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

April 20, 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
Supplemental Response

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 565 pages of records were reviewed for this supplemental production. The 565 pages of records were located pursuant to a search of the Office of the Director. Of these, 360 pages were determined to be responsive and 205 pages were found to be duplicates or non-responsive. Of those 360 pages, 9 pages require further coordination with another agency/component. Therefore this production consists of 351 pages of records are attached and have been marked 2019-ICLI-00054 1778 to 2019-ICLI-00054 2128. Upon review, ICE has determined that portions of the documents will be withheld pursuant to Exemptions b(6), b(7)(C), and b(7)(E) of the FOIA as described below.

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.

AMERICAN OVERSIGHT

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.

ICE has applied FOIA Exemption (b)(7)(E) to protect from disclosure information compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions when such disclosure could reasonably be expected to risk circumvention of the law.

FOIA Exemption (b)(7)(E) protects records compiled for law enforcement purposes, the release of which would disclose techniques and/or procedures for law enforcement investigations or prosecutions or would disclose guidelines for law enforcement investigations or prosecutions if such disclosure could reasonably be expected to risk circumvention of the law. I have determined that disclosure of certain law enforcement sensitive information contained within the responsive records could reasonably be expected to risk circumvention of the law. Additionally, the techniques and procedures at issue are not well known to the public.

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): 351 page(s)

AMERICAN OVERSIGHT

From: Picard, Vincent M
Sent: 25 Feb 2019 18:12:50 +0000
To: Blank, Thomas;Albence, Matthew
Cc: (b)(6); (b)(7)(C) Kelly, Christopher S
Subject: FW: HOT ISSUE: Stillbirth at PIDC
Importance: High

We've already cleared with IHSC/ERO Front Office/OPLA – I'm sending to CBP and DHS now.

From: Rodriguez, Sarah
Sent: Monday, February 25, 2019 1:11 PM
To: #ICE OPA ERO Issue Paper <(b)(6); (b)(7)(C) Bible, Daniel (b)(6); (b)(7)(C) ; Achim, Deborah (b)(6); (b)(7)(C)
Subject: HOT ISSUE: Stillbirth at PIDC
Importance: High

OPA ISSUE: ICE OPA recommends the following statement be cleared regarding the stillbirth at PIDC on Friday night. We've cleared the below with IHSC and COS (b)(6);

In addition to ERO, we need affirmative clearance from OPLA before proceeding.

Our proposed timeline for the release of information is as follows:

(b)(5)

DRAFT STATEMENT:

Joint Statement from ICE and CBP on stillbirth in custody

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

Thanks,
Sarah

Sarah Rodriguez
Deputy Press Secretary
U.S. Immigration and Customs Enforcement
(b)(6); (b)(7)(C)
o: 202.732.(b)(6);
m: 202.486.(b)(6);

AMERICAN OVERSIGHT

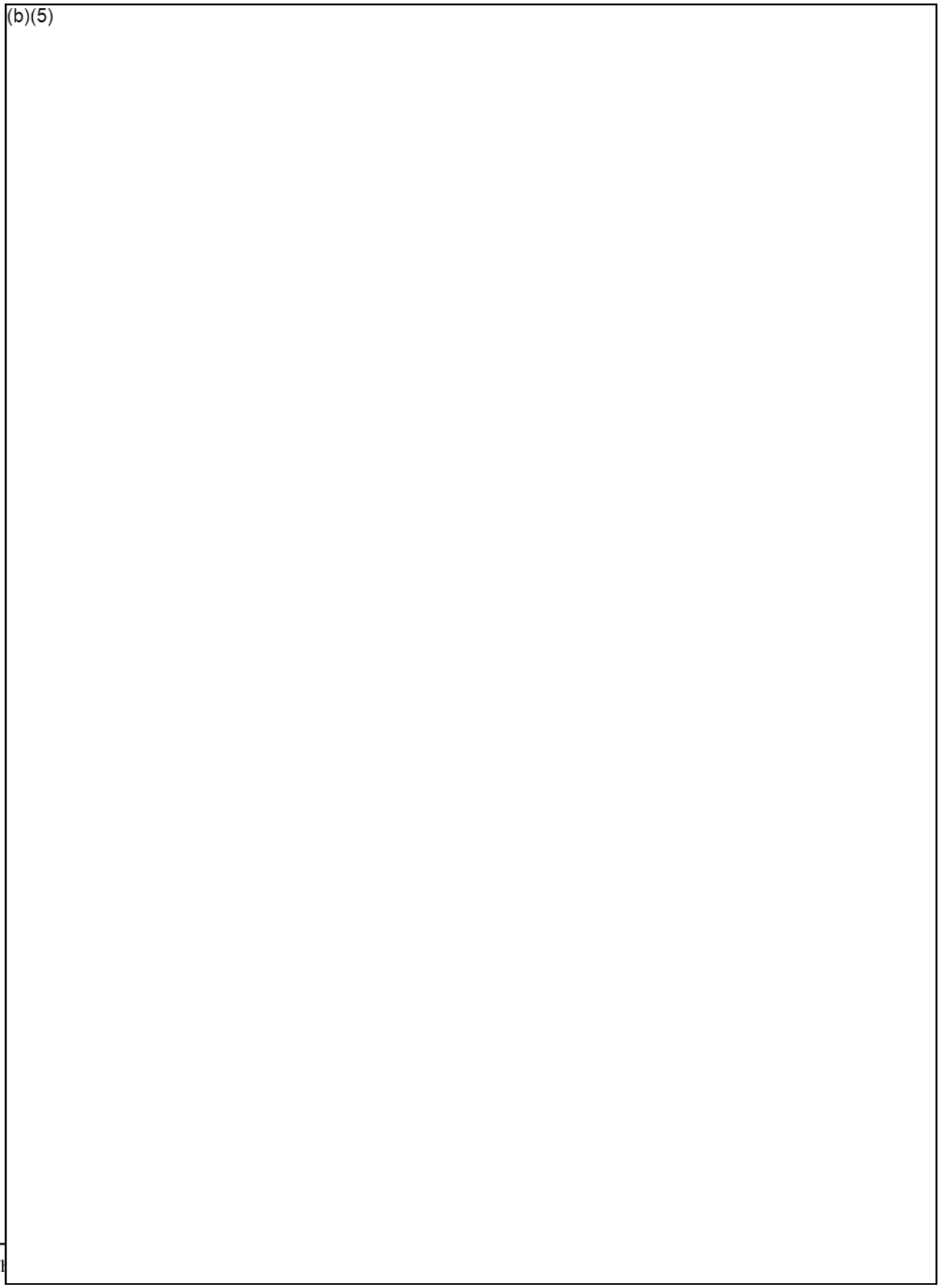
ICE Hearing Questions

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT



[1] Th

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

USCIS Hearing Questions

AMERICAN OVERSIGHT

1. **Administration officials have repeatedly asserted that there are fraudulent families coming across the southern border, though they have failed to provide hard evidence on this. What evidence do you have that DHS is apprehending fraudulent families, and what is DHS doing to combat this issue?**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

2. **Do you support an increase in funding and deployment of ICE's Alternatives to Detention program?**

(b)(5)

3. **Do you agree that Alternatives to Detention are more cost-effective for the taxpayer than family detention facilities?**

(b)(5)

4. **What plans, if any, does ICE have to prioritize and use alternatives to detention for families arriving at and between ports of entry?**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

5. **Will you commit to requiring that the 2011 Performance-Based National Detention Standards (PBNDS 2011) be expeditiously implemented at all ICE detention facilities, including contract facilities?**

(b)(5)

   a. **Will you commit to requiring that any new ICE detention facility contract approved during your leadership will require compliance with PBNDS 2011?**

(b)(5)

[1] These ATD compliance metrics are based on U.S. Border Patrol apprehensions of adults (18 years old and over) with a family unit classification, and all accompanied alien children (0-17 years old) who are no longer active participants in the program. They are updated through June 30, 2018.

AMERICAN OVERSIGHT

6. **Do you believe there are circumstances where it is appropriate for ICE to grant a stay of removal to an undocumented immigrant who is removable under the law? Have you ever ordered or approved the granting of such a stay of removal?**

(b)(5)

7. Have you read the findings of pediatricians in the United States of America that detaining children provides long-term psychological harm to those children? Do you agree with their findings?

(b)(5)

8. ICE official Matthew Albence characterized ICE's family detention facilities as being "more like a summer camp" at a Judiciary Committee hearing last year. **Do you agree with this characterization?**

(b)(5)

[2] "Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities." June 2, 2017. https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf?utm_source=E-mail+Updates&utm_campaign=e1d1c3e779-EMAIL_CAMPAIGN_2017_06_16&utm_medium=email&utm_term=0_7dc4c5d977-e1d1c3e779-45096257

AMERICAN OVERSIGHT

(b)(5)

9. **How many families does ICE currently have in its custody?**

(b)(5)

10. Please explain, legal restrictions aside, whether you believe there is an upper limit to how long a child should be held in immigration detention, and, if so, what this upper limit is?

(b)(5)

11. On May 5, 2017, ICE reversed a decades-long bipartisan policy of issuing stays of removal for beneficiaries of private immigration bills when the Chairman of the Senate Immigration Subcommittee requests a report on the beneficiary. This action was taken without consulting Congress. As a result of ICE's decision, private bill beneficiaries are now subject to deportation even though legislation to provide for their relief is pending in Congress.

    Will you commit to working with the Chairmen and Ranking Members of the Senate Judiciary Committee and Immigration Subcommittee to reevaluate ICE's May 5, 2017 policy change?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

12. 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. Does ICE, in fact, plan to stop detaining families at Karnes?

(b)(5)

13. 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)(5)

14. 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)

15. How many pregnant women are currently in detention? Do you have methods in place for tracking pregnant women and other vulnerable detainees?

(b)(5)

16. There have been multiple reports of physical and sexual abuse of adults and children at ICE detention facilities. Between 2010 and September 2017, reportedly at least 681 complaints of sexual assault, 307 complaints of sexual harassment, and 272 complaints of physical assault

AMERICAN OVERSIGHT

were filed, primarily about incidents while in ICE custody. Of these complaints, it appears only a small fraction were investigated.

a. How many sexual misconduct complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?

(b)(5)

b. How many physical abuse complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?

(b)(5)

c. What steps has ICE taken to ensure that all sexual abuse allegations are taken seriously and thoroughly investigated?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

d. Does ICE have a mandatory reporting policy regarding an ICE employee or contractor who witnesses abuse against an adult or child in ICE custody?

(b)(5)

17. I am concerned about the Administration's decision to reinterpret the 2008 U.S.-Vietnam repatriation agreement in order to facilitate the deportation of Vietnamese immigrants.

- What are the Administration's justifications for reversing the agreement?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

18. Presently, sensitive location policies do not extend protections to other locations that are critical to the safety and security of immigrants, including courthouses. To some, this lack of protection undermines public safety and is a source of frustration for judges, advocates, and community members alike.

a. Do you feel that the policies surrounding sensitive locations should be expanded to include courthouses?

(b)(5)

b. If you believe the current policies in place provide sufficient protection, please explain why.

(b)(5)

19. Is sponsor information shared under the MOA between DHS and HHS being used for immigration enforcement activities?

AMERICAN OVERSIGHT

(b)(5)

20. Recently, the Supreme Court addressed a challenge to an interpretation of a detention provision of the Immigration and Nationality Act that would allow ICE officials to detain an unauthorized immigrant indefinitely once they are taken into criminal custody, even if they were released months ago, without the opportunity for a bond hearing. With this legal question now resolved in ICE's favor, **will you continue this practice of indefinite detentions? Do you believe this is good public policy, and why?**

(b)(5)

21. In January 2019, the DHS Inspector General issued a report finding that, "Instead of holding [detention] facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards." Since this report was issued, the Appropriations Committee included language in its FY19 report requiring that the ICE Director personally sign off on any waivers of contract requirements for immigration detention.

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000031

a. What steps have you taken to remedy the issues raised by the DHS Inspector General report?

(b)(5)

AMERICAN OVERSIGHT

b. How will you ensure that facilities comply with ICE detention standards?

(b)(5)

22. In 2016, the Homeland Security Advisory Council documented alarming deficiencies in the inspections and monitoring processes governing the immigration detention system. The majority of the council voted to recommend a "measured but deliberate shift away" from the use of private prisons for immigration detention

a. Do you believe that private prisons are appropriate for immigration detention?

(b)(5)

b. If the agency does not intend to reduce its reliance on contracts with private prison companies, as recommended by the HSAC in 2016, please articulate the evidence supporting a decision to reject the recommendations of the Council.

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

23. 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.

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.

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

24. 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?

(b)(5)

25. Over the past few years, ICE has demonstrated a troubling lack of fiscal discipline. For instance, in FY 2018, the Department of Homeland Security reprogrammed $200 million to ICE from other agency accounts to cover the costs of immigrant detention and removal.[11] This reprogramming included $10 million from the Federal Emergency Management Agency when the federal government was trying to respond to hurricanes and forest fires that were destroying communities all over the United States.[12] In fact, Congress has expressed repeated alarm regarding this overspending and wrote in a 2019 report accompanying the Department of Homeland Security Appropriations Act 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. Do you expect ICE to request that funds be preprogrammed this fiscal year to cover the costs of detention and removal operations?

(b)(5)

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

(b)(5)

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

(b)(5)

AMERICAN OVERSIGHT

26. Approximately, how many of the ICE domestic digital searches are supported by probable cause warrants? How many were supported by reasonable suspicion alone?

(b)(5)

27. Does ICE consider border digital searches while the device is connected to the internet a violation of the Fourth Amendment?

(b)(5)

AMERICAN OVERSIGHT

From: (b)(6); (b)(7)(C)
Sent: 29 Mar 2019 13:20:12 +0000
To: Kelly, Christopher S
Subject: FW: OPP QFRs
Attachments: 2019-03-27 - Vitiello SJC QFRs_MA.docx

Here are some policy responses

From: (b)(6);
Sent: Friday, March 29, 2019 8:43 AM
To: (b)(6); (b)(7)(C) (b)(6); (b)(7)(C)
Subject: OPP QFRs

Hi (b)(6);

Sending what we have so far on our QFRs. We are still waiting on input from other M&A offices, which is due back to us today. We'll send along when we have it.

Thanks,
(b)(6);
(b)(7)(C

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?**

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:

   > 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.
   > And so when the Justice Department stepped up and said that they would do more prosecutions. We put instructions in place to take advantage of that.

   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 confirmed, how would you avoid repeating the errors in judgment in planning that allow the family separation policy to occur?" You responded:

AMERICAN OVERSIGHT

So it wasn't a family separation policy. It was an increased level of prosecution. Right? The Department of Justice said, we -- they would involve resources to give us a zero tolerance for people who crossed the border in between the ports illegally. And so, the lesson learned there is, we did spend a lot of time in this setting urging Congress to close these loopholes, to give us an opportunity to let people have their due process rights and then removed when they were eligible for relief under the INA. So we'd like to have that opportunity. But in the case of what did happen, we should've been more – we should have leaned forward more on explaining the whole process and being ready for the public outcry that occurred.

It seems from your response that the lesson the Trump Administration learned from this debacle of the Administration's own creation was to explain the Administration's policy more clearly. Were any lessons learned about whether the policy of separating families was just and effective?

7. **(OPA)** President Trump's previous nominee to head ICE, Thomas Homan, made a series of inflammatory and inaccurate statements, including one which led to the resignation of an ICE spokesman who said he "didn't want to perpetuate misleading facts." For example, Mr. Homan:

   - Reportedly referred to undocumented immigrants by the derogatory term "tonks";
   - Called for the criminal prosecution of elected officials who represent jurisdictions that limit their involvement in immigration enforcement;
   - Compared the Mayor of Oakland, California to a "gang lookout"; and
   - Falsely suggested that an undocumented immigrant was responsible for wildfires in Sonoma County and that therefore California state law limiting involvement with immigration enforcement was to blame for the wildfires.

   a. (OPA) What is your reaction to these remarks?

   b. (OPA) If you are confirmed, how would your leadership of ICE be different than Mr. Homan's?

   c. (OPA) Have you ever used the term "tonk" or any other derogatory term to refer to immigrants or minorities? If so, please explain.

8. **(OPA/OPP)** In your response to written questions submitted following a May 23, 2017 Senate Judiciary Immigration Subcommittee hearing titled "Building America's Trust Through Border Security: Progress on the Southern Border," you appeared to credit the Trump Administration's immigration enforcement policies for the decline in border apprehensions in FY 2017. Responding to a question from Senator Grassley, who asked, "Do you agree that President

AMERICAN OVERSIGHT

Trump's return to normal enforcement policies is a major reason for the decrease in border apprehensions and illegal entry to the United States?" you stated:

> Since the inauguration and issuance of Presidential Executive Orders regarding immigration policies, the U.S. Border Patrol has encountered a significant decrease in the flow of illegal aliens migrating to the US. Interviews have indicated migrants are hesitant to come to the U.S. due to increased removals, perceived enhancements to border security (e.g. border wall, increased man-power, etc.), and changes to immigration policies that do not permit them remain in the U.S. if apprehended.

Senator Grassley also asked you to explain what authorities CBP has under current law "to secure the border and enforce our immigration laws," to which you responded: "CBP has broad authority to secure the border and enforce the nation's immigration laws, as well as many other laws on behalf of numerous federal agencies at the border."

Senator Grassley went on to ask, "Is any new legislation necessary to help your agency better enforce the law, or is this really just a matter of resources?" You responded by praising two House bills from last Congress, *Kate's Law* and *No Sanctuary for Criminals Act*. You added that CBP supports legislation giving the agency the flexibility to waive the polygraph exam for certain individuals.

You did not mention the *Flores* Settlement Agreement, a longstanding agreement in place to protect immigrant children. Yet according to a recent news report (available at https://www.washingtonexaminer.com/news/ice-chief-congress-could-end-unmitigated-crisis-on-border-with-one-legal-tweak) you are now saying that because of *Flores*, "the U.S. immigration system is bound to collapse as a result of the record-high levels of unaccompanied children and families arriving at the southwest border since October" and that, "There's an absolutely unmitigated crisis going on at the southwest border."

You credited the Trump Administration's immigration policies for a decreased flow of northbound illegal immigration in FY 2017. Doesn't the Trump Administration also bear responsibility for the situation at the Southern border now, which you have characterized as an unmitigated crisis?

9. **(ERO) Do you support an increase in funding and deployment of ICE's Alternatives to Detention program?**

10. **(ERO) Do you agree that Alternatives to Detention are more cost-effective for the taxpayer than family detention facilities?**

11.

    a. **(ERO) Will you commit to requiring that the 2011 Performance-Based National Detention Standards (PBNDS 2011) be expeditiously implemented at all ICE detention facilities, including contract facilities?**

AMERICAN OVERSIGHT

b. (ERO) Will you commit to requiring that any new ICE detention facility contract approved during your leadership will require compliance with PBNDS 2011?

12. **(OPA) Has the polygraph exam requirement for Customs and Border Protection law enforcement positions elicited admissions of serious criminal conduct by certain job candidates?**

13. ICE's website for job applicants (https://www.ice.gov/careers/faqs) states that ICE conducts pre-employment polygraph screenings for law enforcement positions.

(OPP) When did this policy begin?

(b)(5)

(OPR/OPP) Does ICE use the Test for Espionage, Sabotage, and Corruption (TES-C), the standard Law Enforcement Pre-employment Test (LEPET) test, or a different polygraph examination?

(OPR/OPP) Does ICE perform a pre-employment polygraph screening for all applicants for law enforcement positions or are there exceptions to this requirement?

(b)(5)

(OPR) How many such exams has ICE conducted and what is the passage rate for exams conducted at ICE since the policy began?

14. In 2016, the Homeland Security Advisory Council's CBP Integrity Advisory Panel noted that "integrity could be enhanced further by periodic random and targeted polygraph examinations on a post-hire basis of CBP law enforcement personnel."

a. (OPA/OPR/OPP) Do you agree with this recommendation?

b. (OPA/OPR/OPP) Could post-hire polygraph testing enhance integrity at ICE?

15. At your November 15, 2018 confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, you stated: "I also appreciate the Committee's important oversight role, and I am committed to ensuring that our agency remains accountable to Congress and the taxpayers."

a. (OPA) Do you commit that, if you are confirmed, under your leadership ICE will expeditiously and thoroughly respond to requests for information from all Members of the Senate Judiciary Committee, regardless of their party affiliation?

AMERICAN OVERSIGHT

b. (OPA) What steps have you taken, and do you plan to take, to enhance ICE's accountability to Congress and the American people?

16. **a. (ERO/OPLA) Please explain, with specific examples, how you have directed the use of prosecutorial discretion in deploying ICE detention and removal resources.**

17. **(ERO/OPA) Do you believe there are circumstances where it is appropriate for ICE to grant a stay of removal to an undocumented immigrant who is removable under the law? Have you ever ordered or approved the granting of such a stay of removal?**

18. **(OPA) During his confirmation hearing, USCIS Director Francis Cissna committed to maintaining the existing Deferred Action for Childhood Arrivals (DACA) guidelines and to ensuring that individuals only lose DACA if they have violated the terms of DACA. Will you make the same commitment?**

19. **(ERO)** At your November 15, 2018 confirmation hearing, Senator Hassan asked you whether you "accept findings of pediatricians in the United States of America that detaining children provides long-term psychological harm to those children, yes or no?" You did not answer the question directly. You stated, "I understand the report. Yes." **Please answer this question directly.**

20. **(OPA/ERO)** ICE official Matthew Albence characterized ICE's family detention facilities as being "more like a summer camp" at a Judiciary Committee hearing last year. **Do you agree with this characterization?**

21. At your November 15, 2018 confirmation hearing, in response to a question from Senator Peters about whether there is an upper limit to how long a child should be detained in your view, you responded: "Well the law gives us upper limits. What we're -- in this discussion, what is -- what we're trying to seek is full opportunity in the due process and that requirement. And then when it -- if they're not subject to relief, then they're held only long enough to remove them."

    (OPA) Please explain, legal restrictions aside, whether you believe there is an upper limit to how long a child should be held in immigration detention, and, if so, what this upper limit is?

22. On May 5, 2017, ICE reversed a decades-long bipartisan policy of issuing stays of removal for beneficiaries of private immigration bills when the Chairman of the Senate Immigration Subcommittee requests a report on the beneficiary. This action was taken without consulting Congress. As a result of ICE's decision, private bill beneficiaries are now subject to deportation even though legislation to provide for their relief is pending in Congress.

AMERICAN OVERSIGHT

(OCR) Will you commit to working with the Chairmen and Ranking Members of the Senate Judiciary Committee and Immigration Subcommittee to reevaluate ICE's May 5, 2017 policy change?

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

   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.**

2. On November 15, 2018, you testified before HSGAC that when you implemented the Trump administration's zero tolerance policy as Acting Deputy Commissioner of Customs and Border Protection (CBP), the resulting family separations "were never intended to be permanent." However, you also testified that CBP "never contemplated having the systems work backward" to reunify families, because "the reunification piece is a function of HHS." Furthermore, the Inspector General for DHS concluded in September 2018 that there was "no evidence" of any central database to track and reunify parents and children who were separated as part of the zero tolerance policy.

AMERICAN OVERSIGHT

a. **(OPA) With no central database to track and reunify separated families, how did you intend to avoid permanent or long-term family separations?**

b. **(OPA) Now that it's clear this did not work, what is being done as new families arrive? Is there a database in place? If not, why not?**

c. **(OPA) How did you believe HHS would be able to "work backward" to reunify separated families, if CBP failed to develop a process for notify HHS which children were separated at the border and which children arrived unaccompanied? What is being done to address this problem for those already separated? What is being done for those separated going forward?**

3. On March 13, a complaint filed with the Department of Homeland Security's Office of Civil Rights and Civil Liberties stated that Immigration and Customs Enforcement (ICE) kept several children at the Karnes County Detention Center for 40 days or longer. (*See* Letter to Ms. Cameron Quinn and Mr. John V. Kelly from Refugee and Immigrant Center for Education and Legal Services (Mar. 13, 2019)) As you know, the Karnes facility houses children along with their fathers.

   The group of families represented in the complaint includes a six-year-old boy who was detained with his father for 41 days, from January through March, before being separated from his father and moved to a children's shelter. This boy was allegedly detained for more than two times the 20-day detention period authorized in the Flores settlement agreement.

   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?**

AMERICAN OVERSIGHT

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 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?**

AMERICAN OVERSIGHT

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

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?

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:

AMERICAN OVERSIGHT

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?**

iv. **(ERO) On average, how long does it take a detainee at Adelanto to receive medication after a doctor prescribes it?**

v. **(ERO) On average, how long do detainees have to wait after arriving at Adelanto to see a dentist?**

vi. **(ERO) How many hours per day do detainees at Adelanto spend locked in a cell?**

vii. **(ERO) How many hours do detainees at Adelanto spend in indoor common areas?**

viii. **(ERO) How many hours do detainees at Adelanto spend outside?**

c. **(ERO) What are the policies at Adelanto and other ICE detention facilities to ensure that detainees are able to access correspondence, books, and other materials that are sent to them?**

d. **(ERO) Why are detainees at Adelanto ICE processing facility unable to access their passports, identification documents, or other documents from ICE in time to provide these important documents to the judge when they appear in court?**

e. **(ERO) How does ICE determine the price it charges for food and other goods at the commissary at Adelanto?**

f. **(ERO) Will you commit to providing ICE detainees with access to their documents in advance of their hearings in immigration court or federal district court?**

g. **(ERO) At what temperature are ICE detention cells kept?**

h. **(ERO) Have any doctors reported to ICE or CBP officials that any detainees became ill, or that any detainees' existing symptoms worsened, because of the temperature settings within the facilities?**

9. In December 2018, the Stanford Law School Immigrants' Rights Clinic and the ACLU of Southern California filed a complaint alleging that ICE was failing to allow immigrants at three detention facilities in California to communicate with their attorneys. (*Ernesto Torres,*

AMERICAN OVERSIGHT

Desmond Tenghe, Jason Nsinano, et al. v. U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement (2018))
The complaint alleges that detained immigrants are unable to contact their attorneys by phone because the phone systems in these facilities do not allow them to leave voice mail messages or navigate automated menus if the call is not answered by a live person. Furthermore, when immigrants are allowed to meet with their attorneys in person, these meetings are restricted to locations where their conversations can be overheard.

a. **(ERO/OPLA) What does ICE do to disseminate information to detainees at the Adelanto, Lacy, and Musick facilities about the availability of legal representation? What about other facilities?**

b. **(ERO/OPLA) Will you commit to changing the phone systems at ICE facilities in California to allow immigrants to communicate effectively with their attorneys? If not, why not?**

c. **(ERO/OPLA) Will you commit to providing private areas in ICE detention facilities where immigrants can meet with their attorneys in a confidential manner, respectful of attorney-client privilege? If not, why not?**

10. As you are aware, in October 2018, ICE stopped doing pre-release planning for asylum-seeking families before releasing them into communities along the Southwest Border. There have been numerous reports of families with children being dropped off at bus stations and parking lots without being directed to local shelters or other available community resources to help them reach their ultimate destinations.

    The Joint Explanatory Statement accompanying the 2019 Consolidated Appropriations Act included the following language: "In recent months, ICE has collaborated with organizations that provide temporary shelter to migrants released from ICE custody. Within the $114,147,000 increase above the fiscal year 2018 funding level for the Transportation and Removal Program, ICE is directed to provide for the transportation of migrants to such shelters based on where collaborating organizations have open sheltering capacity, including during surge periods. ICE shall immediately notify the Committees in advance of any decision to deny such transportation."

    a. **(ERO) What has ICE done to comply with this directive to "provide for the transportation of migrants to such [temporary] shelters based on where collaborating organizations have open sheltering capacity"?**

    b. **(ERO) Have individual field offices been issued guidance in light of this requirement?**

    c. **(ERO) Please provide any guidance that has been issued regarding communication and coordination with community-based organizations to ensure the safe and orderly release of migrant families.**

AMERICAN OVERSIGHT

d. (ERO) Many of these temporary shelters provide initial medical screenings and emergency services. These services are typically provided by local government health workers and private health providers. Has your agency made any effort to share health screening information (gathered either by ICE or U.S. Customs and Border Protection) for potential illnesses or injuries that individuals may be experiencing? If not, why not?

11. During the Obama administration, ICE agents, officers, and attorneys were permitted to exercise prosecutorial discretion to promote national security, border security, public safety, and the integrity of the immigration system. (Memorandum from Director John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011)) On January 25, 2017, the Trump administration ended that discretionary authority with Executive Order 13768, which directs that immigration laws must be enforced against all "classes or categories of removable aliens." As a result, ICE arrested 38,000 immigrants with no criminal convictions in FY2017, a 146 percent increase over non-criminal immigration arrests in FY2016. The decision to focus on, and eliminate prosecutorial discretion for, low-priority individuals has forced immigration courts to spend valuable time on these cases, thereby adding to the enormous case backlog.

a. (ERO) Please provide the number of ICE arrests since January 2017 involving individuals with no criminal convictions.

b. (ERO) Please also provide the number of Notices to Appear filed since January 2017 against individuals with no criminal convictions.

c. (ERO) Please provide the total number of individuals removed by ICE since January 2017 who have no criminal convictions.

d. (ERO) Please provide the total cost of arresting, charging, prosecuting removal cases against, and deporting the individuals described in Question 9(a)-(c) above.

12. Recent reporting indicates that ICE has been using information collected by the California Department of Motor Vehicles (DMV) to conduct enforcement actions against individuals with no criminal history. This is concerning due to California's state law allowing residents to apply for licenses regardless of their immigration status, which was established as a way to improve public safety and accountability. (Sergio Flores & Tom Jones, *DMV Confirms ICE Has Limited Access to AB 60 License Information*, NBC LOS ANGELES (Feb. 20, 2019))

a. (ERO/HSI) How has ICE used information collected by the California DMV in its targeting of enforcement actions?

b. (ERO/HSI) Has your agency ever utilized the California Department of Justice's California Law Enforcement Telecommunications System (CLETS) for immigration enforcement purposes not involving a criminal justice matter?

AMERICAN OVERSIGHT

13. On September 2, 2015, you tweeted at Mark Levin that the Democratic Party should be renamed the "Neo-Klanist" party. In November, you testified before HSGAC that this statement was "a joke" and a "momentary lapse in judgment," and that you believed you were sending it as a direct message rather than a public tweet.
    a. **(OPA) Was Mark Levin the intended recipient of the tweet that you believed was a direct message? If not, who was the intended recipient of that remark?**

    b. **(OPA) You said the comment was a joke, can you please explain the joke?**

AMERICAN OVERSIGHT

Senate Judiciary Committee
Questions for the Record from Senator Charles E. Grassley
for Ronald D. Vitiello

Nominee

Director of Immigration and Customs Enforcement
Department of Homeland Security

Cost of Compliance related to Sanctuary Policies

In recent years, many state and local jurisdictions began implementing a policy of not reporting to ICE the release of criminal aliens from their custody, even when ICE identified the aliens and specifically requested notification before their release. These are commonly referred to as "Sanctuary City/State" policies.

The results of these policies are disturbing. In addition to the fact that the American public faces an increased and unnecessary risk to safety because criminal aliens are at-large in the community, additional resources are required to locate and arrest these criminal aliens.

1. **(ERO)** What is the average dollar cost to apprehend an alien, for whom ICE has identified as illegally present and issued a detainer, after s/he was released from a sanctuary jurisdiction? In your answer, please speak to the difference in resources and manpower allocated to an ICE arrest at a local jail versus an instance in which ICE has zero state/local cooperation.

2. **(ERO)** To the best of your knowledge, how many detainers were not honored in FY2017, FY2018, and FY2019 year to date?

3. **(ERO)** What are the increased risks to public safety when an alien must be arrested outside of a secure facility and in the community?

Equal Application of Crimes Involving Moral Turpitude (CIMT)

As you may be aware, recent federal court decisions have made it more difficult for the removal of illegally present aliens with criminal convictions. The use of the outdated categorical approach to determine if an alien has been "convicted of" various criminal grounds for the purpose of removal has had a significant impact, rendering many criminal statutes overbroad and unusable. The term "Crime Involving Moral Turpitude" is vague and open to a wide variety of interpretations. In some cases, aliens who have been convicted of sexual assault of a minor are not ultimately found deportable because a Circuit Court is bound to a patchwork of varying state law definitions, including different statutory requirements. This has completely undermined the intent of the removal statute, to remove criminal aliens from the United States.

AMERICAN OVERSIGHT

1. **(OPLA)** Please explain the effect of Court cases like *U.S. v. Auilera-Montes de Oca* and *Larios- Reyes v. Lynch* on the ability of ICE to remove serious violent criminal aliens from the United States.

2. **(OPLA)** How have these cases impacted the safety and welfare of communities in the United States?

3. **(OPLA)** What are your recommended remedies to overcome these hurdles to remove criminal aliens who prey on the most vulnerable in our communities?

Risks Created by the DHS Appropriations Act, 2019, Section 224

The Department of Homeland Security (DHS) Appropriations Act of 2019 provided funding for Immigration and Customs Enforcement. Pursuant to Section 224, ICE is specifically prohibited from using appropriated funds to detain or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child (UAC). Additionally, Section 224 prohibits ICE from using information solely provided by the Department of Health and Human Services (HHS) concerning the immigration status of UAC sponsors/potential sponsors to execute on ICE's statutory enforcement responsibilities.

4. **(ERO)** Will this restriction on the use of appropriated funds inhibit the ability of the federal government to ensure a safe environment into which an unaccompanied alien child is to be placed?

5. **(ERO)** Will this restriction inhibit ICE's ability to ensure that the household to which a UAC would be released does not include undocumented immigrants with a criminal record?

6. **(HSI)** Can smugglers and human traffickers abuse this loophole? How so?

7. **(ERO/HSI)** With these funding restrictions, how will enforcement actions against criminal aliens and criminal organizations be impacted?

AMERICAN OVERSIGHT

Questions for the Record
Submitted to Mr. Ronald D. Vitiello
from Senator Kamala D. Harris

Nomination of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security
Senate Committee on the Judiciary
March 27, 2019

Coercion of Separated Parents to Relinquish Legal Rights

In August 2018, legal advocates filed a complaint with the Department of Homeland Security Office of Inspector General (DHS OIG) and the Department of Homeland Security Office of Civil Rights and Civil Liberties (CRCL) alleging that ICE employees engaged in coercion and abuse in order to compel immigrant parents who had been separated from their children to forgo their legal rights, including their right to reunify with their children or to lawfully seek asylum. The complaint alleged verbal and physical threats, insults, denial of food, withholding of feminine hygiene products from parents, and false claims to parents that their children would be permanently taken from them.

1. **(OPA) When did you become aware of these allegations?**

During your nomination hearing on November 15, 2018, you committed to meaningfully following up on these allegations.

2. **(OPR/ERO) What actions, if any, did ICE take in response to these allegations? Please provide written documentation.**

3. **Has ICE conducted its own inquiry into these allegations?**

    a. **(OPR/ERO) If so, when will the inquiry be completed and will you publish it?**
    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?**

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

AMERICAN OVERSIGHT

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?**

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?**

(b)(5)

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

AMERICAN OVERSIGHT

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?**

Poor Conditions and Oversight at ICE's Adelanto Processing Center and Other Detention Facilities

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 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?**

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

AMERICAN OVERSIGHT

ICE Use of Body-Worn Cameras

In August 2015, when you were in a Customs and Border Protection (CBP) leadership role, CBP published a feasibility study on the use of body-worn cameras for officers and agents. The study found that body worn cameras would have benefits for CBP if properly acquired, deployed, and managed. CBP has since begun a body-worn camera pilot program.

15. **(OPA) Since you have been in an ICE leadership role, have you initiated any discussions about piloting body-worn cameras at ICE?**

16. **(OPA) If confirmed as ICE Director, will you commit to initiate a pilot program on body-worn cameras for ICE officers and agents?**

AMERICAN OVERSIGHT

Questions for the Record for Ronald Vitiello
from Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions.

   a. **(OPA) Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

   b. **(OPA) Have you ever faced discipline or entered into a settlement related to this kind of conduct?**

2. **(OPA) Several components of the Department of Homeland Security (DHS), including Immigration and Customs Enforcement (ICE) have failed to respond to the Senate Judiciary Committee's questions for the record. Do you commit to responding in a timely manner to all questions for the record submitted to ICE, if you are confirmed?**

3. In April 2018, DHS and the Department of Health and Human Services (HHS) entered into a Memorandum of Agreement (MOA), which was signed by ICE, mandating that the Office of Refugee Resettlement (ORR) within HHS share with ICE information about each unaccompanied immigrant child's potential sponsor and all adult members of that potential sponsor's household. This resulted in deterring potential sponsors coming forward out of fear of immigration enforcement actions against them, leaving unaccompanied children in prolonged detention. These fears were not unfounded. By November 2018, ICE had reportedly arrested 170 individuals based on this information sharing, and more than 100 of those arrested had no criminal record.

   a. **(ERO) How many individuals have you arrested based on information obtained by this information-sharing MOA? Please provide this data broken down by month from April 2018 to the present.**

   b. **(ERO) How many of the individuals above were arrested only for immigration-related offenses? Please provide this data broken down by month from April 2018 to the present.**

4. The Department of Homeland Security's Office of Inspector General (OIG) has issued several reports about the troubling conditions in ICE detention facilities and ICE's failure to hold these facilities accountable. In February 2019, for example, OIG reported that it identified serious issues at an ICE facility in New Jersey that "not only constitute violations of ICE detention standards but also represent significant threats to detainee health and safety," including serving "slimy, foul-smelling" food and maintaining housing units with mold and mildew. Human Rights Watch also reported in June 2018 that "[m]ore people died in immigration detention in fiscal year 2017 than any year since 2009, and the most recent

AMERICAN OVERSIGHT

detailed information we have about immigration detention deaths shows that they are still linked to dangerously inadequate medical care."

Comment [A]: CFO

a. **(ERO) What steps have you taken and what steps will you take to ensure that ICE facilities are safe and sanitary?**

b. **(ERO) What steps have you taken and what steps will you take to improve access to proper medical care at ICE facilities?**

c. **(CFO) In January 2019, OIG reported that, instead of holding ICE facilities accountable through financial penalties, "ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards." OIG made five recommendations to address its findings. By when do you expect to complete implementation of the recommendations made in the OIG report?**

d. **(ERO) ICE responded to the OIG report on December 3, 2018, before the report was publicly released. Since December 3, 2018, how many waivers has ICE issued to facilities with deficient conditions? Since December 2018, on how many facilities with deficient conditions has ICE imposed financial penalties? Please provide a breakdown by month from December 2018 to the present for both questions.**

5. There have been multiple reports of physical and sexual abuse of adults and children at ICE detention facilities. Between 2010 and September 2017, reportedly at least 681 complaints of sexual assault, 307 complaints of sexual harassment, and 272 complaints of physical assault were filed, primarily about incidents while in ICE custody. Of these complaints, it appears only a small fraction were investigated.

a. **(ERO/OPR) How many sexual misconduct complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?**

b. **(ERO/OPR) How many physical abuse complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?**

c. **(ERO/OPR) What steps have you taken to ensure that all sexual abuse allegations are taken seriously and thoroughly investigated?**

d. **(ERO/OPR) What mechanisms and safeguards are in place to enable immigrants in ICE custody to come forward to report abuse by an ICE employee or ICE contractor without fear of retaliation?**

e. **(ERO/OPR) What relief or remedy is available to a detainee who reports abuse at an ICE facility?**

AMERICAN OVERSIGHT

f. (ERO/OPR) Does ICE have a mandatory reporting policy regarding an ICE employee or contractor who witnesses abuse against an adult or child in ICE custody? If so, please provide a copy of that policy.

(b)(5)

6. CBP has indicated that more than 300 migrants, including children have been subject to the Migration Protection Protocols (MPP)—otherwise known as the Remain in Mexico plan—which requires asylum seekers to remain in Mexico as they await the adjudication of their asylum application. Several of the children sent to Mexico are reported to be under age 12. Under the MPP, ICE is responsible for transporting migrants to court for their immigration hearings and facilitating access to counsel. The San Diego Tribune reported issues with scheduling glitches and difficulty notifying migrants of changes in court dates. When one of these migrants returned to the U.S. port of entry for their first immigration court hearings, CBP officers would not let her into the United States, causing her to miss her hearing. When the woman's lawyer explained that her client was at the port of entry ready to come in, but CBP officers would not let her into the United States, the government attorney – the chief counsel for ICE, told the immigration judge that he should order the woman to be deported in her absence. The judge denied the government's motion.

a. (OPLA) Have there been any other cases, like the above-referenced case, where the government attorney has sought to have a migrant subject to the MPP deported after missing a court hearing due to issues with the MPP process? If so, please provide details of those cases and how they were resolved.

b. (OPLA/OPP) In what ways is ICE ensuring that the asylum seekers waiting in Mexico under the MPP policy have *meaningful* access to counsel? How are asylum seekers supposed to meet with their U.S.-licensed lawyers if they are forced to remain in Mexico under the MPP policy?

(b)(5)

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?

(b)(5)

AMERICAN OVERSIGHT

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

(b)(5)

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

(b)(5)

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.

AMERICAN OVERSIGHT

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."

a. (OPA) Is it your view that the President has unlimited authority to declare a national emergency to build a border wall? If not, in your view, what are the legal limits of the President's authority to declare a national emergency to take money from military construction projects to build a border wall?

b. (OPA) In your view, is there a difference between a humanitarian crisis and a national security or military threat at our southern border?

c. (OPA/ERO) Please provide any factual evidence ICE has to support the claim that there is a national emergency at our southern border that necessitates the building of a border wall.

10. The National ICE Council, which represents about 7,600 ICE employees, submitted a letter to the Homeland Security and Governmental Affairs Committee (HSGAC) opposing your nomination. They noted that this was "the first time" in its history that it has officially opposed a presidentially-appointed nomination. At your hearing, you told Sen. Johnson that the charges in the letter are "very technical" and that "most" of what is discussed in the letter occurred before you became Acting Director of ICE. But the letter specifically talked about your tweet "suggesting that the Democratic Party be renamed as the 'NeoKlanist' party." The National ICE Council also raised concerns about your efforts to justify your statement as a "joke." When Sen. Peters asked you at the hearing whether you "believe that's appropriate language for a government official charged with significant responsibilities," you said you "regret[ted]" making this statement and committed to not using that type of language going forward.

a. (OPA) What steps have you taken to promote a culture of respect and professionalism within ICE that treats all people with dignity and humanity?

b. (OPA) Have you taken any implicit bias, diversity, and inclusion training in the past six months? If not, will you take such training and require your employees to do the same, if you are confirmed?

AMERICAN OVERSIGHT

11. In a memo date stamped April 23, 2018, ICE, Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP) recommended that DHS Secretary Nielsen adopt an agency-wide policy of prosecuting all parents accompanied by their children who enter without authorization – a practice that would clearly require the separation of parents from their children. In fact, the policy did result in DHS separating thousands of children from their parents. ICE, USCIS, and CBP recommended this policy with the goal of deterring future migrants, including asylum seekers, from crossing the border.

    a. **(OPA) You have not disputed that you were "[i]nvolved in discussions and operational protocols regarding the administration's most controversial immigration policy that led to family separations." Please clarify what your role and involvement specifically were in these discussions and operational protocols.**

    b. **(OPA) The American Academy of Pediatrics, and numerous child welfare, juvenile justice and child development organizations wrote letters to DHS warning that the family separations conducted by DHS under this policy could inflict significant and long-term trauma on the separated children. What communications, if any, did you receive regarding concerns of the harm to children resulting from these family separations? What actions did you take upon receiving these communications?**

    c. **(OPA) In implementing the zero-tolerance policy, what policy or plan did DHS have in place for reuniting parents and children after it separated them? Please provide a copy to the Senate Judiciary Committee of any DHS directive, memoranda, and other documentation detailing any such reunification policy or plan.**

12. With respect to the thousands of children who were separated from their parents, at your hearing on November 15, 2018, before the Homeland Security and Governmental Affairs Committee, you stated: "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. We tried to take advantage of that capacity." When Senator Peters pointed out, "But it was clear that families would be separated at that point?" you replied, "That would have been a consequence."

    a. **(OPA) Is it your view that a policy, like the zero-tolerance policy, that clearly results in the separation of families, including infants from their parents, is an opportunity to be "take[n] advantage of"?**

    b. **(OPA) Your statement describing the separation of thousands of children from their parents as merely "a consequence" is very concerning because it seems to demonstrate a lack of understanding of the severe and long-term harm on children and families that the zero-tolerance policy created. Knowing what we know now—including that medical and mental health experts have warned that forcibly separating families can result in "toxic stress" and long-term consequences, such as adverse brain development, mental illness, and substance abuse—if given another opportunity, would you again support a policy, like the zero-tolerance policy, that would foreseeably result in the separation of children from their parents?**

AMERICAN OVERSIGHT

13. You further claimed at the November 2018 HSGAC hearing that "in most of the venues when we refer people for their -- for the federal crime of illegal entry. When they go to court locally, a lot of them only go for the hearing long enough to be out of our custody or at CBP out of custody for less than a day and then they're returned to us. And so the separations were -- was contemplated, but was never meant to be permanent. In most cases people got back together with their families on the same day."

    a. **(OPA) Please provide the factual basis for your assertion that "[i]n most cases people got back together with their families on the same day." Is it your statement that thousands more children were separated from their parents than have been previously reported and these families were reunited on the "same day"?**

    b. **(OPA) From April 2017 to June 29, 2018, you were the Acting Deputy Commissioner of CBP. The Department of Homeland Security's OIG found in its September 2018 report that some family separations could have been avoided where parents were quickly prosecuted and released back into CBP custody while their children were still in CBP facilities. But instead of returning the parents to CBP facilities and reuniting them with their children, CBP officials transferred them directly to ICE. The OIG report explained, that "[a]ccording to a senior official who was involved with this decision, CBP made this change in order to avoid doing the additional paperwork required to readmit the adults." Were you aware of or involved in this decision at the time it was made? If so, please explain your role in this decision.**

14. At the hearing, you seemed to suggest that the responsibility of reuniting children who were separated from their parents by DHS rested solely with the Department of Health and Human Services. You stated, "So the reunification piece is a function of HHS, Health and Human Services. They were in care and custody -- they have a care and custody of the children once they're out of CBP custody."

    a. **(ERO/OPA) Is it your view that DHS has no responsibility to ensure that parents who were separated from their children by DHS are reunited with their children?**

    b. **(ERO/OPA) In January 2019, the Office of Inspector General of HHS reported that: "As of December 2018, HHS had identified 2,737 children who were separated from their parents and required to be reunified by a June 2018 court in the *Ms. L v. U.S. Immigration and Customs Enforcement (ICE)* litigation. However, this number does not represent the full scope of family separations. Thousands of children may have been separated during an influx that began in 2017, before the accounting required by the court. In addition, as of early November 2018, HHS has received at least 118 separated children since the court order." What steps are ICE and DHS taking to review the data they have to identify all the children and parents who DHS separated since 2017? What steps are ICE and DHS taking to ensure that HHS has the information it needs to identify these separated children and ensure that they are reunited with their parents?**

AMERICAN OVERSIGHT

c. (ERO/OPA) On February 20, 2019, the government reported to a federal court in *Ms. L v. U.S. Immigration and Customs Enforcement* that there have been 245 new family separations between a June 26, 2018 court order that prohibited the government from separating families absent rare exceptions, and January 31, 2019. What system does DHS currently have in place to track family separations to ensure that parents know where their children are at all times and that those who have custody of the children know where the parents are located? Are ICE officials informed when a person in their custody has been separated from a child or family member? What steps do ICE officials currently take to identify parents in their custody who have been separated from their children, and reunite the parents with their children?

15. At a Senate Judiciary Committee hearing on July 31, 2018, I asked ICE's Executive Associate Director of Enforcement and Removal Operations (ERO) Matt Albence what DHS's long-term plan was for the children who were separated from their parents by DHS. He responded that ICE "has had longstanding policy that facilitates reunification of a parent and a child at the time of removal. That has been our policy and that would have been the process we would have followed and had followed prior to this judge's order."

a. (ERO/OPA) Is Mr. Albence's statement accurate – during the implementation of the zero-tolerance policy that foreseeably resulted in the separation of thousands of children from their parents, was ICE's initial plan to reunify parents with their children at the time of removal? If so, why were more than 400 parents deported without their children? And if so, what was ICE's plan for separated parents and children who were seeking asylum? Please provide a copy of any written version of this policy to the Senate Judiciary Committee.

b. (ERO/OPA) In implementing the zero-tolerance policy, what records were actually kept that identified the parents who were separated from their children and where these parents and children were located? Why did the government report to a federal court in San Diego that HHS had to conduct a *manual* review of the case files for all of the children in its custody— about 11,800 children—to determine which children had been separated from their parents by DHS?

16. The Transactional Records Access Clearinghouse (TRAC) at Syracuse University analyzed U.S. Border Patrol records and data on federal prosecutions, and its report showed that at most only 38 percent of adults apprehended without children were referred for criminal prosecution by CBP following the Justice Department's announcement of the "zero-tolerance" policy on April 6, 2018. Moreover, TRAC found that, at most, only 32 percent of all adults apprehended at the border, including those with children, were criminally prosecuted. This data indicates that most of the people apprehended at or near the southern border were not referred for criminal prosecution and, in fact, it appears that thousands of adults without children were not referred for prosecution while up to 3,000 children may have been separated from their parents under the guise of the zero-tolerance policy.

AMERICAN OVERSIGHT

a. (Defer to CBP) How many adults who were accompanied by children were apprehended at or near the southern border? Please provide data broken down by month from April 2018 to June 2018.

b. (Defer to CBP) How many adults who were accompanied by children and apprehended at or near the southern border were referred for criminal prosecution? Please provide data broken down by month from April 2018 to June 2018.

c. (Defer to CBP) Given the report's finding that, at most, only 38 percent of adults apprehended without children by CBP at or near the southern border were referred for criminal prosecution, what factors did ICE consider and what guidelines, if any, did ICE follow in determining whether to refer an adult accompanied by children for criminal prosecution as compared to an adult who was not accompanied by children?

17. TRAC also reported that only one adult apprehended by CBP as a family unit was actually referred for criminal prosecution in all of April 2018, even though the zero-tolerance policy was announced on April 6, 2018 and a large number of family separations occurred in April 2018. This is inconsistent with the Trump administration's claim that the separation of children from their parent was a consequence of referring all adults apprehended at the border for criminal prosecution under the "zero-tolerance" policy. In fact, TRAC found that "it would appear most separations through at least April [2018] took place for entirely different reasons than the rationale the Administration has given."

a. (Defer to CBP) How many adults were separated from their children under the zero-tolerance policy where the adults were not referred for criminal prosecution? How many children were separated from their parents in these circumstances? Please provide data for both questions broken down by month from April 2018 to June 2018.

b. (Defer to CBP) Under the zero-tolerance policy, who made the decision of whether a family unit—*i.e.*, adults accompanied by children—apprehended at or near the southern border would be separated, either by referring the adult for criminal prosecution or by other means?

c. (Defer to CBP) Under the zero-tolerance policy, who, if anyone, reviewed the decision of whether a family unit apprehended at or near the southern border would be separated?

d. (Defer to CBP) Under the zero-tolerance policy, what factors did ICE consider and what guidelines, if any, did ICE follow in determining whether to separate families where the adult family members were not referred for criminal prosecution?

18. The Trump administration's June 20, 2018 Executive Order on family separations identified a policy of detaining families "where appropriate and consistent with law and available resources." The American Academy of Pediatrics and 13 American medical and mental health organizations have made clear that family detention is not an appropriate solution to family

AMERICAN OVERSIGHT

separation. They have pointed to the serious physical and emotional harm that detention inflicts on children.

a. **(ERO) From June 2018 to the present, how many babies younger than 12 months old have been held in ICE custody? How many babies younger than 12 months old does ICE currently have in its custody?**

b. **(ERO) From June 2018 to the present, how many children age 1 or older have been held in ICE custody? How many children age 1 or older does ICE currently have in its custody? Please provide a breakdown by age for both questions.**

c. **(ERO) What criteria does DHS use to determine whether a family is detained or released, with or without monitoring mechanisms such as ankle monitors? Please provide the Senate Judiciary Committee with a copy of any guidelines used in these determinations**.

d. **(ERO) What is the average length of detention in ICE custody for children age 5 and under and for children over age 5? What is the longest length of ICE detention in ICE custody for children age 5 and under and for children over age 5?**

AMERICAN OVERSIGHT

Senate Judiciary Committee
Questions for the Record from Senator Amy Klobuchar
for Ronald D. Vitiello

Nominee

Director of Immigration and Customs Enforcement
Department of Homeland Security

As Acting Deputy Commissioner of Customs and Border Protection (CBP), you participated in the implementation of the Administration's family separation policy. The American Academy of Pediatrics warned that this policy could cause "irreparable harm" for children who were separated from their parents.

- **(OPA)** Did anyone within the Department of Homeland Security (DHS) raise concerns to you regarding the policy's potential harm to children?
- **(OPA)** During a hearing last December, I asked CBP Commissioner McAleenan if he had any regrets about the implementation of the family separation policy. Do you have any such regrets?

Last December, I sent a letter with 12 other Senators expressing concern over the Administration's decision to reinterpret the 2008 U.S.-Vietnam repatriation agreement in order to facilitate the deportation of Vietnamese immigrants. Many of these Vietnamese immigrants, like other immigrants from South Asian countries, have lived in my state of Minnesota for years.

- **(ERO/OPLA)** What are the Administration's justifications for reversing the agreement?

A report by the DHS's Office of Inspector General released in January found that ICE failed to hold contractors accountable for maintaining safe detention facilities. The report found that in over 14,000 instances where contractors failed to adhere to contract requirements, ICE only fined the contractor twice. Instead, ICE routinely issued waivers to exempt facilities from complying with certain standards, including in instances where there was a risk to the safety of people in detention.

- **(OAQ)** What process is in place for ICE to evaluate contractor deficiencies, and how does ICE decide whether to impose a fine or issue a waiver in a particular case?

Comment [A]: OAQ

AMERICAN OVERSIGHT

Written Questions for Ron Vitiello
Submitted by Senator Patrick Leahy
March 27, 2019

At your hearing before the Senate Homeland Security and Government Affairs Committee (HSGAC), you apologized for a tweet in which you called the Democratic Party the "NeoKlanist Party." I am glad you apologized. You also testified that you did not remember the "context" or "premise" of the tweet.

1. **(OPA) Now that you've had time to reflect upon your tweet, can you explain in writing the context or premise that prompted it?**

The National ICE Council, which represents almost 8,000 employees of ICE, wrote a letter to HSGAC opposing your nomination to serve as the Director of ICE.[1] This is the first time in its history the Council has "officially opposed the nomination of a presidentially-appointed federal official." In its letter, the Council makes a number of serious allegations

1. **(OPA) Have you addressed the allegations made by the National ICE Council in any way? If not, why not?**

2. **(OPA) If you have provided written responses to HSGAC regarding the allegations in the National ICE Council's letter, would you provide this Committee with a copy?**

3. **(OPA) Have you been in contact with leadership at the National ICE Council following the publication of their letter opposing your nomination? If not, why not?**

During your testimony before the HSGAC and in various television interviews, you have repeatedly argued that prosecuting illegal entry will result in lower levels of illegal entry. In June 2018, you stated: "we know that when people have a consequence for illegal activity, they do less of it." But during the period in which the "zero tolerance" prosecution policy was in effect – systematically separating thousands of children from their families – reports confirmed that illegal crossings did not appreciably decrease.

1. **(OPA) Can you provide the Committee with data supporting your view that the aggressive prosecution of illegal entry leads to a decrease in levels of illegal entry?**

[1] http://cdn.cnn.com/cnn/2019/images/02/13/national.ice.council.letter.to.hsgac.re.vitiello.opposition.feb.12.2019.pdf

AMERICAN OVERSIGHT
DHS-19-0195-H, 19-0494-G, 19-0495-F-000069

The enacted FY 19 Homeland Security appropriations act provides ICE with funding to maintain an average daily population of approximately 45,000 detainees, with the expectation of bringing down the detention population to 40,520 by the end of this fiscal year. But ICE's detention capacity is going in the other direction – up – ballooning from roughly 49,000 at the time the FY 19 appropriations package was enacted to 50,074 individuals as of March 13, 2019.

1. **(ERO/OPA) If confirmed to serve as Director of ICE, what is your plan to bring ICE's detention capacity levels down to 40,520 by the end of this fiscal year as expected by Congress? Please provide a detailed, month-by-month roadmap explaining how you would go about bringing ICE detention levels to 40,520 by the end of FY 2019?**

Given the Trump Administration's directive to apprehend immigrants without regard to a history of criminal convictions, an increasing number of immigrants who pose no public safety risk are being targeted by ICE's enforcement operations. In the final month of the Obama administration, just under 18 percent of immigrants apprehended by ICE had no prior criminal convictions. In December 2018, the percentage of non-criminal immigrants apprehended by ICE had spiked to roughly 36.5 percent.[2] I have heard from numerous state and local law enforcement officers and judges concerned that immigrant communities are now more afraid to cooperate with and provide information to authorities about a whole range of crimes, including domestic violence and human trafficking.[3]

1. **(ERO/OPA) Do you believe that ICE's increased enforcement actions against non-criminal immigrants under the Trump administration are in any way negatively impacting the cooperation of immigrant communities with state and local law enforcement authorities? If not, can you provide any kind of data, reporting, or surveys from law enforcement authorities supporting your view?**

Senate Report 115-283, whose provisions were incorporated into the enacted FY 2019 Homeland Security appropriations act, includes report language directing the Department of Homeland Security to maintain records and respond to record requests in compliance with the Freedom of Information Act regarding detainees who are housed in non-federal, private detention facilities. Those private detention facilities fall under the jurisdiction of ICE.

[2] https://www.usatoday.com/story/news/politics/2019/03/21/ice-sets-record-arrests-undocumented-immigrants-no-criminal-record/3232476002/
[3] https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf

AMERICAN OVERSIGHT

1. **(OPA) To your knowledge, has ICE promulgated any memoranda or guidance to non-federal, private detention facilities instructing them to maintain records and respond to records requests in compliance with the Freedom of Information Act? If so, can you please provide us with copies of any such memoranda or guidance?**

2. **(CFO/IGP) If such documents do not exist, can you explain how you would ensure compliance with this enacted report language if confirmed as Director of ICE?**

(b)(5)

The enacted FY 2019 Homeland Security appropriations act prohibits ICE from removing, detaining, or initiating removal proceedings against sponsors or potential sponsors of unaccompanied children based on information received from the Department of Health and Human Services about those individuals.

1. **(OPP/ERO) What procedures has ICE put in place to ensure its compliance with this particular prohibition in the FY 2019 spending bill? Can you provide the Committee with any memoranda or guidance provided to ICE officers and agents educating them about this particular prohibition in the law?**

(b)(5)

2. **(OPP/ERO) If such memoranda and guidance documents do not yet exist, what will you do if confirmed as Director of ICE to disseminate any such documents widely within ICE to ensure compliance with the law?**

(b)(5)

Recent reports exposed an operation across multiple agencies in the U.S. government to surveil, enhance security screenings on, and interrupt the travel of U.S. citizen journalists and lawyers who worked among migrants arriving at our southern border. Punitive actions taken by U.S. Customs and Border Protection against at least 59 targeted individuals – identified in a database called "San Diego Sector Foreign Operations Branch: Migrant Caravan FY-2019, Suspected Organizers, Coordinators, Instigators and Media." – raise a number of legal and constitutional concerns.

1. **(HSI) To your knowledge, what role, if any, did ICE play in developing, implementing, or overseeing this legally suspect this surveillance program?**

AMERICAN OVERSIGHT

Nomination of Ronald Vitiello
to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security

Questions for the Record
Submitted March 27, 2019

QUESTIONS FROM SENATOR WHITEHOUSE

1. The ICE sensitive locations policies, which remain in effect, provide that enforcement actions at sensitive locations should generally be avoided, and require either prior approval from an appropriate supervisory official or exigent circumstances necessitating immediate action. Presently, the agency policy is to obtain prior approval for planned enforcement action at a sensitive location.
    a. (OPA) Will you commit to complying with the ICE sensitive locations policies?
    b. (OPA) What will you do to ensure that the approval process is adhered to?
    c. (OPA) Reports of enforcement actions taking place near schools, churches, hospitals, and other locations call into question whether the policies are being consistently enforced. How should ICE decide when enforcement actions will take place at a sensitive location and what factors are considered in this decision making process?
    d. (OPA) Do you feel as though current ICE enforcement action is consistent with these factors?

2. Presently, sensitive location policies do not extend protections to other locations that are critical to the safety and security of immigrants, including courthouses. To some, this lack of protection undermines public safety and is a source of frustration for judges, advocates, and community members alike.
    a. (OPA) Do you feel that the policies surrounding sensitive locations should be expanded to include courthouses?
    b. (OPA) If you believe the current policies in place provide sufficient protection, please explain why.

3. The lack of clarity in sensitive locations policy has led to confusion about how close immigration agents can be to a sensitive location before it constitutes a violation. For instance, in 2018, a 19-year-old immigrant was arrested at a bus stop directly outside of a Portland hospital. ICE agents watched him leave the hospital and walk to the bus stop at the hospital's entrance, where they apprehended and arrested him. Sensitive location policies are intended to bolster immigrants' ability to carry out activities that are essential to their health and safety.
    a. (OPA) What clarity can you provide to these policies and what methods of reform would you propose to ensure that the policies are uniformly enforced in light of their essential purpose?

AMERICAN OVERSIGHT

4. (OPA) Concerns have been raised regarding the lasting impact of family separation on the well- being of children. What have you done or will you do to address these concerns?

5. (OPA and OPLA) Recently, the Supreme Court addressed a challenge to an interpretation of a detention provision of the Immigration and Nationality Act that would allow ICE officials to detain an unauthorized immigrant indefinitely once they are taken into criminal custody, even if they were released months ago, without the opportunity for a bond hearing. With this legal question now resolved in ICE's favor, will you continue this practice of indefinite detentions? Do you believe this is good public policy, and why?

6. (ERO) Family detention policies have been criticized as costly practices that undermine more humane and less traumatic methods that ensure adequate due process for detainees. What alternatives to detention have you or would you consider?

7. In a June 2018 interview, you said about the deterrent effect of the family separation policy, "We know that when people have a consequence for illegal activity, they do less of it. And that's what we're trying to accomplish here"
   a. (OPA) Do you still believe that family separation functions as a deterrent?
   b. (OPA) If so, is this belief based on scientific studies or research on the deterrent effects of punishment? If so, please cite them.
   c. (OPA) Do you believe that any deterrent effect of the family separation policy outweighs the harms it causes to migrant families and children?

8. As you know, the National Immigration and Customs Enforcement Council of the American Federation of Government Employees wrote a letter to Senators Johnson and Peters opposing your nomination.
   a. (OHC) What contacts have you had with the union after their letter about your nomination was published? Please detail the contents of those communications and who was involved.
   b. (OHC) Have you made any commitments to the union after or before the letter was sent? Please specify.
   c. (OHC) What role will the union have in ICE policymaking under your leadership?

(b)(5)

9. In the letter opposing your nomination, the ICE Union wrote that you "continue the practice of whistleblower retaliation."
   a. (OPA) What is ICE's official policy towards whistleblowers?
   b. (OPA) Do you believe that whistleblowers play an important role in exposing misconduct?

Comment [A]: OHC

AMERICAN OVERSIGHT

c. (OPA) If confirmed, what steps will you take to ensure whistleblowers are able to come forward to raise concerns without fear of retribution?
d. (OPA) Have you ever retaliated against a whistleblower?

AMERICAN OVERSIGHT

10. Documents leaked to NBC 7 in San Diego show that that the U.S. government, including CBP, targeted journalists and activists for scrutiny at the border and created a secret database containing their personal details, social media information, and descriptions of their migrant-related work.
    a. (OPA) Did you have knowledge of this or any other database tracking journalists? Please specify.
    b. (OPA) Have you ever assisted in the creation of a database to track journalists based on their writing and reporting?
    c. (OPA) While at CBP or ICE, have you ever instructed agents to increase screenings on journalists, attorneys or immigration advocates crossing the border?
    d. (OPA) If confirmed, how will you ensure that ICE respects the role of the free press?

11. In a July 2018 article, The New York Times reported that ICE has reported 1,310 claims of sexual abuse against detainees from fiscal years 2013 to 2017. Watchdog organizations estimate the occurrence of sexual abuse to be significantly higher.
    a. (OPA) How will you ensure that ICE law enforcement agents will not abuse detainees?
    b. (OPA) During your time as a CBP and ICE official, what policies have you put in place to ensure claims of abuse, both sexual and nonsexual, are thoroughly investigated?
    c. (OPA) What disciplinary actions have you taken against officers found to have committed abuses? Please specify.

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?

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 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?

AMERICAN OVERSIGHT

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?

14. In January 2019, the DHS Inspector General issued a report finding that, "Instead of holding [detention] facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards." Since this report was issued, the Appropriations Committee included language in its FY19 report requiring that the ICE Director personally sign off on any waivers of contract requirements for immigration detention.
    a. (OPR and ERO) What steps have you taken to remedy the issues raised by the DHS Inspector General report?
    b. (OPA) If confirmed, how will you ensure that facilities comply with ICE detention standards?
    c. (OPR and ERO) How many waivers of contract requirements have been requested of you since the Appropriations Committee report was issued, and how many have you approved?
    d. (OPR and ERO) What was the nature of the waivers approved and the nature of the waivers denied?
    e. (OPA) Will you commit to maintaining or strengthening standards for immigration detention?

15. In 2016, the Homeland Security Advisory Council documented alarming deficiencies in the inspections and monitoring processes governing the immigration detention system. The majority of the council voted to recommend a "measured but deliberate shift away" from the use of private prisons for immigration detention
    a. (OPA) Do you believe that private prisons are appropriate for immigration detention?
    b. (OPA) If the agency does not intend to reduce its reliance on contracts with private prison companies, as recommended by the HSAC in 2016, please articulate the evidence supporting a decision to reject the recommendations of the Council.

AMERICAN OVERSIGHT

(b)(5)

United States Senate Judiciary Committee
Questions for the Record for Ron Vitiello
Nominated to be the Director of Immigration and Customs Enforcement
March 20, 2019

QUESTIONS FROM SENATOR BLUMENTHAL

I am concerned about your judgment. In 2015, you tweeted from your personal account that the Democratic Party should be renamed the "NeoKlanist party."

1. (OPA) **The National ICE Council stated that this sort of behavior could result in a rank and file employee being fired. Do you agree with this statement?**
2. (OPA) **If an ICE employee had engaged in this sort of behavior, what discipline would you suggest for them?**
3. (OPA) **If you are promoted after engaging in this sort of inappropriate behavior, how will you have any credibility as you attempt to lead ICE?**

The Obama Administration prioritized enforcement actions against recent arrivals and those with serious criminal convictions. It is unclear whether the Trump Administration has employed immigration enforcement priorities thus far.

1. (OPA) **What, if any, immigration enforcement priorities do you believe ICE should have?**
2. (OPA) **Do you believe ICE should be performing raids on people's homes or workplaces? If so, will you take into account not wanting to separate families or parents from children during raids?**
3. (OPA) **Do you believe in detaining asylum seekers and families? If so, what is your justification for the detention of asylum seekers and/or families?**

According to news reports, in a July 2017 memo, Jonathan White, the former deputy director of the Office of Refugee Resettlement (ORR), described how efforts made by ICE to target or detain the sponsors of unaccompanied children will likely lead to "significant increases in length of stay and a decline in the discharge rate." In some cases, it appears that ICE used the information that ORR collected on sponsors in order to track those people down and initiate deportation proceedings.

1. (OPP and ERO) **Do you plan on continuing to use the data collected by ORR on potential sponsors in order to track and deport parents?**

(b)(5)

AMERICAN OVERSIGHT

2. (OPA) **Do you agree that ICE efforts to target or detain the sponsors of unaccompanied children currently in detention will lead to "significant increases in length of stay" for children?**
3. (OPA) **Are you aware of all of the physical, emotional, and psychological effects that stays in detention facilities can have on children?**
4. (OPA) **Are you aware that prolonged stays in detention facilities for children can exacerbate the effects mentioned above?**

You served in leadership positions at Customs and Border Patrol (CBP) and ICE during both the lead up to, and the implementation of, President Trump's zero-tolerance family separation policy.

1. (OPA) **What effort, if any, did you make to alert your superiors that the zero-tolerance policy was resulting in the separation of families?**
2. (OPA) **Do you agree with expert assessments that separating kids from their parents can inflict lifelong trauma and psychological harm?**
3. (OPA) **Do you believe that the zero-tolerance family separation policy was effective?**
4. (OPA) **What was the desired effect of this policy?**
5. (OPA) **Is there currently a process in place to reunite any families that are still separated? If so, what is that policy?**
6. (OPA) **Are you aware of any efforts by the administration to re-implement the family separation policy or implement another policy that would also have the effect of separating children from their parents?**

You reportedly stated that the zero-tolerance policy resulted in the separation of "only 2,500 people."

1. (OPA) **Do you believe that all families – including immigrant families – belong together?**
2. (OPA) **Your comment that "only 2,500 people" were affected indicates that you do not believe that is a lot of people. Do you believe that a family separation policy that affected 2,500 people is not a significant event?**
3. (OPLA) **In recent court filings, the government has stated that over 2,800 children were separated from their parents in the summer of 2018. In addition, the Department of Health and Human Services Office of the Inspector General has 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

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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 concerns me because ICE must conduct meaningful and detailed retrospective reviews of the death of anyone in its custody.

1. (OPR and ERO) **Do you have an explanation for the decrease in both the quality and length of the reports?**
2. (OPR and ERO) **Is ICE creating more fulsome reports that are not released to the public?**
3. (OPR and ERO) **A news report published on November 26, 2018 noted that an autopsy of Roxsana Hernández Rodriguez – a transgender woman who died in ICE custody –concluded that Ms. Hernández Rodriguez had likely suffered physical abuse, including blunt-force trauma "indicative of blows, and/or kicks," prior to her death. However, the death report for Ms. Hernández Rodriguez contains no mention of any physical abuse. Can you explain why this information was excluded from the report concerning her death?**

I am concerned by the lack of regulations or enforceable standards for private detention facilities. Detainees are a vulnerable population, and many of them are without legal representation to help ensure fair and humane treatment. Private detention facilities are particularly concerning because they are incentivized to do whatever they can to cut costs, increase the number of detainees, and maximize profits.

1. (ERO) **What has been done to mitigate the effects of perverse incentives?**
2. (ERO) **What does ICE do to ensure humane treatment in private facilities?**
3. (OPR) **When there are news reports detailing inhumane treatment in private detention facilities does ICE investigate those reports?**

AMERICAN OVERSIGHT

4. (ERO) **What are the consequences, if any, for failing to meet the Operations Manual ICE Performance-Based National Detention Standards?**
5. (ERO) **What standards is your office implementing when determining whether to grant a waiver of contractual obligations, as discussed in recent Department of Homeland Security Office of Inspector General reporting?**

Nomination of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, United States Department of Homeland Security
Questions for the Record
Submitted March 27, 2019

QUESTIONS FROM SENATOR COONS

1. You were the Acting Deputy Commissioner of Customs and Border Protection (CBP) when the Department of Justice implemented the zero tolerance immigration enforcement policy.
    a. (OPA) What was your involvement with the creation and implementation of the zero tolerance policy?
    b. (OPA) Prior to the implementation of the zero tolerance policy, did you understand that the policy would result in the separation of children from their parents?
    c. (OPA) Were you aware that family separations as a result of the zero tolerance policy could have health impacts on children?
    d. (OPA) Were you involved in any discussions with medical and mental health experts about the potential impacts of the zero tolerance policy on children?
    e. (OPA) Please describe your role in the preparation and planning process for keeping track of migrant children who would be separated from their parents.
    f. (OPA) Please describe your role in the preparation and planning process for reuniting children with their parents.
    g. (OPA) What was your involvement with President Trump's decision to end family separations?

2. On April 6, 2018, Attorney General Sessions announced a zero tolerance policy that resulted in CBP separating thousands of children from their families at the border before the President rescinded the policy on June 20, 2018, amidst a national outcry. According to a January 2019 report by the Office of Inspector General for the Department of Health and Human Services (HHS), "[t]housands of children may have been separated . . . beg[inning] in 2017."
    a. (OPA) At any point in 2017 or 2018, before the zero tolerance policy was rescinded, did you express concern to anyone at CBP, or the Department of Homeland Security (DHS) generally, about the impact of the zero tolerance policy?
    b. (OPA) Did anyone at CBP, or DHS generally, raise concerns to you about the impact of the zero tolerance policy? If so, did you share their concerns with anyone?

AMERICAN OVERSIGHT

3. In a June 14, 2018, interview on MSNBC about the zero tolerance policy, you were asked by Ali Velshi if you would change anything if you were in charge of policymaking. You responded that you would not change anything because "we need to send the message 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?
    c. (OPA) What steps have you taken to reduce the rising number of miscarriages experienced by detained women?

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?

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000082

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?

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?

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?
    b. (OPA) Have you ever attended any other events hosted by FAIR?
    c. (OPA) Are you aware of any other events hosted by hate groups that you have attended as Acting Director of ICE?
    d. (OPA) If confirmed, will you commit to determining whether any events you may be scheduled to attend during your tenure are hosted by hate groups and, if so, to not attend?

15. At the September 2018 FAIR event, you seemed to dismiss the severe harm caused by the family separations at the border by stating that "only 2,500 people were affected by that situation."
    a. (OPA) Do you agree that more than 2,500 family members were separated at the border?
    b. (OPA) Do you agree that the family separations caused significant harm for every family involved?

AMERICAN OVERSIGHT

c. (OPA) Do you agree that the family separations spread fear in immigrant communities and caused pain to individuals who were not directly affected?

16. Following your nomination, for the first time in its history, the National Immigration and Customs Enforcement Council of the American Federation of Government Employees took an official position of opposition to a presidentially appointed federal official.
    a. (OPA) If you are confirmed, what actions will you take to improve your relationship with the National ICE Council and its members?
    b. (OPA) The Council expressed concern that you do not possess "the highest caliber of leadership." What steps will you take to improve your leadership if you are confirmed?

17. In a February 12, 2019 letter opposing your nomination, the National ICE Council asserted that you "[p]rohibited [w]histleblowers from [g]oing to [w]ork." The Council stated that you "ordered that certain federal employees not be permitted to report to work and perform their official duties as federal employees."
    a. (OPA) Have you ever prohibited whistleblowers from going to work?
    b. (OPA) Since June 30, 2018, how many ICE whistleblowers have not been permitted to report to work?
    c. (OPA) How many ICE whistleblowers are currently not permitted to report to work?
    d. (OPA) If confirmed, what steps will you take to ensure that ICE whistleblowers do not face retaliation?

AMERICAN OVERSIGHT

Nomination of Ronald D. Vitiello
Assistant Secretary for Immigration and Customs Enforcement
U.S. Department of Homeland Security Questions for the Record Submitted March 27, 2019

QUESTIONS FROM SENAOR BOOKER

1. On November 2, 2015, in response to a tweet from Mark Levin asking for alternative names for the Democratic Party, you published a tweet that said, "@marklevinshow the liberalcratic party or the NeoKlanist Party."[1] When you testified before the Senate Homeland Security and Governmental Affairs Committee you said the following about the tweet:

> It was a mistake. I was trying to make a joke. I thought it was a direct message. I wasn't familiar with how the platform worked, as it related to that. I did not mean to suggest that the party is somehow against American values or – and I deeply regret that I did it. It was a momentary lapse of judgement and I apologize.[2]

   a. (OPA) You characterized this tweet as a momentary lapse in judgment. How can you assure members of the Senate that you will not have similar momentary lapses in judgment as Director of U.S. Immigration and Customs Enforcement (ICE)?
   b. (OPA) You also characterized the tweet as a joke. In that moment, why did you think it was funny to compare a major American political party to the KKK?
   c. (OPA) Can you please explain the link between the Democratic Party and the KKK that you believe made your "joke" make sense?

2. During your nominations hearing before the Senate Homeland Security and Governmental Affairs Committee, Senator Peters asked you several questions about an appearance you made at an event hosted by Federation for American Immigration Reform (FAIR).[3] He made you aware of the fact that the Southern Poverty Law Center

[1] Kate Prengel, *Trump's Pick to Lead ICE Once Compared Him to Dennis the Menace*, HEAVY (Nov. 28, 2019), https://heavy.com/news/2018/11/trumps-ice-dennis-the-menace-vitiello/.
[2] *Nominations of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security, and Richard S. Tischner, Jr., to be Director of the Court Services and Offender Supervision Agency for the District of Columbia*, Before the S. Comm. on Homeland Sec. and Governmental Affairs, 115th Cong. (2018) (statement of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec.), *available at* http://www.cq.com/doc/congressionaltranscripts- 5417398?1.
[3] *Id.*

AMERICAN OVERSIGHT

(SPLC) classified Fair as a hate group.[4] When Senator Peters asked you if you know about that classification you said, "I did not know that."[5]

a. (OPA) Since your hearing on November 15, 2018, have you had a chance to review the SPLC's explanation of FAIR and why it designates it as a hate group? If not, why?
b. (OPA) Do you believe it is appropriate for government officials to associate themselves with organizations that are classified as a hate group?

3. FAIR was founded in 1979 by John Tanton who has made numerous controversial anti- immigrant statements.[6] He once said, "As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion."[7] He also said, "I've come to the point of view that for European-American society and culture to persist requires a European-American majority, and a clear one at that."

a. (OPA) What is your reaction to these quotes?
b. (OPA) Do you believe these quotes represent the best of American values?
c. (OPA) How would you respond to someone who is concerned about your ability to lead one of the nation's most important law enforcement agencies given your association with a racist and anti-immigrant organization?

4. In 1997, Dan Stein, the President of FAIR, said in an interview, "Immigrants don't come all church-loving, freedom-loving, God-fearing . . . . Many of them hate America, hate everything that the United States stands for. Talk to some of these Central Americans."[8] You are nominated to be the Director of ICE at a time when thousands of Central American migrants are coming to the United States to seek asylum because of horrible violence and poverty in their home countries.

a. (OPA) What is your reaction to Dan Stein's statement?

b. (OPA) What kind of message do you think this statement sends to Central American migrants that the individual nominated to be the Director of ICE participated in an event hosted by an organization whose president makes such troubling remarks?

c. (OPA) Are you willing to publically repudiate these types of baseless, divisive and hateful characterizations of immigrants?

[4] *See* Southern Poverty Law Center, Federation for American Immigration Reform (last visited Mar. 22, 2019), https://www.splcenter.org/fighting-hate/extremist-files/group/federation-american-immigration-reform.
[5] *Id.*
[6] *Id.*

AMERICAN OVERSIGHT

[7] *Id.*
[8] *Id.*

5. In 2019, the Department of Homeland Security Office of Inspector General issued a report on ICE detention and wrote, "Although ICE employs a multilayered system to manage and oversee detention contracts, ICE does not adequately hold detention facility contractors accountable for not meeting performance standards."[9] The report went on to say, "Instead of holding facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards."[10]

    a. (OPA) What is your plan to hold detention facility contractors accountable and ensure that these operators meeting either the National Detention Standards, 2008 Performance-Based National Detention Standards, or 2011 Performance-Based National Detention Standards?
    b. (OPA) Do you commit to penalizing facility contractors who are not in compliance with performance standards and not use waivers?
    c. (OPA) Do you plan to review the existing detention standards and propose adopting the American Bar Association's Civil Immigration Detention Standards? If not, please explain why.

6. Over the past few years, ICE has demonstrated a troubling lack of fiscal discipline. For instance, in FY 2018, the Department of Homeland Security reprogrammed $200 million to ICE from other agency accounts to cover the costs of immigrant detention and removal.[11] This reprogramming included $10 million from the Federal Emergency Management Agency when the federal government was trying to respond to hurricanes and forest fires that were destroying communities all over the United States.[12] In fact, Congress has expressed repeated alarm regarding this overspending and wrote in a 2019 report accompanying the Department of Homeland Security Appropriations Act 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?

Comment [A]: OCFO

[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-

AMERICAN OVERSIGHT

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?

Comment [A]: OCFO

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. (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-

AMERICAN OVERSIGHT

inhumane- detention-policies-pregnant-women.
[17] *Nominations*, *supra* note 2.
[18] *Id.*
[19] *Id.*
[20] *Id.*
[21] *Id.*

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: 31 Mar 2019 16:05:15 +0000
To: (b)(6); (b)(7)(C)
Subject: FW: SJC QFRs -- ERO Submission
Attachments: SJC questions ERO MASTER COPY JDS (CK) (OPLA 3.31.2019).docx

I just skimmed. You good to incorporate?

From: Loiacono, Adam V
Sent: Sunday, March 31, 2019 11:09 AM
To: Kelly, Christopher S <(b)(6); (b)(7)(C)>; Davis, Mike P <(b)(6); (b)(7)(C)>
Cc: (b)(6); (b)(7)(C) <(b)(6); (b)(7)(C)>; Seguin, Debbie <(b)(6); (b)(7)(C)>; Loiacono, Adam V <(b)(6); (b)(7)(C)>
Subject: RE: SJC QFRs -- ERO Submission

Debbie-

OPLA reviewed the comments addressed to it and inserted information where requested. A few of the edits/comments were anonymized, but when we noticed the formatting, we changed it so you could see our edits/comments. Please note that in light of the time available, we were unable to perform a scrub of the entire document for consistency in language, use of acronyms, etc. That will need to be done at the end. Of course, we stand ready for another round of review tomorrow if necessary.

Please let me know if you have any questions.

Thanks,

Adam V. Loiacono
Deputy Principal Legal Advisor for Enforcement and Litigation
Office of the Principal Legal Advisor
U.S. Immigration and Customs Enforcement
Desk: 202-732-(b)(6);
Iphone: 202-500-(b)(6);
(b)(6); (b)(7)(C)

--- ATTORNEY/CLIENT PRIVILEGE --- ATTORNEY WORK PRODUCT ---
This communication and any attachments may contain confidential and/or sensitive attorney/client privileged information or attorney work product and/or law enforcement sensitive information. It is not for release, review, retransmission, dissemination, or use by anyone other than the intended recipient. Please notify the sender if this email has been misdirected and immediately destroy all originals and copies. Furthermore do not print, copy, re-transmit, disseminate, or otherwise use this information. Any disclosure of this communication or its attachments must be approved by the Office of the Principal Legal Advisor, U.S. Immigration and Customs Enforcement. This document is for INTERNAL GOVERNMENT USE ONLY and may be exempt from disclosure under the Freedom of Information Act, 5 U.S.C. §§ 552(b)(5), (b)(7).

From: Kelly, Christopher S
Sent: Saturday, March 30, 2019 5:50 PM
To: Davis, Mike P <(b)(6); (b)(7)(C)>; Loiacono, Adam V <(b)(6); (b)(7)(C)>
Cc: (b)(6); (b)(7)(C); Seguin, Debbie <(b)(6); (b)(7)(C)>
Subject: RE: SJC QFRs -- ERO Submission

AMERICAN OVERSIGHT

Mike:

Correct attachment attached. Sorry. There are too many docs flying around.

From: Kelly, Christopher S
Sent: Saturday, March 30, 2019 5:11 PM
To: Davis, Mike P <(b)(6); (b)(7)(C); Loiacono, Adam V <(b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C); Seguin, Debbie
<(b)(6); (b)(7)(C)
Subject: RE: SJC QFRs -- ERO Submission

I'll defer to (b)(6); on the current timeline. I think they are passing them in two sets to AD1.

From: Davis, Mike P
Sent: Saturday, March 30, 2019 5:09 PM
To: Kelly, Christopher S <(b)(6); (b)(7)(C)>; Loiacono, Adam V
<(b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C) <(b)(6); (b)(7)(C); Seguin, Debbie
<(b)(6); (b)(7)(C)
Subject: RE: SJC QFRs -- ERO Submission

We'll take a look. Can you remind me of the timeframes we're working under here?

_____

Michael P. Davis
Executive Deputy Principal Legal Advisor
U.S. Immigration and Customs Enforcement
202.732.(b)(6); (office) | 202.904.(b)(6); (mobile)
(b)(6); (b)(7)(C)

Please note that this message may contain sensitive and/or legally privileged information (attorney work product, attorney-client communication, deliberative process, personally identifiable information, law enforcement sensitive, etc.) and should be handled accordingly.

From: Kelly, Christopher S (b)(6); (b)(7)(C)
Date: Saturday, Mar 30, 2019, 5:05 PM
To: Loiacono, Adam V <(b)(6); (b)(7)(C)>, Davis, Mike P <(b)(6); (b)(7)(C)
Cc: (b)(6); (b)(7)(C), Seguin, Debbie <(b)(6); (b)(7)(C)
Subject: RE: SJC QFRs -- ERO Submission

Mike, Adam:

Attached are ERO's responses to the QFR set. There are some that are flagged for OPLA to review. Can you all please review? They pretty much are in E&L's purview.

AMERICAN OVERSIGHT

Thanks in advance.

-Chris

From: Simon, Joseph D
Sent: Saturday, March 30, 2019 1:28 PM
To: Kelly, Christopher S (b)(6); (b)(7)(C)
(b)(6); (b)(7)(C)
Cc: Seguin, Debbie < (b)(6); (b)(7)(C)
Subject: SJC QFRs -- ERO Submission
Importance: High

Good afternoon – please see attached.

We provided responses for many of the questions marked for OPA. I flagged a few things for OD review which are identified in comments. There are three questions that I have retasked – two related to CA databases and one medical. I will follow up on those ASAP.

I will be available for any questions you may have. Thanks

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?**

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:

   > 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.
   > And so when the Justice Department stepped up and said that they would do more prosecutions. We put instructions in place to take advantage of that.

   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 confirmed, how would you avoid repeating the errors in judgment in planning that allow the family separation policy to occur?" You responded:

AMERICAN OVERSIGHT

So it wasn't a family separation policy. It was an increased level of prosecution. Right? The Department of Justice said, we -- they would involve resources to give us a zero tolerance for people who crossed the border in between the ports illegally. And so, the lesson learned there is, we did spend a lot of time in this setting urging Congress to close these loopholes, to give us an opportunity to let people have their due process rights and then removed when they were eligible for relief under the INA. So we'd like to have that opportunity. But in the case of what did happen, we should've been more – we should have leaned forward more on explaining the whole process and being ready for the public outcry that occurred.

It seems from your response that the lesson the Trump Administration learned from this debacle of the Administration's own creation was to explain the Administration's policy more clearly. Were any lessons learned about whether the policy of separating families was just and effective?

7. **(OPA)** President Trump's previous nominee to head ICE, Thomas Homan, made a series of inflammatory and inaccurate statements, including one which led to the resignation of an ICE spokesman who said he "didn't want to perpetuate misleading facts." For example, Mr. Homan:

   - Reportedly referred to undocumented immigrants by the derogatory term "tonks";
   - Called for the criminal prosecution of elected officials who represent jurisdictions that limit their involvement in immigration enforcement;
   - Compared the Mayor of Oakland, California to a "gang lookout"; and
   - Falsely suggested that an undocumented immigrant was responsible for wildfires in Sonoma County and that therefore California state law limiting involvement with immigration enforcement was to blame for the wildfires.

   a. (OPA) What is your reaction to these remarks?

   b. (OPA) If you are confirmed, how would your leadership of ICE be different than Mr. Homan's?

   c. (OPA) Have you ever used the term "tonk" or any other derogatory term to refer to immigrants or minorities? If so, please explain.

8. **(OPA/OPP)** In your response to written questions submitted following a May 23, 2017 Senate Judiciary Immigration Subcommittee hearing titled "Building America's Trust Through Border Security: Progress on the Southern Border," you appeared to credit the Trump Administration's immigration enforcement policies for the decline in border apprehensions in FY 2017. Responding to a question from Senator Grassley, who asked, "Do you agree that President

AMERICAN OVERSIGHT

Trump's return to normal enforcement policies is a major reason for the decrease in border apprehensions and illegal entry to the United States?" you stated:

> Since the inauguration and issuance of Presidential Executive Orders regarding immigration policies, the U.S. Border Patrol has encountered a significant decrease in the flow of illegal aliens migrating to the US. Interviews have indicated migrants are hesitant to come to the U.S. due to increased removals, perceived enhancements to border security (e.g. border wall, increased man-power, etc.), and changes to immigration policies that do not permit them remain in the U.S. if apprehended.

Senator Grassley also asked you to explain what authorities CBP has under current law "to secure the border and enforce our immigration laws," to which you responded: "CBP has broad authority to secure the border and enforce the nation's immigration laws, as well as many other laws on behalf of numerous federal agencies at the border."

Senator Grassley went on to ask, "Is any new legislation necessary to help your agency better enforce the law, or is this really just a matter of resources?" You responded by praising two House bills from last Congress, *Kate's Law* and *No Sanctuary for Criminals Act*. You added that CBP supports legislation giving the agency the flexibility to waive the polygraph exam for certain individuals.

You did not mention the *Flores* Settlement Agreement, a longstanding agreement in place to protect immigrant children. Yet according to a recent news report (available at https://www.washingtonexaminer.com/news/ice-chief-congress-could-end-unmitigated-crisis-on-border-with-one-legal-tweak) you are now saying that because of *Flores*, "the U.S. immigration system is bound to collapse as a result of the record-high levels of unaccompanied children and families arriving at the southwest border since October" and that, "There's an absolutely unmitigated crisis going on at the southwest border."

You credited the Trump Administration's immigration policies for a decreased flow of northbound illegal immigration in FY 2017. Doesn't the Trump Administration also bear responsibility for the situation at the Southern border now, which you have characterized as an unmitigated crisis?

9. **(ERO) Do you support an increase in funding and deployment of ICE's Alternatives to Detention program?**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

10. **(ERO) Do you agree that Alternatives to Detention are more cost-effective for the taxpayer than family detention facilities?**

(b)(5)

11.

a. **(ERO) Will you commit to requiring that the 2011 Performance-Based National Detention Standards (PBNDS 2011) be expeditiously implemented at all ICE detention facilities, including contract facilities?**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

b. (ERO) Will you commit to requiring that any new ICE detention facility contract approved during your leadership will require compliance with PBNDS 2011?

(b)(5)

12. **(OPA) Has the polygraph exam requirement for Customs and Border Protection law enforcement positions elicited admissions of serious criminal conduct by certain job candidates?**

13. ICE's website for job applicants (https://www.ice.gov/careers/faqs) states that ICE conducts pre-employment polygraph screenings for law enforcement positions.

    a. (OPP) When did this policy begin?

    b. (OPR/OPP) Does ICE use the Test for Espionage, Sabotage, and Corruption (TES-C), the standard Law Enforcement Pre-employment Test (LEPET) test, or a different polygraph examination?

    c. (OPR/OPP) Does ICE perform a pre-employment polygraph screening for all applicants for law enforcement positions or are there exceptions to this requirement?

    d. (OPR) How many such exams has ICE conducted and what is the passage rate for exams conducted at ICE since the policy began?

14. In 2016, the Homeland Security Advisory Council's CBP Integrity Advisory Panel noted that "integrity could be enhanced further by periodic random and targeted polygraph examinations on a post-hire basis of CBP law enforcement personnel."

    a. (OPA/OPR/OPP) Do you agree with this recommendation?

    b. (OPA/OPR/OPP) Could post-hire polygraph testing enhance integrity at ICE?

15. At your November 15, 2018 confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, you stated: "I also appreciate the Committee's important oversight role, and I am committed to ensuring that our agency remains accountable to Congress and the taxpayers."

AMERICAN OVERSIGHT

a. **(OPA) Do you commit that, if you are confirmed, under your leadership ICE will expeditiously and thoroughly respond to requests for information from all Members of the Senate Judiciary Committee, regardless of their party affiliation?**

b. **(OPA) What steps have you taken, and do you plan to take, to enhance ICE's accountability to Congress and the American people?**

16.

a. **(ERO/OPLA) Please explain, with specific examples, how you have directed the use of prosecutorial discretion in deploying ICE detention and removal resources.**

(b)(5)

17. **(ERO/OPA) Do you believe there are circumstances where it is appropriate for ICE to grant a stay of removal to an undocumented immigrant who is removable under the law? Have you ever ordered or approved the granting of such a stay of removal?**

(b)(5)

18. **(OPA) During his confirmation hearing, USCIS Director Francis Cissna committed to maintaining the existing Deferred Action for Childhood Arrivals (DACA) guidelines and to ensuring that individuals only lose DACA if they have violated the terms of DACA. Will you make the same commitment?**

19. **(ERO)** At your November 15, 2018 confirmation hearing, Senator Hassan asked you whether you "accept findings of pediatricians in the United States of America that detaining children provides long-term psychological harm to those children, yes or no?" You did not answer the question directly. You stated, "I understand the report. Yes." **Please answer this question directly.**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

20. **(OPA/ERO)** ICE official Matthew Albence characterized ICE's family detention facilities as being "more like a summer camp" at a Judiciary Committee hearing last year. **Do you agree with this characterization?**

(b)(5)

[1] "Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities." June 2, 2017. https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf?utm_source=E-mail+Updates&utm_campaign=e1d1c3e779-EMAIL_CAMPAIGN_2017_06_16&utm_medium=email&utm_term=0_7dc4c5d977-e1d1c3e779-45096257

AMERICAN OVERSIGHT

(b)(5)

21. At your November 15, 2018 confirmation hearing, in response to a question from Senator Peters about whether there is an upper limit to how long a child should be detained in your view, you responded: "Well the law gives us upper limits. What we're -- in this discussion, what is -- what we're trying to seek is full opportunity in the due process and that requirement. And then when it -- if they're not subject to relief, then they're held only long enough to remove them."

(OPA) Please explain, legal restrictions aside, whether you believe there is an upper limit to how long a child should be held in immigration detention, and, if so, what this upper limit is?

(b)(5)

22. On May 5, 2017, ICE reversed a decades-long bipartisan policy of issuing stays of removal for beneficiaries of private immigration bills when the Chairman of the Senate Immigration Subcommittee requests a report on the beneficiary. This action was taken without consulting Congress. As a result of ICE's decision, private bill beneficiaries are now subject to deportation even though legislation to provide for their relief is pending in Congress.

(OCR) Will you commit to working with the Chairmen and Ranking Members of the Senate Judiciary Committee and Immigration Subcommittee to reevaluate ICE's May 5, 2017 policy change?

[2] Ibid.

AMERICAN OVERSIGHT

(b)(5)

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?**

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

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

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.

(b)(5)

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.

2. On November 15, 2018, you testified before HSGAC that when you implemented the Trump administration's zero tolerance policy as Acting Deputy Commissioner of Customs and Border Protection (CBP), the resulting family separations "were never intended to be permanent." However, you also testified that CBP "never contemplated having the systems work backward" to reunify families, because "the reunification piece is a function of HHS." Furthermore, the Inspector General for DHS concluded in September 2018 that there was "no evidence" of any central database to track and reunify parents and children who were separated as part of the zero tolerance policy.

a. (OPA) With no central database to track and reunify separated families, how did you intend to avoid permanent or long-term family separations?

b. (OPA) Now that it's clear this did not work, what is being done as new families arrive? Is there a database in place? If not, why not?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

c. **(OPA) How did you believe HHS would be able to "work backward" to reunify separated families, if CBP failed to develop a process for notify HHS which children were separated at the border and which children arrived unaccompanied? What is being done to address this problem for those already separated? What is being done for those separated going forward?**

(b)(5)

3. On March 13, a complaint filed with the Department of Homeland Security's Office of Civil Rights and Civil Liberties stated that Immigration and Customs Enforcement (ICE) kept several children at the Karnes County Detention Center for 40 days or longer. (*See* Letter to Ms. Cameron Quinn and Mr. John V. Kelly from Refugee and Immigrant Center for Education and Legal Services (Mar. 13, 2019)) As you know, the Karnes facility houses children along with their fathers.

AMERICAN OVERSIGHT

The group of families represented in the complaint includes a six-year-old boy who was detained with his father for 41 days, from January through March, before being separated from his father and moved to a children's shelter. This boy was allegedly detained for more than two times the 20-day detention period authorized in the Flores settlement agreement.

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)(5)

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.

(b)(5)

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

(b)(5)

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.

AMERICAN OVERSIGHT

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

(b)(5)

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?

(b)(5)

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?

(b)(5)

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

AMERICAN OVERSIGHT

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)(5)

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?

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

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)

AMERICAN OVERSIGHT

(b)(5)

(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)

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))

AMERICAN OVERSIGHT

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)(5)

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?

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

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.

   Response: Please see attached.

   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?

   (b)(5)

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

   (b)(5)

   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?

   (b)(5)

AMERICAN OVERSIGHT

iv. **(ERO) On average, how long does it take a detainee at Adelanto to receive medication after a doctor prescribes it?**

(b)(5)

v. **(ERO) On average, how long do detainees have to wait after arriving at Adelanto to see a dentist?**

(b)(5)

vi. **(ERO) How many hours per day do detainees at Adelanto spend locked in a cell?**

(b)(5)

vii. **(ERO) How many hours do detainees at Adelanto spend in indoor common areas?**

(b)(5)

viii. **(ERO) How many hours do detainees at Adelanto spend outside?**

(b)(5)

c. **(ERO) What are the policies at Adelanto and other ICE detention facilities to ensure that detainees are able to access correspondence, books, and other materials that are sent to them?**

(b)(5)

d. **(ERO) Why are detainees at Adelanto ICE processing facility unable to access their passports, identification documents, or other documents from ICE in time to provide these important documents to the judge when they appear in court?**

AMERICAN OVERSIGHT

(b)(5)

e. **(ERO) How does ICE determine the price it charges for food and other goods at the commissary at Adelanto?**

(b)(5)

f. **(ERO) Will you commit to providing ICE detainees with access to their documents in advance of their hearings in immigration court or federal district court?**

(b)(5)

g. **(ERO) At what temperature are ICE detention cells kept?**

(b)(5)

h. **(ERO) Have any doctors reported to ICE or CBP officials that any detainees became ill, or that any detainees' existing symptoms worsened, because of the temperature settings within the facilities?**

(b)(5)

9. In December 2018, the Stanford Law School Immigrants' Rights Clinic and the ACLU of Southern California filed a complaint alleging that ICE was failing to allow immigrants at three detention facilities in California to communicate with their attorneys. (*Ernesto Torres, Desmond Tenghe, Jason Nsinano, et al. v. U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement* (2018)). The complaint alleges that detained immigrants are unable to contact their attorneys by phone because the phone systems in these facilities do not allow them to leave voice mail messages or navigate automated menus if the call is not answered by a live person. Furthermore, when immigrants are allowed to meet with their attorneys in person, these meetings are restricted to locations where their conversations can be overheard.

AMERICAN OVERSIGHT

a. (ERO/OPLA) What does ICE do to disseminate information to detainees at the Adelanto, Lacy, and Musick facilities about the availability of legal representation? What about other facilities?

(b)(5)

b. (ERO/OPLA) Will you commit to changing the phone systems at ICE facilities in California to allow immigrants to communicate effectively with their attorneys? If not, why not?

(b)(5)

c. (ERO/OPLA) Will you commit to providing private areas in ICE detention facilities where immigrants can meet with their attorneys in a confidential manner, respectful of attorney-client privilege? If not, why not?

(b)(5)

10. As you are aware, in October 2018, ICE stopped doing pre-release planning for asylum-seeking families before releasing them into communities along the Southwest Border. There have been numerous reports of families with children being dropped off at bus stations and parking lots without being directed to local shelters or other available community resources to help them reach their ultimate destinations.

AMERICAN OVERSIGHT

The Joint Explanatory Statement accompanying the 2019 Consolidated Appropriations Act included the following language: "In recent months, ICE has collaborated with organizations that provide temporary shelter to migrants released from ICE custody. Within the $114,147,000 increase above the fiscal year 2018 funding level for the Transportation and Removal Program, ICE is directed to provide for the transportation of migrants to such shelters based on where collaborating organizations have open sheltering capacity, including during surge periods. ICE shall immediately notify the Committees in advance of any decision to deny such transportation."

a. (ERO) What has ICE done to comply with this directive to "provide for the transportation of migrants to such [temporary] shelters based on where collaborating organizations have open sheltering capacity"?

(b)(5)

b. (ERO) Have individual field offices been issued guidance in light of this requirement?

(b)(5)

c. (ERO) Please provide any guidance that has been issued regarding communication and coordination with community-based organizations to ensure the safe and orderly release of migrant families.

(b)(5)

d. (ERO) Many of these temporary shelters provide initial medical screenings and emergency services. These services are typically provided by local government health workers and private health providers. Has your agency made any effort to share health screening information (gathered either by ICE or U.S. Customs and Border Protection) for potential illnesses or injuries that individuals may be experiencing? If not, why not?

AMERICAN OVERSIGHT

(b)(5)

11. During the Obama administration, ICE agents, officers, and attorneys were permitted to exercise prosecutorial discretion to promote national security, border security, public safety, and the integrity of the immigration system. (Memorandum from Director John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011)) On January 25, 2017, the Trump administration ended that discretionary authority with Executive Order 13768, which directs that immigration laws must be enforced against all "classes or categories of removable aliens." As a result, ICE arrested 38,000 immigrants with no criminal convictions in FY2017, a 146 percent increase over non-criminal immigration arrests in FY2016. The decision to focus on, and eliminate prosecutorial discretion for, low-priority individuals has forced immigration courts to spend valuable time on these cases, thereby adding to the enormous case backlog.

a. (ERO) Please provide the number of ICE arrests since January 2017 involving individuals with no criminal convictions.

(b)(5)

b. (ERO) Please also provide the number of Notices to Appear filed since January 2017 against individuals with no criminal convictions.

Response:

AMERICAN OVERSIGHT

(b)(5)

c. (ERO) Please provide the total number of individuals removed by ICE since January 2017 who have no criminal convictions.

(b)(5)

d. (ERO) Please provide the total cost of arresting, charging, prosecuting removal cases against, and deporting the individuals described in Question 9(a)-(c) above.

AMERICAN OVERSIGHT

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

(b)(5)

12. Recent reporting indicates that ICE has been using information collected by the California Department of Motor Vehicles (DMV) to conduct enforcement actions against individuals with no criminal history. This is concerning due to California's state law allowing residents to apply for licenses regardless of their immigration status, which was established as a way to improve public safety and accountability. (Sergio Flores & Tom Jones, *DMV Confirms ICE Has Limited Access to AB 60 License Information*, NBC LOS ANGELES (Feb. 20, 2019))

   a. **(ERO/HSI) How has ICE used information collected by the California DMV in its targeting of enforcement actions?**

   b. **(ERO/HSI) Has your agency ever utilized the California Department of Justice's California Law Enforcement Telecommunications System (CLETS) for immigration enforcement purposes not involving a criminal justice matter?**

13. On September 2, 2015, you tweeted at Mark Levin that the Democratic Party should be renamed the "Neo-Klanist" party. In November, you testified before HSGAC that this statement was "a joke" and a "momentary lapse in judgment," and that you believed you were sending it as a direct message rather than a public tweet.
   a. **(OPA) Was Mark Levin the intended recipient of the tweet that you believed was a direct message? If not, who was the intended recipient of that remark?**

   b. **(OPA) You said the comment was a joke, can you please explain the joke?**

AMERICAN OVERSIGHT

(b)(5)

Senate Judiciary Committee
Questions for the Record from Senator Charles E. Grassley
for Ronald D. Vitiello

Nominee

Director of Immigration and Customs Enforcement
Department of Homeland Security

Cost of Compliance related to Sanctuary Policies

In recent years, many state and local jurisdictions began implementing a policy of not reporting to ICE the release of criminal aliens from their custody, even when ICE identified the aliens and specifically requested notification before their release. These are commonly referred to as "Sanctuary City/State" policies.

The results of these policies are disturbing. In addition to the fact that the American public faces an increased and unnecessary risk to safety because criminal aliens are at-large in the community, additional resources are required to locate and arrest these criminal aliens.

1. **(ERO)** What is the average dollar cost to apprehend an alien, for whom ICE has identified as illegally present and issued a detainer, after s/he was released from a sanctuary jurisdiction? In your answer, please speak to the difference in resources and manpower allocated to an ICE arrest at a local jail versus an instance in which ICE has zero state/local cooperation.

(b)(5)

2. **(ERO)** To the best of your knowledge, how many detainers were not honored in FY2017, FY2018, and FY2019 year to date?

(b)(5)

AMERICAN OVERSIGHT

3. **(ERO)** What are the increased risks to public safety when an alien must be arrested outside of a secure facility and in the community?

(b)(5)

Equal Application of Crimes Involving Moral Turpitude (CIMT)

As you may be aware, recent federal court decisions have made it more difficult for the removal of illegally present aliens with criminal convictions. The use of the outdated categorical approach to determine if an alien has been "convicted of" various criminal grounds for the purpose of removal has had a significant impact, rendering many criminal statutes overbroad and unusable. The term "Crime Involving Moral Turpitude" is vague and open to a wide variety of interpretations. In some cases, aliens who have been convicted of sexual assault of a minor are not ultimately found deportable because a Circuit Court is bound to a patchwork of varying state law definitions, including different statutory requirements. This has completely undermined the intent of the removal statute, to remove criminal aliens from the United States.

AMERICAN OVERSIGHT

1. **(OPLA)** Please explain the effect of Court cases like *U.S. v. Auilera-Montes de Oca* and *Larios- Reyes v. Lynch* on the ability of ICE to remove serious violent criminal aliens from the United States.

Please see response to question 2 below.

2. **(OPLA)** How have these cases impacted the safety and welfare of communities in the United States?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

3. **(OPLA)** What are your recommended remedies to overcome these hurdles to remove criminal aliens who prey on the most vulnerable in our communities?

(b)(5)

Risks Created by the DHS Appropriations Act, 2019, Section 224

The Department of Homeland Security (DHS) Appropriations Act of 2019 provided funding for Immigration and Customs Enforcement. Pursuant to Section 224, ICE is specifically prohibited from using appropriated funds to detain or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child (UAC). Additionally, Section 224 prohibits ICE from using information solely provided by the Department of Health and Human Services (HHS)

AMERICAN OVERSIGHT

concerning the immigration status of UAC sponsors/potential sponsors to execute on ICE's statutory enforcement responsibilities.

4. **(ERO)** Will this restriction on the use of appropriated funds inhibit the ability of the federal government to ensure a safe environment into which an unaccompanied alien child is to be placed?

(b)(5)

5. **(ERO)** Will this restriction inhibit ICE's ability to ensure that the household to which a UAC would be released does not include undocumented immigrants with a criminal record?

(b)(5)

6. **(HSI)** Can smugglers and human traffickers abuse this loophole? How so?

(b)(5)

7. **(ERO/HSI)** With these funding restrictions, how will enforcement actions against criminal aliens and criminal organizations be impacted?

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

Questions for the Record
Submitted to Mr. Ronald D. Vitiello
from Senator Kamala D. Harris

Nomination of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security
Senate Committee on the Judiciary
March 27, 2019

Coercion of Separated Parents to Relinquish Legal Rights

In August 2018, legal advocates filed a complaint with the Department of Homeland Security Office of Inspector General (DHS OIG) and the Department of Homeland Security Office of Civil Rights and Civil Liberties (CRCL) alleging that ICE employees engaged in coercion and abuse in order to compel immigrant parents who had been separated from their children to forgo their legal rights, including their right to reunify with their children or to lawfully seek asylum. The complaint alleged verbal and physical threats, insults, denial of food, withholding of feminine hygiene products from parents, and false claims to parents that their children would be permanently taken from them.

1. **(OPA) When did you become aware of these allegations?**

During your nomination hearing on November 15, 2018, you committed to meaningfully following up on these allegations.

2. **(OPR/ERO) What actions, if any, did ICE take in response to these allegations? Please provide written documentation.**
3. **Has ICE conducted its own inquiry into these allegations?**
   a. **(OPR/ERO) If so, when will the inquiry be completed and will you publish it?**
   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?**

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.

Comment [A]: ERO defers to OPR.

AMERICAN OVERSIGHT

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.**

(b)(5)

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.**

(b)(5)

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

(b)(5)

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

(b)(5)

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.

[3] Please note that this information is based on information collected for medical, rather than statistical, reporting purposes. While ICE has sought to provide the most accurate information available, data may be subject to manual-entry errors.

AMERICAN OVERSIGHT

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

(b)(5)

(b)(5)

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

(b)(5)

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)(5)

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

AMERICAN OVERSIGHT

Response: Please see above.

(b)(5)

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

(b)(5)

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

(b)(5)

Poor Conditions and Oversight at ICE's Adelanto Processing Center and Other Detention Facilities

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 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?

(b)(5)

AMERICAN OVERSIGHT

certify that corrective action had been taken. ICE is currently reviewing and will provide a copy of the assessment to the OIG once the results have been finalized and certified.

Additionally, on October 11, 2018, The Nakamoto Group, Inc., completed an annual inspection of Adelanto. The inspectors found just one deficiency in the following area:

- Funds and Personal Property: Every housing area shall have lockers or other securable space for storing detainee's authorized personal property. The amount of storage space shall correspond to the number of detainees assigned to that housing area.

A Corrective Action Plan to address this deficiency has been implemented by the facility.

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

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

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

ICE Use of Body-Worn Cameras

In August 2015, when you were in a Customs and Border Protection (CBP) leadership role, CBP published a feasibility study on the use of body-worn cameras for officers and agents. The study found that body worn cameras would have benefits for CBP if properly acquired, deployed, and managed. CBP has since begun a body-worn camera pilot program.

15. **(OPA) Since you have been in an ICE leadership role, have you initiated any discussions about piloting body-worn cameras at ICE?**

16. **(OPA) If confirmed as ICE Director, will you commit to initiate a pilot program on body-worn cameras for ICE officers and agents?**

AMERICAN OVERSIGHT

Questions for the Record for Ronald Vitiello
from Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions.

   a. **(OPA) Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

   b. **(OPA) Have you ever faced discipline or entered into a settlement related to this kind of conduct?**

2. **(OPA) Several components of the Department of Homeland Security (DHS), including Immigration and Customs Enforcement (ICE) have failed to respond to the Senate Judiciary Committee's questions for the record. Do you commit to responding in a timely manner to all questions for the record submitted to ICE, if you are confirmed?**

3. In April 2018, DHS and the Department of Health and Human Services (HHS) entered into a Memorandum of Agreement (MOA), which was signed by ICE, mandating that the Office of Refugee Resettlement (ORR) within HHS share with ICE information about each unaccompanied immigrant child's potential sponsor and all adult members of that potential sponsor's household. This resulted in deterring potential sponsors coming forward out of fear of immigration enforcement actions against them, leaving unaccompanied children in prolonged detention. These fears were not unfounded. By November 2018, ICE had reportedly arrested 170 individuals based on this information sharing, and more than 100 of those arrested had no criminal record.

   a. **(ERO) How many individuals have you arrested based on information obtained by this information-sharing MOA? Please provide this data broken down by month from April 2018 to the present.**

(b)(5)

   b. **(ERO) How many of the individuals above were arrested only for immigration-related offenses? Please provide this data broken down by month from April 2018 to the present.**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

4. The Department of Homeland Security's Office of Inspector General (OIG) has issued several reports about the troubling conditions in ICE detention facilities and ICE's failure to hold these facilities accountable. In February 2019, for example, OIG reported that it identified serious issues at an ICE facility in New Jersey that "not only constitute violations of ICE detention standards but also represent significant threats to detainee health and safety," including serving "slimy, foul-smelling" food and maintaining housing units with mold and mildew. Human Rights Watch also reported in June 2018 that "[m]ore people died in immigration detention in fiscal year 2017 than any year since 2009, and the most recent detailed information we have about immigration detention deaths shows that they are still linked to dangerously inadequate medical care."

a. (ERO) What steps have you taken and what steps will you take to ensure that ICE facilities are safe and sanitary?

(b)(5)

b. (ERO) What steps have you taken and what steps will you take to improve access to proper medical care at ICE facilities?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

c. (CFO) **In January 2019, OIG reported that, instead of holding ICE facilities accountable through financial penalties, "ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards." OIG made five recommendations to address its findings. By when do you expect to complete implementation of the recommendations made in the OIG report?**

d. (ERO) **ICE responded to the OIG report on December 3, 2018, before the report was publicly released. Since December 3, 2018, how many waivers has ICE issued to facilities with deficient conditions? Since December 2018, on how many facilities with deficient conditions has ICE imposed financial penalties? Please provide a breakdown by month from December 2018 to the present for both questions.**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

Comment [A]: ERO defers to OPR to address these questions.

5. There have been multiple reports of physical and sexual abuse of adults and children at ICE detention facilities. Between 2010 and September 2017, reportedly at least 681 complaints of sexual assault, 307 complaints of sexual harassment, and 272 complaints of physical assault were filed, primarily about incidents while in ICE custody. Of these complaints, it appears only a small fraction were investigated.

   a. **(ERO/OPR) How many sexual misconduct complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?**

   b. **(ERO/OPR) How many physical abuse complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?**

   c. **(ERO/OPR) What steps have you taken to ensure that all sexual abuse allegations are taken seriously and thoroughly investigated?**

   d. **(ERO/OPR) What mechanisms and safeguards are in place to enable immigrants in ICE custody to come forward to report abuse by an ICE employee or ICE contractor without fear of retaliation?**

   e. **(ERO/OPR) What relief or remedy is available to a detainee who reports abuse at an ICE facility?**

   f. **(ERO/OPR) Does ICE have a mandatory reporting policy regarding an ICE employee or contractor who witnesses abuse against an adult or child in ICE custody? If so, please provide a copy of that policy.**

6. CBP has indicated that more than 300 migrants, including children have been subject to the Migration Protection Protocols (MPP)—otherwise known as the Remain in Mexico plan—

AMERICAN OVERSIGHT

which requires asylum seekers to remain in Mexico as they await the adjudication of their asylum application. Several of the children sent to Mexico are reported to be under age 12. Under the MPP, ICE is responsible for transporting migrants to court for their immigration hearings and facilitating access to counsel. The San Diego Tribune reported issues with scheduling glitches and difficulty notifying migrants of changes in court dates. When one of these migrants returned to the U.S. port of entry for their first immigration court hearings, CBP officers would not let her into the United States, causing her to miss her hearing. When the woman's lawyer explained that her client was at the port of entry ready to come in, but CBP officers would not let her into the United States, the government attorney – the chief counsel for ICE, told the immigration judge that he should order the woman to be deported in her absence. The judge denied the government's motion.

a. (OPLA) Have there been any other cases, like the above-referenced case, where the government attorney has sought to have a migrant subject to the MPP deported after missing a court hearing due to issues with the MPP process? If so, please provide details of those cases and how they were resolved.

(b)(5)

b. (OPLA/OPP) In what ways is ICE ensuring that the asylum seekers waiting in Mexico under the MPP policy have *meaningful* access to counsel? How are asylum seekers supposed to meet with their U.S.-licensed lawyers if they are forced to remain in Mexico under the MPP policy?

(b)(5)

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.

AMERICAN OVERSIGHT

(b)(5)

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)(5)

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?

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

(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.

(b)(5)

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

[4] Through February 28, 2019.

[5] Please note that this information is based on information collected for medical, rather than statistical, reporting purposes. While ICE has sought to provide the most accurate information available, data may be subject to manual-entry errors.

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

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)(5)

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

(b)(5)

[6] Through February 28, 2019.

AMERICAN OVERSIGHT

(b)(5)

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."

   a. **(OPA) Is it your view that the President has unlimited authority to declare a national emergency to build a border wall? If not, in your view, what are the legal limits of the President's authority to declare a national emergency to take money from military construction projects to build a border wall?**

   b. **(OPA) In your view, is there a difference between a humanitarian crisis and a national security or military threat at our southern border?**

   c. **(OPA/ERO) Please provide any factual evidence ICE has to support the claim that there is a national emergency at our southern border that necessitates the building of a border wall.**

10. The National ICE Council, which represents about 7,600 ICE employees, submitted a letter to the Homeland Security and Governmental Affairs Committee (HSGAC) opposing your nomination. They noted that this was "the first time" in its history that it has officially opposed a presidentially-appointed nomination. At your hearing, you told Sen. Johnson that the charges in the letter are "very technical" and that "most" of what is discussed in the letter occurred before you became Acting Director of ICE. But the letter specifically talked about your tweet "suggesting that the Democratic Party be renamed as the 'NeoKlanist' party." The National ICE Council also raised concerns about your efforts to justify your statement as a "joke." When Sen. Peters asked you at the hearing whether you "believe that's appropriate language for a government official charged with significant responsibilities," you said you "regret[ted]" making this statement and committed to not using that type of language going forward.

AMERICAN OVERSIGHT

a. **(OPA) What steps have you taken to promote a culture of respect and professionalism within ICE that treats all people with dignity and humanity?**

b. **(OPA) Have you taken any implicit bias, diversity, and inclusion training in the past six months? If not, will you take such training and require your employees to do the same, if you are confirmed?**

11. In a memo date stamped April 23, 2018, ICE, Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP) recommended that DHS Secretary Nielsen adopt an agency-wide policy of prosecuting all parents accompanied by their children who enter without authorization – a practice that would clearly require the separation of parents from their children. In fact, the policy did result in DHS separating thousands of children from their parents. ICE, USCIS, and CBP recommended this policy with the goal of deterring future migrants, including asylum seekers, from crossing the border.

a. **(OPA) You have not disputed that you were "[i]nvolved in discussions and operational protocols regarding the administration's most controversial immigration policy that led to family separations." Please clarify what your role and involvement specifically were in these discussions and operational protocols.**

b. **(OPA) The American Academy of Pediatrics, and numerous child welfare, juvenile justice and child development organizations wrote letters to DHS warning that the family separations conducted by DHS under this policy could inflict significant and long-term trauma on the separated children. What communications, if any, did you receive regarding concerns of the harm to children resulting from these family separations? What actions did you take upon receiving these communications?**

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

c. (OPA) In implementing the zero-tolerance policy, what policy or plan did DHS have in place for reuniting parents and children after it separated them? Please provide a copy to the Senate Judiciary Committee of any DHS directive, memoranda, and other documentation detailing any such reunification policy or plan.

12. With respect to the thousands of children who were separated from their parents, at your hearing on November 15, 2018, before the Homeland Security and Governmental Affairs Committee, you stated: "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. We tried to take advantage of that capacity." When Senator Peters pointed out, "But it was clear that families would be separated at that point?" you replied, "That would have been a consequence."

a. (OPA) Is it your view that a policy, like the zero-tolerance policy, that clearly results in the separation of families, including infants from their parents, is an opportunity to be "take[n] advantage of"?

b. (OPA) Your statement describing the separation of thousands of children from their parents as merely "a consequence" is very concerning because it seems to demonstrate a lack of understanding of the severe and long-term harm on children and families that the zero-tolerance policy created. Knowing what we know now—including that medical and mental health experts have warned that forcibly separating families can result in "toxic stress" and long-term consequences, such as adverse brain development, mental illness, and substance abuse—if given another opportunity, would you again support a policy, like the zero-tolerance policy, that would foreseeably result in the separation of children from their parents?

13. You further claimed at the November 2018 HSGAC hearing that "in most of the venues when we refer people for their -- for the federal crime of illegal entry. When they go to court locally, a lot of them only go for the hearing long enough to be out of our custody or at CBP out of custody for less than a day and then they're returned to us. And so the separations were -- was contemplated, but was never meant to be permanent. In most cases people got back together with their families on the same day."

a. (OPA) Please provide the factual basis for your assertion that "[i]n most cases people got back together with their families on the same day." Is it your statement that

[7] "Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities." June 2, 2017. https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf?utm_source=E-mail+Updates&utm_campaign=e1d1c3e779-EMAIL_CAMPAIGN_2017_06_16&utm_medium=email&utm_term=0_7dc4c5d977-e1d1c3e779-45096257

AMERICAN OVERSIGHT

thousands more children were separated from their parents than have been previously reported and these families were reunited on the "same day"?

b. (OPA) From April 2017 to June 29, 2018, you were the Acting Deputy Commissioner of CBP. The Department of Homeland Security's OIG found in its September 2018 report that some family separations could have been avoided where parents were quickly prosecuted and released back into CBP custody while their children were still in CBP facilities. But instead of returning the parents to CBP facilities and reuniting them with their children, CBP officials transferred them directly to ICE. The OIG report explained, that "[a]ccording to a senior official who was involved with this decision, CBP made this change in order to avoid doing the additional paperwork required to readmit the adults." Were you aware of or involved in this decision at the time it was made? If so, please explain your role in this decision.

14. At the hearing, you seemed to suggest that the responsibility of reuniting children who were separated from their parents by DHS rested solely with the Department of Health and Human Services. You stated, "So the reunification piece is a function of HHS, Health and Human Services. They were in care and custody -- they have a care and custody of the children once they're out of CBP custody."

a. (ERO/OPA) Is it your view that DHS has no responsibility to ensure that parents who were separated from their children by DHS are reunited with their children?

(b)(5)

b. (ERO/OPA) In January 2019, the Office of Inspector General of HHS reported that: "As of December 2018, HHS had identified 2,737 children who were separated from their parents and required to be reunified by a June 2018 court in the *Ms. L v. U.S. Immigration and Customs Enforcement (ICE)* litigation. However, this number does not represent the full scope of family separations. Thousands of children may have been separated during an influx that began in 2017, before the accounting required by the court. In addition, as of early November 2018, HHS has received at least 118 separated children since the court order." What steps are ICE and DHS taking to review the data they have to identify all the children and parents who DHS separated since 2017? What steps are ICE and DHS taking to ensure that HHS has the

AMERICAN OVERSIGHT

information it needs to identify these separated children and ensure that they are reunited with their parents?

(b)(5)

c. (ERO/OPA) On February 20, 2019, the government reported to a federal court in *Ms. L v. U.S. Immigration and Customs Enforcement* that there have been 245 new family separations between a June 26, 2018 court order that prohibited the government from separating families absent rare exceptions, and January 31, 2019. What system does DHS currently have in place to track family separations to ensure that parents know where their children are at all times and that those who have custody of the children know where the parents are located? Are ICE officials informed when a person in their custody has been separated from a child or family member? What steps do ICE officials currently take to identify parents in their custody who have been separated from their children, and reunite the parents with their children?

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

15. At a Senate Judiciary Committee hearing on July 31, 2018, I asked ICE's Executive Associate Director of Enforcement and Removal Operations (ERO) Matt Albence what DHS's long-term plan was for the children who were separated from their parents by DHS. He responded that ICE "has had longstanding policy that facilitates reunification of a parent and a child at the time of removal. That has been our policy and that would have been the process we would have followed and had followed prior to this judge's order."

AMERICAN OVERSIGHT

a. **(ERO/OPA) Is Mr. Albence's statement accurate – during the implementation of the zero-tolerance policy that foreseeably resulted in the separation of thousands of children from their parents, was ICE's initial plan to reunify parents with their children at the time of removal? If so, why were more than 400 parents deported without their children? And if so, what was ICE's plan for separated parents and children who were seeking asylum? Please provide a copy of any written version of this policy to the Senate Judiciary Committee.**

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

b. **(ERO/OPA) In implementing the zero-tolerance policy, what records were actually kept that identified the parents who were separated from their children and where these parents and children were located? Why did the government report to a federal court in San Diego that HHS had to conduct a *manual* review of the case files for all of the children in its custody— about 11,800 children—to determine which children had been separated from their parents by DHS?**

(b)(5)

(b)(5)

16. The Transactional Records Access Clearinghouse (TRAC) at Syracuse University analyzed U.S. Border Patrol records and data on federal prosecutions, and its report showed that at most only 38 percent of adults apprehended without children were referred for criminal prosecution by CBP following the Justice Department's announcement of the "zero-tolerance" policy on April 6, 2018. Moreover, TRAC found that, at most, only 32 percent of all adults apprehended at the border, including those with children, were criminally prosecuted. This data indicates that most of the people apprehended at or near the southern border were not referred for criminal prosecution and, in fact, it appears that thousands of adults without children were not referred for prosecution while up to 3,000 children may have been separated from their parents under the guise of the zero-tolerance policy.

AMERICAN OVERSIGHT

(b)(5)

a. (Defer to CBP) How many adults who were accompanied by children were apprehended at or near the southern border? Please provide data broken down by month from April 2018 to June 2018.

b. (Defer to CBP) How many adults who were accompanied by children and apprehended at or near the southern border were referred for criminal prosecution? Please provide data broken down by month from April 2018 to June 2018.

c. (Defer to CBP) Given the report's finding that, at most, only 38 percent of adults apprehended without children by CBP at or near the southern border were referred for criminal prosecution, what factors did ICE consider and what guidelines, if any, did ICE follow in determining whether to refer an adult accompanied by children for criminal prosecution as compared to an adult who was not accompanied by children?

17. TRAC also reported that only one adult apprehended by CBP as a family unit was actually referred for criminal prosecution in all of April 2018, even though the zero-tolerance policy was announced on April 6, 2018 and a large number of family separations occurred in April 2018. This is inconsistent with the Trump administration's claim that the separation of children from their parent was a consequence of referring all adults apprehended at the border for criminal prosecution under the "zero-tolerance" policy. In fact, TRAC found that "it would appear most separations through at least April [2018] took place for entirely different reasons than the rationale the Administration has given."

a. (Defer to CBP) How many adults were separated from their children under the zero-tolerance policy where the adults were not referred for criminal prosecution? How many children were separated from their parents in these circumstances? Please provide data for both questions broken down by month from April 2018 to June 2018.

b. (Defer to CBP) Under the zero-tolerance policy, who made the decision of whether a family unit—*i.e.*, adults accompanied by children—apprehended at or near the southern border would be separated, either by referring the adult for criminal prosecution or by other means?

c. (Defer to CBP) Under the zero-tolerance policy, who, if anyone, reviewed the decision of whether a family unit apprehended at or near the southern border would be separated?

d. (Defer to CBP) Under the zero-tolerance policy, what factors did ICE consider and what guidelines, if any, did ICE follow in determining whether to separate families where the adult family members were not referred for criminal prosecution?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

18. The Trump administration's June 20, 2018 Executive Order on family separations identified a policy of detaining families "where appropriate and consistent with law and available resources." The American Academy of Pediatrics and 13 American medical and mental health organizations have made clear that family detention is not an appropriate solution to family separation. They have pointed to the serious physical and emotional harm that detention inflicts on children.

a. (ERO) From June 2018 to the present, how many babies younger than 12 months old have been held in ICE custody? How many babies younger than 12 months old does ICE currently have in its custody?

(b)(5)

b. (ERO) From June 2018 to the present, how many children age 1 or older have been held in ICE custody? How many children age 1 or older does ICE currently have in its custody? Please provide a breakdown by age for both questions.

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

c. (ERO) **What criteria does DHS use to determine whether a family is detained or released, with or without monitoring mechanisms such as ankle monitors? Please provide the Senate Judiciary Committee with a copy of any guidelines used in these determinations.**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

d. (ERO) What is the average length of detention in ICE custody for children age 5 and under and for children over age 5? What is the longest length of ICE detention in ICE custody for children age 5 and under and for children over age 5?

(b)(5)

Senate Judiciary Committee
Questions for the Record from Senator Amy Klobuchar
for Ronald D. Vitiello

Nominee

Director of Immigration and Customs Enforcement
Department of Homeland Security

As Acting Deputy Commissioner of Customs and Border Protection (CBP), you participated in the implementation of the Administration's family separation policy. The American Academy of Pediatrics warned that this policy could cause "irreparable harm" for children who were separated from their parents.

AMERICAN OVERSIGHT

- **(OPA)** Did anyone within the Department of Homeland Security (DHS) raise concerns to you regarding the policy's potential harm to children?
- **(OPA)** During a hearing last December, I asked CBP Commissioner McAleenan if he had any regrets about the implementation of the family separation policy. Do you have any such regrets?

Last December, I sent a letter with 12 other Senators expressing concern over the Administration's decision to reinterpret the 2008 U.S.-Vietnam repatriation agreement in order to facilitate the deportation of Vietnamese immigrants. Many of these Vietnamese immigrants, like other immigrants from South Asian countries, have lived in my state of Minnesota for years.

- **(ERO/OPLA)** What are the Administration's justifications for reversing the agreement?

(b)(5)

A report by the DHS's Office of Inspector General released in January found that ICE failed to hold contractors accountable for maintaining safe detention facilities. The report found that in over 14,000 instances where contractors failed to adhere to contract requirements, ICE only fined the contractor twice. Instead, ICE routinely issued waivers to exempt facilities from complying with certain standards, including in instances where there was a risk to the safety of people in detention.

- **(OAQ)** What process is in place for ICE to evaluate contractor deficiencies, and how does ICE decide whether to impose a fine or issue a waiver in a particular case?

AMERICAN OVERSIGHT

AMERICAN OVERSIGHT

Written Questions for Ron Vitiello
Submitted by Senator Patrick Leahy
March 27, 2019

At your hearing before the Senate Homeland Security and Government Affairs Committee (HSGAC), you apologized for a tweet in which you called the Democratic Party the "NeoKlanist Party." I am glad you apologized. You also testified that you did not remember the "context" or "premise" of the tweet.

1. **(OPA) Now that you've had time to reflect upon your tweet, can you explain in writing the context or premise that prompted it?**

The National ICE Council, which represents almost 8,000 employees of ICE, wrote a letter to HSGAC opposing your nomination to serve as the Director of ICE.[8] This is the first time in its history the Council has "officially opposed the nomination of a presidentially-appointed federal official." In its letter, the Council makes a number of serious allegations

1. **(OPA) Have you addressed the allegations made by the National ICE Council in any way? If not, why not?**

2. **(OPA) If you have provided written responses to HSGAC regarding the allegations in the National ICE Council's letter, would you provide this Committee with a copy?**

3. **(OPA) Have you been in contact with leadership at the National ICE Council following the publication of their letter opposing your nomination? If not, why not?**

During your testimony before the HSGAC and in various television interviews, you have repeatedly argued that prosecuting illegal entry will result in lower levels of illegal entry. In June 2018, you stated: "we know that when people have a consequence for illegal activity, they do less of it." But during the period in which the "zero tolerance" prosecution policy was in effect – systematically separating thousands of children from their families – reports confirmed that illegal crossings did not appreciably decrease.

1. **(OPA) Can you provide the Committee with data supporting your view that the aggressive prosecution of illegal entry leads to a decrease in levels of illegal entry?**

[8] http://cdn.cnn.com/cnn/2019/images/02/13/national.ice.council.letter.to.hsgac.re.vitiello.opposition.feb.12.2019.pdf

AMERICAN OVERSIGHT

(b)(5)

The enacted FY 19 Homeland Security appropriations act provides ICE with funding to maintain an average daily population of approximately 45,000 detainees, with the expectation of bringing down the detention population to 40,520 by the end of this fiscal year. But ICE's detention capacity is going in the other direction – up – ballooning from roughly 49,000 at the time the FY 19 appropriations package was enacted to 50,074 individuals as of March 13, 2019.

1. **(ERO/OPA) If confirmed to serve as Director of ICE, what is your plan to bring ICE's detention capacity levels down to 40,520 by the end of this fiscal year as expected by Congress? Please provide a detailed, month-by-month roadmap explaining how you would go about bringing ICE detention levels to 40,520 by the end of FY 2019?**

(b)(5)

Given the Trump Administration's directive to apprehend immigrants without regard to a history of criminal convictions, an increasing number of immigrants who pose no public safety risk are being targeted by ICE's enforcement operations. In the final month of the Obama administration, just under 18 percent of immigrants apprehended by ICE had no prior criminal convictions. In December 2018, the percentage of non-criminal immigrants apprehended by ICE had spiked to roughly 36.5 percent.[9] I have heard from numerous state and local law enforcement officers and judges concerned that immigrant communities are now more afraid to cooperate with and provide information to authorities about a whole range of crimes, including domestic violence and human trafficking.[10]

1. **(ERO/OPA) Do you believe that ICE's increased enforcement actions against non-criminal immigrants under the Trump administration are in any way negatively impacting the cooperation of immigrant communities with state and local law enforcement authorities? If not, can you provide any kind of data, reporting, or surveys from law enforcement authorities supporting your view?**

(b)(5)

[9] https://www.usatoday.com/story/news/politics/2019/03/21/ice-sets-record-arrests-undocumented-immigrants-no-criminal-record/3232476002/
[10] https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf

AMERICAN OVERSIGHT

prioritizes fugitives and aliens who have illegally re-entered the United States, which is a felony. But let me be clear: entering the United States illegally is a crime in and of itself, and ICE's congressionally mandated mission is to enforce immigration law.

Senate Report 115-283, whose provisions were incorporated into the enacted FY 2019 Homeland Security appropriations act, includes report language directing the Department of Homeland Security to maintain records and respond to record requests in compliance with the Freedom of Information Act regarding detainees who are housed in non-federal, private detention facilities. Those private detention facilities fall under the jurisdiction of ICE.

1. **(OPA) To your knowledge, has ICE promulgated any memoranda or guidance to non-federal, private detention facilities instructing them to maintain records and respond to records requests in compliance with the Freedom of Information Act? If so, can you please provide us with copies of any such memoranda or guidance?**

2. **(CFO/IGP) If such documents do not exist, can you explain how you would ensure compliance with this enacted report language if confirmed as Director of ICE?**

The enacted FY 2019 Homeland Security appropriations act prohibits ICE from removing, detaining, or initiating removal proceedings against sponsors or potential sponsors of unaccompanied children based on information received from the Department of Health and Human Services about those individuals.

1. **(OPP/ERO) What procedures has ICE put in place to ensure its compliance with this particular prohibition in the FY 2019 spending bill? Can you provide the Committee with any memoranda or guidance provided to ICE officers and agents educating them about this particular prohibition in the law?**

(b)(5)

2. **(OPP/ERO) If such memoranda and guidance documents do not yet exist, what will you do if confirmed as Director of ICE to disseminate any such documents widely within ICE to ensure compliance with the law?**

(b)(5)

Recent reports exposed an operation across multiple agencies in the U.S. government to surveil, enhance security screenings on, and interrupt the travel of U.S. citizen journalists and lawyers who worked among migrants arriving at our southern border. Punitive actions taken by U.S.

(b)(5)

AMERICAN OVERSIGHT

Customs and Border Protection against at least 59 targeted individuals – identified in a database called "San Diego Sector Foreign Operations Branch: Migrant Caravan FY-2019, Suspected Organizers, Coordinators, Instigators and Media." – raise a number of legal and constitutional concerns.

1. **(HSI) To your knowledge, what role, if any, did ICE play in developing, implementing, or overseeing this legally suspect this surveillance program?**

AMERICAN OVERSIGHT

Nomination of Ronald Vitiello
to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security

Questions for the Record
Submitted March 27, 2019

QUESTIONS FROM SENATOR WHITEHOUSE

1. The ICE sensitive locations policies, which remain in effect, provide that enforcement actions at sensitive locations should generally be avoided, and require either prior approval from an appropriate supervisory official or exigent circumstances necessitating immediate action. Presently, the agency policy is to obtain prior approval for planned enforcement action at a sensitive location.

   a. (OPA) Will you commit to complying with the ICE sensitive locations policies?

(b)(5)

   b. (OPA) What will you do to ensure that the approval process is adhered to?

(b)(5)

   c. (OPA) Reports of enforcement actions taking place near schools, churches, hospitals, and other locations call into question whether the policies are being consistently enforced. How should ICE decide when enforcement actions will take place at a sensitive location and what factors are considered in this decision making process?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

d. (OPA) Do you feel as though current ICE enforcement action is consistent with these factors?

2. Presently, sensitive location policies do not extend protections to other locations that are critical to the safety and security of immigrants, including courthouses. To some, this lack of protection undermines public safety and is a source of frustration for judges, advocates, and community members alike.

a. (OPA) Do you feel that the policies surrounding sensitive locations should be expanded to include courthouses?

(b)(5)

b. (OPA) If you believe the current policies in place provide sufficient protection, please explain why.

(b)(5)

AMERICAN OVERSIGHT

respect to the Sensitive Locations Policy, may also be reported to the Office of Professional Responsibility (OPR).

3. The lack of clarity in sensitive locations policy has led to confusion about how close immigration agents can be to a sensitive location before it constitutes a violation. For instance, in 2018, a 19-year-old immigrant was arrested at a bus stop directly outside of a Portland hospital. ICE agents watched him leave the hospital and walk to the bus stop at the hospital's entrance, where they apprehended and arrested him. Sensitive location policies are intended to bolster immigrants' ability to carry out activities that are essential to their health and safety.

   a. (OPA) What clarity can you provide to these policies and what methods of reform would you propose to ensure that the policies are uniformly enforced in light of their essential purpose?

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

4. (OPA) Concerns have been raised regarding the lasting impact of family separation on the well- being of children. What have you done or will you do to address these concerns?

(b)(5)

5. (OPA and OPLA) Recently, the Supreme Court addressed a challenge to an interpretation of a detention provision of the Immigration and Nationality Act that would allow ICE officials to detain an unauthorized immigrant indefinitely once they are taken into criminal custody, even if they were released months ago, without the opportunity for a bond hearing. With this legal question now resolved in ICE's favor, will you continue this practice of indefinite detentions? Do you believe this is good public policy, and why?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

(b)(5)

6. (ERO) Family detention policies have been criticized as costly practices that undermine more humane and less traumatic methods that ensure adequate due process for detainees. What alternatives to detention have you or would you consider?

(b)(5)

7. In a June 2018 interview, you said about the deterrent effect of the family separation policy, "We know that when people have a consequence for illegal activity, they do less of it. And that's what we're trying to accomplish here"
   a. (OPA) Do you still believe that family separation functions as a deterrent?
   b. (OPA) If so, is this belief based on scientific studies or research on the

AMERICAN OVERSIGHT

deterrent effects of punishment? If so, please cite them.

c. (OPA) Do you believe that any deterrent effect of the family separation policy outweighs the harms it causes to migrant families and children?

8. As you know, the National Immigration and Customs Enforcement Council of the American Federation of Government Employees wrote a letter to Senators Johnson and Peters opposing your nomination.
   a. (OHC) What contacts have you had with the union after their letter about your nomination was published? Please detail the contents of those communications and who was involved.
   b. (OHC) Have you made any commitments to the union after or before the letter was sent? Please specify.
   c. (OHC) What role will the union have in ICE policymaking under your leadership?

9. In the letter opposing your nomination, the ICE Union wrote that you "continue the practice of whistleblower retaliation."
   a. (OPA) What is ICE's official policy towards whistleblowers?
   b. (OPA) Do you believe that whistleblowers play an important role in exposing misconduct?
   c. (OPA) If confirmed, what steps will you take to ensure whistleblowers are able to come forward to raise concerns without fear of retribution?
   d. (OPA) Have you ever retaliated against a whistleblower?

AMERICAN OVERSIGHT

10. Documents leaked to NBC 7 in San Diego show that that the U.S. government, including CBP, targeted journalists and activists for scrutiny at the border and created a secret database containing their personal details, social media information, and descriptions of their migrant-related work.
    a. (OPA) Did you have knowledge of this or any other database tracking journalists? Please specify.
    b. (OPA) Have you ever assisted in the creation of a database to track journalists based on their writing and reporting?
    c. (OPA) While at CBP or ICE, have you ever instructed agents to increase screenings on journalists, attorneys or immigration advocates crossing the border?
    d. (OPA) If confirmed, how will you ensure that ICE respects the role of the free press?

11. In a July 2018 article, The New York Times reported that ICE has reported 1,310 claims of sexual abuse against detainees from fiscal years 2013 to 2017. Watchdog organizations estimate the occurrence of sexual abuse to be significantly higher.
    a. (OPA) How will you ensure that ICE law enforcement agents will not abuse detainees?
    b. (OPA) During your time as a CBP and ICE official, what policies have you put in place to ensure claims of abuse, both sexual and nonsexual, are thoroughly investigated?
    c. (OPA) What disciplinary actions have you taken against officers found to have committed abuses? Please specify.

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?

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 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?

AMERICAN OVERSIGHT

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)

14. In January 2019, the DHS Inspector General issued a report finding that, "Instead of holding [detention] facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards." Since this report was issued, the Appropriations Committee included language in its FY19 report requiring that the ICE Director personally sign off on any waivers of contract requirements for immigration detention.
    a. (OPR and ERO) What steps have you taken to remedy the issues raised by the DHS Inspector General report?

[12] "Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities." June 2, 2017. https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf?utm_source=E-mail+Updates&utm_campaign=e1d1c3e779-EMAIL_CAMPAIGN_2017_06_16&utm_medium=email&utm_term=0_7dc4c5d977-e1d1c3e779-45096257

AMERICAN OVERSIGHT

(b)(5)

b. (OPA) If confirmed, how will you ensure that facilities comply with ICE detention standards?
c. (OPR and ERO) How many waivers of contract requirements have been requested of you since the Appropriations Committee report was issued, and how many have you approved?

(b)(5)

d. (OPR and ERO) What was the nature of the waivers approved and the nature of the waivers denied?

(b)(5)

e. (OPA) Will you commit to maintaining or strengthening standards for immigration detention?

15. In 2016, the Homeland Security Advisory Council documented alarming deficiencies in the inspections and monitoring processes governing the immigration detention system. The majority of the council voted to recommend a "measured but deliberate shift away" from the use of private prisons for immigration detention
    a. (OPA) Do you believe that private prisons are appropriate for immigration

AMERICAN OVERSIGHT

detention?

(b)(5)

b. (OPA) If the agency does not intend to reduce its reliance on contracts with private prison companies, as recommended by the HSAC in 2016, please articulate the evidence supporting a decision to reject the recommendations of the Council.

AMERICAN OVERSIGHT

(b)(5)

United States Senate Judiciary Committee
Questions for the Record for Ron Vitiello
Nominated to be the Director of Immigration and Customs Enforcement
March 20, 2019

QUESTIONS FROM SENATOR BLUMENTHAL

I am concerned about your judgment. In 2015, you tweeted from your personal account that the Democratic Party should be renamed the "NeoKlanist party."

1. (OPA) **The National ICE Council stated that this sort of behavior could result in a rank and file employee being fired. Do you agree with this statement?**
2. (OPA) **If an ICE employee had engaged in this sort of behavior, what discipline would you suggest for them?**
3. (OPA) **If you are promoted after engaging in this sort of inappropriate behavior, how will you have any credibility as you attempt to lead ICE?**

The Obama Administration prioritized enforcement actions against recent arrivals and those with serious criminal convictions. It is unclear whether the Trump Administration has employed immigration enforcement priorities thus far.

1. (OPA) **What, if any, immigration enforcement priorities do you believe ICE should have?**
2. (OPA) **Do you believe ICE should be performing raids on people's homes or workplaces? If so, will you take into account not wanting to separate families or parents from children during raids?**
3. (OPA) **Do you believe in detaining asylum seekers and families? If so, what is your justification for the detention of asylum seekers and/or families?**

According to news reports, in a July 2017 memo, Jonathan White, the former deputy director of the Office of Refugee Resettlement (ORR), described how efforts made by ICE to target or detain the sponsors of unaccompanied children will likely lead to "significant increases in length of stay and a decline in the discharge rate." In some cases, it appears that ICE used the information that ORR collected on sponsors in order to track those people down and initiate deportation proceedings.

1. (OPP and ERO) **Do you plan on continuing to use the data collected by ORR on potential sponsors in order to track and deport parents?**

(b)(5)

AMERICAN OVERSIGHT

2. (OPA) **Do you agree that ICE efforts to target or detain the sponsors of unaccompanied children currently in detention will lead to "significant increases in length of stay" for children?**
3. (OPA) **Are you aware of all of the physical, emotional, and psychological effects that stays in detention facilities can have on children?**

(b)(5)

4. (OPA) **Are you aware that prolonged stays in detention facilities for children can exacerbate the effects mentioned above?**

(b)(5)

[13] "Results of Office of Inspector General FY 2016 Spot Inspections of U.S. Immigration and Customs Enforcement Family Detention Facilities." June 2, 2017. https://www.oig.dhs.gov/sites/default/files/assets/2017/OIG-17-65-Jun17.pdf?utm_source=E-mail+Updates&utm_campaign=e1d1c3e779-EMAIL_CAMPAIGN_2017_06_16&utm_medium=email&utm_term=0_7dc4c5d977-e1d1c3e779-45096257

AMERICAN OVERSIGHT

You served in leadership positions at Customs and Border Patrol (CBP) and ICE during both the lead up to, and the implementation of, President Trump's zero-tolerance family separation policy.

1. (OPA) **What effort, if any, did you make to alert your superiors that the zero-tolerance policy was resulting in the separation of families?**
2. (OPA) **Do you agree with expert assessments that separating kids from their parents can inflict lifelong trauma and psychological harm?**
3. (OPA) **Do you believe that the zero-tolerance family separation policy was effective?**
4. (OPA) **What was the desired effect of this policy?**
5. (OPA) **Is there currently a process in place to reunite any families that are still separated? If so, what is that policy?**
6. (OPA) **Are you aware of any efforts by the administration to re-implement the family separation policy or implement another policy that would also have the effect of separating children from their parents?**

You reportedly stated that the zero-tolerance policy resulted in the separation of "only 2,500 people."

1. (OPA) **Do you believe that all families – including immigrant families – belong together?**
2. (OPA) **Your comment that "only 2,500 people" were affected indicates that you do not believe that is a lot of people. Do you believe that a family separation policy that affected 2,500 people is not a significant event?**
3. (OPLA) **In recent court filings, the government has stated that over 2,800 children were separated from their parents in the summer of 2018. In addition, the Department of Health and Human Services Office of the Inspector General has 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?**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

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?**

(b)(5)

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?**

(b)(5)

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?**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

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?**

(b)(5)

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000170

(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.**

(b)(5)

4. (OPA) **Do you believe that there should be a presumption in favor of releasing pregnant women from immigration detention? If not, why not?**

AMERICAN OVERSIGHT

(b)(5)

(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.**

(b)(5)

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 concerns me because ICE must conduct meaningful and detailed retrospective reviews of the death of anyone in its custody.

AMERICAN OVERSIGHT

1. (OPR and ERO) **Do you have an explanation for the decrease in both the quality and length of the reports?**
2. (OPR and ERO) **Is ICE creating more fulsome reports that are not released to the public?**
3. (OPR and ERO) **A news report published on November 26, 2018 noted that an autopsy of Roxsana Hernández Rodriguez – a transgender woman who died in ICE custody –concluded that Ms. Hernández Rodriguez had likely suffered physical abuse, including blunt-force trauma "indicative of blows, and/or kicks," prior to her death. However, the death report for Ms. Hernández Rodriguez contains no mention of any physical abuse. Can you explain why this information was excluded from the report concerning her death?**

(b)(5)

1. (ERO) **What has been done to mitigate the effects of perverse incentives?**

(b)(5)

AMERICAN OVERSIGHT

with American Correctional Association (ACA) square footage requirements. It must also be noted that detention operations and services at ICE's privately-run facilities are typically far better than most local jails and can be more easily tailored to meet ICE's unique requirements.

2. (ERO) **What does ICE do to ensure humane treatment in private facilities?**

(b)(5)

3. (OPR) **When there are news reports detailing inhumane treatment in private detention facilities does ICE investigate those reports?**
4. (ERO) **What are the consequences, if any, for failing to meet the Operations Manual ICE Performance-Based National Detention Standards?**

(b)(5)

5. (ERO) **What standards is your office implementing when determining whether to grant a waiver of contractual obligations, as discussed in recent Department of Homeland Security Office of Inspector General reporting?**

(b)(5)

Nomination of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, United States Department of Homeland Security
Questions for the Record
Submitted March 27, 2019

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000174

QUESTIONS FROM SENATOR COONS

1. You were the Acting Deputy Commissioner of Customs and Border Protection (CBP) when the Department of Justice implemented the zero tolerance immigration enforcement policy.
    a. (OPA) What was your involvement with the creation and implementation of the zero tolerance policy?
    b. (OPA) Prior to the implementation of the zero tolerance policy, did you understand that the policy would result in the separation of children from their parents?
    c. (OPA) Were you aware that family separations as a result of the zero tolerance policy could have health impacts on children?
    d. (OPA) Were you involved in any discussions with medical and mental health experts about the potential impacts of the zero tolerance policy on children?
    e. (OPA) Please describe your role in the preparation and planning process for keeping track of migrant children who would be separated from their parents.
    f. (OPA) Please describe your role in the preparation and planning process for reuniting children with their parents.
    g. (OPA) What was your involvement with President Trump's decision to end family separations?

2. On April 6, 2018, Attorney General Sessions announced a zero tolerance policy that resulted in CBP separating thousands of children from their families at the border before the President rescinded the policy on June 20, 2018, amidst a national outcry. According to a January 2019 report by the Office of Inspector General for the Department of Health and Human Services (HHS), "[t]housands of children may have been separated . . . beg[inning] in 2017."
    a. (OPA) At any point in 2017 or 2018, before the zero tolerance policy was rescinded, did you express concern to anyone at CBP, or the Department of Homeland Security (DHS) generally, about the impact of the zero tolerance policy?
    b. (OPA) Did anyone at CBP, or DHS generally, raise concerns to you about the impact of the zero tolerance policy? If so, did you share their concerns with anyone?

3. In a June 14, 2018, interview on MSNBC about the zero tolerance policy, you were asked by Ali Velshi if you would change anything if you were in charge of policymaking. You responded that you would not change anything because "we need to send the message 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?

AMERICAN OVERSIGHT

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?

(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)

(b)(5)

(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)

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

(b)(5)

AMERICAN OVERSIGHT

(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?

(b)(5)

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?

(b)(5)

11. Please describe your involvement in ICE's use of information about potential sponsors of unaccompanied migrant children to arrest undocumented individuals.

AMERICAN OVERSIGHT

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)(5)

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?

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?

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?
    b. (OPA) Have you ever attended any other events hosted by FAIR?
    c. (OPA) Are you aware of any other events hosted by hate groups that you have attended as Acting Director of ICE?
    d. (OPA) If confirmed, will you commit to determining whether any events you may be scheduled to attend during your tenure are hosted by hate groups and, if so, to not attend?

15. At the September 2018 FAIR event, you seemed to dismiss the severe harm caused by the family separations at the border by stating that "only 2,500 people were affected by that situation."

AMERICAN OVERSIGHT

a. (OPA) Do you agree that more than 2,500 family members were separated at the border?
b. (OPA) Do you agree that the family separations caused significant harm for every family involved?
c. (OPA) Do you agree that the family separations spread fear in immigrant communities and caused pain to individuals who were not directly affected?

16. Following your nomination, for the first time in its history, the National Immigration and Customs Enforcement Council of the American Federation of Government Employees took an official position of opposition to a presidentially appointed federal official.
    a. (OPA) If you are confirmed, what actions will you take to improve your relationship with the National ICE Council and its members?
    b. (OPA) The Council expressed concern that you do not possess "the highest caliber of leadership." What steps will you take to improve your leadership if you are confirmed?

17. In a February 12, 2019 letter opposing your nomination, the National ICE Council asserted that you "[p]rohibited [w]histleblowers from [g]oing to [w]ork." The Council stated that you "ordered that certain federal employees not be permitted to report to work and perform their official duties as federal employees."
    a. (OPA) Have you ever prohibited whistleblowers from going to work?
    b. (OPA) Since June 30, 2018, how many ICE whistleblowers have not been permitted to report to work?
    c. (OPA) How many ICE whistleblowers are currently not permitted to report to work?
    d. (OPA) If confirmed, what steps will you take to ensure that ICE whistleblowers do not face retaliation?

AMERICAN OVERSIGHT

Nomination of Ronald D. Vitiello
Assistant Secretary for Immigration and Customs Enforcement
U.S. Department of Homeland Security Questions for the Record Submitted March 27, 2019

QUESTIONS FROM SENATOR BOOKER

1. On November 2, 2015, in response to a tweet from Mark Levin asking for alternative names for the Democratic Party, you published a tweet that said, "@marklevinshow the liberalcratic party or the NeoKlanist Party."[1] When you testified before the Senate Homeland Security and Governmental Affairs Committee you said the following about the tweet:

> It was a mistake. I was trying to make a joke. I thought it was a direct message. I wasn't familiar with how the platform worked, as it related to that. I did not mean to suggest that the party is somehow against American values or – and I deeply regret that I did it. It was a momentary lapse of judgement and I apologize.[2]

   a. (OPA) You characterized this tweet as a momentary lapse in judgment. How can you assure members of the Senate that you will not have similar momentary lapses in judgment as Director of U.S. Immigration and Customs Enforcement (ICE)?
   b. (OPA) You also characterized the tweet as a joke. In that moment, why did you think it was funny to compare a major American political party to the KKK?
   c. (OPA) Can you please explain the link between the Democratic Party and the KKK that you believe made your "joke" make sense?

2. During your nominations hearing before the Senate Homeland Security and Governmental Affairs Committee, Senator Peters asked you several questions about an appearance you made at an event hosted by Federation for American Immigration Reform (FAIR).[3] He made you aware of the fact that the Southern Poverty Law Center

[1] Kate Prengel, *Trump's Pick to Lead ICE Once Compared Him to Dennis the Menace*, HEAVY (Nov. 28, 2019), https://heavy.com/news/2018/11/trumps-ice-dennis-the-menace-vitiello/.
[2] *Nominations of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security, and Richard S. Tischner, Jr., to be Director of the Court Services and Offender Supervision Agency for the District of Columbia*, Before the S. Comm. on Homeland Sec. and Governmental Affairs, 115th Cong. (2018) (statement of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec.), *available at* http://www.cq.com/doc/congressionaltranscripts- 5417398?1.
[3] *Id.*

AMERICAN OVERSIGHT

(SPLC) classified Fair as a hate group.[4] When Senator Peters asked you if you know about that classification you said, "I did not know that."[5]

a. (OPA) Since your hearing on November 15, 2018, have you had a chance to review the SPLC's explanation of FAIR and why it designates it as a hate group? If not, why?
b. (OPA) Do you believe it is appropriate for government officials to associate themselves with organizations that are classified as a hate group?

3. FAIR was founded in 1979 by John Tanton who has made numerous controversial anti- immigrant statements.[6] He once said, "As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion."[7] He also said, "I've come to the point of view that for European-American society and culture to persist requires a European-American majority, and a clear one at that."

a. (OPA) What is your reaction to these quotes?
b. (OPA) Do you believe these quotes represent the best of American values?
c. (OPA) How would you respond to someone who is concerned about your ability to lead one of the nation's most important law enforcement agencies given your association with a racist and anti-immigrant organization?

4. In 1997, Dan Stein, the President of FAIR, said in an interview, "Immigrants don't come all church-loving, freedom-loving, God-fearing . . . . Many of them hate America, hate everything that the United States stands for. Talk to some of these Central Americans."[8] You are nominated to be the Director of ICE at a time when thousands of Central American migrants are coming to the United States to seek asylum because of horrible violence and poverty in their home countries.

a. (OPA) What is your reaction to Dan Stein's statement?

b. (OPA) What kind of message do you think this statement sends to Central American migrants that the individual nominated to be the Director of ICE participated in an event hosted by an organization whose president makes such troubling remarks?

c. (OPA) Are you willing to publicly repudiate these types of baseless, divisive and hateful characterizations of immigrants?

[4] *See* Southern Poverty Law Center, Federation for American Immigration Reform (last visited Mar. 22, 2019), https://www.splcenter.org/fighting-hate/extremist-files/group/federation-american-immigration-reform.
[5] *Id.*
[6] *Id.*

AMERICAN OVERSIGHT

[7] *Id.*
[8] *Id.*

5. In 2019, the Department of Homeland Security Office of Inspector General issued a report on ICE detention and wrote, "Although ICE employs a multilayered system to manage and oversee detention contracts, ICE does not adequately hold detention facility contractors accountable for not meeting performance standards."[9] The report went on to say, "Instead of holding facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards."[10]

   a. (OPA) What is your plan to hold detention facility contractors accountable and ensure that these operators meeting either the National Detention Standards, 2008 Performance-Based National Detention Standards, or 2011 Performance-Based National Detention Standards?

(b)(5)

   b. (OPA) Do you commit to penalizing facility contractors who are not in compliance with performance standards and not use waivers?

(b)(5)

   c. (OPA) Do you plan to review the existing detention standards and propose adopting the American Bar Association's Civil Immigration Detention Standards? If not, please explain why.

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

6. Over the past few years, ICE has demonstrated a troubling lack of fiscal discipline. For instance, in FY 2018, the Department of Homeland Security reprogrammed $200 million to ICE from other agency accounts to cover the costs of immigrant detention and removal.[11] This reprogramming included $10 million from the Federal Emergency Management Agency when the federal government was trying to respond to hurricanes and forest fires that were destroying communities all over the United States.[12] In fact, Congress has expressed repeated alarm regarding this overspending and wrote in a 2019 report accompanying the Department of Homeland Security Appropriations Act 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 OVERSIGHT

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)

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

(b)(5)

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000185

medical advice in all cases involving pregnant detainees.

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.*

   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:

AMERICAN OVERSIGHT

> 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: (b)(6); (b)(7)(C)
Sent: 18 Sep 2018 12:13:25 +0000
To: Kelly, Christopher S
Subject: Pregnancy QFRs
Attachments: 18084036_QFR 15 - Pregnant Women in Labor_082418.doc, 18085013_QFR 29_Pregnant Women_08132018.doc, 18082037_QFR 5- Shackling Pregnant Detainees_081318.doc

Thanks!

(b)(6); (b)(7)(C) | Special Assistant | Office of the Deputy Director
Department of Homeland Security | U.S. Immigration and Customs Enforcement
(b)(6); (b)(7)(C)
(o) 202-732(b)(6);
(c) 202-344(b)(7)(

WARNING: This document is UNCLASSIFIED//FOR OFFICIAL USE ONLY (U//FOUO). It contains information that may be exempt from public release under the Freedom of Information Act (5 U.S.C. 552). It is to be controlled, stored, handled, transmitted, distributed, and disposed of in accordance with DHS policy relating to FOUO information and is not to be released to the public or other personnel who do not have a valid "need-to-know" without prior approval of an authorized DHS official. **No portion of this report should be furnished to the media, either in written or verbal form.**

AMERICAN OVERSIGHT

Question#:	15
Topic:	Pregnant Women in Labor
Hearing:	Oversight of Immigration and Family Reunification Efforts
Primary:	The Honorable Kamala D. Harris
Committee:	JUDICIARY (SENATE)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=1167558&tabid=

Question: Recent reports indicate at least two cases of pregnant women who went into labor while being held in ICE detention.

Please provide current ICE policies for caring for pregnant women who go into labor in an ICE detention facility.

(b)(5)

Please provide ICE protocols for the transportation of pregnant women to a hospital, including whether they are accompanied by ICE officers and whether they are shackled during transport.

(b)(5)

During the 2018 fiscal year to date, how many pregnant women in ICE detention facilities went into labor and/or were transferred to a hospital for premature birth or other pregnancy complications.

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

Question#:	15
Topic:	Pregnant Women in Labor
Hearing:	Oversight of Immigration and Family Reunification Efforts
Primary:	The Honorable Kamala D. Harris
Committee:	JUDICIARY (SENATE)

DRAFT

[1] Please note that this information is based on information collected for medical, rather than statistical reporting purposes. While ICE has sought to provide the most accurate information available, data may be subject to manual-entry errors.

AMERICAN OVERSIGHT

Question#:	29
Topic:	Pregnant Women
Hearing:	Oversight of Immigration and Family Reunification Efforts
Primary:	The Honorable Christopher Coons
Committee:	JUDICIARY (SENATE)

(b)(5)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=1167473&tabid=

Question: Since U.S. Immigration and Customs Enforcement has discontinued the presumption of release for pregnant detainees, what policies are in place to afford pregnant women the opportunity to be transferred to less restrictive facilities?

(b)(5)

Q: How many pregnant woman have been held in ICE detention facilities since January 2018?

(b)(5)

Q: How many pregnant women have been detained since the implementation of the zero-tolerance policy?

(b)(5)

Q: Has many pregnant women are currently in ICE custody?

A: (b)(5)

Q: Please describe U.S. Immigration and Customs Enforcement's rules and guidelines governing the shackling of pregnant women, prior to or after labor has commenced.

(b)(5)

(b)(5)

AMERICAN OVERSIGHT

Question#:	29
Topic:	Pregnant Women
Hearing:	Oversight of Immigration and Family Reunification Efforts
Primary:	The Honorable Christopher Coons
Committee:	JUDICIARY (SENATE)

(b)(5)

(b)(5)

Q: How many pregnant women have given birth in ICE detention facilities since January 2018?

A: (b)(5)

Q: How many pregnant women have miscarried while held in ICE detention facilities since January 2018?

(b)(5)

[2] Most miscarriages happen very early in the pregnancy, often before a woman knows she is pregnant.

(b)(5)

DRAFT

AMERICAN OVERSIGHT

Question#:	5
Topic:	Shackling Pregnant Detainees
Hearing:	Oversight of Immigration and Family Reunification Efforts
Primary:	The Honorable Richard Blumenthal
Committee:	JUDICIARY (SENATE)

(b)(5)

https://ect.dhs.gov/iq/workflow_edit.aspx?cid=1167499&tabid=

Question: Under what circumstances will you shackle a pregnant detainee? What are the limitations on the ways in which you will shackle pregnant detainees?

(b)(5)

DRAFT

AMERICAN OVERSIGHT

From: Asher, Nathalie R
Sent: 23 Feb 2019 15:11:58 +0000
To: Albence, Matthew
Cc: Kelly, Christopher S;Marin, David A;Jones, Marla M;(b)(6); (b)(7)(C)
Subject: Premature Birth at Port Isabel (PIDC)

Matt,

From San Antonio/RGV:

Field Ops/IHSC reports that last night a 6-month pregnant Honduran female during intake went into premature labor and despite IHSC's valiant efforts to save the unresponsive male infant, he was declared dead at a nearby hospital in Harlingen.

An ES is forthcoming and I'll have to you ASAP.

Preliminary IHSC summary as follows:

- **PIDC ER Referral 2/22/19:**Patient was a new arrival, awaiting to be release in the PIDC process area. Patient begin complaining of abdominal pain and stated she was approximately 6 months pregnant. Patient was taken to PIDC staging urgent care room for further assessment and evaluation. EMS was called as per doctors' orders. Patient went into labor and delivered an unresponsive male infant. CPR was initiated for the infant, once EMS arrived, infant was intubated. Mother was stable, awake and alert, throughout the deliver. Mother and infant where transported to VBMC Harlingen ER.
- **ER Update 2/22/19 @ 2200:** Mother and infant arrived to ER at 1949. Infant was unresponsive upon arrival and no vital signs could be obtained. CPR was continued until 1958 when male infant was pronounced dead. Infant received 7 dose of Epinephrine 0.01 mg by EMS while in route to hospital. While at the ER, during CPR, infant received one dose of Epinephrine 0.01mg. Autopsy has been requested.
  Upon arrival to ER, mother was and remained stable. She was awake, alert and oriented. Patient was transferred to Mother Baby Unit (b)(6); pending to be seen by the OB/GYN doctor in am.
- **Hospital Admission 2/23/19 @ 0045:** Mother was admitted to hospital with the diagnoses of Stillborn Vaginal Delivery. Patient is awake, alert, oriented and stable at the moment. Patient is pending to be seen by the OB/GYN doctor.

AMERICAN OVERSIGHT

From: Asher, Nathalie R
Sent: 23 Feb 2019 16:21:46 +0000
To: Albence, Matthew
Cc: Kelly, Christopher S;Marin, David A;Jones, Marla M;(b)(6); (b)(7)(C)
Subject: Premature Birth at Port Isabel (PIDC)

Matt,

From San Antonio/RGV/PIDC

Field Ops/IHSC reports that last night a 6-month pregnant Honduran female during intake went into premature labor and despite IHSC's valiant efforts to save the unresponsive male infant, he was declared dead at a nearby hospital in Harlingen.

Preliminary report is that the female was encountered by BP on 2/18 and at some point thereafter was referred to a hospital at McAllen for a medical evaluation. The hospital cleared her on 2/21 and BP transferred her to ERO custody on 2/22 as an NTA so we could release her on O/R given her condition. It was while she was in the PIDC intake area when the unfortunate series of events occurred.

An ES is forthcoming that we should have later this afternoon.

Preliminary IHSC summary as follows:

- **PIDC ER Referral 2/22/19:**Patient was a new arrival, awaiting to be released in the PIDC process area. Patient begin complaining of abdominal pain and stated she was approximately 6 months pregnant. Patient was taken to PIDC staging urgent care room for further assessment and evaluation. EMS was called as per doctors' orders. Patient went into labor and delivered an unresponsive male infant. CPR was initiated for the infant, once EMS arrived, infant was intubated. Mother was stable, awake and alert, throughout the deliver. Mother and infant where transported to VBMC Harlingen ER.
- **ER Update 2/22/19 @ 2200:** Mother and infant arrived to ER at 1949. Infant was unresponsive upon arrival and no vital signs could be obtained. CPR was continued until 1958 when male infant was pronounced dead. Infant received 7 dose of Epinephrine 0.01 mg by EMS while in route to hospital. While at the ER, during CPR, infant received one dose of Epinephrine 0.01mg. Autopsy has been requested.
  Upon arrival to ER, mother was and remained stable. She was awake, alert and oriented. Patient was transferred to Mother Baby Unit(b)(6); pending to be seen by the OB/GYN doctor in am.
- **Hospital Admission 2/23/19 @ 0045:** Mother was admitted to hospital with the diagnoses of Stillborn Vaginal Delivery. Patient is awake, alert, oriented and stable at the moment. Patient is pending to be seen by the OB/GYN doctor.

AMERICAN OVERSIGHT

From: (b)(6); (b)(7)(C)
Sent: 30 Mar 2019 02:17:47 +0000
To: Kelly, Christopher S
Cc: Seguin, Debbie
Subject: QFRS - Blue
Attachments: 2019-03-27 - Vitiello SJC QFRs - MRM - Blue.docx

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);

(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)(7)(

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)

AMERICAN OVERSIGHT

(b)(5)

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

(b)(5)

6. **(OPA)** At your November 15, 2018 confirmation hearing, Senator Carper asked you, "[I]f confirmed, how would you avoid repeating the errors in judgment in planning that allow the family separation policy to occur?" You responded:

(b)(5)

7. **(OPA)** President Trump's previous nominee to head ICE, Thomas Homan, made a series of inflammatory and inaccurate statements, including one which led to the resignation of an ICE spokesman who said he "didn't want to perpetuate misleading facts." For example, Mr. Homan:

- Reportedly referred to undocumented immigrants by the derogatory term "tonks";
- Called for the criminal prosecution of elected officials who represent jurisdictions that limit their involvement in immigration enforcement;
- Compared the Mayor of Oakland, California to a "gang lookout"; and

AMERICAN OVERSIGHT

- Falsely suggested that an undocumented immigrant was responsible for wildfires in Sonoma County and that therefore California state law limiting involvement with immigration enforcement was to blame for the wildfires.

a. (OPA) What is your reaction to these remarks?

(b)(5)

b. (OPA) If you are confirmed, how would your leadership of ICE be different than Mr. Homan's?

(b)(5)

c. (OPA) Have you ever used the term "tonk" or any other derogatory term to refer to immigrants or minorities? If so, please explain.

(b)(5)

8. **(OPA/OPP)** In your response to written questions submitted following a May 23, 2017 Senate Judiciary Immigration Subcommittee hearing titled "Building America's Trust Through Border Security: Progress on the Southern Border," you appeared to credit the Trump Administration's immigration enforcement policies for the decline in border apprehensions in FY 2017. Responding to a question from Senator Grassley, who asked, "Do you agree that President Trump's return to normal enforcement policies is a major reason for the decrease in border apprehensions and illegal entry to the United States?" you stated:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

9. **(ERO) Do you support an increase in funding and deployment of ICE's Alternatives to Detention program?**

10. **(ERO) Do you agree that Alternatives to Detention are more cost-effective for the taxpayer than family detention facilities?**

11.

    a. **(ERO) Will you commit to requiring that the 2011 Performance-Based National Detention Standards (PBNDS 2011) be expeditiously implemented at all ICE detention facilities, including contract facilities?**

    b. **(ERO) Will you commit to requiring that any new ICE detention facility contract approved during your leadership will require compliance with PBNDS 2011?**

12. **(OPA) Has the polygraph exam requirement for Customs and Border Protection law enforcement positions elicited admissions of serious criminal conduct by certain job candidates?**

AMERICAN OVERSIGHT

(b)(5)

13. ICE's website for job applicants (https://www.ice.gov/careers/faqs) states that ICE conducts pre-employment polygraph screenings for law enforcement positions.

a. (OPP) When did this policy begin?

b. (OPR/OPP) Does ICE use the Test for Espionage, Sabotage, and Corruption (TES-C), the standard Law Enforcement Pre-employment Test (LEPET) test, or a different polygraph examination?

(b)(5)

c. (OPR/OPP) Does ICE perform a pre-employment polygraph screening for all applicants for law enforcement positions or are there exceptions to this requirement?

(b)(5)

d. (OPR) How many such exams has ICE conducted and what is the passage rate for exams conducted at ICE since the policy began?

(b)(5)

14. In 2016, the Homeland Security Advisory Council's CBP Integrity Advisory Panel noted that "integrity could be enhanced further by periodic random and targeted polygraph examinations on a post-hire basis of CBP law enforcement personnel."

a. (OPA/OPR/OPP) Do you agree with this recommendation?

(b)(5)

AMERICAN OVERSIGHT

b. (OPA/OPR/OPP) Could post-hire polygraph testing enhance integrity at ICE?

(b)(5)

15. At your November 15, 2018 confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, you stated: "I also appreciate the Committee's important oversight role, and I am committed to ensuring that our agency remains accountable to Congress and the taxpayers."

a. (OPA) Do you commit that, if you are confirmed, under your leadership ICE will expeditiously and thoroughly respond to requests for information from all Members of the Senate Judiciary Committee, regardless of their party affiliation?

(b)(5)

b. (OPA) What steps have you taken, and do you plan to take, to enhance ICE's accountability to Congress and the American people?

(b)(5)

16.

a. (ERO/OPLA) Please explain, with specific examples, how you have directed the use of prosecutorial discretion in deploying ICE detention and removal resources.

17. **(ERO/OPA) Do you believe there are circumstances where it is appropriate for ICE to grant a stay of removal to an undocumented immigrant who is removable under the law? Have you ever ordered or approved the granting of such a stay of removal?**

18. **(OPA) During his confirmation hearing, USCIS Director Francis Cissna committed to maintaining the existing Deferred Action for Childhood Arrivals (DACA) guidelines and to ensuring that individuals only lose DACA if they have violated the terms of DACA. Will you make the same commitment?**

(b)(5)

19. **(ERO)** At your November 15, 2018 confirmation hearing, Senator Hassan asked you whether you "accept findings of pediatricians in the United States of America that detaining children

AMERICAN OVERSIGHT

provides long-term psychological harm to those children, yes or no?" You did not answer the question directly. You stated, "I understand the report. Yes." **Please answer this question directly.**

20. **(OPA/ERO)** ICE official Matthew Albence characterized ICE's family detention facilities as being "more like a summer camp" at a Judiciary Committee hearing last year. **Do you agree with this characterization?**

21. At your November 15, 2018 confirmation hearing, in response to a question from Senator Peters about whether there is an upper limit to how long a child should be detained in your view, you responded: "Well the law gives us upper limits. What we're -- in this discussion, what is -- what we're trying to seek is full opportunity in the due process and that requirement. And then when it -- if they're not subject to relief, then they're held only long enough to remove them."

(OPA) Please explain, legal restrictions aside, whether you believe there is an upper limit to how long a child should be held in immigration detention, and, if so, what this upper limit is?

(b)(5)

22. On May 5, 2017, ICE reversed a decades-long bipartisan policy of issuing stays of removal for beneficiaries of private immigration bills when the Chairman of the Senate Immigration Subcommittee requests a report on the beneficiary. This action was taken without consulting Congress. As a result of ICE's decision, private bill beneficiaries are now subject to deportation even though legislation to provide for their relief is pending in Congress.

(OCR) Will you commit to working with the Chairmen and Ranking Members of the Senate Judiciary Committee and Immigration Subcommittee to reevaluate ICE's May 5, 2017 policy change?

(b)(5)

AMERICAN OVERSIGHT

(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

(b)(5)

2. On November 15, 2018, you testified before HSGAC that when you implemented the Trump administration's zero tolerance policy as Acting Deputy Commissioner of Customs and Border Protection (CBP), the resulting family separations "were never intended to be permanent." However, you also testified that CBP "never contemplated having the systems work backward" to reunify families, because "the reunification piece is a function of HHS." Furthermore, the Inspector General for DHS concluded in September 2018 that there was "no evidence" of any central database to track and reunify parents and children who were separated as part of the zero tolerance policy.

   a. (OPA) With no central database to track and reunify separated families, how did you intend to avoid permanent or long-term family separations?

   (b)(5)

   b. (OPA) Now that it's clear this did not work, what is being done as new families arrive? Is there a database in place? If not, why not?

   (b)(5)

   c. (OPA) How did you believe HHS would be able to "work backward" to reunify separated families, if CBP failed to develop a process for notify HHS which children were separated at the border and which children arrived unaccompanied? What is being done to address this problem for those already separated? What is being done for those separated going forward?

3. On March 13, a complaint filed with the Department of Homeland Security's Office of Civil Rights and Civil Liberties stated that Immigration and Customs Enforcement (ICE) kept several children at the Karnes County Detention Center for 40 days or longer. (*See* Letter to Ms. Cameron Quinn and Mr. John V. Kelly from Refugee and Immigrant Center for Education and Legal Services (Mar. 13, 2019)) As you know, the Karnes facility houses children along with their fathers.

AMERICAN OVERSIGHT

The group of families represented in the complaint includes a six-year-old boy who was detained with his father for 41 days, from January through March, before being separated from his father and moved to a children's shelter. This boy was allegedly detained for more than two times the 20-day detention period authorized in the Flores settlement agreement.

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?

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

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?**

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

AMERICAN OVERSIGHT

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?

iv. (ERO) On average, how long does it take a detainee at Adelanto to receive medication after a doctor prescribes it?

v. (ERO) On average, how long do detainees have to wait after arriving at Adelanto to see a dentist?

vi. (ERO) How many hours per day do detainees at Adelanto spend locked in a cell?

vii. (ERO) How many hours do detainees at Adelanto spend in indoor common areas?

viii. (ERO) How many hours do detainees at Adelanto spend outside?

c. (ERO) What are the policies at Adelanto and other ICE detention facilities to ensure that detainees are able to access correspondence, books, and other materials that are sent to them?

d. (ERO) Why are detainees at Adelanto ICE processing facility unable to access their passports, identification documents, or other documents from ICE in time to provide these important documents to the judge when they appear in court?

e. (ERO) How does ICE determine the price it charges for food and other goods at the commissary at Adelanto?

f. (ERO) Will you commit to providing ICE detainees with access to their documents in advance of their hearings in immigration court or federal district court?

g. (ERO) At what temperature are ICE detention cells kept?

h. (ERO) Have any doctors reported to ICE or CBP officials that any detainees became ill, or that any detainees' existing symptoms worsened, because of the temperature settings within the facilities?

9. In December 2018, the Stanford Law School Immigrants' Rights Clinic and the ACLU of Southern California filed a complaint alleging that ICE was failing to allow immigrants at three detention facilities in California to communicate with their attorneys. (*Ernesto Torres, Desmond Tenghe, Jason Nsinano, et al. v. U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement* (2018))
The complaint alleges that detained immigrants are unable to contact their attorneys by phone because the phone systems in these facilities do not allow them to leave voice mail messages or navigate automated menus if the call is not answered by a live person. Furthermore, when immigrants are allowed to meet with their attorneys in person, these meetings are restricted to locations where their conversations can be overheard.

AMERICAN OVERSIGHT

a. (ERO/OPLA) What does ICE do to disseminate information to detainees at the Adelanto, Lacy, and Musick facilities about the availability of legal representation? What about other facilities?

b. (ERO/OPLA) Will you commit to changing the phone systems at ICE facilities in California to allow immigrants to communicate effectively with their attorneys? If not, why not?

c. (ERO/OPLA) Will you commit to providing private areas in ICE detention facilities where immigrants can meet with their attorneys in a confidential manner, respectful of attorney-client privilege? If not, why not?

10. As you are aware, in October 2018, ICE stopped doing pre-release planning for asylum-seeking families before releasing them into communities along the Southwest Border. There have been numerous reports of families with children being dropped off at bus stations and parking lots without being directed to local shelters or other available community resources to help them reach their ultimate destinations.

    The Joint Explanatory Statement accompanying the 2019 Consolidated Appropriations Act included the following language: "In recent months, ICE has collaborated with organizations that provide temporary shelter to migrants released from ICE custody. Within the $114,147,000 increase above the fiscal year 2018 funding level for the Transportation and Removal Program, ICE is directed to provide for the transportation of migrants to such shelters based on where collaborating organizations have open sheltering capacity, including during surge periods. ICE shall immediately notify the Committees in advance of any decision to deny such transportation."

    a. (ERO) What has ICE done to comply with this directive to "provide for the transportation of migrants to such [temporary] shelters based on where collaborating organizations have open sheltering capacity"?

    b. (ERO) Have individual field offices been issued guidance in light of this requirement?

    c. (ERO) Please provide any guidance that has been issued regarding communication and coordination with community-based organizations to ensure the safe and orderly release of migrant families.

    d. (ERO) Many of these temporary shelters provide initial medical screenings and emergency services. These services are typically provided by local government health workers and private health providers. Has your agency made any effort to share health screening information (gathered either by ICE or U.S. Customs and Border Protection) for potential illnesses or injuries that individuals may be experiencing? If not, why not?

AMERICAN OVERSIGHT

11. During the Obama administration, ICE agents, officers, and attorneys were permitted to exercise prosecutorial discretion to promote national security, border security, public safety, and the integrity of the immigration system. (Memorandum from Director John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011)) On January 25, 2017, the Trump administration ended that discretionary authority with Executive Order 13768, which directs that immigration laws must be enforced against all "classes or categories of removable aliens." As a result, ICE arrested 38,000 immigrants with no criminal convictions in FY2017, a 146 percent increase over non-criminal immigration arrests in FY2016. The decision to focus on, and eliminate prosecutorial discretion for, low-priority individuals has forced immigration courts to spend valuable time on these cases, thereby adding to the enormous case backlog.

    a. **(ERO) Please provide the number of ICE arrests since January 2017 involving individuals with no criminal convictions.**

    b. **(ERO) Please also provide the number of Notices to Appear filed since January 2017 against individuals with no criminal convictions.**

    c. **(ERO) Please provide the total number of individuals removed by ICE since January 2017 who have no criminal convictions.**

    d. **(ERO) Please provide the total cost of arresting, charging, prosecuting removal cases against, and deporting the individuals described in Question 9(a)-(c) above.**

12. Recent reporting indicates that ICE has been using information collected by the California Department of Motor Vehicles (DMV) to conduct enforcement actions against individuals with no criminal history. This is concerning due to California's state law allowing residents to apply for licenses regardless of their immigration status, which was established as a way to improve public safety and accountability. (Sergio Flores & Tom Jones, *DMV Confirms ICE Has Limited Access to AB 60 License Information*, NBC LOS ANGELES (Feb. 20, 2019))

    a. **(ERO/HSI) How has ICE used information collected by the California DMV in its targeting of enforcement actions?**

    (b)(5)

    b. **(ERO/HSI) Has your agency ever utilized the California Department of Justice's California Law Enforcement Telecommunications System (CLETS) for immigration enforcement purposes not involving a criminal justice matter?**

    (b)(5)

AMERICAN OVERSIGHT

13. On September 2, 2015, you tweeted at Mark Levin that the Democratic Party should be renamed the "Neo-Klanist" party. In November, you testified before HSGAC that this statement was "a joke" and a "momentary lapse in judgment," and that you believed you were sending it as a direct message rather than a public tweet.

a. (OPA) Was Mark Levin the intended recipient of the tweet that you believed was a direct message? If not, who was the intended recipient of that remark?

(b)(5)

b. (OPA) You said the comment was a joke, can you please explain the joke?

(b)(5)

AMERICAN OVERSIGHT

1. **(OPLA)** Please explain the effect of Court cases like *U.S. v. Auilera-Montes de Oca* and *Larios- Reyes v. Lynch* on the ability of ICE to remove serious violent criminal aliens from the United States.

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

2. **(OPLA)** How have these cases impacted the safety and welfare of communities in the United States?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

3. **(OPLA)** What are your recommended remedies to overcome these hurdles to remove criminal aliens who prey on the most vulnerable in our communities?

(b)(5)

Risks Created by the DHS Appropriations Act, 2019, Section 224

The Department of Homeland Security (DHS) Appropriations Act of 2019 provided funding for Immigration and Customs Enforcement. Pursuant to Section 224, ICE is specifically prohibited from using appropriated funds to detain or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child (UAC). Additionally, Section 224 prohibits ICE from using information solely provided by the Department of Health and Human Services (HHS) concerning the immigration status of UAC sponsors/potential sponsors to execute on ICE's statutory enforcement responsibilities.

4. **(ERO)** Will this restriction on the use of appropriated funds inhibit the ability of the federal government to ensure a safe environment into which an unaccompanied alien child is to be placed?

5. **(ERO)** Will this restriction inhibit ICE's ability to ensure that the household to which a UAC would be released does not include undocumented immigrants with a criminal record?

6. **(HSI)** Can smugglers and human traffickers abuse this loophole? How so?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

7. **(ERO/HSI)** With these funding restrictions, how will enforcement actions against criminal aliens and criminal organizations be impacted?

(b)(5)

AMERICAN OVERSIGHT

Questions for the Record
Submitted to Mr. Ronald D. Vitiello
from Senator Kamala D. Harris

Nomination of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security
Senate Committee on the Judiciary
March 27, 2019

Coercion of Separated Parents to Relinquish Legal Rights

In August 2018, legal advocates filed a complaint with the Department of Homeland Security Office of Inspector General (DHS OIG) and the Department of Homeland Security Office of Civil Rights and Civil Liberties (CRCL) alleging that ICE employees engaged in coercion and abuse in order to compel immigrant parents who had been separated from their children to forgo their legal rights, including their right to reunify with their children or to lawfully seek asylum. The complaint alleged verbal and physical threats, insults, denial of food, withholding of feminine hygiene products from parents, and false claims to parents that their children would be permanently taken from them.

1. **(OPA) When did you become aware of these allegations?**

   Determine with CRCL when he was notified – Scott Lanum

During your nomination hearing on November 15, 2018, you committed to meaningfully following up on these allegations.

2. **(OPR/ERO) What actions, if any, did ICE take in response to these allegations? Please provide written documentation.**

(b)(5)

3. **Has ICE conducted its own inquiry into these allegations?**

   a. **(OPR/ERO) If so, when will the inquiry be completed and will you publish it?**

(b)(5)

DHS-19-0195-H, 19-0494-G, 19-0495-F-000219

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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?**

AMERICAN OVERSIGHT

Poor Conditions and Oversight at ICE's Adelanto Processing Center and Other Detention Facilities

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 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?

AMERICAN OVERSIGHT

ICE Use of Body-Worn Cameras

In August 2015, when you were in a Customs and Border Protection (CBP) leadership role, CBP published a feasibility study on the use of body-worn cameras for officers and agents. The study found that body worn cameras would have benefits for CBP if properly acquired, deployed, and managed. CBP has since begun a body-worn camera pilot program.

15. (OPA) Since you have been in an ICE leadership role, have you initiated any discussions about piloting body-worn cameras at ICE?

(b)(5)

16. (OPA) If confirmed as ICE Director, will you commit to initiate a pilot program on body-worn cameras for ICE officers and agents?

(b)(5)

AMERICAN OVERSIGHT

Questions for the Record for Ronald Vitiello
from Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions.

   a. (OPA) Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?

   (b)(5)

   b. (OPA) Have you ever faced discipline or entered into a settlement related to this kind of conduct?

   (b)(5)

2. **(OPA) Several components of the Department of Homeland Security (DHS), including Immigration and Customs Enforcement (ICE) have failed to respond to the Senate Judiciary Committee's questions for the record. Do you commit to responding in a timely manner to all questions for the record submitted to ICE, if you are confirmed?**

(b)(5)

3. In April 2018, DHS and the Department of Health and Human Services (HHS) entered into a Memorandum of Agreement (MOA), which was signed by ICE, mandating that the Office of Refugee Resettlement (ORR) within HHS share with ICE information about each unaccompanied immigrant child's potential sponsor and all adult members of that potential sponsor's household. This resulted in deterring potential sponsors coming forward out of fear of immigration enforcement actions against them, leaving unaccompanied children in prolonged detention. These fears were not unfounded. By November 2018, ICE had reportedly arrested 170 individuals based on this information sharing, and more than 100 of those arrested had no criminal record.

   a. (ERO) How many individuals have you arrested based on information obtained by this information-sharing MOA? Please provide this data broken down by month from April 2018 to the present.

AMERICAN OVERSIGHT

b. (ERO) How many of the individuals above were arrested only for immigration-related offenses? Please provide this data broken down by month from April 2018 to the present.

4. The Department of Homeland Security's Office of Inspector General (OIG) has issued several reports about the troubling conditions in ICE detention facilities and ICE's failure to hold these facilities accountable. In February 2019, for example, OIG reported that it identified serious issues at an ICE facility in New Jersey that "not only constitute violations of ICE detention standards but also represent significant threats to detainee health and safety," including serving "slimy, foul-smelling" food and maintaining housing units with mold and mildew. Human Rights Watch also reported in June 2018 that "[m]ore people died in immigration detention in fiscal year 2017 than any year since 2009, and the most recent detailed information we have about immigration detention deaths shows that they are still linked to dangerously inadequate medical care."

a. (ERO) What steps have you taken and what steps will you take to ensure that ICE facilities are safe and sanitary?

b. (ERO) What steps have you taken and what steps will you take to improve access to proper medical care at ICE facilities?

c. (CFO) In January 2019, OIG reported that, instead of holding ICE facilities accountable through financial penalties, "ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards." OIG made five recommendations to address its findings. By when do you expect to complete implementation of the recommendations made in the OIG report?

(b)(5)

d. (ERO) ICE responded to the OIG report on December 3, 2018, before the report was publicly released. Since December 3, 2018, how many waivers has ICE issued to facilities with deficient conditions? Since December 2018, on how many facilities with deficient conditions has ICE imposed financial penalties? Please provide a breakdown by month from December 2018 to the present for both questions.

5. There have been multiple reports of physical and sexual abuse of adults and children at ICE detention facilities. Between 2010 and September 2017, reportedly at least 681 complaints of sexual assault, 307 complaints of sexual harassment, and 272 complaints of physical assault were filed, primarily about incidents while in ICE custody. Of these complaints, it appears only a small fraction were investigated.

AMERICAN OVERSIGHT

a. (ERO/OPR) How many sexual misconduct complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?

b. (ERO/OPR) How many physical abuse complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?

c. (ERO/OPR) What steps have you taken to ensure that all sexual abuse allegations are taken seriously and thoroughly investigated?

d. (ERO/OPR) What mechanisms and safeguards are in place to enable immigrants in ICE custody to come forward to report abuse by an ICE employee or ICE contractor without fear of retaliation?

e. (ERO/OPR) What relief or remedy is available to a detainee who reports abuse at an ICE facility?

f. (ERO/OPR) Does ICE have a mandatory reporting policy regarding an ICE employee or contractor who witnesses abuse against an adult or child in ICE custody? If so, please provide a copy of that policy.

6. CBP has indicated that more than 300 migrants, including children have been subject to the Migration Protection Protocols (MPP)—otherwise known as the Remain in Mexico plan—which requires asylum seekers to remain in Mexico as they await the adjudication of their asylum application. Several of the children sent to Mexico are reported to be under age 12. Under the MPP, ICE is responsible for transporting migrants to court for their immigration hearings and facilitating access to counsel. The San Diego Tribune reported issues with scheduling glitches and difficulty notifying migrants of changes in court dates. When one of these migrants returned to the U.S. port of entry for their first immigration court hearings, CBP officers would not let her into the United States, causing her to miss her hearing. When the woman's lawyer explained that her client was at the port of entry ready to come in, but CBP officers would not let her into the United States, the government attorney – the chief counsel for ICE, told the immigration judge that he should order the woman to be deported in her absence. The judge denied the government's motion.

a. (OPLA) Have there been any other cases, like the above-referenced case, where the government attorney has sought to have a migrant subject to the MPP deported after missing a court hearing due to issues with the MPP process? If so, please provide details of those cases and how they were resolved.

b. (OPLA/OPP) In what ways is ICE ensuring that the asylum seekers waiting in Mexico under the MPP policy have *meaningful* access to counsel? How are asylum seekers supposed to meet with their U.S.-licensed lawyers if they are forced to remain in Mexico under the MPP policy?

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.

AMERICAN OVERSIGHT

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."

a. (OPA) Is it your view that the President has unlimited authority to declare a national emergency to build a border wall? If not, in your view, what are the legal limits of the President's authority to declare a national emergency to take money from military construction projects to build a border wall?

(b)(5)

b. (OPA) In your view, is there a difference between a humanitarian crisis and a national security or military threat at our southern border?

(b)(5)

c. (OPA/ERO) Please provide any factual evidence ICE has to support the claim that there is a national emergency at our southern border that necessitates the building of a border wall.

(b)(5)

1.

2.

AMERICAN OVERSIGHT

(b)(5)

10. The National ICE Council, which represents about 7,600 ICE employees, submitted a letter to the Homeland Security and Governmental Affairs Committee (HSGAC) opposing your nomination. They noted that this was "the first time" in its history that it has officially opposed a presidentially-appointed nomination. At your hearing, you told Sen. Johnson that the charges in the letter are "very technical" and that "most" of what is discussed in the letter occurred before you became Acting Director of ICE. But the letter specifically talked about your tweet "suggesting that the Democratic Party be renamed as the 'NeoKlanist' party." The National ICE Council also raised concerns about your efforts to justify your statement as a "joke." When Sen. Peters asked you at the hearing whether you "believe that's appropriate language for a government official charged with significant responsibilities," you said you "regret[ted]" making this statement and committed to not using that type of language going forward.

a. (OPA) What steps have you taken to promote a culture of respect and professionalism within ICE that treats all people with dignity and humanity?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

b. (OPA) Have you taken any implicit bias, diversity, and inclusion training in the past six months? If not, will you take such training and require your employees to do the same, if you are confirmed?

(b)(5)

11. In a memo date stamped April 23, 2018, ICE, Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP) recommended that DHS Secretary Nielsen adopt an agency-wide policy of prosecuting all parents accompanied by their children who enter without authorization – a practice that would clearly require the separation of parents from their children. In fact, the policy did result in DHS separating thousands of children from their parents. ICE, USCIS, and CBP recommended this policy with the goal of deterring future migrants, including asylum seekers, from crossing the border.

a. (OPA) You have not disputed that you were "[i]nvolved in discussions and operational protocols regarding the administration's most controversial immigration policy that led to family separations." Please clarify what your role and involvement specifically were in these discussions and operational protocols.

(b)(5)

AMERICAN OVERSIGHT

b. (OPA) The American Academy of Pediatrics, and numerous child welfare, juvenile justice and child development organizations wrote letters to DHS warning that the family separations conducted by DHS under this policy could inflict significant and long-term trauma on the separated children. What communications, if any, did you receive regarding concerns of the harm to children resulting from these family separations? What actions did you take upon receiving these communications?

c. (OPA) In implementing the zero-tolerance policy, what policy or plan did DHS have in place for reuniting parents and children after it separated them? Please provide a copy to the Senate Judiciary Committee of any DHS directive, memoranda, and other documentation detailing any such reunification policy or plan.

12. With respect to the thousands of children who were separated from their parents, at your hearing on November 15, 2018, before the Homeland Security and Governmental Affairs Committee, you stated: "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. We tried to take advantage of that capacity." When Senator Peters pointed out, "But it was clear that families would be separated at that point?" you replied, "That would have been a consequence."

a. (OPA) Is it your view that a policy, like the zero-tolerance policy, that clearly results in the separation of families, including infants from their parents, is an opportunity to be "take[n] advantage of"?

(b)(5)

b. (OPA) Your statement describing the separation of thousands of children from their parents as merely "a consequence" is very concerning because it seems to demonstrate a lack of understanding of the severe and long-term harm on children and families that the zero-tolerance policy created. Knowing what we know now—including that medical and mental health experts have warned that forcibly separating families can result in "toxic stress" and long-term consequences, such as adverse brain development, mental illness, and substance abuse—if given another opportunity, would you again support a policy, like the zero-tolerance policy, that would foreseeably result in the separation of children from their parents?

(b)(5)

13. You further claimed at the November 2018 HSGAC hearing that "in most of the venues when we refer people for their -- for the federal crime of illegal entry. When they go to court locally, a lot of them only go for the hearing long enough to be out of our custody or at CBP out of custody for less than a day and then they're returned to us. And so the

AMERICAN OVERSIGHT

separations were -- was contemplated, but was never meant to be permanent. In most cases people got back together with their families on the same day."

a. (OPA) Please provide the factual basis for your assertion that "[i]n most cases people got back together with their families on the same day." Is it your statement that thousands more children were separated from their parents than have been previously reported and these families were reunited on the "same day"?

(b)(5)

b. (OPA) From April 2017 to June 29, 2018, you were the Acting Deputy Commissioner of CBP. The Department of Homeland Security's OIG found in its September 2018 report that some family separations could have been avoided where parents were quickly prosecuted and released back into CBP custody while their children were still in CBP facilities. But instead of returning the parents to CBP facilities and reuniting them with their children, CBP officials transferred them directly to ICE. The OIG report explained, that "[a]ccording to a senior official who was involved with this decision, CBP made this change in order to avoid doing the additional paperwork required to readmit the adults." Were you aware of or involved in this decision at the time it was made? If so, please explain your role in this decision.

(b)(5)

14. At the hearing, you seemed to suggest that the responsibility of reuniting children who were separated from their parents by DHS rested solely with the Department of Health and Human Services. You stated, "So the reunification piece is a function of HHS, Health and Human Services. They were in care and custody -- they have a care and custody of the children once they're out of CBP custody."

a. (ERO/OPA) Is it your view that DHS has no responsibility to ensure that parents who were separated from their children by DHS are reunited with their children?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

b. (ERO/OPA) In January 2019, the Office of Inspector General of HHS reported that: "As of December 2018, HHS had identified 2,737 children who were separated from their parents and required to be reunified by a June 2018 court in the *Ms. L v. U.S. Immigration and Customs Enforcement (ICE)* litigation. However, this number does not represent the full scope of family separations. Thousands of children may have been separated during an influx that began in 2017, before the accounting required by the court. In addition, as of early November 2018, HHS has received at least 118 separated children since the court order." What steps are ICE and DHS taking to review the data they have to identify all the children and parents who DHS separated since 2017? What steps are ICE and DHS taking to ensure that HHS has the information it needs to identify these separated children and ensure that they are reunited with their parents?

c. (ERO/OPA) On February 20, 2019, the government reported to a federal court in *Ms. L v. U.S. Immigration and Customs Enforcement* that there have been 245 new family separations between a June 26, 2018 court order that prohibited the government from separating families absent rare exceptions, and January 31, 2019. What system does DHS currently have in place to track family separations to ensure that parents know where their children are at all times and that those who have custody of the children know where the parents are located? Are ICE officials informed when a person in their custody has been separated from a child or family member? What steps do ICE officials currently take to identify parents in their custody who have been separated from their children, and reunite the parents with their children?

AMERICAN OVERSIGHT

(b)(5)

15. At a Senate Judiciary Committee hearing on July 31, 2018, I asked ICE's Executive Associate Director of Enforcement and Removal Operations (ERO) Matt Albence what DHS's long-term plan was for the children who were separated from their parents by DHS. He responded that ICE "has had longstanding policy that facilitates reunification of a parent and a child at the time of removal. That has been our policy and that would have been the process we would have followed and had followed prior to this judge's order."

    a. **(ERO/OPA) Is Mr. Albence's statement accurate – during the implementation of the zero-tolerance policy that foreseeably resulted in the separation of thousands of children from their parents, was ICE's initial plan to reunify parents with their children at the time of removal? If so, why were more than 400 parents deported without their children? And if so, what was ICE's plan for separated parents and children who were seeking asylum? Please provide a copy of any written version of this policy to the Senate Judiciary Committee.**

    b. **(ERO/OPA) In implementing the zero-tolerance policy, what records were actually kept that identified the parents who were separated from their children and where these parents and children were located? Why did the government report to a federal court in San Diego that HHS had to conduct a *manual* review of the case files for all of the children in its custody— about 11,800 children—to determine which children had been separated from their parents by DHS?**

16. The Transactional Records Access Clearinghouse (TRAC) at Syracuse University analyzed U.S. Border Patrol records and data on federal prosecutions, and its report showed that at most only 38 percent of adults apprehended without children were referred for criminal prosecution by CBP following the Justice Department's announcement of the "zero-tolerance" policy on April 6, 2018. Moreover, TRAC found that, at most, only 32 percent of all adults apprehended at the border, including those with children, were criminally prosecuted. This data indicates that most of the people apprehended at or near the southern border were not referred for criminal prosecution and, in fact, it appears that thousands of adults without children were not referred for prosecution while up to 3,000 children may have been separated from their parents under the guise of the zero-tolerance policy.

    a. **(Defer to CBP) How many adults who were accompanied by children were apprehended at or near the southern border? Please provide data broken down by month from April 2018 to June 2018.**

    b. **(Defer to CBP) How many adults who were accompanied by children and apprehended at or near the southern border were referred for criminal**

AMERICAN OVERSIGHT

prosecution? Please provide data broken down by month from April 2018 to June 2018.

c. **(Defer to CBP) Given the report's finding that, at most, only 38 percent of adults apprehended without children by CBP at or near the southern border were referred for criminal prosecution, what factors did ICE consider and what guidelines, if any, did ICE follow in determining whether to refer an adult accompanied by children for criminal prosecution as compared to an adult who was not accompanied by children?**

17. TRAC also reported that only one adult apprehended by CBP as a family unit was actually referred for criminal prosecution in all of April 2018, even though the zero-tolerance policy was announced on April 6, 2018 and a large number of family separations occurred in April 2018. This is inconsistent with the Trump administration's claim that the separation of children from their parent was a consequence of referring all adults apprehended at the border for criminal prosecution under the "zero-tolerance" policy. In fact, TRAC found that "it would appear most separations through at least April [2018] took place for entirely different reasons than the rationale the Administration has given."

a. **(Defer to CBP) How many adults were separated from their children under the zero-tolerance policy where the adults were not referred for criminal prosecution? How many children were separated from their parents in these circumstances? Please provide data for both questions broken down by month from April 2018 to June 2018.**

b. **(Defer to CBP) Under the zero-tolerance policy, who made the decision of whether a family unit—*i.e.*, adults accompanied by children—apprehended at or near the southern border would be separated, either by referring the adult for criminal prosecution or by other means?**

c. **(Defer to CBP) Under the zero-tolerance policy, who, if anyone, reviewed the decision of whether a family unit apprehended at or near the southern border would be separated?**

d. **(Defer to CBP) Under the zero-tolerance policy, what factors did ICE consider and what guidelines, if any, did ICE follow in determining whether to separate families where the adult family members were not referred for criminal prosecution?**

18. The Trump administration's June 20, 2018 Executive Order on family separations identified a policy of detaining families "where appropriate and consistent with law and available resources." The American Academy of Pediatrics and 13 American medical and mental health organizations have made clear that family detention is not an appropriate solution to family separation. They have pointed to the serious physical and emotional harm that detention inflicts on children.

AMERICAN OVERSIGHT

a. (ERO) From June 2018 to the present, how many babies younger than 12 months old have been held in ICE custody? How many babies younger than 12 months old does ICE currently have in its custody?

b. (ERO) From June 2018 to the present, how many children age 1 or older have been held in ICE custody? How many children age 1 or older does ICE currently have in its custody? Please provide a breakdown by age for both questions.

c. (ERO) What criteria does DHS use to determine whether a family is detained or released, with or without monitoring mechanisms such as ankle monitors? Please provide the Senate Judiciary Committee with a copy of any guidelines used in these determinations.

d. (ERO) What is the average length of detention in ICE custody for children age 5 and under and for children over age 5? What is the longest length of ICE detention in ICE custody for children age 5 and under and for children over age 5?

AMERICAN OVERSIGHT
DHS-19-0195-H, 19-0494-G, 19-0495-F-000236

Senate Judiciary Committee
Questions for the Record from Senator Amy Klobuchar
for Ronald D. Vitiello

Nominee

Director of Immigration and Customs Enforcement
Department of Homeland Security

As Acting Deputy Commissioner of Customs and Border Protection (CBP), you participated in the implementation of the Administration's family separation policy. The American Academy of Pediatrics warned that this policy could cause "irreparable harm" for children who were separated from their parents.

- **(OPA)** Did anyone within the Department of Homeland Security (DHS) raise concerns to you regarding the policy's potential harm to children?

(b)(5)

- **(OPA)** During a hearing last December, I asked CBP Commissioner McAleenan if he had any regrets about the implementation of the family separation policy. Do you have any such regrets?

(b)(5)

Last December, I sent a letter with 12 other Senators expressing concern over the Administration's decision to reinterpret the 2008 U.S.-Vietnam repatriation agreement in order to facilitate the deportation of Vietnamese immigrants. Many of these Vietnamese immigrants, like other immigrants from South Asian countries, have lived in my state of Minnesota for years.

- **(ERO/OPLA)** What are the Administration's justifications for reversing the agreement?

A report by the DHS's Office of Inspector General released in January found that ICE failed to hold contractors accountable for maintaining safe detention facilities. The report found that in over 14,000 instances where contractors failed to adhere to contract requirements, ICE only fined the contractor twice. Instead, ICE routinely issued waivers to exempt facilities from complying with certain standards, including in instances where there was a risk to the safety of people in detention.

- **(OAQ)** What process is in place for ICE to evaluate contractor deficiencies, and how does ICE decide whether to impose a fine or issue a waiver in a particular case?

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT

Written Questions for Ron Vitiello
Submitted by Senator Patrick Leahy
March 27, 2019

At your hearing before the Senate Homeland Security and Government Affairs Committee (HSGAC), you apologized for a tweet in which you called the Democratic Party the "NeoKlanist Party." I am glad you apologized. You also testified that you did not remember the "context" or "premise" of the tweet.

1. **(OPA) Now that you've had time to reflect upon your tweet, can you explain in writing the context or premise that prompted it?**

(b)(5)

The National ICE Council, which represents almost 8,000 employees of ICE, wrote a letter to HSGAC opposing your nomination to serve as the Director of ICE.[1] This is the first time in its history the Council has "officially opposed the nomination of a presidentially-appointed federal official." In its letter, the Council makes a number of serious allegations

1. **(OPA) Have you addressed the allegations made by the National ICE Council in any way? If not, why not?**

2. **(OPA) If you have provided written responses to HSGAC regarding the allegations in the National ICE Council's letter, would you provide this Committee with a copy?**

3. **(OPA) Have you been in contact with leadership at the National ICE Council following the publication of their letter opposing your nomination? If not, why not?**

During your testimony before the HSGAC and in various television interviews, you have repeatedly argued that prosecuting illegal entry will result in lower levels of illegal entry. In June 2018, you stated: "we know that when people have a consequence for illegal activity, they do less of it." But during the period in which the "zero tolerance" prosecution policy was in effect – systematically separating thousands of children from their families – reports confirmed that illegal crossings did not appreciably decrease.

[1] http://cdn.cnn.com/cnn/2019/images/02/13/national.ice.council.letter.to.hsgac.re.vitiello.opposition.feb.12.2019.pdf

AMERICAN OVERSIGHT

1. **(OPA) Can you provide the Committee with data supporting your view that the aggressive prosecution of illegal entry leads to a decrease in levels of illegal entry?**

(b)(5)

The enacted FY 19 Homeland Security appropriations act provides ICE with funding to maintain an average daily population of approximately 45,000 detainees, with the expectation of bringing down the detention population to 40,520 by the end of this fiscal year. But ICE's detention capacity is going in the other direction – up – ballooning from roughly 49,000 at the time the FY 19 appropriations package was enacted to 50,074 individuals as of March 13, 2019.

1. **(ERO/OPA) If confirmed to serve as Director of ICE, what is your plan to bring ICE's detention capacity levels down to 40,520 by the end of this fiscal year as expected by Congress? Please provide a detailed, month-by-month roadmap explaining how you would go about bringing ICE detention levels to 40,520 by the end of FY 2019?**

(b)(5)

1. **(ERO/OPA) Do you believe that ICE's increased enforcement actions against non-criminal immigrants under the Trump administration are in any way negatively impacting the cooperation of immigrant communities with state and**

[2] https://www.usatoday.com/story/news/politics/2019/03/21/ice-sets-record-arrests-undocumented-immigrants-no-criminal-record/3232476002/
[3] https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf

AMERICAN OVERSIGHT

local law enforcement authorities? If not, can you provide any kind of data, reporting, or surveys from law enforcement authorities supporting your view?

Senate Report 115-283, whose provisions were incorporated into the enacted FY 2019 Homeland Security appropriations act, includes report language directing the Department of Homeland Security to maintain records and respond to record requests in compliance with the Freedom of Information Act regarding detainees who are housed in non-federal, private detention facilities. Those private detention facilities fall under the jurisdiction of ICE.

1. **(OPA) To your knowledge, has ICE promulgated any memoranda or guidance to non-federal, private detention facilities instructing them to maintain records and respond to records requests in compliance with the Freedom of Information Act? If so, can you please provide us with copies of any such memoranda or guidance?**

2. **(CFO/IGP) If such documents do not exist, can you explain how you would ensure compliance with this enacted report language if confirmed as Director of ICE?**

(b)(5)

The enacted FY 2019 Homeland Security appropriations act prohibits ICE from removing, detaining, or initiating removal proceedings against sponsors or potential sponsors of unaccompanied children based on information received from the Department of Health and Human Services about those individuals.

1. **(OPP/ERO) What procedures has ICE put in place to ensure its compliance with this particular prohibition in the FY 2019 spending bill? Can you provide**

AMERICAN OVERSIGHT

the Committee with any memoranda or guidance provided to ICE officers and agents educating them about this particular prohibition in the law?

2. **(OPP/ERO) If such memoranda and guidance documents do not yet exist, what will you do if confirmed as Director of ICE to disseminate any such documents widely within ICE to ensure compliance with the law?**

Recent reports exposed an operation across multiple agencies in the U.S. government to surveil, enhance security screenings on, and interrupt the travel of U.S. citizen journalists and lawyers who worked among migrants arriving at our southern border. Punitive actions taken by U.S. Customs and Border Protection against at least 59 targeted individuals – identified in a database called "San Diego Sector Foreign Operations Branch: Migrant Caravan FY-2019, Suspected Organizers, Coordinators, Instigators and Media." – raise a number of legal and constitutional concerns.

1. **(HSI) To your knowledge, what role, if any, did ICE play in developing, implementing, or overseeing this legally suspect this surveillance program?**

(b)(5)

AMERICAN OVERSIGHT

Nomination of Ronald Vitiello
to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security

Questions for the
Record Submitted
March 27, 2019

QUESTIONS FROM SENATOR WHITEHOUSE

1. The ICE sensitive locations policies, which remain in effect, provide that enforcement actions at sensitive locations should generally be avoided, and require either prior approval from an appropriate supervisory official or exigent circumstances necessitating immediate action. Presently, the agency policy is to obtain prior approval for planned enforcement action at a sensitive location.
   a. (OPA) Will you commit to complying with the ICE sensitive locations policies?

(b)(5)

   b. (OPA) What will you do to ensure that the approval process is adhered to?

(b)(5)

   c. (OPA) Do you feel as though current ICE enforcement action is consistent with these factors?

(b)(5)

AMERICAN OVERSIGHT

2. Presently, sensitive location policies do not extend protections to other locations that are critical to the safety and security of immigrants, including courthouses. To some, this lack of protection undermines public safety and is a source of frustration for judges, advocates, and community members alike.
   a. (OPA) Do you feel that the policies surrounding sensitive locations should be expanded to include courthouses?

(b)(5)

   b. (OPA) If you believe the current policies in place provide sufficient protection, please explain why.

(b)(5)

3. The lack of clarity in sensitive locations policy has led to confusion about how close immigration agents can be to a sensitive location before it constitutes a violation. For instance, in 2018, a 19-year-old immigrant was arrested at a bus stop directly outside of a Portland hospital. ICE agents watched him leave the hospital and walk to the bus stop at the hospital's entrance, where they apprehended and arrested him. Sensitive location policies are intended to bolster immigrants' ability to carry out activities that are essential to their health and safety.
   a. (OPA) What clarity can you provide to these policies and what methods of reform would you propose to ensure that the policies are uniformly enforced in light of their essential purpose?

AMERICAN OVERSIGHT

(b)(5)

4. (OPA) Concerns have been raised regarding the lasting impact of family separation on the well- being of children. What have you done or will you do to address these concerns?

(b)(5)

5. (OPA and OPLA) Recently, the Supreme Court addressed a challenge to an interpretation of a detention provision of the Immigration and Nationality Act that would allow ICE officials to detain an unauthorized immigrant indefinitely once they are taken into criminal custody, even if they were released months ago, without the opportunity for a bond hearing. With this legal question now resolved in ICE's favor, will you continue this practice of indefinite detentions? Do you believe this is good public policy, and why?

6. (ERO) Family detention policies have been criticized as costly practices that undermine more humane and less traumatic methods that ensure adequate due process for detainees. What alternatives to detention have you or would you consider?

7. In a June 2018 interview, you said about the deterrent effect of the family separation policy, "We know that when people have a consequence for illegal activity, they do less of it. And that's what we're trying to accomplish here"
   a. (OPA) Do you still believe that family separation functions as a deterrent?

(b)(5)

AMERICAN OVERSIGHT

b. (OPA) If so, is this belief based on scientific studies or research on the deterrent effects of punishment? If so, please cite them.

(b)(5)

c. (OPA) Do you believe that any deterrent effect of the family separation policy outweighs the harms it causes to migrant families and children?

(b)(5)

8. As you know, the National Immigration and Customs Enforcement Council of the American Federation of Government Employees wrote a letter to Senators Johnson and Peters opposing your nomination.
   a. (OHC) What contacts have you had with the union after their letter about your nomination was published? Please detail the contents of those communications and who was involved.

(b)(5)

   b. (OHC) Have you made any commitments to the union after or before the letter was sent? Please specify.

(b)(5)

   c. (OHC) What role will the union have in ICE policymaking under your leadership?

If confirmed, I will continue to meet the agency's contractual obligations to advise and collaborate with employee unions. I believe it is in the best interest of the agency to maintain productive, transparent relationships with union leadership, members, and all employees.

9. In the letter opposing your nomination, the ICE Union wrote that you "continue the practice of whistleblower retaliation."
   a. (OPA) What is ICE's official policy towards whistleblowers?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

b. (OPA) Do you believe that whistleblowers play an important role in exposing misconduct?

(b)(5)

c. (OPA) If confirmed, what steps will you take to ensure whistleblowers are able to come forward to raise concerns without fear of retribution?

(b)(5)

d. (OPA) Have you ever retaliated against a whistleblower?

(b)(5)

AMERICAN OVERSIGHT

10. Documents leaked to NBC 7 in San Diego show that that the U.S. government, including CBP, targeted journalists and activists for scrutiny at the border and created a secret database containing their personal details, social media information, and descriptions of their migrant-related work.
    a. (OPA) Did you have knowledge of this or any other database tracking journalists? Please specify.

(b)(5)

    b. (OPA) Have you ever assisted in the creation of a database to track journalists based on their writing and reporting?

(b)(5)

    c. (OPA) While at CBP or ICE, have you ever instructed agents to increase screenings on journalists, attorneys or immigration advocates crossing the border?

(b)(5)

    d. (OPA) If confirmed, how will you ensure that ICE respects the role of the free press?

(b)(5)

11. In a July 2018 article, The New York Times reported that ICE has reported 1,310 claims of sexual abuse against detainees from fiscal years 2013 to 2017. Watchdog organizations estimate the occurrence of sexual abuse to be significantly higher.
    a. (OPA) How will you ensure that ICE law enforcement agents will not abuse detainees?

(b)(5)

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000248

(b)(5)

b. (OPA) During your time as a CBP and ICE official, what policies have you put in place to ensure claims of abuse, both sexual and nonsexual, are thoroughly investigated?

(b)(5)

c. (OPA) What disciplinary actions have you taken against officers found to have committed abuses? Please specify.

(b)(5)

AMERICAN OVERSIGHT

(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

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?

(b)(5)

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)

AMERICAN OVERSIGHT

(b)(5)

14. In January 2019, the DHS Inspector General issued a report finding that, "Instead of holding [detention] facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards." Since this report was issued, the Appropriations Committee included language in its FY19 report requiring that the ICE Director personally sign off on any waivers of contract requirements for immigration detention.
    a. (OPR and ERO) What steps have you taken to remedy the issues raised by the DHS Inspector General report?
    b. (OPA) If confirmed, how will you ensure that facilities comply with ICE detention standards?
    c. (OPR and ERO) How many waivers of contract requirements have been requested of you since the Appropriations Committee report was issued, and how many have you approved?
    d. (OPR and ERO) What was the nature of the waivers approved and the nature of the waivers denied?
    e. (OPA) Will you commit to maintaining or strengthening standards for immigration detention?

15. In 2016, the Homeland Security Advisory Council documented alarming deficiencies in the inspections and monitoring processes governing the immigration detention system. The majority of the council voted to recommend a "measured but deliberate shift away" from the use of private prisons for immigration detention
    a. (OPA) Do you believe that private prisons are appropriate for immigration detention?
    b. (OPA) If the agency does not intend to reduce its reliance on contracts with private prison companies, as recommended by the HSAC in 2016, please articulate the evidence supporting a decision to reject the recommendations of the Council.

AMERICAN OVERSIGHT

United States Senate Judiciary Committee
Questions for the Record for Ron Vitiello
Nominated to be the Director of Immigration and Customs Enforcement
March 20, 2019

QUESTIONS FROM SENATOR BLUMENTHAL

I am concerned about your judgment. In 2015, you tweeted from your personal account that the Democratic Party should be renamed the "NeoKlanist party."

1. (OPA) **The National ICE Council stated that this sort of behavior could result in a rank and file employee being fired. Do you agree with this statement?**

(b)(5)

2. (OPA) **If an ICE employee had engaged in this sort of behavior, what discipline would you suggest for them?**

(b)(5)

3. (OPA) **If you are promoted after engaging in this sort of inappropriate behavior, how will you have any credibility as you attempt to lead ICE?**

(b)(5)

The Obama Administration prioritized enforcement actions against recent arrivals and those with serious criminal convictions. It is unclear whether the Trump Administration has employed immigration enforcement priorities thus far.

1. (OPA) **What, if any, immigration enforcement priorities do you believe ICE should have?**

AMERICAN OVERSIGHT

(b)(5)

2. (OPA) **Do you believe ICE should be performing raids on people's homes or workplaces? If so, will you take into account not wanting to separate families or parents from children during raids?**

(b)(5)

3. (OPA) **Do you believe in detaining asylum seekers and families? If so, what is your justification for the detention of asylum seekers and/or families?**

(b)(5)

According to news reports, in a July 2017 memo, Jonathan White, the former deputy director of the Office of Refugee Resettlement (ORR), described how efforts made by ICE to target or detain the sponsors of unaccompanied children will likely lead to "significant increases in length of stay and a decline in the discharge rate." In some cases, it appears that ICE used the information that ORR collected on sponsors in order to track those people down and initiate deportation proceedings.

1. (OPP and ERO) **Do you plan on continuing to use the data collected by ORR on potential sponsors in order to track and deport parents?**
2. (OPA) **Do you agree that ICE efforts to target or detain the sponsors of unaccompanied children currently in detention will lead to "significant increases in length of stay" for children?**

(b)(5)

AMERICAN OVERSIGHT

3. (OPA) **Are you aware of all of the physical, emotional, and psychological effects that stays in detention facilities can have on children?**

(b)(5)

4. (OPA) **Are you aware that prolonged stays in detention facilities for children can exacerbate the effects mentioned above?**

(b)(5)

You served in leadership positions at Customs and Border Patrol (CBP) and ICE during both the lead up to, and the implementation of, President Trump's zero-tolerance family separation policy.

1. (OPA) **What effort, if any, did you make to alert your superiors that the zero-tolerance policy was resulting in the separation of families?**

(b)(5)

2. (OPA) **Do you agree with expert assessments that separating kids from their parents can inflict lifelong trauma and psychological harm?**

(b)(5)

3. (OPA) **Do you believe that the zero-tolerance family separation policy was effective?**

(b)(5)

4. (OPA) **What was the desired effect of this policy?**

AMERICAN OVERSIGHT

(b)(5)

5. (OPA) **Is there currently a process in place to reunite any families that are still separated? If so, what is that policy?**

(b)(5)

6. (OPA) **Are you aware of any efforts by the administration to re-implement the family separation policy or implement another policy that would also have the effect of separating children from their parents?**

(b)(5)

You reportedly stated that the zero-tolerance policy resulted in the separation of "only 2,500 people."

1. (OPA) **Do you believe that all families – including immigrant families – belong together?**

(b)(5)

2. (OPA) **Your comment that "only 2,500 people" were affected indicates that you do not believe that is a lot of people. Do you believe that a family separation policy that affected 2,500 people is not a significant event?**

(b)(5)

3. (OPLA) **In recent court filings, the government has stated that over 2,800 children were separated from their parents in the summer of 2018. In addition, the Department of Health and Human Services Office of the Inspector General has 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?**

(b)(5)

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

AMERICAN OVERSIGHT

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?**

(b)(5)

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

(b)(5)

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?**

AMERICAN OVERSIGHT

(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)

AMERICAN OVERSIGHT

(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 concerns me because ICE must conduct meaningful and detailed retrospective reviews of the death of anyone in its custody.

1. (OPR and ERO) **Do you have an explanation for the decrease in both the quality and length of the reports?**

(b)(5)

2. (OPR and ERO) **Is ICE creating more fulsome reports that are not released to the public?**

(b)(5)

3. (OPR and ERO) **A news report published on November 26, 2018 noted that an autopsy of Roxsana Hernández Rodriguez – a transgender woman who died in ICE custody –concluded that Ms. Hernández Rodriguez had likely suffered physical**

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000259

abuse, including blunt-force trauma "indicative of blows, and/or kicks," prior to her death. However, the death report for Ms. Hernández Rodriguez contains no mention of any physical abuse. Can you explain why this information was excluded from the report concerning her death?

(b)(5)

I am concerned by the lack of regulations or enforceable standards for private detention facilities. Detainees are a vulnerable population, and many of them are without legal representation to help ensure fair and humane treatment. Private detention facilities are particularly concerning because they are incentivized to do whatever they can to cut costs, increase the number of detainees, and maximize profits.

1. (ERO) **What has been done to mitigate the effects of perverse incentives?**
2. (ERO) **What does ICE do to ensure humane treatment in private facilities?**
3. (OPR) **When there are news reports detailing inhumane treatment in private detention facilities does ICE investigate those reports?**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

4. (ERO) **What are the consequences, if any, for failing to meet the Operations Manual ICE Performance-Based National Detention Standards?**
5. (ERO) **What standards is your office implementing when determining whether to grant a waiver of contractual obligations, as discussed in recent Department of Homeland Security Office of Inspector General reporting?**

AMERICAN OVERSIGHT

Nomination of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, United States Department of Homeland Security
Questions for the Record
Submitted March 27, 2019

QUESTIONS FROM SENATOR COONS

1. You were the Acting Deputy Commissioner of Customs and Border Protection (CBP) when the Department of Justice implemented the zero tolerance immigration enforcement policy.
   a. (OPA) What was your involvement with the creation and implementation of the zero tolerance policy?

(b)(5)

   b. (OPA) Prior to the implementation of the zero tolerance policy, did you understand that the policy would result in the separation of children from their parents?

(b)(5)

   c. (OPA) Were you aware that family separations as a result of the zero tolerance policy could have health impacts on children?

(b)(5)

   d. (OPA) Were you involved in any discussions with medical and mental health experts about the potential impacts of the zero tolerance policy on children?

(b)(5)

AMERICAN OVERSIGHT

e. (OPA) Please describe your role in the preparation and planning process for keeping track of migrant children who would be separated from their parents.

(b)(5)

f. (OPA) Please describe your role in the preparation and planning process for reuniting children with their parents.

(b)(5)

g. (OPA) What was your involvement with President Trump's decision to end family separations?

(b)(5)

2. On April 6, 2018, Attorney General Sessions announced a zero tolerance policy that resulted in CBP separating thousands of children from their families at the border before the President rescinded the policy on June 20, 2018, amidst a national outcry. According to a January 2019 report by the Office of Inspector General for the Department of Health and Human Services (HHS), "[t]housands of children may have been separated . . . beg[inning] in 2017."

   a. (OPA) At any point in 2017 or 2018, before the zero tolerance policy was rescinded, did you express concern to anyone at CBP, or the Department of Homeland Security (DHS) generally, about the impact of the zero tolerance policy?

   (b)(5)

   b. (OPA) Did anyone at CBP, or DHS generally, raise concerns to you about the impact of the zero tolerance policy? If so, did you share their concerns with anyone?

   (b)(5)

3. In a June 14, 2018, interview on MSNBC about the zero tolerance policy, you were asked by Ali Velshi if you would change anything if you were in charge of policymaking. You responded that you would not change anything because "we need to send the message that crossing the border is illegal." With the benefit of hindsight, would you still support the implementation of the zero tolerance policy?

(b)(5)

AMERICAN OVERSIGHT

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

(b)(5)

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?

(b)(5)

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?

(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?

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000264

(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)

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000265

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?

AMERICAN OVERSIGHT

c. (OPA) Do you believe that potential sponsors for unaccompanied children should be an enforcement priority for ICE?

Every day our agents and officers are prioritizing arrests based on finite resources, and immigration violators are on that list.

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)

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?

(b)(5)

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?

(b)(5)

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

(b)(5)

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

(b)(5)

AMERICAN OVERSIGHT

d. (OPA) If confirmed, will you commit to determining whether any events you may be scheduled to attend during your tenure are hosted by hate groups and, if so, to not attend?

(b)(5)

15. At the September 2018 FAIR event, you seemed to dismiss the severe harm caused by the family separations at the border by stating that "only 2,500 people were affected by that situation."
    a. (OPA) Do you agree that more than 2,500 family members were separated at the border?

(b)(5)

    b. (OPA) Do you agree that the family separations caused significant harm for every family involved?

(b)(5)

    c. (OPA) Do you agree that the family separations spread fear in immigrant communities and caused pain to individuals who were not directly affected?

(b)(5)

16. Following your nomination, for the first time in its history, the National Immigration and Customs Enforcement Council of the American Federation of Government Employees took an official position of opposition to a presidentially appointed federal official.
    a. (OPA) If you are confirmed, what actions will you take to improve your relationship with the National ICE Council and its members?

(b)(5)

    b. (OPA) The Council expressed concern that you do not possess "the highest caliber of leadership." What steps will you take to improve your leadership if you are confirmed?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

17. In a February 12, 2019 letter opposing your nomination, the National ICE Council asserted that you "[p]rohibited [w]histleblowers from [g]oing to [w]ork." The Council stated that you "ordered that certain federal employees not be permitted to report to work and perform their official duties as federal employees."
    a. (OPA) Have you ever prohibited whistleblowers from going to work?

    (b)(5)

    b. (OPA) Since June 30, 2018, how many ICE whistleblowers have not been permitted to report to work?

    (b)(5)

    c. (OPA) How many ICE whistleblowers are currently not permitted to report to work?

    (b)(5)

    d. (OPA) If confirmed, what steps will you take to ensure that ICE whistleblowers do not face retaliation?

    (b)(5)

AMERICAN OVERSIGHT

Nomination of Ronald D. Vitiello
Assistant Secretary for Immigration and Customs Enforcement
U.S. Department of Homeland Security Questions for the Record Submitted March 27, 2019

QUESTIONS FROM SENATOR BOOKER

1. On November 2, 2015, in response to a tweet from Mark Levin asking for alternative names for the Democratic Party, you published a tweet that said, "@marklevinshow the liberalcratic party or the NeoKlanist Party."[1] When you testified before the Senate Homeland Security and Governmental Affairs Committee you said the following about the tweet:

> It was a mistake. I was trying to make a joke. I thought it was a direct message. I wasn't familiar with how the platform worked, as it related to that. I did not mean to suggest that the party is somehow against American values or – and I deeply regret that I did it. It was a momentary lapse of judgement and I apologize.[2]

a. (OPA) You characterized this tweet as a momentary lapse in judgment. How can you assure members of the Senate that you will not have similar momentary lapses in judgment as Director of U.S. Immigration and Customs Enforcement (ICE)?

(b)(5)

b. (OPA) You also characterized the tweet as a joke. In that moment, why did you think it was funny to compare a major American political party to the KKK?

(b)(5)

c. (OPA) Can you please explain the link between the Democratic Party and the KKK that you believe made your "joke" make sense?

(b)(5)

AMERICAN OVERSIGHT

2. During your nominations hearing before the Senate Homeland Security and Governmental Affairs Committee, Senator Peters asked you several questions about an appearance you made at an event hosted by Federation for American Immigration Reform (FAIR).[3] He made you aware of the fact that the Southern Poverty Law Center

[1] Kate Prengel, *Trump's Pick to Lead ICE Once Compared Him to Dennis the Menace*, HEAVY (Nov. 28, 2019), https://heavy.com/news/2018/11/trumps-ice-dennis-the-menace-vitiello/.
[2] *Nominations of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security, and Richard S. Tischner, Jr., to be Director of the Court Services and Offender Supervision Agency for the District of Columbia*, Before the S. Comm. on Homeland Sec. and Governmental Affairs, 115th Cong. (2018) (statement of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec.), *available at* http://www.cq.com/doc/congressionaltranscripts- 5417398?1.
[3] *Id.*

(SPLC) classified Fair as a hate group.[4] When Senator Peters asked you if you know about that classification you said, "I did not know that."[5]

a. (OPA) Since your hearing on November 15, 2018, have you had a chance to review the SPLC's explanation of FAIR and why it designates it as a hate group? If not, why?

(b)(5)

b. (OPA) Do you believe it is appropriate for government officials to associate themselves with organizations that are classified as a hate group?

(b)(5)

3. FAIR was founded in 1979 by John Tanton who has made numerous controversial anti- immigrant statements.[6] He once said, "As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion."[7] He also said, "I've come to the point of view that for European-American society and culture to persist requires a European-American majority, and a clear one at that."

a. (OPA) What is your reaction to these quotes?

(b)(5)

b. (OPA) Do you believe these quotes represent the best of American values?

(b)(5)

AMERICAN OVERSIGHT

c. (OPA) How would you respond to someone who is concerned about your ability to lead one of the nation's most important law enforcement agencies given your association with a racist and anti-immigrant organization?

(b)(5)

4. In 1997, Dan Stein, the President of FAIR, said in an interview, "Immigrants don't come all church-loving, freedom-loving, God-fearing . . . . Many of them hate America, hate everything that the United States stands for. Talk to some of these Central Americans."[8] You are nominated to be the Director of ICE at a time when thousands of Central American migrants are coming to the United States to seek asylum because of horrible violence and poverty in their home countries.

a. (OPA) What is your reaction to Dan Stein's statement?

(b)(5)

b. (OPA) What kind of message do you think this statement sends to Central American migrants that the individual nominated to be the Director of ICE participated in an event hosted by an organization whose president makes such troubling remarks?

(b)(5)

c. (OPA) Are you willing to publically repudiate these types of baseless, divisive and hateful characterizations of immigrants?

(b)(5)

[4] *See* Southern Poverty Law Center, Federation for American Immigration Reform (last visited Mar. 22, 2019), https://www.splcenter.org/fighting-hate/extremist-files/group/federation-american-immigration-reform.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*

5. In 2019, the Department of Homeland Security Office of Inspector General issued a report on ICE detention and wrote, "Although ICE employs a multilayered system to

AMERICAN OVERSIGHT

manage and oversee detention contracts, ICE does not adequately hold detention facility contractors accountable for not meeting performance standards."[9] The report went on to say, "Instead of holding facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards."[10]

a. (OPA) What is your plan to hold detention facility contractors accountable and ensure that these operators meeting either the National Detention Standards, 2008 Performance-Based National Detention Standards, or 2011 Performance-Based National Detention Standards?

(b)(5)

b. (OPA) Do you commit to penalizing facility contractors who are not in compliance with performance standards and not use waivers?
c. (OPA) Do you plan to review the existing detention standards and propose adopting the American Bar Association's Civil Immigration Detention Standards? If not, please explain why.

6. Over the past few years, ICE has demonstrated a troubling lack of fiscal discipline. For instance, in FY 2018, the Department of Homeland Security reprogrammed $200 million to ICE from other agency accounts to cover the costs of immigrant detention and removal.[11] This reprogramming included $10 million from the Federal Emergency Management Agency when the federal government was trying to respond to hurricanes and forest fires that were destroying communities all over the United States.[12] In fact, Congress has expressed repeated alarm regarding this overspending and wrote in a 2019 report accompanying the Department of Homeland Security Appropriations Act 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?

(b)(5)

AMERICAN OVERSIGHT

(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)

AMERICAN OVERSIGHT

(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

a. (OPA) Did you ever object to the "zero-tolerance" policy before it was instituted?

(b)(5)

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?

(b)(5)

c. (OPA) Do you believe it is morally right to separate immigrant children from their parents at the Southwest border?

(b)(5)

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?

(b)(5)

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)(5)

AMERICAN OVERSIGHT

b. (OPA) Was the separation of migrant children from their parents meant to serve as a deterrent?

(b)(5)

c. (OPA) Why did you downplay the significant number of migrant children who were separated from their parents?

(b)(5)

[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: (b)(6); (b)(7)(C)
Sent: 29 Mar 2019 02:07:44 +0000
To: Kelly, Christopher S
Cc: Seguin, Debbie
Subject: QFRs
Attachments: 2019-03-27 - Vitiello SJC QFRs - MRM.docx

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); (b)(7)(

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?**

   (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:

   > 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.
   > And so when the Justice Department stepped up and said that they would do more prosecutions. We put instructions in place to take advantage of that.

   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

AMERICAN OVERSIGHT

confirmed, how would you avoid repeating the errors in judgment in planning that allow the family separation policy to occur?" You responded:

(b)(5)

7. **(OPA)** President Trump's previous nominee to head ICE, Thomas Homan, made a series of inflammatory and inaccurate statements, including one which led to the resignation of an ICE spokesman who said he "didn't want to perpetuate misleading facts." For example, Mr. Homan:

   - Reportedly referred to undocumented immigrants by the derogatory term "tonks";
   - Called for the criminal prosecution of elected officials who represent jurisdictions that limit their involvement in immigration enforcement;
   - Compared the Mayor of Oakland, California to a "gang lookout"; and
   - Falsely suggested that an undocumented immigrant was responsible for wildfires in Sonoma County and that therefore California state law limiting involvement with immigration enforcement was to blame for the wildfires.

a. (OPA) What is your reaction to these remarks?

(b)(5)

b. (OPA) If you are confirmed, how would your leadership of ICE be different than Mr. Homan's?

AMERICAN OVERSIGHT

(b)(5)

c. (OPA) Have you ever used the term "tonk" or any other derogatory term to refer to immigrants or minorities? If so, please explain.

(b)(5)

8. **(OPA/OPP)** In your response to written questions submitted following a May 23, 2017 Senate Judiciary Immigration Subcommittee hearing titled "Building America's Trust Through Border Security: Progress on the Southern Border," you appeared to credit the Trump Administration's immigration enforcement policies for the decline in border apprehensions in FY 2017. Responding to a question from Senator Grassley, who asked, "Do you agree that President Trump's return to normal enforcement policies is a major reason for the decrease in border apprehensions and illegal entry to the United States?" you stated:

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

You credited the Trump Administration's immigration policies for a decreased flow of northbound illegal immigration in FY 2017. Doesn't the Trump Administration also bear responsibility for the situation at the Southern border now, which you have characterized as an unmitigated crisis?

(b)(5)

9. **(ERO) Do you support an increase in funding and deployment of ICE's Alternatives to Detention program?**

10. **(ERO) Do you agree that Alternatives to Detention are more cost-effective for the taxpayer than family detention facilities?**

11.

    a. **(ERO) Will you commit to requiring that the 2011 Performance-Based National Detention Standards (PBNDS 2011) be expeditiously implemented at all ICE detention facilities, including contract facilities?**

    b. **(ERO) Will you commit to requiring that any new ICE detention facility contract approved during your leadership will require compliance with PBNDS 2011?**

12. **(OPA) Has the polygraph exam requirement for Customs and Border Protection law enforcement positions elicited admissions of serious criminal conduct by certain job candidates?**

(b)(5)

13. ICE's website for job applicants (https://www.ice.gov/careers/faqs) states that ICE conducts pre-employment polygraph screenings for law enforcement positions.

    a. **(OPP) When did this policy begin?**

AMERICAN OVERSIGHT

b. (OPR/OPP) Does ICE use the Test for Espionage, Sabotage, and Corruption (TES-C), the standard Law Enforcement Pre-employment Test (LEPET) test, or a different polygraph examination?

(b)(5)

c. (OPR/OPP) Does ICE perform a pre-employment polygraph screening for all applicants for law enforcement positions or are there exceptions to this requirement?

(b)(5)

d. (OPR) How many such exams has ICE conducted and what is the passage rate for exams conducted at ICE since the policy began?

(b)(5)

14. In 2016, the Homeland Security Advisory Council's CBP Integrity Advisory Panel noted that "integrity could be enhanced further by periodic random and targeted polygraph examinations on a post-hire basis of CBP law enforcement personnel."

a. (OPA/OPR/OPP) Do you agree with this recommendation?

b. (OPA/OPR/OPP) Could post-hire polygraph testing enhance integrity at ICE?

15. At your November 15, 2018 confirmation hearing before the Senate Homeland Security and Governmental Affairs Committee, you stated: "I also appreciate the Committee's important oversight role, and I am committed to ensuring that our agency remains accountable to Congress and the taxpayers."

a. (OPA) Do you commit that, if you are confirmed, under your leadership ICE will expeditiously and thoroughly respond to requests for information from all Members of the Senate Judiciary Committee, regardless of their party affiliation?

(b)(5)

b. (OPA) What steps have you taken, and do you plan to take, to enhance ICE's

AMERICAN OVERSIGHT

accountability to Congress and the American people?

(b)(5)

16. **a. (ERO/OPLA) Please explain, with specific examples, how you have directed the use of prosecutorial discretion in deploying ICE detention and removal resources.**

17. **(ERO/OPA) Do you believe there are circumstances where it is appropriate for ICE to grant a stay of removal to an undocumented immigrant who is removable under the law? Have you ever ordered or approved the granting of such a stay of removal?**

18. **(OPA) During his confirmation hearing, USCIS Director Francis Cissna committed to maintaining the existing Deferred Action for Childhood Arrivals (DACA) guidelines and to ensuring that individuals only lose DACA if they have violated the terms of DACA. Will you make the same commitment?**

(b)(5)

19. **(ERO)** At your November 15, 2018 confirmation hearing, Senator Hassan asked you whether you "accept findings of pediatricians in the United States of America that detaining children provides long-term psychological harm to those children, yes or no?" You did not answer the question directly. You stated, "I understand the report. Yes." **Please answer this question directly.**

20. **(OPA/ERO)** ICE official Matthew Albence characterized ICE's family detention facilities as being "more like a summer camp" at a Judiciary Committee hearing last year. **Do you agree with this characterization?**

21. At your November 15, 2018 confirmation hearing, in response to a question from Senator Peters about whether there is an upper limit to how long a child should be detained in your view, you responded: "Well the law gives us upper limits. What we're -- in this discussion, what is -- what we're trying to seek is full opportunity in the due process and that requirement. And then when it -- if they're not subject to relief, then they're held only long enough to remove them."

(OPA) Please explain, legal restrictions aside, whether you believe there is an upper limit to how long a child should be held in immigration detention, and, if so, what this upper limit is?

(b)(5)

AMERICAN OVERSIGHT

22. On May 5, 2017, ICE reversed a decades-long bipartisan policy of issuing stays of removal for beneficiaries of private immigration bills when the Chairman of the Senate Immigration Subcommittee requests a report on the beneficiary. This action was taken without consulting Congress. As a result of ICE's decision, private bill beneficiaries are now subject to deportation even though legislation to provide for their relief is pending in Congress.

(OCR) Will you commit to working with the Chairmen and Ranking Members of the Senate Judiciary Committee and Immigration Subcommittee to reevaluate ICE's May 5, 2017 policy change?

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

   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

(b)(5)

2. On November 15, 2018, you testified before HSGAC that when you implemented the Trump administration's zero tolerance policy as Acting Deputy Commissioner of Customs and Border Protection (CBP), the resulting family separations "were never intended to be permanent." However, you also testified that CBP "never contemplated having the systems work backward" to reunify families, because "the reunification piece is a function of HHS." Furthermore, the Inspector General for DHS concluded in September 2018 that there was "no evidence" of any central database to track and reunify parents and children who were separated as part of the zero tolerance policy.

   a. (OPA) With no central database to track and reunify separated families, how did you intend to avoid permanent or long-term family separations?

   (b)(5)

   b. (OPA) Now that it's clear this did not work, what is being done as new families arrive? Is there a database in place? If not, why not?

   (b)(5)

   c. (OPA) How did you believe HHS would be able to "work backward" to reunify separated families, if CBP failed to develop a process for notify HHS which children were separated at the border and which children arrived unaccompanied? What is being done to address this problem for those already separated? What is being done for those separated going forward?

3. On March 13, a complaint filed with the Department of Homeland Security's Office of Civil Rights and Civil Liberties stated that Immigration and Customs Enforcement (ICE) kept several children at the Karnes County Detention Center for 40 days or longer. (*See* Letter to Ms. Cameron Quinn and Mr. John V. Kelly from Refugee and Immigrant Center for Education and Legal Services (Mar. 13, 2019)) As you know, the Karnes facility houses children along with their fathers.

   The group of families represented in the complaint includes a six-year-old boy who was detained with his father for 41 days, from January through March, before being separated from his father and moved to a children's shelter. This boy was allegedly detained for more than two times the 20-day detention period authorized in the Flores settlement agreement.

AMERICAN OVERSIGHT

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

AMERICAN OVERSIGHT

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)

AMERICAN OVERSIGHT

(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))

AMERICAN OVERSIGHT

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?

iv. (ERO) On average, how long does it take a detainee at Adelanto to receive medication after a doctor prescribes it?

AMERICAN OVERSIGHT

v. **(ERO) On average, how long do detainees have to wait after arriving at Adelanto to see a dentist?**

vi. **(ERO) How many hours per day do detainees at Adelanto spend locked in a cell?**

vii. **(ERO) How many hours do detainees at Adelanto spend in indoor common areas?**

viii. **(ERO) How many hours do detainees at Adelanto spend outside?**

c. **(ERO) What are the policies at Adelanto and other ICE detention facilities to ensure that detainees are able to access correspondence, books, and other materials that are sent to them?**

d. **(ERO) Why are detainees at Adelanto ICE processing facility unable to access their passports, identification documents, or other documents from ICE in time to provide these important documents to the judge when they appear in court?**

e. **(ERO) How does ICE determine the price it charges for food and other goods at the commissary at Adelanto?**

f. **(ERO) Will you commit to providing ICE detainees with access to their documents in advance of their hearings in immigration court or federal district court?**

g. **(ERO) At what temperature are ICE detention cells kept?**

h. **(ERO) Have any doctors reported to ICE or CBP officials that any detainees became ill, or that any detainees' existing symptoms worsened, because of the temperature settings within the facilities?**

9. In December 2018, the Stanford Law School Immigrants' Rights Clinic and the ACLU of Southern California filed a complaint alleging that ICE was failing to allow immigrants at three detention facilities in California to communicate with their attorneys. (*Ernesto Torres, Desmond Tenghe, Jason Nsinano, et al. v. U.S. Department of Homeland Security and U.S. Immigration and Customs Enforcement* (2018))
The complaint alleges that detained immigrants are unable to contact their attorneys by phone because the phone systems in these facilities do not allow them to leave voice mail messages or navigate automated menus if the call is not answered by a live person. Furthermore, when immigrants are allowed to meet with their attorneys in person, these meetings are restricted to locations where their conversations can be overheard.

a. **(ERO/OPLA) What does ICE do to disseminate information to detainees at the Adelanto, Lacy, and Musick facilities about the availability of legal representation? What about other facilities?**

AMERICAN OVERSIGHT

b. (ERO/OPLA) Will you commit to changing the phone systems at ICE facilities in California to allow immigrants to communicate effectively with their attorneys? If not, why not?

c. (ERO/OPLA) Will you commit to providing private areas in ICE detention facilities where immigrants can meet with their attorneys in a confidential manner, respectful of attorney-client privilege? If not, why not?

10. As you are aware, in October 2018, ICE stopped doing pre-release planning for asylum-seeking families before releasing them into communities along the Southwest Border. There have been numerous reports of families with children being dropped off at bus stations and parking lots without being directed to local shelters or other available community resources to help them reach their ultimate destinations.

    The Joint Explanatory Statement accompanying the 2019 Consolidated Appropriations Act included the following language: "In recent months, ICE has collaborated with organizations that provide temporary shelter to migrants released from ICE custody. Within the $114,147,000 increase above the fiscal year 2018 funding level for the Transportation and Removal Program, ICE is directed to provide for the transportation of migrants to such shelters based on where collaborating organizations have open sheltering capacity, including during surge periods. ICE shall immediately notify the Committees in advance of any decision to deny such transportation."

    a. (ERO) What has ICE done to comply with this directive to "provide for the transportation of migrants to such [temporary] shelters based on where collaborating organizations have open sheltering capacity"?

    b. (ERO) Have individual field offices been issued guidance in light of this requirement?

    c. (ERO) Please provide any guidance that has been issued regarding communication and coordination with community-based organizations to ensure the safe and orderly release of migrant families.

    d. (ERO) Many of these temporary shelters provide initial medical screenings and emergency services. These services are typically provided by local government health workers and private health providers. Has your agency made any effort to share health screening information (gathered either by ICE or U.S. Customs and Border Protection) for potential illnesses or injuries that individuals may be experiencing? If not, why not?

11. During the Obama administration, ICE agents, officers, and attorneys were permitted to exercise prosecutorial discretion to promote national security, border security, public safety, and the integrity of the immigration system. (Memorandum from Director John Morton, *Exercising Prosecutorial Discretion Consistent with the Civil Immigration Enforcement Priorities of the Agency for the Apprehension, Detention, and Removal of Aliens* (June 17, 2011)) On January 25, 2017, the Trump administration ended that discretionary authority with

AMERICAN OVERSIGHT

Executive Order 13768, which directs that immigration laws must be enforced against all "classes or categories of removable aliens." As a result, ICE arrested 38,000 immigrants with no criminal convictions in FY2017, a 146 percent increase over non-criminal immigration arrests in FY2016. The decision to focus on, and eliminate prosecutorial discretion for, low-priority individuals has forced immigration courts to spend valuable time on these cases, thereby adding to the enormous case backlog.

a. **(ERO) Please provide the number of ICE arrests since January 2017 involving individuals with no criminal convictions.**

b. **(ERO) Please also provide the number of Notices to Appear filed since January 2017 against individuals with no criminal convictions.**

c. **(ERO) Please provide the total number of individuals removed by ICE since January 2017 who have no criminal convictions.**

d. **(ERO) Please provide the total cost of arresting, charging, prosecuting removal cases against, and deporting the individuals described in Question 9(a)-(c) above.**

12. Recent reporting indicates that ICE has been using information collected by the California Department of Motor Vehicles (DMV) to conduct enforcement actions against individuals with no criminal history. This is concerning due to California's state law allowing residents to apply for licenses regardless of their immigration status, which was established as a way to improve public safety and accountability. (Sergio Flores & Tom Jones, *DMV Confirms ICE Has Limited Access to AB 60 License Information*, NBC LOS ANGELES (Feb. 20, 2019))

a. **(ERO/HSI) How has ICE used information collected by the California DMV in its targeting of enforcement actions?**

(b)(5)

b. **(ERO/HSI) Has your agency ever utilized the California Department of Justice's California Law Enforcement Telecommunications System (CLETS) for immigration enforcement purposes not involving a criminal justice matter?**

(b)(5)

13. On September 2, 2015, you tweeted at Mark Levin that the Democratic Party should be renamed the "Neo-Klanist" party. In November, you testified before HSGAC that this statement was "a joke" and a "momentary lapse in judgment," and that you believed you were sending it as a direct message rather than a public tweet.

AMERICAN OVERSIGHT

a. (OPA) Was Mark Levin the intended recipient of the tweet that you believed was a direct message? If not, who was the intended recipient of that remark?

b. (OPA) You said the comment was a joke, can you please explain the joke?

AMERICAN OVERSIGHT

Senate Judiciary Committee
Questions for the Record from Senator Charles E. Grassley
for Ronald D. Vitiello

Nominee

Director of Immigration and Customs Enforcement
Department of Homeland Security

Cost of Compliance related to Sanctuary Policies

In recent years, many state and local jurisdictions began implementing a policy of not reporting to ICE the release of criminal aliens from their custody, even when ICE identified the aliens and specifically requested notification before their release. These are commonly referred to as "Sanctuary City/State" policies.

The results of these policies are disturbing. In addition to the fact that the American public faces an increased and unnecessary risk to safety because criminal aliens are at-large in the community, additional resources are required to locate and arrest these criminal aliens.

1. **(ERO)** What is the average dollar cost to apprehend an alien, for whom ICE has identified as illegally present and issued a detainer, after s/he was released from a sanctuary jurisdiction? In your answer, please speak to the difference in resources and manpower allocated to an ICE arrest at a local jail versus an instance in which ICE has zero state/local cooperation.

2. **(ERO)** To the best of your knowledge, how many detainers were not honored in FY2017, FY2018, and FY2019 year to date?

3. **(ERO)** What are the increased risks to public safety when an alien must be arrested outside of a secure facility and in the community?

Equal Application of Crimes Involving Moral Turpitude (CIMT)

As you may be aware, recent federal court decisions have made it more difficult for the removal of illegally present aliens with criminal convictions. The use of the outdated categorical approach to determine if an alien has been "convicted of" various criminal grounds for the purpose of removal has had a significant impact, rendering many criminal statutes overbroad and unusable. The term "Crime Involving Moral Turpitude" is vague and open to a wide variety of interpretations. In some cases, aliens who have been convicted of sexual assault of a minor are not ultimately found deportable because a Circuit Court is bound to a patchwork of varying state law definitions, including different statutory requirements. This has completely undermined the intent of the removal statute, to remove criminal aliens from the United States.

AMERICAN OVERSIGHT

1. **(OPLA)** Please explain the effect of Court cases like *U.S. v. Auilera-Montes de Oca* and *Larios- Reyes v. Lynch* on the ability of ICE to remove serious violent criminal aliens from the United States.

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

2. **(OPLA)** How have these cases impacted the safety and welfare of communities in the United States?

(b)(5)

3. **(OPLA)** What are your recommended remedies to overcome these hurdles to

AMERICAN OVERSIGHT

remove criminal aliens who prey on the most vulnerable in our communities?

(b)(5)

Risks Created by the DHS Appropriations Act, 2019, Section 224

The Department of Homeland Security (DHS) Appropriations Act of 2019 provided funding for Immigration and Customs Enforcement. Pursuant to Section 224, ICE is specifically prohibited from using appropriated funds to detain or initiate removal proceedings against a sponsor, potential sponsor, or member of a household of a sponsor or potential sponsor of an unaccompanied alien child (UAC). Additionally, Section 224 prohibits ICE from using information solely provided by the Department of Health and Human Services (HHS) concerning the immigration status of UAC sponsors/potential sponsors to execute on ICE's statutory enforcement responsibilities.

4. **(ERO)** Will this restriction on the use of appropriated funds inhibit the ability of the federal government to ensure a safe environment into which an unaccompanied alien child is to be placed?

5. **(ERO)** Will this restriction inhibit ICE's ability to ensure that the household to which a UAC would be released does not include undocumented immigrants with a criminal record?

6. **(HSI)** Can smugglers and human traffickers abuse this loophole? How so?

(b)(5)

AMERICAN OVERSIGHT

7. **(ERO/HSI)** With these funding restrictions, how will enforcement actions against criminal aliens and criminal organizations be impacted?

(b)(5)

AMERICAN OVERSIGHT

Questions for the Record
Submitted to Mr. Ronald D. Vitiello
from Senator Kamala D. Harris

Nomination of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security
Senate Committee on the Judiciary
March 27, 2019

Coercion of Separated Parents to Relinquish Legal Rights

In August 2018, legal advocates filed a complaint with the Department of Homeland Security Office of Inspector General (DHS OIG) and the Department of Homeland Security Office of Civil Rights and Civil Liberties (CRCL) alleging that ICE employees engaged in coercion and abuse in order to compel immigrant parents who had been separated from their children to forgo their legal rights, including their right to reunify with their children or to lawfully seek asylum. The complaint alleged verbal and physical threats, insults, denial of food, withholding of feminine hygiene products from parents, and false claims to parents that their children would be permanently taken from them.

1. **(OPA) When did you become aware of these allegations?**

(b)(5)

2. **(OPR/ERO) What actions, if any, did ICE take in response to these allegations? Please provide written documentation.**

(b)(5)

3. **Has ICE conducted its own inquiry into these allegations?**

   a. **(OPR/ERO) If so, when will the inquiry be completed and will you publish it?**

(b)(5)

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

AMERICAN OVERSIGHT

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?**

AMERICAN OVERSIGHT

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?**

(b)(5)

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?**

Poor Conditions and Oversight at ICE's Adelanto Processing Center and Other Detention Facilities

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

AMERICAN OVERSIGHT

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?

AMERICAN OVERSIGHT

ICE Use of Body-Worn Cameras

In August 2015, when you were in a Customs and Border Protection (CBP) leadership role, CBP published a feasibility study on the use of body-worn cameras for officers and agents. The study found that body worn cameras would have benefits for CBP if properly acquired, deployed, and managed. CBP has since begun a body-worn camera pilot program.

15. (OPA) Since you have been in an ICE leadership role, have you initiated any discussions about piloting body-worn cameras at ICE?

(b)(5)

16. (OPA) If confirmed as ICE Director, will you commit to initiate a pilot program on body-worn cameras for ICE officers and agents?

AMERICAN OVERSIGHT

Questions for the Record for Ronald Vitiello
from Senator Mazie K. Hirono

1. As part of my responsibility as a member of the Senate Judiciary Committee and to ensure the fitness of nominees, I am asking nominees to answer the following two questions.

   a. **(OPA) Since you became a legal adult, have you ever made unwanted requests for sexual favors, or committed any verbal or physical harassment or assault of a sexual nature?**

   (b)(5)

   b. **(OPA) Have you ever faced discipline or entered into a settlement related to this kind of conduct?**

   (b)(5)

2. **(OPA) Several components of the Department of Homeland Security (DHS), including Immigration and Customs Enforcement (ICE) have failed to respond to the Senate Judiciary Committee's questions for the record. Do you commit to responding in a timely manner to all questions for the record submitted to ICE, if you are confirmed?**

(b)(5)

3. In April 2018, DHS and the Department of Health and Human Services (HHS) entered into a Memorandum of Agreement (MOA), which was signed by ICE, mandating that the Office of Refugee Resettlement (ORR) within HHS share with ICE information about each unaccompanied immigrant child's potential sponsor and all adult members of that potential sponsor's household. This resulted in deterring potential sponsors coming forward out of fear of immigration enforcement actions against them, leaving unaccompanied children in prolonged detention. These fears were not unfounded. By November 2018, ICE had reportedly arrested 170 individuals based on this information sharing, and more than 100 of those arrested had no criminal record.

   a. **(ERO) How many individuals have you arrested based on information obtained by this information-sharing MOA? Please provide this data broken down by month from April 2018 to the present.**

   b. **(ERO) How many of the individuals above were arrested only for immigration-related offenses? Please provide this data broken down by month from April 2018 to the present.**

AMERICAN OVERSIGHT

4. The Department of Homeland Security's Office of Inspector General (OIG) has issued several reports about the troubling conditions in ICE detention facilities and ICE's failure to hold these facilities accountable. In February 2019, for example, OIG reported that it identified serious issues at an ICE facility in New Jersey that "not only constitute violations of ICE detention standards but also represent significant threats to detainee health and safety," including serving "slimy, foul-smelling" food and maintaining housing units with mold and mildew. Human Rights Watch also reported in June 2018 that "[m]ore people died in immigration detention in fiscal year 2017 than any year since 2009, and the most recent detailed information we have about immigration detention deaths shows that they are still linked to dangerously inadequate medical care."

   a. **(ERO) What steps have you taken and what steps will you take to ensure that ICE facilities are safe and sanitary?**

   b. **(ERO) What steps have you taken and what steps will you take to improve access to proper medical care at ICE facilities?**

   c. **(CFO) In January 2019, OIG reported that, instead of holding ICE facilities accountable through financial penalties, "ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards." OIG made five recommendations to address its findings. By when do you expect to complete implementation of the recommendations made in the OIG report?**

   d. **(ERO) ICE responded to the OIG report on December 3, 2018, before the report was publicly released. Since December 3, 2018, how many waivers has ICE issued to facilities with deficient conditions? Since December 2018, on how many facilities with deficient conditions has ICE imposed financial penalties? Please provide a breakdown by month from December 2018 to the present for both questions.**

5. There have been multiple reports of physical and sexual abuse of adults and children at ICE detention facilities. Between 2010 and September 2017, reportedly at least 681 complaints of sexual assault, 307 complaints of sexual harassment, and 272 complaints of physical assault were filed, primarily about incidents while in ICE custody. Of these complaints, it appears only a small fraction were investigated.

   a. **(ERO/OPR) How many sexual misconduct complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?**

   b. **(ERO/OPR) How many physical abuse complaints has ICE received in the past 24 months? How many of those complaints were fully investigated? What were the results of those investigations?**

   c. **(ERO/OPR) What steps have you taken to ensure that all sexual abuse allegations are taken seriously and thoroughly investigated?**

AMERICAN OVERSIGHT

d. (ERO/OPR) What mechanisms and safeguards are in place to enable immigrants in ICE custody to come forward to report abuse by an ICE employee or ICE contractor without fear of retaliation?

e. (ERO/OPR) What relief or remedy is available to a detainee who reports abuse at an ICE facility?

f. (ERO/OPR) Does ICE have a mandatory reporting policy regarding an ICE employee or contractor who witnesses abuse against an adult or child in ICE custody? If so, please provide a copy of that policy.

6. CBP has indicated that more than 300 migrants, including children have been subject to the Migration Protection Protocols (MPP)—otherwise known as the Remain in Mexico plan—which requires asylum seekers to remain in Mexico as they await the adjudication of their asylum application. Several of the children sent to Mexico are reported to be under age 12. Under the MPP, ICE is responsible for transporting migrants to court for their immigration hearings and facilitating access to counsel. The San Diego Tribune reported issues with scheduling glitches and difficulty notifying migrants of changes in court dates. When one of these migrants returned to the U.S. port of entry for their first immigration court hearings, CBP officers would not let her into the United States, causing her to miss her hearing. When the woman's lawyer explained that her client was at the port of entry ready to come in, but CBP officers would not let her into the United States, the government attorney – the chief counsel for ICE, told the immigration judge that he should order the woman to be deported in her absence. The judge denied the government's motion.

a. (OPLA) Have there been any other cases, like the above-referenced case, where the government attorney has sought to have a migrant subject to the MPP deported after missing a court hearing due to issues with the MPP process? If so, please provide details of those cases and how they were resolved.

b. (OPLA/OPP) In what ways is ICE ensuring that the asylum seekers waiting in Mexico under the MPP policy have *meaningful* access to counsel? How are asylum seekers supposed to meet with their U.S.-licensed lawyers if they are forced to remain in Mexico under the MPP policy?

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?

AMERICAN OVERSIGHT

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."

AMERICAN OVERSIGHT

a. (OPA) Is it your view that the President has unlimited authority to declare a national emergency to build a border wall? If not, in your view, what are the legal limits of the President's authority to declare a national emergency to take money from military construction projects to build a border wall?

b. (OPA) In your view, is there a difference between a humanitarian crisis and a national security or military threat at our southern border?

c. (OPA/ERO) Please provide any factual evidence ICE has to support the claim that there is a national emergency at our southern border that necessitates the building of a border wall.

10. The National ICE Council, which represents about 7,600 ICE employees, submitted a letter to the Homeland Security and Governmental Affairs Committee (HSGAC) opposing your nomination. They noted that this was "the first time" in its history that it has officially opposed a presidentially-appointed nomination. At your hearing, you told Sen. Johnson that the charges in the letter are "very technical" and that "most" of what is discussed in the letter occurred before you became Acting Director of ICE. But the letter specifically talked about your tweet "suggesting that the Democratic Party be renamed as the 'NeoKlanist' party." The National ICE Council also raised concerns about your efforts to justify your statement as a "joke." When Sen. Peters asked you at the hearing whether you "believe that's appropriate language for a government official charged with significant responsibilities," you said you "regret[ted]" making this statement and committed to not using that type of language going forward.

a. (OPA) What steps have you taken to promote a culture of respect and professionalism within ICE that treats all people with dignity and humanity?

(b)(5)

AMERICAN OVERSIGHT

b. (OPA) Have you taken any implicit bias, diversity, and inclusion training in the past six months? If not, will you take such training and require your employees to do the same, if you are confirmed?

(b)(5)

11. In a memo date stamped April 23, 2018, ICE, Citizenship and Immigration Services (USCIS), and Customs and Border Protection (CBP) recommended that DHS Secretary Nielsen adopt an agency-wide policy of prosecuting all parents accompanied by their children who enter without authorization – a practice that would clearly require the separation of parents from their children. In fact, the policy did result in DHS separating thousands of children from their parents. ICE, USCIS, and CBP recommended this policy with the goal of deterring future migrants, including asylum seekers, from crossing the border.

a. (OPA) You have not disputed that you were "[i]nvolved in discussions and operational protocols regarding the administration's most controversial immigration policy that led to family separations." Please clarify what your role and involvement specifically were in these discussions and operational protocols.

(b)(5)

b. (OPA) The American Academy of Pediatrics, and numerous child welfare, juvenile justice and child development organizations wrote letters to DHS warning that the family separations conducted by DHS under this policy could inflict significant and long-term trauma on the separated children. What communications, if any, did you receive regarding concerns of the harm to children resulting from these family separations? What actions did you take upon receiving these communications?

c. (OPA) In implementing the zero-tolerance policy, what policy or plan did DHS have in place for reuniting parents and children after it separated them? Please provide a copy to the Senate Judiciary Committee of any DHS directive, memoranda, and other documentation detailing any such reunification policy or plan.

AMERICAN OVERSIGHT

12. With respect to the thousands of children who were separated from their parents, at your hearing on November 15, 2018, before the Homeland Security and Governmental Affairs Committee, you stated: "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. We tried to take advantage of that capacity." When Senator Peters pointed out, "But it was clear that families would be separated at that point?" you replied, "That would have been a consequence."

    a. **(OPA) Is it your view that a policy, like the zero-tolerance policy, that clearly results in the separation of families, including infants from their parents, is an opportunity to be "take[n] advantage of"?**

    b. **(OPA) Your statement describing the separation of thousands of children from their parents as merely "a consequence" is very concerning because it seems to demonstrate a lack of understanding of the severe and long-term harm on children and families that the zero-tolerance policy created. Knowing what we know now—including that medical and mental health experts have warned that forcibly separating families can result in "toxic stress" and long-term consequences, such as adverse brain development, mental illness, and substance abuse—if given another opportunity, would you again support a policy, like the zero-tolerance policy, that would foreseeably result in the separation of children from their parents?**

13. You further claimed at the November 2018 HSGAC hearing that "in most of the venues when we refer people for their -- for the federal crime of illegal entry. When they go to court locally, a lot of them only go for the hearing long enough to be out of our custody or at CBP out of custody for less than a day and then they're returned to us. And so the separations were -- was contemplated, but was never meant to be permanent. In most cases people got back together with their families on the same day."

    a. **(OPA) Please provide the factual basis for your assertion that "[i]n most cases people got back together with their families on the same day." Is it your statement that thousands more children were separated from their parents than have been previously reported and these families were reunited on the "same day"?**

    (b)(5)

    b. **(OPA) From April 2017 to June 29, 2018, you were the Acting Deputy Commissioner of CBP. The Department of Homeland Security's OIG found in its September 2018 report that some family separations could have been avoided where parents were quickly prosecuted and released back into CBP custody while their children were still in CBP facilities. But instead of returning the parents to CBP facilities and reuniting them with their children, CBP officials transferred them directly to ICE. The OIG report explained, that "[a]ccording to a senior official who was involved**

AMERICAN OVERSIGHT

with this decision, CBP made this change in order to avoid doing the additional paperwork required to readmit the adults." Were you aware of or involved in this decision at the time it was made? If so, please explain your role in this decision.

14. At the hearing, you seemed to suggest that the responsibility of reuniting children who were separated from their parents by DHS rested solely with the Department of Health and Human Services. You stated, "So the reunification piece is a function of HHS, Health and Human Services. They were in care and custody -- they have a care and custody of the children once they're out of CBP custody."

a. (ERO/OPA) Is it your view that DHS has no responsibility to ensure that parents who were separated from their children by DHS are reunited with their children?

(b)(5)

b. (ERO/OPA) In January 2019, the Office of Inspector General of HHS reported that: "As of December 2018, HHS had identified 2,737 children who were separated from

AMERICAN OVERSIGHT

their parents and required to be reunified by a June 2018 court in the *Ms. L v. U.S. Immigration and Customs Enforcement (ICE)* litigation. However, this number does not represent the full scope of family separations. Thousands of children may have been separated during an influx that began in 2017, before the accounting required by the court. In addition, as of early November 2018, HHS has received at least 118 separated children since the court order." What steps are ICE and DHS taking to review the data they have to identify all the children and parents who DHS separated since 2017? What steps are ICE and DHS taking to ensure that HHS has the information it needs to identify these separated children and ensure that they are reunited with their parents?

c. (ERO/OPA) On February 20, 2019, the government reported to a federal court in *Ms. L v. U.S. Immigration and Customs Enforcement* that there have been 245 new family separations between a June 26, 2018 court order that prohibited the government from separating families absent rare exceptions, and January 31, 2019. What system does DHS currently have in place to track family separations to ensure that parents know where their children are at all times and that those who have custody of the children know where the parents are located? Are ICE officials informed when a person in their custody has been separated from a child or family member? What steps do ICE officials currently take to identify parents in their custody who have been separated from their children, and reunite the parents with their children?

(b)(5)

15. At a Senate Judiciary Committee hearing on July 31, 2018, I asked ICE's Executive Associate Director of Enforcement and Removal Operations (ERO) Matt Albence what DHS's long-term plan was for the children who were separated from their parents by DHS. He responded that ICE "has had longstanding policy that facilitates reunification of a parent and a child at the time of removal. That has been our policy and that would have been the process we would have followed and had followed prior to this judge's order."

a. (ERO/OPA) Is Mr. Albence's statement accurate – during the implementation of the zero-tolerance policy that foreseeably resulted in the separation of thousands of children from their parents, was ICE's initial plan to reunify parents with their children at the time of removal? If so, why were more than 400 parents deported without their children? And if so, what was ICE's plan for separated parents and children who were seeking asylum? Please provide a copy of any written version of this policy to the Senate Judiciary Committee.

AMERICAN OVERSIGHT

b. (ERO/OPA) In implementing the zero-tolerance policy, what records were actually kept that identified the parents who were separated from their children and where these parents and children were located? Why did the government report to a federal court in San Diego that HHS had to conduct a *manual* review of the case files for all of the children in its custody— about 11,800 children—to determine which children had been separated from their parents by DHS?

16. The Transactional Records Access Clearinghouse (TRAC) at Syracuse University analyzed U.S. Border Patrol records and data on federal prosecutions, and its report showed that at most only 38 percent of adults apprehended without children were referred for criminal prosecution by CBP following the Justice Department's announcement of the "zero-tolerance" policy on April 6, 2018. Moreover, TRAC found that, at most, only 32 percent of all adults apprehended at the border, including those with children, were criminally prosecuted. This data indicates that most of the people apprehended at or near the southern border were not referred for criminal prosecution and, in fact, it appears that thousands of adults without children were not referred for prosecution while up to 3,000 children may have been separated from their parents under the guise of the zero-tolerance policy.

a. (Defer to CBP) How many adults who were accompanied by children were apprehended at or near the southern border? Please provide data broken down by month from April 2018 to June 2018.

b. (Defer to CBP) How many adults who were accompanied by children and apprehended at or near the southern border were referred for criminal prosecution? Please provide data broken down by month from April 2018 to June 2018.

c. (Defer to CBP) Given the report's finding that, at most, only 38 percent of adults apprehended without children by CBP at or near the southern border were referred for criminal prosecution, what factors did ICE consider and what guidelines, if any, did ICE follow in determining whether to refer an adult accompanied by children for criminal prosecution as compared to an adult who was not accompanied by children?

17. TRAC also reported that only one adult apprehended by CBP as a family unit was actually referred for criminal prosecution in all of April 2018, even though the zero-tolerance policy was announced on April 6, 2018 and a large number of family separations occurred in April 2018. This is inconsistent with the Trump administration's claim that the separation of children from their parent was a consequence of referring all adults apprehended at the border for criminal prosecution under the "zero-tolerance" policy. In fact, TRAC found that "it would appear most separations through at least April [2018] took place for entirely different reasons than the rationale the Administration has given."

a. (Defer to CBP) How many adults were separated from their children under the zero-tolerance policy where the adults were not referred for criminal prosecution? How many children were separated from their parents in these circumstances? Please provide data for both questions broken down by month from April 2018 to June 2018.

AMERICAN OVERSIGHT

b. (Defer to CBP) Under the zero-tolerance policy, who made the decision of whether a family unit—*i.e.*, adults accompanied by children—apprehended at or near the southern border would be separated, either by referring the adult for criminal prosecution or by other means?

c. (Defer to CBP) Under the zero-tolerance policy, who, if anyone, reviewed the decision of whether a family unit apprehended at or near the southern border would be separated?

d. (Defer to CBP) Under the zero-tolerance policy, what factors did ICE consider and what guidelines, if any, did ICE follow in determining whether to separate families where the adult family members were not referred for criminal prosecution?

18. The Trump administration's June 20, 2018 Executive Order on family separations identified a policy of detaining families "where appropriate and consistent with law and available resources." The American Academy of Pediatrics and 13 American medical and mental health organizations have made clear that family detention is not an appropriate solution to family separation. They have pointed to the serious physical and emotional harm that detention inflicts on children.

a. (ERO) From June 2018 to the present, how many babies younger than 12 months old have been held in ICE custody? How many babies younger than 12 months old does ICE currently have in its custody?

b. (ERO) From June 2018 to the present, how many children age 1 or older have been held in ICE custody? How many children age 1 or older does ICE currently have in its custody? Please provide a breakdown by age for both questions.

c. (ERO) What criteria does DHS use to determine whether a family is detained or released, with or without monitoring mechanisms such as ankle monitors? Please provide the Senate Judiciary Committee with a copy of any guidelines used in these determinations.

d. (ERO) What is the average length of detention in ICE custody for children age 5 and under and for children over age 5? What is the longest length of ICE detention in ICE custody for children age 5 and under and for children over age 5?

AMERICAN OVERSIGHT

Senate Judiciary Committee
Questions for the Record from Senator Amy Klobuchar
for Ronald D. Vitiello

Nominee

Director of Immigration and Customs Enforcement
Department of Homeland Security

As Acting Deputy Commissioner of Customs and Border Protection (CBP), you participated in the implementation of the Administration's family separation policy. The American Academy of Pediatrics warned that this policy could cause "irreparable harm" for children who were separated from their parents.

- **(OPA)** Did anyone within the Department of Homeland Security (DHS) raise concerns to you regarding the policy's potential harm to children?
- **(OPA)** During a hearing last December, I asked CBP Commissioner McAleenan if he had any regrets about the implementation of the family separation policy. Do you have any such regrets?

Last December, I sent a letter with 12 other Senators expressing concern over the Administration's decision to reinterpret the 2008 U.S.-Vietnam repatriation agreement in order to facilitate the deportation of Vietnamese immigrants. Many of these Vietnamese immigrants, like other immigrants from South Asian countries, have lived in my state of Minnesota for years.

- **(ERO/OPLA)** What are the Administration's justifications for reversing the agreement?

A report by the DHS's Office of Inspector General released in January found that ICE failed to hold contractors accountable for maintaining safe detention facilities. The report found that in over 14,000 instances where contractors failed to adhere to contract requirements, ICE only fined the contractor twice. Instead, ICE routinely issued waivers to exempt facilities from complying with certain standards, including in instances where there was a risk to the safety of people in detention.

- **(OAQ)** What process is in place for ICE to evaluate contractor deficiencies, and how does ICE decide whether to impose a fine or issue a waiver in a particular case?

AMERICAN OVERSIGHT

Written Questions for Ron Vitiello
Submitted by Senator Patrick Leahy
March 27, 2019

At your hearing before the Senate Homeland Security and Government Affairs Committee (HSGAC), you apologized for a tweet in which you called the Democratic Party the "NeoKlanist Party." I am glad you apologized. You also testified that you did not remember the "context" or "premise" of the tweet.

1. **(OPA) Now that you've had time to reflect upon your tweet, can you explain in writing the context or premise that prompted it?**

(b)(5)

The National ICE Council, which represents almost 8,000 employees of ICE, wrote a letter to HSGAC opposing your nomination to serve as the Director of ICE.[1] This is the first time in its history the Council has "officially opposed the nomination of a presidentially-appointed federal official." In its letter, the Council makes a number of serious allegations

1. **(OPA) Have you addressed the allegations made by the National ICE Council in any way? If not, why not?**

2. **(OPA) If you have provided written responses to HSGAC regarding the allegations in the National ICE Council's letter, would you provide this Committee with a copy?**

3. **(OPA) Have you been in contact with leadership at the National ICE Council following the publication of their letter opposing your nomination? If not, why not?**

During your testimony before the HSGAC and in various television interviews, you have repeatedly argued that prosecuting illegal entry will result in lower levels of illegal entry. In June 2018, you stated: "we know that when people have a consequence for illegal activity, they do less of it." But during the period in which the "zero tolerance" prosecution policy was in effect – systematically separating thousands of children from their families – reports confirmed that illegal crossings did not appreciably decrease.

[1] http://cdn.cnn.com/cnn/2019/images/02/13/national.ice.council.letter.to.hsgac.re.vitiello.opposition.feb.12.2019.pdf

AMERICAN OVERSIGHT

1. **(OPA) Can you provide the Committee with data supporting your view that the aggressive prosecution of illegal entry leads to a decrease in levels of illegal entry?**

(b)(5)

1. **(ERO/OPA) If confirmed to serve as Director of ICE, what is your plan to bring ICE's detention capacity levels down to 40,520 by the end of this fiscal year as expected by Congress? Please provide a detailed, month-by-month roadmap explaining how you would go about bringing ICE detention levels to 40,520 by the end of FY 2019?**

(b)(5)

1. **(ERO/OPA) Do you believe that ICE's increased enforcement actions against non-criminal immigrants under the Trump administration are in any way negatively impacting the cooperation of immigrant communities with state and local law enforcement authorities? If not, can you provide any kind of data, reporting, or surveys from law enforcement authorities supporting your view?**

(b)(5)

[2] https://www.usatoday.com/story/news/politics/2019/03/21/ice-sets-record-arrests-undocumented-immigrants-no-criminal-record/3232476002/
[3] https://www.aclu.org/sites/default/files/field_document/rep18-icecourthouse-combined-rel01.pdf

AMERICAN OVERSIGHT

1. **(OPA) To your knowledge, has ICE promulgated any memoranda or guidance to non-federal, private detention facilities instructing them to maintain records and respond to records requests in compliance with the Freedom of Information Act? If so, can you please provide us with copies of any such memoranda or guidance?**

2. **(CFO/IGP) If such documents do not exist, can you explain how you would ensure compliance with this enacted report language if confirmed as Director of ICE?**

The enacted FY 2019 Homeland Security appropriations act prohibits ICE from removing, detaining, or initiating removal proceedings against sponsors or potential sponsors of unaccompanied children based on information received from the Department of Health and Human Services about those individuals.

1. **(OPP/ERO) What procedures has ICE put in place to ensure its compliance with this particular prohibition in the FY 2019 spending bill? Can you provide the Committee with any memoranda or guidance provided to ICE officers and agents educating them about this particular prohibition in the law?**

2. **(OPP/ERO) If such memoranda and guidance documents do not yet exist, what will you do if confirmed as Director of ICE to disseminate any such documents widely within ICE to ensure compliance with the law?**

Recent reports exposed an operation across multiple agencies in the U.S. government to surveil, enhance security screenings on, and interrupt the travel of U.S. citizen journalists and lawyers who worked among migrants arriving at our southern border. Punitive actions taken by U.S. Customs and Border Protection against at least 59 targeted individuals – identified in a database called "San Diego Sector Foreign Operations Branch: Migrant Caravan FY-2019, Suspected Organizers, Coordinators, Instigators and Media." – raise a number of legal and constitutional concerns.

1. **(HSI) To your knowledge, what role, if any, did ICE play in developing, implementing, or overseeing this legally suspect this surveillance program?**

AMERICAN OVERSIGHT

Nomination of Ronald Vitiello
to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Department of Homeland Security

Questions for the Record
Submitted March 27, 2019

QUESTIONS FROM SENATOR WHITEHOUSE

1. The ICE sensitive locations policies, which remain in effect, provide that enforcement actions at sensitive locations should generally be avoided, and require either prior approval from an appropriate supervisory official or exigent circumstances necessitating immediate action. Presently, the agency policy is to obtain prior approval for planned enforcement action at a sensitive location.
   a. (OPA) Will you commit to complying with the ICE sensitive locations policies?

(b)(5)

   b. (OPA) What will you do to ensure that the approval process is adhered to?

(b)(5)

   c. (OPA) Do you feel as though current ICE enforcement action is consistent with these factors?

(b)(5)

AMERICAN OVERSIGHT

2. Presently, sensitive location policies do not extend protections to other locations that are critical to the safety and security of immigrants, including courthouses. To some, this lack of protection undermines public safety and is a source of frustration for judges, advocates, and community members alike.
    a. (OPA) Do you feel that the policies surrounding sensitive locations should be expanded to include courthouses?

(b)(5)

    b. (OPA) If you believe the current policies in place provide sufficient protection, please explain why.

3. The lack of clarity in sensitive locations policy has led to confusion about how close immigration agents can be to a sensitive location before it constitutes a violation. For instance, in 2018, a 19-year-old immigrant was arrested at a bus stop directly outside of a Portland hospital. ICE agents watched him leave the hospital and walk to the bus stop at the hospital's entrance, where they apprehended and arrested him. Sensitive location policies are intended to bolster immigrants' ability to carry out activities that are essential to their health and safety.
    a. (OPA) What clarity can you provide to these policies and what methods of reform would you propose to ensure that the policies are uniformly enforced in light of their essential purpose?

AMERICAN OVERSIGHT

4. (OPA) Concerns have been raised regarding the lasting impact of family separation on the well- being of children. What have you done or will you do to address these concerns?

5. (OPA and OPLA) Recently, the Supreme Court addressed a challenge to an interpretation of a detention provision of the Immigration and Nationality Act that would allow ICE officials to detain an unauthorized immigrant indefinitely once they are taken into criminal custody, even if they were released months ago, without the opportunity for a bond hearing. With this legal question now resolved in ICE's favor, will you continue this practice of indefinite detentions? Do you believe this is good public policy, and why?

6. (ERO) Family detention policies have been criticized as costly practices that undermine more humane and less traumatic methods that ensure adequate due process for detainees. What alternatives to detention have you or would you consider?

7. In a June 2018 interview, you said about the deterrent effect of the family separation policy, "We know that when people have a consequence for illegal activity, they do less of it. And that's what we're trying to accomplish here"
   a. (OPA) Do you still believe that family separation functions as a deterrent?
   b. (OPA) If so, is this belief based on scientific studies or research on the deterrent effects of punishment? If so, please cite them.
   c. (OPA) Do you believe that any deterrent effect of the family separation policy outweighs the harms it causes to migrant families and children?

8. As you know, the National Immigration and Customs Enforcement Council of the American Federation of Government Employees wrote a letter to Senators Johnson and Peters opposing your nomination.
   a. (OHC) What contacts have you had with the union after their letter about your nomination was published? Please detail the contents of those communications and who was involved.
   b. (OHC) Have you made any commitments to the union after or before the letter was sent? Please specify.
   c. (OHC) What role will the union have in ICE policymaking under your leadership?

9. In the letter opposing your nomination, the ICE Union wrote that you "continue the practice of whistleblower retaliation."
   a. (OPA) What is ICE's official policy towards whistleblowers?
   b. (OPA) Do you believe that whistleblowers play an important role in exposing misconduct?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

c. (OPA) If confirmed, what steps will you take to ensure whistleblowers are able to come forward to raise concerns without fear of retribution?

(b)(5)

d. (OPA) Have you ever retaliated against a whistleblower?

(b)(5)

AMERICAN OVERSIGHT

10. Documents leaked to NBC 7 in San Diego show that that the U.S. government, including CBP, targeted journalists and activists for scrutiny at the border and created a secret database containing their personal details, social media information, and descriptions of their migrant-related work.
    a. (OPA) Did you have knowledge of this or any other database tracking journalists? Please specify.

(b)(5)

    b. (OPA) Have you ever assisted in the creation of a database to track journalists based on their writing and reporting?

(b)(5)

    c. (OPA) While at CBP or ICE, have you ever instructed agents to increase screenings on journalists, attorneys or immigration advocates crossing the border?

(b)(5)

    d. (OPA) If confirmed, how will you ensure that ICE respects the role of the free press?

(b)(5)

11. In a July 2018 article, The New York Times reported that ICE has reported 1,310 claims of sexual abuse against detainees from fiscal years 2013 to 2017. Watchdog organizations estimate the occurrence of sexual abuse to be significantly higher.
    a. (OPA) How will you ensure that ICE law enforcement agents will not abuse detainees?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

b. (OPA) During your time as a CBP and ICE official, what policies have you put in place to ensure claims of abuse, both sexual and nonsexual, are thoroughly investigated?

(b)(5)

c. (OPA) What disciplinary actions have you taken against officers found to have committed abuses? Please specify.

(b)(5)

AMERICAN OVERSIGHT

(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

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?

(b)(5)

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?

14. In January 2019, the DHS Inspector General issued a report finding that, "Instead of holding [detention] facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards." Since this report was issued, the Appropriations Committee included language in its FY19 report requiring that the ICE Director personally sign off on any waivers of contract requirements for immigration detention.
    a. (OPR and ERO) What steps have you taken to remedy the issues raised by the DHS Inspector General report?
    b. (OPA) If confirmed, how will you ensure that facilities comply with ICE detention standards?
    c. (OPR and ERO) How many waivers of contract requirements have been requested

AMERICAN OVERSIGHT

DHS-19-0195-H, 19-0494-G, 19-0495-F-000328

of you since the Appropriations Committee report was issued, and how many have you approved?

d. (OPR and ERO) What was the nature of the waivers approved and the nature of the waivers denied?
e. (OPA) Will you commit to maintaining or strengthening standards for immigration detention?

15. In 2016, the Homeland Security Advisory Council documented alarming deficiencies in the inspections and monitoring processes governing the immigration detention system. The majority of the council voted to recommend a "measured but deliberate shift away" from the use of private prisons for immigration detention
    a. (OPA) Do you believe that private prisons are appropriate for immigration detention?
    b. (OPA) If the agency does not intend to reduce its reliance on contracts with private prison companies, as recommended by the HSAC in 2016, please articulate the evidence supporting a decision to reject the recommendations of the Council.

AMERICAN OVERSIGHT

United States Senate Judiciary Committee
Questions for the Record for Ron Vitiello
Nominated to be the Director of Immigration and Customs Enforcement
March 20, 2019

QUESTIONS FROM SENATOR BLUMENTHAL

I am concerned about your judgment. In 2015, you tweeted from your personal account that the Democratic Party should be renamed the "NeoKlanist party."

1. (OPA) **The National ICE Council stated that this sort of behavior could result in a rank and file employee being fired. Do you agree with this statement?**
2. (OPA) **If an ICE employee had engaged in this sort of behavior, what discipline would you suggest for them?**
3. (OPA) **If you are promoted after engaging in this sort of inappropriate behavior, how will you have any credibility as you attempt to lead ICE?**

The Obama Administration prioritized enforcement actions against recent arrivals and those with serious criminal convictions. It is unclear whether the Trump Administration has employed immigration enforcement priorities thus far.

1. (OPA) **What, if any, immigration enforcement priorities do you believe ICE should have?**
2. (OPA) **Do you believe ICE should be performing raids on people's homes or workplaces? If so, will you take into account not wanting to separate families or parents from children during raids?**
3. (OPA) **Do you believe in detaining asylum seekers and families? If so, what is your justification for the detention of asylum seekers and/or families?**

According to news reports, in a July 2017 memo, Jonathan White, the former deputy director of the Office of Refugee Resettlement (ORR), described how efforts made by ICE to target or detain the sponsors of unaccompanied children will likely lead to "significant increases in length of stay and a decline in the discharge rate." In some cases, it appears that ICE used the information that ORR collected on sponsors in order to track those people down and initiate deportation proceedings.

1. (OPP and ERO) **Do you plan on continuing to use the data collected by ORR on potential sponsors in order to track and deport parents?**
2. (OPA) **Do you agree that ICE efforts to target or detain the sponsors of unaccompanied children currently in detention will lead to "significant increases in length of stay" for children?**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

3. (OPA) **Are you aware of all of the physical, emotional, and psychological effects that stays in detention facilities can have on children?**
4. (OPA) **Are you aware that prolonged stays in detention facilities for children can exacerbate the effects mentioned above?**

You served in leadership positions at Customs and Border Patrol (CBP) and ICE during both the lead up to, and the implementation of, President Trump's zero-tolerance family separation policy.

1. (OPA) **What effort, if any, did you make to alert your superiors that the zero-tolerance policy was resulting in the separation of families?**
2. (OPA) **Do you agree with expert assessments that separating kids from their parents can inflict lifelong trauma and psychological harm?**
3. (OPA) **Do you believe that the zero-tolerance family separation policy was effective?**
4. (OPA) **What was the desired effect of this policy?**
5. (OPA) **Is there currently a process in place to reunite any families that are still separated? If so, what is that policy?**
6. (OPA) **Are you aware of any efforts by the administration to re-implement the family separation policy or implement another policy that would also have the effect of separating children from their parents?**

You reportedly stated that the zero-tolerance policy resulted in the separation of "only 2,500 people."

1. (OPA) **Do you believe that all families – including immigrant families – belong together?**
2. (OPA) **Your comment that "only 2,500 people" were affected indicates that you do not believe that is a lot of people. Do you believe that a family separation policy that affected 2,500 people is not a significant event?**
3. (OPLA) **In recent court filings, the government has stated that over 2,800 children were separated from their parents in the summer of 2018. In addition, the Department of Health and Human Services Office of the Inspector General has 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?**

AMERICAN OVERSIGHT

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

(b)(5)

AMERICAN OVERSIGHT

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 concerns me because ICE must conduct meaningful and detailed retrospective reviews of the death of anyone in its custody.

AMERICAN OVERSIGHT

1. (OPR and ERO) **Do you have an explanation for the decrease in both the quality and length of the reports?**

(b)(5)

2. (OPR and ERO) **Is ICE creating more fulsome reports that are not released to the public?**

(b)(5)

3. (OPR and ERO) **A news report published on November 26, 2018 noted that an autopsy of Roxsana Hernández Rodriguez – a transgender woman who died in ICE custody –concluded that Ms. Hernández Rodriguez had likely suffered physical abuse, including blunt-force trauma "indicative of blows, and/or kicks," prior to her death. However, the death report for Ms. Hernández Rodriguez contains no mention of any physical abuse. Can you explain why this information was excluded from the report concerning her death?**

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

I am concerned by the lack of regulations or enforceable standards for private detention facilities. Detainees are a vulnerable population, and many of them are without legal representation to help ensure fair and humane treatment. Private detention facilities are particularly concerning because they are incentivized to do whatever they can to cut costs, increase the number of detainees, and maximize profits.

1. (ERO) **What has been done to mitigate the effects of perverse incentives?**
2. (ERO) **What does ICE do to ensure humane treatment in private facilities?**
3. (OPR) **When there are news reports detailing inhumane treatment in private detention facilities does ICE investigate those reports?**

(b)(5)

4. (ERO) **What are the consequences, if any, for failing to meet the Operations Manual ICE Performance-Based National Detention Standards?**
5. (ERO) **What standards is your office implementing when determining whether to grant a waiver of contractual obligations, as discussed in recent Department of Homeland Security Office of Inspector General reporting?**

Nomination of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, United States Department of Homeland Security
Questions for the Record
Submitted March 27, 2019

QUESTIONS FROM SENATOR COONS

1. You were the Acting Deputy Commissioner of Customs and Border Protection (CBP) when the Department of Justice implemented the zero tolerance immigration enforcement policy.
   a. (OPA) What was your involvement with the creation and implementation of the zero tolerance policy?

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

b. (OPA) Prior to the implementation of the zero tolerance policy, did you understand that the policy would result in the separation of children from their parents?
c. (OPA) Were you aware that family separations as a result of the zero tolerance policy could have health impacts on children?
d. (OPA) Were you involved in any discussions with medical and mental health experts about the potential impacts of the zero tolerance policy on children?
e. (OPA) Please describe your role in the preparation and planning process for keeping track of migrant children who would be separated from their parents.
f. (OPA) Please describe your role in the preparation and planning process for reuniting children with their parents.
g. (OPA) What was your involvement with President Trump's decision to end family separations?

2. On April 6, 2018, Attorney General Sessions announced a zero tolerance policy that resulted in CBP separating thousands of children from their families at the border before the President rescinded the policy on June 20, 2018, amidst a national outcry. According to a January 2019 report by the Office of Inspector General for the Department of Health and Human Services (HHS), "[t]housands of children may have been separated . . . beg[inning] in 2017."
   a. (OPA) At any point in 2017 or 2018, before the zero tolerance policy was rescinded, did you express concern to anyone at CBP, or the Department of Homeland Security (DHS) generally, about the impact of the zero tolerance policy?
   b. (OPA) Did anyone at CBP, or DHS generally, raise concerns to you about the impact of the zero tolerance policy? If so, did you share their concerns with anyone?

3. In a June 14, 2018, interview on MSNBC about the zero tolerance policy, you were asked by Ali Velshi if you would change anything if you were in charge of policymaking. You responded that you would not change anything because "we need to send the message 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?

AMERICAN OVERSIGHT

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?

(b)(5)

AMERICAN OVERSIGHT

(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)

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?

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.

AMERICAN OVERSIGHT

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?
b. (OPA) Have you ever attended any other events hosted by FAIR?
c. (OPA) Are you aware of any other events hosted by hate groups that you have attended as Acting Director of ICE?
d. (OPA) If confirmed, will you commit to determining whether any events you may be scheduled to attend during your tenure are hosted by hate groups and, if so, to not attend?

15. At the September 2018 FAIR event, you seemed to dismiss the severe harm caused by the family separations at the border by stating that "only 2,500 people were affected by that situation."
    a. (OPA) Do you agree that more than 2,500 family members were separated at the border?
    b. (OPA) Do you agree that the family separations caused significant harm for every family involved?
    c. (OPA) Do you agree that the family separations spread fear in immigrant communities and caused pain to individuals who were not directly affected?

16. Following your nomination, for the first time in its history, the National Immigration and Customs Enforcement Council of the American Federation of Government Employees took an official position of opposition to a presidentially appointed federal official.
    a. (OPA) If you are confirmed, what actions will you take to improve your relationship with the National ICE Council and its members?
    b. (OPA) The Council expressed concern that you do not possess "the highest caliber of leadership." What steps will you take to improve your leadership if you are confirmed?

17. In a February 12, 2019 letter opposing your nomination, the National ICE Council asserted that you "[p]rohibited [w]histleblowers from [g]oing to [w]ork." The Council stated that you "ordered that certain federal employees not be permitted to report to work and perform their official duties as federal employees."
    a. (OPA) Have you ever prohibited whistleblowers from going to work?

    (b)(5)

    b. (OPA) Since June 30, 2018, how many ICE whistleblowers have not been permitted to report to work?

    (b)(5)

    c. (OPA) How many ICE whistleblowers are currently not permitted to report to work?

    (b)(5)

AMERICAN OVERSIGHT

d. (OPA) If confirmed, what steps will you take to ensure that ICE whistleblowers do not face retaliation?

(b)(5)

AMERICAN OVERSIGHT

Nomination of Ronald D. Vitiello
Assistant Secretary for Immigration and Customs Enforcement
U.S. Department of Homeland Security Questions for the Record Submitted March 27, 2019

QUESTIONS FROM SENATOR BOOKER

1. On November 2, 2015, in response to a tweet from Mark Levin asking for alternative names for the Democratic Party, you published a tweet that said, "@marklevinshow the liberalcratic party or the NeoKlanist Party."[1] When you testified before the Senate Homeland Security and Governmental Affairs Committee you said the following about the tweet:

> It was a mistake. I was trying to make a joke. I thought it was a direct message. I wasn't familiar with how the platform worked, as it related to that. I did not mean to suggest that the party is somehow against American values or – and I deeply regret that I did it. It was a momentary lapse of judgement and I apologize.[2]

   a. (OPA) You characterized this tweet as a momentary lapse in judgment. How can you assure members of the Senate that you will not have similar momentary lapses in judgment as Director of U.S. Immigration and Customs Enforcement (ICE)?

(b)(5)

   b. (OPA) You also characterized the tweet as a joke. In that moment, why did you think it was funny to compare a major American political party to the KKK?
   c. (OPA) Can you please explain the link between the Democratic Party and the KKK that you believe made your "joke" make sense?

2. During your nominations hearing before the Senate Homeland Security and Governmental Affairs Committee, Senator Peters asked you several questions about an appearance you made at an event hosted by Federation for American Immigration Reform (FAIR).[3] He made you aware of the fact that the Southern Poverty Law Center

[1] Kate Prengel, *Trump's Pick to Lead ICE Once Compared Him to Dennis the Menace*, HEAVY (Nov. 28, 2019), https://heavy.com/news/2018/11/trumps-ice-dennis-the-menace-vitiello/.
[2] *Nominations of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S.*

AMERICAN OVERSIGHT

Department of Homeland Security, and Richard S. Tischner, Jr., to be Director of the Court Services and Offender Supervision Agency for the District of Columbia, Before the S. Comm. on Homeland Sec. and Governmental Affairs, 115th Cong. (2018) (statement of Ronald D. Vitiello to be Assistant Secretary for Immigration and Customs Enforcement, U.S. Dep't of Homeland Sec.), *available at* http://www.cq.com/doc/congressionaltranscripts- 5417398?1.

[3] *Id.*

(SPLC) classified Fair as a hate group.[4] When Senator Peters asked you if you know about that classification you said, "I did not know that."[5]

a. (OPA) Since your hearing on November 15, 2018, have you had a chance to review the SPLC's explanation of FAIR and why it designates it as a hate group? If not, why?
b. (OPA) Do you believe it is appropriate for government officials to associate themselves with organizations that are classified as a hate group?

3. FAIR was founded in 1979 by John Tanton who has made numerous controversial anti- immigrant statements.[6] He once said, "As Whites see their power and control over their lives declining, will they simply go quietly into the night? Or will there be an explosion."[7] He also said, "I've come to the point of view that for European-American society and culture to persist requires a European-American majority, and a clear one at that."

a. (OPA) What is your reaction to these quotes?
b. (OPA) Do you believe these quotes represent the best of American values?
c. (OPA) How would you respond to someone who is concerned about your ability to lead one of the nation's most important law enforcement agencies given your association with a racist and anti-immigrant organization?

4. In 1997, Dan Stein, the President of FAIR, said in an interview, "Immigrants don't come all church-loving, freedom-loving, God-fearing . . . . Many of them hate America, hate everything that the United States stands for. Talk to some of these Central Americans."[8] You are nominated to be the Director of ICE at a time when thousands of Central American migrants are coming to the United States to seek asylum because of horrible violence and poverty in their home countries.

a. (OPA) What is your reaction to Dan Stein's statement?

b. (OPA) What kind of message do you think this statement sends to Central American migrants that the individual nominated to be the Director of ICE participated in an event hosted by an organization whose president makes such troubling remarks?

c. (OPA) Are you willing to publically repudiate these types of baseless, divisive and hateful characterizations of immigrants?

AMERICAN OVERSIGHT

[4] *See* Southern Poverty Law Center, Federation for American Immigration Reform (last visited Mar. 22, 2019), https://www.splcenter.org/fighting-hate/extremist-files/group/federation-american-immigration-reform.
[5] *Id.*
[6] *Id.*
[7] *Id.*
[8] *Id.*

5. In 2019, the Department of Homeland Security Office of Inspector General issued a report on ICE detention and wrote, "Although ICE employs a multilayered system to manage and oversee detention contracts, ICE does not adequately hold detention facility contractors accountable for not meeting performance standards."[9] The report went on to say, "Instead of holding facilities accountable through financial penalties, ICE issued waivers to facilities with deficient conditions, seeking to exempt them from complying with certain standards."[10]

   a. (OPA) What is your plan to hold detention facility contractors accountable and ensure that these operators meeting either the National Detention Standards, 2008 Performance-Based National Detention Standards, or 2011 Performance-Based National Detention Standards?

(b)(5)

   b. (OPA) Do you commit to penalizing facility contractors who are not in compliance with performance standards and not use waivers?
   c. (OPA) Do you plan to review the existing detention standards and propose adopting the American Bar Association's Civil Immigration Detention Standards? If not, please explain why.

6. Over the past few years, ICE has demonstrated a troubling lack of fiscal discipline. For instance, in FY 2018, the Department of Homeland Security reprogrammed $200 million to ICE from other agency accounts to cover the costs of immigrant detention and removal.[11] This reprogramming included $10 million from the Federal Emergency Management Agency when the federal government was trying to respond to hurricanes and forest fires that were destroying communities all over the United States.[12] In fact, Congress has expressed repeated alarm regarding this overspending and wrote in a 2019 report accompanying the Department of Homeland Security Appropriations Act

AMERICAN OVERSIGHT

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)

AMERICAN OVERSIGHT

(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: Barrera, Staci A
Sent: 21 Dec 2019 15:27:00 +0000
To: [redacted] Albence, Matthew;Benner, Derek N;Kelly, Christopher S;Short, Tracy;[redacted] Robbins, Timothy S;[redacted]
Cc: A[redacted];Davis, Mike P;[redacted];Gonzalez, Barbara M;[redacted]
Subject: FY 20 Appropriation

All,

Just in case you missed it - the President has signed both H.R. 1865 and H.R. 1185, which together provide discretionary appropriations for all Federal agencies for FY 20. As soon as we have final details and analysis CFO will share an updated summary.

Enjoy the holidays!

Staci

Sent with BlackBerry Work
(www.blackberry.com)

From: [redacted]@ice.dhs.gov>
Date: Tuesday, Dec 17, 2019, 7:28 PM
To: Albence, Matthew <[redacted]@ice.dhs.gov>, Benner, Derek N <[redacted]@ice.dhs.gov>, Kelly, Christopher S <[redacted]@ice.dhs.gov>, [redacted]@ice.dhs.gov>, Short, Tracy <[redacted]@ice.dhs.gov>, [redacted]@ice.dhs.gov>, Robbins, Timothy S <[redacted]@ice.dhs.gov>, [redacted]@ice.dhs.gov>
Cc: A[redacted]@ice.dhs.gov>, [redacted]@ice.dhs.gov>, [redacted]@ice.dhs.gov>, Davis, Mike P <[redacted]@ice.dhs.gov>, [redacted]@ice.dhs.gov>, Kovacic, Raymond <[redacted]@ice.dhs.gov>, [redacted]@ice.dhs.gov>, [redacted]@ice.dhs.gov>, Gonzalez, Barbara M <[redacted]@ice.dhs.gov>
Subject: Update version 2: **FY20 House Approps Bill**

Please see updated attached Approps Bill summary.
(We will provide updates as more details become available from consultation with congressional staffs)

House passed the spending package known as the 'security related' Bill today after waiving a 72 hr rule that provides time to review legislation. Senate is expected to consider / vote in the next few days and the President indicated he would sign. A separate spending package consisting of the remaining 8 bills also went through and are on the same timeframe to be signed before Friday.

AMERICAN OVERSIGHT

Providing an excerpt from today's reporting as informational....

Before the vote on the security-related bills, Congressional Progressive Caucus and Hispanic Caucus members said they'd oppose the four-bill measure, which includes the Defense, Commerce-Justice-Science, Financial Services and Homeland Security bills. They decried the lack of strings on border wall funding and immigration enforcement capabilities.

"The bill before us today will not stop the abuse and wrongful detention of people in custody, nor will it prevent the Trump Administration from misusing federal funds to advance their horrific mass detention and deportation agenda. We also find it offensive that at a time when millions of families can't afford to put food on the table, this bill wastes $1.375 billion on the pointless, immoral border wall," Progressive Caucus co-chairwoman Pramila Jayapal, a Washington Democrat, and co-chairman Mark Pocan of Wisconsin said in a statement.

From: (b)(6); (b)(7)(C) @ice.dhs.gov>
Date: Tuesday, Dec 17, 2019, 08:32
To: Albence, Matthew <(b)(6); (b)(7)(C) @ice.dhs.gov>, Benner, Derek N (b)(6); (b)(7)(C) @ice.dhs.gov>, Kelly, Christopher S <(b)(6); (b)(7)(C) y@ice.dhs.gov>, (b)(6); (b)(6); (b)(7)(C) @ice.dhs.gov>, Short, Tracy <(b)(6); (b)(7)(C) ce.dhs.gov>, (b)(6); (b)(7)(C) (b)(6); (b)(7)(C) @ice.dhs.gov>, Robbins, Timothy S <(b)(6); (b)(7)(C) @ice.dhs.gov>, R (b)(6); (b)(6); (b)(7)(C) @ice.dhs.gov>
Cc: (b)(6); (b)(7)(C) @ice.dhs.gov>, (b)(6); (b)(7)(C) @ice.dhs.gov>, (b)(6); (b)(7)(C) @ice.dhs.gov>, Davis, Mike P <(b)(6); (b)(7)(C) @ice.dhs.gov>, (b)(6); (b)(7)(C) @ice.dhs.gov>
Subject: **FY20 House Approps Bill**

Attached and below are highlights of the House FY20 Approps Bill. Expect floor votes tomorrow and Senate the following day.

We'll followup with detailed information; however, the Bill enacts funding to support the FY19 enacted detention bed level of 45,279 total adp.

AMERICAN OVERSIGHT

Issues we're concerned with but don't have complete information yet include: whether the pay raise is funded (could be approx $75M); whether cap and Fug ops payroll is completely fixed.

Other highlights:

- preserves DHS ability for transfer / reprogram

- matches military pay raise for federal civilians at 3.1%

- Requires ICE to make information publicly available about the numbers and categories of people in ICE custody.

• Requires ICE to make information about the 287(g) program publicly available.

• Requires ICE to sever contracts with detention facilities that fail two consecutive inspections and requires more frequent inspections by ICE's Office of Professional Responsibility.

• Authorizes members of Congress to conduct unannounced inspections of detention facilities.

• Prohibits DHS from destroying records related to potential sexual assault or abuse of individuals in its custody.

• Continues to ensure that information shared with ICE by the Department of Health and Human on potential sponsors of unaccompanied children cannot be used by ICE for detention or removal purposes unless the sponsor has a dangerous criminal background.

• Continues to prevent DHS from placing pregnant women in restraints except in extraordinary circumstances.

AMERICAN OVERSIGHT

ICE TREATMENT OF PREGNANT DETAINEES

Topline Talking Points

(b)(5)

AMERICAN OVERSIGHT

(b)(5)

AMERICAN OVERSIGHT