Office of Information Governance and Privacy

U.S. Department of Homeland Security
500 12th St., SW
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

June 22, 2020

Daniel Alexander McGrath
American Oversight
1030 15th Street, NW
Suite B255
Washington, DC 20005

RE: American Oversight v. ICE
ICE FOIA Case Number 2019-ICLI-00054

Dear Mr. McGrath:

This letter is a supplemental response to your Freedom of Information Act (FOIA) request to U.S. Immigration and Customs Enforcement (ICE), dated June 26, 2019. You have requested the following records in connection with 3 FOIA requests:

1. 2019-ICFO-29818, requesting, training materials and policies/directives pertaining to the processing/medical evaluation and care for transgender detainees,
2. 2019-ICFO-36401, requesting training materials and policies/directives pertaining to the processing/medical evaluation and care for pregnant detainees, those that miscarried, juveniles and also emails from Albence, Homan and Vitello & their chiefs of staff on related topics, and
3. 2019-ICFO-36404, requesting various categories of information pertaining to IHSC staffing.

ICE has considered your request under the FOIA, 5 U.S.C. § 552. A total of 555 pages of records were reviewed for this supplemental production. The 555 pages of records were located pursuant to a search of the Office of the Director. Of these, 105 pages were determined to be responsive and 450 pages were found to be duplicates or non-responsive. Therefore, this production consists of 105 pages of records are attached and have been marked 2019-ICLI-00054 2558 to 2019-ICLI-00054 2662. Upon review, ICE has determined that portions of the documents will be withheld pursuant to Exemptions b(5), b(6) and b(7)(C) of the FOIA as described below.

ICE has applied Exemption 5 to protect from disclosure intra-agency documents that contain the recommendations, opinions, and conclusions of agency employees. The disclosure of these communications would discourage the expression of candid opinions and inhibit the free and frank exchange of information and opinions among agency personnel on important agency decision-making by having a chilling effect on the agency's deliberative process.

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FOIA Exemption 5 protects from disclosure those inter- or intra-agency documents that are normally privileged in the civil discovery context. The three most frequently invoked privileges are the deliberative process privilege, the attorney work-product privilege, and the attorney-client privilege. After carefully reviewing the responsive documents, I have determined that portions of the responsive documents qualify for protection under the deliberative process privilege, the attorney-client privilege, and the attorney work-product privilege. The deliberative process privilege protects the integrity of the deliberative or decision-making processes within the agency by exempting from mandatory disclosure opinions, conclusions, and recommendations included within inter-agency or intra-agency memoranda or letters. The release of this internal information would discourage the expression of candid opinions and inhibit the free and frank exchange of information among agency personnel. The attorney work-product privilege protects documents and other memoranda prepared by an attorney in contemplation of litigation. The attorney-client privilege protects confidential communications between an attorney and his client relating to a legal matter for which the client has sought professional advice. It applies to facts divulged by a client to his attorney, and encompasses any opinions given by an attorney to his client based upon, and thus reflecting, those facts, as well as communications between attorneys that reflect client-supplied information. The attorney-client privilege is not limited to the context of litigation.

ICE has applied FOIA Exemptions 6 and 7(C) to protect from disclosure the names, e-mail addresses, and phone numbers of ICE and DHS employees contained within the documents, as well as the names, and other personally identifiable information of other individuals contained within the records.

FOIA Exemption 6 exempts from disclosure personnel or medical files and similar files the release of which would cause a clearly unwarranted invasion of personal privacy. This requires a balancing of the public's right to disclosure against the individual's right to privacy. The privacy interests of the individuals in the records you have requested outweigh any minimal public interest in disclosure of the information. Any private interest you may have in that information does not factor into the aforementioned balancing test.

FOIA Exemption 7(C) protects records or information compiled for law enforcement purposes that could reasonably be expected to constitute an unwarranted invasion of personal privacy. This exemption takes particular note of the strong interests of individuals, whether they are suspects, witnesses, or investigators, in not being unwarrantably associated with alleged criminal activity. That interest extends to persons who are not only the subjects of the investigation, but those who may have their privacy invaded by having their identities and information about them revealed in connection with an investigation. Based upon the traditional recognition of strong privacy interest in law enforcement records, categorical withholding of information that identifies third parties in law enforcement records is ordinarily appropriate. As such, I have determined that the privacy interest in the identities of individuals in the records you have requested clearly outweigh any minimal public interest in disclosure of the information. Please note that any private interest you may have in that information does not factor into this determination.

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If you have any questions about this letter, please contact AUSA Diana Valdivia with the United States Attorney's Office at 202 252 2545.

Sincerely,

Dexter E. Johnson/for

Catrina Pavlik-Keenan
FOIA Officer

Enclosure(s): 105 page(s)

AMERICAN OVERSIGHT

From: Seguin, Debbie
Sent: 30 Mar 2019 20:59:41 +0000
To: (b)(6); (b)(7)(C) ;Kelly, Christopher S
Subject: RE: QFRS - Blue
Attachments: 2019-03-27 - Vitiello SJC QFRs - MRM - Blue_DS.docx

I adjudicated as many Green questions and comments as I could and offered ideas to task out those that I couldn't. Defer to you as to who will triage the rest of the tasks.

From: Kelly, Christopher S
Sent: Saturday, March 30, 2019 9:37 AM
To: (b)(6); (b)(7)(C)
Cc: Seguin, Debbie (b)(6); (b)(7)(C)
Subject: RE: QFRS - Blue

See attached. I sent a couple to Matt.

From: (b)(6); (b)(7)(C)
Sent: Friday, March 29, 2019 10:18 PM
To: Kelly, Christopher S <(b)(6); (b)(7)(C)
Cc: Seguin, Debbie (b)(6); (b)(7)(C)
Subject: QFRS - Blue

Chris,

Please see attached and provide edits/comments to all questions in Blue. If you can please try and have this reviewed and to Debbie by Noon tomorrow, our goal is to get AD1 final answers on all blue/yellow questions for his review late tomorrow or early Sunday. Joe has also said he will have the ERO questions to us no later than Noon tomorrow which will also be a significant chunk.

Thanks, Matt

(b)(6); (b)(7)(C)
Deputy Chief of Staff
Office of the Director
U.S. Immigration and Customs Enforcement
Office: (202) 732-(b)(6);
Mobile: (571) 319-(b)(6);

AMERICAN OVERSIGHT

Questions for the Record for Mr. Ronald Vitiello, Deputy Director and Senior Official Performing the Duties of Director for U.S. Immigration and Customs Enforcement (ICE)
Senator Richard J. Durbin
March 27, 2019

For questions with subparts, please provide a separate response for each subpart.

1. On July 3, 2018, I submitted questions to you and other Trump Administration officials following a June 28, 2018 briefing on the Administration's family separation policy I received from you and other officials. Senators Grassley, Feinstein, Tillis, and Cruz also received this briefing. The Administration's briefers were unable to answer questions at the briefing and it was agreed that the briefers would respond to written follow-up questions.

   Senator Cruz's office compiled questions from the Senators who had attended the briefing and informed my office that they were submitted to the Administration in July 2018. I never received a response to the questions I submitted almost nine months ago.

   Please provide responses to these questions, which are included as Attachment 1.
   (Instructed by majority counsel to disregard – removed from document)

2. **(OPA) Do you think the Trump Administration's zero-tolerance policy has been a success?**

   (b)(5)

3. **(OPA) Was it appropriate for a Federal district court judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sabraw did on June 26, 2018? If so, why? If not, why not?**

   (b)(5)

4. **On June 17, 2018, DHS Secretary Nielsen stated on Twitter: "We do not have a policy of separating families at the border. Period." Was this an accurate statement?**

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5. **(OPA)** At your November 15, 2018 confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, you stated in response to a question from Senator Peters about the Trump Administration's family separation policy:

(b)(5)

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c. (ERO/OPR) Has anyone been reprimanded for providing inaccurate information to parents?

d. (ERO/OPR) What is being done to uncover how parents and children are being treated?

6. On December 14, 2017, ICE reversed its policy that favored release of pregnant detainees, and implemented a policy of detaining pregnant women in accordance with President Trump's Executive Order 13768. Meanwhile, in the first two years of the Trump administration, miscarriage rates of women in ICE custody nearly doubled. (Scott Bixby, *Immigrant Miscarriages in ICE Detention Have Nearly Doubled Under Trump*, DAILY BEAST (Mar. 1, 2019))

   In February 2019, a 24-year-old woman gave birth to a stillborn baby boy while in ICE custody at the Port Isabel Detention Center. As of March 2019, 17 infants under the age of one year were held in immigration custody at Dilley Family Residential Center in Texas, which lacks specialized medical care facilities for this vulnerable population. (Madeline Buiano, *Babies in Poor Heath at ICE-Run Detention Facility, Says Complaint*, THE CENTER FOR PUBLIC INTEGRITY (Mar. 1, 2019))

   On March 5, 2019, I introduced the Stop Shackling and Detaining Pregnant Women Act, along with Senator Murray, to protect the health and safety of pregnant women and youth by reinstituting the presumption of release of pregnant women and youth from immigration detention, prohibiting DHS from shackling pregnant women in its custody, and setting standards of care and transparency for the treatment of pregnant women and youth.

   a. (OPA/ERO) Are you aware that the detention and shackling of pregnant women poses risks to the health of the mother and of the developing child?

(b)(5)

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(b)(5)

b. (OPA/ERO) What have you done to address the increase in miscarriages of women in ICE detention?

(b)(5)

c. (OPA/ERO) Will you commit to reversing the December 14, 2017 directive that eliminated the presumption that pregnant women and youth should be released from immigration custody?

(b)(5)

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(b)(5)

7. Current ICE family detention practices cost $319 per detained family member per day. Meanwhile, federal contract funding for immigration bed space in facilities operated by Core Civic and Geo Group have increased by over $100 million each since 2016. (Michaela Ross, Madi Alexander, Paul Morphy, *Immigration Spending Surges as White House Calls for More Funds*, Bloomberg Government (Jan. 25, 2019))

   Furthermore, prolonged family detention has been opposed by groups ranging from the American Academy of Pediatrics to DHS's own Advisory Committee on Family Residential Centers. Despite these findings, on June 2017, DHS terminated the Family Case Management Program, an innovative program of alternatives to detention that boasted compliance rates of more than 99% with both ICE check-ins and with immigration court hearings. The program cost only $36 per day for an entire family. (Frank Bajak, *ICE shutters detention alternative for asylum-seekers* (June 9, 2017))

   a. **(ERO) Will you commit to re-starting the Family Case Management Program, given its cost-effectiveness when compared to prolonged family detention, and given the enrolled families' high rates of compliance with court proceedings?**

   b. **(ERO) Will you commit to exploring additional models for alternatives to detention as a humane and cost-effective way to decrease detention of children and families?**

8. On September 27, 2018, the DHS Inspector General issued a report documenting poor conditions and mistreatment of immigrants at the Adelanto ICE Processing Center. The OIG report indicated that the Adelanto ICE Processing Center potentially violated ICE detention standards.

   When my staff visited Adelanto, several detainees complained about not being able to access their property that was surrendered to ICE. Specifically, a number of detainees were not able to retrieve their passport, ID, and original versions of documents from ICE in time to provide these important documents to the judge when they appeared in court.

   Moreover, reports indicate that detainees at Adelanto are engaging in a hunger strike to protest the conditions in which they are held, including the high cost of food, limited availability of legal representation, and restricted access to correspondence sent to them by mail.

   a. **(ERO/OPR) Please provide the most recent inspection report for the Adelanto ICE Processing Center.**

   b. **Please answer the following questions about Adelanto with specificity:**

      i. **(ERO) How many doctors are available to detainees at the Adelanto ICE Detention Center?**

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b. (OPR/ERO) If not, will you commit to commencing an inquiry immediately?

4. (OPR/ERO) Will you commit to establish written guidelines and conduct training to ensure ICE employees never engage in coercion or abuse when forms are presented to detained individuals asking them to relinquish legal rights?

(b)(5)

Under current law, children cannot be held for more than 20 days in ICE detention. Media reports suggest that in order to get around this 20-day rule, the White House considered a so-called "binary choice policy" to force parents to choose between either having their children stay with them in ICE detention indefinitely, or having their children separated but kept in HHS detention indefinitely.

5. (OPA) Have you ever been consulted by the White House on this binary choice policy – either in person or in writing?

(b)(5)

a. (OPA) If in person, please provide the dates and the names of the people attending that meeting to the Committee.

NA

b. (OPA) If in writing, please provide that documentation to the Committee.

NA

ICE Detention of Pregnant Women

On December 14, 2017, ICE issued a directive that reversed a policy of presumptive release from detention for pregnant women. In your pre-hearing questionnaire, you stated that ICE

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tracks pregnancy-related cases for detainees in custody and provided the number of pregnant detainees held in ICE custody at that time.

6. **(ERO) Please provide an updated number of pregnant women who have been detained in ICE custody since ICE issued the December 2018 directive.**

7. **(ERO) How many pregnant women are currently detained?**

8. **(ERO) Do you have a breakdown by trimester of pregnancy?**

During DHS Secretary Nielsen's testimony to the Homeland Security and Governmental Affairs Committee on May 15, 2018, she declared that "we do not detain any women past their third trimester, once they enter the third trimester, we provide them separate housing." However, in your pre-hearing questionnaire, you stated that as of October 4, 2018, there were a total of four detainees in their third trimester.

9. **(OPP) What exactly is ICE's policy of detaining pregnant women in their third trimester?**

On May 15, 2018, I asked Secretary Nielsen about a September 2017 complaint filed with the DHS IG and Office of Civil Rights and Civil Liberties in which pregnant women alleged mistreatment in ICE custody, including insufficient access to medical care resulting in dehydration and even miscarriage. Secretary Nielsen promised to provide an assessment of medical treatment of pregnant women in immigration detention but I have received no response. I asked again for such an assessment again during your nomination hearing on November 15, 2018, but have received no response.

10. **(ERO) Has ICE conducted an assessment of the treatment of pregnant women in its detention facilities?**

    a. **(ERO) If yes, what outside medical experts has ICE engaged with in conducting this assessment and will you provide documentation of this assessment to this Committee?**

    b. **(ERO) If no, do you commit to conduct such an assessment in engagement with outside medical experts and provide it to this Committee?**

11. **(ERO) What training and guidance do ICE employees receive about specialized care for pregnant women in ICE custody and detention facilities?**

    a. **(ERO) Have you consulted with medical experts in its development?**

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(b)(5)

12. In an August 2016 memo signed by then-Executive Associate Director Thomas Homan, ICE directed its agents not to detain pregnant women "absent extraordinary circumstances or the requirement of mandatory detention." However, In December 2017, Homan superseded the agency's directive and his previous memo regarding the detention of pregnant women.
    a. (OPA) Do you believe ICE should detain pregnant women absent extraordinary circumstances or the requirement of mandatory detention?

(b)(5)

13. In a 2017 report, titled, "Detention of Immigrant Children," the American Academy of Pediatrics said, "The Department of Homeland Security facilities do not meet the basic standards for the care of children in residential settings." More recently, two physicians who work with DHS's Office for Civil Rights and Civil Liberties and have extensively

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total of four days in immigration detention – three in CBP custody and one in ICE custody. This recent tragedy has renewed my concern that ICE is unnecessarily detaining, shackling, and denying adequate medical care to pregnant women in immigration custody.

1. (OPA) **The number of undocumented women who have lost their pregnancies while in government detention is reported to have greatly increased during President Trump's tenure. Do you have a plan to reverse this trend and ensure the safety of expectant mothers?**

(b)(5)

2. (OPA) **Would you support legislation barring the shackling of pregnant women? If not, why not?**

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(b)(5)

(b)(5)

3. (ERO) **Please provide a list of every documented instance during your tenure as Acting Director of ICE where an ICE officer restrained or shackled a pregnant woman. Please include the facts and reasoning behind the decision to shackle or restrain the pregnant woman.**
4. (OPA) **Do you believe that there should be a presumption in favor of releasing pregnant women from immigration detention? If not, why not?**

(b)(5)

The current level of appropriations is sufficient for ICE to detain an annual average of 45,274 individuals on a daily basis. In order to reach that annual average, appropriators have calculated that the agency must decrease its detention population to 40,520 by the end of the fiscal year to account for overspending in the first half of the year. However, as of early March, there were roughly 50,000 individuals in ICE custody, which is higher than the number of individuals that were in custody when the bill was signed.

1. (OPA and ERO) **What is your plan to work towards reducing the number of people in ICE custody to 40,520 by the end of the year? Please provide a specific timeline and proposal including steps to be taken and the numeric goals to be achieved by the fiscal year's end.**

When Congress appropriated funds for the Department of Homeland Security last March, it required ICE to "complete and make public an initial report regarding any in-custody death within 30 days of such death, with subsequent reporting to be completed and released within 60 days of the initial report." ICE failed to meet this basic requirement. Past administrations have issued death reports that have been nearly 30 pages in length. However, last year, the ICE website contained death reports that were only a few pages in length. The brevity of these reports

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(b)(5)

(b)(5)

8. (OPA) If confirmed, will you reinstate ICE's policy of a presumption of release for pregnant detainees?

(b)(5)

a. (OPA) Are you aware of the health risks that pregnant women and their developing children face when detained?

(b)(5)

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b. (OPA) What steps have you taken to ensure that pregnant detainees receive sufficient prenatal care?

(b)(5)

c. (OPA) What steps have you taken to reduce the rising number of miscarriages experienced by detained women?

(b)(5)

9. (ERO) What steps have you taken as acting director of ICE to pursue more cost effective and humane alternatives to detention?

10. (ERO) In 2017, the Trump administration terminated the Family Case Management Program, which cost only $38 per family per day and yielded over 99% compliance rates with ICE appointments and immigration court hearings. Would you support reinstating the Family Case Management Program or the implementation of other innovative alternatives to detention?

11. Please describe your involvement in ICE's use of information about potential sponsors of unaccompanied migrant children to arrest undocumented individuals.
    a. (ERO) How many arrests have stemmed from CBP or HHS sharing information with ICE that it obtained from unaccompanied children about potential sponsors?
    b. (OPA) Do you agree that arresting individuals who have offered to sponsor unaccompanied children results in children spending longer periods of time in federal custody?
    c. (OPA) Do you believe that potential sponsors for unaccompanied children should be an enforcement priority for ICE?

(b)(5)

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(b)(5)

12. (OPA) In 2015, you tweeted that the Democratic Party should be renamed the "liberalcratic party or the NeoKlanist Party." At your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs on November 15, 2018, you stated that the posting of this tweet was a "mistake" and that you were "trying to make a joke." You further described your tweet as a "momentary lapse of judgment." If you are confirmed to lead U.S. Immigration and Customs Enforcement, you will direct and oversee more than 20,000 law enforcement officers and personnel who are tasked with enforcing U.S. immigration laws. Employing good judgment and demonstrating integrity in that role could not be of higher importance. Does tweeting an offensive joke because of a momentary lapse of judgment demonstrate the judgment and integrity required to lead U.S. Immigration and Customs Enforcement?

I fully understand the importance and gravity of my mistake and the offense it caused and I apologize for that. I regret that it happened and commit it will not happen again. Throughout my 34-year career as a sworn federal law enforcement official, I have always done my job with integrity and professionalism and will continue to do so if confirmed.

13. (OPA) In 2016, you tweeted a picture comparing then-candidate Trump to Dennis the Menace with the caption: "This I can tell you. 100%." What did you mean by that?

I was impressed by his ability to shake things up during the primary.

14. (OPA) In September 2018, you attended and were interviewed at the annual event for the Federation for American Immigration Reform (FAIR), entitled "Hold Their Feet to the Fire." The Southern Poverty Law Center classifies FAIR as a hate group.
    a. (OPA) Were you aware that the Southern Poverty Law Center classifies FAIR as a hate group before you attended and were interviewed at FAIR's annual event?

       No

    b. (OPA) Have you ever attended any other events hosted by FAIR?

       No

    c. (OPA) Are you aware of any other events hosted by hate groups that you have attended as Acting Director of ICE?

       Not to my knowledge

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From: Kelly, Christopher S
Sent: 30 Mar 2019 13:36:55 +0000
To: (b)(6); (b)(7)(C)
Cc: Seguin, Debbie
Subject: RE: QFRS - Blue
Attachments: 2019-03-27 - Vitiello SJC QFRs - MRM - Blue.docx

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Thanks, Matt

(b)(6); (b)(7)(C)
Deputy Chief of Staff
Office of the Director
U.S. Immigration and Customs Enforcement
Office: (202) 732(b)(6);
Mobile: (571) 319-(b)(6);

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Senate Judiciary Committee QFRs for Nominee Vitiello

Questions for the Record for Mr. Ronald Vitiello, Deputy Director and Senior Official Performing the Duties of Director for U.S. Immigration and Customs Enforcement (ICE)
Senator Richard J. Durbin
March 27, 2019

For questions with subparts, please provide a separate response for each subpart.

1. On July 3, 2018, I submitted questions to you and other Trump Administration officials following a June 28, 2018 briefing on the Administration's family separation policy I received from you and other officials. Senators Grassley, Feinstein, Tillis, and Cruz also received this briefing. The Administration's briefers were unable to answer questions at the briefing and it was agreed that the briefers would respond to written follow-up questions.

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2. **(OPA) Do you think the Trump Administration's zero-tolerance policy has been a success?**

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3. **(OPA) Was it appropriate for a Federal district court judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sabraw did on June 26, 2018? If so, why? If not, why not?**

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4. **On June 17, 2018, DHS Secretary Nielsen stated on Twitter: "We do not have a policy of separating families at the border. Period." Was this an accurate statement?**

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5. **(OPA)** At your November 15, 2018 confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, you stated in response to a question from Senator Peters about the Trump Administration's family separation policy:

   (b)(5)

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d. (ERO/OPR) What is being done to uncover how parents and children are being treated?

6. On December 14, 2017, ICE reversed its policy that favored release of pregnant detainees, and implemented a policy of detaining pregnant women in accordance with President Trump's Executive Order 13768. Meanwhile, in the first two years of the Trump administration, miscarriage rates of women in ICE custody nearly doubled. (Scott Bixby, *Immigrant Miscarriages in ICE Detention Have Nearly Doubled Under Trump*, DAILY BEAST (Mar. 1, 2019))

   In February 2019, a 24-year-old woman gave birth to a stillborn baby boy while in ICE custody at the Port Isabel Detention Center. As of March 2019, 17 infants under the age of one year were held in immigration custody at Dilley Family Residential Center in Texas, which lacks specialized medical care facilities for this vulnerable population. (Madeline Buiano, *Babies in Poor Heath at ICE-Run Detention Facility, Says Complaint*, THE CENTER FOR PUBLIC INTEGRITY (Mar. 1, 2019))

   On March 5, 2019, I introduced the Stop Shackling and Detaining Pregnant Women Act, along with Senator Murray, to protect the health and safety of pregnant women and youth by reinstituting the presumption of release of pregnant women and youth from immigration detention, prohibiting DHS from shackling pregnant women in its custody, and setting standards of care and transparency for the treatment of pregnant women and youth.

a. (OPA/ERO) Are you aware that the detention and shackling of pregnant women poses risks to the health of the mother and of the developing child?

(b)(5)

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b. (OPA/ERO) What have you done to address the increase in miscarriages of women in ICE detention?

(b)(5)

c. (OPA/ERO) Will you commit to reversing the December 14, 2017 directive that eliminated the presumption that pregnant women and youth should be released from immigration custody?

(b)(5)

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b. (OPR/ERO) If not, will you commit to commencing an inquiry immediately?

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Under current law, children cannot be held for more than 20 days in ICE detention. Media reports suggest that in order to get around this 20-day rule, the White House considered a so-called "binary choice policy" to force parents to choose between either having their children stay with them in ICE detention indefinitely, or having their children separated but kept in HHS detention indefinitely.

5. (OPA) Have you ever been consulted by the White House on this binary choice policy – either in person or in writing?

(b)(5)

a. (OPA) If in person, please provide the dates and the names of the people attending that meeting to the Committee.

NA

b. (OPA) If in writing, please provide that documentation to the Committee.

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ICE Detention of Pregnant Women

On December 14, 2017, ICE issued a directive that reversed a policy of presumptive release from detention for pregnant women. In your pre-hearing questionnaire, you stated that ICE tracks pregnancy-related cases for detainees in custody and provided the number of pregnant detainees held in ICE custody at that time.

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6. **(ERO) Please provide an updated number of pregnant women who have been detained in ICE custody since ICE issued the December 2018 directive.**

7. **(ERO) How many pregnant women are currently detained?**

8. **(ERO) Do you have a breakdown by trimester of pregnancy?**

During DHS Secretary Nielsen's testimony to the Homeland Security and Governmental Affairs Committee on May 15, 2018, she declared that "we do not detain any women past their third trimester, once they enter the third trimester, we provide them separate housing." However, in your pre-hearing questionnaire, you stated that as of October 4, 2018, there were a total of four detainees in their third trimester.

9. **(OPP) What exactly is ICE's policy of detaining pregnant women in their third trimester?**

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    a. **(ERO) If yes, what outside medical experts has ICE engaged with in conducting this assessment and will you provide documentation of this assessment to this Committee?**

    b. **(ERO) If no, do you commit to conduct such an assessment in engagement with outside medical experts and provide it to this Committee?**

11. **(ERO) What training and guidance do ICE employees receive about specialized care for pregnant women in ICE custody and detention facilities?**

    a. **(ERO) Have you consulted with medical experts in its development?**

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c. (OPP) To date, how many adults and children have been subject to the MPP policy? Please provide a breakdown of the number of children by age.

d. (OPP) How were these individuals selected to be sent to Mexico under the MPP policy? What specific criteria does DHS use and who makes these decisions?

e. (OPP) Who at DHS made the decision to subject children to the MPP policy and what were the justifications for that decision?

f. (OPP) What are the exact terms of the agreement between the United States and the Mexican government regarding the MPP policy?

7. At your HSGAC hearing, Sen. Harris asked you about ICE's reversal of the prior administration's policy that had generally discouraged the detention of pregnant immigrant women absent extraordinary circumstances or the need for mandatory detention. As for pregnant women in their third trimester, you stated that ICE's policy "is that special care is taken in the third trimester and it's presumed that we would not keep anyone in custody. But if they are in custody and we have the ability to remove them then we would do that." In February 2019, a woman in her third trimester of pregnancy, who was held at an ICE detention facility, delivered a stillborn baby while in ICE custody. There have also been reports of mistreatment of pregnant women in ICE custody, a lack of adequate medical care, and a significant increase in the number of miscarriages among women detained by ICE.

a. (ERO) What steps have you already taken and what steps do you plan to take to address the increases in miscarriages among women in ICE custody?

b. (ERO) What oversight and accountability mechanisms have you put in place or will you put in place to ensure that pregnant women are not mistreated or denied proper medical care while they are detained by ICE?

c. (ERO) Since ICE changed its policy regarding the detention of pregnant women, how many pregnant women have been detained by ICE? Of these pregnant women, how many of them are currently in ICE custody? Please provide data broken down by trimester for both questions.

d. (ERO) What is the average length of detention and the longest length of detention in ICE custody for pregnant women?

8. In June 2017, DHS ended the Family Case Management Program, which was a highly successful alternative to detention that cost significantly less than detaining families. This program cost about $36 to $38 each day per family, while ICE family detention costs nearly $320 per person each day. A November 2017 report by the DHS Inspector General found that the Family Case Management Program was 99 percent successful for ICE check-ins and appointments and 100 percent successful for attendance at court hearings.

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(b)(5)

12. In an August 2016 memo signed by then-Executive Associate Director Thomas Homan, ICE directed its agents not to detain pregnant women "absent extraordinary circumstances or the requirement of mandatory detention." However, In December 2017, Homan superseded the agency's directive and his previous memo regarding the detention of pregnant women.
    a. (OPA) Do you believe ICE should detain pregnant women absent extraordinary circumstances or the requirement of mandatory detention?

(b)(5)

13. In a 2017 report, titled, "Detention of Immigrant Children," the American Academy of Pediatrics said, "The Department of Homeland Security facilities do not meet the basic standards for the care of children in residential settings." More recently, two physicians who work with DHS's Office for Civil Rights and Civil Liberties and have extensively

AMERICAN OVERSIGHT

DHS-19-0195, 19-0494-J, 19-0495-H-000021
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visited family detention centers wrote a letter to the Senate Whistleblowing Caucus based on their concerns over the potential expansion of family detention. The physicians found egregious examples of inadequate care that included severe weight loss in children detained in family detention centers as well as "an infant with bleeding of the brain that went undiagnosed for five days."

a. (OPA) Under your leadership, what will ICE do to address the concerns from medical experts about the substandard care for immigrant children in family detention centers?

ICE is committed to ensuring that everyone in our custody receives timely access to medical services and treatment. Comprehensive medical care is provided from the moment detainees arrive and throughout the entirety of their stay. All ICE detainees receive medical, dental and mental health intake screening within 12 hours of arriving at each detention facility, a full health assessment within 14 days of entering ICE custody or arrival at a facility, and access to daily sick call and 24-hour emergency care. Pursuant to our commitment to the welfare of those in the agency's custody, ICE spends more than $296 million annually on the spectrum of healthcare services provided to detainees.

The agency is committed to ensuring that those in our custody reside in safe, secure, and humane environments and under appropriate conditions of confinement. It also uses a multi-layered inspections program to ensure its facilities meet a certain threshold of care as outlined in our contracts with facilities, as well as the National Detention Standards and the Performance Based National Detention Standards (PBNDS).

b. (OPA) Given how many experts in the medical and mental health community have raised concerns about the conditions in ICE detention facilities, do you agree that ICE could benefit from having an independent, non-governmental team of medical and mental health professionals with training in child assessment and make recommendations for ways to improve the care and treatment of children?

(b)(5)

(b)(5)

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1. (OPA) **Did you have any involvement in the memo, including providing any advice or counsel on issues related to this memo?**

   I would have reviewed the implementation memo at CBP and discussed impact on the workforce and operations.

2. (OPA) **If so, what was the content of this advice or counsel?**

   Determining the impact on the workforce and operations.

Section 4.4 of the Operations Manual ICE Performance-Based National Detention Standards states: "At no time shall a pregnant detainee be restrained, absent truly extraordinary circumstances that render restraints absolutely necessary." Section 4.4 also guarantees pregnant detainees "access to specialized prenatal care, pregnancy testing, comprehensive counseling and assistance, postpartum follow up, lactation services, and abortion services." Earlier this year, a 24-year old Honduran woman had a miscarriage while in immigration detention. She had spent a total of four days in immigration detention – three in CBP custody and one in ICE custody. This recent tragedy has renewed my concern that ICE is unnecessarily detaining, shackling, and denying adequate medical care to pregnant women in immigration custody.

1. (OPA) **The number of undocumented women who have lost their pregnancies while in government detention is reported to have greatly increased during President Trump's tenure. Do you have a plan to reverse this trend and ensure the safety of expectant mothers?**

(b)(5)

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DHS-19-0195, 19-0494-J, 19-0495-H-000023
2019-ICLI-00054 2580

(b)(5)

(b)(5)

2. (OPA) **Would you support legislation barring the shackling of pregnant women? If not, why not?**

(b)(5)

3. (ERO) **Please provide a list of every documented instance during your tenure as Acting Director of ICE where an ICE officer restrained or shackled a pregnant woman. Please include the facts and reasoning behind the decision to shackle or restrain the pregnant woman.**
4. (OPA) **Do you believe that there should be a presumption in favor of releasing pregnant women from immigration detention? If not, why not?**

(b)(5)

The current level of appropriations is sufficient for ICE to detain an annual average of 45,274 individuals on a daily basis. In order to reach that annual average, appropriators have calculated that the agency must decrease its detention population to 40,520 by the end of the fiscal year to account for overspending in the first half of the year. However, as of early March, there were roughly 50,000 individuals in ICE custody, which is higher than the number of individuals that were in custody when the bill was signed.

1. (OPA and ERO) **What is your plan to work towards reducing the number of people in ICE custody to 40,520 by the end of the year? Please provide a specific timeline and proposal including steps to be taken and the numeric goals to be achieved by the fiscal year's end.**

When Congress appropriated funds for the Department of Homeland Security last March, it required ICE to "complete and make public an initial report regarding any in-custody death

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(b)(5)

(b)(5)

7. (OPA) On November 15, 2018, at your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs, in response to Senator Hassan's request, you would not commit to stop pursuing an increased ability to detain children and changes to the *Flores v. Reno* settlement agreement. Will you commit to not pursuing increased authority to detain children if you are confirmed?

(b)(5)

a. (OPA) You previously stated that family detention facilities are "not . . . a burden to stay in." Are you aware of the health impacts of detention for children?

(b)(5)

b. (OPA) What steps have you taken to ensure that children in detention receive adequate medical care and treatment?

(b)(5)

8. (OPA) If confirmed, will you reinstate ICE's policy of a presumption of release for pregnant detainees?

(b)(5)

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(b)(5)

a. (OPA) Are you aware of the health risks that pregnant women and their developing children face when detained?

(b)(5)

b. (OPA) What steps have you taken to ensure that pregnant detainees receive sufficient prenatal care?

(b)(5)

AMERICAN OVERSIGHT

c. (OPA) What steps have you taken to reduce the rising number of miscarriages experienced by detained women?

(b)(5)

9. (ERO) What steps have you taken as acting director of ICE to pursue more cost effective and humane alternatives to detention?

10. (ERO) In 2017, the Trump administration terminated the Family Case Management Program, which cost only $38 per family per day and yielded over 99% compliance rates with ICE appointments and immigration court hearings. Would you support reinstating the Family Case Management Program or the implementation of other innovative alternatives to detention?

11. Please describe your involvement in ICE's use of information about potential sponsors of unaccompanied migrant children to arrest undocumented individuals.
    a. (ERO) How many arrests have stemmed from CBP or HHS sharing information with ICE that it obtained from unaccompanied children about potential sponsors?
    b. (OPA) Do you agree that arresting individuals who have offered to sponsor unaccompanied children results in children spending longer periods of time in federal custody?
    c. (OPA) Do you believe that potential sponsors for unaccompanied children should be an enforcement priority for ICE?

(b)(5)

12. (OPA) In 2015, you tweeted that the Democratic Party should be renamed the "liberalcratic party or the NeoKlanist Party." At your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs on November 15, 2018, you stated that the posting of this tweet was a "mistake" and that you were "trying to make a joke." You further described your tweet as a "momentary lapse of judgment." If you are confirmed to lead U.S. Immigration and Customs Enforcement, you will direct and oversee more than 20,000 law enforcement officers and personnel who are tasked with enforcing U.S. immigration laws. Employing good judgment and demonstrating integrity in that role could not be of higher importance. Does tweeting an offensive joke

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DHS-19-0195, 19-0494-J, 19-0495-H-000027
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(b)(5)

b. (OCFO) Do you commit to ensuring that ICE is not spending more American taxpayer dollars than Congress has appropriated to the agency?

(b)(5)

c. (OCFO) What is your plan to reign in ICE spending and ensure that the agency will not exceed congressionally appropriated spending levels?

(b)(5)

7. Prior to the Trump Administration, it was ICE's policy that pregnant women should not be placed in detention "absent extraordinary circumstances or the requirement of mandatory detention."[14] However, in December 2017, ICE reversed that policy and now handles pregnant women like any other detainee.[15] The President of the American Immigration Lawyers Association called this policy an "egregious human rights offense" and said, "Detention creates serious health risks, and many women have medical needs that cannot typically be addressed in a detention setting."[16]

a. (OPA) Do you agree that "[d]etention creates serious health risks, and many women have medical needs that cannot typically be addressed in a detention setting"? If not, please cite what resources you are relying on to support your answer.

(b)(5)

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(b)(5)

b. (OPA) Do you plan to reverse this policy if you are confirmed? If not, please explain.

(b)(5)

8. When you testified before the Senate Homeland Security and Governmental Affairs Committee, you were asked about the role you played in the Trump Administration's "zero-tolerance" policy that led to the separation of thousands of immigrant children from their parents.[17] Senator Peters asked you, "[W]hy didn't you or anyone recognize that family separations that would occur could cause a massive outcry from the public."[18] In response, you said, "What we were trying to do at CBP and in the Department was not separate families, but apply consequences as the Justice Department leaned forward and offered up additional prosecutorial resources as a so-called zero tolerance policy."[19]

   Senator Peters pressed you on this and asked you whether "it was clear that families would be separated at that point."[20] You answered, "That would have been a consequence."[21] In other words you were aware that implementing the "zero-tolerance" policy would result in the separation of immigrant children from their parents.

[14] Thomas Homan, Executive Associate Director, Memorandum for U.S. Immigration and Customs Enforcement re: Identification and Monitoring of Pregnant Detainees (Aug. 15, 2016), https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2_IdentificationMonitoringPregnantDetainees.pdf.
[15] *See* Ice Directive 11032.3: Identification and Monitoring of Pregnant Detainees (Dec. 14, 2017), https://www.ice.gov/sites/default/files/documents/Document/2018/11032_3_PregnantDetaines.pdf.
[16] Press Release, American Immigration Lawyers Association, ICE Formalizes Inhumane Detention Policies for Pregnant Women (Mar. 29, 2018), https://www.americanimmigrationcouncil.org/news/ice-formalizes-inhumane- detention-policies-pregnant-women.
[17] *Nominations*, *supra* note 2.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

AMERICAN OVERSIGHT

From: Kelly, Christopher S
Sent: 30 Mar 2019 21:20:00 +0000
To: Seguin, Debbie;(b)(6); (b)(7)(C)
Cc: Loiacono, Adam V;Simon, Joseph D
Subject: RE: QFRS - Blue
Attachments: 2019-03-27 - Vitiello SJC QFRs - MRM - Blue_DS CK.docx

Matt:

Added some responses to the green questions in comments highlighted in Red.

Also, copying Joe (Joe—there are a few that ERO will need to address), and Adam (one will require OPLA to take a look as it relates to Ms. L, I believe).

-Chris

From: Seguin, Debbie
Sent: Saturday, March 30, 2019 5:00 PM
To:(b)(6); (b)(7)(C); Kelly, Christopher S <(b)(6); (b)(7)(C)
Subject: RE: QFRS - Blue

I adjudicated as many Green questions and comments as I could and offered ideas to task out those that I couldn't. Defer to you as to who will triage the rest of the tasks.

From: Kelly, Christopher S
Sent: Saturday, March 30, 2019 9:37 AM
To:(b)(6); (b)(7)(C)
Cc: Seguin, Debbie <(b)(6); (b)(7)(C)
Subject: RE: QFRS - Blue

See attached. I sent a couple to Matt.

From:(b)(6); (b)(7)(C)
Sent: Friday, March 29, 2019 10:18 PM
To: Kelly, Christopher S <(b)(6); (b)(7)(C)
Cc: Seguin, Debbie <(b)(6); (b)(7)(C)
Subject: QFRS - Blue

Chris,

Please see attached and provide edits/comments to all questions in Blue. If you can please try and have this reviewed and to Debbie by Noon tomorrow, our goal is to get AD1 final answers on all blue/yellow questions for his review late tomorrow or early Sunday. Joe has also said he will have the ERO questions to us no later than Noon tomorrow which will also be a significant chunk.

Thanks,(b)(6);

AMERICAN OVERSIGHT

(b)(6); (b)(7)(C)
Deputy Chief of Staff
Office of the Director
U.S. Immigration and Customs Enforcement
Office: (202) 732-(b)(6)
Mobile: (571) 319-(b)(6);

AMERICAN OVERSIGHT

Questions for the Record for Mr. Ronald Vitiello, Deputy Director and Senior Official Performing the Duties of Director for U.S. Immigration and Customs Enforcement (ICE)
Senator Richard J. Durbin
March 27, 2019

For questions with subparts, please provide a separate response for each subpart.

1. On July 3, 2018, I submitted questions to you and other Trump Administration officials following a June 28, 2018 briefing on the Administration's family separation policy I received from you and other officials. Senators Grassley, Feinstein, Tillis, and Cruz also received this briefing. The Administration's briefers were unable to answer questions at the briefing and it was agreed that the briefers would respond to written follow-up questions.

   Senator Cruz's office compiled questions from the Senators who had attended the briefing and informed my office that they were submitted to the Administration in July 2018. I never received a response to the questions I submitted almost nine months ago.

   Please provide responses to these questions, which are included as Attachment 1.
   (Instructed by majority counsel to disregard – removed from document)

2. **(OPA) Do you think the Trump Administration's zero-tolerance policy has been a success?**

   (b)(5)

3. **(OPA) Was it appropriate for a Federal district court judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sabraw did on June 26, 2018? If so, why? If not, why not?**

   (b)(5)

4. **On June 17, 2018, DHS Secretary Nielsen stated on Twitter: "We do not have a policy of separating families at the border. Period." Was this an accurate statement?**

   (b)(5)

5. **(OPA)** At your November 15, 2018 confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, you stated in response to a question from Senator Peters about the Trump Administration's family separation policy:

(b)(5)

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c. (ERO/OPR) Has anyone been reprimanded for providing inaccurate information to parents?

d. (ERO/OPR) What is being done to uncover how parents and children are being treated?

6. On December 14, 2017, ICE reversed its policy that favored release of pregnant detainees, and implemented a policy of detaining pregnant women in accordance with President Trump's Executive Order 13768. Meanwhile, in the first two years of the Trump administration, miscarriage rates of women in ICE custody nearly doubled. (Scott Bixby, *Immigrant Miscarriages in ICE Detention Have Nearly Doubled Under Trump*, DAILY BEAST (Mar. 1, 2019))

   In February 2019, a 24-year-old woman gave birth to a stillborn baby boy while in ICE custody at the Port Isabel Detention Center. As of March 2019, 17 infants under the age of one year were held in immigration custody at Dilley Family Residential Center in Texas, which lacks specialized medical care facilities for this vulnerable population. (Madeline Buiano, *Babies in Poor Heath at ICE-Run Detention Facility, Says Complaint*, THE CENTER FOR PUBLIC INTEGRITY (Mar. 1, 2019))

   On March 5, 2019, I introduced the Stop Shackling and Detaining Pregnant Women Act, along with Senator Murray, to protect the health and safety of pregnant women and youth by reinstituting the presumption of release of pregnant women and youth from immigration detention, prohibiting DHS from shackling pregnant women in its custody, and setting standards of care and transparency for the treatment of pregnant women and youth.

   a. (OPA/ERO) Are you aware that the detention and shackling of pregnant women poses risks to the health of the mother and of the developing child?

(b)(5)

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(b)(5)

b. (OPA/ERO) What have you done to address the increase in miscarriages of women in ICE detention?

(b)(5)

c. (OPA/ERO) Will you commit to reversing the December 14, 2017 directive that eliminated the presumption that pregnant women and youth should be released from immigration custody?

(b)(5)

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(b)(5)

7. Current ICE family detention practices cost $319 per detained family member per day. Meanwhile, federal contract funding for immigration bed space in facilities operated by Core Civic and Geo Group have increased by over $100 million each since 2016. (Michaela Ross, Madi Alexander, Paul Morphy, *Immigration Spending Surges as White House Calls for More Funds*, Bloomberg Government (Jan. 25, 2019))

   Furthermore, prolonged family detention has been opposed by groups ranging from the American Academy of Pediatrics to DHS's own Advisory Committee on Family Residential Centers. Despite these findings, on June 2017, DHS terminated the Family Case Management Program, an innovative program of alternatives to detention that boasted compliance rates of more than 99% with both ICE check-ins and with immigration court hearings. The program cost only $36 per day for an entire family. (Frank Bajak, *ICE shutters detention alternative for asylum-seekers* (June 9, 2017))

   a. **(ERO) Will you commit to re-starting the Family Case Management Program, given its cost-effectiveness when compared to prolonged family detention, and given the enrolled families' high rates of compliance with court proceedings?**

   b. **(ERO) Will you commit to exploring additional models for alternatives to detention as a humane and cost-effective way to decrease detention of children and families?**

8. On September 27, 2018, the DHS Inspector General issued a report documenting poor conditions and mistreatment of immigrants at the Adelanto ICE Processing Center. The OIG report indicated that the Adelanto ICE Processing Center potentially violated ICE detention standards.

   When my staff visited Adelanto, several detainees complained about not being able to access their property that was surrendered to ICE. Specifically, a number of detainees were not able to retrieve their passport, ID, and original versions of documents from ICE in time to provide these important documents to the judge when they appeared in court.

   Moreover, reports indicate that detainees at Adelanto are engaging in a hunger strike to protest the conditions in which they are held, including the high cost of food, limited availability of legal representation, and restricted access to correspondence sent to them by mail.

   a. **(ERO/OPR) Please provide the most recent inspection report for the Adelanto ICE Processing Center.**

   b. **Please answer the following questions about Adelanto with specificity:**

      i. **(ERO) How many doctors are available to detainees at the Adelanto ICE Detention Center?**

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b. (OPR/ERO) If not, will you commit to commencing an inquiry immediately?

4. (OPR/ERO) Will you commit to establish written guidelines and conduct training to ensure ICE employees never engage in coercion or abuse when forms are presented to detained individuals asking them to relinquish legal rights?

(b)(5)

Under current law, children cannot be held for more than 20 days in ICE detention. Media reports suggest that in order to get around this 20-day rule, the White House considered a so-called "binary choice policy" to force parents to choose between either having their children stay with them in ICE detention indefinitely, or having their children separated but kept in HHS detention indefinitely.

5. (OPA) Have you ever been consulted by the White House on this binary choice policy – either in person or in writing?

(b)(5)

a. (OPA) If in person, please provide the dates and the names of the people attending that meeting to the Committee.

NA

b. (OPA) If in writing, please provide that documentation to the Committee.

NA

ICE Detention of Pregnant Women

On December 14, 2017, ICE issued a directive that reversed a policy of presumptive release from detention for pregnant women. In your pre-hearing questionnaire, you stated that ICE

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tracks pregnancy-related cases for detainees in custody and provided the number of pregnant detainees held in ICE custody at that time.

6. **(ERO) Please provide an updated number of pregnant women who have been detained in ICE custody since ICE issued the December 2018 directive.**

7. **(ERO) How many pregnant women are currently detained?**

8. **(ERO) Do you have a breakdown by trimester of pregnancy?**

During DHS Secretary Nielsen's testimony to the Homeland Security and Governmental Affairs Committee on May 15, 2018, she declared that "we do not detain any women past their third trimester, once they enter the third trimester, we provide them separate housing." However, in your pre-hearing questionnaire, you stated that as of October 4, 2018, there were a total of four detainees in their third trimester.

9. **(OPP) What exactly is ICE's policy of detaining pregnant women in their third trimester?**

On May 15, 2018, I asked Secretary Nielsen about a September 2017 complaint filed with the DHS IG and Office of Civil Rights and Civil Liberties in which pregnant women alleged mistreatment in ICE custody, including insufficient access to medical care resulting in dehydration and even miscarriage. Secretary Nielsen promised to provide an assessment of medical treatment of pregnant women in immigration detention but I have received no response. I asked again for such an assessment again during your nomination hearing on November 15, 2018, but have received no response.

10. **(ERO) Has ICE conducted an assessment of the treatment of pregnant women in its detention facilities?**

    a. **(ERO) If yes, what outside medical experts has ICE engaged with in conducting this assessment and will you provide documentation of this assessment to this Committee?**

    b. **(ERO) If no, do you commit to conduct such an assessment in engagement with outside medical experts and provide it to this Committee?**

11. **(ERO) What training and guidance do ICE employees receive about specialized care for pregnant women in ICE custody and detention facilities?**

    a. **(ERO) Have you consulted with medical experts in its development?**

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c. (OPP) To date, how many adults and children have been subject to the MPP policy? Please provide a breakdown of the number of children by age.

d. (OPP) How were these individuals selected to be sent to Mexico under the MPP policy? What specific criteria does DHS use and who makes these decisions?

e. (OPP) Who at DHS made the decision to subject children to the MPP policy and what were the justifications for that decision?

f. (OPP) What are the exact terms of the agreement between the United States and the Mexican government regarding the MPP policy?

7. At your HSGAC hearing, Sen. Harris asked you about ICE's reversal of the prior administration's policy that had generally discouraged the detention of pregnant immigrant women absent extraordinary circumstances or the need for mandatory detention. As for pregnant women in their third trimester, you stated that ICE's policy "is that special care is taken in the third trimester and it's presumed that we would not keep anyone in custody. But if they are in custody and we have the ability to remove them then we would do that." In February 2019, a woman in her third trimester of pregnancy, who was held at an ICE detention facility, delivered a stillborn baby while in ICE custody. There have also been reports of mistreatment of pregnant women in ICE custody, a lack of adequate medical care, and a significant increase in the number of miscarriages among women detained by ICE.

a. (ERO) What steps have you already taken and what steps do you plan to take to address the increases in miscarriages among women in ICE custody?

b. (ERO) What oversight and accountability mechanisms have you put in place or will you put in place to ensure that pregnant women are not mistreated or denied proper medical care while they are detained by ICE?

c. (ERO) Since ICE changed its policy regarding the detention of pregnant women, how many pregnant women have been detained by ICE? Of these pregnant women, how many of them are currently in ICE custody? Please provide data broken down by trimester for both questions.

d. (ERO) What is the average length of detention and the longest length of detention in ICE custody for pregnant women?

8. In June 2017, DHS ended the Family Case Management Program, which was a highly successful alternative to detention that cost significantly less than detaining families. This program cost about $36 to $38 each day per family, while ICE family detention costs nearly $320 per person each day. A November 2017 report by the DHS Inspector General found that the Family Case Management Program was 99 percent successful for ICE check-ins and appointments and 100 percent successful for attendance at court hearings.

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(b)(5)

12. In an August 2016 memo signed by then-Executive Associate Director Thomas Homan, ICE directed its agents not to detain pregnant women "absent extraordinary circumstances or the requirement of mandatory detention." However, In December 2017, Homan superseded the agency's directive and his previous memo regarding the detention of pregnant women.
    a. (OPA) Do you believe ICE should detain pregnant women absent extraordinary circumstances or the requirement of mandatory detention?

(b)(5)

13. In a 2017 report, titled, "Detention of Immigrant Children," the American Academy of Pediatrics said, "The Department of Homeland Security facilities do not meet the basic standards for the care of children in residential settings." More recently, two physicians who work with DHS's Office for Civil Rights and Civil Liberties and have extensively

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total of four days in immigration detention – three in CBP custody and one in ICE custody. This recent tragedy has renewed my concern that ICE is unnecessarily detaining, shackling, and denying adequate medical care to pregnant women in immigration custody.

1. (OPA) **The number of undocumented women who have lost their pregnancies while in government detention is reported to have greatly increased during President Trump's tenure. Do you have a plan to reverse this trend and ensure the safety of expectant mothers?**

(b)(5)

2. (OPA) **Would you support legislation barring the shackling of pregnant women? If not, why not?**

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

3. (ERO) **Please provide a list of every documented instance during your tenure as Acting Director of ICE where an ICE officer restrained or shackled a pregnant woman. Please include the facts and reasoning behind the decision to shackle or restrain the pregnant woman.**
4. (OPA) **Do you believe that there should be a presumption in favor of releasing pregnant women from immigration detention? If not, why not?**

(b)(5)

The current level of appropriations is sufficient for ICE to detain an annual average of 45,274 individuals on a daily basis. In order to reach that annual average, appropriators have calculated that the agency must decrease its detention population to 40,520 by the end of the fiscal year to account for overspending in the first half of the year. However, as of early March, there were roughly 50,000 individuals in ICE custody, which is higher than the number of individuals that were in custody when the bill was signed.

1. (OPA and ERO) **What is your plan to work towards reducing the number of people in ICE custody to 40,520 by the end of the year? Please provide a specific timeline and proposal including steps to be taken and the numeric goals to be achieved by the fiscal year's end.**

When Congress appropriated funds for the Department of Homeland Security last March, it required ICE to "complete and make public an initial report regarding any in-custody death within 30 days of such death, with subsequent reporting to be completed and released within 60 days of the initial report." ICE failed to meet this basic requirement. Past administrations have issued death reports that have been nearly 30 pages in length. However, last year, the ICE website contained death reports that were only a few pages in length. The brevity of these reports

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(b)(5)

(b)(5)

8. (OPA) If confirmed, will you reinstate ICE's policy of a presumption of release for pregnant detainees?

(b)(5)

a. (OPA) Are you aware of the health risks that pregnant women and their developing children face when detained?

(b)(5)

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b. (OPA) What steps have you taken to ensure that pregnant detainees receive sufficient prenatal care?

(b)(5)

c. (OPA) What steps have you taken to reduce the rising number of miscarriages experienced by detained women?

(b)(5)

9. (ERO) What steps have you taken as acting director of ICE to pursue more cost effective and humane alternatives to detention?

10. (ERO) In 2017, the Trump administration terminated the Family Case Management Program, which cost only $38 per family per day and yielded over 99% compliance rates with ICE appointments and immigration court hearings. Would you support reinstating the Family Case Management Program or the implementation of other innovative alternatives to detention?

11. Please describe your involvement in ICE's use of information about potential sponsors of unaccompanied migrant children to arrest undocumented individuals.
    a. (ERO) How many arrests have stemmed from CBP or HHS sharing information with ICE that it obtained from unaccompanied children about potential sponsors?
    b. (OPA) Do you agree that arresting individuals who have offered to sponsor unaccompanied children results in children spending longer periods of time in federal custody?
    c. (OPA) Do you believe that potential sponsors for unaccompanied children should be an enforcement priority for ICE?

(b)(5)

AMERICAN OVERSIGHT

From: Kelly, Christopher S
Sent: 30 Mar 2019 13:50:07 +0000
To: Seguin, Debbie; (b)(6); (b)(7)(C)
Subject: RE: QFRs
Attachments: 2019-03-27 - Vitiello SJC QFRs - MRM_DS (CK).docx

One responsive comment in yellow. I sent two questions out (one to OPR and one to ERO), copying (b)(6);

From: Seguin, Debbie
Sent: Friday, March 29, 2019 9:31 PM
To: Kelly, Christopher S <(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Subject: RE: QFRs

Please use this one instead. I've resolved the comments that I was looking into. The rest of the comments will either need to be tasked out or confirmed with AD1 on Monday. Thanks.

From: Seguin, Debbie
Sent: Friday, March 29, 2019 9:05 PM
To: Kelly, Christopher S <(b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Subject: RE: QFRs

Finished my review of the attached. (b)(5)
(b)(5) y (a couple of Chris comments). I've lodged other comments in the document that I'm hoping either of you could address by reaching out to other programs.

Chris please make changes to this document if you ended up sharing with DD.

Thanks,
Debbie

From: Kelly, Christopher S
Sent: Friday, March 29, 2019 11:40 AM
To: (b)(6); (b)(7)(C)
Cc: Seguin, Debbie (b)(6); (b)(7)(C)
Subject: RE: QFRs

Suggested edits attached.

From: (b)(6); (b)(7)(C)
Sent: Thursday, March 28, 2019 10:08 PM
To: Kelly, Christopher S <(b)(6); (b)(7)(C)
Cc: Seguin, Debbie (b)(6); (b)(7)(C)
Subject: QFRs

AMERICAN OVERSIGHT

Not sure what your guys thoughts are on this, but here are a bunch of answers OPA and I pulled today for review, they are highlighted in yellow. I was thinking if Chris can review tomorrow and provide comments to Debbie, we can start clearing in chunks and then I can input the cleared answers into a clean version broken down by Senator.

(b)(6); (b)(7)(C)
Deputy Chief of Staff
Office of the Director
U.S. Immigration and Customs Enforcement
Office: (202) 732-(b)(6);
Mobile: (571) 319-(b)(6);

AMERICAN OVERSIGHT

Questions for the Record for Mr. Ronald Vitiello, Deputy Director and Senior Official Performing the Duties of Director for U.S. Immigration and Customs Enforcement (ICE)
Senator Richard J. Durbin
March 27, 2019

For questions with subparts, please provide a separate response for each subpart.

1. On July 3, 2018, I submitted questions to you and other Trump Administration officials following a June 28, 2018 briefing on the Administration's family separation policy I received from you and other officials. Senators Grassley, Feinstein, Tillis, and Cruz also received this briefing. The Administration's briefers were unable to answer questions at the briefing and it was agreed that the briefers would respond to written follow-up questions.

   Senator Cruz's office compiled questions from the Senators who had attended the briefing and informed my office that they were submitted to the Administration in July 2018. I never received a response to the questions I submitted almost nine months ago.

   Please provide responses to these questions, which are included as Attachment 1.
   (Instructed by majority counsel to disregard – removed from document)

2. **(OPA) Do you think the Trump Administration's zero-tolerance policy has been a success?**

3. **(OPA) Was it appropriate for a Federal district court judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sabraw did on June 26, 2018? If so, why? If not, why not?**

4. **On June 17, 2018, DHS Secretary Nielsen stated on Twitter: "We do not have a policy of separating families at the border. Period." Was this an accurate statement?**

   Yes, we do not have a policy of separating families at the border.

5. **(OPA)** At your November 15, 2018 confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, you stated in response to a question from Senator Peters about the Trump Administration's family separation policy:

   [redacted] (b)(5)

   Were you aware that the separation of families would necessarily occur as a direct outcome of the application of consequences you described?

6. **(OPA)** At your November 15, 2018 confirmation hearing, Senator Carper asked you, "[I]f

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(b)(5)

Executive Order 13768. Meanwhile, in the first two years of the Trump administration, miscarriage rates of women in ICE custody nearly doubled. (Scott Bixby, *Immigrant Miscarriages in ICE Detention Have Nearly Doubled Under Trump*, DAILY BEAST (Mar. 1, 2019))

In February 2019, a 24-year-old woman gave birth to a stillborn baby boy while in ICE custody at the Port Isabel Detention Center. As of March 2019, 17 infants under the age of one year were held in immigration custody at Dilley Family Residential Center in Texas, which lacks specialized medical care facilities for this vulnerable population. (Madeline Buiano, *Babies in Poor Heath at ICE-Run Detention Facility, Says Complaint*, THE CENTER FOR PUBLIC INTEGRITY (Mar. 1, 2019))

On March 5, 2019, I introduced the Stop Shackling and Detaining Pregnant Women Act, along with Senator Murray, to protect the health and safety of pregnant women and youth by reinstituting the presumption of release of pregnant women and youth from immigration detention, prohibiting DHS from shackling pregnant women in its custody, and setting standards of care and transparency for the treatment of pregnant women and youth.

a. (OPA/ERO) Are you aware that the detention and shackling of pregnant women poses risks to the health of the mother and of the developing child?

(b)(5)

b. (OPA/ERO) What have you done to address the increase in miscarriages of women in ICE detention?

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(b)(5)

c. (OPA/ERO) Will you commit to reversing the December 14, 2017 directive that eliminated the presumption that pregnant women and youth should be released from immigration custody?

(b)(5)

7. Current ICE family detention practices cost $319 per detained family member per day. Meanwhile, federal contract funding for immigration bed space in facilities operated by Core Civic and Geo Group have increased by over $100 million each since 2016. (Michaela Ross,

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Madi Alexander, Paul Morphy, *Immigration Spending Surges as White House Calls for More Funds*, Bloomberg Government (Jan. 25, 2019))

Furthermore, prolonged family detention has been opposed by groups ranging from the American Academy of Pediatrics to DHS's own Advisory Committee on Family Residential Centers. Despite these findings, on June 2017, DHS terminated the Family Case Management Program, an innovative program of alternatives to detention that boasted compliance rates of more than 99% with both ICE check-ins and with immigration court hearings. The program cost only $36 per day for an entire family. (Frank Bajak, *ICE shutters detention alternative for asylum-seekers* (June 9, 2017))

a. **(ERO) Will you commit to re-starting the Family Case Management Program, given its cost-effectiveness when compared to prolonged family detention, and given the enrolled families' high rates of compliance with court proceedings?**

b. **(ERO) Will you commit to exploring additional models for alternatives to detention as a humane and cost-effective way to decrease detention of children and families?**

8. On September 27, 2018, the DHS Inspector General issued a report documenting poor conditions and mistreatment of immigrants at the Adelanto ICE Processing Center. The OIG report indicated that the Adelanto ICE Processing Center potentially violated ICE detention standards.

When my staff visited Adelanto, several detainees complained about not being able to access their property that was surrendered to ICE. Specifically, a number of detainees were not able to retrieve their passport, ID, and original versions of documents from ICE in time to provide these important documents to the judge when they appeared in court.

Moreover, reports indicate that detainees at Adelanto are engaging in a hunger strike to protest the conditions in which they are held, including the high cost of food, limited availability of legal representation, and restricted access to correspondence sent to them by mail.

a. **(ERO/OPR) Please provide the most recent inspection report for the Adelanto ICE Processing Center.**

b. **Please answer the following questions about Adelanto with specificity:**

   i. **(ERO) How many doctors are available to detainees at the Adelanto ICE Detention Center?**

   ii. **(ERO) How many nurses and physicians' assistants are available at Adelanto?**

   iii. **(ERO) If a detainee becomes ill after arriving at Adelanto, how long, on average, does the detainee have to wait to be seen by a doctor?**

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4. **(OPR/ERO) Will you commit to establish written guidelines and conduct training to ensure ICE employees never engage in coercion or abuse when forms are presented to detained individuals asking them to relinquish legal rights?**

(b)(5)

Under current law, children cannot be held for more than 20 days in ICE detention. Media reports suggest that in order to get around this 20-day rule, the White House considered a so-called "binary choice policy" to force parents to choose between either having their children stay with them in ICE detention indefinitely, or having their children separated but kept in HHS detention indefinitely.

5. **(OPA) Have you ever been consulted by the White House on this binary choice policy – either in person or in writing?**

    a. **(OPA) If in person, please provide the dates and the names of the people attending that meeting to the Committee.**

    b. **(OPA) If in writing, please provide that documentation to the Committee.**

ICE Detention of Pregnant Women

On December 14, 2017, ICE issued a directive that reversed a policy of presumptive release from detention for pregnant women. In your pre-hearing questionnaire, you stated that ICE tracks pregnancy-related cases for detainees in custody and provided the number of pregnant detainees held in ICE custody at that time.

6. **(ERO) Please provide an updated number of pregnant women who have been detained in ICE custody since ICE issued the December 2018 directive.**

7. **(ERO) How many pregnant women are currently detained?**

8. **(ERO) Do you have a breakdown by trimester of pregnancy?**

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During DHS Secretary Nielsen's testimony to the Homeland Security and Governmental Affairs Committee on May 15, 2018, she declared that "we do not detain any women past their third trimester, once they enter the third trimester, we provide them separate housing." However, in your pre-hearing questionnaire, you stated that as of October 4, 2018, there were a total of four detainees in their third trimester.

9. **(OPP) What exactly is ICE's policy of detaining pregnant women in their third trimester?**

On May 15, 2018, I asked Secretary Nielsen about a September 2017 complaint filed with the DHS IG and Office of Civil Rights and Civil Liberties in which pregnant women alleged mistreatment in ICE custody, including insufficient access to medical care resulting in dehydration and even miscarriage. Secretary Nielsen promised to provide an assessment of medical treatment of pregnant women in immigration detention but I have received no response. I asked again for such an assessment again during your nomination hearing on November 15, 2018, but have received no response.

10. **(ERO) Has ICE conducted an assessment of the treatment of pregnant women in its detention facilities?**

    a. **(ERO) If yes, what outside medical experts has ICE engaged with in conducting this assessment and will you provide documentation of this assessment to this Committee?**

    b. **(ERO) If no, do you commit to conduct such an assessment in engagement with outside medical experts and provide it to this Committee?**

11. **(ERO) What training and guidance do ICE employees receive about specialized care for pregnant women in ICE custody and detention facilities?**

    a. **(ERO) Have you consulted with medical experts in its development?**

<u>Poor Conditions and Oversight at ICE's Adelanto Processing Center and Other Detention Facilities</u>

On September 27, 2018, the DHS IG published a report identifying significant health and safety violations at the Adelanto ICE Processing Center in California. The IG found that the Adelanto facility failed to provide detainees with adequate medical care. From November 2017 to April 2018, detainees filed 80 medical grievances for not receiving urgent care, not being seen by

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7. At your HSGAC hearing, Sen. Harris asked you about ICE's reversal of the prior administration's policy that had generally discouraged the detention of pregnant immigrant women absent extraordinary circumstances or the need for mandatory detention. As for pregnant women in their third trimester, you stated that ICE's policy "is that special care is taken in the third trimester and it's presumed that we would not keep anyone in custody. But if they are in custody and we have the ability to remove them then we would do that." In February 2019, a woman in her third trimester of pregnancy, who was held at an ICE detention facility, delivered a stillborn baby while in ICE custody. There have also been reports of mistreatment of pregnant women in ICE custody, a lack of adequate medical care, and a significant increase in the number of miscarriages among women detained by ICE.

   a. **(ERO) What steps have you already taken and what steps do you plan to take to address the increases in miscarriages among women in ICE custody?**

   b. **(ERO) What oversight and accountability mechanisms have you put in place or will you put in place to ensure that pregnant women are not mistreated or denied proper medical care while they are detained by ICE?**

   c. **(ERO) Since ICE changed its policy regarding the detention of pregnant women, how many pregnant women have been detained by ICE? Of these pregnant women, how many of them are currently in ICE custody? Please provide data broken down by trimester for both questions.**

   d. **(ERO) What is the average length of detention and the longest length of detention in ICE custody for pregnant women?**

8. In June 2017, DHS ended the Family Case Management Program, which was a highly successful alternative to detention that cost significantly less than detaining families. This program cost about $36 to $38 each day per family, while ICE family detention costs nearly $320 per person each day. A November 2017 report by the DHS Inspector General found that the Family Case Management Program was 99 percent successful for ICE check-ins and appointments and 100 percent successful for attendance at court hearings.

   a. **(ERO) What steps are you taking to explore using cost-effective alternatives to detention, like the Family Case Management Program?**

   b. **(ERO) If confirmed, will you reinstate the Family Case Management Program?**

9. On February 15, 2019, the President announced he was declaring a national emergency to build a border wall, claiming "We have an invasion of drugs and criminals coming into our country." But he undermined his own declaration of an emergency by stating: "I didn't need to do this, but I'd rather do it much faster. . . . I just want to get it done faster, that's all." In a January 2019 interview, you were asked about whether you though the President should declare a national emergency to build a border wall. You responded, "It's quite clear to me that he's dedicated to getting this job done, so whatever means he needs to take to do that, I think he should do it."

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(b)(5)

12. In an August 2016 memo signed by then-Executive Associate Director Thomas Homan, ICE directed its agents not to detain pregnant women "absent extraordinary circumstances or the requirement of mandatory detention." However, In December 2017, Homan superseded the agency's directive and his previous memo regarding the detention of pregnant women.
    a. (OPA) Do you believe ICE should detain pregnant women absent extraordinary circumstances or the requirement of mandatory detention?

(b)(5)

13. In a 2017 report, titled, "Detention of Immigrant Children," the American Academy of Pediatrics said, "The Department of Homeland Security facilities do not meet the basic standards for the care of children in residential settings." More recently, two physicians

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stated that numerous more families may have been separated prior to the summer of 2018. Do you still believe your previous statement that "only 2,500 people" were victims of family separation to be true?

Among the people affected by President Trump's family separation policy are 29 parents from Central America who crossed into the United States at the Calexico Port of Entry on March 2, 2019. Roughly 17 of these 29 parents are currently in immigration detention. As the author of the Families Belong Together Act, I believe that each of that parents who were the victims of the Trump administration's family separation policy should be provided a path to citizenship so that they can reunite with their children and receive much needed medical attention in this country.

1. (OPLA) **As the Acting ICE Director, you should certainly be aware of the status of these cases. When will each of the parents currently in detention be released from detention?**
2. (OPA) **A few small nonprofits were able to raise a set of funds to bring these families back to the United States. Do you believe that the government does not have the resources to bring parents, who fell victim to the family separation policy, back to the United States?**
3. (OPA) **What process is in place in the event that other parents who are victims of the family separation policy seek to return to the United States? If there is no policy currently in place, when will there be?**

On April 23, 2018, the Commissioner of CBP, the Director of U.S. Citizenship and Immigration Services, and the Director of ICE sent a memo to Secretary Nielsen titled "Increasing Prosecutions of Immigration Violations."

1. (OPA) **Did you have any involvement in the memo, including providing any advice or counsel on issues related to this memo?**
2. (OPA) **If so, what was the content of this advice or counsel?**

Section 4.4 of the Operations Manual ICE Performance-Based National Detention Standards states: "At no time shall a pregnant detainee be restrained, absent truly extraordinary circumstances that render restraints absolutely necessary." Section 4.4 also guarantees pregnant detainees "access to specialized prenatal care, pregnancy testing, comprehensive counseling and assistance, postpartum follow up, lactation services, and abortion services." Earlier this year, a 24-year old Honduran woman had a miscarriage while in immigration detention. She had spent a total of four days in immigration detention – three in CBP custody and one in ICE custody. This recent tragedy has renewed my concern that ICE is unnecessarily detaining, shackling, and denying adequate medical care to pregnant women in immigration custody.

1. (OPA) **The number of undocumented women who have lost their pregnancies while in government detention is reported to have greatly increased during President Trump's tenure. Do you have a plan to reverse this trend and ensure the safety of expectant mothers?**

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DHS-19-0195, 19-0494-J, 19-0495-H-000054
2019-ICLI-00054 2611

2. (OPA) **Would you support legislation barring the shackling of pregnant women? If not, why not?**

(b)(5)

(b)(5)

3. (ERO) **Please provide a list of every documented instance during your tenure as Acting Director of ICE where an ICE officer restrained or shackled a pregnant woman. Please include the facts and reasoning behind the decision to shackle or restrain the pregnant woman.**
4. (OPA) **Do you believe that there should be a presumption in favor of releasing pregnant women from immigration detention? If not, why not?**

(b)(5)

The current level of appropriations is sufficient for ICE to detain an annual average of 45,274 individuals on a daily basis. In order to reach that annual average, appropriators have calculated that the agency must decrease its detention population to 40,520 by the end of the fiscal year to account for overspending in the first half of the year. However, as of early March, there were roughly 50,000 individuals in ICE custody, which is higher than the number of individuals that were in custody when the bill was signed.

1. (OPA and ERO) **What is your plan to work towards reducing the number of people in ICE custody to 40,520 by the end of the year? Please provide a specific timeline and proposal including steps to be taken and the numeric goals to be achieved by the fiscal year's end.**

When Congress appropriated funds for the Department of Homeland Security last March, it required ICE to "complete and make public an initial report regarding any in-custody death within 30 days of such death, with subsequent reporting to be completed and released within 60 days of the initial report." ICE failed to meet this basic requirement. Past administrations have

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that crossing the border is illegal." With the benefit of hindsight, would you still support the implementation of the zero tolerance policy?

4. (OPA) Do you believe that the separation of families is consistent with the fundamental values of the United States?

5. (OPA) Do you support a "binary choice" policy, which could once again lead to family separations by requiring parents to choose between allowing their children to be released from custody alone after 20 days or remaining detained together as a family?

6. (OPA) Will you commit that if confirmed to lead Immigration and Customs Enforcement (ICE), you will not advocate for any policy that will have the effect of separating migrant children from their parents, even if family separation is not the goal of the policy?

7. (OPA) On November 15, 2018, at your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs, in response to Senator Hassan's request, you would not commit to stop pursuing an increased ability to detain children and changes to the *Flores v. Reno* settlement agreement. Will you commit to not pursuing increased authority to detain children if you are confirmed?
   a. (OPA) You previously stated that family detention facilities are "not . . . a burden to stay in." Are you aware of the health impacts of detention for children?
   b. (OPA) What steps have you taken to ensure that children in detention receive adequate medical care and treatment?

8. (OPA) If confirmed, will you reinstate ICE's policy of a presumption of release for pregnant detainees?
   a. (OPA) Are you aware of the health risks that pregnant women and their developing children face when detained?
   b. (OPA) What steps have you taken to ensure that pregnant detainees receive sufficient prenatal care?

(b)(5)

   c. (OPA) What steps have you taken to reduce the rising number of miscarriages experienced by detained women?

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(b)(5)

(b)(5)

9. (ERO) What steps have you taken as acting director of ICE to pursue more cost effective and humane alternatives to detention?

10. (ERO) In 2017, the Trump administration terminated the Family Case Management Program, which cost only $38 per family per day and yielded over 99% compliance rates with ICE appointments and immigration court hearings. Would you support reinstating the Family Case Management Program or the implementation of other innovative alternatives to detention?

11. Please describe your involvement in ICE's use of information about potential sponsors of unaccompanied migrant children to arrest undocumented individuals.
    a. (ERO) How many arrests have stemmed from CBP or HHS sharing information with ICE that it obtained from unaccompanied children about potential sponsors?
    b. (OPA) Do you agree that arresting individuals who have offered to sponsor unaccompanied children results in children spending longer periods of time in federal custody?
    c. (OPA) Do you believe that potential sponsors for unaccompanied children should be an enforcement priority for ICE?

12. (OPA) In 2015, you tweeted that the Democratic Party should be renamed the "liberalcratic party or the NeoKlanist Party." At your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs on November 15, 2018, you stated that the posting of this tweet was a "mistake" and that you were "trying to make a joke." You further described your tweet as a "momentary lapse of judgment." If you are confirmed to lead U.S. Immigration and Customs Enforcement, you will direct and oversee more than 20,000 law enforcement officers and personnel who are tasked with enforcing U.S. immigration laws. Employing good judgment and demonstrating integrity in that role could not be of higher importance. Does tweeting an offensive joke because of a momentary lapse of judgment demonstrate the judgment and integrity required to lead U.S. Immigration and Customs Enforcement?

(b)(5)

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that there are "persistent and growing concerns about ICE's lack of fiscal discipline, whether real or manufactured, and its inability to manage detention resources within the appropriations made by law without the threat of anti-deficiency."[13]

a. (OCFO) Do you expect ICE to request that funds be preprogrammed this fiscal year to cover the costs of detention and removal operations?

[9] DEP'T OF HOMELAND SEC. OFFICE OF INSPECTOR GEN, ICE DOES NOT FULLY USE CONTRACTING TOOLS TO HOLD DETENTION FACILITY CONTRACTORS ACCOUNTABLE FOR FAILING TO MEET PERFORMANCE STANDARDS (2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf.
[10] *Id.*
[11] Detention Watch Network, ICE's Fiscal Mismanagement: Deceit and Abuse, https://www.detentionwatchnetwork.org/sites/default/files/ICE%E2%80%99s%20Fiscal%20Mismanagement-%20Deceit%20and%20Abuse.pdf (last visited Mar. 27, 2019).
[12] *Id.*
[13] Senate Committee on Appropriations, *S. Rept. 115-283, Report to Accompany S. 3109, Department of Homeland Security Appropriations Bill, 2019*, June 21, 2019, https://www.congress.gov/congressional-report/115th- congress/senate-report/283/1.

b. (OCFO) Do you commit to ensuring that ICE is not spending more American taxpayer dollars than Congress has appropriated to the agency?
c. (OCFO) What is your plan to reign in ICE spending and ensure that the agency will not exceed congressionally appropriated spending levels?

7. Prior to the Trump Administration, it was ICE's policy that pregnant women should not be placed in detention "absent extraordinary circumstances or the requirement of mandatory detention."[14] However, in December 2017, ICE reversed that policy and now handles pregnant women like any other detainee.[15] The President of the American Immigration Lawyers Association called this policy an "egregious human rights offense" and said, "Detention creates serious health risks, and many women have medical needs that cannot typically be addressed in a detention setting."[16]

a. (OPA) Do you agree that "[d]etention creates serious health risks, and many women have medical needs that cannot typically be addressed in a detention setting"? If not, please cite what resources you are relying on to support your answer.

(b)(5)

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(b)(5)

b. (OPA) Do you plan to reverse this policy if you are confirmed? If not, please explain.

8. When you testified before the Senate Homeland Security and Governmental Affairs Committee, you were asked about the role you played in the Trump Administration's "zero-tolerance" policy that led to the separation of thousands of immigrant children from their parents.[17] Senator Peters asked you, "[W]hy didn't you or anyone recognize that family separations that would occur could cause a massive outcry from the public."[18] In response, you said, "What we were trying to do at CBP and in the Department was not separate families, but apply consequences as the Justice Department leaned forward and offered up additional prosecutorial resources as a so-called zero tolerance policy."[19]

   Senator Peters pressed you on this and asked you whether "it was clear that families would be separated at that point."[20] You answered, "That would have been a consequence."[21] In other words you were aware that implementing the "zero-tolerance" policy would result in the separation of immigrant children from their parents.

[14] Thomas Homan, Executive Associate Director, Memorandum for U.S. Immigration and Customs Enforcement re: Identification and Monitoring of Pregnant Detainees (Aug. 15, 2016), https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2_IdentificationMonitoringPregnantDetainees.pdf.
[15] *See* Ice Directive 11032.3: Identification and Monitoring of Pregnant Detainees (Dec. 14, 2017), https://www.ice.gov/sites/default/files/documents/Document/2018/11032_3_PregnantDetaines.pdf.
[16] Press Release, American Immigration Lawyers Association, ICE Formalizes Inhumane Detention Policies for Pregnant Women (Mar. 29, 2018), https://www.americanimmigrationcouncil.org/news/ice-formalizes-inhumane- detention-policies-pregnant-women.
[17] *Nominations*, *supra* note 2.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

AMERICAN OVERSIGHT

From: Seguin, Debbie
Sent: 30 Mar 2019 01:30:43 +0000
To: Kelly, Christopher S (b)(6); (b)(7)(C)
Subject: RE: QFRs
Attachments: 2019-03-27 - Vitiello SJC QFRs - MRM_DS.docx

Please use this one instead. I've resolved the comments that I was looking into. The rest of the comments will either need to be tasked out or confirmed with AD1 on Monday. Thanks.

From: Seguin, Debbie
Sent: Friday, March 29, 2019 9:05 PM
To: Kelly, Christopher S (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Subject: RE: QFRs

Finished my review of the attached. (b)(5)
(b)(5)
(b)(5). I've lodged other comments in the document that I'm hoping either of you could address by reaching out to other programs.

Chris please make changes to this document if you ended up sharing with DD.

Thanks,
Debbie

From: Kelly, Christopher S
Sent: Friday, March 29, 2019 11:40 AM
To: Murphy, Matthew R (b)(6); (b)(7)(C)
Cc: Seguin, Debbie (b)(6); (b)(7)(C)
Subject: RE: QFRs

Suggested edits attached.

From: (b)(6); (b)(7)(C)
Sent: Thursday, March 28, 2019 10:08 PM
To: Kelly, Christopher S (b)(6); (b)(7)(C)
Cc: Seguin, Debbie (b)(6); (b)(7)(C)
Subject: QFRs

Not sure what your guys thoughts are on this, but here are a bunch of answers OPA and I pulled today for review, they are highlighted in yellow. I was thinking if Chris can review tomorrow and provide comments to Debbie, we can start clearing in chunks and then I can input the cleared answers into a clean version broken down by Senator.

(b)(6); (b)(7)(C)
Deputy Chief of Staff
Office of the Director
U.S. Immigration and Customs Enforcement

AMERICAN OVERSIGHT

Office: (202) 732-(b)(6)
Mobile: (571) 319-(b)(6);
(b)(7)(

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a. (OPLA) Do you believe that a 41-day detention period for a child complies with the terms of the settlement agreement in *Flores v. Barr* (*Flores*)?

b. (OPLA) Has ICE disclosed to the court in the *Flores* case that children were detained for over 40 days along with their parents at Karnes? If so, please provide the dates and methods of any such disclosures.

c. (OPLA/OPA) Will you commit to complying with the *Flores* settlement agreement by releasing children from ICE custody after 20 days or less?

4. Reports indicate that ICE is considering plans to stop detaining families at the Karnes County Detention Center, and instead use the Karnes facility to detain single adults.

a. (ERO) Does ICE, in fact, plan to stop detaining families at Karnes?

b. (ERO) If ICE stops detaining families at Karnes, will you commit to releasing the parents who are detained there along with their children, to avoid moving children to shelters when one of their parents is in the United States?

c. (ERO) If ICE stops detaining families at Karnes, will ICE detain fathers and children together at an alternative location? How will ICE ensure that the closure of Karnes does not result in separation of fathers from their children?

5. In November 2018, you testified before HSGAC that ICE was discussing the option of imposing a "binary choice" on parents, to waive their children's rights to release under the *Flores* agreement, or to be separated from their children upon the child's release in accordance with *Flores*. You stated that the "binary choice" alternative would be "a way for [ICE] to meet the requirement of the *Flores* settlement agreement while giving people the right to due process in an immigration proceeding."

a. (OPLA/ERO) What is being done to ensure children are provided meaningful due process when they have been separated from their parents?

b. (OPLA/ERO) There are reports parents have been misled by DHS about being reunited with their children and what their rights are under the law. What is being done to ensure parents are provided meaningful due process? What is being done to ensure parents are provided accurate information about their rights?

c. (ERO/OPR) Has anyone been reprimanded for providing inaccurate information to parents?

d. (ERO/OPR) What is being done to uncover how parents and children are being treated?

6. On December 14, 2017, ICE reversed its policy that favored release of pregnant detainees, and implemented a policy of detaining pregnant women in accordance with President Trump's

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Executive Order 13768. Meanwhile, in the first two years of the Trump administration, miscarriage rates of women in ICE custody nearly doubled. (Scott Bixby, *Immigrant Miscarriages in ICE Detention Have Nearly Doubled Under Trump*, DAILY BEAST (Mar. 1, 2019))

In February 2019, a 24-year-old woman gave birth to a stillborn baby boy while in ICE custody at the Port Isabel Detention Center. As of March 2019, 17 infants under the age of one year were held in immigration custody at Dilley Family Residential Center in Texas, which lacks specialized medical care facilities for this vulnerable population. (Madeline Buiano, *Babies in Poor Heath at ICE-Run Detention Facility, Says Complaint*, THE CENTER FOR PUBLIC INTEGRITY (Mar. 1, 2019))

On March 5, 2019, I introduced the Stop Shackling and Detaining Pregnant Women Act, along with Senator Murray, to protect the health and safety of pregnant women and youth by reinstituting the presumption of release of pregnant women and youth from immigration detention, prohibiting DHS from shackling pregnant women in its custody, and setting standards of care and transparency for the treatment of pregnant women and youth.

a. (OPA/ERO) Are you aware that the detention and shackling of pregnant women poses risks to the health of the mother and of the developing child?

(b)(5)

b. (OPA/ERO) What have you done to address the increase in miscarriages of women in ICE detention?

(b)(5)

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(b)(5)

c. (OPA/ERO) Will you commit to reversing the December 14, 2017 directive that eliminated the presumption that pregnant women and youth should be released from immigration custody?

(b)(5)

7. Current ICE family detention practices cost $319 per detained family member per day. Meanwhile, federal contract funding for immigration bed space in facilities operated by Core Civic and Geo Group have increased by over $100 million each since 2016. (Michaela Ross,

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4. **(OPR/ERO) Will you commit to establish written guidelines and conduct training to ensure ICE employees never engage in coercion or abuse when forms are presented to detained individuals asking them to relinquish legal rights?**

(b)(5)

Under current law, children cannot be held for more than 20 days in ICE detention. Media reports suggest that in order to get around this 20-day rule, the White House considered a so-called "binary choice policy" to force parents to choose between either having their children stay with them in ICE detention indefinitely, or having their children separated but kept in HHS detention indefinitely.

5. **(OPA) Have you ever been consulted by the White House on this binary choice policy – either in person or in writing?**

    a. **(OPA) If in person, please provide the dates and the names of the people attending that meeting to the Committee.**

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ICE Detention of Pregnant Women

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6. **(ERO) Please provide an updated number of pregnant women who have been detained in ICE custody since ICE issued the December 2018 directive.**

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During DHS Secretary Nielsen's testimony to the Homeland Security and Governmental Affairs Committee on May 15, 2018, she declared that "we do not detain any women past their third trimester, once they enter the third trimester, we provide them separate housing." However, in your pre-hearing questionnaire, you stated that as of October 4, 2018, there were a total of four detainees in their third trimester.

9. **(OPP) What exactly is ICE's policy of detaining pregnant women in their third trimester?**

On May 15, 2018, I asked Secretary Nielsen about a September 2017 complaint filed with the DHS IG and Office of Civil Rights and Civil Liberties in which pregnant women alleged mistreatment in ICE custody, including insufficient access to medical care resulting in dehydration and even miscarriage. Secretary Nielsen promised to provide an assessment of medical treatment of pregnant women in immigration detention but I have received no response. I asked again for such an assessment again during your nomination hearing on November 15, 2018, but have received no response.

10. **(ERO) Has ICE conducted an assessment of the treatment of pregnant women in its detention facilities?**

    a. **(ERO) If yes, what outside medical experts has ICE engaged with in conducting this assessment and will you provide documentation of this assessment to this Committee?**

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<u>Poor Conditions and Oversight at ICE's Adelanto Processing Center and Other Detention Facilities</u>

On September 27, 2018, the DHS IG published a report identifying significant health and safety violations at the Adelanto ICE Processing Center in California. The IG found that the Adelanto facility failed to provide detainees with adequate medical care. From November 2017 to April 2018, detainees filed 80 medical grievances for not receiving urgent care, not being seen by

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providers for months for persistent health conditions, and not receiving prescribed medications. One disabled detainee was inappropriately held in solitary confinement for nine days, with his file not indicating that facility staff ever moved him from his wheelchair during this time or that his bedding and toiletries had been unpacked. The IG further found that ICE cited medical care deficiencies in three detainee death reviews at Adelanto since FY15.

12. (ERO) What disciplinary and remedial actions have you undertaken in response to this report?

13. (OPR) Will you disclose the Adelanto ICE death reviews to this Committee?

(b)(5)

14. (ERO) Will you provide this Committee with documentation of your agency's policies for oversight of medical care providers in your detention facilities?

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7. At your HSGAC hearing, Sen. Harris asked you about ICE's reversal of the prior administration's policy that had generally discouraged the detention of pregnant immigrant women absent extraordinary circumstances or the need for mandatory detention. As for pregnant women in their third trimester, you stated that ICE's policy "is that special care is taken in the third trimester and it's presumed that we would not keep anyone in custody. But if they are in custody and we have the ability to remove them then we would do that." In February 2019, a woman in her third trimester of pregnancy, who was held at an ICE detention facility, delivered a stillborn baby while in ICE custody. There have also been reports of mistreatment of pregnant women in ICE custody, a lack of adequate medical care, and a significant increase in the number of miscarriages among women detained by ICE.

   a. **(ERO) What steps have you already taken and what steps do you plan to take to address the increases in miscarriages among women in ICE custody?**

   b. **(ERO) What oversight and accountability mechanisms have you put in place or will you put in place to ensure that pregnant women are not mistreated or denied proper medical care while they are detained by ICE?**

   c. **(ERO) Since ICE changed its policy regarding the detention of pregnant women, how many pregnant women have been detained by ICE? Of these pregnant women, how many of them are currently in ICE custody? Please provide data broken down by trimester for both questions.**

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8. In June 2017, DHS ended the Family Case Management Program, which was a highly successful alternative to detention that cost significantly less than detaining families. This program cost about $36 to $38 each day per family, while ICE family detention costs nearly $320 per person each day. A November 2017 report by the DHS Inspector General found that the Family Case Management Program was 99 percent successful for ICE check-ins and appointments and 100 percent successful for attendance at court hearings.

   a. **(ERO) What steps are you taking to explore using cost-effective alternatives to detention, like the Family Case Management Program?**

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9. On February 15, 2019, the President announced he was declaring a national emergency to build a border wall, claiming "We have an invasion of drugs and criminals coming into our country." But he undermined his own declaration of an emergency by stating: "I didn't need to do this, but I'd rather do it much faster. . . . I just want to get it done faster, that's all." In a January 2019 interview, you were asked about whether you though the President should declare a national emergency to build a border wall. You responded, "It's quite clear to me that he's dedicated to getting this job done, so whatever means he needs to take to do that, I think he should do it."

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(b)(5)

12. In an August 2016 memo signed by then-Executive Associate Director Thomas Homan, ICE directed its agents not to detain pregnant women "absent extraordinary circumstances or the requirement of mandatory detention." However, In December 2017, Homan superseded the agency's directive and his previous memo regarding the detention of pregnant women.
    a. (OPA) Do you believe ICE should detain pregnant women absent extraordinary circumstances or the requirement of mandatory detention?

(b)(5)

13. In a 2017 report, titled, "Detention of Immigrant Children," the American Academy of Pediatrics said, "The Department of Homeland Security facilities do not meet the basic standards for the care of children in residential settings." More recently, two physicians

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2019-ICLI-00054 2626

(b)(6); (b)(7)(C)

a. (OPA) Under your leadership, what will ICE do to address the concerns from medical experts about the substandard care for immigrant children in family detention centers?

(b)(5)

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stated that numerous more families may have been separated prior to the summer of 2018. Do you still believe your previous statement that "only 2,500 people" were victims of family separation to be true?

Among the people affected by President Trump's family separation policy are 29 parents from Central America who crossed into the United States at the Calexico Port of Entry on March 2, 2019. Roughly 17 of these 29 parents are currently in immigration detention. As the author of the Families Belong Together Act, I believe that each of that parents who were the victims of the Trump administration's family separation policy should be provided a path to citizenship so that they can reunite with their children and receive much needed medical attention in this country.

1. (OPLA) **As the Acting ICE Director, you should certainly be aware of the status of these cases. When will each of the parents currently in detention be released from detention?**
2. (OPA) **A few small nonprofits were able to raise a set of funds to bring these families back to the United States. Do you believe that the government does not have the resources to bring parents, who fell victim to the family separation policy, back to the United States?**
3. (OPA) **What process is in place in the event that other parents who are victims of the family separation policy seek to return to the United States? If there is no policy currently in place, when will there be?**

On April 23, 2018, the Commissioner of CBP, the Director of U.S. Citizenship and Immigration Services, and the Director of ICE sent a memo to Secretary Nielsen titled "Increasing Prosecutions of Immigration Violations."

1. (OPA) **Did you have any involvement in the memo, including providing any advice or counsel on issues related to this memo?**
2. (OPA) **If so, what was the content of this advice or counsel?**

Section 4.4 of the Operations Manual ICE Performance-Based National Detention Standards states: "At no time shall a pregnant detainee be restrained, absent truly extraordinary circumstances that render restraints absolutely necessary." Section 4.4 also guarantees pregnant detainees "access to specialized prenatal care, pregnancy testing, comprehensive counseling and assistance, postpartum follow up, lactation services, and abortion services." Earlier this year, a 24-year old Honduran woman had a miscarriage while in immigration detention. She had spent a total of four days in immigration detention – three in CBP custody and one in ICE custody. This recent tragedy has renewed my concern that ICE is unnecessarily detaining, shackling, and denying adequate medical care to pregnant women in immigration custody.

1. (OPA) **The number of undocumented women who have lost their pregnancies while in government detention is reported to have greatly increased during President Trump's tenure. Do you have a plan to reverse this trend and ensure the safety of expectant mothers?**

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DHS-19-0195, 19-0494-J, 19-0495-H-000071
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2. (OPA) **Would you support legislation barring the shackling of pregnant women? If not, why not?**

(b)(5)

(b)(5)

3. (ERO) **Please provide a list of every documented instance during your tenure as Acting Director of ICE where an ICE officer restrained or shackled a pregnant woman. Please include the facts and reasoning behind the decision to shackle or restrain the pregnant woman.**
4. (OPA) **Do you believe that there should be a presumption in favor of releasing pregnant women from immigration detention? If not, why not?**

(b)(5)

The current level of appropriations is sufficient for ICE to detain an annual average of 45,274 individuals on a daily basis. In order to reach that annual average, appropriators have calculated that the agency must decrease its detention population to 40,520 by the end of the fiscal year to account for overspending in the first half of the year. However, as of early March, there were roughly 50,000 individuals in ICE custody, which is higher than the number of individuals that were in custody when the bill was signed.

1. (OPA and ERO) **What is your plan to work towards reducing the number of people in ICE custody to 40,520 by the end of the year? Please provide a specific timeline and proposal including steps to be taken and the numeric goals to be achieved by the fiscal year's end.**

When Congress appropriated funds for the Department of Homeland Security last March, it required ICE to "complete and make public an initial report regarding any in-custody death within 30 days of such death, with subsequent reporting to be completed and released within 60 days of the initial report." ICE failed to meet this basic requirement. Past administrations have

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that crossing the border is illegal." With the benefit of hindsight, would you still support the implementation of the zero tolerance policy?

4. (OPA) Do you believe that the separation of families is consistent with the fundamental values of the United States?

5. (OPA) Do you support a "binary choice" policy, which could once again lead to family separations by requiring parents to choose between allowing their children to be released from custody alone after 20 days or remaining detained together as a family?

6. (OPA) Will you commit that if confirmed to lead Immigration and Customs Enforcement (ICE), you will not advocate for any policy that will have the effect of separating migrant children from their parents, even if family separation is not the goal of the policy?

7. (OPA) On November 15, 2018, at your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs, in response to Senator Hassan's request, you would not commit to stop pursuing an increased ability to detain children and changes to the *Flores v. Reno* settlement agreement. Will you commit to not pursuing increased authority to detain children if you are confirmed?
    a. (OPA) You previously stated that family detention facilities are "not . . . a burden to stay in." Are you aware of the health impacts of detention for children?
    b. (OPA) What steps have you taken to ensure that children in detention receive adequate medical care and treatment?

8. (OPA) If confirmed, will you reinstate ICE's policy of a presumption of release for pregnant detainees?
    a. (OPA) Are you aware of the health risks that pregnant women and their developing children face when detained?
    b. (OPA) What steps have you taken to ensure that pregnant detainees receive sufficient prenatal care?

(b)(5)

    c. (OPA) What steps have you taken to reduce the rising number of miscarriages experienced by detained women?

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(b)(5)

(b)(5)

9. (ERO) What steps have you taken as acting director of ICE to pursue more cost effective and humane alternatives to detention?

10. (ERO) In 2017, the Trump administration terminated the Family Case Management Program, which cost only $38 per family per day and yielded over 99% compliance rates with ICE appointments and immigration court hearings. Would you support reinstating the Family Case Management Program or the implementation of other innovative alternatives to detention?

11. Please describe your involvement in ICE's use of information about potential sponsors of unaccompanied migrant children to arrest undocumented individuals.
    a. (ERO) How many arrests have stemmed from CBP or HHS sharing information with ICE that it obtained from unaccompanied children about potential sponsors?
    b. (OPA) Do you agree that arresting individuals who have offered to sponsor unaccompanied children results in children spending longer periods of time in federal custody?
    c. (OPA) Do you believe that potential sponsors for unaccompanied children should be an enforcement priority for ICE?

12. (OPA) In 2015, you tweeted that the Democratic Party should be renamed the "liberalcratic party or the NeoKlanist Party." At your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs on November 15, 2018, you stated that the posting of this tweet was a "mistake" and that you were "trying to make a joke." You further described your tweet as a "momentary lapse of judgment." If you are confirmed to lead U.S. Immigration and Customs Enforcement, you will direct and oversee more than 20,000 law enforcement officers and personnel who are tasked with enforcing U.S. immigration laws. Employing good judgment and demonstrating integrity in that role could not be of higher importance. Does tweeting an offensive joke because of a momentary lapse of judgment demonstrate the judgment and integrity required to lead U.S. Immigration and Customs Enforcement?

(b)(5)

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that there are "persistent and growing concerns about ICE's lack of fiscal discipline, whether real or manufactured, and its inability to manage detention resources within the appropriations made by law without the threat of anti-deficiency."[13]

a. (OCFO) Do you expect ICE to request that funds be preprogrammed this fiscal year to cover the costs of detention and removal operations?

[9] DEP'T OF HOMELAND SEC. OFFICE OF INSPECTOR GEN, ICE DOES NOT FULLY USE CONTRACTING TOOLS TO HOLD DETENTION FACILITY CONTRACTORS ACCOUNTABLE FOR FAILING TO MEET PERFORMANCE STANDARDS (2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf.
[10] *Id.*
[11] Detention Watch Network, ICE's Fiscal Mismanagement: Deceit and Abuse, https://www.detentionwatchnetwork.org/sites/default/files/ICE%E2%80%99s%20Fiscal%20Mismanagement-%20Deceit%20and%20Abuse.pdf (last visited Mar. 27, 2019).
[12] *Id.*
[13] Senate Committee on Appropriations, *S. Rept. 115-283, Report to Accompany S. 3109, Department of Homeland Security Appropriations Bill, 2019*, June 21, 2019, https://www.congress.gov/congressional-report/115th- congress/senate-report/283/1.

b. (OCFO) Do you commit to ensuring that ICE is not spending more American taxpayer dollars than Congress has appropriated to the agency?
c. (OCFO) What is your plan to reign in ICE spending and ensure that the agency will not exceed congressionally appropriated spending levels?

7. Prior to the Trump Administration, it was ICE's policy that pregnant women should not be placed in detention "absent extraordinary circumstances or the requirement of mandatory detention."[14] However, in December 2017, ICE reversed that policy and now handles pregnant women like any other detainee.[15] The President of the American Immigration Lawyers Association called this policy an "egregious human rights offense" and said, "Detention creates serious health risks, and many women have medical needs that cannot typically be addressed in a detention setting."[16]

a. (OPA) Do you agree that "[d]etention creates serious health risks, and many women have medical needs that cannot typically be addressed in a detention setting"? If not, please cite what resources you are relying on to support your answer.

(b)(5)

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(b)(5)

b. (OPA) Do you plan to reverse this policy if you are confirmed? If not, please explain.

8. When you testified before the Senate Homeland Security and Governmental Affairs Committee, you were asked about the role you played in the Trump Administration's "zero-tolerance" policy that led to the separation of thousands of immigrant children from their parents.[17] Senator Peters asked you, "[W]hy didn't you or anyone recognize that family separations that would occur could cause a massive outcry from the public."[18] In response, you said, "What we were trying to do at CBP and in the Department was not separate families, but apply consequences as the Justice Department leaned forward and offered up additional prosecutorial resources as a so-called zero tolerance policy."[19]

   Senator Peters pressed you on this and asked you whether "it was clear that families would be separated at that point."[20] You answered, "That would have been a consequence."[21] In other words you were aware that implementing the "zero-tolerance" policy would result in the separation of immigrant children from their parents.

[14] Thomas Homan, Executive Associate Director, Memorandum for U.S. Immigration and Customs Enforcement re: Identification and Monitoring of Pregnant Detainees (Aug. 15, 2016), https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2_IdentificationMonitoringPregnantDetainees.pdf.
[15] *See* Ice Directive 11032.3: Identification and Monitoring of Pregnant Detainees (Dec. 14, 2017), https://www.ice.gov/sites/default/files/documents/Document/2018/11032_3_PregnantDetaines.pdf.
[16] Press Release, American Immigration Lawyers Association, ICE Formalizes Inhumane Detention Policies for Pregnant Women (Mar. 29, 2018), https://www.americanimmigrationcouncil.org/news/ice-formalizes-inhumane- detention-policies-pregnant-women.
[17] *Nominations*, *supra* note 2.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

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a. (OPA) Did you ever object to the "zero-tolerance" policy before it was instituted?
b. (OPA) Do you believe it is in the best interest of immigrant youths' health to separate them from their parents at the Southwest border?
c. (OPA) Do you believe it is morally right to separate immigrant children from their parents at the Southwest border?
d. (OPA) Do you believe separating immigrant youth from their parents at the Southwest border is in keeping with the ideals and values that are at the core of the United States?

9. When you attended FAIR's event referenced in question 2, you did a radio interview and talked about the implantation of the "zero-tolerance" policy. During the interview, you said:

> During the zero-tolerance policy, the Justice Department came to us and said you do not now have to exempt anybody from prosecution who crosses the border between ports of entry. So CBP went about identifying people who crossed the border illegally, whether they had children or not, and set them up for prosecution. Well, like in the state, if you don't pay your taxes or if you rob a bank and you live at home with children, when the police come to arrest you, you're going to be separated from your children. So it's not the police's intent to separate you, and it wasn't out intent to separate families. It was our intent to hold people to account for the illegal activity that they did.[22]

During the interview you also said "only 2,500 people were affected by that situation" referring to the thousands of migrant children who were separated from their parents.[23]

a. (OPA) Do you stand by those comments?
b. (OPA) Was the separation of migrant children from their parents meant to serve as a deterrent?
c. (OPA) Why did you downplay the significant number of migrant children who were separated from their parents?

[22] Interview on Tom Roten Morning Show (Sept. 5, 2018), at 48:00, https://www.iheart.com/podcast/512-tom-roten- morning-show-28270078/episode/trms-in-dc-hold-their-29805421/.
[23] *Id*.

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From: Kelly, Christopher S
Sent: 29 Mar 2019 15:39:37 +0000
To: (b)(6); (b)(7)(C)
Cc: Seguin, Debbie
Subject: RE: QFRs
Attachments: 2019-03-27 - Vitiello SJC QFRs - MRM.docx

Suggested edits attached.

From: Murphy, Matthew R
Sent: Thursday, March 28, 2019 10:08 PM
To: Kelly, Christopher S (b)(6); (b)(7)(C)
Cc: Seguin, Debbie (b)(6); (b)(7)(C)
Subject: QFRs

Not sure what your guys thoughts are on this, but here are a bunch of answers OPA and I pulled today for review, they are highlighted in yellow. I was thinking if Chris can review tomorrow and provide comments to Debbie, we can start clearing in chunks and then I can input the cleared answers into a clean version broken down by Senator.

(b)(6); (b)(7)(C)
Deputy Chief of Staff
Office of the Director
U.S. Immigration and Customs Enforcement
Office: (202) 732-(b)(6);
Mobile: (571) 319-(b)(6);

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Executive Order 13768. Meanwhile, in the first two years of the Trump administration, miscarriage rates of women in ICE custody nearly doubled. (Scott Bixby, *Immigrant Miscarriages in ICE Detention Have Nearly Doubled Under Trump*, DAILY BEAST (Mar. 1, 2019))

In February 2019, a 24-year-old woman gave birth to a stillborn baby boy while in ICE custody at the Port Isabel Detention Center. As of March 2019, 17 infants under the age of one year were held in immigration custody at Dilley Family Residential Center in Texas, which lacks specialized medical care facilities for this vulnerable population. (Madeline Buiano, *Babies in Poor Heath at ICE-Run Detention Facility, Says Complaint*, THE CENTER FOR PUBLIC INTEGRITY (Mar. 1, 2019))

On March 5, 2019, I introduced the Stop Shackling and Detaining Pregnant Women Act, along with Senator Murray, to protect the health and safety of pregnant women and youth by reinstituting the presumption of release of pregnant women and youth from immigration detention, prohibiting DHS from shackling pregnant women in its custody, and setting standards of care and transparency for the treatment of pregnant women and youth.

a. (OPA/ERO) Are you aware that the detention and shackling of pregnant women poses risks to the health of the mother and of the developing child?

(b)(5)

b. (OPA/ERO) What have you done to address the increase in miscarriages of women in ICE detention?

(b)(5)

(b)(5)

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(b)(5)

c. (OPA/ERO) Will you commit to reversing the December 14, 2017 directive that eliminated the presumption that pregnant women and youth should be released from immigration custody?

(b)(5)

7. Current ICE family detention practices cost $319 per detained family member per day. Meanwhile, federal contract funding for immigration bed space in facilities operated by Core Civic and Geo Group have increased by over $100 million each since 2016. (Michaela Ross, Madi Alexander, Paul Morphy, *Immigration Spending Surges as White House Calls for More Funds*, Bloomberg Government (Jan. 25, 2019))

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DHS-19-0195, 19-0494-J, 19-0495-H-000080
2019-ICLI-00054 2637

4. **(OPR/ERO) Will you commit to establish written guidelines and conduct training to ensure ICE employees never engage in coercion or abuse when forms are presented to detained individuals asking them to relinquish legal rights?**

(b)(5)

Under current law, children cannot be held for more than 20 days in ICE detention. Media reports suggest that in order to get around this 20-day rule, the White House considered a so-called "binary choice policy" to force parents to choose between either having their children stay with them in ICE detention indefinitely, or having their children separated but kept in HHS detention indefinitely.

5. **(OPA) Have you ever been consulted by the White House on this binary choice policy – either in person or in writing?**

    a. **(OPA) If in person, please provide the dates and the names of the people attending that meeting to the Committee.**

    b. **(OPA) If in writing, please provide that documentation to the Committee.**

ICE Detention of Pregnant Women

On December 14, 2017, ICE issued a directive that reversed a policy of presumptive release from detention for pregnant women. In your pre-hearing questionnaire, you stated that ICE tracks pregnancy-related cases for detainees in custody and provided the number of pregnant detainees held in ICE custody at that time.

6. **(ERO) Please provide an updated number of pregnant women who have been detained in ICE custody since ICE issued the December 2018 directive.**

7. **(ERO) How many pregnant women are currently detained?**

8. **(ERO) Do you have a breakdown by trimester of pregnancy?**

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During DHS Secretary Nielsen's testimony to the Homeland Security and Governmental Affairs Committee on May 15, 2018, she declared that "we do not detain any women past their third trimester, once they enter the third trimester, we provide them separate housing." However, in your pre-hearing questionnaire, you stated that as of October 4, 2018, there were a total of four detainees in their third trimester.

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(b)(5)

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1. (OPA) **Did you have any involvement in the memo, including providing any advice or counsel on issues related to this memo?**
2. (OPA) **If so, what was the content of this advice or counsel?**

Section 4.4 of the Operations Manual ICE Performance-Based National Detention Standards states: "At no time shall a pregnant detainee be restrained, absent truly extraordinary circumstances that render restraints absolutely necessary." Section 4.4 also guarantees pregnant detainees "access to specialized prenatal care, pregnancy testing, comprehensive counseling and assistance, postpartum follow up, lactation services, and abortion services." Earlier this year, a 24-year old Honduran woman had a miscarriage while in immigration detention. She had spent a total of four days in immigration detention – three in CBP custody and one in ICE custody. This recent tragedy has renewed my concern that ICE is unnecessarily detaining, shackling, and denying adequate medical care to pregnant women in immigration custody.

1. (OPA) **The number of undocumented women who have lost their pregnancies while in government detention is reported to have greatly increased during President Trump's tenure. Do you have a plan to reverse this trend and ensure the safety of expectant mothers?**

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2. (OPA) **Would you support legislation barring the shackling of pregnant women? If not, why not?**

(b)(5)

(b)(5)

3. (ERO) **Please provide a list of every documented instance during your tenure as Acting Director of ICE where an ICE officer restrained or shackled a pregnant woman. Please include the facts and reasoning behind the decision to shackle or restrain the pregnant woman.**
4. (OPA) **Do you believe that there should be a presumption in favor of releasing pregnant women from immigration detention? If not, why not?**

(b)(5)

The current level of appropriations is sufficient for ICE to detain an annual average of 45,274 individuals on a daily basis. In order to reach that annual average, appropriators have calculated that the agency must decrease its detention population to 40,520 by the end of the fiscal year to account for overspending in the first half of the year. However, as of early March, there were roughly 50,000 individuals in ICE custody, which is higher than the number of individuals that were in custody when the bill was signed.

1. (OPA and ERO) **What is your plan to work towards reducing the number of people in ICE custody to 40,520 by the end of the year? Please provide a specific timeline and proposal including steps to be taken and the numeric goals to be achieved by the fiscal year's end.**

When Congress appropriated funds for the Department of Homeland Security last March, it required ICE to "complete and make public an initial report regarding any in-custody death within 30 days of such death, with subsequent reporting to be completed and released within 60 days of the initial report." ICE failed to meet this basic requirement. Past administrations have

AMERICAN OVERSIGHT

that crossing the border is illegal." With the benefit of hindsight, would you still support the implementation of the zero tolerance policy?

4. (OPA) Do you believe that the separation of families is consistent with the fundamental values of the United States?

5. (OPA) Do you support a "binary choice" policy, which could once again lead to family separations by requiring parents to choose between allowing their children to be released from custody alone after 20 days or remaining detained together as a family?

6. (OPA) Will you commit that if confirmed to lead Immigration and Customs Enforcement (ICE), you will not advocate for any policy that will have the effect of separating migrant children from their parents, even if family separation is not the goal of the policy?

7. (OPA) On November 15, 2018, at your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs, in response to Senator Hassan's request, you would not commit to stop pursuing an increased ability to detain children and changes to the *Flores v. Reno* settlement agreement. Will you commit to not pursuing increased authority to detain children if you are confirmed?
    a. (OPA) You previously stated that family detention facilities are "not . . . a burden to stay in." Are you aware of the health impacts of detention for children?
    b. (OPA) What steps have you taken to ensure that children in detention receive adequate medical care and treatment?

8. (OPA) If confirmed, will you reinstate ICE's policy of a presumption of release for pregnant detainees?
    a. (OPA) Are you aware of the health risks that pregnant women and their developing children face when detained?
    b. (OPA) What steps have you taken to ensure that pregnant detainees receive sufficient prenatal care?

(b)(5)

    c. (OPA) What steps have you taken to reduce the rising number of miscarriages experienced by detained women?

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(b)(5)

9. (ERO) What steps have you taken as acting director of ICE to pursue more cost effective and humane alternatives to detention?

10. (ERO) In 2017, the Trump administration terminated the Family Case Management Program, which cost only $38 per family per day and yielded over 99% compliance rates with ICE appointments and immigration court hearings. Would you support reinstating the Family Case Management Program or the implementation of other innovative alternatives to detention?

11. Please describe your involvement in ICE's use of information about potential sponsors of unaccompanied migrant children to arrest undocumented individuals.
    a. (ERO) How many arrests have stemmed from CBP or HHS sharing information with ICE that it obtained from unaccompanied children about potential sponsors?
    b. (OPA) Do you agree that arresting individuals who have offered to sponsor unaccompanied children results in children spending longer periods of time in federal custody?
    c. (OPA) Do you believe that potential sponsors for unaccompanied children should be an enforcement priority for ICE?

12. (OPA) In 2015, you tweeted that the Democratic Party should be renamed the "liberalcratic party or the NeoKlanist Party." At your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs on November 15, 2018, you stated that the posting of this tweet was a "mistake" and that you were "trying to make a joke." You further described your tweet as a "momentary lapse of judgment." If you are confirmed to lead U.S. Immigration and Customs Enforcement, you will direct and oversee more than 20,000 law enforcement officers and personnel who are tasked with enforcing U.S. immigration laws. Employing good judgment and demonstrating integrity in that role could not be of higher importance. Does tweeting an offensive joke because of a momentary lapse of judgment demonstrate the judgment and integrity required to lead U.S. Immigration and Customs Enforcement?

(b)(5)

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DHS-19-0195, 19-0494-J, 19-0495-H-000089
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that there are "persistent and growing concerns about ICE's lack of fiscal discipline, whether real or manufactured, and its inability to manage detention resources within the appropriations made by law without the threat of anti-deficiency."[13]

a. (OCFO) Do you expect ICE to request that funds be preprogrammed this fiscal year to cover the costs of detention and removal operations?

[9] DEP'T OF HOMELAND SEC. OFFICE OF INSPECTOR GEN, ICE DOES NOT FULLY USE CONTRACTING TOOLS TO HOLD DETENTION FACILITY CONTRACTORS ACCOUNTABLE FOR FAILING TO MEET PERFORMANCE STANDARDS (2019), https://www.oig.dhs.gov/sites/default/files/assets/2019-02/OIG-19-18-Jan19.pdf.
[10] *Id.*
[11] Detention Watch Network, ICE's Fiscal Mismanagement: Deceit and Abuse, https://www.detentionwatchnetwork.org/sites/default/files/ICE%E2%80%99s%20Fiscal%20Mismanagement-%20Deceit%20and%20Abuse.pdf (last visited Mar. 27, 2019).
[12] *Id.*
[13] Senate Committee on Appropriations, *S. Rept. 115-283, Report to Accompany S. 3109, Department of Homeland Security Appropriations Bill, 2019*, June 21, 2019, https://www.congress.gov/congressional-report/115th- congress/senate-report/283/1.

b. (OCFO) Do you commit to ensuring that ICE is not spending more American taxpayer dollars than Congress has appropriated to the agency?
c. (OCFO) What is your plan to reign in ICE spending and ensure that the agency will not exceed congressionally appropriated spending levels?

7. Prior to the Trump Administration, it was ICE's policy that pregnant women should not be placed in detention "absent extraordinary circumstances or the requirement of mandatory detention."[14] However, in December 2017, ICE reversed that policy and now handles pregnant women like any other detainee.[15] The President of the American Immigration Lawyers Association called this policy an "egregious human rights offense" and said, "Detention creates serious health risks, and many women have medical needs that cannot typically be addressed in a detention setting."[16]

a. (OPA) Do you agree that "[d]etention creates serious health risks, and many women have medical needs that cannot typically be addressed in a detention setting"? If not, please cite what resources you are relying on to support your answer.

(b)(5)

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(b)(5)

b. (OPA) Do you plan to reverse this policy if you are confirmed? If not, please explain.

8. When you testified before the Senate Homeland Security and Governmental Affairs Committee, you were asked about the role you played in the Trump Administration's "zero-tolerance" policy that led to the separation of thousands of immigrant children from their parents.[17] Senator Peters asked you, "[W]hy didn't you or anyone recognize that family separations that would occur could cause a massive outcry from the public."[18] In response, you said, "What we were trying to do at CBP and in the Department was not separate families, but apply consequences as the Justice Department leaned forward and offered up additional prosecutorial resources as a so-called zero tolerance policy."[19]

   Senator Peters pressed you on this and asked you whether "it was clear that families would be separated at that point."[20] You answered, "That would have been a consequence."[21] In other words you were aware that implementing the "zero-tolerance" policy would result in the separation of immigrant children from their parents.

[14] Thomas Homan, Executive Associate Director, Memorandum for U.S. Immigration and Customs Enforcement re: Identification and Monitoring of Pregnant Detainees (Aug. 15, 2016), https://www.ice.gov/sites/default/files/documents/Document/2016/11032.2_IdentificationMonitoringPregnantDetainees.pdf.
[15] *See* Ice Directive 11032.3: Identification and Monitoring of Pregnant Detainees (Dec. 14, 2017), https://www.ice.gov/sites/default/files/documents/Document/2018/11032_3_PregnantDetaines.pdf.
[16] Press Release, American Immigration Lawyers Association, ICE Formalizes Inhumane Detention Policies for Pregnant Women (Mar. 29, 2018), https://www.americanimmigrationcouncil.org/news/ice-formalizes-inhumane- detention-policies-pregnant-women.
[17] *Nominations*, *supra* note 2.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

AMERICAN OVERSIGHT

a. (OPA) Did you ever object to the "zero-tolerance" policy before it was instituted?
b. (OPA) Do you believe it is in the best interest of immigrant youths' health to separate them from their parents at the Southwest border?
c. (OPA) Do you believe it is morally right to separate immigrant children from their parents at the Southwest border?
d. (OPA) Do you believe separating immigrant youth from their parents at the Southwest border is in keeping with the ideals and values that are at the core of the United States?

9. When you attended FAIR's event referenced in question 2, you did a radio interview and talked about the implantation of the "zero-tolerance" policy. During the interview, you said:

> During the zero-tolerance policy, the Justice Department came to us and said you do not now have to exempt anybody from prosecution who crosses the border between ports of entry. So CBP went about identifying people who crossed the border illegally, whether they had children or not, and set them up for prosecution. Well, like in the state, if you don't pay your taxes or if you rob a bank and you live at home with children, when the police come to arrest you, you're going to be separated from your children. So it's not the police's intent to separate you, and it wasn't out intent to separate families. It was our intent to hold people to account for the illegal activity that they did.[22]

During the interview you also said "only 2,500 people were affected by that situation" referring to the thousands of migrant children who were separated from their parents.[23]

a. (OPA) Do you stand by those comments?
b. (OPA) Was the separation of migrant children from their parents meant to serve as a deterrent?
c. (OPA) Why did you downplay the significant number of migrant children who were separated from their parents?

[22] Interview on Tom Roten Morning Show (Sept. 5, 2018), at 48:00, https://www.iheart.com/podcast/512-tom-roten- morning-show-28270078/episode/trms-in-dc-hold-their-29805421/.
[23] *Id*.

AMERICAN OVERSIGHT

From: Kelly, Christopher S
Sent: 30 Mar 2019 15:51:34 +0000
To: (b)(6); (b)(7)(C) ;Seguin, Debbie
Subject: RE: QFRs
Attachments: 2019-03-27 - Vitiello SJC QFRs - MRM - Blue.docx

Okay, I should have been more clear. What I highlighted initially was my response to one existing comment. I added numerous others, now highlighted.

From: (b)(6); (b)(7)(C)
Sent: Saturday, March 30, 2019 10:04 AM
To: Kelly, Christopher S (b)(6); (b)(7)(C) >; Seguin, Debbie (b)(6); (b)(7)(C)
Subject: RE: QFRs

Chris,

Just to clarify is the only comment you are sending back related to the NBC Media reports on tracking reporters?

(b)(6);

From: Kelly, Christopher S
Sent: Saturday, March 30, 2019 9:50 AM
To: Seguin, Debbie (b)(6); (b)(7)(C) ;(b)(6); (b)(7)(C) ;(b)(6); (b)(7)(C)
Subject: RE: QFRs

One responsive comment in yellow. I sent two questions out (one to OPR and one to ERO), copying (b)(6);

From: Seguin, Debbie
Sent: Friday, March 29, 2019 9:31 PM
To: Kelly, Christopher S <(b)(6); (b)(7)(C) ;(b)(6); (b)(7)(C) ;(b)(6); (b)(7)(C)
Subject: RE: QFRs

Please use this one instead. I've resolved the comments that I was looking into. The rest of the comments will either need to be tasked out or confirmed with AD1 on Monday. Thanks.

From: Seguin, Debbie
Sent: Friday, March 29, 2019 9:05 PM
To: Kelly, Christopher S <(b)(6); (b)(7)(C) >(b)(6); (b)(7)(C) ;(b)(6); (b)(7)(C)
Subject: RE: QFRs

AMERICAN OVERSIGHT

Finished my review of the attached. I'm waiting for OPP to give me language pertaining to detention limit for minors. Also whether the approps language changes pregnant detainee policy (a couple of Chris comments). I've lodged other comments in the document that I'm hoping either of you could address by reaching out to other programs.

Chris please make changes to this document if you ended up sharing with DD.

Thanks,
Debbie

From: Kelly, Christopher S
Sent: Friday, March 29, 2019 11:40 AM
To: (b)(6); (b)(7)(C) <(b)(6); (b)(7)(C)
Cc: Seguin, Debbie <(b)(6); (b)(7)(C)
Subject: RE: QFRs

Suggested edits attached.

From: (b)(6); (b)(7)(C)
Sent: Thursday, March 28, 2019 10:08 PM
To: Kelly, Christopher S <(b)(6); (b)(7)(C)
Cc: Seguin, Debbie <(b)(6); (b)(7)(C)
Subject: QFRs

Not sure what your guys thoughts are on this, but here are a bunch of answers OPA and I pulled today for review, they are highlighted in yellow. I was thinking if Chris can review tomorrow and provide comments to Debbie, we can start clearing in chunks and then I can input the cleared answers into a clean version broken down by Senator.

(b)(6); (b)(7)(C)
Deputy Chief of Staff
Office of the Director
U.S. Immigration and Customs Enforcement
Office: (202) 732(b)(6);
Mobile: (571) 319(b)(6);

AMERICAN OVERSIGHT

Questions for the Record for Mr. Ronald Vitiello, Deputy Director and Senior Official Performing the Duties of Director for U.S. Immigration and Customs Enforcement (ICE)
Senator Richard J. Durbin
March 27, 2019

For questions with subparts, please provide a separate response for each subpart.

1. On July 3, 2018, I submitted questions to you and other Trump Administration officials following a June 28, 2018 briefing on the Administration's family separation policy I received from you and other officials. Senators Grassley, Feinstein, Tillis, and Cruz also received this briefing. The Administration's briefers were unable to answer questions at the briefing and it was agreed that the briefers would respond to written follow-up questions.

   Senator Cruz's office compiled questions from the Senators who had attended the briefing and informed my office that they were submitted to the Administration in July 2018. I never received a response to the questions I submitted almost nine months ago.

   Please provide responses to these questions, which are included as Attachment 1.
   (Instructed by majority counsel to disregard – removed from document)

2. **(OPA) Do you think the Trump Administration's zero-tolerance policy has been a success?**

   (b)(5)

3. **(OPA) Was it appropriate for a Federal district court judge to order the reunification of families who were separated as a result of the zero-tolerance policy, as Judge Dana Sabraw did on June 26, 2018? If so, why? If not, why not?**

   (b)(5)

4. **On June 17, 2018, DHS Secretary Nielsen stated on Twitter: "We do not have a policy of separating families at the border. Period." Was this an accurate statement?**

   (b)(5)

5. **(OPA)** At your November 15, 2018 confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, you stated in response to a question from Senator Peters about the Trump Administration's family separation policy:

   (b)(5)

(b)(5)

AMERICAN OVERSIGHT

Nomination Ronald D. Vitiello to be Director of Immigration and Customs Enforcement
U.S. Department of Homeland Security
Questions for the Record
March 27, 2019

QUESTIONS FROM SENATOR FEINSTEIN

1. As part of ongoing litigation in federal district court, the administration has identified 2,816 children who were separated from their parents or legal guardians and detained as of June 26, 2018, as part of the administration's zero tolerance policy. (*Ms. L v. U.S. Immigration and Customs Enforcement, et al*. (2018)) However, the Inspector General for Health and Human Services concluded in January 2019 that "thousands" more children may have been separated from their families under this policy and released prior to June 26, and 118 children were separated between July and November 2018.

   At the September 2018 "Hold Their Feet to the Fire" convention of the Federation for American Immigration Reform (FAIR), you stated that "only 2,500 people were affected" by family separation. (Interview with Tom Roten Morning Show (Sept. 5, 2018))

   a. (OPA) When you stated that 2,500 people were affected by the zero tolerance policy, were you aware of the administration's own court filings that identified hundreds more separated children?

   (b)(5)

   b. (OPA) Were you aware that thousands more children were likely separated from their families prior to June 26?

   (b)(5)

   c. (ERO/OPLA) What has been done to track down those parents and children who have been lost and unaccounted for?

   d. (ERO/OPLA) I have asked repeatedly for the numbers. When will Congress receive a full accounting of the family separations? Please specify with a month and year.

   e. (OPA) Please describe in full your involvement in planning and implementing the Trump administration's zero tolerance policy of family separation. Please include all recommendations that you provided input into and why you believe each recommendation was appropriate.

   (b)(5)

AMERICAN OVERSIGHT

d. (ERO/OPR) What is being done to uncover how parents and children are being treated?

6. On December 14, 2017, ICE reversed its policy that favored release of pregnant detainees, and implemented a policy of detaining pregnant women in accordance with President Trump's Executive Order 13768. Meanwhile, in the first two years of the Trump administration, miscarriage rates of women in ICE custody nearly doubled. (Scott Bixby, *Immigrant Miscarriages in ICE Detention Have Nearly Doubled Under Trump*, DAILY BEAST (Mar. 1, 2019))

   In February 2019, a 24-year-old woman gave birth to a stillborn baby boy while in ICE custody at the Port Isabel Detention Center. As of March 2019, 17 infants under the age of one year were held in immigration custody at Dilley Family Residential Center in Texas, which lacks specialized medical care facilities for this vulnerable population. (Madeline Buiano, *Babies in Poor Heath at ICE-Run Detention Facility, Says Complaint*, THE CENTER FOR PUBLIC INTEGRITY (Mar. 1, 2019))

   On March 5, 2019, I introduced the Stop Shackling and Detaining Pregnant Women Act, along with Senator Murray, to protect the health and safety of pregnant women and youth by reinstituting the presumption of release of pregnant women and youth from immigration detention, prohibiting DHS from shackling pregnant women in its custody, and setting standards of care and transparency for the treatment of pregnant women and youth.

a. (OPA/ERO) Are you aware that the detention and shackling of pregnant women poses risks to the health of the mother and of the developing child?

(b)(5)

AMERICAN OVERSIGHT

b. (OPA/ERO) What have you done to address the increase in miscarriages of women in ICE detention?

(b)(5)

c. (OPA/ERO) Will you commit to reversing the December 14, 2017 directive that eliminated the presumption that pregnant women and youth should be released from immigration custody?

(b)(5)

AMERICAN OVERSIGHT

c. (OPP) To date, how many adults and children have been subject to the MPP policy? Please provide a breakdown of the number of children by age.

d. (OPP) How were these individuals selected to be sent to Mexico under the MPP policy? What specific criteria does DHS use and who makes these decisions?

e. (OPP) Who at DHS made the decision to subject children to the MPP policy and what were the justifications for that decision?

f. (OPP) What are the exact terms of the agreement between the United States and the Mexican government regarding the MPP policy?

7. At your HSGAC hearing, Sen. Harris asked you about ICE's reversal of the prior administration's policy that had generally discouraged the detention of pregnant immigrant women absent extraordinary circumstances or the need for mandatory detention. As for pregnant women in their third trimester, you stated that ICE's policy "is that special care is taken in the third trimester and it's presumed that we would not keep anyone in custody. But if they are in custody and we have the ability to remove them then we would do that." In February 2019, a woman in her third trimester of pregnancy, who was held at an ICE detention facility, delivered a stillborn baby while in ICE custody. There have also been reports of mistreatment of pregnant women in ICE custody, a lack of adequate medical care, and a significant increase in the number of miscarriages among women detained by ICE.

a. (ERO) What steps have you already taken and what steps do you plan to take to address the increases in miscarriages among women in ICE custody?

b. (ERO) What oversight and accountability mechanisms have you put in place or will you put in place to ensure that pregnant women are not mistreated or denied proper medical care while they are detained by ICE?

c. (ERO) Since ICE changed its policy regarding the detention of pregnant women, how many pregnant women have been detained by ICE? Of these pregnant women, how many of them are currently in ICE custody? Please provide data broken down by trimester for both questions.

d. (ERO) What is the average length of detention and the longest length of detention in ICE custody for pregnant women?

8. In June 2017, DHS ended the Family Case Management Program, which was a highly successful alternative to detention that cost significantly less than detaining families. This program cost about $36 to $38 each day per family, while ICE family detention costs nearly $320 per person each day. A November 2017 report by the DHS Inspector General found that the Family Case Management Program was 99 percent successful for ICE check-ins and appointments and 100 percent successful for attendance at court hearings.

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(b)(5)

12. In an August 2016 memo signed by then-Executive Associate Director Thomas Homan, ICE directed its agents not to detain pregnant women "absent extraordinary circumstances or the requirement of mandatory detention." However, In December 2017, Homan superseded the agency's directive and his previous memo regarding the detention of pregnant women.
    a. (OPA) Do you believe ICE should detain pregnant women absent extraordinary circumstances or the requirement of mandatory detention?

(b)(5)

13. In a 2017 report, titled, "Detention of Immigrant Children," the American Academy of Pediatrics said, "The Department of Homeland Security facilities do not meet the basic standards for the care of children in residential settings." More recently, two physicians who work with DHS's Office for Civil Rights and Civil Liberties and have extensively

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DHS-19-0195, 19-0494-J, 19-0495-H-000100
2019-ICLI-00054 2657

1. (OPA) **Did you have any involvement in the memo, including providing any advice or counsel on issues related to this memo?**

   I would have reviewed the implementation memo at CBP and discussed impact on the workforce and operations.

2. (OPA) **If so, what was the content of this advice or counsel?**

   Determining the impact on the workforce and operations.

Section 4.4 of the Operations Manual ICE Performance-Based National Detention Standards states: "At no time shall a pregnant detainee be restrained, absent truly extraordinary circumstances that render restraints absolutely necessary." Section 4.4 also guarantees pregnant detainees "access to specialized prenatal care, pregnancy testing, comprehensive counseling and assistance, postpartum follow up, lactation services, and abortion services." Earlier this year, a 24-year old Honduran woman had a miscarriage while in immigration detention. She had spent a total of four days in immigration detention – three in CBP custody and one in ICE custody. This recent tragedy has renewed my concern that ICE is unnecessarily detaining, shackling, and denying adequate medical care to pregnant women in immigration custody.

1. (OPA) **The number of undocumented women who have lost their pregnancies while in government detention is reported to have greatly increased during President Trump's tenure. Do you have a plan to reverse this trend and ensure the safety of expectant mothers?**

(b)(5)

AMERICAN OVERSIGHT

DHS-19-0195, 19-0494-J, 19-0495-H-000101
2019-ICLI-00054 2658

(b)(5)

(b)(5)

2. (OPA) **Would you support legislation barring the shackling of pregnant women? If not, why not?**

(b)(5)

3. (ERO) **Please provide a list of every documented instance during your tenure as Acting Director of ICE where an ICE officer restrained or shackled a pregnant woman. Please include the facts and reasoning behind the decision to shackle or restrain the pregnant woman.**
4. (OPA) **Do you believe that there should be a presumption in favor of releasing pregnant women from immigration detention? If not, why not?**

(b)(5)

The current level of appropriations is sufficient for ICE to detain an annual average of 45,274 individuals on a daily basis. In order to reach that annual average, appropriators have calculated that the agency must decrease its detention population to 40,520 by the end of the fiscal year to account for overspending in the first half of the year. However, as of early March, there were roughly 50,000 individuals in ICE custody, which is higher than the number of individuals that were in custody when the bill was signed.

1. (OPA and ERO) **What is your plan to work towards reducing the number of people in ICE custody to 40,520 by the end of the year? Please provide a specific timeline and proposal including steps to be taken and the numeric goals to be achieved by the fiscal year's end.**

When Congress appropriated funds for the Department of Homeland Security last March, it required ICE to "complete and make public an initial report regarding any in-custody death

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

7. (OPA) On November 15, 2018, at your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs, in response to Senator Hassan's request, you would not commit to stop pursuing an increased ability to detain children and changes to the *Flores v. Reno* settlement agreement. Will you commit to not pursuing increased authority to detain children if you are confirmed?

(b)(5)

a. (OPA) You previously stated that family detention facilities are "not . . . a burden to stay in." Are you aware of the health impacts of detention for children?

(b)(5)

b. (OPA) What steps have you taken to ensure that children in detention receive adequate medical care and treatment?

(b)(5)

8. (OPA) If confirmed, will you reinstate ICE's policy of a presumption of release for pregnant detainees?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

a. (OPA) Are you aware of the health risks that pregnant women and their developing children face when detained?

(b)(5)

b. (OPA) What steps have you taken to ensure that pregnant detainees receive sufficient prenatal care?

(b)(5)

AMERICAN OVERSIGHT

c. (OPA) What steps have you taken to reduce the rising number of miscarriages experienced by detained women?

(b)(5)

9. (ERO) What steps have you taken as acting director of ICE to pursue more cost effective and humane alternatives to detention?

10. (ERO) In 2017, the Trump administration terminated the Family Case Management Program, which cost only $38 per family per day and yielded over 99% compliance rates with ICE appointments and immigration court hearings. Would you support reinstating the Family Case Management Program or the implementation of other innovative alternatives to detention?

11. Please describe your involvement in ICE's use of information about potential sponsors of unaccompanied migrant children to arrest undocumented individuals.
    a. (ERO) How many arrests have stemmed from CBP or HHS sharing information with ICE that it obtained from unaccompanied children about potential sponsors?
    b. (OPA) Do you agree that arresting individuals who have offered to sponsor unaccompanied children results in children spending longer periods of time in federal custody?
    c. (OPA) Do you believe that potential sponsors for unaccompanied children should be an enforcement priority for ICE?

(b)(5)

12. (OPA) In 2015, you tweeted that the Democratic Party should be renamed the "liberalcratic party or the NeoKlanist Party." At your nomination hearing before the Senate Committee on Homeland Security and Governmental Affairs on November 15, 2018, you stated that the posting of this tweet was a "mistake" and that you were "trying to make a joke." You further described your tweet as a "momentary lapse of judgment." If you are confirmed to lead U.S. Immigration and Customs Enforcement, you will direct and oversee more than 20,000 law enforcement officers and personnel who are tasked with enforcing U.S. immigration laws. Employing good judgment and demonstrating integrity in that role could not be of higher importance. Does tweeting an offensive joke

AMERICAN OVERSIGHT

DHS-19-0195, 19-0494-J, 19-0495-H-000105
2019-ICLI-00054 2662