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*Report on Ending “Catch and Release” at  
the Borders of the United States*

**July 2018**

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<b>SentVia:</b>	(b)(6)
<b>To:</b>	(b)(6)
<b>CC:</b>	
<b>Subject:</b>	[Adjudicate comments] Authorities and Resources Needed to End Catch and Release - WF 1162825
<b>Date:</b>	2018/07/17 09:12:48
<b>Priority:</b>	Normal
<b>Type:</b>	Note

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ICE finally came back with their edits to the Authorities and Resources Needed to End Catch and Release Report. I have compiled all of the edits/comments from Components into the table below. Please review the comments from Components, adjudicate as appropriate, and return a clean version of the report to PLCY ExecSec. Please advise on your timeline for completion so that I can ensure that we are properly tracking this document.

Component	Clearance Started Comments	Clearance Due Attachment	Cleared By	Cleared on Date
CBP attached. Yes	CBP - (b)(6) <<WF 1162825 - Comments Matrix (CBP).doc>>	07/03/2018	CBP comments	
ICE comments. Yes	ICE - Thomas Blank <<DRAFT Additional Resources and Authorities Necessary for Ending C and R ....docx>>	07/16/2018	ICE clears with	
USCG comment No	USCG - (b)(6)	07/06/2018	clears without	
USCIS comments. Yes	USCIS - Tracy Renaud <<Comments Matrix (USCIS).doc>>	07/10/2018	USCIS clears with	
PRIV attached. Yes	PRIV - Jonathan Cantor <<Catch and Release Comments Matrix (PRIV).doc>>	07/11/2018	comments	
CRCL attached. Cleared by Deputy Officer Veronica Venture.	CRCL - Veronica Venture <<Comments Matrix (CRCL).doc>>	07/02/2018	CRCL comments	
OGC comments	OGC - (b)(6) <<_DRAFT Additional Resources and Authorities Necessary for Ending C and R....docx>> <<WF 1162825 - Comments Matrix (OGC).doc>>	07/02/2018	OGC clears with	
MGMT comments (MGMT).docx>>	MGMT - Laurie Boulden <<DRAFT Additional Resources and Authorities Necessary for.. (MGMT).docx>>	07/02/2018	MGMT clears with	

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Office of Policy, Executive Secretariat

U.S. Department of Homeland Security

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<b>Delivered Date:</b>	2018/07/17 09:12:48

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*Report on Ending “Catch and Release” at  
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**U.S. Immigration  
and Customs  
Enforcement**

The Honorable Richard Blumenthal  
United States Senate  
Washington, DC 20510

Dear Senator Blumenthal:

Thank you for your July 2, 2018 letter. Secretary Nielsen asked that I respond on her behalf.

On April 6, 2018, the Attorney General issued a memorandum entitled, “Zero-Tolerance for Offenses under 8 U.S.C. § 1325(a).” This memorandum directed federal prosecutors along the southern border to adopt a “zero-tolerance policy for all offenses referred for prosecution under section 1325(a)” by the Department of Homeland Security (DHS). On May 5, 2018, the U.S. Border Patrol (USBP) began to increase referrals for prosecution as a result of this policy. This initiative aims to refer to the U.S. Attorney’s Offices all adult aliens who are amenable to prosecution for violating 8 U.S.C. § 1325(a), *Illegal Entry*, which carries a potential penalty of up to 2 years in prison. Subsequently, on June 20, 2018, President Trump issued an Executive Order (EO), *Affording Congress an Opportunity to Address Family Separation*, 2018 WL 3046068, which directs the Administration to continue to protect the border with our Zero-Tolerance initiative, while simultaneously avoiding the separation of families to the extent we can legally do so. As expressed in the EO, it is the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with the law and available resources. The Department is continuing to examine these issues in light of ongoing litigation and recent court decisions.

DHS and the Department of Health and Human Services (HHS) have established a process to ensure that family members know the location of their children and have regular communication after separation. Moreover, DHS and HHS are working together to ensure that those adults who are subject to removal are reunited with their children for the purposes of removal. The U.S. government knows the location of all children in its custody and has reunited or is working to reunite them with their families.

Phase One of this process, reunifying all eligible parents with their minor children under the age of 5, was completed on July 12, 2018. HHS and DHS successfully reunified alien minors under 5 years old in the custody of HHS with those eligible parents in the custody of DHS, per the court order. Of the 103 children covered by Phase One of the court order, 57 children were

The Honorable Richard Blumenthal  
Page 2

reunified, and the parents of the remaining 46 children were ineligible for reunification under court-approved criteria.

U.S. Immigration and Customs Enforcement (ICE) and its federal partners are currently implementing Phase Two of reunifying all eligible parents with their minor children between the ages of 5 and 17. Following HHS's verification of parentage, and upon request of the parent to be reunified with their children, families are reunified for release on Alternatives to Detention (ATD) or removal, as appropriate. Family units with parents still in removal proceedings will be released in ATD. During this phase, ICE is transferring parents of children to an ICE Enforcement and Removal Operations area of responsibility to facilitate reunification. ICE is working with local non-governmental organizations to effectuate a safe release plan and ensure that necessary services such as food, shelter, clothing assistance, and travel resources are available to those who have been reunited.

In light of pending litigation, ICE is unable to provide further information on the specific cases mentioned in your letter.

Thank you again for your letter and interest in this important issue.

Sincerely,

Ronald D. Vitiello  
Deputy Director and  
Senior Official Performing the Duties of the Director



# U.S. Immigration and Customs Enforcement

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STATEMENT

OF

MATTHEW T. ALBENCE

EXECUTIVE ASSOCIATE DIRECTOR  
ENFORCEMENT AND REMOVAL OPERATIONS  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

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BEFORE THE

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

Wednesday, July 31, 2018  
226 Dirksen Senate Office Building

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# U.S. Immigration and Customs Enforcement

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STATEMENT

OF

MATTHEW T. ALBENCE

EXECUTIVE ASSOCIATE DIRECTOR  
ENFORCEMENT AND REMOVAL OPERATIONS  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

*"Oversight of Immigration Enforcement and Family Reunification"*

BEFORE THE

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

Tuesday, July 31, 2018  
226 Dirksen Senate Office Building

## Introduction

Chairman Grassley, Ranking Member Feinstein, and distinguished members of the Committee:

My name is Matthew T. Albence, and I am the Executive Associate Director of the Enforcement and Removal Operations (ERO) division of the U.S. Immigration and Customs Enforcement (ICE) agency. Thank you for the opportunity to appear before you today to discuss ICE's role in the Administration's family reunification efforts, as well as its critical mission of protecting the homeland and ensuring the integrity of our nation's immigration system through the enforcement of our country's immigration laws.

Our nation's immigration laws are extremely complex, and in many cases, outdated and full of loopholes. This often makes it difficult for people to understand all that ICE does to protect the people of this great country. Nowhere is this more evident than in the recent events surrounding the Zero Tolerance policy. Today, I would like to discuss: the impact that this policy and the *Ms. L* case have had on ICE operations; the tremendous efforts made and successes achieved by the dedicated men and women of ICE; the progress made and challenges faced by our agency in implementing the family reunification process; and the issue of immigration enforcement as a whole.

ICE's immigration enforcement efforts are led by more than 7,700 proud, professional law enforcement officers and support personnel of ERO. To ensure the national security and public safety of the United States, ICE ERO officers faithfully execute the immigration laws enacted by Congress. They may take enforcement action against any alien encountered in the course of their duties who is present in the United States in violation of immigration law.

Pursuant to its statutory responsibilities, ICE is one of several agencies involved in the processing of unaccompanied alien children (UACs) and family units, and plays a critical role by quickly and safely transporting UACs from U.S. Customs and Border Protection (CBP) custody to the U.S. Department of Health and Human Services (HHS) Office of Refugee Resettlement (ORR), and also works with HHS to vet potential UAC sponsors. ICE also houses alien families together at family residential centers, manages the non-detained docket, and effectuates removal orders following the conclusion of immigration proceedings.

ICE's interior enforcement efforts are essential to DHS' overall border security strategy. It is impossible to have true border security without strong interior enforcement. Those who seek to illegally enter the United States must know that there is no free pass, and that should they successfully evade enforcement at the border, ICE will find, arrest, and upon the issuance of a final removal order, repatriate them to their home countries. Additionally, those that enter the country lawfully must know that should they violate the terms of their admission—whether through criminal activity, overstaying their lawful period of admission, or failing to comply with the terms of their visa—they too will be targeted for arrest, detention, and removal.

### *Executive Orders and Zero Tolerance Policy*

During his first two weeks in office, President Trump signed a series of Executive Orders (EOs) that laid the policy groundwork for the Department of Homeland Security (DHS) and ICE

to carry out the critical work of securing our borders, enforce our immigration laws, and ensure that individuals who pose a threat to national security or public safety, or who are otherwise in violation of the immigration laws, are not permitted to enter or remain in the United States. These EOs established the Administration's policy of effective border security and immigration enforcement through the faithful execution of the laws passed by Congress.

In furtherance of this goal, on April 6, 2018, the Attorney General announced a "Zero Tolerance" policy, in which each United States Attorney's Office along the Southwest Border would prosecute, to the extent practicable, all offenses referred for prosecution under 8 U.S.C. § 1325. Subsequently, on May 4, 2018, Secretary of Homeland Security Kirstjen Nielsen directed officers and agents to ensure that all adults deemed prosecutable for improper entry in violation of 8 U.S.C. §1325(a) are referred to the Department of Justice (DOJ) for criminal prosecution. On May 5, 2018, CBP began implementation of this policy, resulting in the transfer of adults who had entered illegally to U.S. Marshals Service custody pending prosecution. When adults are transferred to the U.S. Marshals Service for prosecution, their children become UAC as defined in section 279(g)(2) of Title 6 of the U.S. Code, and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), which mandates that DHS generally must transfer any UAC in its custody to the Department of Health and Human Services (HHS) for care and custody within 72 hours, absent exceptional circumstances.

On June 20, 2018, President Trump signed an Executive Order entitled, *Affording Congress an Opportunity to Address Family Separation*. This Order clarified that it is the policy of the Administration to rigorously enforce our immigration laws, including by pursuing criminal prosecutions for illegal entry under 8 U.S.C. § 1325(a), until and unless Congress directs otherwise. At the same time, the Administration will maintain family unity, including by detaining alien families together during the pendency of criminal improper entry or immigration proceedings, where appropriate and consistent with law and available resources. In practice, this allows DHS to continue its judicious enforcement of U.S. immigration laws, while maintaining family unity for those crossing the border.

#### *Family Reunification Efforts and Associated Challenges*

On February 26, 2018, the American Civil Liberties Union (ACLU) filed a lawsuit in the U.S. District Court for the Southern District of California, *Ms. L vs. ICE*, alleging that the separation of parents and children who were apprehended at or between ports of entry violated the constitutional rights of the parents to family integrity. The lawsuit asked the court for an order prohibiting such separations. On June 6, 2018, the court denied the government's motion to dismiss, finding that the plaintiffs had alleged sufficient facts and a cognizable legal theory giving rise to a plausible claim for relief.

In addition, on June 26, 2018, the court certified a class of plaintiffs consisting of parents who have been, are, or will be detained in DHS custody, and whose children were separated from them at the border and are detained in HHS custody. The court excluded parents with criminal history or communicable diseases, or those apprehended in the interior, from the class definition. The court further ordered the reunification of class members with their children where there had been no determination that the parent was unfit or presented a danger to their



child, unless the parent affirmatively, knowingly, and voluntarily declined reunification. Under the court's order, HHS was directed to work with DHS to reunify eligible parents with their minor children under the age of five within 14 days, and to reunify eligible parents with their minor children age five and older within 30 days—or by July 26, 2018.

Phase One of this process, reunifying eligible parents with their minor children under the age of five, was completed on July 12, 2018. HHS and DHS successfully reunified 57 alien minors under five years old in the custody of HHS with those eligible parents in the custody of DHS, per the court order. Of the 103 children covered by Phase One of the court order, 57 children were reunified, and the parents of the remaining 46 children were ineligible for reunification under the court-approved criteria or could not then be reunified because the parents were in criminal custody or had already have been removed.

ICE and its federal partners are currently implementing Phase Two of the reunification process. During this phase, three ICE ERO Areas of Responsibility (AORs) in San Antonio, El Paso, and Phoenix will serve as primary centers of reunification for children ages five to seventeen with their parents in DHS custody, after HHS has evaluated parentage, fitness, and safety considerations, and had determined that the parents are eligible for reunification. Those parents who were not in ICE custody in one of the three designated AORs were transported into one of those AORs for the purposes of reunification. Where reunified families are to be released, ICE will work with local non-governmental organizations (NGOs) to effectuate a safe release plan, and will ensure that necessary services such as food, shelter, clothing assistance, and travel resources are available to those who have been reunited.

As of the July 26, 2018 Joint Status Report filed with the Court, 1,820 of the 2,551 children age five and above whose parents were identified as class members, have been reunified with their parent(s) or eligible sponsor. 1,442 children were reunified with parents in ICE custody (HHS reported as of 0600 EST hours) and none of these family units have been removed. Of the remaining 445 parents in ICE custody (as of 0630 EST on 7/27/2018), 353 have final orders of removal and 120 have declined reunification.

The court's order to reunite these families has required DHS to prioritize these reunions over other pressing operational needs, including the removals of individuals determined to have no lawful right to remain in the United States. These reunifications have required an unprecedented level of coordination between HHS and ICE, including the temporary assignment of nine ICE law enforcement officers and eight ICE data analysts to the HHS Special Operations Center. Additionally, the three ICE AORs have been operating 24/7 to support reunification operations, and will do so as long as necessary to effectuate efficient reunification of children with parents.

The key steps in the Government's plan for reunifying a parent and child in its custody included:

ICE creates a criminal background synopsis for the adult parent.

1. HHS reviews the ICE criminal background synopsis.

2. HHS reviews its case file to determine parentage or to identify red flags of possible non-parentage or trafficking.
3. HHS reviews its case file to determine fitness and safety or to identify red flags that the adult is unfit or poses a danger to the child.
4. Absent red flags, HHS conducts an in-person interview of the adult in ICE custody at an ICE reunification location.
5. Absent red flags, HHS, or an HHS contractor, also conducts a follow-up interview in an effort to confirm that the parent of a child would like to be reunified, as some parents elect to not reunify with their child(ren).
6. Absent red flags, and upon affirmation by the parent that they do wish to be reunified, HHS moves the child to the reunification location, where the child is turned over to ICE custody ,and reunification is completed by ICE.

Throughout the reunification process, the Government's primary goal is the protection and care of the children. ICE approaches its role in this mission with attention to detail, care, and concern, and as the reunification process continues, DHS will continue to provide updates on the progress made.

#### *Challenges and Legislative Fixes*

Since the initial surge in FY 2014, there has been a significant increase in the arrivals of both family units and UACs across the southern border, a trend which continues despite the Administration's enhanced enforcement efforts because of and the numerous loopholes that currently exist in our immigration laws. Thus far in FY 2018, approximately 44,000 UACs and 106,000 members of family units have been apprehended at the southern border. These numbers represent an increase from FY 2017, when approximately 49,000 UACs and 105,000 members of family units were apprehended throughout the entire fiscal year.

In addition, most of these family units and UACs are nationals of the Central American countries of El Salvador, Guatemala, and Honduras. While historically Mexico was the largest source of illegal immigration to the United States, the number of Mexican nationals attempting to cross the border illegally has dropped dramatically in recent years and the net flow of migration from Mexico, legal and illegal, has decreased. This is significant, because removals of non-Mexican nationals take longer, and require ICE to use additional detention capacity, expend more time and effort to secure travel documents from the country of origin, and arrange costly air transportation. Additionally, many Central American nationals seek protection under our asylum laws, and those who are found to have credible fear require careful adjudication by United States Citizenship and Immigration Services (USCIS).

With regard to UACs, the problem is exacerbated as those from countries other than Canada and Mexico are exempt from expedited removal pursuant to the TVPRA, which further encumbers the already overburdened immigration courts. With a backlog of over 700,000 cases on the non-detained docket alone, it takes years for the cases of these UACs to work their way through the system. And even after they receive a final order of removal (which most do), few are ever actually returned to their country of origin. The *Flores* Settlement Agreement only

permits the short-term detention of UACs and ICE simply lacks the resources to locate, arrest, and remove the thousands of UACs who have been ordered removed but are not in ICE custody.

It is important to note that current laws and court rulings which favor the release of family units and UACs often require the federal government to release illegal alien families and UACs into communities across the United States. This practice has not only led to aliens failing to appear for court hearings and failing to comply with removal orders, but has also incentivized smugglers to place children into the hands of adult strangers so they can pose as families and be released from immigration custody after crossing the border. This creates a safety issue for these children, who have already made an extremely dangerous journey to reach the United States, risking possible trauma, abuse, abandonment, injury, and death along the way.

Amendments to the laws and judicial processes are needed to help ensure the successful repatriation of persons ordered removed by an immigration judge. Specifically, the following specific legislative changes are needed:

- Amend the TVPRA to provide for the expedited removal of any UACs who are not victims of human trafficking and who do not express a fear of return to their home country, and provide for similar treatment of all UACs, whether from contiguous or noncontiguous countries, to ensure they are swiftly and safely returned to their countries of origin.
- Terminate the *Flores* Settlement Agreement (FSA) by passing legislation specifying UAC care standards, and clarifying the corresponding provisions of the TVPRA that supersede the FSA.
- Amend the definition of “special immigrant juvenile” to require that the applicant meet the definition of a UAC, and mandate that the applicant must demonstrate that reunification with either parent is not viable due to abuse, neglect, or abandonment, and that the applicant is a victim of trafficking. The current legal requirement is not operationally viable.
- Repeal the current requirement that an asylum officer have initial jurisdiction over cases involving UACs, in order to expedite processing of UAC asylum applications and shorten lengthy court timelines.

## **Conclusion**

Thank you again for the opportunity to appear before you today, and for your continued support of ICE and its essential law enforcement mission. We continue to respond to the trend of family units and UAC who are apprehended while illegally crossing into the United States, and to address this humanitarian and border security issue in a manner that is comprehensive, coordinated, and humane. While DHS and ICE are continuing to examine these issues in light of ongoing litigation and recent court decisions, a permanent fix from Congress is essential to providing operational clarity for officers in the field. Congress must act to eliminate the loopholes that incentivize illegal immigration, and must also provide ICE with the lawful

authority and requisite funding needed to ensure that families can be kept together throughout the course of their immigration proceedings.

I would be pleased to answer any questions.

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# U.S. Immigration and Customs Enforcement

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STATEMENT

OF

MATTHEW T. ALBENCE

EXECUTIVE ASSOCIATE DIRECTOR  
ENFORCEMENT AND REMOVAL OPERATIONS  
U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT  
DEPARTMENT OF HOMELAND SECURITY

REGARDING A HEARING ON

(b)(5)

BEFORE THE

UNITED STATES SENATE  
COMMITTEE ON THE JUDICIARY

Wednesday, July 31, 2018  
226 Dirksen Senate Office Building

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**IMMIGRATION PC MEETING  
July 3, 2018**

**Objective:**

- Principals will discuss implementation gaps and needed decision-making in relation to the President’s Executive Order on maintaining alien families together in immigration custody.
- Discussion points will include:
  - Judge Sabraw’s June 26, 2018 decision on family detention and implications for EO implementation; and
  - DHS’s current family unit (FAMU) detention capacity and expansion opportunities.

**Agenda:**

- Reunification (HHS, ICE)
- Referral for Prosecution (DHS, DOJ)
- Removals (DHS, DOJ)
- Resources (DoD, DHS, OMB, HHS)
- Legal Strategy (DOJ)
- Legislative Strategy (OLA)

**Key Messages**

The President’s border security initiatives require discussion among stakeholder agencies regarding to implementation challenges, operational gaps, and any required immediate decision-making.

An all-hands approach from across Cabinet agencies is required to ensure we deal with the crisis at our southern border.

**Key Issues:**

(b)(5)

**Reunifying Zero Tolerance-Affected Alien-Parents & Minors**

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**Referral for Prosecution**

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**Resources**

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**Legal Strategy**

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(b)(5)

**Media Guidance re Communicating our Border-Crisis Situation**

(b)(5)

**History:**

- June 21:
  - Pursuant to EO section 3(e), DOJ filed a request to modify the Settlement Agreement in *Flores v. Sessions*.
- June 26:
  - *Ms. L. v. ICE*. California federal court ordered government to reunify all parents separated from their children at the border within 30 days (14 days for children under 5) and barred the practice of separating immigrant families due to immigration detention (not prosecution). Held: class members had substantive due process right to family integrity.
  - Background of Lead Plaintiffs:
    - November 2017 – Ms. L presented self with daughter at POE, claiming CF.

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- Detained then separated (daughter sent to ORR facility) when relationship could not be verified.
  - Ms. L passed CF screening, placed in removal proceedings under INA § 240, 8 U.S.C. § 1229b.
  - Reunited after complaint filed (five months later) and DNA evidence established the familial relationship.
  - Ms. C. convicted under 8 U.S.C, § 1325(a). Served 25 days in criminal custody (completed sentence September 2017).
  - Not reunited with son when returned to immigration custody.
  - Released on bond after five months; reunited thereafter.
- June 29:
    - DOJ filed notice of compliance with Judge Gee explaining its position that based on the *Ms. L* order.
    - DOJ believes we are not violating the *Flores* court orders if holding beyond 20-days.

**Attachments:**

- A. Talking Points
- B. White House Agenda
- C. Text of Executive Order, “Affording Congress an Opportunity to Address Family Separation”
- D. Judge Sabraw order in *Ms. L. v. ICE*
- E. DOJ’s June 29 Notice of Compliance re *Flores v. Sessions*

**Staff Responsible for Briefing Memo:** (b)(6)

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**IMMIGRATION PC MEETING**

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## EXECUTIVE ORDERS

# Affording Congress an Opportunity to Address Family Separation

Issued on: June 20, 2018

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By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, it is hereby ordered as follows:

Section 1. Policy. It is the policy of this Administration to rigorously enforce our immigration laws. Under our laws, the only legal way for an alien to enter this country is at a designated port of entry at an appropriate time. When an alien enters or attempts to enter the country anywhere else, that alien has committed at least the crime of improper entry and is subject to a fine or imprisonment under section 1325(a) of title 8, United States Code. This Administration will initiate proceedings to enforce this and other criminal provisions of the INA until and unless Congress directs otherwise. It is also the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources. It is unfortunate that Congress's failure to act and court orders have put the Administration in the position of separating alien families to effectively enforce the law.

Sec. 2. Definitions. For purposes of this order, the following definitions apply:

(a) "Alien family" means

(i) any person not a citizen or national of the United States who has not been admitted into, or is not authorized to enter or remain in, the United States, who entered this country with an alien child or alien children at or between designated ports of entry and who was detained; and

(ii) that person's alien child or alien children.

(b) "Alien child" means any person not a citizen or national of the United States who

(i) has not been admitted into, or is not authorized to enter or remain in, the United States;

(ii) is under the age of 18; and

(iii) has a legal parent-child relationship to an alien who entered the United States with the alien child at or between designated ports of entry and who was detained.

Sec. 3. Temporary Detention Policy for Families Entering this Country Illegally. (a) The Secretary of Homeland Security (Secretary), shall, to the extent permitted by law and subject to the availability of appropriations, maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings involving their members.

(b) The Secretary shall not, however, detain an alien family together when there is a concern that detention of an alien child with the child's alien parent would pose a risk to the child's welfare.

(c) The Secretary of Defense shall take all legally available measures to provide to the Secretary, upon request, any existing facilities available for the housing and care of alien families, and shall construct such facilities if necessary and consistent with law. The Secretary, to the extent permitted by law, shall be responsible for reimbursement for the use of these facilities.

(d) Heads of executive departments and agencies shall, to the extent consistent with law, make available to the Secretary, for the housing and care of alien families pending court proceedings for improper entry, any facilities that are appropriate for such purposes. The Secretary, to the extent permitted by law, shall be responsible for reimbursement for the use of these facilities.

(e) The Attorney General shall promptly file a request with the U.S. District Court for the Central District of California to modify the Settlement Agreement in *Flores v. Sessions*, CV 85-4544 ("*Flores* settlement"), in a manner that would permit the Secretary, under present resource constraints, to detain alien families together throughout the pendency of criminal proceedings for improper entry or any removal or other immigration proceedings.

Sec. 4. Prioritization of Immigration Proceedings Involving Alien Families. The Attorney General shall, to the extent practicable, prioritize the adjudication of cases involving detained families.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,

June 20, 2018.

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**WEEKLY PRINCIPALS IMMIGRATION MEETING  
July 3, 2018**

**Objective:**

- Principals will discuss implementation gaps and needed decision-making in relation to the President's Executive Order on maintaining alien families together in immigration custody. Discussion points include:
  - Judge Sabraw's June 26 decision on family detention and implications for EO implementation.
  - DHS's current family unit (FAMU) detention capacity and expansion opportunities.

**Agenda:**

- Reunification
- Referral for Prosecution
- Resources
- Legal Strategy
- Legislative Strategy
- Media Guidance/Communications Issues

**Key Messages**

The President's border security initiatives require discussion among stakeholder agencies with regards to implementation challenges, operational gaps, and any required immediate decision-making. An all-hands approach from across Cabinet agencies is required to ensure we deal with the crisis at our southern border.

**Key Issues:**

DHS Priorities for Meeting

(b)(5)

Issues Likely to be Raised

- Reunifying Zero Tolerance-Affected Alien-Parents & Minors

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(b)(5)

- Referral for Prosecution

(b)(5)

- Resources

(b)(5)



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- **Legal Strategy:**

(b)(5)

- **Legislative Strategy:**

- For discussion

- **Media Guidance re Communicating our Border-Crisis Situation**

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**History:**

- June 21: pursuant to EO section 3(e), DOJ filed a request to modify the Settlement Agreement in *Flores v. Sessions*.
- June 26: *Ms. L. v. ICE*. California federal court ordered government to reunify all parents separated from their children at the border within 30 days (14 days for children under 5), and barred the practice of separating immigrant families due to immigration detention (not prosecution). Held: class members had substantive due process right to family integrity.
  - Background of lead plaintiffs:
    - Nov. 2017, Ms. L presented self with daughter at PoE, claiming CF. Detained then separated (daughter sent to ORR facility) when relationship couldn't be verified. Ms. L passed CF screening, placed in removal proceedings under INA § 240, 8 U.S.C. § 1229b; reunited after complaint filed (five months later) and DNA evidence established the familial relationship.
    - Ms. C. convicted under 8 U.S.C. § 1325(a); served 25 days in criminal custody (completed sentence Sept. 2017). Not reunited with son when returned to immigration custody. Released on bond after 5 months; reunited thereafter.
- June 29: DOJ filed notice of compliance with Judge Gee explaining its position that based on the Ms. L order, DOJ believes we are not violating the *Flores* court orders if holding beyond 20-days.

**Attachments:**

- A. Talking Points
- B. White House Agenda
- C. Text of Executive Order, "Affording Congress an Opportunity to Address Family Separation"

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D. Judge Sabraw order in *Ms. L. v. ICE*

E. DOJ's June 29 Notice of Compliance re *Flores v. Sessions*

**Staff Responsible for Briefing Memo:**

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**WEEKLY PRINCIPALS IMMIGRATION MEETING  
June 26, 2018**

**Objective:**

- Principals will discuss implementation gaps and decision that need to be made regarding the President’s Executive Order on maintaining alien families together in immigration custody. Discussion points include:
  - DHS’s current family unit (FAMU) detention capacity and expansion opportunities.
  - Share OGC’s memorialized concerns and recommendations.
  - Communicate DHS’s prioritization of the EO’s border-security mandate and obtain updates from partner agencies on their own progress and further plans.

**Agenda:**

- Reunifying Alien-Parents & Minors/Increasing Family Residential Center (FRC) Capacity
- Prosecution of Adults from Family Units
- Voluntary Removal
- Other DHS Actions
- Financial issues
- Media Guidance/Communications Issues
- DOJ Topics

**Key Messages**

The President’s border security initiatives require discussion among stakeholder agencies with regards to implementation challenges, operational gaps, and any immediate decisions that must be made. An all-hands approach from across Cabinet agencies is required to ensure we deal with the crisis at our southern border.

**Key Issues:**

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Issues Likely to be Raised

- Reunifying Alien-Parents & Minors/Increasing Family Residential Center (FRC) Capacity

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- **OGC:**

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- **Prosecution of Adults from Family Units**

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- Voluntary Removal

- Other DHS Actions

- DHS Financial Issues

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- Media Guidance/Communications Issues

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- DOJ Topics:

(b)(5)

**History:**

- On June 21, 2018, pursuant to EO section 3(e), DOJ filed its request to modify the Settlement Agreement in *Flores v. Sessions*—See attachment.
  - The legal foundation of the request is based on the crisis situation at the border: “The Court should provide a limited exemption from its construction of the [FSA]’s release provisions so that ICE may detain alien minors who have arrived with their parent or legal guardian together in ICE family residential facilities... Second, the Court should exempt ICE family residential facilities from [FSA]’s state licensure requirements. These changes are justified by several material changes in circumstances--including the ongoing and worsening influx of families unlawfully entering the United States at the southwest border.”

**Attachments:**

- A. Talking Points
- B. White House Agenda
- C. Text of Executive Order, “Affording Congress an Opportunity to Address Family Separation”
- D. DOJ’s request to modify the Settlement Agreement in *Flores v. Sessions*.

**Staff Responsible for Briefing Memo:** (b)(6)



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**S1 Meeting on the Family Reunification Process  
July 2, 2018**

**Objective:**

- To update Secretary of the Department of Homeland Security (DHS) Kirstjen Nielsen on the family reunification process, including an overview of the process, associated numbers, cooperation with the Department of Health and Human Services (HHS) and other agencies, and any other outstanding issues that need to be addressed.

**Agenda:**

- You will discuss the family reunification process and the ongoing challenges related to family reunification.
- U.S. Immigration and Customs Enforcement (ICE), Enforcement and Removal Operations (ERO) Executive Associate Director Matthew T. Albence will be the subject matter expert for this discussion.

**Key Messages**

In light of President Trump's Executive Order, *According Congress an Opportunity to Address Family Separation*, which was issued on June 20, 2018, a process to reunite the parent(s) with their minor child(ren) needs to be established.

**Key Issues:**

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**WEEKLY PRINCIPALS IMMIGRATION MEETING  
June 26, 2018**

**Objectives:**

- Principals will discuss implementation gaps and decisions that need to be made regarding the President’s Executive Order on maintaining alien families together in immigration custody. Discussion points will include:
  - DHS’s current family unit (FAMU) detention capacity and expansion opportunities.
  - Share concerns and recommendations by OGC regarding the legality of the proposals.
  - Communicate DHS’s prioritization of the EO’s border security mandate.
  - Obtain updates from partner agencies on their own progress and further plans.

**Agenda (please see Attachment B):**

- Update on Border Security Immigration Coordination Group (NSC)
- Closing Out Decisions (DCOS)
- Messaging (DHS, WH COMMS)
- DOJ Topics (DOJ)

**Key Messages**

The President’s border security initiatives require discussion among stakeholder agencies with regards to implementation challenges, operational gaps, and any immediate decisions that must be made.

An all-hands approach from across Cabinet agencies is required to ensure we deal with the crisis at our southern border.

**Key Issues:**

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**Issues Likely to be Raised**

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**Prosecution of Adults in Family Units for Illegal Entry**

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**FRC Capacity Expansion**

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**OGC**

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**Closing Out Family Detentions**

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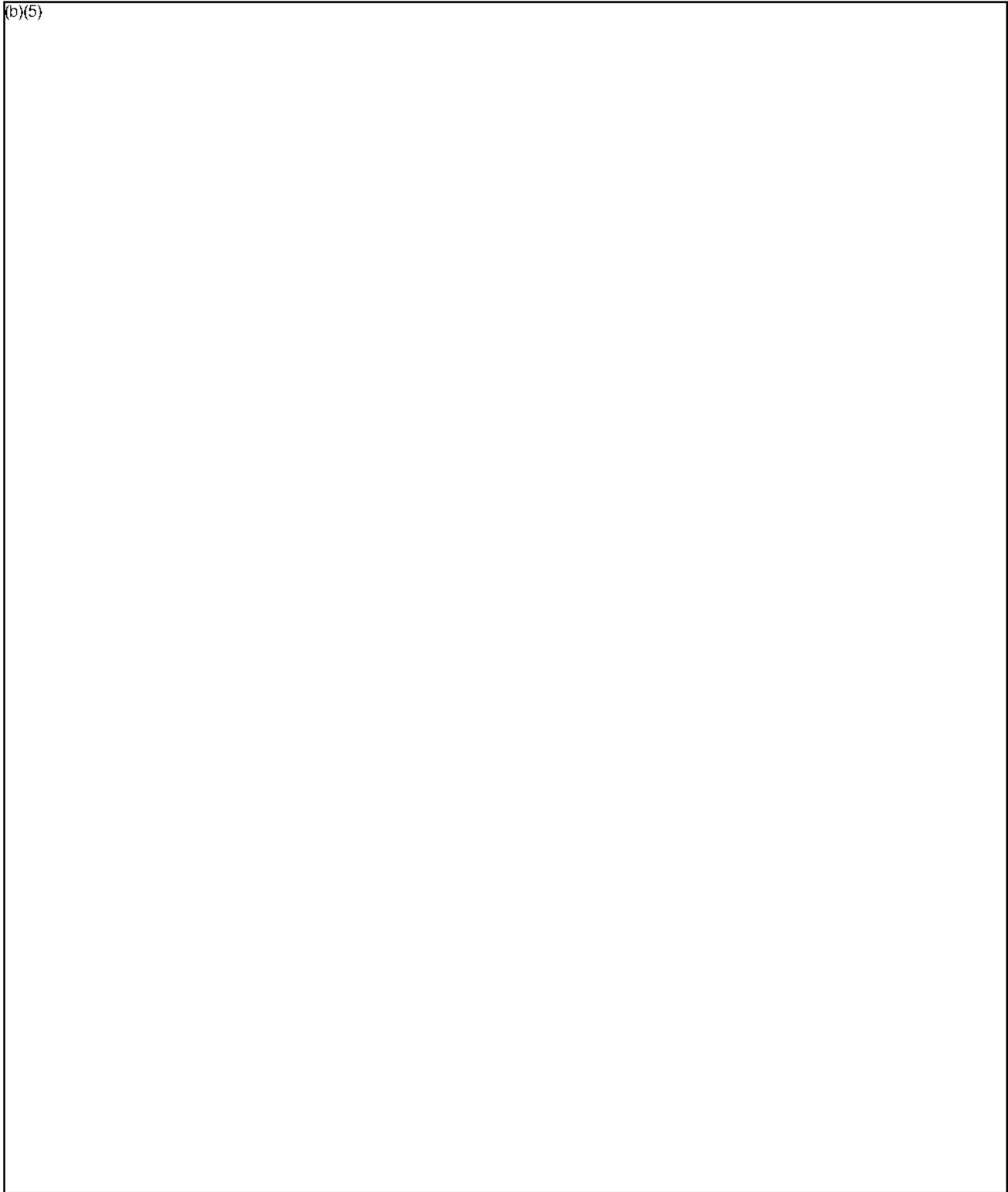
**DHS Financial Issues**

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**Media Guidance/Communications Issues**

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## DOJ Topics

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### History:

- On June 21, 2018, pursuant to EO section 3(e), DOJ filed its request to modify the Settlement Agreement in *Flores v. Sessions* (please see **Attachment D**).
  - The legal foundation of the request is based on the crisis situation at the border: “The Court should provide a limited exemption from its construction of the [FSA]’s release provisions so that ICE may detain alien minors who have arrived with their parent or legal guardian together in ICE family residential facilities... Second, the Court should exempt ICE family residential facilities from [FSA]’s state licensure requirements. These changes are justified by several material changes in circumstances--including the ongoing and worsening influx of families unlawfully entering the United States at the southwest border.”

### Attachments:

- A. Talking Points
- B. White House Agenda
- C. Text of Executive Order, “Affording Congress an Opportunity to Address Family Separation”
- D. DOJ’s request to modify the Settlement Agreement in *Flores v. Sessions*.

Staff Responsible for Briefing Memo: (b)(6)

**WEEKLY PRINCIPALS IMMIGRATION MEETING  
Talking Points**

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## EXECUTIVE ORDERS

# Affording Congress an Opportunity to Address Family Separation

Issued on: June 20, 2018

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By the authority vested in me as President by the Constitution and the laws of the United States of America, including the Immigration and Nationality Act (INA), 8 U.S.C. 1101 *et seq.*, it is hereby ordered as follows:

Section 1. Policy. It is the policy of this Administration to rigorously enforce our immigration laws. Under our laws, the only legal way for an alien to enter this country is at a designated port of entry at an appropriate time. When an alien enters or attempts to enter the country anywhere else, that alien has committed at least the crime of improper entry and is subject to a fine or imprisonment under section 1325(a) of title 8, United States Code. This Administration will initiate proceedings to enforce this and other criminal provisions of the INA until and unless Congress directs otherwise. It is also the policy of this Administration to maintain family unity, including by detaining alien families together where appropriate and consistent with law and available resources. It is unfortunate that Congress's failure to act and court orders have put the Administration in the position of separating alien families to effectively enforce the law.

Sec. 2. Definitions. For purposes of this order, the following definitions apply:

(a) "Alien family" means

(i) any person not a citizen or national of the United States who has not been admitted into, or is not authorized to enter or remain in, the United States, who entered this country with an alien child or alien children at or between designated ports of entry and who was detained; and

(ii) that person's alien child or alien children.

(b) "Alien child" means any person not a citizen or national of the United States who

(i) has not been admitted into, or is not authorized to enter or remain in, the United States;

(ii) is under the age of 18; and

(iii) has a legal parent-child relationship to an alien who entered the United States with the alien child at or between designated ports of entry and who was detained.



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Sec. 3. Temporary Detention Policy for Families Entering this Country Illegally. (a) The Secretary of Homeland Security (Secretary), shall, to the extent permitted by law and subject to the availability of appropriations, maintain custody of alien families during the pendency of any criminal improper entry or immigration proceedings involving their members.

(b) The Secretary shall not, however, detain an alien family together when there is a concern that detention of an alien child with the child's alien parent would pose a risk to the child's welfare.

(c) The Secretary of Defense shall take all legally available measures to provide to the Secretary, upon request, any existing facilities available for the housing and care of alien families, and shall construct such facilities if necessary and consistent with law. The Secretary, to the extent permitted by law, shall be responsible for reimbursement for the use of these facilities.

(d) Heads of executive departments and agencies shall, to the extent consistent with law, make available to the Secretary, for the housing and care of alien families pending court proceedings for improper entry, any facilities that are appropriate for such purposes. The Secretary, to the extent permitted by law, shall be responsible for reimbursement for the use of these facilities.

(e) The Attorney General shall promptly file a request with the U.S. District Court for the Central District of California to modify the Settlement Agreement in *Flores v. Sessions*, CV 85-4544 ("*Flores* settlement"), in a manner that would permit the Secretary, under present resource constraints, to detain alien families together throughout the pendency of criminal proceedings for improper entry or any removal or other immigration proceedings.

Sec. 4. Prioritization of Immigration Proceedings Involving Alien Families. The Attorney General shall, to the extent practicable, prioritize the adjudication of cases involving detained families.

Sec. 5. General Provisions. (a) Nothing in this order shall be construed to impair or otherwise affect:

(i) the authority granted by law to an executive department or agency, or the head thereof; or

(ii) the functions of the Director of the Office of Management and Budget relating to budgetary, administrative, or legislative proposals.

(b) This order shall be implemented in a manner consistent with applicable law and subject to the availability of appropriations.

(c) This order is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the United States, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

DONALD J. TRUMP

THE WHITE HOUSE,

June 20, 2018.

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**Legal Analysis on Executive Order:  
Affording Congress an Opportunity to Address Family Separation**

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**CALL WITH RANKING MEMBER CLAIRE MCCASKILL (D-MO)  
4 pm, Monday, June 25, 2018**

**Objective:**

- You requested a call with Ranking Member McCaskill. This call seeks to clarify issues surrounding the separation of families at the border.

**Key Messages**

On June 20<sup>th</sup>, President Trump signed an Executive Order that allows the Administration to continue to protect the border with our zero-tolerance policy, while also avoiding the separation of illegal alien families, to the extent we can legally do so.

The Department of Justice (DOJ) will seek an immediate modification of the *Flores* settlement agreement, which, as interpreted by court decisions, results in ICE rarely holding family units for longer than 20 days.

However, no one knows how the courts may rule, and only Congress can provide lasting border security, avoid the separation of families, and close dangerous immigration loopholes.

**History:**

- On June 7, 2018, Senator Dianne Feinstein (D-CA) introduced her “Keep Families Together Act” (S. 3036), which would specifically outline the limited circumstances in which USBP agents could separate a child from his or her parent or legal guardian. Every Senate Democrat joined as a cosponsor, with Senator McCaskill joining on June 18, 2018.
- During the Homeland Security and Governmental Affairs Committee (HSGAC) hearing on May 15, 2018, Ranking Member McCaskill agreed that “There is no question, you have to separate children from families when there has been a violation.” However, she further stated that, “the fact that there is no joint concept of operations, and we are upping the number of children we are taking from families is outrageous.”
  - The Ranking Member requested a copy of the unaccompanied alien children (UAC) joint concept of operations (JCO). OLA provided an interim briefing to the Senator’s staff on the JCO on June 5, 2018.
  - The JCO is actively being reviewed and edited. DHS and the HHS continue to work collaboratively on the JCO and look forward to sharing it with Congress as soon as possible.

**Key Issues:**

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- *If the adult is placed into expedited removal proceedings and expresses a fear of persecution or torture or an intention to seek asylum, DHS faces limitations that make it extremely difficult to detain a family unit together.*

(b)(5)

- *In response to these decisions, as well as outdated law, DHS routinely finds aliens are coming as family units in the expectation that they will be released because they arrive as family units.*

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**Attachments:**

- A. Talking Points
- B. Media Pull

**Staff Responsible for Briefing Memo:** (b)(6) Senior Legislative Advisor, OLA, (b)(6)  
(b)(6) OLA, (b)(6)

*Reviewed and approved by:* David Wonnberg, Acting A/S, OLA, (b)(6)

**OGC Reviewer:**

**Attachment A**

**Senator Claire McCaskill (D-MO) – Talking Points**

**Top Line:**

(b)(5)

**UAC Joint Concept of Operations (JCO):**

(b)(5)

**Family Separation**

(b)(5)

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(b)(5)



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**CALL WITH RANKING MEMBER CLAIRE MCCASKILL (D-MO)  
Media Pull**

**Twitter**

**Claire McCaskill** @clairecmc

Retweeted (b)(6)

What she said.

(b)(6)

I live in a border state. I appreciate the need to enforce and protect our international boundaries, but this zero-tolerance policy is cruel. It is immoral. And it breaks my heart.

10:31 AM - 18 Jun 2018

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Yes. I will be on the bill and will be doing more follow up work with [CBP] and HHS as ranking member on Homeland Security Committee.

8:55 AM - 17 Jun 2018

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To assert that you must rip children from their family to secure the border is just not true.

8:49 AM - 17 Jun 2018

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I will be joining this bill next week to stop this outrageous administration policy and following up on my longstanding work on the failure of HHS to adequately care for these children.

Sen Dianne Feinstein @SenFeinstein

UPDATE: 40 senators now support our bill to bar children from being taken from their parents at the border. We're continuing to ask Republican senators to join our bill. If you're represented by a Republican senator, please ask them to cosponsor S.3036. #FamiliesBelongTogether

8:45 AM - 17 Jun 2018

**McCaskill open to GOP plans to end family separation, but says Trump could fix now**

BY LINDSAY WISE AND BRYAN LOWRY

Updated June 19, 2018 03:57 PM

U.S. Sen. Claire McCaskill tore into President Donald Trump and her likely GOP opponent Tuesday over the separation of families at the southern border.

McCaskill, a Missouri Democrat seeking re-election in a state President Donald Trump won by double digits, said a bipartisan group of lawmakers that unsuccessfully promoted an immigration bill earlier this year has been talking about possible solutions to end the practice of separating children from their families when they are caught entering the country illegally.

But she also said that Trump, whose administration began the practice in a departure from his predecessors, could fix the situation on his own with a phone call.

“Let’s hope the president picks up the phone and says we can secure the border without removing children from their families because we can,” McCaskill said. “I want to secure the border. Let me say it again. I want to secure the border. There’s a lot of things we can be doing to secure the border and none of them require separating children from their families.”

McCaskill noted that that the decision to pursue criminal charges against the families — on top of their expedited removal, which was carried out under previous administrations — is what has led to the housing of children in different facilities from their parents.

“First-time border crossers are misdemeanants. It is very unusual for the federal government to handle misdemeanors. I challenge Jeff Sessions to show me the dockets in every U.S. attorney’s offices around the country where they have a large number of misdemeanants,” said McCaskill, a former Jackson County prosecutor.

More than 2,300 minors were separated from their children at the border from May 5 through June 9, according to the Department of Homeland Security.

The conditions in the facilities housing children have come under scrutiny. A report by the Associated Press described children being housed in cages in a Texas holding facility, with bottles of water and bags of chips strewn across the floor.

McCaskill has signed on to a bill, introduced by U.S. Sen. Dianne Feinstein, D-Calif., to end the family separations, but she said she also was willing to consider Republican proposals.

U.S. Sen. Roy Blunt, R-Mo., has joined U.S. Sen. Ted Cruz, R-Texas, in sponsoring a Republican plan to end the practice.

“I think Congress can and should solve this problem. I believe we will. I co-sponsored a bill with Sen. Cruz ... to try to both create a way that families stay together, but also to get a reasonable number of judges so that these cases can be heard,” Blunt told reporters Tuesday.

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He did not directly answer a question about whether he expected Democrats to support Cruz's bill.

"I expect to solve the problem," he said.

Asked if he thinks Trump should at least temporarily halt his administration's policy of separating kids from families while Congress works on a legislative fix, Blunt said that if Trump did that, Congress would lose incentive to act.

"If the problem is no longer there," Blunt said, "then Congress will not act to solve this problem."

Blunt said the Feinstein and Cruz bills have "plenty of commonalities," and he's hopeful Democrats and Republicans can come up with a compromise that can pass.

"I'd like it to get done this week," Blunt said of a standalone bill to end family separations at the border. "This has been a disappointing place for a while. I'd like to see something get done."

McCaskill said that she has not yet read Cruz's legislation but would give it her consideration after its details become public.

"I think that probably there is something we can do that would get 60 votes if we're all willing to put down our political saber-rattling and actually try to find the solution that allows these children to remain with their families for an expedited removal," McCaskill said.

McCaskill's GOP challengers have split on the issue.

One of McCaskill's Republican challengers, Austin Petersen, said Monday that separating families is "a terrible policy that must change immediately."

However, Missouri Attorney General Josh Hawley, Trump's endorsed Republican candidate, stopped short of calling for the policy to end immediately and put the blame on McCaskill when asked about the policy Monday.

"The whole immigration system is a disaster, and Claire McCaskill should answer for that: she's been in D.C. for over a decade and she has shown zero leadership to secure the border, stop sanctuary cities, or protect American workers," Hawley said in a statement.

"Nobody wants to see children and parents separated, just like no one should want to see illegal drugs and gangs pouring across our border. But none of that will change until McCaskill and the D.C. crowd take some responsibility and build the wall and secure the border," Hawley said.

He doubled down the Marc Cox Morning Show on Tuesday, saying McCaskill's support for Feinstein's bill means she's "basically giving illegal immigrants a free pass and allowing them to use children as a human shield."

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McCaskill shrugged off Hawley's criticism.

"There's one thing you can be sure of: No matter what policy question my opponent is asked, he is somehow going to blame me rather than answering the question," she said. "He did not answer the question other than to say 'build the wall' and that's not the answer for the children who are in these facilities right at this moment."

A spokeswoman for U.S. Rep. Vicky Hartzler, R-Missouri, said in a statement that family separations are "a difficult issue" that the congresswoman is aware of.

"The House is scheduled to take up two important pieces of immigration legislation this week that addresses this issue as well as provides a (Dreamers) solution and increased funding to secure our borders," the spokeswoman, Anna Swick, said in an email. "The Congresswoman is a strong supporter of legal immigration and hopes the Congress will come together and move a solution forward."

U.S. Rep. Sam Graves, R-Missouri, did not respond to multiple requests for comment.

The Associated Press contributed to this report.

Source: <http://www.kansascity.com/news/politics-government/article213455999.html>

**McCaskill slams Trump policy on border family separation**

POSTED 3:32 PM, JUNE 18, 2018, ASSOCIATED PRESS

JEFFERSON CITY, Mo. (AP) – Missouri’s Democratic U.S. Sen. Claire McCaskill is criticizing the Trump administration over the forced separation of migrant children and parents at the U.S.-Mexico border.

McCaskill in a Monday statement said she’ll work to stop what she described as a misguided policy.

Despite bipartisan criticism, President Donald Trump is digging in and says he would keep the U.S. from becoming “a migrant camp.”

Missouri Republican Sen. Roy Blunt’s spokeswoman didn’t immediately return an Associated Press request for comment.

McCaskill is up for re-election in a state won by Trump. She likely will face Republican U.S. Senate candidate Josh Hawley, who didn’t directly answer a question about whether he supports the administration’s policy. He says nobody wants to see families separated and called on McCaskill and other lawmakers to secure the border.

Source: <http://fox2now.com/2018/06/18/mccaskill-slams-trump-policy-on-border-family-separation/>

## DHS secretary defends separating families at the border

By Tal Kopan, *CNN* – May 15, 2018

*Washington (CNN)* – Homeland Security Secretary Kirstjen Nielsen on Tuesday defended an agency policy that will result in more families being separated at the border, saying, under a barrage of questions at a Senate hearing, that similar separations happen in the US "every day." But Nielsen also agreed with senators that more must be done to protect the children who either come to the US without their parents or are separated from them.

Nielsen was testifying Tuesday at a Senate Homeland Security and Governmental Affairs Committee hearing, where lawmakers on both sides of the aisle raised concerns about what happens to immigrant children who end up in the custody of DHS, who -- by law -- transfers such minors to the custody of Health and Human Services within two days.

"Once you start taking these children, please, I don't think any record should reflect that somehow, you are confident or anybody is confident that they're being placed in a safe and secure environment," said Sen. Claire McCaskill, the top Democrat on the committee.

Nielsen said the department has recently instituted a policy that it will refer everyone caught crossing the border illegally for prosecution, even if they are claiming they deserve asylum or have small children. Any parents who are prosecuted as a result will be separated from their children in the process... The Trump administration last month testified it lost track of 20% -- or nearly 1,500 children -- of the undocumented minors that had been in its custody over a three-month period at the end of 2017.

"We are begging you, if in fact this is going to be the outcome, where we're separating children, in some cases infants, from their parents, we need to know where these kids are," said North Dakota Democrat Heidi Heitkamp. "What you're doing to children when you take them away from their parents is the most trauma impactful thing you can do to a child. So let's be good people and good Americans as it relates to how we treat children."

Nielsen repeatedly agreed that while she plans to pursue the prosecutions policy, she intends to work with HHS to make sure the children are protected. "I just want to say, I couldn't agree with your concerns more, period," Nielsen said. "We owe more to these children to protect them. So I'm saying I agree, we've taken steps and we will continue to strengthen what our partners do to protect these children."

Source: <https://www.cnn.com/2018/05/15/politics/dhs-separating-families-secretary-nielsen-hearing/index.html>

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<b>Question#:</b>	1
<b>Topic:</b>	TVPRA Compliance
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** We've heard much talk about children exploiting "loopholes" to enter and remain in the U.S. These so-called "loopholes" are actually the law of the land. The Trafficking Victims Protection Reauthorization Act of 2008 - which passed the Senate by unanimous consent - established procedures for vulnerable unaccompanied children arriving at our border. Far from exploiting these so-called "loopholes," unaccompanied children have instead been routinely denied the protections established pursuant to the TVPRA. A 2015 GAO study concluded that CBP agents failed to consistently screen unaccompanied children for trafficking indicators and fear of return, and neglected to document the rationales for decisions to repatriate children - all in contravention of the TVPRA.

Three years after this GAO study issued recommendations to improve compliance with the TVPRA, the CBP has still not implemented them. Why?

**Response:** (b)(5)

(b)(5)

**Question:** Given the White House's intense interest in these so-called "loopholes," have you received any instructions from DHS leadership to postpone or in any way delay the implementation of these measures to improve your agency's compliance with the law?

<b>Question#:</b>	1
<b>Topic:</b>	TVPRA Compliance
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Response:** (b)(5)

(b)(5)

DRAFT

<b>Question#:</b>	2
<b>Topic:</b>	Family Separation
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Patrick J. Leahy
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** DHS recently announced that it will implement a "zero tolerance" policy and refer 100 percent of adults illegally crossing the border for criminal prosecution - even if they arrive with children. This will establish a de facto family separation policy, forcibly breaking up families and sending children into the custody of the Department of Health and Human Services. DHS has thus far refused to make public its memo outlining this new "zero tolerance" policy.

Please provide any documents within your agency's possession memorializing the new "zero tolerance" policy to this Committee.

Please provide this Committee with any projections by your agency about the number of children expected to be separated from their families as a result of this new "zero tolerance" policy during the remainder of this fiscal year.

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	3
<b>Topic:</b>	Separated Children
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Amy Klobuchar
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** At Wednesday's hearing, you said that between May 6 and May 19 of this year, 658 children were referred for prosecution after the Administration implemented a new policy to refer all those who cross the border illegally to the Justice Department for prosecution. You also said that you did not have statistics on how many children had been separated from their parents this fiscal year at that time.

How many immigrant children have been separated from their parents this fiscal year, and what is the average age of those children?

**Response:** (b)(5)

(b)(5)

(b)(5)

<b>Question#:</b>	4
<b>Topic:</b>	Screening for Trafficking I
<b>Hearing:</b>	TVPRRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Amy Klobuchar
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In the past few years, we have heard troubling reports about minors from other countries seeking to come to the United States who have fallen victim to human trafficking, and a 2015 Government Accountability Office (GAO) report noted inconsistencies in the screening of unaccompanied alien children by U.S. Customs and Border Protection (CBP) for indicators of human trafficking.

What has CBP done to improve its response in this area, so that officers can respond appropriately in cases involving potential trafficking victims?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	5
<b>Topic:</b>	Special Immigrant Juvenile Status
<b>Hearing:</b>	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Richard Blumenthal
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Special Immigrant Juvenile status allows children under the age of 21 who have been abused, abandoned or neglected by one or both parents to obtain a green card. To get the status, applicants must first have a ruling from their state's juvenile court, finding that they have been abused, abandoned or neglected. A judge must declare the young person dependent on the court, or appoint a caretaker. The applicant then submits the judge's order to U.S. Citizenship and Immigration Services (USCIS). The Trump administration is reinterpreting the law to narrow it, stating that in cases where applicants are over 18 they no longer qualify, because family courts lack jurisdiction over people age 18 or older.

Why was the Special Immigrant Juvenile status law reinterpreted to exclude individuals between the ages of 18 and 21?

**Response:** (b)(5)

(b)(5)

**Question:** What was the decision making process for this change? Please provide any documents memorializing the legal reasoning for the decision.

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	5
<b>Topic:</b>	Special Immigrant Juvenile Status
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Richard Blumenthal
<b>Committee:</b>	JUDICIARY (SENATE)

(b)(5)

**Question:** What alternate process is the Administration providing those individuals Congress explicitly protected by statute?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	6
<b>Topic:</b>	Least Restrictive Setting
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Richard Blumenthal
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Due to prolonged stays in Office of Refugee Resettlement (ORR) custody, many children now turn 18 while waiting to be reunified with a family member or a sponsor. The Trafficking Victims Protection Reauthorization Act of 2013 (TVPRA) states that, when unaccompanied immigrant children in ORR custody turn 18, ICE "shall consider placement in the least restrictive setting available after taking into account the individual's danger to self, danger to the community, and risk of flight." Instead of automatically placing teenagers in adult detention facilities, Congress mandated that ORR and ICE consider alternatives, such as placement with sponsors or supervised group homes. Media reports and court documents indicate that the Administration is not complying with the TVPRA's "least restrictive setting" requirement.

How many teenagers are currently held in adult detention facilities?

What steps are DHS and HHS taking to comply with the TVPRA and place minors who have turned 18 in the "least restrictive setting available?"

**Response:** (b)(5)

(b)(5)



<b>Question#:</b>	6
<b>Topic:</b>	Least Restrictive Setting
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Richard Blumenthal
<b>Committee:</b>	JUDICIARY (SENATE)

(b)(5)

DRAFT

<b>Question#:</b>	7
<b>Topic:</b>	Family Reunification I
<b>Hearing:</b>	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Appropriators have already expressed concern over family separation at the border and the procedures in place to reunite separated family members. Despite this, we continue to hear reports and stories in which separated family members are unable to locate one another, contact one another, or reunite with one another. There are even many cases in which very young children are unable to be reunified with their parents for removal. This is of particular concern given that the vast majority of individuals in immigration detention are unrepresented by legal counsel.

What policies and procedures are in place to ensure that U.S. Marshals and DHS coordinate with ORR and cooperate to locate separated family members, facilitate communication between them, and reunite them whether in the US or at the time of removal?

**Response:** (b)(5)

(b)(5)

**Question:** Furthermore, what policies and procedures are in place to document instances in which families are separated in CBP custody and the reason for the separation? Is this information always included in processing forms/uploaded to internal databases and is it always passed on to ICE and ORR?

<b>Question#:</b>	7
<b>Topic:</b>	Family Reunification I
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Response:** (b)(5)

(b)(5)

**Question:** How does the government ensure communication between family members to ensure documents and other evidence needed for their legal case is available?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	8
<b>Topic:</b>	Form 93 Update
<b>Hearing:</b>	TVPRRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Appearing before the HSGAC Permanent Subcommittee on Investigations on April 26, DHS Acting Under Secretary for Office of Strategy, Policy, and Plans James McCament testified that:

CBP uses Form 93, a trafficking screening form for UACs, to screen children apprehended with their parents for trafficking concerns; and

CBP's timeframe for making determinations on whether to separate children from parents is 72 hours, in accordance with the TVPRRA. However, in 2015 the GAO found that CBP failed to adequately and effectively screen unaccompanied children for trafficking indicators, fear of return, and ability to make independent decisions. Moreover, CBP failed to adequately track whether agents were completing the existing training on the screening and processing of UACs. The GAO recommended that CBP revise its training materials and Form 93 screening guidance to ensure the adequate screening of UACs for trafficking, capacity, and asylum concerns. Nearly three years later, CBP has still not updated these materials, much less implemented them, with the current projected finalization being the end of June 2018.

Given its failed track record on screening and processing children, how can we expect CBP rely on Form 93 to effectively screen children who came with their parents or other family members for trafficking concerns?

**Response:** (b)(5)

(b)(5)

**Question:** Does CBP track the use of Form 93 in every case of family separation? (In other words, if CBP claims it is separating families to combat trafficking or smuggling, it's not clear that its existing policies and procedures--and failure to follow them-- are the answer.)

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	8
<b>Topic:</b>	Form 93 Update
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

(b)(5)

**Question:** How has training of agents and officers been modified to improve screening?

**Response:** (b)(5)

(b)(5)

DKL

<b>Question#:</b>	9
<b>Topic:</b>	Unaccompanied Children
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Deputy Under Secretary McCament appears to have referred to TVPRA Sec. 235(b)(3), which requires DHS to transfer custody of an unaccompanied child to ORR within 72 hours after the child is determined to be unaccompanied.

At what point does DHS consider that a child they separate from her parent becomes unaccompanied?

**Response:** (b)(5)

(b)(5)

**Question:** Does DHS consider the child to be unaccompanied as soon as an agency official identifies any questions as to the family relationship or trafficking indicia?

**Response:** (b)(5)

(b)(5)

**Question:** Does DHS consider the child to be unaccompanied until such questions are resolved?

**Response:** (b)(5)

(b)(5)

**Question:** When does the 72-hour statutory period begin running?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	10
<b>Topic:</b>	Screening for Trafficking II
<b>Hearing:</b>	TVPRRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In 2015 the GAO found that CBP failed to adequately and effectively screen unaccompanied children for trafficking indicators, fear of return, and ability to make independent decisions. Moreover, CBP failed to adequately track whether agents were completing the existing training on the screening and processing of UACs. The GAO recommended that CBP revise its training materials and Form 93 screening guidance to ensure the adequate screening of UACs for trafficking, capacity, and asylum concerns. Nearly three years later, CBP has still not updated these materials, much less implemented them, with the current projected finalization being the end of June 2018.

How does DHS account for this failure to fulfill the most basic requirements of the anti-trafficking and child protection mechanisms in our law?

**Response:** (b)(5)

(b)(5)

**Question:** How does the Department expect it could adequately perform such minimal screenings for all children when it can't fulfill these minimal protections for children from contiguous countries?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	11
<b>Topic:</b>	Appearing for Court
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

(b)(5)

**Question:** In recent months DHS has proffered wildly variable statistics on unaccompanied children who do not appear in immigration court. On January 16, Secretary Nielsen claimed that 90% of unaccompanied children do not show up for court. Only a month later on February 15, DHS claimed in a press release that 66% of unaccompanied children fail to appear for court. In either case, it appears that DHS isolates a subset of the overall data--those cases that resulted in a removal order--a misleading characterization, given the reality that with significant court backlogs many unaccompanied children's cases remain pending.

Moreover, this mischaracterization elides the critical importance of legal counsel for children, as data shows that more 95% of unaccompanied children with legal representation show up for court and, more importantly, that children are five times more likely to gain protection when they're represented. This is evidence recognized by the GAO, which recently acknowledged in a Senate hearing that studies show representation helps immigrants move through the process more efficiently. The GAO's acknowledgement is just the latest in a long line of government studies and analyses confirming the critical efficiencies that access to legal counsel and information provides.

Please describe your methodology for arriving at the 90% figure. How do you account for the vast statistical disparity between the Secretary's testimony and your agency's press release?

**Response:** (b)(5)

(b)(5)



<b>Question#:</b>	12
<b>Topic:</b>	Family Reunification II
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** There is a Catch-22 element to the "zero tolerance" policy. The Administration intends to prosecute people for "illegal entry", which is often the way refugees present themselves when seeking asylum. Many cannot make it to a Port of Entry and have to cross the border at the nearest point in order to surrender to the Border Patrol. If they are then charged with a crime, it makes it impossible for them to get asylum and they are separated from their families. Parents seeking asylum do not set out on a dangerous journey of hundreds of miles with their children with no certainty of refuge if there is not a serious threat at home. I find this policy inhumane, and I'd like to know more about the specifics of what has been going on even without its having taken effect for long.

How many families since Apr. 11, 2017, when the AG announced his recommitment to border prosecutions, have been separated due to the mother, father, or other family member being prosecuted?

**Response:** (b)(5)

(b)(5)

**Question:** How many have since been reunited?

**Response:** (b)(5)

(b)(5)

**Question:** How are the agencies working together to ensure separated family members maintain communication, especially to ensure separated children have the information and documents they need to prove their claim for immigration relief?

<b>Question#:</b>	12
<b>Topic:</b>	Family Reunification II
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

<b>Response:</b>	(b)(5)
(b)(5)	

<b>Question#:</b>	13
<b>Topic:</b>	Parental Relationship
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** DHS officials have asserted that these families have been separated to protect the interests of minor children because CBP is unable to ascertain the parental relationship or otherwise believe that the child is in imminent danger.

Please describe how DHS investigates the veracity of a parent-child relationship.

**Response:** (b)(5)

(b)(5)

**Question:** What time benchmarks or other accountability measures do you use to make sure that children do not languish in ORR custody while DHS fails to take steps to confirm the parent-child relationship, as happened in the case of the Congolese mother and her 7-year-old daughter for months?

**Response:** (b)(5)

<b>Question#:</b>	14
<b>Topic:</b>	Change of Interpretation
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Is the Administration considering taking steps to allow the interpretation of "unaccompanied alien child" as defined by the Homeland Security Act of 2002?

Wouldn't a change undermine Congress' intent as expressed in the TVPRA and the Homeland Security Act?

**Response:** (b)(5)

(b)(5)

DRAFT

<b>Question#:</b>	15
<b>Topic:</b>	Zero Tolerance
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** The Trump Administration has been very aggressive in using the separation of families as a scare tactic, designed to deter immigration from Central America, where children are being targeted by gangs and sex traffickers. With the new "zero tolerance" policy, this can only get worse. Already this fiscal year, according to the New York Times, more than 700 children have been separated from their parents, including more than 100 under the age of four.

If parents in the families that are separated at the border are criminally prosecuted and convicted, won't the children be held in ORR custody indefinitely?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	15
<b>Topic:</b>	Zero Tolerance
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

(b)(5)

**Question:** What instruction has been given to the CBP and ICE agents and officers on how to process families apprehended and/or separated at the border?

**Response:** (b)(5)  
(b)(5)

**Question:** What sort of training is provided to agents and officers on how to conduct separations?

**Response:** (b)(5)  
(b)(5)

(b)(5)

DRAFT

<b>Question#:</b>	16
<b>Topic:</b>	Interview Children
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** CBP has acknowledged that one main indicator CBP uses when deciding to separate a family is based on interviews with children.

Is a child welfare professional present when the CBP officer is conducting such questioning?

**Response:** (b)(5)

(b)(5)

**Question:** Is there a training guide or protocol that CBP officers use to interview children coming across the border to determine whether the parent/child relationship is bona-fide?

**Response:** (b)(5)

(b)(5)

**Question:** Are children of all ages questioned about family ties to the individual they enter the US with?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	17
<b>Topic:</b>	Child Trafficking Victims
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	The Honorable Mazie Hirono
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** CBP has been criticized by the United Nations High Commission on Refugees and the GAO over its inability to identify child trafficking victims. Has the agency revamped its screening tools or trainings to improve detection?

**Response:** (b)(5)

(b)(5)

DRAFT



<b>Question#:</b>	18
<b>Topic:</b>	Databases Used
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Against what databases or sources of data do you pull intelligence to determine who amongst the UAC population have criminal charges or are gang-affiliated?

**Response:** (b)(5)

(b)(5)

**Question:** How do you determine affiliation? What sources of information do you pull from?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	19
<b>Topic:</b>	Immigration System
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** Is it fair to assume that smugglers and traffickers know how our system work? By that I mean, is it common knowledge to them that if they bring minors to our border, that Border Patrol will apprehend them, ICE will transport them and turn them over to HHS, and then HHS will reunify them with parents who are here illegally or with sponsors who have not been properly vetted?

**Response:** (b)(5)

(b)(5)

DRAFT

<b>Question#:</b>	20
<b>Topic:</b>	UAC Parents
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** If a parent, who is here in the US illegally, pays smugglers or traffickers, to bring their kids to the US to join them, is that child considered “unaccompanied”? What happens to the parents?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	21
<b>Topic:</b>	Operational Challenges
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** What are your agency's biggest operational challenges when trying to prevent human trafficking across our borders?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	21
<b>Topic:</b>	Operational Challenges
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

(b)(5)

**Question:** How can Congress help?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	21
<b>Topic:</b>	Operational Challenges
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

(b)(5)

<b>Question#:</b>	22
<b>Topic:</b>	Workload Increase
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** What more can you tell us about your respective increases in workload?

**Response:** (b)(5)

(b)(5)

**Question:** How can Congress help?

**Response:** (b)(5)

(b)(5)

<b>Question#:</b>	22
<b>Topic:</b>	Workload Increase
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

(b)(5)



<b>Question#:</b>	23
<b>Topic:</b>	Criminal Influence
<b>Hearing:</b>	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
<b>Primary:</b>	Senator Thom Tillis
<b>Committee:</b>	JUDICIARY (SENATE)

**Question:** In 2015, the Senate Homeland Security & Governmental Affairs Committee found that 40 percent of unaccompanied minors failed to show for immigration hearings over an 18-month period. I am concerned about what happens in the time between when they are released and the day of their hearing, for which many seem not to show up. My concern is during that window, they are typically in communities already populated with MS-13 or other gangs such as the 18th Street Gang.

Is it fair to say that improving follow-up procedures are not enough when more needs to be done in the individual communities to prevent a gang-stronghold?

What should we be doing to limit the influence criminals have in these communities?

**Response:** (b)(5)

(b)(5)

**Attachment E**

**Dream Act of 2017**

**Summary of Bill**

**Section 1: Short Title**

**Section 2: Definitions**

**Section 3: Permanent Resident status on a Conditional Basis for Certain Long-Term Residents Who Entered the United States as Children**

(b)(5)



(b)(5)

**Section 4: Terms of Permanent Resident Status on a Conditional Basis.**

(b)(5)

**Section 5: Removal of Conditional Basis of Permanent Resident Status.**

(b)(5)

**Section 6: Documentation Requirements.**

(b)(5)

(b)(5)

**Section 7: Rulemaking.**

(b)(5)

**Section 8: Confidentiality.**

(b)(5)

**Section 9. Restoration of State Option to Determine Residency for Purposes of Higher Education Benefits.**

(b)(5)

Top Line Questions and Answers



## Potential Questions and Answers

Secretary Kirstjen Nielsen

U.S. Department of Homeland Security

*Meeting with the*

U.S. House of Representatives  
Republican Conference

Thursday, June 7, 2018, at 9:00 a.m.  
U.S. Capitol Building

U.S. Department of Homeland Security  
Office of Legislative Affairs

Top Line Questions and Answers

**Issues**

Immigration Loopholes ..... 1  
Southwest Border Migration (CBP).....2  
Border Security (CBP) .....2  
National Guard Deployment (CBP) .....4  
100% Prosecutions (PLCY / CBP).....5  
Family Separations (CBP).....6  
Unaccompanied Alien Children (UAC) (CBP).....8  
Immigration Enforcement Priorities (ICE).....9  
H-2B (USCIS) .....10  
DACA (USCIS).....11  
Temporary Protected Status (TPS) (USCIS).....13  
Mandatory E-Verify (USCIS) .....14  
International Entrepreneur (IE) Rule (USCIS).....14  
Visa Overstays (CBP / ICE).....15

Top Line Questions and Answers

Immigration Loopholes

- 1. The easiest thing we can do to stop the pull factors of immigration are to close the loopholes. Secretary, can you please describe for us what loopholes exist and what you recommend happen to fix the problems?**

(b)(5)



- 2. Secretary Nielsen, what is the effect of the current immigration law and the corresponding current asylum policies on DHS's ability to secure the southern U.S. border?**

(b)(5)



Top Line Questions and Answers

(b)(5)

Southwest Border Migration (CBP)

**3. What kind of numbers do we see for illegal migration on the border?**

(b)(5)

Border Security (CBP)

**4. What resources does DHS need to secure the border?**

(b)(5)

**5. What are the major threats and vulnerabilities along the southern border?**

(b)(5)

**6. Why does Border Patrol need a wall?**

(b)(5)



Top Line Questions and Answers

(b)(5)

**7. Please provide an update on the border wall prototypes.**

(b)(5)

**8. What are the next planned activities in building a barrier along the southern border?**

(b)(5)

(b)(7)(E)

**9. What can you tell us about the recent Border Patrol shooting near Houston? How could this happen?**

(b)(7)(B)

Top Line Questions and Answers

National Guard Deployment (CBP)

**10. The President says he will deploy troops until a wall is built, but right now, there isn't even funding for the wall. What will they be doing on the border, and how will this use of troops and funding impact other national security missions?**

(b)(5)
(b)(7)(E)
(b)(5)

**11. How long will this Administration be wasting the taxpayer's hard-earned money by keeping the National Guard on the border?**

(b)(5)
(b)(7)(E)
(b)(5)

**12. Since this most recent deployment, what has the National Guard accomplished?**

(b)(5)
(b)(7)(E)

Top Line Questions and Answers

**13. Apparently, Department of the Interior has been on the border as well. Can you explain what they've been doing?**

(b)(5)

100% Prosecutions (PLCY / CBP)

**14. How do you plan to handle, resource-wise, increased prosecutions?**

(b)(5)

(b)(7)(E)

**15. Do you have enough resources to execute?**

(b)(5)

**16. Will you prosecute those seeking asylum who illegally cross the border?**

(b)(5)

**17. Is this prosecution initiative in effect across the entire Southwest Border?**

(b)(5)

Top Line Questions and Answers

**18. Does the 100 percent prosecution policy that DHS and DOJ have recently announced violate Article 31 of the UN Refugee Convention?**

(b)(5)

**19. Aren't DHS and DOJ violating Article 31(1) of the Convention and Protocol Relating to the Status of Refugees by prosecuting these foreign nationals seeking asylum in our country?**

(b)(5)

**20. Secretary Nielsen, why do you say the asylum backlog translates to a border security issue?**

(b)(5)

**21. Secretary Nielsen, can you not allocate resources to address the asylum backlog?**

(b)(5)

Family Separations (CBP)

**22. Are you now separating all families at the border?**

(b)(5)

Top Line Questions and Answers

(b)(5)

**23. Does that mean you will separate the parents from their children?**

(b)(5)

**24. Will these families be reunited?**

(b)(5)

**25. If you refer the parent for prosecution, why do you have to separate the child?**

(b)(5)

**26. Are you going to detain and prosecute all parents caught crossing the border illegally with their children?**

(b)(5)

Top Line Questions and Answers

(b)(5)

**27. Will CBP refer everyone who crosses illegally for prosecution and removal regardless of age or country of origin?**

(b)(5)

Unaccompanied Alien Children (UAC) (CBP)

**28. Do we expect another surge of UAC?**

(b)(5)

**29. When CBP encounters UAC, what checks are performed to ensure that these children are not currently associated with or being recruited by gangs in the United States?**

(b)(5)

(b)(7)(E)

**30. I'm concerned that DHS and HHS are woefully behind and ignoring the most vulnerable children in your custody. How can we be assured that the Administration will get its act together and do its job to protect these innocent children?**

(b)(5)

Top Line Questions and Answers

(b)(5)

**31. I'm disturbed by media reports that the U.S. Government "lost" almost 1,500 kids. What happened?**

(b)(5)

Immigration Enforcement Priorities (ICE)

**32. What is DHS's current immigration enforcement priority?**

(b)(5)

**33. What is the danger of sanctuary jurisdictions not allowing state/local law enforcement to comply with detainer requests?**

(b)(5)

Top Line Questions and Answers

(b)(5)

**34. How does the enforcement of our immigration laws contribute to the dismantling of transnational criminal organizations into the United States?**

(b)(5)

H-2B (USCIS)

**35. What can we do to stop these annual crises?**

(b)(5)

**36. This situation is killing U.S. businesses. Do you understand that?**

(b)(5)



Top Line Questions and Answers

**37. What should I tell employers who are asking me why DHS decided to introduce an H-2B lottery this year?**

(b)(5)

**38. What is DHS doing to target fraud and abuse in the H-2B program?**

(b)(5)

DACA (USCIS)

**39. What is the current status of DACA?**

(b)(5)

**40. Are DACA recipients being targeted for immigration enforcement actions?**

(b)(5)

**41. What is DHS's policy concerning information sharing related to DACA recipients?**

(b)(5)

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Top Line Questions and Answers

(b)(5)

**42. What is the cost of DACA?**

(b)(5)

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Top Line Questions and Answers

(b)(5)

**43. Where does the funding for DACA come from?**

(b)(5)

Temporary Protected Status (TPS) (USCIS)

**44. Recently, you decided not to extend TPS for Honduras and Nepal. Have you made any decisions on other countries that are up for renewal?**

(b)(5)

**45. Are security checks performed on TPS applicants?**

(b)(5)

**46. How many TPS beneficiaries are there in the US currently?**

(b)(5)

**47. DHS has announced intention to terminate TPS for several countries despite the continuous flow of nationals from those nations into the U.S. Although reports indicate conditions have improved, there is no quantitative data that supports conditions have improved to a point of termination of TPS. Please explain how/why DHS is reaching a decision to terminate TPS.**

(b)(5)

Top Line Questions and Answers

**48. Do you agree with former Secretary Kelly's comments during an interview where he said we should fold all the TPS recipients that have been here for a considerable period of time and find a way for them to a path of citizenship?**

(b)(5)

Mandatory E-Verify (USCIS)

**49. How many employers currently use E-Verify?**

(b)(5)

**50. What if States or municipalities refuse to participate in mandatory E-Verify?**

(b)(5)

**51. Is there a way for someone who is rejected by E-Verify to appeal?**

(b)(5)

International Entrepreneur (IE) Rule (USCIS)

**52. Why is DHS proposing to remove the regulations published as part of the International Entrepreneur (IE) Final Rule?**

(b)(5)

**53. Would removal of these regulations mean that individuals will not be allowed to apply for parole under this specific program?**

(b)(5)

Top Line Questions and Answers

**54. What factors did DHS consider when deciding to propose removal of these regulations?**

(b)(5)

**55. How many individuals have applied for the International Entrepreneur program since USCIS began accepting applications?**

(b)(5)

**56. What is USCIS doing about the other parole programs?**

(b)(5)

Visa Overstays (CBP / ICE)

**57. How does DHS track the number of visa overstays, and how is the Department acting on overstay information from the overstay report?**

(b)(5)



# SECURING AMERICA'S FUTURE ACT

REFOCUSSES  
LEGAL  
IMMIGRATION  
ON SKILLS  
NEEDED IN THE  
U.S.



- **Ends the Diversity Program** – Eliminates the visa lottery green card program
- **Ends Chain Migration** – Eliminates green card programs for relatives (other than spouses and minor children); creates a renewable temporary visa for parents of citizens to unite families at no cost to taxpayers
- **Reduces Overall Immigration Levels** – Reduces immigration levels (now averaging over 1,060,000 a year) by about 260,000 a year – a decrease of about 25%
- **Increases Immigration Levels for Skilled Workers** – Increases the number of green cards available in the three skilled worker green card categories from about 120,000 a year to about 175,000 – an increase of 45%
- **Agricultural Workers** – Creates a workable agricultural guest worker program to grow our economy
- **Visa Security** – Sends additional ICE agents to more high-risk embassies overseas to vet visitors and immigrants



SECURES OUR  
BORDERS

- **Build the Border Wall** – Authorizes border wall construction
- **Advanced Technology** – Additional technology, roads and other tactical infrastructure to secure the border
- **Secures Ports of Entry** – Improves, modernizes, and expands ports of entry along the southern border
- **More Boots on the Ground** – Adds 5,000 Border Patrol Agents and 5,000 CBP Officers
- **Use of the National Guard** – Authorizes the Guard to provide aviation and intelligence support for border security operations
- **Biometric Entry-Exit System** – Requires full implementation at all air, land, and sea ports of entry



PREVENTS  
FUTURE  
ILLEGAL  
IMMIGRATION  
VIA INTERIOR  
ENFORCEMENT

- **Makes E-Verify Mandatory** – Employers must check to see that they are only hiring legal workers
- **Cracks Down on Sanctuary Cities** – Authorizes the Department of Justice to withhold law enforcement grants from sanctuary cities/allows victims to sue the sanctuary cities that released their attackers
- **Facilitates Cooperation with Local Law Enforcement** – Establishes probable cause standards for ICE detainers/indemnifies localities that comply/requires ICE enter into 287(g) agreements requested by localities
- **Detaining Dangerous Individuals** – Allows DHS to detain dangerous illegal immigrants who cannot be removed
- **Kate's Law** – Enhances criminal penalties for deported criminals who illegally return
- **Combats Asylum Fraud** – Tightens the "credible fear" standard to root out frivolous claims and increases penalties for fraud/terminates asylum for individuals who voluntarily return home
- **Keeps Out and Removes Dangerous Criminals** – Makes illegal immigrants removable for being gang members/makes those with convictions for aggravated felonies, not registering as sex offenders, and multiple DUIs removable
- **Visa Overstays** – Makes illegal presence a federal misdemeanor (illegally crossing the border already is a crime)
- **Safely Returns Unaccompanied Minors** – Ensures the safe and quick return of unaccompanied minors apprehended at the border; allows for the detention of minors apprehended at the border with their parents

DACA



- **Legislatively Provides Legal Status** – Individuals who received deferred action on the basis of being brought to the U.S. as minors get a 3-year renewable legal status allowing them to work and travel overseas (without advance parole). There is no special path to a green card. Recipients may only make use of existing paths to green cards
- **No Criminals** – No gang members or those with criminal convictions/convictions in juvenile court for serious crimes are eligible
- **Combats Fraud** – Strong anti-fraud measures/allows for prosecutions for fraud

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**MEETING WITH HOUSE REPUBLICAN CONFERENCE**  
**9 AM, Thursday, June 7, 2018**  
**U.S. Capitol, TBD**

**Objective:**

- House Republican Leadership requested your presence at the Conference's meeting, where they will discuss the path forward for the various immigration proposals, to include the Goodlatte-McCaul bill, and recent developments on the immigration discharge petition.
  - Urge the Republican conference to work together to craft a legislative solution that we all can support, reflects the White House's immigration framework, and importantly, can garner the President's signature.
  - Join House Leadership in asking Republicans to not sign the discharge petition. Emphasize that Republicans are better off working together and should avoid forcing votes on proposals that are comprised of Democrats' immigration wish lists, which would do real harm to our front line operators.

**Agenda:**

- In-person meeting with the entire House Republican Conference.

**Key Messages**

Republicans should stand united and present President Trump with an immigration proposal that he can support and sign.

I appreciate that many of you have been working tirelessly for years to find a permanent solution for DACA recipients. I want to work with you and your colleagues to find common ground, but any acceptable proposal must close dangerous loopholes, give DHS the authority and funding to move forward on a border wall system, end chain migration, and cancel the visa lottery system.

**Background:**

- Rep. Carlos Curbelo (R-FL) and Rep. Jeff Denham (R-CA) are leading an effort to gather signatures for a discharge petition to move immigration bills to the full House floor for consideration. Under normal House rules, the Speaker controls when a bill is brought to the floor, but the discharge petition is a way around that.
- The discharge petition requires 218 signatures. There are 193 Democrats in the House, all of which are expected to be willing to sign the petition.
  - In late May, Reps. John Katko (R-NY) and David Trott (R-MI) became the 19th and 20th Republicans to sign the petition, leaving the discharge petition only five signatures shy of 218.
- The petition needs to be "cured" within a certain number of legislative days in session. It can then be brought to the House floor the 2nd or 4th Monday of any month: June 25 or July 23 are the next dates the discharge signatories would be able to force a vote on four immigration bills.

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- The discharge petition with 218 signatures or more would then bypass the Rules Committee and force House Leadership to bring to the floor four immigration bills for consideration, in a process known as “Queen of the Hill”:
  - Goodlatte-McCaul bill
  - Speaker will have a choice of his bill. This is still undetermined at this point.
  - The Democrats will have bill; most likely the DREAM Act.
  - Rep. Denham will also have opportunity to bring his own bill—probably the Hurd-Aguilar bill.
- The bill with the most votes is deemed the winner and moves onto the Senate for further consideration. The Senate has no obligation to take up any legislation passed in the House and similar measures to those contemplated by this discharge petition have already failed to receive 60 votes in the Senate this session.

**Bills in Play:****1) Goodlatte-McCaul, Securing America's Future Act (H.R. 4760)**

- a. Compilation of four House Judiciary Committee bills & Rep. McCaul’s Secure Border bill. House Leadership is seeking to bring a modified version of this bill to the floor in an attempt to stave off the discharge petition.

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**b. Top Line Summary:**

- i. Immigration: Reforms the visa lottery, ends chain migration, and reduces overall immigration levels.
- ii. Guestworker programs: Includes reforms to expand opportunities for agricultural guestworkers to come to the United States. Note: DHS clearly supports this and is preparing a draft regulation with DOL to dramatically expand the guestworker program.
- iii. Border Security: authorizes border wall construction, technology and road improvements on southern border. Adds 5,000 Border Patrol Agents and 5,000 CBP Officers. Makes the Administration’s requested changes to the TVPRA regarding treatment of Unaccompanied Alien Children (UACs).
- iv. Interior Enforcement: Mandatory E-Verify, withholds grants from sanctuary cities, includes Kate’s Law, tightens “credible fear” asylum standard.
- v. DACA: Individuals who received deferred action on the basis of being brought to the U.S. as minors get a 3-year renewable legal status. Recipients may only make use of existing paths to green cards. This is the smallest illegal-alien population under any legislative amnesty proposal to date and hence would be easiest to process by DHS operationally.

- c. Floor Outlook: Does not have the votes to pass the House at this time.

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- e. *Also see Attachment C*, Summary of Goodlatte-McCaul bill

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**2) Speaker will have a choice of his bill**

- a. Floor Outlook: Since this bill has yet to be written, it is still undetermined at this point whether it will garner enough support to pass.

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**3) Democrats will have a bill—most likely a clean DREAM Act of 2017 (S. 1615)**

- a. Top Line Summary:

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- b. Floor Outlook: Likely that this could pass (or Hurd-Aguilar below).
- c. *Also see Attachment E*, DREAM Act of 2017 Summary

**4) Rep. Denham will also have opportunity to bring his own bill—probably the Uniting and Securing America (USA) Act (H.R. 4796)**

- a. Senators McCain and Coons are the lead sponsors in the Senate where this legislation failed to garner 60 votes required earlier this year; Reps. Hurd and Aguilar are sponsoring the bill in the House.
- b. Top Line Summary:

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- c. Floor Outlook: Likely that this could pass.
- d. *Also see Attachment D*, Tiger Team Analyses of Hurd-Aguilar bill

**Closing Loopholes:**

As the Republican Conference continues to debate the provisions that should be included in a compromise immigration bill, the meeting may provide an opportunity to outline the loopholes that need to be closed to garner DHS' support:

**1) Clarify DHS' Detainer Authority and Provide Indemnification and Immunity for State and Local Governments**

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**2) Update Unaccompanied Alien Children (UAC) Laws and Terminate the *Flores* Settlement Agreement (FSA)**

(b)(5)

**3) Fraud Mitigation and Reforming the "Credible Fear" Process**

(b)(5)

**4) Close Loopholes to Bar Terrorist Aliens from Entry and Receiving Immigration Benefits**

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**5) Close Loopholes that Allow Criminal Aliens to Circumvent Removal**

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**6) Addresses Additional Problems with Removing Criminal Aliens**

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**7) Close Loopholes Created by the U.S. Supreme Court's Decision in Zadvydas v. Davis**

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**8) Discourage Visa Overstays by Classifying Such Conduct as a Criminal Offense**

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**Attachments:**

- A. [Talking Points / Remarks]
- B. Potential Questions and Recommended Answers
- C. Summary of Goodlatte-McCaul bill
- D. Tiger Team Analyses of Hurd-Aguilar bill
- E. Summary of Dream Act

**Staff Responsible for Briefing Memo:** Senior Legislative Advisor, (b)(6)

*Reviewed and approved by:* Deputy Assistant Secretary (b)(6)

**OGC Reviewer:** Attorney in Component Counsel or HQ, Title, Phone Number.

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<b>From:</b>	(b)(6)
<b>To:</b>	"Short, Tracy (b)(6) (b)(6) "Scudder, Ryan (b)(6) (b)(6)
<b>CC:</b>	
<b>Subject:</b>	[Counselor Clearance Request] S1 HSGAC Issue Papers
<b>Date:</b>	2018/08/24 16:09:28
<b>Priority:</b>	Normal
<b>Type:</b>	Note

High Priority    S1 Materials    Due: 3 pm 08.28.18 (Tuesday)

Tracy and Ryan,

Attached are the following HSGAC Hearing issue papers that fall into your portfolio:

Lead:

- 8. BITMAP Program – drafted by ICE
- 10. EO Implementation – drafted by ICE
- 11. Illegal Immigration Statistics – drafted by CBP
- 12. Illegal Immigration Statistics – drafted by ICE
- 14. Special Interest Aliens – drafted by ICE
- 15. DACA Update – drafted by USCIS
- 16. Temporary Protected Status (TPS) Update – drafted by USCIS
- 17. Family Units – drafted by CBP
- 18. Unaccompanied Alien Children (UAC) – drafted by CBP
- 20. Detention Beds – drafted by ICE
- 21. ICE Detainers and Sanctuary Jurisdictions - drafted by ICE
- 22. Recalcitrant Countries – drafted by ICE
- 23. H-2B Visa Program – drafted by USCIS
- 24. Termination of Temporary Immigrations Programs – drafted by USCIS
- 26. EB-5 Program – drafted by USCIS
- 27. Chain Migration – drafted by USCIS
- 28. Diversity Visa Program – drafted by USCIS
- 29. H-1B Visa Program – drafted by USCIS
- 30. Asylum Seekers – drafted by USCIS
- 31. USCIS Vetting and Screening – drafted by USCIS
- 33. Wall Update – drafted by CBP

- 34. Border Metrics – drafted by CBP
- 35. Northern Border Threat Analysis-Strategy-Implementation – drafted by CBP
- 36. Opioids – drafted by PLCY
- 37. Port Security - drafted by USCG
- 38. POE Cargo Screening – drafted by CBP
- 39. National Guard Deployment to Southern border – drafted by CBP
- 40. Southwest Border Migration Update – drafted by CBP
- 42. Electronic Searches and Seizures at the Border – drafted by CBP
- 43. Zero Tolerance Initiative – drafted by CBP
- 44. Foreign Partnerships to Secure the Border – drafted by PLCY

Support:

- 2. Terrorist Travel: Top Overseas Security Gaps of Concern – drafted by I&A
- 9. EO 13780: Enhanced Vetting and Info Sharing – drafted by PLCY
- 13. Refugee Security and Ongoing DHS Enhancements – drafted by USCIS
- 25. Mandatory E-Verify – drafted by USCIS

In an effort to streamline this process, additional counselors will be reviewing issue papers with multiple equities concurrently – BBIC will work to combine edits.

If possible, we are now requesting your review and clearance by 3 pm on Tuesday, August 28 (however, please let us know if you need more time). Thank you!

Best,

(b)(6)

Briefing Book Coordinator  
Office of the Executive Secretary  
Office of the Secretary  
U.S. Department of Homeland Security

(b)(6)

<b>Sender:</b>	(b)(6)
<b>Recipient:</b>	"Short, Tracy (b)(6)
	(b)(6)
	"Scudder, Ryan (b)(6)
	(b)(6)

	(b)(6)
<b>Sent Date:</b>	2018/08/24 16:09:28

**U.S. Immigrations and Customs Enforcement (ICE):  
Executive Order Implementation**

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Customs and Border Protection (CBP):**  
Illegal Immigration Statistics Update and DHS Response

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Immigration and Customs Enforcement (ICE):**  
Illegal Immigration Statistics Update - ICE

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**TOPLINE POINTS**

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**BACKGROUND**

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**US Citizenship and Immigration Services (USCIS):**  
Refugee Security and Ongoing DHS Enhancements

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Immigration and Customs Enforcement (ICE):**  
**Special Interest Aliens**

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**TOPLINE POINTS**

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**BACKGROUND**

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**US Citizenship and Immigration Services (USCIS):**  
Deferred Action for Childhood Arrivals (DACA)

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**TOPLINE POINTS**

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**BACKGROUND**

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**US Citizenship and Immigration Services (USCIS):**  
**Temporary Protected Status (TPS)**

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**TOPLINE POINTS**

- I take TPS decisions very seriously and I make each decision in full compliance with the law.

**BACKGROUND**

- Temporary Protected Status (TPS) is a temporary status given to eligible nationals of designated countries who are present in the United States. The Secretary of Homeland Security may designate a foreign country for TPS due to conditions in the country that temporarily prevent the country's nationals, including those unlawfully present in the United States, from returning safely or, in certain circumstances, where the country is unable to adequately handle the return of its nationals. TPS may be granted to eligible nationals of certain countries, or eligible individuals without nationality who last resided in the designated country.
- Under INA section 244(b)(1), the Secretary of Homeland Security, after consultation with appropriate U.S. Government agencies, may designate a foreign country (or any part of such foreign country) for TPS if the conditions in the foreign country fall into one or more of three statutory categories: (1) ongoing armed conflict, (2) environmental disaster, or (3) extraordinary and temporary conditions.
- Countries can initially be designated for TPS for a period of 6 to 18 months. At least 60 days prior to the expiration of a country's TPS designation, the Secretary must review the conditions in the country to determine whether it still meets the requirements for a designation.
- Based on that review, the Secretary will extend or terminate the country's TPS designation, or, in some cases, newly designate the country. If the Secretary determines that the conditions for designation no longer continue to be met, the Secretary shall terminate the designation. If the Secretary finds, however, that the conditions for designation continue to be met (or makes no determination at all), the TPS designation must be extended a minimum of six months, but may be extended, in the Secretary's discretion, for 12 or 18 months.
- When a country is designated for TPS, nationals of that country who are residing in the United States may apply for TPS with U.S. Citizenship and Immigration Services (USCIS). In order to be eligible for TPS, applicants must meet required continuous residence and physical presence dates, which generally prevent individuals who first arrive in the United States after a country's designation for TPS from receiving the status.
- Security and background checks are performed on all TPS applicants.
- TPS beneficiaries are authorized to remain in the United States and receive work authorization and documentation of such for the duration of their status.
- TPS does not provide an independent pathway for individuals to receive lawful permanent residence in the United States. TPS also does not provide a mechanism for family members to derive status or be brought to the United States.
- Approximately 437,000 individuals are receiving protection through the TPS program. Some of these individuals may also have another lawful immigration status or authorization to remain in the United States.

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**U.S. Customs and Border Protection (CBP):**  
Family Units

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**TOPLINE POINTS**

- On May 5, 2018, in coordination with the Department of Justice and several internal and external stakeholders, CBP implemented the Zero Tolerance prosecution initiative by increasing prosecution referrals for all amenable adults who violate 8 U.S.C. § 1325(a) by illegally entering the United States. This prosecution initiative applied to all suspected violators, including amendable adults that are part of a family unit and in accordance with recent court orders.
- Adult violators, including amendable parents and legal guardians, are referred for prosecution and remanded to the custody of the United States Marshals Service and the minor children are placed with the Department of Health and Human Services (HHS) as required by the Homeland Security Act and the Trafficking Victims Protection Reauthorization Act of 2008, and in accordance with recent court orders. CBP's U.S. Border Patrol (USBP) relays all relevant information to ICE/ERO and HHS to facilitate reunification at the conclusion of the criminal and immigration proceedings.
- This prosecution initiative does not terminate or negate parental rights or the ability for the individuals to seek asylum. USBP adheres to all applicable law, policies, court rulings, and standard procedures.
- While the Zero Tolerance prosecution initiative is still in effect, it is not being applied to Ms. L class members, given court orders in those cases. Single adults and parents or legal guardians outside the Ms. L class are still subject to the Zero Tolerance prosecution initiative.

**BACKGROUND**

- USBP is generally the first law enforcement agency to apprehend aliens who make illegal entries into the United States and the Office of Field Operations (OFO) processes applicants for admission at ports of entry (POE). Consistent with the Immigration and Nationality Act (INA), regulations, judicial rulings, and DHS policy, and internal procedures, both USBP and OFO processes all detainees in line with each alien's individualized processing dispositions (Expedited Removal, Notice to Appear, etc.) and subsequently transfers custody of those aliens to ICE/ERO.
- USBP and OFO do not have a blanket policy that dictates family separation. The decision to separate is made on a case-by-case basis. Family Unit records are stored in the Enforcement Integrated Database (EID). DHS has not destroyed any records. When USBP removed a Family Unit designation when a family unit was reprocessed, the record in the live system was moved from the main table to a journal table. The record was not removed from the database. These records are still available for review and reporting from the journal tables in the EID. CBP continues to refine its systems and processes to accurately maintain records. Moving forward, in the event of a separation, electronic records for all family members are

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**U.S. Customs and Border Protection (CBP):**  
**Unaccompanied Alien Children (UAC)**

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Customs and Border Protection (CBP):**  
Terrorism Watchlisted Persons Encountered by DHS

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**TOPLINE POINTS**

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**BACKGROUND**

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**Office Intelligence and Analysis (I&A):**  
**Terrorist Travel: Top Overseas Security Gaps of Concern**

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### **TOPLINE POINTS**

- The United States operates one of the world's most comprehensive watchlisting and vetting processes to detect known or suspected terrorists (KSTs) and identify previously unknown terrorists to prevent them from entering the homeland.
- However, security vulnerabilities overseas can put the U.S. homeland in danger by allowing possible terrorist operatives, terrorist affiliates, and violent radicals to get one step closer to our shores.
- In particular, we are concerned about three issues that many of our international partners face, including:
  - Inadequate border security;
  - Intelligence and information sharing challenges (within their governments and with other countries, including the USG); and
  - Weak traveler screening.
- DHS continues to encourage foreign governments to close these security gaps and, where it is in America's interest, provide assistance to help them secure their borders.

### **BACKGROUND**

#### *Overview*

- To counter terrorist travel, DHS provides foreign partners with capacity building and technical assistance on investigations.
  - DHS requires Visa Waiver Program (VWP) countries to enter into and implement information sharing agreements; systematically screen travelers crossing their respective borders against U.S. counterterrorism information; report lost and stolen documents within 24 hours; systematically collecting and analyzing passenger travel data (Advance Passenger Information (API) and Passenger Name Records (PNR)).
  - Under Presidential Proclamation 9645, DHS regularly reviews the information-sharing practices, policies, and capabilities of all countries against standard baseline criteria to support determinations whether their nationals seeking to enter the United States pose a national security or public safety threat. The subsequent engagements have resulted in improved screening and vetting at home and around the world.

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- CBP has preclearance operations located in 15 foreign airports and one land border ferry operation in six countries to include:
  - Oranjestad, Aruba;
  - Hamilton, Bermuda;
  - Freeport and Nassau, Bahamas;
  - Calgary, Edmonton, Halifax, Montreal, Ottawa, Toronto, Victoria, Vancouver, and Winnipeg, Canada;
  - Dublin and Shannon, Ireland; and
  - Abu Dhabi, United Arab Emirates.
- The Transportation Security Administration (TSA) has agreements in place requiring each country to adopt and maintain aviation security screening standards and protocols for US bound passengers and checked baggage, where applicable, commensurate to those of the United States at the 15 existing preclearance airports.

#### *Global Entry*

- Global Entry (GE) allows certain pre-approved, low-risk travelers dedicated processing upon arrival to the United States. CBP has entered into full GE arrangements with Argentina; Colombia; Germany; India; Mexico; the Netherlands; Panama; Republic of Korea; Singapore; Switzerland; Taiwan; the United Kingdom and has Pilot GE programs with Qatar, Saudi Arabia, Israel and Japan.

#### *Homeland Criminal Organization and Network Target*

- ICE/HSI engages in information and intelligence sharing with foreign partners to investigate, disrupt, dismantle, and prevent the travel of terrorists through host nation law enforcement partnerships such as the Homeland Criminal Organization and Network Target (HOMECORT) prioritization process.
  - HOMECORT consists of several stages that prioritize DHS investigations of criminal networks, leverage support for these investigations, and then optimize the broadest spectrum of DHS and interagency efforts against these criminal networks as well as their illicit activities, their finances, and the impacts of their crimes.
  - The HOMECORT process unifies the widest network of DHS component authorities, capabilities, expertise and resources against the criminal networks most harmful to homeland security.

#### *The Biometric Identification Transnational Migration Alert Program (BITMAP)*

- ICE/HSI, in collaboration with the Department of Defense (DoD) and CBP, manages the Biometric Identification Transnational Migration Alert Program (BITMAP). Through BITMAP, ICE/HSI trains and equips foreign counterparts to tactically collect biometric and biographic data on special interest aliens, gang members, and other persons of interest. BITMAP enrollments provide the USG information on foreign partners' law enforcement

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**U.S. Immigration and Customs Enforcement (ICE):**  
Detention Beds

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**TOPLINE POINTS**

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**BACKGROUND**

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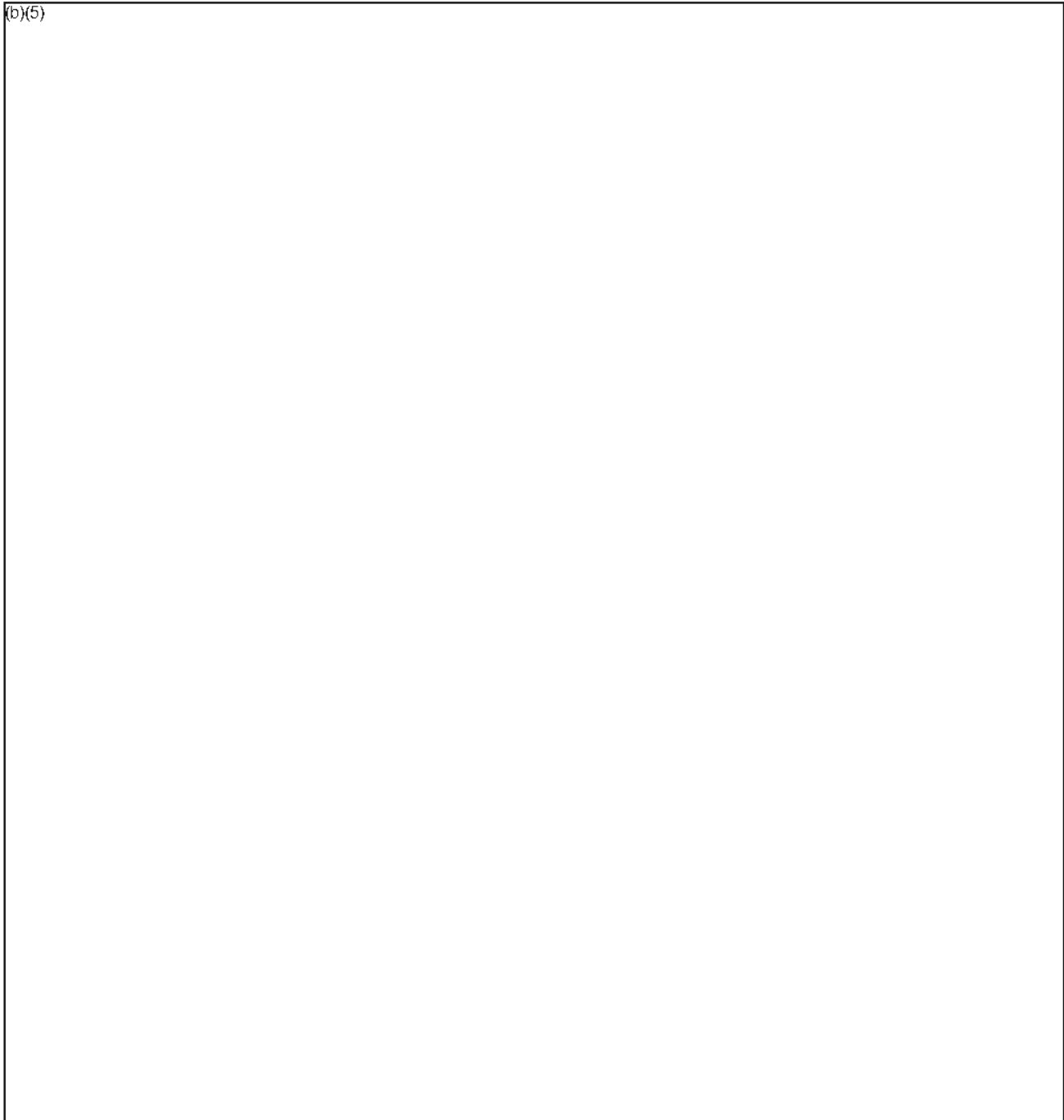
**U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT**



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**U.S. Immigration and Customs Enforcement  
ICE Detainers and Sanctuary Jurisdictions World-Wide-Threats Hearings  
Examples of Sanctuary Jurisdictions Negatively Impacting ICE HSI Offices  
August 16, 2018**

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- state and local LEAs removing officers from task forces in which ICE HSI participates or leads;
- the release of criminal alien suspects, including MS-13 members, from local jails because detainers are not honored; and
- state and local law enforcement officers refusing to cooperate or participate in enforcement actions either led by ICE HSI or in which ICE HSI is participating.
- One of the biggest impediments hindering ICE's efforts in removing dangerous criminals from American communities is the lack of cooperation from certain jurisdictions.
- Some state and local jurisdictions refuse to honor ICE detainers, share information relating to potentially removable aliens, and even prevent ICE officers from gaining access to their jail population for the purpose of conducting interviews. This is a significant impediment because ICE often requires interviews to determine alienage, removability, and gang affiliation.
- Unfortunately, as ICE has issued more detainers, some state and local jurisdictions have increasingly refused to honor them.
  - In Fiscal Year (FY) 2018, as of June 30, 2018, LEAs declined 11,479 ICE detainers issued by Enforcement and Removal Operations (ERO), as compared to 8,170 in FY 2017 and 3,623 in FY 2016, representing the greatest number of declined detainers over the last 3 fiscal years.
  - Despite intensified efforts to locate and arrest these aliens—many of whom are convicted criminals—ERO was only able to arrest 6 percent of them in FY 2017.
  - As a direct result of these declined detainers, 7,710 aliens, who are illegally present in the country and have been arrested on criminal charges, remain at large, demonstrating the very real public safety threat posed by jurisdictions that refuse to cooperate with ICE's enforcement efforts.

## **BACKGROUND**

### *Detainers*

- The Immigration and Naturalization Service (INS), a predecessor agency of ICE, began issuing the immigration detainer Form I-247 (Immigration Detainer - Notice of Action) in the 1950s on an ad hoc basis. Federal immigration detainers are issued by federal immigration authorities (pursuant to 8 U.S.C. § 1357(d); 8 C.F.R § 287.7(b)) to request that other LEAs hold individuals who are already in their custody and suspected of being in the United States unlawfully.
- ICE created and implemented the most recent detainer Form I-247A, Immigration Detainer - Notice of Action, on April 2, 2017, pursuant to Policy Number 10074.2, *Issuance of Immigration Detainers by ICE Officers*. On the same date, previous detainer forms were retired.
- Form I-247A fulfilled the requirement of former Secretary of Homeland Security John F. Kelly's February 20, 2017 memorandum entitled *Enforcement of the Immigration Laws to Serve the National Interest* to "eliminate the existing detainer forms and replace them with a new form to more effectively communicate with recipient law enforcement agencies."
  - Honoring ICE detainers increases public safety and keeps our communities safe. When LEAs fail to honor immigration detainers and release serious criminal offenders, it undermines ICE's ability to protect public safety and carry out the mission, and is much

- safer for all involved (i.e., the community, law enforcement, and the criminal alien) if ICE officers take custody in the controlled environment of another LEA.
- In a new approach, DHS and ICE, in coordination with the U.S. Department of Justice (DOJ), have taken actions to support state and local partners when they face legal challenges for lawfully cooperating with ICE detainers, including filing statements of interest and amicus briefs before the courts.
  - ICE will only issue a detainer subsequent to the determination of probable cause of alienage and removability, and the basis for this determination is identified on the detainer.
  - Detainers constitute as a legally authorized request, which an LEA may rely upon to continue to maintain custody of an alien for up to 48 hours so that ICE may assume custody for removal purposes.
  - Methods for identifying removable aliens in the custody of another LEA (which means they have been arrested for or convicted of a criminal violation) include: receiving biometric hits through interoperability (Immigration Alien Query and Immigration Alien Response); in-person interviews; conducting record checks in pertinent databases; receiving notification from detention facilities; reviewing jail rosters; and other processes outlined in officer-issued handbooks.
  - Once ICE has established probable cause of alienage and removability, a detainer is created and transmitted along with—pursuant to ICE policy—a completed Warrant of Arrest for Alien (Form I-200) or Warrant of Removal/Deportation (Form I-205) to the federal, state, and/or local LEA notifying them of ICE’s intent to take custody of the alien.
  - If the detainer is honored by the LEA, ICE must either assume custody within 48 hours of notification of the alien’s release or cancel the detainer.
  - An ICE detainer requests that the receiving LEA do the following:
    - notify ICE as early as practicable (at least 48 hours in advance, if possible) before the alien is released from custody;
    - maintain custody of the alien for a period not to exceed 48 hours beyond the time he or she would have otherwise been released to allow ICE to assume custody;
    - relay the detainer to any other LEA to which the alien is transferred; and
    - notify ICE in the event of the alien’s death, hospitalization, or transfer to another institution.

### *Sanctuary Jurisdictions*

- Examples of sanctuary jurisdictions include:
  - The California TRUST Act, Assembly Bill 4, imposes strict limitations on the circumstances under which law enforcement officials may honor an ICE detainer. The California TRUTH Act, Assembly Bill 2792, limits DHS access to interview aliens detained in criminal custody. California Senate Bill 54 (SB 54), which includes the California Values Act, took effect January 1, 2018, prohibits local LEAs from using money or personnel to investigate, interrogate, detain, detect, or arrest persons for immigration enforcement purposes, including prohibitions on providing information about release dates or holding an alien pursuant to a detainer. SB 54 effectively makes the entire state of California a sanctuary jurisdiction.
  - A Cook County, Illinois, ordinance<sup>1</sup> provides that the Cook County Sheriff shall decline ICE detainers unless there is a written agreement with the Federal

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- On May 31, 2016, DOJ's Office of the Inspector General (OIG) issued a memorandum entitled, *Department of Justice Referral of Allegations of Potential Violations of 8 U.S.C. § 1373 by Grant Recipients*, in which it noted concerns that laws and policies restricting interaction and cooperation with ICE "may be inconsistent with at least the intent of Section 1373 [of Title 8 of the United States Code (U.S.C.)].” On July 7, 2016, DOJ's Office of Justice Programs provided guidance entitled, *Office of Justice Programs Guidance Regarding Compliance with 8 U.S.C. § 1373*, to recipients of Justice Assistance Grant Program and State Criminal Alien Assistance Program grants.

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- Thereafter, on January 27, 2017, President Donald J. Trump issued EO 13768, *Enhancing Public Safety in the Interior of the United States*, which highlights public safety threats created by sanctuary jurisdictions and provides that “[i]t is the policy of the executive branch to ensure, to the fullest extent of the law, that a state, or political subdivision of a state, shall comply with 8 U.S.C. 1373.” 82 Fed. Reg. 8799, 8801 (Jan. 25, 2017).

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**U.S. Immigration and Customs Enforcement (ICE):**  
Recalcitrant Countries: Enforcement and Removal Operations

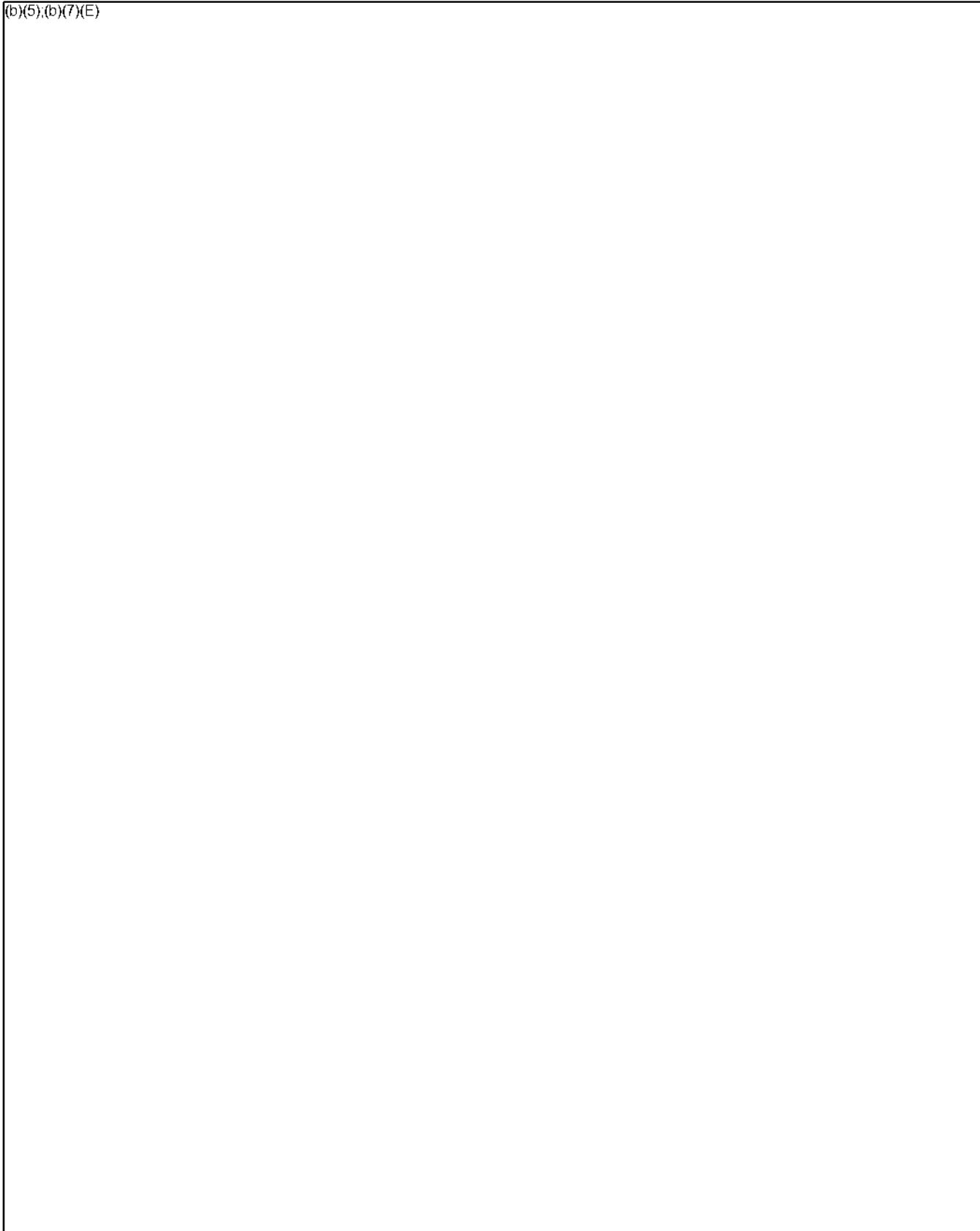
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**TOPLINE POINTS**

(b)(5);(b)(7)(E)

**BACKGROUND**

(b)(5),(b)(7)(E)





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**U.S. Citizenship and Immigration Services (USCIS):  
H-2B Nonimmigrant Visa Program**

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Citizenship and Immigration Services (USCIS):**  
Termination of Temporary Immigration Programs

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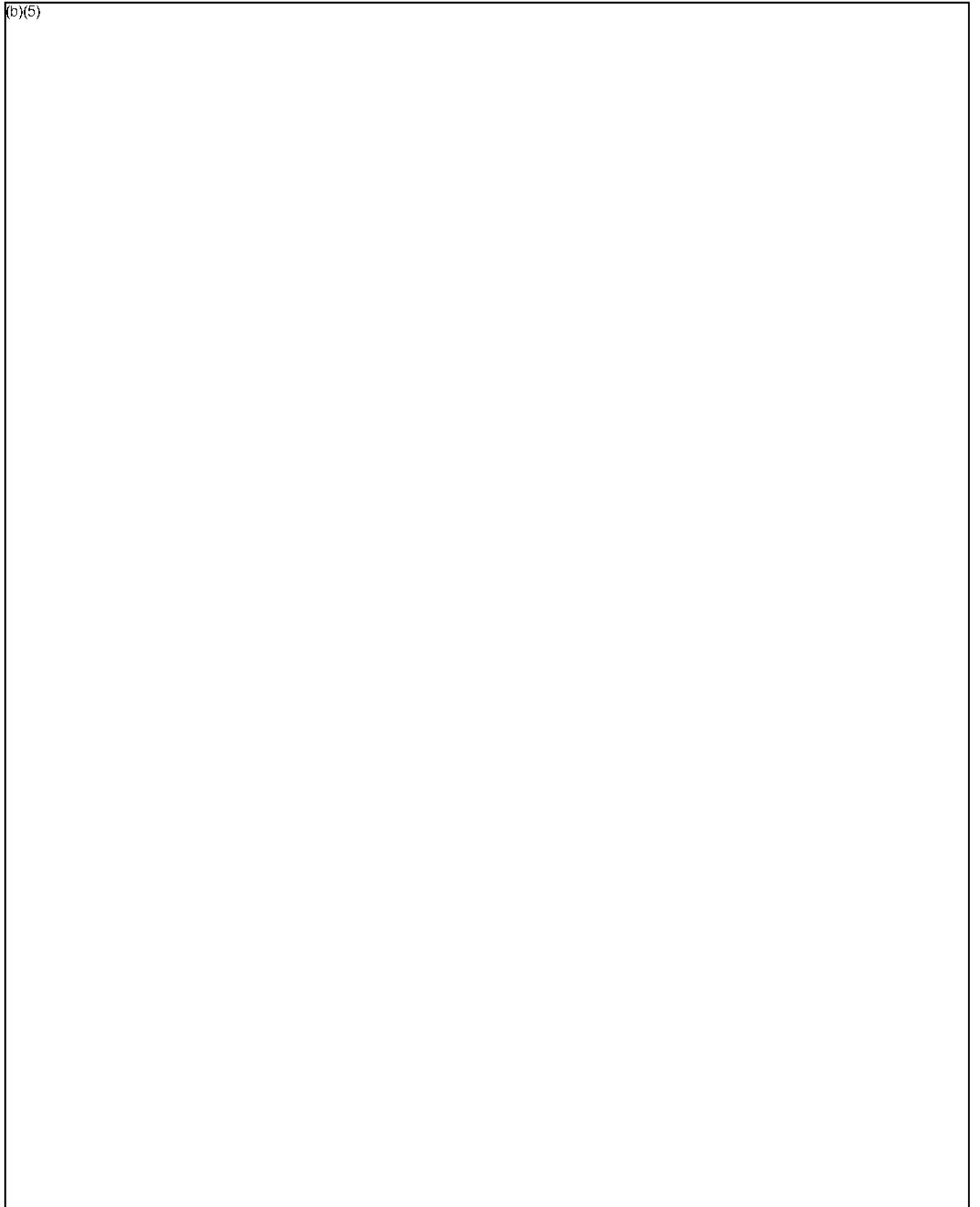
**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Citizenship and Immigration Services (USCIS):  
Mandatory E-Verify**

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**TOPLINE POINTS**

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**BACKGROUND**

(b)(5)



**U.S. Citizenship and Immigration Services (USCIS):  
EB-5 Investor Visa Program**

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Citizenship and Immigration Services (USCIS):  
Chain Migration**

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Citizenship and Immigration Services (USCIS):**  
Diversity Visa Lottery Program

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Citizenship and Immigration Services (USCIS):  
H-1B Nonimmigrant Visa Program**

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**BACKGROUND**

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**U.S. Citizenship and Immigration Services (USCIS):  
Asylum Seekers**

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Citizenship and Immigration Services (USCIS):**  
**Enhanced Screening and Vetting**

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**BACKGROUND**

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**U.S. Customs and Border Protection (CBP):**  
Wall Update

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**TOPLINE POINTS**

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**BACKGROUND**

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robust physical characteristics, prototypes are intended to deter illegal crossings in the project area.

- CBP began its testing of the prototypes on November 26. Testing finished December 14. The evaluation and assessment completed in early March 2018.
  - CBP tested a variety of factors. The two most significant for USBP, however, are how easy it is to climb and how readily it can be breached using hand-held power tools.
- The results of the evaluation and assessment have been incorporated into the border wall tool kit for possible future construction.
- The design for the 14 miles of replacement secondary barrier in San Diego (FY 2018 project) may include updated wall attributes resulting from the prototype effort.

#### *FY 2017 Projects*

- CBP's FY 2017 appropriation included \$341 million for fence replacement projects and completion of 35 gates in existing barrier in RGV. These projects span the USBP El Centro, El Paso, and San Diego Sectors and include:
  - El Paso Sector vehicle fence replacement wall (20 miles);
    - Construction award occurred in February 2018
    - Construction began in April 2018
    - Construction is on track to complete in March 2019
  - El Centro Sector primary replacement wall (2 miles);
    - Contract awarded November 2017
    - Construction started in February 2018
    - Construction is on track to complete in October 2018
  - San Diego Sector pedestrian fence replacement wall (14 miles);
    - Construction awarded in April 2018
    - Construction started in May 2018
    - Construction completion is targeted for May 2019
  - El Paso Sector pedestrian fence replacement wall (4 miles);
    - Construction awarded in May 2018
    - Construction start is planned for September 2018
    - Construction completion is targeted for March 2019

#### *FY 2018 Projects*

- The Border Wall Program received \$1.375B for construction in the FY18 Omnibus appropriation.
  - \$445M for 25 miles of levee wall system in the RGV Sector
  - \$196M for approximately 8 miles of wall system in RGV Sector
  - \$251M to replace 14 miles of Secondary Wall in the San Diego Sector
  - \$445M to replace approximately 48 miles of primary pedestrian wall miles in multiple sectors across the southern border
- FY 2018 funding also includes \$38M for planning for FY 2019 projects.
  - This funding will be used to fund real estate activities to include landowner identification, planning and design for FY19 projects, planning management and oversight, and preliminary alignment work for FY20 projects.

**U.S. Customs and Border Protection (CBP):**  
**Border Metrics**

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**BACKGROUND**

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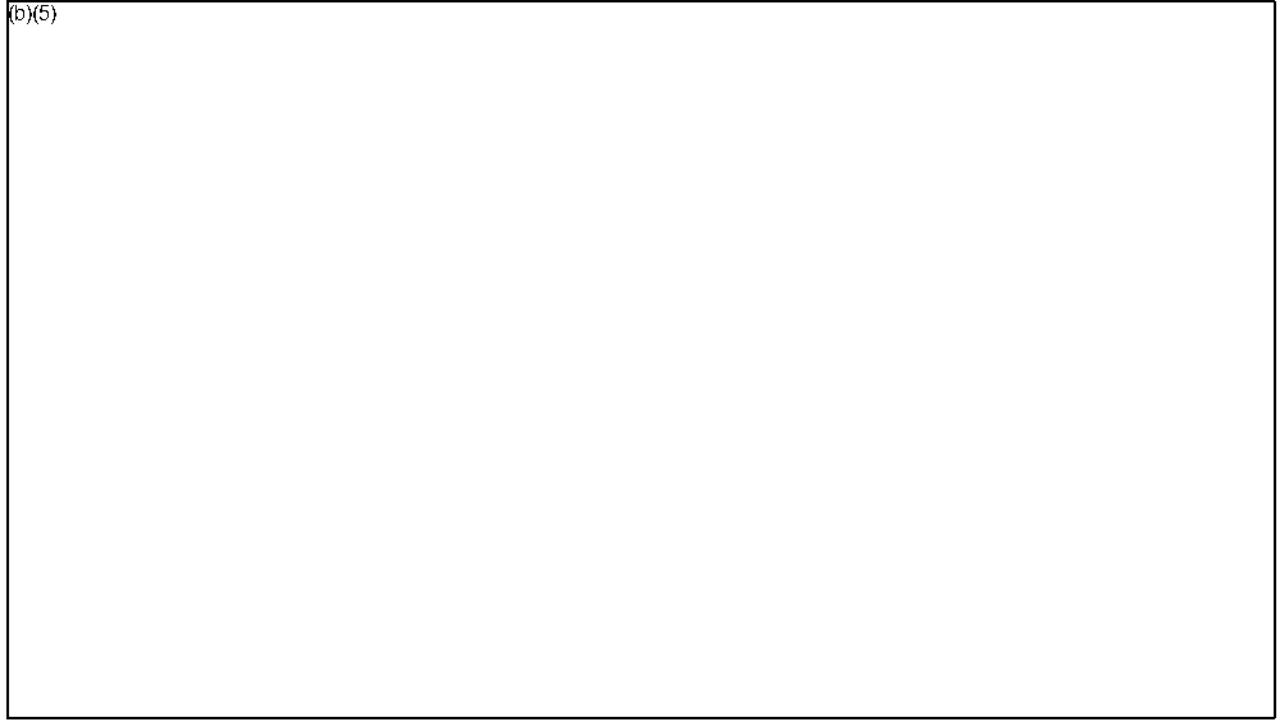
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**U.S. Customs and Border Protection (CBP):**  
Northern Border Threat Analysis/Strategy/Implementation Plan

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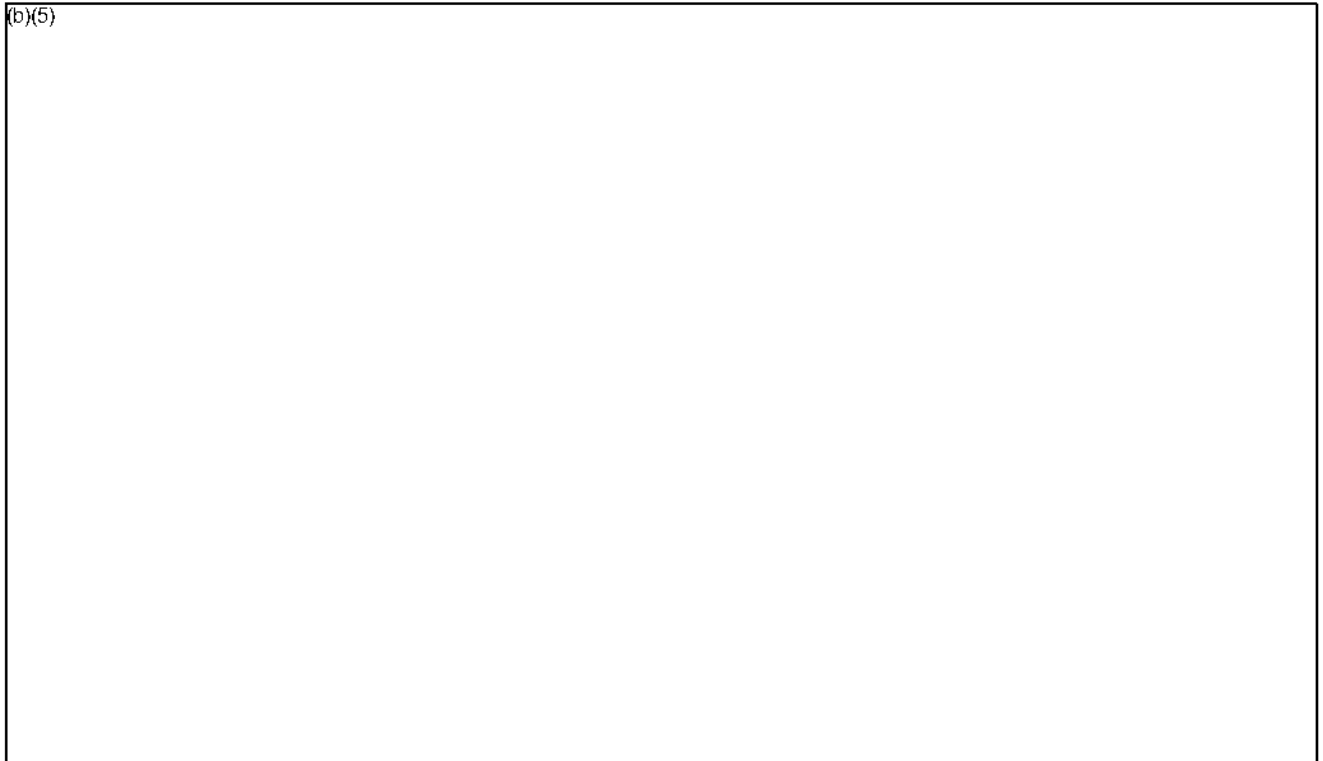
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**BACKGROUND**

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**Office of Strategy, Policy, and Plans (PLCY):**  
**Opioids**

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**BACKGROUND**

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**U.S. Coast Guard (USCG):**  
Port Security

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**BACKGROUND**

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**U.S. Customs and Border Protection (CBP):**  
Port of Entry Cargo Screenings – Use of Scanning Technology

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**BACKGROUND**

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**U.S. Customs and Border Protection (CBP):**  
National Guard on the Southern Border: Operation Guardian Support (OGS)

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**TOP LINE POINTS**

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**BACKGROUND**

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**U.S. Customs and Border Protection (CBP):**  
Southwest Border Migration Update

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**BACKGROUND**

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**U.S. Customs and Border Protection (CBP):**  
Electronic Device Searches and Seizures at the Border

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**BACKGROUND**

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**U.S. Customs and Border Protection (CBP):**  
**Zero Tolerance Initiative**

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**BACKGROUND**

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**Office of Strategy, Policy, and Plans (PLCY):**  
**Foreign Partnerships to Secure the Southern Border**

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**TOPLINE POINTS**

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**BACKGROUND**

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**U.S. Immigrations and Customs Enforcements (ICE):**  
**Biometric Identification Transnational Migration Alert Program (BITMAP)**

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**BACKGROUND**

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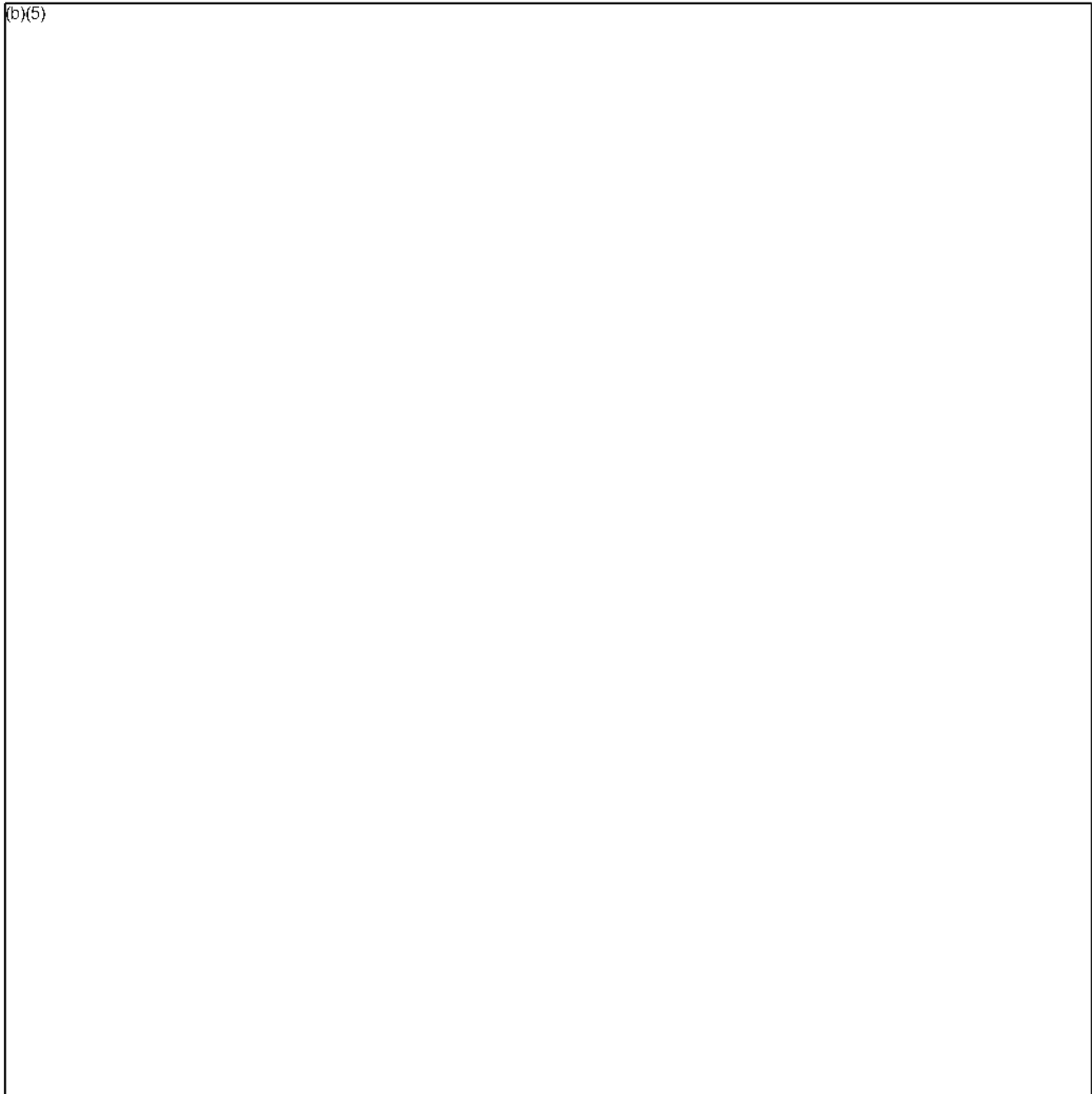
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**Office of Strategy, Policy, and Plans:**  
Executive Order 13780, Section 2 and Presidential Proclamation 9645

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