice to Appear (NTA).

Response: Please refer to the below tables for the number of noncitizens that were released by CBP with an NTR, checked into an ICE field office, and were subsequently issued a charging document, broken down by FY and by month.

PD/NTR Releases that checked into an ICE Field Office and were issued a Charging Document⁴

| Timeframe of Releases | FY 2021 (Oct 2020 – Sept 2021) | FY22TD (Oct 2021 – Nov 2021) | Calendar Year 2021 (Jan 2021 – Dec 2021) |
|--|--------------------------------|------------------------------|--|
| Total Releases | 59,654 | N/A* | 59,654 |
| *CBP discontinued releasing family unit noncitizens with NTRs on October 15, 2021. | | | |

Monthly Breakout of PD/NTR Releases that checked into an ICE Field Office and were issued a Charging Document

³Sources: UIP data extract as of September 6, 2022; timeframe of releases October 1, 2020 through December 31, 2021. Check-in data extracted from Enforcement Integrated Database (EID) as of September 6, 2022. Check-ins are defined when (1) at least one member of the family unit or single adult made contact with a local ICE field office as instructed or was subsequently encountered which resulted in an enforcement action. When at least one family member in all are given credit for a check in; or (2) had an appointment record created in the Field Office Appointment Scheduler (FOAS).

⁴ Sources: UIP data extract as of September 6, 2022; timeframe of releases October 1, 2020 through December 31, 2021. Check-in and Charging Document data extracted from EID as of September 6, 2022. Check-ins are defined when (1) at least one member of the family unit or single adult made contact with a local ICE field office as instructed or was subsequently encountered which resulted in an enforcement action. When at least one family member in all are given credit for a check in; or (2) had an appointment record created in FOAS.

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | NTR's Issued |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

| Month | Total Releases |
|----------------|----------------|
| March 2021 | 2,748 |
| April 2021 | 6,069 |
| May 2021 | 4,146 |
| June 2021 | 7,338 |
| July 2021 | 20,026 |
| August 2021 | 17,348 |
| September 2021 | 1,979 |
| Total | 59,654 |

Question: Of this total number, how many illegal aliens were again released?

Response: Please refer to the below table below for noncitizens who were released by CBP with an NTR, received a charging document when checking in with an ICE field office, and were detained and then released.

PD/NTR Releases that checked into an ICE Field Office, were issued Charging Documents, and were Detained and Released⁵

| Timeframe of Releases | FY 2021 (Oct 2020 – Sept 2021) | FY22TD (Oct 2021 – Nov 2021) | Calendar Year 2021 (Jan 2021 – Dec 2021) |
|--|--------------------------------|------------------------------|--|
| Total Releases | 6,066 | N/A* | 6,066 |
| *CBP discontinued releasing family unit noncitizens with NTRs on October 15, 2021. | | | |

⁵Sources: UIP data extract as of September 6, 2022; timeframe of releases October 1, 2020 through December 31, 2021. Check-in and Charging Document data extracted from EID as of September 6, 2022. Check-ins are defined when (1) at least one member of the family unit or single adult made contact with a local ICE field office as instructed or was subsequently encountered which resulted in an enforcement action. When at least one family member in all are given credit for a check in; or (2) had an appointment record created in FOAS.

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | NTA's Issued |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Please provide detailed data for each of the following questions. For each subquestion, please specifically identify the answer for fiscal year 2021, fiscal year 2022 to date, and calendar year 2021 to date.

Identify the total number of illegal aliens encountered by U.S. Border Patrol at the Southwest border that were issued a Notice to Appear (NTA).

Response:

| USBP Outcome Category | FY 2021 | FY22TD (Thru Nov 2021) | Calendar Year 2021 (Thru Nov 2021) |
|-----------------------|---------|------------------------|------------------------------------|
| Notice to Appear* | 151,565 | 49,759 | 201,289 |

*CBP discontinued releasing family unit noncitizens with NTRs on October 15, 2021.

**Any USBP NTA (Not MPP or ENV) or WA/NTA with Custodial Redetermination of OREC - Order of Recognizance, ORLS - Order of Recognizance Lack of Space, ORLF - Order of Recognizance Lack of Funds, OSLF - Order of Supervision Lack of Funds, OSLS - Order of Supervision Lack of Space, OSUP - Order of Supervision, ORFU - Order of Recognizance - Family Unit, ORHM - Order of Recognizance Humanitarian/Medical, or ORHU - Order of Recognizance - Humanitarian.). Any OFO with a disposition of NTA and a Latest Custody Status of RELEASED or TURNED OVER TO.*

Question: Of this total number of aliens who were issued an NTA, how many are currently being detained?

Response: Please refer to the below table for the number of noncitizens who were issued an NTA by CBP and are currently in ICE custody.

CBP Encounters with an NTA (October 1, 2020 through November 30, 2021) with an ICE Currently Detained

| CBP Encounter Year | Currently Detained |
|--------------------|--------------------|
| FY 2021 | 45 |

⁶ ICE detention data does not include U.S. Department of Health and Human Services Office of Refugee Resettlement transfers/facilities and U.S. Marshals Service prisoners.

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | NTA's Issued |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

| | |
|---|----|
| FY 2022 (Through November 2021) | 8 |
| Calendar Year (CY) 2021 (Through November 2021) | 50 |

Question: How many were released into the United States?

Response: Please refer to the below table for the number of noncitizens who were issued an NTA by CBP and were subsequently released from ICE custody.⁷

CBP Encounters with an NTA (October 1, 2020 through November 30, 2021) with a Subsequent ICE Release

| CBP Encounter Year | ICE Release |
|---------------------------------|-------------|
| FY 2021 | 20,692 |
| FY 2022 (Through November 2021) | 7,327 |
| CY 2021 (Through November 2021) | 27,991 |

Question: Of those released with an NTA, how many have appeared voluntarily to immigration court proceedings?

Response: DHS respectfully defers to the DOJ's Executive Office for Immigration Review.

⁷ICE Releases analysis is based on the year the noncitizen was encountered by CBP and issued an NTA.

⁸ An ICE Final Release is defined as a Final Bookout that reflects one of the following release reasons: Bonded Out, Order of Recognizance, Order of Supervision, Paroled, or PD. All Case Statuses are included. A noncitizen may have multiple releases; only the most recent release is included in this report.

| | |
|-------------------|--|
| Question#: | 20 |
| Topic: | Parole |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Please provide detailed data for each of the following questions. For each subquestion, please specifically identify the answer for fiscal year 2021, fiscal year 2022 to date, and calendar year 2021 to date.

Identify the total number of illegal aliens encountered by U.S. Border Patrol at the Southwest border who were granted parole.

Response:

| USBP Outcome Category | Fiscal Year 2021 | FY22TD (Thru Nov. 2021) | Calendar Year 2021 (Thru Nov. 2021) |
|-----------------------|------------------|-------------------------|-------------------------------------|
| Parole* | 33,451 | 17,351 | 50,802 |

**USBP Parole includes a Disposition of Parole. OFO Parole includes various Dispositions of "PAROLED-(DT)-PORT OF ENTRY", "PAROLED-(DT)-PORT OF ENTRY", "PAROLED-(DA)-ADVANCE PAROLE", "PAROLED-(CH)-ADVANCE HUMANITARIAN", "PAROLED-(CP)-PUBLIC INTEREST", "PAROLED-(DE)-DEFERRED INSPECTION", "PAROLED-(RP)-FILIPINO WORLD WAR II VETERANS PAROLE (USCIS)", "PAROLED-(HF)-HAITIAN FAMILY REUNIFICATION", "PAROLED-(UHP)-UKRAINIAN HUMANITARIAN PAROLE / UNITING FOR UKRAINE."*

| | |
|-------------------|--|
| Question#: | 21 |
| Topic: | Failed to Appear |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Please provide detailed data for each of the following questions. For each subquestion, please specifically identify the answer for fiscal year 2021, fiscal year 2022 to date, and calendar year 2021 to date.

Identify the total number of illegal aliens that were arrested or otherwise encountered by DHS that have been released under DHS alternatives to detention and then failed to appear at their next scheduled court date.

Response: In FY 2021, there were 6,400 participants who enrolled into U.S. Immigration and Customs Enforcement’s Alternatives to Detention (ATD) program and also had their first hearing prior to November 16, 2021. Of these 6,400 participants, 49 failed to attend their first hearing while in the program, resulting in a 99.23 percent attendance rate.⁹

In FY 2022 (through November 16, 2021), there were 315 participants who enrolled into ATD and also had their first hearing prior to November 16, 2021. Of these 315 participants, 3 failed to attend their first hearing while in the program, resulting in a 99.05 percent attendance rate.¹⁰

In Calendar Year 2021 (through November 16, 2021), there were 6,030 participants who enrolled into ATD and also had their first hearing prior to November 16, 2021. Of these 6,030 participants, 50 failed to attend their first hearing while in the program, resulting in a 99.17 percent attendance rate.¹¹

⁹Data taken from Intensive Supervision Appearance Program (ISAP) IV Participants Report from BI, Inc. and filtered for stint start dates between October 1, 2020 and September 30, 2021. This dataset was then cross-referenced to ISAP Court Tracking data, as of September 30, 2021, including only the first hearing that a participant had court tracking data for. Attendance rate is excluding all pending results. Court tracking is only assigned to about 40 percent of the active population within ATD at any given time.

¹⁰ Data taken from ISAP IV Participants Report from BI, Inc. and filtered for stint start dates between October 1, 2021 and November 16, 2021. This dataset was then cross-referenced to ISAP Court Tracking data, as of August 31, 2022, including only the first hearing that a participant had court tracking data for prior to November 16, 2021. Attendance rate is excluding all pending results. Court tracking is only assigned to about 40 percent of the active population within ATD at any given time.

¹¹Data taken from ISAP IV Participants Report from BI, Inc. and filtered for stint start dates between January 1, 2021 and November 16, 2021. This dataset was then cross-referenced to ISAP Court Tracking data, as of August 31, 2022, including only the first hearing that a participant had court tracking data for prior to November 16, 2021. Attendance rate is excluding all pending results. Court tracking is only assigned to about 40 percent of the active population within ATD at any given time.

| | |
|-------------------|--|
| Question#: | 22 |
| Topic: | Family Separation |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Identify the number of individuals who illegally entered the United States as a family group that were prosecuted resulting in separation from other family members.

Response: The Biden-Harris Administration prioritizes family unity, and the Administration is committed to the safe reunification of families that were unjustly separated at the U.S.-Mexico border during the prior Administration. As of October 26, 2022, the Task Force has facilitated the reunification of 533 children with their separated parents in the United States and provided these families with access to behavioral health services.

It is appropriate to separate individuals from family units in cases of serious crime, national security, medical emergency, or active warrant. In the cases cited below, adult individuals were separated from a family unit based on that individual’s criminal history or because of the commission of a serious crime.

| CBP Nationwide | Fiscal Year 2021 | FY22TD (Thru Nov 2021) | Calendar Year 2021 (Thru Nov. 2021) |
|------------------------|------------------|------------------------|-------------------------------------|
| Adult Family Subjects* | 35 | 8 | 43 |

**Adult Apprehensions Separated from a Family Unit based on Family Member Prosecuted - USBP Family Separation Reason: Other Reasons and Criminal History Reasons, OFO Family Separation Reason: PROSECUTION OF PARENT/GUARDIAN.*

| | |
|-------------------|--|
| Question#: | 23 |
| Topic: | Children Illegally Crossed |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Identify the total number of individuals under the age of 18 who have illegally crossed the Southwest border.

Response:

| Encounter Category | Fiscal Year 2021 | FY22TD (Thru Nov 2021) | Calendar Year 2021 (Thru Nov. 2021) |
|-----------------------------------|------------------|------------------------|-------------------------------------|
| CBP Southwest Juvenile Encounters | 382,018 | 69,201 | 429,583 |

Question: Identify the total number of children who have been detained or held in any type of facility (whether you prefer to call them cages or “soft-sided detention facilities” or any other term).

Response: DHS follows the guidance set forth in 8 U.S.C. 1232(b)(4) and the William Wilberforce Trafficking Victims Protection and Reauthorization Act of 2008 (TVPRA) to determine the age of unaccompanied noncitizen children who are in DHS custody. Pursuant to the Flores Settlement Agreement, the Homeland Security Act, and the TVPRA, DHS has 72 hours to transfer unaccompanied children (UC) into the care and custody of HHS Office of Refugee Resettlement. Upon encounter, an agent will question noncitizens as to their immigration status and nationality. Agents also determine the demographic of the subjects (each subject, i.e., family units, single adults, or UCs). Subjects are thoroughly searched, all documents in their possession are examined, and any identity documents are carefully inspected. During intake and processing agents obtain biographical information including the subject’s date of birth. Criminal and immigration history checks are conducted and verified on law enforcement databases, based on name, date of birth, and biometrics for minors who are 14 years old and older.

Question: Identify the names and locations of all facilities at the Southwest border that are used by DHS or in collaboration with the Department of Health and Human Services for the temporary or long-term detention of children.

Response: As outlined above, DHS follows the guidance set forth in 8 U.S.C. 1232(b)(4) and the TVPRA and provides for the timely transfer of unaccompanied children to HHS. DHS respectfully defers to HHS for a response to this question.

| | |
|-------------------|--|
| Question#: | 24 |
| Topic: | Deaths |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: How many illegal aliens does DHS estimate have died crossing the Southwest border during calendar year 2021?

Response: USBP recorded 650 deaths during calendar year 2021.

| | |
|-------------------|--|
| Question#: | 25 |
| Topic: | Sexual Assaults |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: How many women does DHS estimate have been sexually assaulted while seeking to cross the Southwest border during calendar year 2021?

Response: DHS does not have an estimate of this.

| | |
|-------------------|--|
| Question#: | 26 |
| Topic: | Human Trafficking |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: How many women or children does DHS estimate have been subjected to human trafficking while seeking to cross the Southwest border during calendar year 2021?

Response: Human smuggling and human trafficking are two very distinct crimes. Human trafficking is an exploitation-based crime against an individual that does not require a border crossing to have taken place and affects both U.S. citizens and noncitizens. Human smuggling is a transportation-based crime against that involves the movement of individuals across an international border. While these acts are sometimes conflated, they are two distinct crimes and generally not connected. It is possible, of course, that human smuggling can lead to human trafficking.

Upon encounter by DHS, as part of the screening process, migrants are screened for indicators of human trafficking. The UC trafficking screening process is accomplished and documented via *CBP-Form 93 Unaccompanied Alien Child Screening Addendum* in accordance with the *Trafficking Victims Protection Reauthorization Act of 2008*. This is an in-depth process which requires agents to visually screen all UCs and interview all UCs that are capable of answering questions and then decide, based the totality of the visual indicators and the answers provided, if the UC is a victim of human trafficking.

At any time during or upon completion of screening any person in USBP custody, if a Border Patrol Agent (BPA) believes that person is a victim of human trafficking, USBP immediately notifies ICE Homeland Security Investigations (HSI), as HSI has purview over human trafficking investigations.

HSI is unable to accurately estimate the number of women and children who have been subjected to human trafficking while seeking to cross the Southwest border during calendar year 2021. HSI can report from its criminal investigative data that it identified assisted 675 victims subjected to human trafficking throughout the United States during calendar year 2021, but this is not the total number of individuals subjected to trafficking.

For additional background, HSI notes while some transnational traffickers transport victims across the southwest border to later be subjected to forced labor and/or commercial sexual exploitation upon arrival at the destination in the United States, the cases HSI most frequently encounter are traffickers who recruit and exploit foreign nationals who are already in the United States.

| | |
|-------------------|--|
| Question#: | 26 |
| Topic: | Human Trafficking |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

| | |
|-------------------|--|
| Question#: | 27 |
| Topic: | Removed from the United States |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: According to data from U.S. Customs & Border Protection, there have been 1,684,116 total CBP encounters with illegal aliens in calendar year 2021, of which 1,516,650 have taken place at the Southwest border. Please provide detailed data for each of the following questions. For each subquestion, please specifically identify the answer for fiscal year 2021, fiscal year 2022 to date, and calendar year 2021 to date.

The total number of illegal aliens who were encountered in calendar year 2021 who have been removed or deported from the United States.

Response:

CBP Encounters (October 1, 2020 through November 30, 2021) with a Subsequent U.S. ICE Removal

| CBP Encounter Year | ICE Removals |
|--|--------------|
| FY 2021 | 18,961 |
| FY 2022 (Through November 2021) | 3,202 |
| Calendar Year 2021 (Through November 2021) | 18,385 |

| Outcome Category | Fiscal Year 2021 | FY22TD (Thru Nov 2021) | Calendar Year 2021 (Thru Nov. 2021) |
|------------------|------------------|------------------------|-------------------------------------|
| CBP Removals* | 184,873 | 52,911 | 223,256 |

*Denotes subjects turned over to ERO, which includes USBP TOT ERO: FMUA and Single Adults NOT a Notice to Appear (NTA) and with Dispositions of WA/NTA, ER/CF, ADMDPT, VWPPRM OR NOT MEXICAN and dispositions of REINST, ER, ER/LR, B. OFO TOT ERO includes a Transfer to Agency = 'ICE-ERO'. Also denotes subjects deported/returned, which includes USBP: Mexican citizenship and Disposition of (B;V;ER;ER/LR;REINST). OFO: Mexican citizenship and dispositions of BAG AND BAGGAGE, EXPEDITED REMOVAL (ER), VOLUNTARY RETURN, WD IN LIEU OF ER, WD IN LIEU OF NTA, WITHDRAWAL (WD2), REINSTATEMENT OF DEPORT ORDER I-871. Outcomes data base on Bookout Date.

| | |
|-------------------|--|
| Question#: | 28 |
| Topic: | Criminal Record |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: The total number of illegal aliens who were encountered in calendar year 2021 who have a criminal record either in their country or origin or in the United States.

Response: ICE notes that, while ICE may have access in some cases, it does not have access to foreign criminal records of every noncitizen who has entered the United States.

Please see the charts below:

| Noncitizen with a Criminal Record | OFO* | USBP** |
|--|--------------|---------------|
| Southwest Border | 661 | 9,020 |
| Nationwide | 6,639 | 9,230 |

**Data denotes inadmissible subjects encountered by CBP OFO with a charge under Section 212(A)(2). ** USBP denotes deportable subjects encountered by USBP with a criminal charge.*

Calendar Year 2021 CBP Encounters with Subsequent ERO Encounters by Criminality¹²

| Criminality | CBP Program | | Total |
|----------------------------|--------------------|--------------|--------------|
| | OFO | USBP | |
| Total | 423 | 2,686 | 3,109 |
| Convicted Criminal | 78 | 1,743 | 1,821 |
| Pending Criminal Charges | 37 | 49 | 86 |
| Other Immigration Violator | 308 | 894 | 1,202 |

¹² ERO notes not all noncitizens encountered by CBP are subsequently encountered by ERO or turned over to ICE detention. ERO is only able to provide the criminality data for CBP encounters attached to subsequent ERO enforcement actions. FY 2022 YTD. ERO Encounters data are updated through September 19, 2022. CBP encounter data was received by ERO on September 7, 2022. Data range is between January 4, 2021 and November 30, 2021. ERO Encounters include all ERO Programs.

| | |
|-------------------|--|
| Question#: | 28 |
| Topic: | Criminal Record |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: The total number of individuals identified in your response above who have been removed or deported from the United States or who DHS has released into the United States.

Response: Please see the chart below:

Calendar Year 2021 CBP Encounters with a Subsequent ICE Removal¹³

| CBP Program | Removals |
|--------------|--------------|
| Total | 1,410 |
| OFO | 27 |
| USBP | 1,383 |

Question: Of the total identified in response above, please identify the number who have criminal convictions for the following types of criminal activity:

Murder.

Rape or aggravated sexual assault.

Child abuse or child pornography.

Drunk driving.

Human trafficking.

Drug trafficking.

Response: Please see the chart below:

Calendar Year 2021 CBP Encounters with a Subsequent ICE Removal by Most Serious Criminal Conviction¹⁴

¹³FY 2022 YTD ERO Encounters data are updated through September 19, 2022. CBP encounter data was received by ERO on September 7, 2022. Data range is between January 4, 2021 and November 30, 2021. ERO Encounters include all ERO Programs. FY 2022 YTD ICE Removals data are updated through September 19, 2022.

| | |
|-------------------|--|
| Question#: | 28 |
| Topic: | Criminal Record |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

| Most Serious Criminal Conviction | CBP Program | | Removals |
|---|-------------|--------------|--------------|
| | OFO | USBP | Total |
| Total | 27 | 1,383 | 1,410 |
| Arson | - | 2 | 2 |
| Assault | 1 | 213 | 214 |
| Burglary | - | 56 | 56 |
| Commercialized Sexual Offenses | - | 1 | 1 |
| Dangerous Drugs | 19 | 265 | 284 |
| Family Offenses | - | 9 | 9 |
| Flight / Escape | - | 17 | 17 |
| Forgery | 1 | 18 | 19 |
| Fraudulent Activities | 2 | 26 | 28 |
| General Crimes | 2 | 10 | 12 |
| Health / Safety | - | 2 | 2 |
| Homicide | - | 15 | 15 |
| Immigration | 1 | 437 | 438 |
| Invasion of Privacy | - | 2 | 2 |
| Kidnapping | 1 | 13 | 14 |
| Larceny | - | 18 | 18 |
| Obstructing Judiciary, Congress, Legislature, Etc. | - | 11 | 11 |
| Obstructing the Police | - | 19 | 19 |
| Public Peace | - | 4 | 4 |
| Robbery | - | 30 | 30 |
| Sex Offenses (Not Involving Assault or Commercialized Sex) | - | 46 | 46 |

¹⁴FY 2022 YTD ERO Encounters data are updated through September 19, 2022. CBP encounter data was received by ERO on September 7, 2022. Data range is between January 4, 2021 and November 30, 2021. ERO Encounters include all ERO Programs.

| | |
|-------------------|--|
| Question#: | 28 |
| Topic: | Criminal Record |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

| | | | |
|--|---|----|----|
| Sexual Assault | - | 46 | 46 |
| Smuggling | - | 2 | 2 |
| Stolen Property | - | 3 | 3 |
| Stolen Vehicle | - | 13 | 13 |
| Threat | - | 5 | 5 |
| Traffic Offenses | - | 38 | 38 |
| Weapon Offenses | - | 58 | 58 |
| No Most Serious Criminal Conviction Record | - | 4 | 4 |

| OFO Criminal Charge Category* | Southwest Border | Nationwide |
|--|------------------|--------------|
| Controlled Substance Crime | 106 | 2,580 |
| Crime of Moral Turpitude | 98 | 3,914 |
| Drug Trafficking | 419 | 1,513 |
| Family Benefit Trafficking | 36 | 62 |
| Human Trafficking | 1 | 1 |
| Money Laundering | 16 | 29 |
| Multiple Criminal Offenses | 15 | 137 |
| Prostitution/Vice | 4 | 261 |
| Noncitizens with Criminal Convictions** | 661 | 6,639 |

**Data denotes inadmissible subjects encountered by OFO with a charge under Section 212(A)(2). **Total does not equal the sum of data by charge category because the same apprehension can have multiple Charges that are included in multiple categories. Data from January 1, 2021 to November 30, 2021*

| | |
|-------------------|--|
| Question#: | 28 |
| Topic: | Criminal Record |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

| USBP Criminal Charge Category | Southwest Border | Nationwide |
|---|-------------------------|-------------------|
| Assault, battery, domestic violence | 1,036 | 1,054 |
| Burglary, robbery, larceny, theft | 732 | 749 |
| Driving under the influence of liquor or drugs | 1,288 | 1,323 |
| Homicide/manslaughter | 52 | 54 |
| Illegal drug possession, trafficking | 1,907 | 1,964 |
| Illegal Entry, Re-entry | 5,551 | 5,630 |
| Illegal Weapons Possession, Transport, Trafficking | 283 | 291 |
| Sexual offenses | 405 | 410 |
| Other | 2,309 | 2,382 |
| USBP Total Subjects* | 9,532 | 9,746 |

**USBP total subjects does not equal the sum of data by category because the same apprehension can have multiple Criminal Charges that are included in multiple categories.*

| | |
|-------------------|--|
| Question#: | 29 |
| Topic: | Charged with Felonies |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Have any illegal aliens who were encountered in calendar year 2021 and released into the United States been charged with or convicted of any felonies since their arrival?

Response: In FY 2021, 747 noncitizens were encountered with a subsequent ICE release and felony or aggravated felony charge or conviction. Of these 747, 108 had convictions and 639 had only charges.

| | |
|-------------------|--|
| Question#: | 30 |
| Topic: | Ernesto Morales |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: On October 23, 2021 Ernesto Lopez Morales, an illegal immigrant from Guatemala, was arrested after a hit-and-run that killed a 5-year-old girl. Morales tested over the legal limit for blood alcohol content, admitted to driving without his headlights on, and admitted to fleeing the scene of the crash. Prior to the date of this incident, was Mr. Morales a priority for removal under this administration's new removal and enforcement priorities?

Response: Please note that on June 10, 2022, the U.S. District Court for the Southern District of Texas issued a final judgment vacating Secretary Mayorkas' September 30, 2021, memorandum, *Guidelines for the Enforcement of Immigration Law* (Mayorkas Memorandum). Based on that decision, effective June 25, 2022, ICE ceased to follow the Mayorkas Memorandum. In the absence of the Mayorkas Memorandum, ICE officers and agents will continue to make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

| | |
|-------------------|--|
| Question#: | 31 |
| Topic: | Bruno DeJesus |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: In June 2021, Bruno Sanches De Jesus was charged with two counts of rape after allegedly sexually assaulting an 18-year-old woman on a Martha's Vineyard ferry. Mr. Sanches De Jesus overstayed a 90-day waiver of his visa two years ago. Prior to the date of the alleged rape, was Mr. Sanches De Jesus a priority for removal under this administration's new removal and enforcement priorities?

Response: Please note that on June 10, 2022, the U.S. District Court for the Southern District of Texas issued a final judgment vacating Secretary Mayorkas' September 30, 2021, memorandum, *Guidelines for the Enforcement of Immigration Law* (Mayorkas Memorandum). Based on that decision, effective June 25, 2022, ICE ceased to follow the Mayorkas Memorandum. In the absence of the Mayorkas Memorandum, ICE officers and agents will continue to make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

| | |
|-------------------|--|
| Question#: | 32 |
| Topic: | Got-Aways |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Identify the total estimated number of "got-aways"-aliens who crossed the Southwest border illegally without encountering CBP-for fiscal year 2021, fiscal year 2022 to date, and calendar year 2021 to date.

Response: 6 U.S.C. 223(a)(3) defines a “got away” as an unlawful border crosser who is directly or indirectly observed making an unlawful entry into the United States and is not apprehended and is not turned back. Please refer to the table below for FY 2021 figures.

Reporting on got-aways is necessarily based on estimates. The data provided below are based on CBP’s observational estimate, which reflects a standard, Southwest Border-wide methodology for determining when to report a subject as a got away. Some subjects are observed directly as evading apprehension or turning back; others are acknowledged as got-aways or turn backs after agents follow evidence that indicate entries have occurred such as foot sign (i.e., tracks), sensor activations, interviews with apprehended subjects, camera views, and communication between and among stations and sectors. The Department also produces a model-based estimate of got-aways which is developed from a statistical analysis of the estimated at-the-border apprehension rate. The observational and model-based estimates rely on different data sources and methodologies but are closely correlated, which suggests that they accurately capture got-away trends. These metrics are posted annually in the Border Security Metrics Report.

Notably, because the Department is unable to capture person-level information about got-aways, data are not available on the numbers of got-aways who are repeat entrants/returning migrants or the number subsequently arrested at CBP checkpoints or elsewhere within the United States.

| Category | Fiscal Year 2021 | FY22TD (Thru Nov. 2021) | Calendar Year 2021 (Thru Nov. 2021) |
|---------------------------------|------------------|-------------------------|-------------------------------------|
| USBP Southwest Border Got-aways | 389,155 | 99,876 | 425,347 |

| | |
|-------------------|--|
| Question#: | 33 |
| Topic: | Metrics |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: DHS produces regular metrics containing information on illegal immigration, border activity, and related data. To the extent you are unable to provide an estimated number in response to any of the proceeding questions, will you commit to ensuring that DHS has the necessary tools to track these metrics?

Response: The DHS Office of Immigration Statistics is responsible for developing, analyzing, and disseminating statistical information needed to inform policy and assess the effects of immigration in the United States. In addition, each component regularly publishes key operational data to its website for public consumption. DHS continues to evaluate its methodology and reporting metrics to ensure transparency, improve the quality and accuracy of data, and to make our data readily accessible to Congress and the public.

| | |
|-------------------|--|
| Question#: | 34 |
| Topic: | COVID-19 Testing |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: You testified at the hearing that all aliens are tested for COVID-19 through cooperative agreements with nongovernmental agencies (NGOs) when they are released. You also testified that any individual illegal aliens that test positive for COVID-19 are quarantined.

Identify the specific basis for DHS's authority to mandate that any alien or individual crossing the border be tested for COVID-19.

Response: DHS does not mandate testing for noncitizens encountered at the border and taken into CBP custody, but instead has provided testing for those who consented to such testing prior to release from DHS custody.

Question: Identify with specificity what authority NGOs have to mandate that an illegal alien be tested for COVID-19.

Identify what authority NGOs have to detain an alien who refuses to be tested for COVID-19.

Identify what authority NGOs have to detain or quarantine any alien who tests positive for COVID-19.

Response: Regarding nongovernmental organization (NGO) participation in COVID testing, DHS developed and implemented a robust, multi-layered framework that strives to ensure that all noncitizens entering the United States are tested for COVID-19 prior to further processing or at the time they are being released into the United States. This framework includes partnerships with federal, state, local, and NGOs, and accounts for reimbursing 100 percent of testing costs in accordance with state and local regulations.

Testing by state, local, and non-governmental partners is most often conducted through a federally funded, state-managed, and locally executed approach, though the specific local government partner or non-governmental partner differs based on the region of the southwest border in which the migrant being tested is located. In some locations, NGOs test individuals released from CBP custody as part of their reception and support efforts for this population, while in others, local government agencies conduct testing. In areas without local government or NGO testing capability, testing efforts may be coordinated directly by DHS.

This testing regimen is also designed to be flexible and adaptable to dynamic conditions such as surges in migration, positivity rates, and increasing vaccination rates across the southwest border.

| | |
|-------------------|--|
| Question#: | 34 |
| Topic: | COVID-19 Testing |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Identify the number of aliens released by DHS who have refused to engage with an NGO.

Identify the number of aliens released by DHS who have refused to be tested for COVID-19 by an NGO.

Response: DHS does not track these numbers.

| | |
|-------------------|--|
| Question#: | 35 |
| Topic: | Positive Tests |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Please provide detailed data for each of the following questions. For each subquestion, please specifically identify the answer for fiscal year 2021, fiscal year 2022 to date, and calendar year 2021 to date.

Identify the number of aliens released by DHS who have tested positive for COVID-19.

Response: Data provided below is based on the Public Health, Safety, and Preparedness (PHSP) respiratory illness tracker set up to track COVID-19 test results. Custody Release date is a field in the tracker, but it is not always recorded. The priority of PHSP is to track positive test results and isolation, etc. As such, the data below is the number of detained noncitizens who tested positive for any reason during custody and then have a release date recorded.

It should be noted the Centers for Disease Control and Prevention recognizes a person may continue to test positive for up to 90 days after their initial positive test. Because results may not be informative, further testing during that time may not be advisable. Therefore, ICE Health Service Corps does not retest detained noncitizens upon release if they had been positive for COVID-19 within 90 days. This can also contribute to underreporting of release dates on the PHSP tracker.

In FY 2021, from October 1, 2020 to September 30, 2021, there were 16,244 detained noncitizens who tested positive and have recorded release dates.

In FY 2022, from October 1, 2021 to November 30, 2021, there were 2,179 detained noncitizens who tested positive and have recorded release dates.

In Calendar Year 2021, from January 1, 2021 to November 30, 2021, there were 17,603 detained noncitizens who tested positive and have recorded release dates.

Question: Identify the number who have tested positive for COVID-19 while in DHS custody.

Response: This following reflects the number of detained noncitizens reported above plus any remaining positive detained noncitizens who lack a recorded release date:

In FY 2021, from October 1, 2020 to September 30, 2021, there were 16,488 detained noncitizens who tested positive.

In FY 2022, from October 1, 2021 to November 30, 2021, there were 2,197 detained noncitizens who tested positive.

| | |
|-------------------|--|
| Question#: | 35 |
| Topic: | Positive Tests |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

In Calendar Year 2021, from January 1, 2021 to November 30, 2021, there were 17,849 detained noncitizens who tested positive.

Question: Identify the number who have tested positive for COVID-19 while in the custody of an NGO.

Response: DHS does not have oversight or data from noncitizens once they are released from ICE custody.

| | |
|-------------------|--|
| Question#: | 36 |
| Topic: | MPP Reimplementation |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: You testified at the hearing that DHS is moving forward to restart the Migrant Protection Protocols (MPP), commonly referred to as the "Remain in Mexico" policy, in good faith.

Identify with specificity what individual steps DHS has taken to reimplement MPP.

Provide detailed information about DHS and Department of State engagement with the Government of Mexico toward restarting MPP to date.

Identify what leverage, incentive, or penalties, that President Biden's administration has asserted to regain cooperation from Mexico to reimplement MPP.

Response: On June 30, 2022, the Supreme Court affirmed that the Secretary has the discretionary authority to terminate MPP. On August 8, 2022, the U.S. District Court for the Northern District of Texas lifted the injunction that required DHS to reimplement MPP in good faith. Individuals are no longer being newly enrolled in MPP, and individuals currently in MPP in Mexico are disenrolled when they return for their next scheduled court date. Individuals disenrolled from MPP will continue their removal proceedings in the United States.

Prior to the lifting of the injunction, DHS worked to ensure the safe and orderly reimplementation of MPP. The reimplementation began in the El Paso, Texas, sector on December 6, 2021, and DHS expanded the program across the Southwest Border. Those enrolled and processed into MPP were returned at four ports of entry: El Paso, Texas; San Diego, California; Brownsville, Texas; and Laredo, Texas.

| | |
|-------------------|--|
| Question#: | 37 |
| Topic: | Make the Border Secure |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: In your testimony, you stated that your department has programs underway that will make the border more secure.

Identify each of these programs.

Response: As part of CBP's comprehensive effort to improve the security of our nation's borders while enhancing legitimate travel and trade, CBP has several programs and initiatives in place across the joint operating area aimed at modernizing border security functions and increase accessibility and transparency to CBP's most utilized services.

- The U.S. Department of Defense (DoD) is currently assisting CBP with 1,400 ground troops and 12,100 aviation hours, all being utilized for detection and monitoring along the southwest border. DoD is further assisting with the loan, operation, and maintenance of 12 aerostat detection systems placed in strategic locations along the southwest border.
- USBP invested in technology that improves detection and monitoring capabilities in remote areas and modernized command, control, and communication equipment and resources. These investments include ISTs, COP advancements, and advanced multi-service operational network and team awareness kit deployments.
- CBP has partnered with the Government of Mexico (GoM) and other foreign governments and has instituted CBP trainers and advisors in Mexico and Central America to provide local collaborative efforts that affect irregular migration activities. Additionally, CBP implemented Operation Echo Alliance, a binational operation involving GoM that provides mirrored patrols, information sharing, and allows for further collaboration to mitigate irregular migration.
- Simplified Arrival is an enhanced international arrival process that uses facial biometrics to automate the manual document checks that are already required for admission into the United States, provides travelers with a secure, touchless travel experience. A CBP Officer will review and query the travel document, which will retrieve the traveler's passport or visa photo from government holdings. The new photo of the traveler will be compared to the photo previously collected.
- At ports of entry, CBP has expanded its use of innovative nonintrusive inspection (NII) technology, which allows officers to remain agile in the commercial environment, facilitating the processing of lawful trade while intercepting narcotics and contraband. CBP's NII Systems Program supports the detection and prevention of weapons, drugs, currency, and other illegal merchandise. This program is an essential aspect of the CBP's layered enforcement strategy.

| | |
|-------------------|--|
| Question#: | 37 |
| Topic: | Make the Border Secure |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

- The continued application and modernization of the Maritime Operations Coordination Plan (MOC-P) for continued bolstering of Regional Coordinating Mechanisms to secure operational control of our maritime borders and improve maritime domain awareness.
- Investigations and prosecutions via leveraging state and local partners for task force programs to include supporting the HSI Border Enforcement Security Task Force and Border Crime Suppression Teams.

Currently, DoD support to CBP assists with closing the gap between the amount of support requested and CBP AMO's ability to support these requirements through organic sourcing. DoD support enhances operational border enforcement flights and are manned by BPAs as supplemental aircrew members.

Tactical Maritime Surveillance System (TMSS): With the increasingly effective land surveillance technologies and land deterrent measures, CBP is observing rapidly growing and unmonitored illicit drug and migrant smuggling activities in the United States waterways. To combat this new threat, the TMSS program was developed. TMSS addresses official CBP mission gaps in California, Texas, and Florida by establishing and operating near-shore persistent land and maritime domain awareness capabilities. TMSS's also processes and shares collected domain information across numerous DHS stakeholders.

Question: Identify the status of each of these programs' implementation.

Response: All ports of entry programs are currently active.

The DoD Request for Assistance (RFA) 22 will expire on September 30, 2022, however DoD RFA 23 has been approved and will overlap current deployments, giving CBP full ground personnel and aviation coverage through September 30, 2023. The aerostat RFA was extended, and aerostats will be deployed through the first quarter of FY 2023.

USBP began deployment of ISTs, advanced multi-service operational networks, and team awareness kits during FY 2022, and will continue deployment through FY 2023.

CBP trainers and advisors have been deployed through Mexico and Central America throughout FY 2022 and will continue their deployments at various locations tentatively through January 9, 2023. Additionally, Operation Echo Alliance was operational through the summer of 2022, and will have its second iteration from October 5, 2022 through November 10, 2022.

CBP AMO acquisition program statuses:

| | |
|-------------------|--|
| Question#: | 37 |
| Topic: | Make the Border Secure |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

- MEA: 26 MEA's are in operation; anticipating delivery of up to 3 more in FY 2023 in addition to a contract awarded for an MEA Land Interdiction variant.
- UH60 Medium Lift Helicopter: 25 UH60's are in operation, anticipating delivery of 5 UH60's in FY2023.
- P-3 Recapitalization: 14 P3 aircraft are in operation, we will begin an Analysis of Alternatives (AoA) in FY 2023 that will investigate solutions (i.e. retrofit of existing fleet or new aircraft acquisition) to address obsolescence in those aircraft.
- Light Enforcement Platform: AMO has completed the AoA and will begin an acquisition program intended to replace legacy light enforcement aircraft.
- Tactical Maritime Surveillance System: AMO anticipates the deployment of 2 wide-area, persistent maritime surveillance systems on aerostats in South Padre Island, TX, and Southern California beginning in FY 2023.

Question: Identify what metrics will be used to validate the effectiveness of these programs in terms of securing the border.

Response: As part of CBP's continual effort to quantify and improve various secure border programs and reporting efficiencies, CBP has integrated resources and information received into the tracking, sign-cutting, and modeling database system, which in turn feeds the information into CBP systems of record, including E3 and Qlik. Additionally, CBP recently introduced Enforcement Metric Dashboard, a live up-to-the-minute program, to provide leadership the ability to quantifiably understand and bolster air/land and sea enforcement in the following three (3) primary ways: visualize port and individual metrics; identify strengths and areas for improvement; and enable decisions for improving operations.

CBP AMO evaluates the effectiveness of its aircraft and vessel programs through asset utilization and any associated outcomes. These outcomes include pounds of drugs seized, aircraft hours, vessel hours, numbers of apprehensions, arrests, and rescues. These measures help AMO track the effectiveness and extent that AMO is providing support to securing the border.

| | |
|-------------------|--|
| Question#: | 38 |
| Topic: | Reduction in Crossings |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: Do you believe that a more secure border requires a reduction in the number of illegal crossings and encounters?

Response: Under the Biden-Harris Administration, DHS has been executing a comprehensive and deliberate strategy to secure our borders and build a safe, orderly, and humane immigration system. Migration is a hemispheric challenge, one not limited to the United States. Displacement and migration are at a high point throughout the world, higher than any time since World War II. In our hemisphere, violence, authoritarian regimes, corruption, food insecurity, climate change, the COVID-19 pandemic, and dire economic conditions all contribute to the increase in migration. As a result, we are experiencing historic levels of encounters at our border. Nevertheless, after inheriting a broken and dismantled immigration system, since January 2021 DHS has effectively managed an unprecedented number of noncitizens seeking to enter the United States and interdicted more drugs and disrupted more smuggling operations than ever before.

| | |
|-------------------|--|
| Question#: | 39 |
| Topic: | Alleged Whipping Incident |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Ted Cruz |
| Committee: | JUDICIARY (SENATE) |

Question: In September, you stated: "I want to assure you that we are addressing [the alleged whipping incident involving mounted Border Patrol agents] with tremendous speed and tremendous force." You further stated that the investigation by the Department of Homeland Security (DHS) Office of Professional Responsibility would "be completed in days - not weeks." On November 16, the DHS Inspector General declined to pursue this investigation.

What steps is DHS currently taking to take to pursue this investigation?

Response: CBP OPR initiated this investigation on September 20, 2021, after viewing media reporting depicting potential misconduct that took place the previous day on the part of BPAs assigned to the USBP Horse Patrol Unit (HPU). In accordance with DHS policy, OPR referred this matter to the DHS Office of Inspector General (OIG) on September 20, 2021. The following day, DHS OIG notified CBP OPR that it did not intend to investigate the matter and referred the case back to OPR.

OPR presented this matter to the United States Attorney's Office for the Western District of Texas on September 29, 2021 and received a prosecutorial declination on March 11, 2022. During that five-plus months, OPR's investigative work was, per long-standing protocol, largely suspended. Once OPR received the declination, OPR personnel ultimately conducted over 30 interviews and reviewed videos, photographs, and documents related to the incident. OPR completed the investigation and delivered the initial report to CBP leadership on April 11, 2022.

Question: What is the current status of this investigation?

Response: This investigation is complete. OPR delivered the investigative report to CBP leadership on April 11, 2022. In keeping with the agency's and the DHS's commitment to transparency and accountability, and given significant interest from the workforce, Congress, and the public, CBP released the OPR investigative report of this incident in its entirety on the Accountability and Transparency page of CBP's website on July 8, 2022. The names in the investigative report (<https://www.cbp.gov/sites/default/files/assets/documents/2022-Jul/202112280-cbp-closing-report-public-redacted-final.pdf>) of this incident were redacted in order to protect individuals' privacy.

| | |
|-------------------|--|
| Question#: | 5 |
| Topic: | Border Crisis |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: In September 2021, there were 192,001 encounters with illegal immigrants at our southern border. Over all of FY2021, CBP had over 1.7 million border encounters at our southern border. This is the most encounters ever recorded.

Is the Biden Administration ready to concede that the situation at our southern border is a crisis? How can the Administration justify calling the situation anything less than a crisis?

Response:

Migration is a hemispheric challenge, one not limited to the United States. Displacement and migration are at a high point throughout the world, higher than any time since World War II. In our hemisphere, violence, authoritarian regimes, corruption, food insecurity, climate change, the COVID-19 pandemic, and dire economic conditions all contribute to the increase in migration. As a result, we are experiencing historic levels of encounters at our border. The demographics of the arriving population have also changed, with more Venezuelans, Cubans, and Nicaraguans arriving than ever before, driven to migrate by repressive governments and faltering economic conditions in their home countries. The governments of Venezuela, Cuba, and Nicaragua do not cooperate with the U.S. government in allowing us to return individuals to their home countries, presenting a unique challenge.

The current increase in irregular migration to the Southwest Border presents a challenging operational environment for DHS. The agency is using every resource available to better address this challenge, as outlined below.

The six pillars of our plan are as follows:

1. We are surging resources, including personnel, transportation, medical support, and facilities to support border operations.
2. We are increasing CBP processing efficiency and moving with deliberate speed to mitigate potential overcrowding at Border Patrol stations and to alleviate the burden on the surrounding border communities.
3. We are administering consequences for unlawful entry, including removal, detention, and prosecution.
4. We are bolstering the capacity of non-governmental organizations (NGOs) to receive noncitizens after they have been processed by CBP and are awaiting the results of their immigration removal proceedings. And, we are ensuring appropriate coordination with and support for state, local, and community leaders to help mitigate increased impacts to their communities

| | |
|-------------------|--|
| Question#: | 5 |
| Topic: | Border Crisis |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

5. We are targeting and disrupting the Transnational Criminal Organizations (TCOs) and smugglers who take advantage of and profit from vulnerable migrants, and who seek to traffic drugs into our country.
6. We are deterring irregular migration south of our border, in partnership with the Department of State (DOS), other federal agencies, and nations throughout the Western Hemisphere, to ensure that we are sharing the responsibility throughout the region.

Our outdated immigration system was not built to manage the current levels and types of migratory flows that we are experiencing and is already under strain. This is true at the federal level, as well as for state, local, and NGO partners. However, we have been able to manage increased encounters because of prudent planning and execution, and the talent and unwavering dedication of the DHS workforce and our state, local, and community partners.

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Encounters |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: How many encounters with illegal immigrants occurred from January 20, 2021 to the present day? Please provide a demographic breakdown of unaccompanied minors, family units, and single adults.

How many individual illegal immigrants were encountered by CBP from January 20, 2021 to the present day? Please provide a demographic breakdown of unaccompanied minors, family units, and single adults.

Response:

| Demographic | Southwest Border | Nationwide |
|------------------------------|-------------------------|-------------------|
| Accompanied Minors | 2,241 | 3,109 |
| FMUA | 551,815 | 556,302 |
| Single Adults | 1,105,410 | 1,301,684 |
| UC / Single Minors | 156,451 | 157,633 |
| CBP Total Encounters* | 1,815,917 | 2,018,728 |

**Denotes Encounters from 01/20/2021 to 11/30/2021*

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Criminal Convictions |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: How many of those encountered had criminal convictions or pending charges?

Response: Below is a list of U.S Border Patrol (USBP) nationwide encounters from January 20, 2021 through November 16, 2021 for whom there were National Crime Information Center (NCIC) hits for criminal convictions. Please note the total number of hits may exceed the total number of unique individuals, as the same individual encountered can have multiple charges in NCIC captured in different categories. Individuals who pose a threat to national security or public safety may be subject to continued detention, expedited removal, and/or referral to the U.S. Department of Justice (DOJ) for criminal prosecution as appropriate in the circumstances of each case.

| Southwest Border | Northern Border | Coastal Border | Nationwide |
|------------------|-----------------|----------------|------------|
| 8,735 | 22 | 164 | 8,921 |

Question: Which crimes were these criminal aliens convicted of or charged with? Please provide a specific breakdown of crimes including murder, sexual assault, violent assaults, and drug trafficking.

Response: DHS respectfully defers to DOJ.

| | |
|-------------------|--|
| Question#: | 8 |
| Topic: | Biden Blueprint |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: On June 15, I wrote a letter regarding a document titled the "DHS Plan to Restore Trust in Our Legal Immigration System." This followed reports that media organizations had received a copy of this document. My colleagues and I requested a copy of this plan so that we could conduct appropriate congressional oversight of the Biden Administration's immigration policies.

Your office responded three months later with a letter stating that the Biden Blueprint was still a preliminary, deliberative document which was still being reviewed by the White House. At this time, we have received no further information from you or indication of when this document will be released.

Has the Biden Blueprint been finalized? If so, when will it be released to Congress and to the American public?

Has the Biden Administration generally, and DHS specifically, been following this blueprint? If the agency has been following this blueprint, isn't it appropriate to release the blueprint so that Congress can conduct oversight of the work?

DHS is already doing in line with this blueprint?

If the Biden Administration has not been following this blueprint on immigration matters, then what plan has the Administration been following? Has the Administration been following any plan at all to stop the crisis on our southern border?

Response: Within his first weeks in office, President Biden released several Executive Orders aimed at restoring faith in our Nation's legal immigration system, to include *Executive Order 14012: Executive Order on Restoring Faith in Our Legal Immigration Systems and Strengthening Integration and Inclusion Efforts for New Americans*. The Department is committed to ensuring a safe, orderly, and humane immigration system while securing our nation's borders.

The Biden Administration is engaged in a comprehensive strategy that addresses the management of irregular migration in our hemisphere while simultaneously holding true to our values as a Nation. As part of this strategy, we are investing in the region to address the causes of irregular migration and strengthening collaborative migration management with regional partners. DHS is implementing a multi-pronged approach to address the number of extraordinary factors in Central America, including lack of economic opportunity, that often force migrants to make the dangerous journey to the United States. DHS is working closely with

| | |
|-------------------|--|
| Question#: | 8 |
| Topic: | Biden Blueprint |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

our interagency partners to open lawful pathways for protection and opportunity for individuals in our hemisphere.

On April 26, 2022, DHS released a memorandum that provides more details on how DHS is leading the execution of a whole-of-government plan to prepare for and manage increased encounters of noncitizens at our Southwest Border. The six pillars of our plan are as follows:

1. We are surging resources, including personnel, transportation, medical support, and facilities to support border operations.
2. We are increasing CBP processing efficiency and moving with deliberate speed to mitigate potential overcrowding at Border Patrol stations and to alleviate the burden on the surrounding border communities.
3. We are administering consequences for unlawful entry, including removal, detention, and prosecution.
4. We are bolstering the capacity of non-governmental organizations (NGOs) to receive noncitizens after they have been processed by CBP and are awaiting the results of their immigration removal proceedings. And, we are ensuring appropriate coordination with and support for state, local, and community leaders to help mitigate increased impacts to their communities
5. We are targeting and disrupting the Transnational Criminal Organizations (TCOs) and smugglers who take advantage of and profit from vulnerable migrants, and who seek to traffic drugs into our country.
6. We are deterring irregular migration south of our border, in partnership with the Department of State (DOS), other federal agencies, and nations throughout the Western Hemisphere, to ensure that we are sharing the responsibility throughout the region.

| | |
|-------------------|--|
| Question#: | 9 |
| Topic: | August 12th Letter |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: On August 12, I wrote a letter to DHS regarding the failure to provide illegal immigrants with Notices to Appear (NTA) upon being released into the country. The letter also noted that less than 13% of 50,000 illegal immigrants released between March and August had actually shown up at an ICE office to pick up an NTA with a court date.

When can my colleagues and I expect to receive a response to this letter?

Response: The response was transmitted on February 2, 2022.

| | |
|-------------------|--|
| Question#: | 10 |
| Topic: | Released Without an NTA |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Has DHS continued to follow the policy of not issuing NTAs to illegal immigrants who enter the country?

Response: CBP discontinued releasing noncitizens with Notices to Report (NTRs) in October 2021.

USBP has a variety of processing pathways for noncitizens apprehended between ports of entry without inspection, including expulsions under the Centers for Disease Control and Prevention's (CDC) Title 42 public health authority, placement in Expedited Removal, and initiation of removal proceedings with a charging document (or an NTA). When USBP needs to decompress its facilities, USBP paroles noncitizens into the United States to complete their immigration processing.

As of July 30, 2021, DHS initiated a disposition through which CBP may grant parole under section 212(d)(5) of the Immigration and Nationality Act and ICE Enforcement and Removal Operations (ERO) subsequently enrolls the individual in an Alternatives to Detention (ATD) program to facilitate compliance with reporting obligations. The individual is instructed to report to a local ICE office within 60 days for issuance of an NTA.

In the case of family units, ICE enrolls the head of household in its ATD program. Decisions about which ATD program, such as SmartLink or a GPS ankle monitor, is most appropriate are made following an individualized case review. Upon the noncitizen's arrival at their final destination, they are further evaluated and assigned varying levels of case management support. These releases occur only after CBP has assessed the case for national security or public safety concerns.

Question: What are the most up to date statistics you have of the number of illegal immigrants being released into the country without a NTA?

Response: As of November 5, 2021, there were 138,979 noncitizens who were released by CBP without an NTA. These noncitizens were given either a NTR or they were paroled and enrolled into ATD.

Question: How many illegal immigrants were released into the country without a NTA but who have subsequently visited an ICE office to pick up a NTA?

| | |
|-------------------|--|
| Question#: | 10 |
| Topic: | Released Without an NTA |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Response: As of November 5, 2021, there were 89,722 noncitizens who were either within the reporting timeframe to check-in or had checked-in at an ICE office after previously being released by CBP without an NTA.

Question: How many illegal immigrants were released into the country without a NTA, and who have not visited an ICE office to pick up a NTA?

Response: As of November 5, 2021, there were 49,257 noncitizens who had not yet checked into an ICE field office and were beyond the reporting timeframe. However, noncitizens may be issued an NTA at an ICE office beyond their reporting timeframe.

When noncitizens who were issued an NTR and fail to subsequently comply with instructions to report to an ICE field office within the given timeframe for further processing, they may become subject to further enforcement action. As a result, as with any noncitizen in the United States without lawful status, ICE will make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

| | |
|-------------------|--|
| Question#: | 11 |
| Topic: | Asylum Change Claims |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: DHS recently published a notice of proposed rulemaking to change the way in which asylum claims are adjudicated at the border.

How did DHS and DOJ reach the position of giving discretion to USCIS asylum officers to make credible fear determinations?

What analyses did DHS and DOJ conduct before issuing this proposed rule?

Response: The principal purpose of the proposed rule is to simultaneously increase both the efficiency and the procedural fairness of the expedited removal process for individuals who have been found to have a credible fear of persecution or torture. As explained in the proposed rule, the regulations that existed at the time provided that individuals who receive a positive credible fear determination are referred to an immigration court for removal proceedings under section 240 of the Immigration and Nationality Act (“INA”). DHS and DOJ considered the fact that it may take years before the individual's protection claim is first adjudicated by an immigration judge. The Departments also considered that the ability to stay in the United States for years waiting for an initial decision could motivate unauthorized border crossings by individuals who otherwise would not have sought to enter the United States and who lack a meritorious claim for asylum or other forms of protection.

USCIS asylum officers have authority to make credible fear determinations under INA 235(b)(1)(B). The asylum merits interview process was designed to streamline asylum processing for noncitizens who have established a credible fear of persecution or torture so that these individuals may receive administratively final decisions on their asylum applications in a matter of months, rather than years. Allowing cases with positive credible fear determinations to instead remain with USCIS for the full asylum merits adjudication capitalizes on the investment of time and expertise the agency has already made. It also enables meritorious cases to be resolved more quickly, reducing the overall asylum system backlogs and using limited asylum officer and immigration judge resources more efficiently.

| | |
|-------------------|--|
| Question#: | 12 |
| Topic: | Outside Groups |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Did DHS and DOJ discuss this proposal with any outside groups or organizations? If so, please note which organizations were consulted and what considerations they provided.

Response: The proposed rule sought notice and comment for a 60-day period to allow interested persons to submit written data, views, comments, and arguments on all aspects of the proposed rule. The proposed rule was not discussed with any outside groups or organizations during the deliberative rulemaking process outside of the 60-day notice and comment period.

| | |
|-------------------|--|
| Question#: | 13 |
| Topic: | Impact |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Did DHS consider how this might impact the number of grants and denials compared to current policy? Does DHS expect more, less, or the same number of grants and denials compared to the current policy?

Response: DHS does not expect that the rule would have a significant effect on the number of individuals who may be granted asylum. Asylum grant rates between U.S. Citizenship and Immigration Services (USCIS) and the Executive Office of Immigration Review (EOIR) have historically been comparable.

| | |
|-------------------|--|
| Question#: | 14 |
| Topic: | Appeals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Did DHS and DOJ consider the likelihood that applicants will still appeal their asylum decisions to an immigration judge? If so, how does DHS anticipate that continued appeals will in fact expedite adjudication times?

Response: Under the rule, individuals who are not granted asylum could be referred to an immigration judge for proceedings that would be more streamlined. The Interim Final Rule lays out a streamlined processing framework once an asylum application under the IFR is under EOIR jurisdiction, with strict timelines for each phase of the EOIR process. Streamlined removal proceedings will allow the asylum application to be adjudicated before EOIR in a matter of months, rather than years. Historical data reflect that only a small percentage of individuals denied asylum proceed to appeal these denials administratively or petition for review of the denials before the federal courts.

| | |
|-------------------|--|
| Question#: | 15 |
| Topic: | Enforce Immigration Laws |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Since the beginning of this year, you have made several changes to enforcement priorities for illegal immigrants. This was most recently done through your memorandum on September 30, 2021.

Please provide your justification for stating that, just because an illegal immigrant broke the law to enter the U.S., that their illegal status "should not alone be the basis of an enforcement action against them." Is it not the case that DHS and its components should be taking every effort to enforce our immigration laws?

Response: In June 2022, the U.S. District Court for the Southern District of Texas issued a decision that vacated the Secretary's September 30, 2021 memorandum, *Guidelines for the Enforcement of Civil Immigration Law*. Accordingly, as of June 25, 2022, ICE personnel ceased implementation of and reliance on the memorandum. On July 21, 2022, the Supreme Court denied DHS's request for a stay, but decided to hear the case on the merits during the December 2022 term. DHS is abiding by the vacatur as long as the decision remains in effect.

| | |
|-------------------|--|
| Question#: | 16 |
| Topic: | Pull Factors |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Did you consider in your drafting that these enforcement authorities could induce further illegal immigration to the country and serve as a pull factor?

Response: In June 2022, the U.S. District Court for the Southern District of Texas issued a decision that vacated the Secretary's September 30, 2021, *Guidelines for the Enforcement of Civil Immigration Law*. On July 21, 2022, the Supreme Court denied DHS's request for a stay, but decided to hear the case on the merits during the December 2022 term. DHS is abiding by the vacatur as long as the decision remains in effect.

| | |
|-------------------|--|
| Question#: | 17 |
| Topic: | Three Categories |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: How did you identify the three categories for enforcement priority? Did you consider any other categories for inclusion in this policy?

Response: In June 2022, the U.S. District Court for the Southern District of Texas issued a decision that vacated the Secretary's September 30, 2021, *Guidelines for the Enforcement of Civil Immigration Law*. On July 21, 2022, the Supreme Court denied DHS's request for a stay, but decided to hear the case on the merits during the December 2022 term. DHS is abiding by the vacatur as long as the decision remains in effect.

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | Determine Mitigating Factors |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: How did you determine the mitigating and aggravating factors?

Response: In June 2022, the U.S. District Court for the Southern District of Texas issued a decision that vacated the Secretary's September 30, 2021, *Guidelines for the Enforcement of Civil Immigration Law*. On July 21, 2022, the Supreme Court denied DHS's request for a stay, but decided to hear the case on the merits during the December 2022 term. DHS is abiding by the vacatur as long as the decision remains in effect.

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | ICE Impact |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: How have these enforcement policies impacted the efforts of ICE agents to protect public safety and enforce the law? Please provide detailed statistics about the difference between enforcement activity since January 20, 2021, and the same time period in 2020.

Response: In June 2022, the U.S. District Court for the Southern District of Texas issued a decision that vacated the Secretary’s September 30, 2021, *Guidelines for the Enforcement of Civil Immigration Law* (Mayorkas Memorandum). In the absence of the Mayorkas Memorandum, ICE officers make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

Question: Please provide detailed statistics about the difference between enforcement activity since January 20, 2021, and the same time period in 2020.

Response: Please refer to the below chart. Since March 2020, COVID-19 has impacted the operations of all law enforcement agencies, including ICE.

For a substantial portion of Fiscal Year (FY) 2020, ICE officers were operating under pre-pandemic circumstances, conducting normal enforcement, detention, and removal operations. By the start of FY 2021 and throughout that year, however, ICE, and many other law enforcement agencies significantly reduced its number of arrests and limited the number of individuals taken into custodial settings due to the risk of COVID-19.

| ICE Enforcement and Removal Operations Administrative Arrests by Criminality | | | |
|--|--------------------|--------------------------|----------------------------|
| From January 2021 through November 2021 | | | |
| Total | Convicted Criminal | Pending Criminal Charges | Other Immigration Violator |
| 64,980 | 27,428 | 5,062 | 32,490 |
| From January 2020 through November 2020 | | | |

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | ICE Impact |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

| Total | Convicted Criminal | Pending Criminal Charges | Other Immigration Violator |
|----------------|---------------------------|---------------------------------|-----------------------------------|
| 156,054 | 58,870 | 19,157 | 78,027 |

| | |
|-------------------|--|
| Question#: | 20 |
| Topic: | Enrolled in MPP |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Since August 24, DHS has been under court order to restore MPP. However, on October 29, 2021, you issued another memorandum attempting to terminate MPP. This raises concerns that you have not been acting expeditiously to restore MPP as directed by the courts.

How many illegal immigrants are currently enrolled in MPP?

How many illegal immigrants have been processed through MPP and released into the interior of the United States since January 20, 2021?

Has DHS enrolled any illegal immigrants in MPP since August 24, 2021?

Response: Between December 6, 2021 and August 8, 2022, DHS enrolled a total of 12,581 noncitizens in the MPP program. Prior to the cessation of the program on August 9, 2022, a total of 5,044 enrollees were disenrolled and 5,504 re-entered the United States to attend immigration proceedings before the EOIR. On August 8, 2022, the U.S. District Court for the Northern District of Texas lifted the injunction that required DHS to reimplement MPP in good faith. Individuals are no longer being newly enrolled in MPP, and individuals currently in MPP in Mexico are disenrolled when they return for their next scheduled court date. Individuals disenrolled from MPP will continue their removal proceedings in the United States.

| | |
|-------------------|--|
| Question#: | 21 |
| Topic: | Restarting MPP |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: From August 24, 2021 to the present, what specific actions has DHS taken to comply with the federal district court ruling and restart MPP? Has DHS entered any contracts pertaining to restarting MPP?

Response: On June 30, 2022, the Supreme Court affirmed that the Secretary has the discretionary authority to terminate MPP. On August 8, 2022, the U.S. District Court for the Northern District of Texas lifted the injunction that required DHS to reimplement MPP in good faith. Individuals are no longer being newly enrolled in MPP, and individuals currently in MPP in Mexico are disenrolled when they return for their next scheduled court date. Individuals disenrolled from MPP will continue their removal proceedings in the United States.

| | |
|-------------------|--|
| Question#: | 22 |
| Topic: | Detainer Request |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: I am deeply concerned about the threat posed by criminal aliens who have crossed the border illegally. Criminal aliens have been protected across the country through sanctuary city policies which prohibit cooperation with federal immigration enforcement. These types of policies are dangerous and are a public safety threat to our communities.

How many illegal immigrants have received a detainer request since January 20, 2021? How does that compare to the same time period in 2020?

Please provide a breakdown of the crimes committed by criminal aliens who were subject to a detainer request including murder, sexual assault, drug trafficking, and any other violent assaults.

Response: On March 11, 2022, Immigration and Customs Enforcement released the agency's Fiscal Year (FY) 2021 Annual Report detailed data from ICE's broad responsibilities. The requested information is contained in this report. The report is available online: <https://www.ice.gov/news/releases/ice-releases-fy-2021-annual-report>.

| | |
|-------------------|--|
| Question#: | 23 |
| Topic: | Requests Ignored |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: How many detainer requests were ignored by sanctuary jurisdictions? Please provide a detailed breakdown by state and local jurisdictions who failed to comply with detainer requests.

Response: ICE has limited visibility into actions taken by state and local authorities as state and local law enforcement agencies do not generally communicate whether a detainer has been honored or declined. In cases where state or local authorities release a noncitizen sought by ICE without notification to ICE, the system may not reflect a declined detainer unless the noncitizen is subsequently re-arrested. As such, ICE is unable to report on the number of declined detainers by state and local jurisdictions.

| | |
|-------------------|--|
| Question#: | 24 |
| Topic: | Criminal Charges |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Of those deported from the United States since January 20, 2021, how many had criminal records or pending criminal charges? Please provide a breakdown of their criminal conduct including murder, sexual assault, drug trafficking, and any other violent assaults.

Of those who are repeat border crossers, how many and what percentage have a criminal record or pending criminal charges?

Response: On March 11, 2022, Immigration and Customs Enforcement released the agency's Fiscal Year (FY) 2021 Annual Report detailed data from ICE's broad responsibilities. The requested information is contained in this report. The report is available online: <https://www.ice.gov/news/releases/ice-releases-fy-2021-annual-report>.

| | |
|-------------------|--|
| Question#: | 25 |
| Topic: | TikTok Ads |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: On October 25, 2021, Fox Business reported that Mexican Drug Cartels are using TikTok to entrap American youths to help smuggle and transport illegal immigrants.

What is CBP doing to address this problem?

Is CBP in communication with TikTok to remove these illicit advertisements?

Response: DHS respectfully defers to DOJ.

| | |
|-------------------|--|
| Question#: | 26 |
| Topic: | H-2B Visas |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: H-2B temporary worker visas are crucially important to seasonal businesses in industries across North Carolina. Employers are having to make tough decisions just to keep their business open while they struggle to find a reliable staffing solution. In light of worker shortages across the country, many business owners have had to turn to temporary workers to fill the gap in labor demand.

Do you acknowledge that DHS continues to have authority to issue additional visas to employers for both the first and second half of fiscal year 2022?

Will you commit to releasing additional H-2B visas in both the first and second half of fiscal year 2022?

When will you make a decision to release additional visas, and how will you ensure that the regulatory burdens will not delay the release of additional visas?

Response: On January 28, 2022, DHS published a temporary final rule making available a supplemental increase of 20,000 visas for the H-2B program for U.S. employers seeking to employ additional workers on or before March 31, 2022. As in prior years, DHS consulted with U.S. Department of Labor (DOL) to ensure that the supplemental increase does not adversely affect the wages and working conditions of U.S. workers.

| | |
|-------------------|--|
| Question#: | 27 |
| Topic: | H-2B Visa Rule |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: For the last four years Congress has given the Department of Homeland Security the authority to provide relief to seasonal employers across the country. However, each time Congress has given DHS the authority to issue additional H-2B visas, DHS and the Department of Labor have taken months to publish such a rule.

Is it the position of DHS that you must once again go through the lengthy process of publishing a Temporary Final Rule each year? What is the agency's interpretation for why a rule must be issued each year to release additional H-2B visas?

In order to improve certainty for seasonal employers and to increase bureaucratic efficiency, will DHS consider publishing a rule which would permanently articulate how DHS will exercise its authority, if provided by Congress, rather than publishing a Temporary Final Rule each time authority is provided?

Response: DHS recognizes the labor challenges facing some U.S. businesses and appreciates the importance of the H-2B program in addressing those challenges. When Congress gives DHS its time-limited authority to increase the H-2B cap beyond the annual numerical limitation set forth in section 214 of the INA, DHS has worked expeditiously, in each instance, to exercise this statutory authority. Each year, apart from FY 2020, DHS has published a joint temporary final rule with DOL on an expedited schedule to authorize these visas as soon as possible. Recognizing the importance of the H-2B program, DHS will continue to consider ways to exercise authority given by Congress as quickly and efficiently as possible. In addition, DHS notes that Congress may consider a statutory provision to articulate how DHS will exercise its authority.

| | |
|-------------------|--|
| Question#: | 28 |
| Topic: | Streamlining H-2B Visas |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Are there any other actions DHS has taken to streamline the process for approving additional H-2B visas? What additional actions will the agency take to expeditiously process H-2B visas for individuals with an approved labor petition?

Response: DHS adjudicates petitions as quickly and efficiently as possible and is committed to delivering timely and fair decisions to all petitioners. In addition, H-2B petitioners may choose to request premium processing, which allows for expedited processing for an additional fee. H-2B petitioners requesting premium processing have a reasonable expectation of an adjudicative action within 15 days.

| | |
|-------------------|--|
| Question#: | 29 |
| Topic: | Requiring Vaccinations |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: While DHS is going to require travelers to provide proof of vaccination before entering the country, it is my understanding that DHS is not requiring vaccinations for those in ICE or CBP custody.

What is the current policy of DHS and its components, including ICE and CBP, for requiring COVID vaccinations for detainees?

If you do not require detained migrants to be vaccinated, what are the legal and policy justifications for not requiring such vaccinations while legal travelers into the United States are required to be vaccinated?

Response: ICE, and CBP as operationally feasible, offer COVID-19 vaccines to age-appropriate individuals in DHS custody.

Since mid-2022, as operationally feasible, CBP has offered COVID-19 vaccinations to age-appropriate noncitizens found inadmissible under Title 8 authority, who have been taken into CBP custody along the Southwest Border, and who are unable to provide proof of a previous U.S. Food and Drug Administration approved or World Health Organization listed vaccination.

While ICE cannot mandate individuals in detention to consent to be vaccinated, all detention facilities are responsible for ensuring those detained in ICE custody are offered the COVID-19 vaccines in accordance with state priorities and guidance.

| | |
|-------------------|--|
| Question#: | 30 |
| Topic: | Title 42 |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Can DHS expel migrants under Title 42 authority based on their status as being unvaccinated?

Response: CBP is currently enforcing the CDC's public health order requiring the expulsion of certain undocumented noncitizens in response to the COVID-19 pandemic. The August 2021 Title 42 Order currently being enforced due to court order sets forth specific categories of persons who are subject to the Order, as well as outlining individuals who may be excepted from the Order. Vaccine status is not among the criteria used to determine whether an individual is a "covered noncitizen" subject to the Order.

| | |
|-------------------|--|
| Question#: | 31 |
| Topic: | Vaccinated in ICE Custody |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: How many detainees have received one dose of a COVID vaccine while in ICE custody? How many have received both doses?

Response: From December 1, 2020 to November 16, 2021, 21,215 detained noncitizens in ICE custody received one dose and 2,571 received two doses. As noted, some noncitizens received one dose during December 1, 2020 to November 16, 2021. This was due to having received the Johnson & Johnson single shot COVID-19 vaccine or they were only able to get one COVID-19 dose due to the average length of stay in ICE custody.

Question: What is the number and percentage of those who have refused to be vaccinated while in ICE custody?

Response: There were 9,464 (9.8 percent) detained noncitizens in ICE custody who refused the COVID-19 vaccine during the timeframe of December 1, 2020 to November 16, 2021.

| | |
|-------------------|--|
| Question#: | 1 |
| Topic: | Vaccinated in CBP Custody |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: How many detainees have received one dose of a COVID vaccine while in CBP custody? How many have received both doses?

What is the number and percentage of those who have refused to be vaccinated while in CBP custody?

Response: The vaccination program for migrants in U.S. Customs and Border Protection (CBP) custody did not begin until December 6, 2021. Therefore, as of November 16, 2021, zero COVID-19 vaccinations had been provided to migrants in custody.

| | |
|-------------------|--|
| Question#: | 2 |
| Topic: | Border Agents Vaccination Status |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: According to media reports, CBP recently drafted a report on the vaccination status of border patrol agents. This report indicated that 48% of border patrol agents have not yet responded to the agency on their vaccination status.

Please provide the most up to date information about how many border patrol agents have responded, or not responded, to the agency regarding their vaccination status.

What is your best estimate of how many border patrol agents have not been vaccinated, and what percentage of the workforce does that cover?

Response: As of November 27, 2021, 80 percent of U.S. Border Patrol (USBP) personnel had self-reported being vaccinated, 18 percent had self-reported being unvaccinated or submitted a request for reasonable accommodation, and 2 percent had not declared a status.

| | |
|-------------------|--|
| Question#: | 3 |
| Topic: | Not Vaccinated |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: If large numbers of border patrol agents choose not to get vaccinated, how will DHS and CBP respond?

Response: CBP began with an extensive communications campaign with the workforce. CBP's communication efforts were successful and increased COVID-19 vaccination rates from 24 percent of the workforce to 87 percent (97 percent including those who have requested reasonable accommodations). During the week of November 15, 2021, CBP used the Human Resources Business Engine (HRBE), to send automated counseling letters to approximately 3,400 non-compliant employees, comprising 5.3 percent of the workforce. Since then, compliance efforts have been placed on hold pending the outcome of litigation on the matter.

Question: Is it appropriate to suspend or terminate border patrol agents who want to exercise their right not to be vaccinated while we are in the middle of an unprecedented crisis at the southern border?

Response: CBP is following the mandates outlined by the Safer Federal Workforce Taskforce. If a CBP employee has a religious or medical reason for not wanting to be vaccinated, they may submit a reasonable accommodation request. Should CBP be in a position to resume its compliance efforts upon the conclusion of litigation on the matter, no disciplinary action will be taken until an employee's request for a reasonable accommodation is adjudicated.

To ensure compliance with an applicable nationwide preliminary injunction, which may be supplemented, modified, or vacated, depending on the course of ongoing litigation, the federal government will take no action to implement or enforce the COVID-19 vaccination requirement pursuant to Executive Order 14043 on Requiring Coronavirus Disease 2019 Vaccination for federal employees. Therefore, to the extent a federal job announcement includes the requirement that applicants must be fully vaccinated against COVID-19 pursuant to Executive Order 14043, that requirement does not currently apply. Federal agencies may request information regarding the vaccination status of selected applicants for the purposes of implementing other workplace safety protocols, such as protocols related to masking, physical distancing, testing, travel and quarantine.

| | |
|-------------------|--|
| Question#: | 4 |
| Topic: | FY 21 Employment Based Visas |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: I am concerned about the ability of DHS and its components, particularly USCIS, to efficiently and effectively process employment-based visas. In FY21, USCIS was unable to process nearly 80,000 employment-based visas before the end of the fiscal year, meaning these congressionally authorized visas went unused. I wrote to USCIS about this issue on October 20, and requested a response no later than December 1.

Will you commit to ensuring my questions are answered as quickly as possible? My questions were as follows:

What was the total number of employment-based visas which were available in FY21?

How many employment-based visas did USCIS process in FY21? How many employment-based visas went unused in FY21?

What specific measures did you take to improve processing times for employment-based visas in FY21?

Response: The U.S. Department of State (DOS) determined that the total number of visas available in the employment-based preference categories in Fiscal Year (FY) 2021 was 262,288. DOS published the annual Report of the Visa Office for FY 2021 and reported that 280,077 total visas were issued, exceeding the annual goal. This is the highest number of (EB) adjustment of status applications approved since FY 2005.

USCIS prioritized employment-based (EB) adjustment of status applications during every step of processing and adjudication during FY 2021. Among the actions that USCIS took during FY 2021 to maximize EB visa use or improve processing times were the following:

- Based on a multi-year study of EB adjustment of status adjudications, implemented a risk-based interview determination for these applications beginning in March of 2020.
- Through the end of FY 2020, continued to review and prepare employment-based adjustment of status applications for which visas would become available in October of 2020 for final adjudication.
- Worked collaboratively with DOS to ensure that the dates in the Visa Bulletin were set at a level to allow the filing of sufficient new employment-based adjustment of status applications early in FY 2021.
- Allowed applicants to file using the Dates for Filing chart in the DOS Visa Bulletin during the first quarter of FY 2021.

| | |
|-------------------|--|
| Question#: | 4 |
| Topic: | FY 21 Employment Based Visas |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

- Prioritized the receipt and processing of the employment-based adjustment of status workload at our Lockbox intake facilities.
- Redistributed pending workloads between Lockbox intake facilities and distributed newly-filed employment-based adjustment of status applications between additional facilities, in order to improve processing and reduce delays in the initial intake and receipt of applications.
- Eliminated a “frontlog” of applications (which was more than 1 million receipts in January 2021 and was fully eliminated in July 2021) by expanding staffing and overtime at USCIS intake facilities. Prioritized the processing of the employment-based adjustment of status workload both in Field Operations and Service Center Operations.
- Restored contractor processing capacity at the USCIS National Benefits Center
- Reused biometrics for close to 2 million applicants since March 2020 and reduced pending biometrics appointments from 1.4 million in January 2021 to 155,000 as of September 30, 2021, thus freeing up resources at our Application Support Centers (ASCs).
- Prioritized the scheduling of biometrics appointments at ASCs for employment-based adjustment of status applicants.
- Expanded hours at ASC locations where necessary to gain additional capacity for biometrics appointments for employment-based adjustment of status applicants.
- Redistributed the employment-based adjustment of status workload between offices and directorates to match workloads with available resources.
- Provided overtime funds to USCIS employees processing and adjudicating employment-based adjustment of status applications.
- In addition, one of the significant challenges that USCIS faced in FY 2021 concerned the lack of a valid Form I-693, Report of Medical Examination and Vaccination Record. In order to demonstrate eligibility for adjustment of status, applicants in the employment-based preference categories are required to provide a valid Form I-693. However, USCIS often does not receive the Form I-693 at the time of filing and instead receives it from applicants when requested through a Request for Evidence (RFE). USCIS took the following steps to address this issue:

| | |
|-------------------|--|
| Question#: | 5 |
| Topic: | FY 22 Employment Based Visas |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: What is the total number of employment-based visas which will be available in FY22?

Response: DOS estimated that the FY 2022 employment-based annual limit will be approximately 280,000 – more than double the typical annual total – due to unused family-based visa numbers from FY 2021 being allocated to the next fiscal year’s available EB visas. DOS’s determination of the annual limit for employment-based visas in FY 2022 was 281,507, which they published in the [Visa Bulletin for September 2022](#).

Question: What specific measures will you use in FY22 to improve processing times for employment-base visas?

Response: USCIS is well-situated to process an even higher number of employment-based adjustment of status applications in FY 2022. In support of those processing goals, USCIS will take measures including:

- Continue to prioritize the processing of EB adjustment of status applications throughout the agency, while preserving the integrity of the immigration system and continuing to provide resources to serve other applicants and petitioners.
- Work collaboratively with DOS to ensure that the dates in the Visa Bulletin are set at a level to allow the filing of sufficient new employment-based adjustment of status applications early in FY 2022.
- Allow applicants to file using the Dates for Filing chart in the DOS Visa Bulletin during the first quarter of FY 2022. Service Center Operations is in the process of increasing the number of adjudication officers assigned to work EB cases and will consider reallocation of caseloads to maximize capacity across USCIS.

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Visa Backlog |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: What is your best estimate of the number of individuals currently waiting in the employment based visa backlog?

Response: Estimating the number of individuals who are awaiting visa availability in the employment-based categories is very challenging. A noncitizen can be said to enter the queue when they have a priority date. The priority date for an employment-based petition that requires a labor certification from the Department of Labor (DOL) is the date the labor certification application was accepted for processing. The priority date for a petition in a classification that does not require a labor certification is the date the completed, signed petition is properly filed with USCIS. The queue for employment-based immigrant visas consists of the following subgroups, in order of progress through the process:

| Sub-Group | Notes on Estimation |
|--|---|
| Noncitizens with a pending labor certification application for whom a visa is not available | USCIS has no visibility on this population. |
| Noncitizens with an approved labor certification application for whom a visa is not available and there is; no petition pending with USCIS | USCIS has no visibility on this population. |
| Noncitizens with a pending immigrant visa petition with USCIS for whom a visa is not available | USCIS can determine the number of pending petitions. However, the number of family members who may immigrate with the principal beneficiary of the petition cannot be determined from the petition data and must be estimated. Also, many noncitizens have two or more employment-based petitions filed on their behalf, often in different categories. Correcting for duplicate petitions filed on behalf of the same noncitizen is challenging, particularly for older petitions. In addition, since the petitions are pending, the analysis should assume that a certain percentage will not be approved. Furthermore, given the long wait times for visa availability, many noncitizens become lawful permanent residents through other, faster, pathways (through marriage, for example) while |

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Visa Backlog |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

| | |
|--|---|
| | <p>awaiting a visa. Finally, USCIS and DOS experience has shown that a certain percentage of individuals for whom visas are available choose not to seek a visa or adjust status to lawful permanent residence. This “non-response” rate should be included in the analysis.</p> <p>There are approximately 125,600 pending employment-based immigrant visa petitions at USCIS, across the EB1 through EB5 preference categories. With estimated approval rates in each category, and estimated number of dependents, these petitions represent approximately 232,400 noncitizens. This estimate does not consider the “non-response” rate at this time.</p> |
| <p>Noncitizens with an approved immigrant visa petition but for whom a visa is not available</p> | <p>USCIS can determine the number of approved petitions. However, the number of family members who may immigrate with the principal beneficiary of the petition cannot be determined from the petition data and must be estimated. Also, it is common for a noncitizen to have two or more employment-based petitions filed on their behalf, often in different categories. Correcting for duplicate petitions filed on behalf of the same noncitizen is challenging, particularly for older petitions. In addition, given the long wait times for visa availability, many noncitizens become lawful permanent residents through other, faster, pathways (through marriage, for example) while awaiting a visa. In order to determine who is truly in the visa queue, all such noncitizens need to be removed from the analysis. This, too, is difficult. Finally, USCIS and DOS experience has shown that a certain percentage of individuals for whom visas are available choose not to seek a visa. This “non-</p> |

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Visa Backlog |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

| | |
|---|--|
| | <p>response” rate should be included in the analysis.</p> <p>There are approximately 438,400 approved employment-based immigrant petitions across EB1 through EB5 preference categories. With estimated dependents, these petitions represent approximately 875,000 noncitizens with an approved employment-based immigrant visa petition but for whom a visa is not available. This estimate does not consider the “non-response” rate at this time.</p> |
| <p>Noncitizens with a pending adjustment of status or immigrant visa application for whom a visa is not available</p> | <p>For this sub-group, USCIS and DOS have a discrete count of family members who intend to immigrate, and it is less likely that the noncitizens will have more than one pending application. It is still possible that members of this subgroup have obtained lawful permanent resident status through some other pathway after filing, and the analysis should account for this. As the applications are pending, the analysis should assume that a certain percentage will be denied and not require the use of a visa.</p> <p>There are approximately 263,000 noncitizens with a pending adjustment of status application (I-485) in the employment-based preference categories. However, visas are available for the vast majority of the noncitizens with pending applications at this time. Only applicants in the EB3 category from India and China are currently affected by retrogression. Given the difficulties in determining the exact priority date, category, and country of chargeability of our pending adjustment workload, USCIS cannot state with certainty how many do not have a visa available. In addition, USCIS does not have</p> |

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Visa Backlog |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

| | |
|--|---|
| | information on how many immigrant visa applications are pending with DOS. |
|--|---|

USCIS notes that analysts at the Congressional Research Service and nongovernmental organizations (NGOs) have attempted to estimate the employment-based visa queue based on available USCIS and DOS data. However, these analyses are based on incomplete data and do not account for multiple petitions, beneficiaries who have already obtained lawful permanent residence, denial rates, non-response rates, and the other considerations noted above.

USCIS and DOS do periodically publish analyses that provide some insight into the EB visa queue. DOS publishes an “Annual Report of Immigrant Visa Applicants in the Family-sponsored and Employment-based preferences Registered at the National Visa Center.” The most recent report is from November of 2020 and is available at https://travel.state.gov/content/dam/visas/Statistics/Immigrant-Statistics/WaitingList/WaitingListItem_2020_vF.pdf. USCIS also publishes a “Form I-140, I-360, I-526 Approved Employment-Based Petitions Awaiting Visa Availability” report. The most recent provided data as of April 21, 2021, and is available at https://www.uscis.gov/sites/default/files/document/reports/EB_I140_I360_I526_performancedata_fy2021_Q1_Q2.pdf. However, this report duplicates every petition included in the DOS report. It also does not account for potential derivative family members, does include multiple petitions filed on behalf of the same noncitizen, does not include pending petitions, does not filter out petitions filed for beneficiaries who have since acquired lawful permanent residence in some other way, does not account for the likely “non-response” rate, and does not account for the denial rate of any future application for adjustment of status or immigrant visa application.

While the subgroups in the table above comprise the queue of noncitizens with priority dates for whom employment-based visas are not currently available, there are hundreds of thousands of individuals with priority dates who have visas available to them in the employment-based preference categories. These include noncitizens with pending adjustment of status or immigrant visa applications and individuals with pending or approved petitions who have not yet applied to become lawful permanent residents. While these individuals are generally not considered to be in the “visa backlog,” they are eligible to receive employment-based visas ahead of those in the queue for whom visas are not yet available.

Question: Of those waiting in the employment-based visa backlog, what percentage have been approved for a visa who currently reside in the United States?

Response: USCIS cannot state with certainty how many individuals in the queue for employment-based immigrant visas currently reside in the United States. All of those

| | |
|-------------------|--|
| Question#: | 6 |
| Topic: | Visa Backlog |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

noncitizens with pending adjustment of status applications listed in the response to Question 6 above had to be physically present in the United States when they applied for adjustment of status. The beneficiaries of pending or approved immigrant visa petitions, or pending or approved labor certification applications, may reside in any country and are not required to provide USCIS with an updated residential address. However, most noncitizens seeking to become lawful permanent residents (LPRs) in the employment-based preference categories do so through adjustment of status, suggesting that most live in the United States. From FY 2015 – 2019, 82 percent of all new employment-based LPRs had adjusted status.

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Additional Funding |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Is there additional funding which you need from Congress in order to effectively process all eligible employment-based visas in FY22?

Response: USCIS respectfully refers you to the President’s Budget for FY 2022 for USCIS, which requests appropriations in the amount of \$345 million (in additional to available fee resources) for application processing, reducing backlogs within asylum, field, and service center offices, and support of the refugee program. We appreciate the support received from Congress in the recent Continuing Resolution (CR) legislation of September 2021 (Public Law 117-43), which provided \$250 million for these purposes on an annualized basis during the CR period.

USCIS will benefit from, and appreciates, the ongoing support for discretionary/appropriated funding in FY 2023 so it can continue its prioritization of reducing backlogs across its major immigration benefit workflows, and ensure it has adequate staffing, facilities space, and a secure IT infrastructure.

Congress can also continue to support our partners at DOS Consular Affairs as they rebuild their own capacity after the pandemic and related operational and fiscal challenges.

Question: What additional authorities could Congress provide to USCIS which would allow for you to process all employment-based visas in FY22?

Response: The Administration’s proposal to modernize the U.S. immigration system (the U.S. Citizenship Act of 2021) includes, with respect to employment-based immigration:

- Clearing employment-based visa backlogs, recapturing unused visas, ensuring that visa numbers do not go to “waste” in the future; reducing lengthy wait times, and eliminating per-country visa caps;
- Making it easier for graduates of U.S. universities with advanced STEM degrees to stay in the United States;
- Improving access to green cards for workers in lower-wage sectors and eliminating other unnecessary hurdles for employment-based green cards;
- Providing dependents of H-1B visa holders with work authorization, and preventing children from “aging out” of the system; and
- Creating a pilot program to stimulate regional economic development, giving the U.S. Department of Homeland Security (DHS) the authority to adjust green cards based on macroeconomic conditions, and incentivizing higher wages for nonimmigrant, high-skilled visas to prevent unfair competition with American workers.

| | |
|-------------------|--|
| Question#: | 7 |
| Topic: | Additional Funding |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

USCIS stands ready to work with Congress on these proposals, and we continue to be available to provide technical drafting assistance to your offices on potential immigration legislation.

| | |
|-------------------|--|
| Question#: | 8 |
| Topic: | Fentanyl |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: In Fiscal Year 2021, Customs and Border Protection (CBP) reported seizing 10,586 pounds of fentanyl. This is more than double the amount of fentanyl seized during Fiscal Year 2020.

How are you working with our local, state, federal, and international partners to stop fentanyl from entering the country?

Response: Most illicit drugs, including fentanyl, enter the United States along our Southwest Border via land ports of entry. They are brought in by privately owned vehicles, commercial vehicles, and even pedestrians. Fentanyl and other synthetic opioids are also encountered at International Mail Facilities and Express Consignment Carrier (ECC) environments. Fentanyl discovered in shipments largely originate, and are likely synthesized, in Mexico and are concealed within other commodities versus small shipments of powder. Illicit fentanyl can be purchased from sellers through online transactions and then shipped via international mail packages or ECCs.

The shift in the illicit drug market toward primarily fentanyl, its analogues, and other synthetic opioids led CBP to develop and implement the CBP Strategy to Combat Opioids. CBP's enforcement efforts are guided by the strategy's four key objectives that focus on ensuring CBP can act aggressively and proactively to combat illicit opioids and quickly anticipate and adapt to changing tactics and techniques used by cartels, traffickers, smugglers, and their networks: enhance collaboration and information-sharing to combat illicit opioids; produce actionable intelligence on illicit opioids; target the illicit opioid supply chain; and protect CBP personnel from exposure to opioids.

CBP and Immigration and Customs Enforcement have joined with colleagues from the Office of National Drug Control Policy, the U.S. Department of Justice (DOJ), DOS, and the U.S. Postal Service in meeting with Government of India law enforcement counterpart agencies under the bilateral Counter Narcotics Work Group (CNWG). The CNWG was established in late 2020 and most recently met in person in July 2022 to coordinate efforts in stemming the flow of illicit narcotics, particularly fentanyl. Additionally, and under the auspices of the CNWG, U.S. and India law enforcement agencies are coordinating to focus investigative efforts on identified persons and companies who ship opioids using the international mail and express consignment systems.

| | |
|-------------------|--|
| Question#: | 8 |
| Topic: | Fentanyl |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: How are you working with local, state, and federal partners to prevent fentanyl from being distributed into our communities?

Response: The CBP Office of Field Operations (OFO) collaborates with our local, state, and federal partners through bolstering task force capabilities. Task force contributions support the objectives outlined in CBP Strategy to Combat Opioids. Each Field Office has personnel working with our partnering agencies to combat the distribution of fentanyl by Transnational Criminal Organizations. OFO strengthens these task forces by enhancing information sharing and enforcement efforts through Special Operations specifically targeting drug trafficking.

The OFO National Canine Enforcement Program (NCEP) currently employs 442 Concealed Human Narcotic Detector Dogs that are trained to detect fentanyl and fentanyl analogues. The NCEP is collaborating with the World Customs Organization and DOS Bureau of International Narcotics and Law Enforcement Affairs to export canine fentanyl detection to international partners. A scoping mission has been completed in Brazil and another is scheduled for the end of October in India. Exporting canine fentanyl detection training builds CBP rapport with our international partners and will interrupt the supply chain of fentanyl that may end up on the streets of the United States. Saving lives regardless of country is paramount.

In FY 2022 (ytd) NCEP canine enforcement teams have seized 4,153 kilograms (kgs) of fentanyl and 604 kgs of heroin in the CBP environment. NCEP additionally has seized 81 kgs of fentanyl and 11 kgs of heroin by providing outside agency assists to our state and local law enforcement partners.

During FY 2021 NCEP canine enforcement teams seized 3,823 kgs of fentanyl and 1,744 kgs in the CBP environment. Additionally, NCEP teams seized 76 kgs of fentanyl and 14 kgs of heroin assisting our state and local law enforcement partners.

The NCEP canine enforcement teams are a valuable asset not only for CBP, but for our local and surrounding communities as well by providing canine narcotic detection services to state and local agencies who may not have fentanyl detection capabilities.

| | |
|-------------------|--|
| Question#: | 9 |
| Topic: | Fake Pills |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: On September 30, 2021, the United States Drug Enforcement Administration (DEA) Administrator Anne Milgram announced that a total of 9.5 million fake pills have been seized this year. 1.8 million fake pills were seized and 810 arrests were made nationwide in a two-month operation called "One Pill Can Kill". Administrator Milgram highlighted that the fake pills laced are being produced by Mexican criminal drug networks and being sent to the United States.

What efforts is DHS taking to stop the fake pills from entering the country through ports of entry?

Response: CBP is utilizing innovative narcotics testing methods to identify trace amounts of fentanyl. Rapid Response Strips are a low cost and effective tool in identifying low concentrations of fentanyl in fake pills; a common method employed by narcotics trafficking organizations along the Southwest Border.

Additionally, CBP has worked with large and small businesses to develop new and innovative technologies to assist in locating and identifying narcotics being smuggled into the United States.

CBP plays a critical role in the Nation's efforts to keep dangerous narcotics out of the hands of the American public. Interdicting drugs at ports of entry (POEs), leveraging targeting and intelligence-driven strategies, and working with our partners to combat Drug Trafficking Organizations (DTOs) are key components of our multi-layered, risk-based approach to enhance the security of our borders. This layered approach reduces our reliance on any single point or program and extends our zone of security outward ensuring our physical border is not the first or last line of defense.

Question: Have you seen a rise of fake pill seizures at the southern border?

Response: The seizure of fentanyl in pill form has become more common place as Transnational Criminal Organizations (TCOs) have identified the high value in this narcotic trafficking scheme. As noted above, CBP has utilized innovative narcotics testing methods to identify trace amounts of fentanyl. Rapid Response Strips are a low cost and effective tool in identifying low concentrations of fentanyl in fake pills.

Question: What efforts are being taken to stop them from entering the country at the southern border?

| | |
|-------------------|--|
| Question#: | 9 |
| Topic: | Fake Pills |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Response: CBP plays a critical role in the Nation’s efforts to keep dangerous narcotics out of the hands of the American public. CBP continues to collaborate with our partners, foreign and domestic, to achieve this goal. Interdicting illicit drugs, leveraging targeting and intelligence-driven strategies, and working with our partners to combat DTOs are key components of our multi-layered, risk-based approach to enhance the security of our borders. This layered approach reduces our reliance on any single point or program and extends our zone of security outward ensuring our physical border is not the first or last line of defense.

Additionally, CBP hosts regular binational meetings at various POEs along the Southwest Border with representation from federal, state, local and Government of Mexico counterparts. These recurring meetings are designed to facilitate partnerships near and across borders and to address the threat posed by illicit revenue streams generated via narcotics trafficking. CBP liaises with the attaché in Mexico City to further advance the whole of government approach for dismantling TCOs, and the effect these TCOs have on both the United States and Mexico.

CBP has Task Force Officers which further advance CBP’s national security interests by being embedded within other federal agencies. CBP Officers act as force multipliers for these other federal agencies, while also proving key support structures via intelligence gathering and sharing. This information can be seamlessly disseminated throughout CBP to further inform the field of new or developing trends.

| | |
|-------------------|--|
| Question#: | 10 |
| Topic: | Project Bitter Pill |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: In 2012, the U.S. Immigration and Customs Enforcement's (ICE) Homeland Security Investigations (HSI) coordinated a multiple agency effort called "Project Bitter Pill", which led to the seizure of 686 websites that were selling counterfeit pills. This effort provided CBP with critical information that led to the interception of packages with counterfeit pills.

At this time, is DHS working on any similar efforts like Project Bitter Pill to prevent counterfeit pills from entering the country? If not, will you commit to taking action against these types of websites and drug networks?

Response: U.S. Immigration and Customs Enforcement (ICE) Homeland Security Investigations (HSI) leads the National Intellectual Property Rights Coordination Center (IPR Center), which is the U.S. Government's response to intellectual property theft and counterfeiting. A primary focus of the IPR Center is coordinating the investigation and interdiction of counterfeits that threaten public health and safety.

HSI is continuously working on efforts to prevent counterfeit pills from entering the United States. For example, Operation Apothecary is an IPR Center initiative targeting the smuggling or illegal importation of unapproved, counterfeit, or adulterated pharmaceuticals entering the United States via international mail, express consignment, and sea and land ports. In FY 2021, HSI reported 19 criminal arrests, 25 indictments, and 21 convictions as part of Operation Apothecary.

Operation Apothecary was initiated in 2004 to address and attack vulnerabilities in the entry process that might allow for the smuggling of commercial quantities of unapproved, counterfeit, or adulterated drugs. Over time, the operation has expanded to address the importation of smaller amounts of counterfeit drugs; these smaller importations have risen dramatically as consumers are able to order products directly via online stores. Consumers purchase pharmaceuticals over the internet with the belief that the products advertised are legitimate products, but in fact the products are often counterfeit or an unapproved version that may have been manufactured in unsanitary conditions or not subjected to any safeguards or quality controls. Criminals posing as legitimate pharmaceutical providers advertise prescription drugs and inexpensive alternatives for sale without requiring a valid prescription.

The online sale of counterfeit pharmaceuticals is a global problem. As part of Operation Apothecary, the IPR Center participates in the INTERPOL-led Operation Pangea. Operation Pangea is the largest global internet-based operation focusing on illicit websites selling fake or counterfeit medicines. Operation Pangea engages police, customs, and national regulatory authorities to target websites supplying fake and illicit medicines, and has an outreach

| | |
|-------------------|--|
| Question#: | 10 |
| Topic: | Project Bitter Pill |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

component that engages the public to increase awareness of the serious health risks posed by unapproved, counterfeit, or adulterated pharmaceuticals.

Additionally, HSI's Cyber Crimes Center (C3) continues to prioritize investigations targeting criminal organizations engaged in COVID-19 fraud, including, but not limited to, counterfeit medications and vaccines. From the onset of the COVID-19 pandemic, C3 began proactively identifying websites linked to COVID-19 fraud. As a result of these efforts, HSI has seized 25 websites and disrupted an additional 416 websites through administrative actions. Several of these websites operated under the guise of selling vaccines or COVID-19-related medications to harvest sensitive personally identifiable information as a phishing scam. In one such case, HSI conducted an undercover purchase of a counterfeit COVID-19 vaccine on one of these sites, which led to the arrest and successful prosecution of those involved.

| | |
|-------------------|--|
| Question#: | 11 |
| Topic: | BITMAP |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: In 2011, President Obama and the DHS administration launched the pilot program, Biometric Identification Transnational Migration Alert Program (BITMAP). The BITMAP enables partner-country law enforcement officers to collect and share biometric and biographic data on special interest individuals with CBP. The information is valuable to identify and detain potential violent criminals or members on the terror watch list, when they enter illegally into the U.S.

Do you believe that BITMAP program has been a beneficial tool for CBP? What challenges has CBP had with BITMAP?

Response: Yes, the Biometric Identification Transnational Migration Alert Program (BITMAP) has been a beneficial tool for CBP as it allows host nations to take appropriate law enforcement actions against identified threats to the U.S. national security.

Question: What challenges has CBP had with BITMAP?

Response: CBP works with ICE HSI to constantly improve this tool.

| | |
|-------------------|--|
| Question#: | 13 |
| Topic: | DMARC Strategy |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: The 2021 NDAA states that "Not later than December 31, 2021, the Secretary of Homeland Security shall develop and submit to Congress a strategy, including recommendations, to implement across all United States-based email providers Domain-based Message Authentication, Reporting, and Conformance (DMARC) standard at scale."

Will DHS be prepared to submit its DMARC strategy and recommendations to Congress by the December 31, 2021 deadline? If not, please explain why there is any delay, and when Congress can expect this directive to be completed.

Response: The Department has previously submitted to Congress the requested report.

| | |
|-------------------|--|
| Question#: | 14 |
| Topic: | Prosecuting Cybercrimes |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: The Department of Homeland Security's cybersecurity strategy states that CISA's mission requires partnership with law enforcement agencies, to "reduce threats by investigating, disrupting, and defeating criminal actors and organizations that use cyberspace to carry out their illicit activities." According to World Economic Forum research, we are successfully prosecuting fewer than 1% of cybercriminals.

What plans have you developed or put in place to enhance DHS work with law enforcement to rectify this problem, and can you give us a timeline for when we can see some tangible progress? How will DHS work with law enforcement agencies such as the FBI to raise costs on cybercriminals and prosecute cybercrimes?

Response: The Cybersecurity and Infrastructure Security Agency (CISA) works very closely with law enforcement across many aspects of our cyber mission, particularly with the Federal Bureau of Investigation (FBI) but also with the U.S. Secret Service and ICE HSI within DHS.

CISA and the FBI already work closely together through their mandated asset response and threat response missions. CISA and FBI coordinate for joint notification to victims of cyber incident, with FBI pursuing law enforcement investigations and CISA offering CISA services to mitigate and prevent future incidents. CISA, FBI, and law enforcement components within DHS frequently share information about cyber threat activity targeting critical infrastructure including technical artifacts and analysis from cyber incidents to help inform respective missions.

The FBI and Secret Service are members of CISA's Joint Cyber Defense Collaborative (JCDC) and are closely involved in all JCDC lines of effort. As a public-private partnership, the JCDC conducts operational collaboration and information fusion regarding current threat activity, cyber defense planning to address longer term cybersecurity gaps, and dissemination of cybersecurity guidance with its US Government and private sector partners. This fusion of public and private sector partners is designed to facilitate more robust information sharing regarding cyber threat actors and activity and provide a mechanism for entities with the visibility, capabilities, and authorities in cyberspace to effect a unified response. As it continues to mature in the near term, membership in the JCDC will provide expanded benefits to law enforcement's ability to develop an understanding of the cyber threat landscape, attribute specific malicious activity, and take action.

CISA and the FBI frequently co-author Joint Cybersecurity Advisories that inform critical infrastructure stakeholders regarding cyber threat activity and provide risk and mitigation guidance. This unified approach results in authoritative products that represent information on

| | |
|-------------------|--|
| Question#: | 14 |
| Topic: | Prosecuting Cybercrimes |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

the threat actor gleaned from FBI investigatory activities combined with protective advice and mitigation guidance developed from CISA's deep cybersecurity expertise.

CISA provides liaisons in key law enforcement partner organizations, and FBI and Secret Service have liaisons embedded within CISA's Cybersecurity Division to facilitate maximum coordination between complimentary mission sets. Additionally, CISA is becoming integrated into FBI cyber task forces (CTF). CISA Cybersecurity Advisors located throughout the United States are onboarding to FBI Cyber Division regional CTF. This integration supports closer collaboration between CISA and FBI in FBI field offices where a significant portion of FBI investigations, coordination with stakeholders, and threat actor focused subject matter expertise exists. This physical blending of personnel facilitates close tactical and operational coordination between CISA's asset response and the FBI's threat response mission.

In September 2022, CISA and the FBI established the Joint Ransomware Task Force (JRTF) to coordinate an ongoing nationwide campaign against ransomware. Each participating Federal agency will leverage its existing authorities and capabilities to support the JRTF. As it matures, the JRTF will provide a framework to enhance interagency coordination and build and measure the progress of USG efforts to counter ransomware.

Given the recent growth of new mechanisms such as JCDC and the JRTF, we cannot give a specific timeline for expected progress in combating cybercrime but are taking serious steps to establish new bodies to improve law enforcement efforts to counter cybercrime.

| | |
|-------------------|--|
| Question#: | 15 |
| Topic: | CISA Funding |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: The Department of Homeland Security's budget includes an increased budget of \$2.1 billion for CISA, on top of the \$650 million given to CISA under the American Rescue Plan Act.

How much of this funding will DHS use to address the growing cybercrime threat, and is the current funding CISA is getting adequate to fulfill CISA's mandated roles to enhance law enforcement?

Do you believe we need to enhance funding for cybercrime law enforcement at DHS and partner agencies?

How should we better leverage our resources to more effectively fight cybercrime?

Response: As the nation's cyber defense agency, CISA is focused across our broad mission to reduce the prevalence and impact of malicious cyber activity, including cyber crime. Much of our efforts are focused on driving adoption of strong cybersecurity practices and more rapidly detecting and mitigating intrusions, which is applicable to cyber criminals and other bad actors alike, including nation-states. For example, we provide focused products and technical guidance to help organizations harden their networks and respond to intrusions, assign personnel to every region of the country to conduct assessments and provide direct support to public and private organizations, maintain collaboration platforms to rapidly exchange information on new threats across hundreds of public and private partners, and provide technology such as our CyberSentry program to assist organizations in detecting threats that might compromise critical networks. The FY 2023 President's Budget further supports our critical efforts to address the risk of malicious cyber activity targeting American networks, including the threat of cyber crime.

As part of our mission, CISA collaborates extensively with law enforcement. Multiple FBI and U.S. Secret Service personnel are embedded in our operational cyber teams and CISA has a liaison embedded in the National Cyber Investigative Joint Task Force. In addition, in accordance with the Cyber Incident Reporting for Critical Infrastructure Act of 2022 (CIRCIA), CISA and FBI established the JRTF to coordinate an ongoing nationwide campaign against ransomware. As a co-chair of the JRTF, CISA uses existing resources to reduce the risk from ransomware and other types of cybercrime in coordination with law enforcement partners. We look forward to working with Congress to ensure that our critical collaboration activities, including the JRTF, are appropriately resourced to address the growing risk of cyber crime.

| | |
|-------------------|--|
| Question#: | 16 |
| Topic: | Ransomware Victims |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: The FBI was able to recover a significant portion of the ransom that cybercriminals took in their ransomware campaign against Colonial Pipeline earlier this year. There are thousands of victims of ransomware every year.

Do you think all victims of these criminal attacks should have access to similar government services?

Response: CISA appreciates the critical role of law enforcement partners in taking action against criminal groups, infrastructure, and assets. We defer to our law enforcement partners regarding considerations related to the actions taken by law enforcement subsequent to the Colonial Pipeline intrusion.

As a cyber defense agency, CISA's role is to ensure that victims or potential victims of ransomware attacks, whether they be private companies, state, local, tribal, and territorial (SLTT) governments, critical infrastructure owners and operators, or individuals, have access to resources to protect their networks and respond more effectively to ransomware. CISA provides a number of resources reduce the risk of ransomware, including alerts and advisories on [StopRansomware.gov](https://www.stopransomware.gov); a Ransomware Guide containing a catalog of prevention best practices and a response checklist; and a catalog of free services to help organizations reduce the risk and impact of ransomware intrusions.

| | |
|-------------------|--|
| Question#: | 17 |
| Topic: | Public-Private Partnership |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Should CISA, as the agency charged with enhancing public-private partnerships in the cyber field, be working with law enforcement to facilitate this sort of coordination?

How can we expand successful initiatives such as this to protect private companies from losses and block cybercriminals from earning profits for the malicious behaviors?

Response: CISA works closely with law enforcement to enhance public-private partnerships. CISA brings together experts from across the public and private sector. Industry partners include some of the nation's most important cybersecurity companies and owners and operators across critical infrastructure. U.S. government partners include the FBI, the U.S. DOJ, and the U.S. Secret Service.

Coordination and information sharing frequently occur between U.S. government partners which include the FBI, among others. CISA has established partnerships with law enforcement agencies and routinely shares information with those entities on and/or about malicious cyber activity and coordinates/assists on notifying effected entities and developing cybersecurity products that provide cyber threat information and mitigation guidance and recommendations.

CISA gathers, analyzes, and shares information about cyber threats, including cybercrime, providing real-world value and proactive solutions in partnership with law enforcement and private sector partners. CISA continues to expand its impacts through increasingly diverse and numerous partnerships, prioritized collaboration focusing on significant cyber threats, and a reputation for actionable and proactive information sharing.

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | Threats from China |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: As you know, both the Obama and Trump Administrations documented that China has been stealing US Intellectual Property through cyber theft for years. This organized theft is part of a well-developed and documented initiative called the Digital Silk Road strategy. This allows China to place its technology in critical infrastructure, all of which threaten our homeland security, and it facilitates China in protecting its criminal citizens.

Considering these very sophisticated cyber strategies, what are you doing to ensure that our cyber strategy is keeping up with the emerging threats from China and other nations?

Response: CISA maintains Mission Coordination teams that focus on adversary-specific cyber threats. Each team is comprised of operational elements from across CISA's Cybersecurity Division that are structured and trained to focus on a specific threat region. The teams work in a coordinated fashion to identify, locate, and neutralize current and future threats to U.S. infrastructure.

One of the operational elements within the teams is threat analysis. These analysts are specifically trained to understand and recognize the tactics, techniques, and procedures and motivations of the adversaries in their region. One of the primary tools used by the threat analysts is a system that aggregates threat indicators and intelligence data from a variety of sources, including reports generated by TH analysts, data shared with CISA by government, private sector and international partners, and information feeds from commercial cybersecurity vendors.

Using the tools and skills outlined, CISA threat analysts are constantly analyzing information and data derived from internal/external and Classified/Unclassified reporting, assessing threat levels, and refining adversary profiles with any newly discovered tactics, techniques, and procedures. This information is used to develop threat briefs and reporting that is shared with U.S. Government agencies and partners. Additionally, threat analysts develop threat packages which are tailored to provide the latest trends and practices being leveraged by China and other threat actors which then drives proactive hunting to seek out, identify, and respond to malicious activity occurring in various networks across the Federal Executive Civilian Branch, State, Local, Tribal and Territorial and Critical Infrastructure networks.

CISA develops cybersecurity products that provide cyber threat information and mitigation guidance and recommendations to both restricted audiences in a particular sector and to entities world-wide. Many of these products leverage information from private sector partners or are developed and distributed jointly with interagency partners including the FBI and the National Security Agency (NSA).

| | |
|-------------------|--|
| Question#: | 18 |
| Topic: | Threats from China |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Since 2017, CISA has published 14 major products on Chinese cyber threats and activities including eight joint products. The most recent product released on October 6, 2022 was a joint Cybersecurity Advisory developed by CISA, NSA, and FBI that provides the top Common Vulnerabilities and Exposures used since 2020 by People's Republic of China.

CISA recommends users and administrators review the publications in the China Cyber Threat Overview and Advisories section of the CISA webpage for descriptions of tactics and techniques associated with this threat and recommended mitigations and detections.

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | Improve Cyber Security |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: What actions have you taken at DHS to improve our cyber strategy and focus on the threats faced by both state and non-state actors?

Response: As a Department, we continue to think broadly about our unique authorities and responsibilities and seek opportunities to fully utilize those authorities and responsibilities to bolster cybersecurity across the critical infrastructure sectors within our purview, as well as broadly in partnership with our interagency and international allies.

Within DHS, CISA works to defend our government and critical infrastructure, and DHS is actively recruiting the talent necessary to not only maintain that level of capability but deepen it. Through the work of the JCDC and other CISA programs, we are working with public-private partners to pursue defense-in-depth and promote good cyber hygiene for all organizations, including our SLTT partners. Through the Transportation Security Administration (TSA) and the US Coast Guard, DHS also provides expertise and capability to support cybersecurity and resilience across the transportation sector. DHS law enforcement agencies also work with domestic and international law enforcement counterparts to investigate and disrupt cyber criminals. We continue to address both criminal and nation-state threats with a focus on ensuring that the delivery of essential goods and services to the public are not disrupted.

JCDC

At DHS, our focus is on developing more meaningful partnerships with our interagency colleagues, with those in industry, and governments across the world. One example which really demonstrates how our partnerships can prevent cyber-attacks is CISA's JCDC. The JCDC is only a year old, but by bringing together industry and government stakeholders to jointly assess, plan for, and mitigate cyber risks to our governments and critical infrastructure we can transform traditional public-private partnerships into real-time private-public operational collaboration. We must shift the paradigm from reacting to threats and vulnerabilities to proactively planning for contingencies and taking steps to mitigate them. This type of cooperation that brings the visibility, insight, and innovation of the private sector with the capabilities and authorities of the federal cyber ecosystem to collectively drive down cyber risk to the nation at scale is how we want our Department to evolve when it comes to enhancing our future cybersecurity posture. At the same time, we must work with international partners to share information we glean about threats and steps we can take to increase our cybersecurity and resilience.

CIRCA

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | Improve Cyber Security |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

In March 2022, President Biden signed CIRCIA into law. Enactment of CIRCIA marks an important milestone in improving America’s cybersecurity by, among other things, requiring CISA to develop and implement regulations requiring covered entities to report covered cyber incidents and ransomware payments to CISA, or by exception, other Federal agencies, when an agreement is in place between CISA and the agency. These reports will allow CISA and SRMAs to have increased visibility into incidents and an improved ability to manage risk. This will enable CISA and SRMAs, as necessary, to render assistance to victims suffering attacks, analyze incoming reporting across sectors to spot trends, and quickly share that information with Federal partners and network defenders to warn other potential victims.

These new authorities are regulatory in nature and require CISA to complete mandatory rulemaking activities before the reporting requirements go into effect. CIRCIA requires CISA to develop and publish a Notice of Proposed Rulemaking (NPRM), which will be open for public comment, and a Final Rule. CIRCIA also mandates that CISA consult with various entities, including Sector Risk Management Agencies, DOJ, other appropriate Federal agencies, and the DHS-chaired Cyber Incident Reporting Council (CIRC), throughout the rulemaking process.

CISA is committed to receiving inputs into the NPRM from other stakeholders as well, such as critical infrastructure owners and operators and other members of the potentially regulated community, while maintaining the rulemaking schedule required by statute.

CIRC

The vision for the CIRC is to not only identify opportunities and challenges to coordinate, deconflict and harmonize Federal cyber incident reporting, but to also take tangible steps toward streamlining the reporting process. It is critical to ensure that Government agencies have access to information related to cyber incidents sufficient for their mission needs and to reduce burden on industry so that resources are spent on addressing impacts and recovery efforts rather than report writing. The commitment and collaboration of all parties involved has proved invaluable, with broad membership to include not only Sector Risk Management Agencies and federal law enforcement, but also independent regulators and other agencies who are considering cyber incident reporting requirements. In addition to interagency collaboration, DHS has conducted numerous private sector engagements to understand where there is conflict or ambiguity between reporting regimes. The CIRC working group has been focused on identifying best practices related to:

- (1) Defining a reportable cyber incident
- (2) Determining timing and triggers
- (3) Identifying contents of reports
- (4) Examining reporting and enforcement mechanisms

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | Improve Cyber Security |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

The CIRCIA requires DHS to report to Congress on opportunities and challenges to harmonize incident reporting and suggest legislative changes to do so. DHS will be relying heavily on Council input when drafting the Secretary’s report to Congress and we want to ensure that the recommendations in the DHS report are informed by industry input.

JRTF

Pursuant to the requirements of the CIRCIA, CISA and FBI are leading the JRTF in coordinating existing whole-of-government efforts to combat the threat of ransomware. The JRTF will connect with the public and private sector to provide strategic direction to ongoing and emerging nationwide counter-ransomware campaigns. One major objective of the JRTF is to facilitate coordination between Federal agencies and private sector and SLTT partners to improve Federal actions against ransomware threats, including efforts to increase our Nation’s resilience to ransomware incidents. Additionally, the JRTF is coordinating the disruption of ransomware criminal actors, associated infrastructure, and their finances.

EO 14028 Implementation

The Department remains committed to fulfilling the timelines and objectives outlined in last year’s executive order on improving the nation’s cybersecurity. This includes establishing the Cyber Safety Review Board (CSRB) to review significant cyber events and to provide recommendations to the President. The CSRB is an unprecedented public-private initiative that brings together government and industry leaders to review and assess significant cyber events to better protect our nation’s networks and infrastructure.

The CSRB’s first report – released on July 14 – focused on the vulnerabilities identified in the log4j software library that was discovered in late 2021. This report includes 19 actionable recommendations for government and industry seeking to address the continued risk posed by the widely used Log4j open-source software library. These recommendations fall into four categories: addressing the continued risks of Log4j, driving existing best practices for security hygiene, building a better software ecosystem, and making investments in the future. Overall, the CSRB is an important milestone in our national effort to better understand the cybersecurity threats facing our nation and how to improve our posture in advance of future threats.

Performance Goals

DHS finds common cybersecurity standards and best practices to be important because they reduce cyber risks across all sectors. CISA and the National Institute of Standards and Technology began development of Cybersecurity Performance Goals last year based on nine categories of recommended cybersecurity practices through collaboration with industry. CISA

| | |
|-------------------|--|
| Question#: | 19 |
| Topic: | Improve Cyber Security |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

will be releasing set of cross-sector baseline performance goals for critical infrastructure in October 2022. These performance goals should be considered a roadmap for C-suite executives to understand and implement measures to achieve a minimum level of cybersecurity. Following release of these performance goals, CISA will begin working on sector specific goals.

| | |
|-------------------|--|
| Question#: | 20 |
| Topic: | Economic Motives |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Verizon's 2020 cyber breach report found that over 90% of cyber breaches are economically motivated. The economic ratio on cyberattacks is also skewed. Cyberattacks are cheap and relatively easy to acquire. They are very profitable. DHS has historically focused its cyber security programs almost exclusively on technology.

Do you think we might have more success if we focused on the economic motives for cyberattacks rather than just the technical means of how they occur?

Will CISA, under your leadership, continue to develop a broader view of cybersecurity, including a focus on the economics of cyberattacks?

Response: To make meaningful progress in addressing cybersecurity risks facing our country, we must focus on all aspects of the problem. Even as our partners in law enforcement take steps to impose costs on adversaries and disrupt their financial flows to affect the underlying economic model of cyber crime, CISA focuses on understanding economic considerations that could improve our nation's cyber defense. For example, CISA developed a public paper evaluating the costs of cyber incidents, which is foundational work to help us drive adoption of the right security measures at the lowest costs. We will continue working to develop a fully holistic view of cybersecurity that enables our community, public and private, to utilize every lever in protecting American organizations from cyber risks.

| | |
|-------------------|--|
| Question#: | 21 |
| Topic: | Direct Seizure Authority |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: In 2019, I introduced the "Counterfeit Goods Seizure Act of 2019". This bill would have expanded Customs and Border Protection's (CBP's) direct seizure authority to include design patents, in addition to its current authority to seize goods that violate trademark and copyright law. It is aimed at counterfeiters seeking an end run around customs by exploiting loopholes in trademark and copyright law.

Do you agree that CBP needs this authority? If so, do you recommend any particular structure for this authority?

Response: CBP already possesses the authority to enforce design patents at the border pursuant to exclusion orders issued by the U.S. International Trade Commission (ITC) under 19 U.S.C. § 1337. However, the ITC's process for design patent border enforcement is underutilized. As such, CBP does not support the legislative proposal under consideration.

If Congress were to pass this legislative proposal and the new authority was utilized by the trade community with greater frequency than existing authorities, CBP would likely require substantial additional resources. This is because CBP would not be able to enforce design patents at the border in the same manner as it handles counterfeit trademark violations. Design patent enforcement requires a more complex analysis that cannot easily be performed by visual analysis in the field.

Unlike counterfeit trademark determinations, which primarily involve factual questions about the genuine nature of the imported merchandise (such as whether there is probable cause based on articulable facts to consider the marks in question to be spurious), design patent infringement determinations require a legal analysis to apply the test that the U.S. Court of Appeals for the Federal Circuit articulated, en banc, in *Egyptian Goddess, Inc. v. Swisa, Inc.*, 543 F.3d 665 (Fed. Cir. 2008). Accordingly, determining design patent infringement involves mixed questions of law and fact and is based on the so-called "ordinary observer" test, in which the ordinary observer is deemed to view the differences between the accused design and the patented product, in light of the prior art. Such determinations cannot readily be made by CBP field officers, who would not be in a position to evaluate a suspect shipment in light of the prior art.

Rather, as with more complex patent questions, Attorney-Advisors at CBP Headquarters in the Office of Trade, Regulations and Rulings, would need to perform this function.

Accordingly, development and implementation of a framework for design patent border enforcement would require that significant additional resources be provided by Congress to those at CBP Headquarters responsible for making the necessary legal determinations.

| | |
|-------------------|--|
| Question#: | 22 |
| Topic: | Additional Authorities |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: As DHS Secretary, what additional authorities would you need to ensure that all intellectual property is appropriately protected at the border?

What additional authorities do you need to combat intellectual property theft and facilitate lawful trade?

Response: CBP seized over 27,000 shipments that violated IPR in FY 2021, with approximately 90 percent of those seizures occurring in the small package environment. If the seized products were genuine, the total manufacturer's suggested retail price of the items would have been valued at over \$3.3 billion. As the volume of small packages continues to increase year over year, the number of enforcement actions needed to ensure secure, legitimate trade also grows; however, CBP's operational cost to process a small package IPR seizure is often greater than the value of the shipment.

To meet current trade challenges, transformational reform is needed to protect American workers and business, ensure fair competition, increase transparency and accountability in the supply chain, and enable the swift and secure movement of legitimate goods across the U.S. border. CBP's 21st Century Customs Framework (21CCF) is a strategic initiative that seeks to achieve these outcomes, whereby government and industry are coming together to modernize the legal and operational framework for trade. CBP would be happy to brief your office to provide further detail regarding this important initiative.

| | |
|-------------------|--|
| Question#: | 23 |
| Topic: | Counterfeits from China |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: In fiscal year (FY) 2020, CBP seized over 25 thousand counterfeits with an estimated retail value of over \$1.3 billion dollars. This includes counterfeit pharmaceuticals, COVID-19 products, automobile parts, and consumer products that can harm U.S. citizens. Approximately 80 percent of these goods originated in or were transshipped through China or Hong Kong.

What do you recommend Congress do to address the counterfeits coming from China to the United States?

Response: CBP seized over 27,000 shipments that violated intellectual property rights (IPR) in FY 2021, with approximately 90 percent of those seizures occurring in the small package environment. If the seized products were genuine, the total manufacturer's suggested retail price of the items would have been valued at over \$3.3 billion. As the volume of small packages continues to increase year over year, the number of enforcement actions needed to ensure secure, legitimate trade also grows; however, CBP's operational cost to process a small package IPR seizure is often greater than the value of the shipment.

To meet current trade challenges, transformational reform is needed to protect American workers and business, ensure fair competition, increase transparency and accountability in the supply chain, and enable the swift and secure movement of legitimate goods across the U.S. border. CBP's 21CCF is a strategic initiative that seeks to achieve these outcomes, whereby government and industry are coming together to modernize the legal and operational framework for trade. CBP would be happy to brief your office to provide further detail regarding this important initiative.

| | |
|-------------------|--|
| Question#: | 24 |
| Topic: | Report Recommendations |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: I understand the Transportation Security Administration last month was ordered to pay over \$100 million to a contractor for patent infringement.

In 2019, the Homeland Security Operational Analysis Center (HSOAC) issued a report for DHS on the role of intellectual property in the US Department of Homeland Security. The report recommends DHS change its approach to IP as increasing reliance on technology drives IP closer to the forefront of decision making. It points out the legal and reputational harms that can arise from patent lawsuits like the one that just occurred. This is not just about patent infringements-it impacts DHS's ability to effectively commercialize research, ensure bad actors don't misuse agency seals and brands to impersonate TSA officers or improperly suggest DHS endorsement, and reportedly compromised DHS's ability to respond to cybersecurity attacks on the federal government.

What changes have you made and what do you plan to make to implement the report's recommendation?

Can you commit to me that you will report on progress made on the report's recommendation to me by the end of the year?

What plans do you have to adopt the report's recommendations?

Response: The Homeland Security Operational Analysis Center (HSOAC) Report is an important recognition of the underappreciated role of intellectual property (IP) across the entirety of the Department. It is a valuable independent assessment and a tool for promoting IP awareness and change in how the Department manages it in support of its homeland security mission. IP is critical to the Department's technology use.

The Under Secretary for Science and Technology (USST) has delegated responsibility to manage the IP Program within the Department. The Senior Official Performing the duties of the Under Secretary for Science and Technology has taken measures consistent with the Report to strengthen IP management within the Department.

The TSA litigation you reference originated well-prior to the Report in the early days of the Department. While this litigation highlights the need for effective IP management, I am pleased to say that the Department has come a long way since then. There is still work to be done and the Department and its Science and Technology Directorate (S&T) are committed to the importance of internal DHS IP management.

| | |
|-------------------|--|
| Question#: | 24 |
| Topic: | Report Recommendations |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Since issuance of the HSOAC Report, S&T has:

- Expanded the Chief Scientist role to be the IP senior executive within S&T;
- Established an Invention Secrecy Act (ISA) Program Office to fulfill the Department’s ISA responsibilities in close coordination with experts in the Components;
- Conducted and implemented the recommendations of internal technology transfer and transition sprint within S&T. Integrated IP management within the S&T business process that is aligned to component technology needs;
- Ensured that intellectual property attorneys review appropriate research and development contracts through the “Procurement Request” tracker.
- As to future plans:
 - DHS is examining the Report’s recommendation on centralization of the Department’s IP Program and may expand the responsibilities of the Chief Scientist; and
 - Consistent with the Report’s recommendation, DHS is exploring options to establish an IP Program budget that meets its needs for IP management.

The HSOAC Report provides significant information to assist in how DHS manages IP; however, how the Department does this has evolved since issuance of the Report. S&T has expanded the Chief Scientist role to be the IP senior executive within S&T. The Department is considering options to improve IP management consistent with the Report, as well as policies and procedures that would apply across the Department to manage IP in a holistic manner. However, the Department also realizes that in order to adopt some of the Report’s recommendations, DHS may need to seek additional funding.

| | |
|-------------------|--|
| Question#: | 25 |
| Topic: | Report Findings |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Do you agree with the report's findings?

Response: Again, the HSOAC Report provides significant information to assist in how DHS manages IP; however, how the Department does this has evolved since issuance of the Report. It remains useful for areas of further improvement.

| | |
|-------------------|--|
| Question#: | 26 |
| Topic: | Intellectual Property Functions |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: What plans do you have to enhance the management of intellectual property functions at DHS?

What, if any, changes have been made since 2019 with respect to the Department's practices regarding intellectual property assets.

Response: IP is a complex issue for any organization, but particularly so for DHS as it looks to develop and deploy IP intensive technology at mission speed. The Department is examining the IP Cadre model at the U.S. Department of Defense for how it could be modified and applied within the Department, particularly to more efficiently make use of S&T's existing technology transfer and transition resources and IP legal professionals.

- Expanded the Chief Scientist role to be the IP senior executive within S&T;
- Established the ISA Program Office to fulfill the Department's ISA responsibilities in close coordination with experts in the Components;
- Integrated IP management within the S&T business process that is aligned to component technology needs.

| | |
|-------------------|--|
| Question#: | 27 |
| Topic: | Misuse of Seals |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: What data do you have on the misuse of DHS and ICE seals by bad actors seeking to pose as law enforcement, or to operate in a manner that implies ICE approval or certification? What measures is DHS taking to stop these activities?

Response: From January 20, 2021 through November 30, 2021, ICE Office of Professional Responsibility (OPR) received 262 reports of alleged misuse of DHS and ICE seals by bad actors and/or impersonation of a DHS or ICE employee. Of the 262 reports of misuse, OPR investigated a total of 17 cases that specifically dealt with the fraudulent use of DHS and ICE badges, seals, or logos. Of the 17 cases, 5 were substantiated, meaning the investigation led to the arrest or identification of a bad actor.

To mitigate these activities, OPR assesses and investigates reported allegations of misconduct, including the misuse of DHS or ICE credentials. It should be noted that many of the received reports are vague and do not lead to the identification of an actual bad actor. Additionally, many of the victims do not obtain/retain the information provided by the bad actors for law enforcement follow up or will refuse to speak to law enforcement when contacted.

| | |
|-------------------|--|
| Question#: | 28 |
| Topic: | IPE Review |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: What data do you have on the level of review of IPR provisions in contracts?

Response: At the start of FY 2021, S&T integrated the IP Group within the Office of General Counsel in its procurement request process. To date the IP Group reviewed in excess of 2,100 contract actions.

| | |
|-------------------|--|
| Question#: | 29 |
| Topic: | ISA Requirements |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: The report notes that the Information Secrecy Act (ISA) must request a secrecy order barring publication and release of information related to a patent application filed with the U.S. Patent and Trademark Office (USPTO), when release of the information would threaten national security. The report notes that DHS "intends to begin implementation of ISA requirements in the near future."

Has DHS begun implementation of these requirements?

Has it completed implementation? If it has not completed implementation, what are the obstacles preventing completion?

Response: Yes, S&T is the lead for ISA within DHS. Since issuance of the Report, S&T established an ISA Program Office to carry out the Department's ISA responsibilities. The DHS ISA Program has collaborated with its counterparts across government to learn ISA best practices. DHS is committed to an ISA Program that properly balances national security interests with promoting American technological and economic competitiveness.

In 2022, DHS is preparing to launch a Department-wide Invention Secrecy Act compliance program, provided that appropriations are provided for implementation.

| | |
|-------------------|--|
| Question#: | 30 |
| Topic: | Technology Transfer |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Technology transfer-turning government research into jobs and products-is incredibly important to our economy. DHS's website states that the problem is often a result of lack of partnerships between the government and the private sector, nonexistent funding and other resources to mature the technology, and inefficient processes to transfer technology out of the laboratory environment.

What obstacles to commercializing DHS intellectual property assets does DHS currently face?

Are additional authorities needed to facilitate technology transfer?

Response: Technology transition remains a difficult endeavor with many challenges. Only a small fraction of the research performed in federal laboratories reaches the marketplace where it can have an impact. This problem is known as “the Valley of Death,” and is not specific or unique to DHS.

DHS, like all agencies, faces the challenge of developing a suite of relevant IP for each solution with sufficient rights and economic value that overcomes the obstacles inherent in transferring technology from the lab into a commercially available product for homeland security operators use at mission speed.

The Department is working hard to overcome these obstacles. Recently the S&T Screening at Speed Program that support’s TSA received an award from the Federal Laboratory Consortium for Technology Transfer for Interagency Partnership. S&T with the support of DOE’s Pacific Northwest National Laboratory for the development and technology transfer of critical millimeter wave passenger screening technology, also known as High Definition Advanced Imaging Technology (HD-AIT). HD-AIT is a dramatic improvement in passenger screening that will reduce wait times and improve traveler experience to support TSA mission success.

S&T’s Technology Transfer and Commercialization Program (T2C) serves as the focal point to manage technology transfer activities throughout DHS and the DHS laboratory network. Technologies developed and evaluated within the Department can have tremendous potential for commercial applications throughout the nation, enhance the competitiveness of individual small businesses, and expand areas of exploration and cooperation for all non-traditional partners.

S&T’s T2C has built out significant capabilities and programs to support DHS programs. Examples include:

| | |
|-------------------|--|
| Question#: | 30 |
| Topic: | Technology Transfer |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Through the Commercialization Accelerator Program (CAP), S&T is leading the successful transfer of federally funded DHS mission-relevant technologies. CAP supports technology advancement and maturation activities with DHS partners to drive the commercialization and adoption of technologies by homeland security end users. CAP efforts have led to cooperative research and licensing opportunities thereby ensuring that the public benefits from DHS' research investments.

The Homeland Security Startup Studio (HSSS) is another innovative program run by T2C that promotes technology transfer and commercialization of homeland security related technologies. Conducted in partnership with the venture-building company FedTech, HSSS pairs the next generation of entrepreneurs with federally-funded, cutting-edge technologies to help move them from the lab to the market. The first HSSS cohort in FY 2021 resulted in the creation of 5 companies. The FY 2022 cohort concluded in July and 2 companies have been established and 5 more are in the process of incorporating.

DHS S&T continues to coordinate with other Federal agency partners to discuss best practices associated with technology transfer and commercialization.

S&T is also studying the feasibility of establishing an Innovation Hub and adopting best practices developed by peer agencies to accelerate the development and commercialization of DHS relevant technology solutions.

| | |
|-------------------|--|
| Question#: | 31 |
| Topic: | Cyber Incidents and Cybercrimes |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | Senator Thom Tillis |
| Committee: | JUDICIARY (SENATE) |

Question: Recently, the FBI testified before the House of Representatives that "cyber incident reporting is crime reporting." Does DHS and CISA share this view? If not, please explain your view of the distinction between cyber incident reporting and cybercrime reporting.

Response: Whether a cyber incident also constitutes a federal crime will depend on the manner in which the term "cyber incident" is defined in the relevant reporting regime. For example, under the Federal Information Security Modernization Act of 2014 definition of the term "incident," certain criminal activity would qualify as an "incident," as would some events that may fall short of a federal crime. See 44 U.S.C. § 3552(b)(2). CIRCIA also defines a cyber incident as something that does not necessarily require a criminal nexus. See CIRCIA, Pub. L. No. 117-103, Div. Y (2022), § 103(a)(2), 136 Stat. 49 (to be codified at 6 U.S.C. § 681(6)) (referencing § 2209 of the Homeland Security Act).

| | |
|-------------------|--|
| Question#: | 32 |
| Topic: | NSBA Memo |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: An internal National School Boards Association (NSBA) memo released earlier this month stated that the NSBA has been actively engaged with the Department of Homeland Security. Did you or anyone else at DHS ever communicate with the White House, DOJ, or NSBA regarding the 9/29 NSBA letter, the Attorney General's 10/4 memorandum, or the issue of parents voicing concerns about mask mandates or critical race theory at school board meetings?

Response: DHS regularly engages with a wide range of stakeholders on security issues related to schools, to include students, their parents and families, teachers, administrators, and those from the broader community. I have hosted listening sessions, such as with representatives from Historically Black Colleges and Universities in the wake of numerous bomb threats that they received. During these engagements, DHS strives to ensure that it is providing accurate threat information about concerns impacting our schools and campuses, and that it hears the concerns of these groups about the resources and training that DHS offers to improve school safety. The National School Boards Association is one of the stakeholders that DHS has met with in the past and will continue to do so, along with numerous other organizations representing key stakeholders for improving school safety. We defer to DOJ for discussions regarding the Attorney General's memorandum.

| | |
|-------------------|--|
| Question#: | 33 |
| Topic: | Concerned Parents |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: Does the DHS view concerned parents as domestic terror threats?

Does the DHS have any plans to surveil, investigate, monitor, or otherwise target parents who express concerns at school board meetings?

Response: No. DHS derives its definition of domestic terrorism from the statutory definition of terrorism in the Homeland Security Act of 2002, 6 U.S.C. § 101(18). The statute defines terrorism as any activity that (1) involves an act that is dangerous to human life or potentially destructive of critical infrastructure or key resources and (2) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States and appears to be intended to (a) intimidate or coerce a civilian population, (b) influence the policy of a government by intimidation or coercion, or (c) affect the conduct of a government by mass destruction, assassination, or kidnapping. DHS does not characterize any specific individual, group, or movement as a domestic terrorist or domestic violent extremist threat based on their Constitutionally-protected advocacy of political or social positions, political activism, or use of strong rhetoric.

| | |
|-------------------|--|
| Question#: | 34 |
| Topic: | Border Visit |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: Have you ever advised President Biden to visit the border? If so, why hasn't the President done so? If not, why not?

Response: The Biden Administration is implementing policies to ensure a safe, orderly, humane and secure border. It is longstanding practice for Administrations of both parties not to disclose internal deliberations, including with the White House.

| | |
|-------------------|--|
| Question#: | 35 |
| Topic: | Birthright Citizenship |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: Do you believe the Constitution requires the United States to award citizenship to individuals simply because they were born on U.S. soil?

Birthright citizenship is widely abused in this country, as it is a major incentive for individuals to cross the border into the United States. Foreign nationals come to our country for the specific purpose of giving birth on U.S. soil, so that their children can have U.S. citizenship. People without loyalty and/or connections to the United States reap benefits and privileges of U.S. citizenship by virtue of being born on U.S. soil, whereas other lawful immigrants wait for years to get a visa to enter the United States and then wait decades to earn citizenship. Is this a fair system?

Response: Pursuant to the 14th Amendment, the U.S. Constitution grants “All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside.”

Individuals who attempt to enter the United States undergo biometric and biographic vetting. Anyone who attempts to enter the United States without authorization and is unable to establish a legal basis to remain in the United States will be subject to removal and may face additional consequences, including bars to future immigration benefits.

| | |
|-------------------|--|
| Question#: | 36 |
| Topic: | Enforcement Actions |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: Last month, you issued guidance that dramatically expanded the list of so-called protected places where ICE and CBP can't take immigration enforcement actions. This list includes parades and vaccination sites. Can federal law enforcement arrest American citizens at parades and vaccination sites? If so, why are illegal immigrants given these special protections that American citizens don't have?

Response: On October 27, 2021, Secretary Mayorkas issued a memorandum entitled, *Guidelines for Enforcement Actions in or Near Protected Areas*, which directs DHS officers, ICE and CBP officers, to avoid taking an enforcement action in or near a location that would restrain people's access to essential services or engagement in essential activities. These locations are referred to as "protected areas," which may include, but are not limited to, schools, medical or mental healthcare facilities, places of worship or religious study, places where children gather, social services establishments, places where disaster or emergency response and relief is provided, ongoing parades or demonstrations, and places where religious or civil ceremonies or observances occur. These guidelines takes into account the restraining impact that enforcement actions near or in such establishments could have on noncitizens' ability to access the protected areas.

ICE further notes the guidelines direct DHS officers to avoid enforcement actions at protected areas to the fullest extent possible. However, there are certain circumstances when this may not be possible, such as when the enforcement action involves national security threats; there is imminent risk of death, violence, or physical harm to a person; the enforcement action involves the hot pursuit of an individual who poses a public safety threat; there is imminent risk that evidence material to a criminal case could be destroyed; or when a safe alternative does not exist. While this list is not exhaustive, the implementation of these guidelines allow ICE and CBP officers to conduct enforcement actions in accordance with each agency's important national security, public safety, and border security missions.

ICE is not able to comment on other federal agencies.

| | |
|-------------------|--|
| Question#: | 37 |
| Topic: | Enforce Immigration Laws |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: The President of El Salvador stated publicly that the crisis at our southern border is as concerning to him as it is to us, because his country is losing its most talented people. And Mexico's government has expressed concern that President Biden's new asylum policies are creating business for organized crime. Do you acknowledge that your failure to effectively enforce our immigration laws not only hurts the people of the United States, but also deprives some of the poorest countries in the western hemisphere of their ability to lift their own people out of poverty and stamp out crime and corruption?

Response: Migration is a hemispheric challenge, one not limited to the United States. Displacement and migration are at a high point throughout the world, higher than any time since World War II. In our hemisphere, violence, authoritarian regimes, corruption, food insecurity, climate change, the COVID-19 pandemic, and dire economic conditions all contribute to the increase in migration. As a result, we are experiencing historic levels of encounters at our border. The demographics of the arriving population have also changed, with more Venezuelans, Cubans, and Nicaraguans arriving than ever before, driven to migrate by repressive governments and faltering economic conditions in their home countries. For example, almost four times as many Venezuelans as last year attempted to cross our Southwest border, placing their lives in the hands of ruthless smuggling organizations. One in four Venezuelans, approximately 7 million people, have fled their homes. More than a third of those who have fled have settled in Colombia. Costa Rica, a country of only 5 million people, is hosting more than 200,000 Nicaraguan migrants, according to UNHCR. The governments of Venezuela, Cuba, and Nicaragua have historically refused to cooperate with the U.S. government in allowing us to return individuals to their home countries, presenting a unique challenge.

As with any noncitizen in the United States without lawful status, ICE will make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

| | |
|-------------------|--|
| Question#: | 38 |
| Topic: | Discussions |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: Have you and the Vice President ever had discussions about how President Biden's border policies are draining poor countries in the western hemisphere of their top talent? If not, do you plan to?

Response: Migration is a hemispheric challenge, one not limited to the United States. Displacement and migration are at a high point throughout the world, higher than any time since World War II. In our hemisphere, violence, authoritarian regimes, corruption, food insecurity, climate change, the COVID-19 pandemic, and dire economic conditions all contribute to the increase in migration. As a result, we are experiencing historic levels of encounters at our border. The demographics of the arriving population have also changed, with more Venezuelans, Cubans, and Nicaraguans arriving than ever before, driven to migrate by repressive governments and faltering economic conditions in their home countries. For example, almost four times as many Venezuelans as last year attempted to cross our Southwest border, placing their lives in the hands of ruthless smuggling organizations. One in four Venezuelans, approximately 7 million people, have fled their homes. More than a third of those who have fled have settled in Colombia. Costa Rica, a country of only 5 million people, is hosting more than 200,000 Nicaraguan migrants, according to UNHCR. The governments of Venezuela, Cuba, and Nicaragua have historically refused to cooperate with the U.S. government in allowing us to return individuals to their home countries, presenting a unique challenge.

As with any noncitizen in the United States without lawful status, ICE will make enforcement decisions on a case-by-case basis to focus on the greatest threats to homeland security in a professional and responsible manner informed by their experience as law enforcement officers.

| | |
|-------------------|--|
| Question#: | 39 |
| Topic: | Officers Infected |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: How many ICE, CBP, and Border Patrol law enforcement officers have died of COVID-19 since the Biden administration took office?

Response: As of November 16, 2021, 34 CBP employees (including 2 contract staff members) died of COVID-19.

Five ICE law enforcement officers died of COVID-19 between January 20, 2021 and November 30, 2021.

Question: How many of these officers have become infected during the same period?

Response: As of November 16, 2021, 5,430 CBP employees tested positive for COVID-19.

Between January 20, 2021 and November 30, 2021, ICE data for COVID-19 illnesses shows that 939 ICE employees and contractors reported being positive for COVID-19. The data collection did not capture whether an ICE employee was a law enforcement officer.

| | |
|-------------------|--|
| Question#: | 40 |
| Topic: | COVID Positive Releases |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: Since President Biden took office, how many individuals apprehended by the Border Patrol, CBP, and/or ICE have been released from DHS custody as COVID positive?

How many individuals were released untested?

Response: CBP does not capture these metrics. From January 20, 2021 to November 30, 2021, there were 17,389 detained noncitizens who tested positive while in ICE custody with a recorded release date. Notably, these are individuals who tested positive at any time during ICE custody and does not reflect the number of individuals who were testing positive at time of release from custody.

| | |
|-------------------|--|
| Question#: | 41 |
| Topic: | Testing Migrants |
| Hearing: | Oversight of the Department of Homeland Security |
| Primary: | The Honorable Marsha Blackburn |
| Committee: | JUDICIARY (SENATE) |

Question: Does the Border Patrol test migrants in their custody prior to transferring them to ICE custody? If not, why not?

Response: USBP does not test migrants prior to transfer to ICE custody. USBP does administer a health interview to migrants when they are brought into USBP facilities and those with identified medical concerns are then referred for a more in-depth medical assessment with on-site medical personnel. Following the medical assessment, those that require further evaluation, testing, or treatment, including for symptoms of COVID-19, are transported to the local healthcare system for the highest level of care available.

While USBP is not conducting testing on migrants in its custody, current COVID-19 testing efforts for those leaving USBP custody include:

- U.S. Department of Health and Human Services testing unaccompanied children being referred to Office of Refugee Resettlement (ORR) custody.
- NGOs testing migrants released from CBP custody in multiple sector to include the following USBP sectors:
 - Tucson Sector
 - Yuma Sector
 - El Centro Sector
 - San Diego Sector
 - NGOs in El Paso, TX conduct testing if the migrant is symptomatic or feeling ill.
 - Laredo, Texas - LRT NGOs have been conducting COVID-19 testing on every single subject that is turned over to them. The Holding Institute is the one that intakes all subjects first and administers the tests. They have also been offering the COVID-19 vaccine. Catholic Charities in Laredo will only take subjects after they have tested negative at the Holding Institute. These are the only two NGOs dealt with in LRT
- ICE Health Service Corps testing for flights with individuals returned under Title 42 at the Yuma Enhanced Centralized Processing Center in Yuma Sector and Title 8 Electronic Nationality Verification flights at the Donna Soft-Sided Facility in the Rio Grande Valley Sector.