

Question#:	1
Topic:	Verifying Relationships
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: Can you please explain the criteria and process CBP personnel are required to use for verifying family relationships?

Response: (b)(5)

(b)(5)

Question: Is this process different for families who present themselves at ports of entry than for those apprehended by Border Patrol?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	2
Topic:	TEDS Application
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: Can you please explain what CBP does to ensure family units are kept together, per its 2015 National Standards on Transport, Escort, Detention, and Search (TEDS)?

Response: (b)(5)

(b)(5)

Question: How does the Administration's zero-tolerance directive for adult border crossers hinder your ability to keep families together?

Response: (b)(5)

(b)(5)

Question: Do your 2015 TEDS still apply to Border Patrol's operations?

Response: (b)(5)

Question#:	2
Topic:	TEDS Application
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question#:	3
Topic:	GAO Recommendations
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: In July 2015, GAO recommended that CBP revise the methods and questions used by Border Patrol agents and OFO officers to screen unaccompanied alien children. What is the status of CBP's efforts to address these recommendations?

Response: (b)(5)

(b)(5)

Question: In July 2015, GAO found that CBP personnel were not properly screening all Mexican unaccompanied children who had credible fear of returning to Mexico and who were victims of a severe form of trafficking in persons. The related recommendations remain open. Why has CBP not issued updated guidance per these recommendations?

Response: (b)(5)

(b)(5)

Question: What is the status of CBP's efforts to address these recommendations?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	3
Topic:	GAO Recommendations
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: In the absence of such guidance, how is CBP ensuring that agents and officers are complying with trafficking preventions requirements and addressing the weaknesses that GAO identified in 2015?

Response: (b)(5)

(b)(5)

Question#:	4
Topic:	Filing Asylum Claims
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: The Secretary and other leaders, such as yourself, have been telling people who are seeking asylum to go to our ports of entry. Otherwise, DHS intends to refer these asylum seekers to the Department of Justice for criminal prosecution if they attempt to approach a Border Patrol agent. However, we have heard reports from groups and asylum seekers themselves that CBP in the past improperly turned away or dissuaded people trying to file asylum claims at certain ports of entry. Is CBP preventing people from filing their asylum claims?

Response:

(b)(5)

(b)(5)

Question#:	4
Topic:	Filing Asylum Claims
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

Question: What kind of guidance have you issued to your field directors to make sure this doesn't happen?

Response:

(b)(5)

(b)(5)

(b)(5)

Question#:	4
Topic:	Filing Asylum Claims
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

DRAFT

Question#:	5
Topic:	Additional Asylum Seekers
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: In April, CBP noted that capacity issues at San Ysidro Port of Entry slowed down the processing time for asylum seekers. I presume that the persistent CBP officer staffing shortage is one of the factors affecting these capacity issues. How has CBP prepared, if at all, for additional asylum seekers at ports of entry?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	5
Topic:	Additional Asylum Seekers
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

DRAFT

Question#:	6
Topic:	Compliance with Refugee Protocol
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: In 2015, the DHS Inspector General reported that:

Border Patrol does not have guidance on whether to refer to Streamline prosecution aliens who express fear of persecution or fear of return to their home countries. As a result, Border Patrol agents sometimes use Streamline to refer aliens expressing such fear to DOJ for prosecution. Using Streamline to refer aliens expressing fear of persecution, prior to determining their refugee status, may violate U.S. obligations under the 1967 United Nations Protocol Relating to the Status of Refugees, which the United States ratified in 1968.

What has the Border Patrol done since 2015 to offer guidance to its agents regarding compliance with this protocol?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	7
Topic:	Differences in Processes
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: How do CBP intake and screening processes differ, if at all, for people who arrive at a port of entry and claim fear compared to those who claim fear after being apprehended by Border Patrol agents between ports of entry?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	7
Topic:	Differences in Processes
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

(b)(5)

Question#:	8
Topic:	Referral to DOJ
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: The Attorney General's April 6, 2018, memorandum directs each United States Attorney's Office, in consultation with DHS, to adopt a zero-tolerance policy for all first-time illegal entrants along the southwest border. How, if at all, are foreign nationals who are apprehended between ports of entry prioritized for referral to DOJ?

Response: (b)(5)

(b)(5)

(b)(5)

Question: How does CBP ensure that individuals referred to DOJ and who have articulated fear claims receive access to a credible fear interview by USCIS?

Response: (b)(5)

(b)(5)

Question#:	8
Topic:	Referral to DOJ
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

Question: Under what circumstances is CBP referring foreign nationals to DOJ for prosecution before the individual received a credible fear interview with USCIS?

Response: (b)(5)

(b)(5)

Question: What type of information does Border Patrol track regarding individuals that the agency refers to DOJ for immigration-only offense prosecutions, as well as individuals that Border Patrol refers to USCIS for credible fear interviews?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	9
Topic:	Administration Policy
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: Is it now the policy of the Trump Administration to question the citizenship of anyone who is conversing a language other than English?

Response: (b)(5)

Question: What kind of training measures is the Border Patrol providing to its agents so that we do not have a repeat of the Montana incident recorded in mid-May 2018 in which a Border Patrol agent questioned two U.S. citizens after he overheard them speaking in Spanish?

Response: (b)(5)

(b)(5)

Question#:	10
Topic:	Detention Facilities
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: This last December, the Inspector General issued a report that found extremely serious problems with the treatment of detainees and conditions at various ICE detention facilities across the country. What are you doing to correct the many violations that facilities are committing?

What, if anything, has been done in the past six months to address the very serious issues raised by the DHS Inspector General?

Response: (b)(5)

(b)(5)

Question#:	11
Topic:	Families in Custody
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: How many families does ICE currently have in its custody?

How many of these families have been referred to ICE custody since the beginning of the zero-tolerance policy that took effect in early May 2018?

Response: (b)(5)

(b)(5)

¹ ICE FRCs includes Berks County Family Shelter, Karnes County Residential Center, and South Texas Family Residential Center.

Question#:	12
Topic:	Family Reunification
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: When CBP transfers an adult who has been separated from his or her children into ICE custody, what does ICE do to ensure that both the adult and child know of each other's location?

What does ICE do to ensure families can eventually be unified?

Response: (b)(5)

(b)(5)

Question#:	12
Topic:	Family Reunification
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

DRAFT

Question#:	13
Topic:	Asylum Claims
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: Operation Streamline has been in effect for some time now. Though I understand that the current zero-tolerance policy is different, what has been the effect of criminal prosecution through Streamline on a person's ability to claim asylum?

Response: (b)(5)

(b)(5)

Question: Have asylum claims been denied because of a criminal illegal entry or re-entry charge?

How will claims filed by asylum seekers who are charged with illegal entry or re-entry be affected by these charges?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	13
Topic:	Asylum Claims
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

[Redacted Content]

(b)(5)

[Redacted Content]

DRAFT

Question#:	14
Topic:	Credible Fear Interviews
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: How, if at all, does USCIS ensure that illegal entrants apprehended by CBP or ICE are receiving credible fear interviews, as required?

When do foreign nationals who are apprehended by Border Patrol and referred to DOJ for prosecution receive access to a credible fear interview if they have made a fear claim?

Where and how are individuals detained while awaiting credible fear interviews?

If USCIS determines that an individual has a credible fear of persecution, what are the next steps for that individual?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	14
Topic:	Credible Fear Interviews
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

² If an individual neither requests nor declines review of the determination, the individual is still referred to the Immigration Judge for review of the credible fear determination.

Question#:	15
Topic:	CAM Program
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Filemon Vela
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: The Central American Minors Refugee program was cancelled abruptly in 2017. There were 4,000 applicants who have legally-present adult family members in the United States whose applications were cancelled when the program was shut down. Can you please tell us why the program was shuttered?

Is it the Trump Administration's position that it is in the best interest of these children to stay in violent countries or risk a dangerous journey through Mexico?

If not, what was the purpose of closing down a legal pathway to refugee status?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	16
Topic:	Assistance from Mexican Government
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable J. Luis Correa
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: For the past ten fiscal years, how many asylum-seekers that originally intended to come to the United States are provided asylum and assisted by the Mexican government?

Response: (b)(5)

(b)(5)

Question: How many asylum-seekers actually reach the U.S. - Mexico border?

Response: (b)(5)

(b)(5)

Question: Of those asylum-seekers that reach the U.S. - Mexico border, what is the number and percentage that are granted asylum in the United States?

Response: (b)(5)

(b)(5)

Question: Can you please describe how Mexico has helped CBP by assisting migrants along its southern border?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	16
Topic:	Assistance from Mexican Government
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable J. Luis Correa
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: How has CBP helped the Mexican government in efforts to build up its border management?

Response: (b)(5)

(b)(5)

Question#:	16
Topic:	Assistance from Mexican Government
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable J. Luis Correa
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

DRAFT

Question#:	17
Topic:	Children Separated
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Nanette Diaz Barragán
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: According to the New York Times more than 700 children had to be taken from adults claiming to be their parents since October 2017, including more than 100 children under the age of four. Secretary Nielsen disputed this figure at a May 15th Senate Homeland hearing. She said that the (700 children figure) was an HHS number and not a DHS figure. What is the DHS figure for the number of children separated from their family member since October 2017, disaggregated by month?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	17
Topic:	Children Separated
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Nanette Diaz Barragán
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

DRAFT

Question#:	18
Topic:	CBP Verification Process
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Nanette Diaz Barragán
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: Can you please explain what process CBP personnel are supposed to follow when they are unable to verify familial relationships?

Response: (b)(5)

(b)(5)

Question: Of the 700 children who were separated from adults claiming familial relationships since October 2017, how many of these instances led to human trafficking charges?

Response: (b)(5)

(b)(5)

(b)(5)

Question#:	19
Topic:	OPR Report
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Nanette Diaz Barragán
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: In January 2017, CBP's Office of Professional Responsibility publicly released a report on its activities for fiscal year 2015. Has any subsequent reporting occurred?

Response: (b)(5)

Question: When will reports for fiscal years 2016 and 2017 be released publicly?

Response: (b)(5)

(b)(5)

Question#:	20
Topic:	Defining Asylum Fraud
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Nanette Diaz Barragán
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

Question: How does USCIS define "fraud" for asylum claims?

How does USCIS determine a person's asylum claim is fraudulent?

How many of the asylum claims denied by USCIS in the past five fiscal years have led to perjury charges?

Response: (b)(5)

(b)(5)

Question#:	20
Topic:	Defining Asylum Fraud
Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
Primary:	The Honorable Nanette Diaz Barragán
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

DRAFT

Question#:	1
Topic:	TVPRA Compliance
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Patrick J. Leahy
Committee:	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?

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

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

DRAFT

Question#:	2
Topic:	Family Separation
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Patrick J. Leahy
Committee:	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)

Question#:	3
Topic:	Separated Children
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Amy Klobuchar
Committee:	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)

Question#:	4
Topic:	Screening for Trafficking I
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Amy Klobuchar
Committee:	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)

Question#:	5
Topic:	Special Immigrant Juvenile Status
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Richard Blumenthal
Committee:	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)

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

(b)(5)

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

Response: (b)(5)

(b)(5)

Question#:	6
Topic:	Least Restrictive Setting
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Richard Blumenthal
Committee:	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)

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

(b)(5)

DRAFT

Question#:	7
Topic:	Family Reunification I
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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?

Question#:	7
Topic:	Family Reunification I
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

Question#:	8
Topic:	Form 93 Update
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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 TVPPRA. 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)

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

(b)(5)

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

Response: (b)(5)

(b)(5)

Question#:	9
Topic:	Unaccompanied Children
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: Deputy Under Secretary McCament appears to have referred to TVPPRA 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)

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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?

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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)

Question#:	10
Topic:	Screening for Trafficking II
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

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

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)(5)

Question#:	12
Topic:	Family Reunification II
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

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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?

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

Response: (b)(5)

(b)(5)

Question#:	13
Topic:	Parental Relationship
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

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

Question: Is the Administration considering taking steps to arrow 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)

Question#:	15
Topic:	Zero Tolerance
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

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

(b)(5)

(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)

Question#:	16
Topic:	Interview Children
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

Question#:	17
Topic:	Child Trafficking Victims
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

Question#:	18
Topic:	Databases Used
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

Question#:	19
Topic:	Immigration System
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

Question#:	20
Topic:	UAC Parents
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

Question#:	21
Topic:	Operational Challenges
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

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

(b)(5)

Question: How can Congress help?

Response: (b)(5)

(b)(5)

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

(b)(5)

Question#:	22
Topic:	Workload Increase
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

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

(b)(5)

Question#:	23
Topic:	Criminal Influence
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

Question#:	1
Topic:	TVPRA Compliance
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Patrick J. Leahy
Committee:	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?

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

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

DRAFT

Question#:	2
Topic:	Family Separation
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Patrick J. Leahy
Committee:	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)

Question#:	3
Topic:	Separated Children
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Amy Klobuchar
Committee:	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)

Question#:	4
Topic:	Screening for Trafficking I
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Amy Klobuchar
Committee:	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)

Question#:	5
Topic:	Special Immigrant Juvenile Status
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Richard Blumenthal
Committee:	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)

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

(b)(5)

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

Response: (b)(5)

(b)(5)

Question#:	6
Topic:	Least Restrictive Setting
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Richard Blumenthal
Committee:	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)

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

(b)(5)

DRAFT

Question#:	7
Topic:	Family Reunification I
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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?

Question#:	7
Topic:	Family Reunification I
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

Question#:	8
Topic:	Form 93 Update
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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 TVPPRA. 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)

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

(b)(5)

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

Response: (b)(5)

(b)(5)

Question#:	9
Topic:	Unaccompanied Children
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	JUDICIARY (SENATE)

Question: Deputy Under Secretary McCament appears to have referred to TVPPRA 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?

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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)

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

Response: (b)(5)

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

Response: (b)(5)

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Question#:	10
Topic:	Screening for Trafficking II
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

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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)

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

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)

Question#:	12
Topic:	Family Reunification II
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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?

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

Response:

(b)(5)

(b)(5)

Question#:	13
Topic:	Parental Relationship
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

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

Question: Is the Administration considering taking steps to arrow 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)

Question#:	15
Topic:	Zero Tolerance
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)(5)

Question#:	15
Topic:	Zero Tolerance
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

Question#:	16
Topic:	Interview Children
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

Question#:	17
Topic:	Child Trafficking Victims
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	The Honorable Mazie Hirono
Committee:	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)

Question#:	18
Topic:	Databases Used
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

Question#:	19
Topic:	Immigration System
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

Question#:	20
Topic:	UAC Parents
Hearing:	TVPPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

Question#:	21
Topic:	Operational Challenges
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

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

(b)(5)

Question: How can Congress help?

Response: (b)(5)

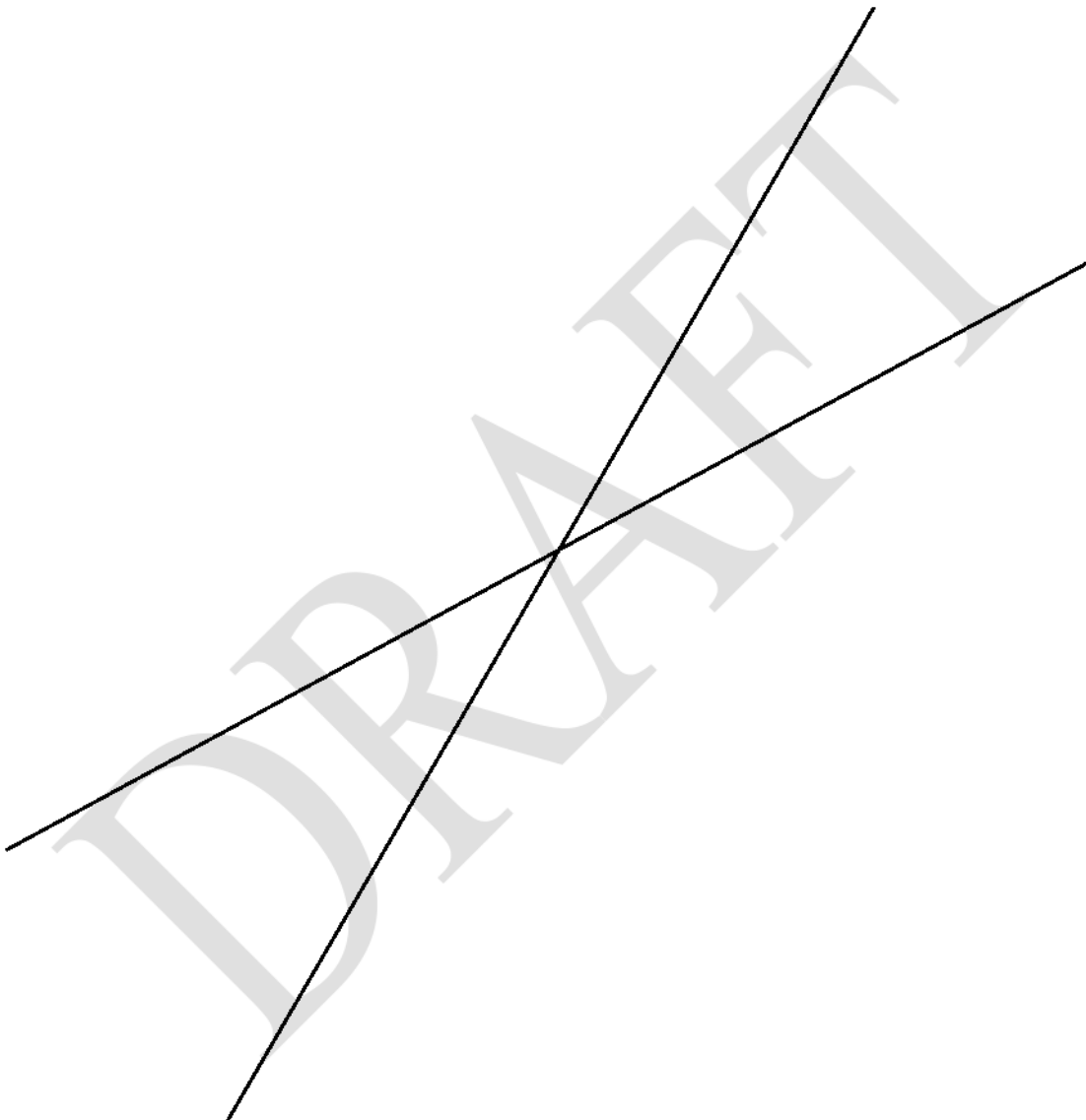
(b)(5)

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

(b)(5)

(b)(5)

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



Question#:	22
Topic:	Workload Increase
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

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

(b)(5)



Question#:	23
Topic:	Criminal Influence
Hearing:	TVPRA and Exploited Loopholes Affecting Unaccompanied Alien Children
Primary:	Senator Thom Tillis
Committee:	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)

Page 102

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

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

Objective:

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Key Issues:

(b)(5)

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History:

(b)(5)

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:

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**CALL WITH UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
FILIPPO GRANDI
June 25, 2018**

TOP LINE TALKING POINTS

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**CALL WITH UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
FILIPPO GRANDI
June 25, 2018**

Objective:

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Key Issues:

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Attachments:

- A. Talking Points
- B. Biography
- C. Applying the Comprehensive Refugee Response (CRRF) in North and Central America

Staff Responsible for Briefing Memo:

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From:	(b)(6)
To:	
CC:	
Subject:	[Print] Briefing Materials for Tuesday, June 26
Date:	2018/06/26 13:31:29
Priority:	Normal
Type:	Note

All,

Attached are materials for S1's Principals Immigration Meeting today at 2:45 pm. Can someone please print for S1 and COS?

Thank you!

(b)(6)

From:	(b)(6)
Sent:	Tuesday, June 26, 2018 1:23 PM
To:	Taylor, Miles (b)(6) Lim, Evelyn (b)(6)
Cc:	(b)(6)
Subject:	[For DCOS Review] Briefing Materials for Tuesday, June 26

Miles and Evelyn,

Attached for your review are materials for S1's Weekly Principals Immigration Meeting. These materials were drafted by PLCY and reviewed by (b)(6)

For your awareness, we are still awaiting data from ICE, USCIS, and CBP regarding the timeframe questions from the NSC yesterday evening.

Please let us know if you have any comments. Thank you!

Best,

(b)(6)

Office of the Executive Secretary
Office of the Secretary
U.S. Department of Homeland Security

(b)(6)

Sender:	(b)(6)
Recipient:	
Sent Date:	2018/06/26 13:31:29

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WEEKLY PRINCIPALS IMMIGRATION MEETING
Talking Points

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

Objectives:

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Key Issues:

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History:

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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:

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**CALL WITH UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
FILIPPO GRANDI
June 25, 2018**

Objective:

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Key Issues:

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Attachments:

- A. Talking Points
- B. Biography
- C. Applying the Comprehensive Refugee Response (CRRF) in North and Central America

Staff Responsible for Briefing Memo:

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**CALL WITH UNITED NATIONS HIGH COMMISSIONER FOR REFUGEES
FILIPPO GRANDI
June 25, 2018**

TOP LINE TALKING POINTS

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**WEEKLY PRINCIPALS IMMIGRATION MEETING
July 9, 2018**

Objective:

(b)(5)

Agenda:

(b)(5)

Key Issues:

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History:

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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*

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

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

OGC Reviewer: (b)(6)

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WEEKLY PRINCIPALS IMMIGRATION MEETING
Talking Points

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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

Ms. L.; et al.,
Petitioners-Plaintiffs,
v.
U.S Immigration and Customs
Enforcement (“ICE”); et al.,
Respondents-Defendants.

Case No.: 18cv0428 DMS (MDD)

**ORDER GRANTING PLAINTIFFS’
MOTION FOR CLASSWIDE
PRELIMINARY INJUNCTION**

Eleven weeks ago, Plaintiffs leveled the serious accusation that our Government was engaged in a widespread practice of separating migrant families, and placing minor children who were separated from their parents in government facilities for “unaccompanied minors.” According to Plaintiffs, the practice was applied indiscriminately, and separated even those families with small children and infants—many of whom were seeking asylum. Plaintiffs noted reports that the practice would become national policy. Recent events confirm these allegations. Extraordinary relief is requested, and is warranted under the circumstances.

On May 7, 2018, the Attorney General of the United States announced a “zero tolerance policy,” under which all adults entering the United States illegally would be subject to criminal prosecution, and if accompanied by a minor child, the child would be

1 separated from the parent.¹ Over the ensuing weeks, hundreds of migrant children were
2 separated from their parents, sparking international condemnation of the practice. Six days
3 ago on June 20, 2018, the President of the United States signed an Executive Order (“EO”)
4 to address the situation and to require preservation of the “family unit” by keeping migrant
5 families together during criminal and immigration proceedings to the extent permitted by
6 law, while also maintaining “rigorous[]” enforcement of immigration laws. *See* Executive
7 Order, *Affording Congress an Opportunity to Address Family Separation* § 1, 2018 WL
8 3046068 (June 20, 2018). The EO did not address reunification of the burgeoning
9 population of over 2,000 children separated from their parents. Public outrage remained
10 at a fever pitch. Three days ago on Saturday, June 23, 2018, the Department of Homeland
11 Security (“DHS”) issued a “Fact Sheet” outlining the government’s efforts to “ensure that
12 those adults who are subject to removal are reunited with their children for the purposes of
13 removal.”²

14 Plaintiffs assert the EO does not eliminate the need for the requested injunction, and
15 the Fact Sheet does not address the circumstances of this case. Defendants disagree with
16 those assertions, but there is no genuine dispute that the Government was not prepared to
17 accommodate the mass influx of separated children. Measures were not in place to provide
18 for communication between governmental agencies responsible for detaining parents and
19 those responsible for housing children, or to provide for ready communication between
20 separated parents and children. There was no reunification plan in place, and families have
21 been separated for months. Some parents were deported at separate times and from
22

23
24 ¹ *See* U.S. Att’y. Gen., *Attorney General Sessions Delivers Remarks Discussing the*
25 *Immigration Enforcement Actions of the Trump Administration* (May 7, 2018),
26 [https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-](https://www.justice.gov/opa/speech/attorney-general-sessions-delivers-remarks-discussing-immigration-enforcement-actions)
discussing-immigration-enforcement-actions.

27 ² *See* U.S. Dep’t of Homeland Sec., *Fact Sheet: Federal Regulations Protecting the*
28 *Confidentiality of Asylum Applicants* (June 23, 2018),
[https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-](https://www.dhs.gov/news/2018/06/23/fact-sheet-zero-tolerance-prosecution-and-family-reunification)
reunification.

1 different locations than their children. Migrant families that lawfully entered the United
2 States at a port of entry seeking asylum were separated. And families that were separated
3 due to entering the United States illegally between ports of entry have not been reunited
4 following the parent's completion of criminal proceedings and return to immigration
5 detention.

6 This Court previously entered an order finding Plaintiffs had stated a legally
7 cognizable claim for violation of their substantive due process rights to family integrity
8 under the Fifth Amendment to the United States Constitution based on their allegations the
9 Government had separated Plaintiffs from their minor children while Plaintiffs were held
10 in immigration detention and without a showing that they were unfit parents or otherwise
11 presented a danger to their children. *See Ms. L. v. U.S. Immigration & Customs Enf't*, 302
12 F. Supp. 3d 1149, 2018 WL 2725736, at *7-12 (S.D. Cal. June 6, 2018). A class action
13 has been certified to include similarly situated migrant parents. Plaintiffs now request
14 classwide injunctive relief to prohibit separation of class members from their children in
15 the future absent a finding the parent is unfit or presents a danger to the child, and to require
16 reunification of these families once the parent is returned to immigration custody unless
17 the parent is determined to be unfit or presents a danger to the child.

18 Plaintiffs have demonstrated a likelihood of success on the merits, irreparable harm,
19 and that the balance of equities and the public interest weigh in their favor, thus warranting
20 issuance of a preliminary injunction. This Order does not implicate the Government's
21 discretionary authority to enforce immigration or other criminal laws, including its
22 decisions to release or detain class members. Rather, the Order addresses only the
23 circumstances under which the Government may separate class members from their
24 children, as well as the reunification of class members who are returned to immigration
25 custody upon completion of any criminal proceedings.

26 ///

27 ///

28 ///

I.

BACKGROUND

This case started with the filing of a Complaint by Ms. L., a Catholic citizen of the Democratic Republic of the Congo fleeing persecution from her home country because of her religious beliefs. The specific facts of Ms. L.'s case are set out in the Complaint and this Court's June 6, 2018 Order on Defendants' motion to dismiss. *See Ms. L.*, 2018 WL 2725736, at *1-3. In brief, Ms. L. and her then-six-year-old daughter S.S., lawfully presented themselves at the San Ysidro Port of Entry seeking asylum based on religious persecution. They were initially detained together, but after a few days S.S. was "forcibly separated" from her mother. When S.S. was taken away from her mother, "she was screaming and crying, pleading with guards not to take her away from her mother." (Am. Compl. ¶ 43.) Immigration officials claimed they had concerns whether Ms. L. was S.S.'s mother, despite Ms. L.'s protestations to the contrary and S.S.'s behavior. So Ms. L. was placed in immigration custody and scheduled for expedited removal, thus rendering S.S. an "unaccompanied minor" under the Trafficking Victims Protection and Reauthorization Act ("TVPRA"), Pub. L. No. 110-457 (Dec. 23, 2008), and subjecting her to the "care and custody" of the Office of Refugee Resettlement ("ORR").³ S.S. was placed in a facility in

³ The TVPRA provides that "the care and custody of all unaccompanied alien children, including responsibility for their detention, where appropriate, shall be the responsibility of" HHS and its sub-agency, ORR. 8 U.S.C. § 1232(b)(1). An "unaccompanied alien child" ("UAC") is a child under 18 years of age with no lawful immigration status in the United States who has neither a parent nor legal guardian in the United States nor a parent nor legal guardian in the United States "available" to care for them. 6 U.S.C. § 279(g)(2). According to the TVPRA, a UAC "may not be placed with a person or entity unless the Secretary of Health and Human Services makes a determination that the proposed custodian is capable of providing for the child's physical and mental well-being. Such determination shall, at a minimum, include verification of the custodian's identity and relationship to the child, if any, as well as an independent finding that the individual has not engaged in any activity that would indicate a potential risk to the child." 8 U.S.C. § 1232(c)(3)(A).

1 Chicago over a thousand miles away from her mother. Immigration officials later
2 determined Ms. L. had a credible fear of persecution and placed her in removal
3 proceedings, where she could pursue her asylum claim. During this period, Ms. L. was
4 able to speak with her daughter only “approximately 6 times by phone, never by video.”
5 (Am. Compl. ¶ 45.) Each time they spoke, S.S. “was crying and scared.” (*Id.* ¶ 43.) Ms.
6 L. was “terrified that she would never see her daughter again.” (*Id.* ¶ 45.) After the present
7 lawsuit was filed, Ms. L. was released from ICE detention into the community. The Court
8 ordered the Government to take a DNA saliva sample (or swab), which confirmed that Ms.
9 L. was the mother of S.S. Four days later, Ms. L. and S.S. were reunited after being
10 separated for nearly five months.

11 In an Amended Complaint filed on March 9, 2018, this case was expanded to include
12 another Plaintiff, Ms. C. She is a citizen of Brazil, and unlike Ms. L., she did not present
13 at a port of entry. Instead, she and her 14-year-old son J. crossed into the United States
14 “between ports of entry,” after which they were apprehended by U.S. Border Patrol. Ms.
15 C. explained to the agent that she and her son were seeking asylum, but the Government,
16 as was its right under federal law, charged Ms. C. with entering the country illegally and
17 placed her in criminal custody. This rendered J. an “unaccompanied minor” and he, like
18 S.S., was transferred to the custody of ORR, where he, too, was housed in a facility in
19 Chicago several hundred miles away from his mother. Ms. C. was thereafter convicted of
20 misdemeanor illegal entry and served 25 days in criminal custody. After completing that
21 sentence, Ms. C. was transferred to immigration detention for removal proceedings and
22 consideration of her asylum claim, as she too had passed a credible fear screening. Despite
23 being returned to immigration custody, Ms. C. was not reunited with J. During the five
24 months she was detained, Ms. C. did not see her son, and they spoke on the phone only “a
25 handful of times[.]” (*Id.* ¶ 58.) Ms. C. was “desperate” to be reunited with her son, worried
26 about him constantly and did not know when she would be able to see him. (*Id.*) J. had a
27 difficult time emotionally during the period of separation from his mother. (*Id.* ¶ 59.) Ms.
28 C. was eventually released from immigration detention on bond, and only recently reunited

1 with J. Their separation lasted more than eight months despite the lack of any allegations
2 or evidence that Ms. C. was unfit or otherwise presented a danger to her son.⁴

3 Ms. L. and Ms. C. are not the only migrant parents who have been separated from
4 their children at the border. Hundreds of others, who have both lawfully presented at ports
5 of entry (like Ms. L.) and unlawfully crossed into the country (like Ms. C.), have also been
6 separated. Because this practice is affecting large numbers of people, Plaintiffs sought
7 certification of a class consisting of similarly situated individuals. The Court certified that
8 class with minor modifications,⁵ and now turns to the important question of whether
9 Plaintiffs are entitled to a classwide preliminary injunction that (1) halts the separation of
10 class members from their children absent a determination that the parent is unfit or presents
11 a danger to the child, and (2) reunites class members who are returned to immigration
12 custody upon completion of any criminal proceedings absent a determination that the
13 parent is unfit or presents a danger to the child.

14 Since the present motion was filed, several important developments occurred, as
15 previously noted. First, on May 7, 2018, the Government announced its zero tolerance
16 policy for all adult persons crossing the border illegally, which resulted in the separation
17 of hundreds of children who had crossed with their parents. This is what happened with
18 Ms. C., though she crossed prior to the public announcement of the zero tolerance policy.
19

20
21 ⁴ As stated in the Court's Order on Defendants' motion to dismiss, Plaintiffs do not
22 challenge Ms. C.'s initial separation from J. as a result of the criminal charge filed against
23 her. Plaintiffs' only complaint with regard to Ms. C. concerns the Government's failure to
reunite her with J. after she was returned to immigration custody.

24 ⁵ The class is defined to include: "All adult parents who enter the United States at or
25 between designated ports of entry who (1) have been, are, or will be detained in
26 immigration custody by the [DHS], and (2) have a minor child who is or will be separated
27 from them by DHS and detained in ORR custody, ORR foster care, or DHS custody absent
28 a determination that the parent is unfit or presents a danger to the child." (*See* Order
Granting in Part Mot. for Class Cert. at 17.) The class does not include parents with
criminal history or communicable disease, or those apprehended in the interior of the
country or subject to the EO. (*See id.* at 4 n.5.)

1 She is not alone. There are hundreds of similarly situated parents, and there are more than
2 2,000 children that have now been separated from their parents.

3 When a parent is charged with a criminal offense, the law ordinarily requires
4 separation of the family. This separation generally occurs regardless of whether the parent
5 is charged with a state or federal offense. The repercussions on the children, however, can
6 vary greatly depending on status. For citizens, there is an established system of social
7 service agencies ready to provide for the care and well-being of the children, if necessary,
8 including child protective services and the foster care system. This is in addition to any
9 family members that may be available to provide shelter for these minor children.
10 Grandparents and siblings are frequently called upon. Non-citizens may not have this kind
11 of support system, such as other family members who can provide shelter for their children
12 in the event the parent is detained at the border. This results in immigrant children going
13 into the custody of the federal government, which is presently not well equipped to handle
14 that important task.

15 For children placed in federal custody, there are two options. One of those options
16 is ORR, but it was established to address a different problem, namely minor children who
17 were apprehended at the border without their parents, *i.e.*, true “unaccompanied alien
18 children.” It was not initially designed to address the problem of migrant children detained
19 with their parents at the border and who were thereafter separated from their parents. The
20 second option is family detention facilities, but the options there are limited. Indeed, at the
21 time of oral argument on this motion, Government counsel represented to the Court that
22 the “total capacity in [family] residential centers” was “less than 2,700.” (Rep. Tr. at 9,
23 May 9, 2018, ECF No. 70.) For male heads of households, *i.e.*, fathers traveling with their
24 children, there was only one facility with “86 beds.” (*Id.* at 43.)

25 The recently issued EO confirms the government is inundated by the influx of
26 children essentially orphaned as a result of family separation. The EO now directs “[h]eads
27 of executive departments and agencies” to make available “any facilities ... appropriate”
28 for the housing and care of alien families. EO § 3(d). The EO also calls upon the *military*

1 by directing the Secretary of Defense to make available “any existing” facility and to
2 “construct such facilities[,]” if necessary, *id.* § 3(c), which is an extraordinary measure.
3 Meanwhile, “tent cities” and other make-shift facilities are springing up. That was the
4 situation into which Plaintiffs, and hundreds of other families that were separated at the
5 border in the past several months, were placed.

6 This situation has reached a crisis level. The news media is saturated with stories of
7 immigrant families being separated at the border. People are protesting. Elected officials
8 are weighing in. Congress is threatening action. Seventeen states have now filed a
9 complaint against the Federal Government challenging the family separation practice. *See*
10 *State of Washington v. United States*, Case No. 18cv0939, United States District Court for
11 the Western District of Washington. And the President has taken action.

12 Specifically, on June 20, 2018, the President signed the EO referenced above. The
13 EO states it is the Administration’s policy “to maintain family unity, including by detaining
14 alien families together where appropriate and consistent with law and available resources.”
15 *Id.* § 1.⁶ In furtherance of that policy, the EO indicates that parents and children who are
16 apprehended together at the border will be detained together “during the pendency of any
17 criminal improper entry or immigration proceedings” to the extent permitted by law. *Id.* §
18 3. The language of the EO is not absolute, however, as it states that family unity shall be
19 maintained “where appropriate and consistent with law and available resources[,]” *id.* § 1,
20 and “to the extent permitted by law and subject to the availability of appropriations[.]” *Id.*
21 § 3. The EO also indicates rigorous enforcement of illegal border crossers will continue.
22 *Id.* § 1 (“It is the policy of this Administration to rigorously enforce our immigration
23 laws.”). And finally, although the Order speaks to a policy of “maintain[ing] family unity,”
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26 ⁶ The Order defines “alien family” as “any person not a citizen or national of the United
27 States who has not been admitted into, or is not authorized to enter or remain in, the United
28 States, who entered this country with an alien child or alien children at or between
designated ports of entry and who was detained[.]” *Id.* § 2(a)(i).

1 it is silent on the issue of reuniting families that have already been separated or will be
2 separated in the future.” *Id.*

3 In light of these recent developments, and in particular the EO, the Court held a
4 telephonic status conference with counsel on June 22, 2018. During that conference, the
5 Court inquired about communication between ORR and DHS, and ORR and the
6 Department of Justice (“DOJ”), including the Bureau of Prisons (“BOP”), as it relates to
7 these separated families. Reunification procedures were also discussed, specifically
8 whether there was any affirmative reunification procedure for parents and children after
9 parents were returned to immigration detention following completion of criminal
10 proceedings. Government counsel explained the communication procedures that were in
11 place, and represented, consistent with her earlier representation to the Court, that there
12 was no procedure in place for the reunification of these families.⁷

13 The day after the status conference, Saturday, June 23, DHS issued the Fact Sheet
14 referenced above. This document focuses on several issues addressed during the status
15 conference, *e.g.*, processes for enhanced communication between separated parents and
16 children, but only “for the purposes of removal.” It also addresses coordination between
17 and among three agencies, CBP, ICE, and HHS agency ORR, but again for the purpose of
18 removal. The Fact Sheet does not address reunification for other purposes, such as
19 immigration or asylum proceedings, which can take months. It also does not mention other
20 vital agencies frequently involved during criminal proceedings: DOJ and BOP.

21 At the conclusion of the recent status conference, the Court requested supplemental
22 briefing from the parties. Those briefs have now been submitted. After thoroughly
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25 ⁷ The Court: “Is there currently any affirmative reunification process that the government
26 has in place once parent and child are separated? Government counsel: I would say ...
27 when a parent is released from criminal custody and taken into ICE custody is the practice
28 to reunite them in family detention[?] And at that [previous hearing] I said no, that that
was not the practice. I think my answer on that narrow question would be the same.” (Rep.
Tr. at 29-30, June 22, 2018, ECF No. 77.)

1 considering all of the parties' briefs and the record in this case, and after hearing argument
2 from counsel on these important issues, the Court grants Plaintiffs' motion for a classwide
3 preliminary injunction.

4 **II.**
5 **DISCUSSION**

6 Plaintiffs seek classwide preliminary relief that (1) enjoins Defendants' practice of
7 separating class members from their children absent a determination that the parent is unfit
8 or presents a danger to their child, and (2) orders the government to reunite class members
9 with their children when the parent is returned to immigration custody after their criminal
10 proceedings conclude, absent a determination that the parent is unfit or presents a danger
11 to the child. Injunctive relief is "an extraordinary remedy that may only be awarded upon
12 a clear showing that the plaintiff is entitled to such relief." *Winter v. Natural Res. Def.*
13 *Council, Inc.*, 555 U.S. 7, 22 (2008). To meet that showing, Plaintiffs must demonstrate
14 "[they are] likely to succeed on the merits, that [they are] likely to suffer irreparable harm
15 in the absence of preliminary relief, that the balance of equities tips in [their] favor, and
16 that an injunction is in the public interest." *Am. Trucking Ass'ns v. City of Los Angeles*,
17 559 F.3d 1046, 1052 (9th Cir. 2009) (quoting *Winter*, 555 U.S. at 20).⁸

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20 ⁸ The Ninth Circuit applies separate standards for injunctions depending on whether they
21 are prohibitory, *i.e.*, whether they prevent future conduct, or mandatory, *i.e.*, "they go
22 beyond 'maintaining the status quo[.]'" *Hernandez v. Sessions*, 872 F.3d 976, 997 (9th
23 Cir. 2017). The standard set out above applies to prohibitory injunctions, which is what
24 Plaintiffs seek here. To the extent Plaintiffs are also requesting mandatory relief, that
25 request is "subject to a higher standard than prohibitory injunctions," namely that relief
26 will issue only "when 'extreme or very serious damage will result' that is not capable of
27 compensation in damages," and the merits of the case are not 'doubtful.'" *Id.* at 999
28 (quoting *Marlyn Nutraceuticals, Inc. v. Mucos Pharma GmbH & Co.*, 571 F.3d 873, 879
(9th Cir. 2009)). The Ninth Circuit recognizes that application of these different standards
"is controversial[.]" and that other Circuits have questioned this approach. *Id.* at 997-98.
This Court need not, and does not, address that discrepancy here. Suffice it to say that to
the extent some portion of Plaintiffs' requested relief is subject to a standard higher than

1 Before turning to these factors, the Court addresses directly Defendants’ argument
2 that an injunction is not necessary here in light of the EO and the recently released Fact
3 Sheet. Although these documents reflect some attempts by the Government to address
4 some of the issues in this case, neither obviates the need for injunctive relief here. As
5 indicated throughout this Order, the EO is subject to various qualifications. For instance,
6 Plaintiffs correctly assert the EO allows the government to separate a migrant parent from
7 his or her child “where there is a *concern* that detention of an alien child with the child’s
8 alien parent would pose a risk to the child’s welfare.” EO § 3(b) (emphasis added).
9 Objective standards are necessary, not subjective ones, particularly in light of the history
10 of this case. Furthermore, the Fact Sheet focuses on reunification “at time of removal[,]”
11 U.S. Dep’t of Homeland Sec., *supra*, note 2, stating that the parent slated for removal will
12 be matched up with their child at a location in Texas and then removed. It says nothing
13 about reunification during the intervening time between return from criminal proceedings
14 to ICE detention or the time in ICE detention prior to actual removal, which can take
15 months. Indeed, it is undisputed “ICE has no plans or procedures in place to reunify the
16 parent with the child other than arranging for them to be deported together after the parent’s
17 immigration case is concluded.” (Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex.
18 31 ¶ 11.) Thus, neither of these directives eliminates the need for an injunction in this case.
19 With this finding, the Court now turns to the *Winter* factors.

20 **A. Likelihood of Success**

21 “The first factor under *Winter* is the most important—likely success on the merits.”
22 *Garcia v. Google, Inc.*, 786 F.3d 733, 740 (9th Cir. 2015). While Plaintiffs carry the burden
23 of demonstrating likelihood of success, they are not required to prove their case in full at
24 the preliminary injunction stage but only such portions that enable them to obtain the
25 injunctive relief they seek. *See Univ. of Texas v. Camenisch*, 451 U.S. 390, 395 (1981).

26 _____
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28 the traditional standard for injunctive relief, Plaintiffs have met their burden for the reasons
set out below.

1 Here, the only claim currently at issue is Plaintiffs' due process claim.⁹ Specifically,
2 Plaintiffs contend the Government's practice of separating class members from their
3 children, and failing to reunite those parents who have been separated, without a
4 determination that the parent is unfit or presents a danger to the child violates the parents'
5 substantive due process rights to family integrity under the Fifth Amendment to the United
6 States Constitution. To prevail on this claim, Plaintiffs must show that the Government
7 practice "shocks the conscience." In the Order on Defendants' motion to dismiss, the Court
8 found Plaintiffs had set forth sufficient facts to support that claim. *Ms. L.*, 2018 WL
9 2725736, at *7-12. The evidence submitted since that time supports that finding, and
10 demonstrates Plaintiffs are likely to succeed on this claim.

11 As explained in the Court's Order on Defendants' motion to dismiss, the "shocks the
12 conscience" standard is not subject to a rigid list of established elements. *See County of*
13 *Sacramento v. Lewis*, 523 U.S. 833, 850 (1998) (stating "[r]ules of due process are not ...
14 subject to mechanical application in unfamiliar territory.") On the contrary, "an
15 investigation into substantive due process involves an appraisal of the totality of the
16 circumstances rather than a formalistic examination of fixed elements[.]" *Armstrong v.*
17 *Squadrito*, 152 F.3d 564, 570 (7th Cir. 1998).

18 Here, each Plaintiff presents different circumstances, but both were subjected to the
19 same government practice of family separation without a determination that the parent was
20 unfit or presented a danger to the child. *Ms. L.* was separated from her child without a
21 determination she was unfit or presented a danger to her child, and *Ms. C.* was not reunited
22 with her child despite the absence of any finding that she was unfit or presented a danger
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25 ⁹ In their supplemental brief, Defendants assert Plaintiffs are raising new claims based on
26 events that transpired after the Complaints were filed, *e.g.*, the announcement of the zero
27 tolerance policy and the EO. The Court disagrees. Plaintiffs' claims are not based on these
28 events, but are based on the practice of separating class members from their children. The
subsequent events are relevant to Plaintiffs' claim, but they have not changed the claim
itself, which remains focused on the practice of separation.

1 to her child. Outside of the context of this case, namely an international border, Plaintiffs
2 would have a high likelihood of success on a claim premised on such a practice. *See D.B.*
3 *v. Cardall*, 826 F.3d 721, 741 (4th Cir. 2016) (citing cases finding due process violation
4 where state action interfered with rights of fit parents); *Heartland Academy Community*
5 *Church v. Waddle*, 595 F.3d 798, 808-811 (8th Cir. 2010) (finding removal of children
6 from religious school absent evidence the students were “at immediate risk of child abuse
7 or neglect” was violation of clearly established constitutional right); *Brokaw v. Mercer*
8 *County*, 235 F.3d 1000, 1019 (7th Cir. 2000) (citing *Croft v. Westmoreland County*
9 *Children and Youth Services*, 103 F.3d 1123, 1126 (3d Cir. 1997) (“courts have recognized
10 that a state has no interest in protecting children from their parents unless it has some
11 definite and articulable evidence giving rise to a reasonable suspicion that a child has been
12 abused or is in imminent danger of abuse.”))

13 The context of this case is different. The Executive Branch, which is tasked with
14 enforcement of the country’s criminal and immigration laws, is acting within its powers to
15 detain individuals lawfully entering the United States and to apprehend individuals illegally
16 entering the country. However, as the Court explained in its Order on Defendants’ motion
17 to dismiss, the right to family integrity still applies here. The context of the family
18 separation practice at issue here, namely an international border, does not render the
19 practice constitutional, nor does it shield the practice from judicial review.

20 On the contrary, the context and circumstances in which this practice of family
21 separation were being implemented support a finding that Plaintiffs have a likelihood of
22 success on their due process claim. First, although parents and children may lawfully be
23 separated when the parent is placed in criminal custody, the same general rule does not
24 apply when a parent and child present together lawfully at a port of entry seeking asylum.
25 In that situation, the parent has committed no crime, and absent a finding the parent is unfit
26 or presents a danger to the child, it is unclear why separation of Ms. L. or similarly situated
27 class members would be necessary. Here, many of the family separations have been the
28 result of the Executive Branch’s zero tolerance policy, but the record also reflects that the

1 practice of family separation was occurring before the zero tolerance policy was
2 announced, and that practice has resulted in the casual, if not deliberate, separation of
3 families that lawfully present at the port of entry, not just those who cross into the country
4 illegally. Ms. L. is an example of this family separation practice expanding beyond its
5 lawful reach, and she is not alone. (*See, e.g.*, Pls.’ Reply Br. in Supp. of Mot. for Class
6 Cert., Exs. 22-23, 25-26) (declarations from parents attesting to separation at border after
7 lawfully presenting at port of entry and requesting asylum); Pls.’ Supp. Mem. in Supp. of
8 Classwide Prelim. Inj., Ex. 32 ¶¶ 9, 10b, 11a (listing parents who were separated from
9 children after presenting at ports of entry)).

10 As set out in the Court’s prior Order, asylum seekers like Ms. L. and many other
11 class members may be fleeing persecution and are entitled to careful consideration by
12 government officials. Particularly so if they have a credible fear of persecution. We are a
13 country of laws, and of compassion. We have plainly stated our intent to treat refugees
14 with an ordered process, and benevolence, by codifying principles of asylum. *See, e.g.*,
15 The Refugee Act, PL 96-212, 94 Stat. 102 (1980). The Government’s treatment of Ms. L.
16 and other similarly situated class members does not meet this standard, and it is unlikely
17 to pass constitutional muster.

18 Second, the practice of separating these families was implemented without any
19 effective system or procedure for (1) tracking the children after they were separated from
20 their parents, (2) enabling communication between the parents and their children after
21 separation, and (3) reuniting the parents and children after the parents are returned to
22 immigration custody following completion of their criminal sentence. This is a startling
23 reality. The government readily keeps track of personal property of detainees in criminal
24 and immigration proceedings. Money, important documents, and automobiles, to name a
25 few, are routinely catalogued, stored, tracked and produced upon a detainees’ release, at
26 all levels—state and federal, citizen and alien. Yet, the government has no system in place
27 to keep track of, provide effective communication with, and promptly produce alien
28 children. The unfortunate reality is that under the present system migrant children are not

1 accounted for with the same efficiency and accuracy as *property*. Certainly, that cannot
2 satisfy the requirements of due process. *See Santosky v. Kramer*, 455 U.S. 745, 758-59
3 (1982) (quoting *Lassiter v. Dept. of Soc. Services of Durham County, N.C.*, 452 U.S. 18,
4 (1981)) (stating it is “‘plain beyond the need for multiple citation’ that a natural parent’s
5 ‘desire for and right to the companionship, care, custody, and management of his or her
6 children’ is an interest far more precious than any property right.”) (internal quotation
7 marks omitted).

8 The lack of effective methods for communication between parents and children who
9 have been separated has also had a profoundly negative effect on the parents’ criminal and
10 immigration proceedings, as well as the childrens’ immigration proceedings. *See United*
11 *States v. Dominguez-Portillo*, No:EP-17-MJ-4409-MAT, 2018 WL 315759, at *1-2 (W.D.
12 Tex. Jan. 5, 2018) (explaining that criminally charged defendants “‘had not received any
13 paperwork or information concerning the whereabouts or well-being of” their children). In
14 effect, these parents have been left “‘in a vacuum, without knowledge of the well-being and
15 location of their children, to say nothing of the immigration proceedings in which those
16 minor children find themselves.” *Id.* at *14. This situation may result in a number of
17 different scenarios, all of which are negative – some profoundly so. For example, “[i]f
18 parent and child are asserting or intending to assert an asylum claim, that child may be
19 navigating those legal waters without the benefit of communication with and assistance
20 from her parent; that defendant, too, must make a decision on his criminal case with total
21 uncertainty about this issue.” *Id.* Furthermore, “‘a defendant facing certain deportation
22 would be unlikely to know whether he might be deported before, simultaneous to, or after
23 their child, or whether they would have the opportunity to even discuss their
24 deportations[.]” *Id.* Indeed, some parents have already been deported without their
25 children, who remain in government facilities in the United States.¹⁰

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28 ¹⁰ *See, e.g.,* Pls.’ Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 32 ¶ 16k, Ex. 36 ¶ 7a;
Nelson Renteria, *El Salvador demands U.S. return child taken from deported father*,

1 The absence of established procedures for dealing with families that have been
2 separated at the border, and the effects of that void on the families involved, is borne out
3 in the cases of Plaintiffs here. Ms. L. was separated from her child when immigration
4 officials claimed they could not verify she was S.S.'s mother, and detained her for
5 expedited removal proceedings. That rendered S.S. "unaccompanied" under the TVPRA
6 and subject to immediate transfer to ORR, which accepted responsibility for S.S. There
7 was no further communication between the agencies, ICE and ORR. The filing of the
8 present lawsuit prompted release and reunification of Ms. L. and her daughter, a process
9 that took close to five months and court involvement. Ms. C. completed her criminal
10 sentence in 25 days, but it took nearly eight months to be reunited with her son. She, too,
11 had to file suit to regain custody of her son from ORR.

12 These situations confirm what the Government has already stated: it is not
13 affirmatively reuniting parents like Plaintiffs and their fellow class members for purposes
14 other than removal. Outside of deportation, the onus is on the parents, who, for the most
15 part, are themselves in either criminal or immigration proceedings, to contact ORR or
16 otherwise search for their children and make application for reunification under the
17 TVPRA. However, this reunification procedure was not designed to deal with the present
18 circumstances. (*See* Pls.' Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 33 ¶¶ 6-9.)
19 Rather, "ORR's reunification process was designed to address the situation of children who
20 come to the border or are apprehended outside the company of a parent or legal guardian."
21 (*Id.* ¶ 6.) Placing the burden on the parents to find and request reunification with their
22 children under the circumstances presented here is backwards. When children are
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26 REUTERS (June 21, 2018, 4:03 PM), [https://www.reuters.com/article/us-usa-immigration-el-salvador/el-salvador-demands-us-return-child-taken-from-deported-father-](https://www.reuters.com/article/us-usa-immigration-el-salvador/el-salvador-demands-us-return-child-taken-from-deported-father-idUSKBN1JH3ER)
27 [idUSKBN1JH3ER](https://www.reuters.com/article/us-usa-immigration-el-salvador/el-salvador-demands-us-return-child-taken-from-deported-father-idUSKBN1JH3ER); Miriam Jordan, *'I Can't Go Without My Son': A Deported Mother's*
28 *Plea*, N.Y. TIMES (June 17, 2018), [https://www.nytimes.com/2018/06/17/us/immigration-](https://www.nytimes.com/2018/06/17/us/immigration-deported-parents.html)
[deported-parents.html](https://www.nytimes.com/2018/06/17/us/immigration-deported-parents.html).

1 separated from their parents under these circumstances, the Government has an affirmative
2 obligation to track and promptly reunify these family members.

3 This practice of separating class members from their minor children, and failing to
4 reunify class members with those children, without any showing the parent is unfit or
5 presents a danger to the child is sufficient to find Plaintiffs have a likelihood of success on
6 their due process claim. When combined with the manner in which that practice is being
7 implemented, *e.g.*, the lack of any effective procedures or protocols for notifying the
8 parents about their childrens' whereabouts or ensuring communication between the parents
9 and children, and the use of the children as tools in the parents' criminal and immigration
10 proceedings, (*see* Pls.' Supp. Mem. in Supp. of Classwide Prelim. Inj., Ex. 29 ¶¶ 8, 14), a
11 finding of likelihood of success is assured. A practice of this sort implemented in this way
12 is likely to be "so egregious, so outrageous, that it may fairly be said to shock the
13 contemporary conscience," *Lewis*, 523 U.S. at 847 n.8, interferes with rights "'implicit in
14 the concept of ordered liberty[.]'" *Rochin v. Cal.*, 342 U.S. 165, 169 (1952) (quoting *Palko*
15 *v. State of Conn.*, 302 U.S. 319, 325 (1937)), and is so "'brutal' and 'offensive' that it
16 [does] not comport with traditional ideas of fair play and decency." *Breithaupt v. Abram*,
17 352 U.S. 432, 435 (1957).

18 For all of these reasons, the Court finds there is a likelihood of success on Plaintiffs'
19 due process claim.

20 **B. Irreparable Injury**

21 Turning to the next factor, Plaintiffs must show they are "'likely to suffer irreparable
22 harm in the absence of preliminary relief.'" *Hernandez v. Sessions*, 872 F.3d 976, 994 (9th
23 Cir. 2017) (quoting *Winter*, 555 U.S. at 20). "'It is well established that the deprivation of
24 constitutional rights unquestionably constitutes irreparable injury.'" *Id.* (quoting
25 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012) (internal quotation marks
26 omitted). As explained, Plaintiffs have demonstrated the likelihood of a deprivation of
27 their constitutional rights, and thus they have satisfied this factor.

1 The injury in this case, however, deserves special mention. That injury is the
2 separation of a parent from his or her child, which the Ninth Circuit has repeatedly found
3 constitutes irreparable harm. *See Leiva–Perez v. Holder*, 640 F.3d 962, 969–70 (9th Cir.
4 2011); *Washington v. Trump*, 847 F.3d 1151, 1169 (9th Cir. 2017) (identifying “separated
5 families” as an irreparable harm).

6 Furthermore, the record in this case reflects that the separations at issue have been
7 agonizing for the parents who have endured them. One of those parents, Mr. U., an asylum
8 seeker from Kyrgyzstan, submitted a declaration in this case in which he stated that after
9 he was told he was going to be separated from his son he “felt as though [he] was having
10 a heart attack.” (Reply in Supp. of Mot. for Class Cert., Ex. 21 ¶ 4.) Another asylum-
11 seeking parent from El Salvador who was separated from her two sons writes,

12 The separation from my sons has been incredibly hard, because I have never
13 been away from them before. I do not want my children to think that I
14 abandoned them. [My children] are so attached to me. [One of my children]
15 used to sleep in bed with me every night while [my other child] slept in his
16 own bed in the same room.... It hurts me to think how anxious and distressed
they must be without me.

17 (Reply in Supp. of Mot. for Class Cert., Ex. 24 ¶ 9.) And another asylum-seeking parent
18 from Honduras described having to place her crying 18-month old son in a car seat in a
19 government vehicle, not being able to comfort him, and her crying as the officers “took
20 [her] son away.” (Reply in Supp. of Mot. for Class Cert., Ex. 25 ¶ 7.) There has even been
21 a report that one father committed suicide in custody after being separated from his wife
22 and three-year-old child. *See Molly Hennessy-Fiske, Honduran Migrant Who Was*
23 *Separated From Family is Found Dead in Texas Jail in an Apparent Suicide*, L.A. TIMES
24 (June 9, 2018, 5:35 PM), [http://www.latimes.com/nation/la-na-border-patrol-suicide-](http://www.latimes.com/nation/la-na-border-patrol-suicide-20180609-story.html)
25 [20180609-story.html](http://www.latimes.com/nation/la-na-border-patrol-suicide-20180609-story.html).

26 The parents, however, are not the only ones suffering from the separations. One of
27 the *amici* in this case, Children’s Defense Fund, states,
28

1 there is ample evidence that separating children from their mothers or fathers
2 leads to serious, negative consequences to children's health and development.
3 Forced separation disrupts the parent-child relationship and puts children at
4 increased risk for both physical and mental illness.... And the psychological
5 distress, anxiety, and depression associated with separation from a parent
6 would follow the children well after the immediate period of separation—
7 even after eventual reunification with a parent or other family.

8 (ECF No. 17-11 at 3.) Other evidence before the Court reflects that “separating children
9 from parents is a highly destabilizing, traumatic experience that has long term
10 consequences on child well-being, safety, and development.” (ECF No. 17-13 at 2.) That
11 evidence reflects:

12 Separation from family leaves children more vulnerable to exploitation and
13 abuse, no matter what the care setting. In addition, traumatic separation from
14 parents creates toxic stress in children and adolescents that can profoundly
15 impact their development. Strong scientific evidence shows that toxic stress
16 disrupts the development of brain architecture and other organ systems, and
17 increases the risk for stress-related disease and cognitive impairment well into
18 adult years. Studies have shown that children who experience such traumatic
19 events can suffer from symptoms of anxiety and post-traumatic stress
20 disorder, have poorer behavioral and educational outcomes, and experience
21 higher rates of poverty and food insecurity.

22 (ECF No. 17-13 at 2.) And Martin Guggenheim, the Fiorello LaGuardia Professor of
23 Clinical Law at New York University School of Law and Founding Member of the Center
24 for Family Representation, states:

25 Children are at risk of suffering great emotional harm when they are removed
26 from their loved ones. And children who have traveled from afar and made
27 their way to this country to seek asylum are especially at risk of suffering
28 irreversible psychological harm when wrested from the custody of the parent
or caregiver with whom they traveled to the United States.

(Mem. in Supp. of Classwide Prelim. Inj., Ex. 17 ¶ 16.) All of this evidence, combined
with the constitutional violation alleged here, conclusively shows that Plaintiffs and the

1 class members are likely to suffer irreparable injury if a preliminary injunction does not
2 issue.

3 **C. Balance of Equities**

4 Turning to the next factor, “[t]o obtain a preliminary injunction, a plaintiff must also
5 demonstrate that ‘the balance of equities tips in his favor.’” *Hernandez*, 872 F.3d at 995
6 (quoting *Winter*, 555 U.S. at 20). As with irreparable injury, when a plaintiff establishes
7 “a likelihood that Defendants’ policy violates the U.S. Constitution, Plaintiffs have also
8 established that both the public interest and the balance of the equities favor a preliminary
9 injunction.” *Arizona Dream Act Coalition v. Brewer*, 757 F.3d 1053, 1069 (9th Cir. 2014).

10 Plaintiffs here assert the balance of equities weighs in favor of an injunction in this
11 case. Specifically, Plaintiffs argue Defendants would not suffer any hardship if the
12 preliminary injunction is issued because the Government “cannot suffer harm from an
13 injunction that merely ends an unlawful practice[.]” *Rodriguez v. Robbins*, 715 F.3d 1127,
14 1145 (9th Cir. 2013); *see also Arizona Dream Act Coalition*, 757 F.3d at 1069 (quoting
15 *Melendres v. Arpaio*, 695 F.3d 990, 1002 (9th Cir. 2012)) (stating balance of equities favors
16 “‘prevent[ing] the violation of a party’s constitutional rights.’”). When the absence of harm
17 to the Government is weighed against the harms to Plaintiffs set out above, Plaintiffs argue
18 this factor weighs in their favor. The Court agrees.

19 The primary harm Defendants assert here is the possibility that an injunction would
20 have a negative impact on their ability to enforce the criminal and immigration laws.
21 However, the injunction here—preventing the separation of parents from their children and
22 ordering the reunification of parents and children that have been separated—would do
23 nothing of the sort. The Government would remain free to enforce its criminal and
24 immigration laws, and to exercise its discretion in matters of release and detention
25 consistent with law. *See* EO §§ 1, 3(a) & (e) (discussing *Flores v. Sessions*, CV 85-4544);
26 *see also Comm. of Cent. Am. Refugees v. I.N.S.*, 795 F.2d 1434, 1439-40 (9th Cir. 1986)
27 (stating “prudential considerations preclude[] interference with the Attorney General’s
28 [exercise of] discretion” in selecting the detention facilities where aliens are to be

1 detained). It would just have to do so in a way that preserves the class members’
2 constitutional rights to family association and integrity. *See Rodriguez*, 715 F.3d at 1146
3 (“While ICE is entitled to carry out its duty to enforce the mandates of Congress, it must
4 do so in a manner consistent with our constitutional values.”) Thus, this factor also weighs
5 in favor of issuing the injunction.

6 **D. Public Interest**

7 The final factor for consideration is the public interest. *See Hernandez*, 872 F.3d at
8 996 (quoting *Stormans, Inc. v. Selecky*, 586 F.3d 1109, 1139 (9th Cir. 2009)) (“When, as
9 here, ‘the impact of an injunction reaches beyond the parties, carrying with it a potential
10 for public consequences, the public interest will be relevant to whether the district court
11 grants the preliminary injunction.”) To obtain the requested relief, “Plaintiffs must
12 demonstrate that the public interest favors granting the injunction ‘in light of [its] *likely*
13 consequences,’ i.e., ‘consequences [that are not] too remote, insubstantial, or speculative
14 and [are] supported by evidence.’” *Id.* (quoting *Stormans*, 586 F.3d at 1139). “‘Generally,
15 public interest concerns are implicated when a constitutional right has been violated,
16 because all citizens have a stake in upholding the Constitution.’” *Id.* (quoting *Preminger*
17 *v. Principi*, 422 F.3d 815, 826 (9th Cir. 2005)).

18 This case involves two important public interests: the interest in enforcing the
19 country’s criminal and immigration laws and the constitutional liberty interest “of parents
20 in the care, custody, and control of their children[,]” which “is perhaps the oldest of the
21 fundamental liberty interests recognized by” the Supreme Court. *Troxel v. Granville*, 530
22 U.S. 57, 65 (2000). Both of these interests are valid and important, and both can be served
23 by the issuance of an injunction in this case.

24 As stated, the public’s interest in enforcing the criminal and immigration laws of this
25 country would be unaffected by issuance of the requested injunction. The Executive
26 Branch is free to prosecute illegal border crossers and institute immigration proceedings
27 against aliens, and would remain free to do so if an injunction were issued. Plaintiffs do
28 not seek to enjoin the Executive Branch from carrying out its duties in that regard.

1 What Plaintiffs do seek by way of the requested injunction is to uphold their rights
2 to family integrity and association while their immigration proceedings are underway. This
3 right, specifically, the relationship between parent and child, is “constitutionally
4 protected,” *Quilloin v. Walcott*, 434 U.S. 246, 255 (1978), and “well established.”
5 *Rosenbaum v. Washoe Cty.*, 663 F.3d 1071, 1079 (9th Cir. 2011). The public interest in
6 upholding and protecting that right in the circumstances presented here would be served
7 by issuance of the requested injunction. *See Arizona Dream Act Coalition*, 757 F.3d at
8 1069 (quoting *Valle del Sol Inc. v. Whiting*, 732 F.3d 1006, 1029 (9th Cir. 2013) (“[I]t is
9 clear that it would not be equitable or in the public’s interest to allow the state ... to violate
10 the requirements of federal law, especially when there are no adequate remedies
11 available.”)) Accordingly, this factor, too, weighs in favor of issuing the injunction.

12 III.

13 CONCLUSION

14 The unfolding events—the zero tolerance policy, EO and DHS Fact Sheet—serve to
15 corroborate Plaintiffs’ allegations. The facts set forth before the Court portray reactive
16 governance—responses to address a chaotic circumstance of the Government’s own
17 making. They belie measured and ordered governance, which is central to the concept of
18 due process enshrined in our Constitution. This is particularly so in the treatment of
19 migrants, many of whom are asylum seekers and small children. The extraordinary remedy
20 of classwide preliminary injunction is warranted based on the evidence before the Court.
21 For the reasons set out above, the Court hereby GRANTS Plaintiffs’ motion for classwide
22 preliminary injunction, and finds and orders as follows:

- 23 (1) Defendants, and their officers, agents, servants, employees, attorneys, and all those
24 who are in active concert or participation with them, are preliminarily enjoined from
25 detaining Class Members in DHS custody without and apart from their minor
26 children, absent a determination that the parent is unfit or presents a danger to the
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1 child, unless the parent affirmatively, knowingly, and voluntarily declines to be
2 reunited with the child in DHS custody.¹¹

3 (2) If Defendants choose to release Class Members from DHS custody, Defendants, and
4 their officers, agents, servants, employees and attorneys, and all those who are in
5 active concert or participation with them, are preliminary enjoined from continuing
6 to detain the minor children of the Class Members and must release the minor child
7 to the custody of the Class Member, unless there is a determination that the parent
8 is unfit or presents a danger to the child, or the parent affirmatively, knowingly, and
9 voluntarily declines to be reunited with the child.

10 (3) Unless there is a determination that the parent is unfit or presents a danger to the
11 child, or the parent affirmatively, knowingly, and voluntarily declines to be reunited
12 with the child:

13 (a) Defendants must reunify all Class Members with their minor children who are
14 under the age of five (5) within fourteen (14) days of the entry of this Order; and

15 (b) Defendants must reunify all Class Members with their minor children age five
16 (5) and over within thirty (30) days of the entry of this Order.

17 (4) Defendants must immediately take all steps necessary to facilitate regular
18 communication between Class Members and their children who remain in ORR
19 custody, ORR foster care, or DHS custody. Within ten (10) days, Defendants must
20 provide parents telephonic contact with their children if the parent is not already in
21 contact with his or her child.

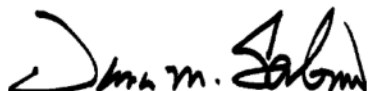
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25 ¹¹ “Fitness” is an important factor in determining whether to separate parent from child. In
26 the context of this case, and enforcement of criminal and immigration laws at the border,
27 “fitness” could include a class member’s mental health, or potential criminal involvement
28 in matters other than “improper entry” under 8 U.S.C. § 1325(a), (*see* EO § 1), among other
matters. Fitness factors ordinarily would be objective and clinical, and would allow for the
proper exercise of discretion by government officials.

- 1 (5) Defendants must immediately take all steps necessary to facilitate regular
2 communication between and among all executive agencies responsible for the
3 custody, detention or shelter of Class Members and the custody and care of their
4 children, including at least ICE, CBP, BOP, and ORR, regarding the location and
5 well-being of the Class Members' children.
- 6 (6) Defendants, and their officers, agents, servants, employees, attorneys, and all those
7 who are in active concert or participation with them, are preliminarily enjoined from
8 removing any Class Members without their child, unless the Class Member
9 affirmatively, knowingly, and voluntarily declines to be reunited with the child prior
10 to the Class Member's deportation, or there is a determination that the parent is unfit
11 or presents a danger to the child.
- 12 (7) This Court retains jurisdiction to entertain such further proceedings and to enter such
13 further orders as may be necessary or appropriate to implement and enforce the
14 provisions of this Order and Preliminary Injunction.

15 A status conference will be held on **July 6, 2018**, at **12:00 noon**, to discuss all
16 necessary matters. A notice of teleconference information sheet will be provided in a
17 separate order.

18 **IT IS SO ORDERED.**

19 Dated: June 26, 2018

20 
21 Hon. Dana M. Sabraw
22 United States District Judge
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28

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**UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA**

19 JENNY LISETTE FLORES; *et al.*,) Case No. CV 85-4544-DMG
20)
21 Plaintiffs,) **DEFENDANTS' NOTICE OF**
22) **COMPLIANCE**
23 v.)
24)
25 JEFFERSON B. SESSIONS III,)
26 Attorney General of the)
27 United States; *et al.*,)
28 Defendants.)

1 The Government's June 21, 2018, ex parte application explained that the
2 Flores Agreement—as interpreted by this Court and the Ninth Circuit—put the
3 Government in the difficult position of having to separate families if it decides it
4 should detain parents for immigration purposes. Defendants wish to inform the
5 Court that, following the filing of our application to this Court, a federal district
6 court in the Ninth Circuit held that such separation likely violates substantive due
7 process under the Fifth Amendment. *Ms. L v. U.S. Immigration and Customs*
8 *Enforcement*, No. 18-428 (S.D. Cal. June 26, 2018) (attached as exhibit). The *Ms.*
9 *L* court certified a class and entered a class-wide preliminary injunction requiring
10 reunification—both for parents released into the interior of the United States and
11 for parents in DHS custody— and barring future separations for families in DHS
12 custody.
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18 Defendants are submitting this notice of compliance to explain how the
19 government is applying the Flores Agreement in light of this injunction. To
20 comply with the *Ms. L* injunction barring parents in DHS custody from being
21 separated from their children, the Government will not separate families but detain
22 families together during the pendency of immigration proceedings when they are
23 apprehended at or between ports of entry. As explained below, we believe that the
24 Flores Agreement permits the Government to detain families together to comply
25 with the nationwide order in *Ms. L*. We nevertheless continue to believe that an
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1 amendment of the Flores Agreement is appropriate to address this issue. Until that
2 amendment, this submission sets out the Government's interpretation and
3 application of the Agreement in light of *Ms. L*.
4

5 A. There are many legitimate justifications for detaining arriving aliens
6 under the immigration laws, including well-established rules that allow arriving
7 aliens at the border to be detained pending a determination of whether they may
8 legally be admitted to the United States. Such detention, which Congress has made
9 mandatory in many circumstances under 8 U.S.C. § 1225(b), is essential to
10 protecting our southwest border, discouraging families that are not entitled to
11 remain in this country from making the dangerous journey to the border, and
12 returning families promptly when they are not entitled to relief in this country. *See*
13 *Jennings v. Rodriguez*, 138 S. Ct. 830, 843 (2018); *cf. Demore v. Kim*, 538 U.S.
14 510, 526 (2003) (discussing the Supreme Court's "longstanding view that the
15 Government may constitutionally detain deportable aliens during the limited period
16 necessary for their removal proceedings").
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22 We have explained over a period of years that one impact of the *Flores*
23 requirements, if applied to minors that come into DHS custody accompanied by
24 their parents, would be the separation of parents from their children. In construing
25 the Flores Agreement, over the government's objection, to apply to children taken
26 into custody with their families, the Ninth Circuit understood that the separation of
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1 parents from their children was a direct consequence of its holding. *Flores v.*
2 *Lynch*, 828 F.3d 898, 908-09 (9th Cir. 2016). But the Ninth Circuit also made
3 clear that neither the Flores Agreement nor court rulings applying it impose any
4 legal barrier on the critical authority of DHS to detain adults who come into
5 immigration custody at the border with their children. *Flores*, 828 F.3d at 908-09.
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8 The *Ms. L* court reached the same conclusion in considering the situation of
9 the separation of accompanied children from their parents, this time from the point
10 of view of the parents, who were not parties to the *Flores* case or the Settlement
11 Agreement. The *Ms. L* court issued class-wide relief requiring that, in most
12 circumstances, parents be kept with their children during the pendency of
13 immigration proceedings. Notably, like the Ninth Circuit, the court in *Ms. L*
14 recognized the authority of DHS to detain parents in immigration custody pending
15 resolution of their immigration cases. As the court emphasized, even in light of the
16 court's injunction requiring families to be kept together and reunified, the
17 "Government would remain free to enforce its criminal and immigration laws, and
18 to exercise its discretion in matters of release and detention consistent with law."
19 Order at 20; *see also id.* at 3 ("Order does not implicate the Government's
20 discretionary authority to enforce immigration laws . . . including its decision to
21 release or detain class members."). Thus, while the Government must keep
22 families together when it chooses to exercise its discretion to detain or release a
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1 parent under the INA, the court cited the *Flores* in explaining that the Government
2 otherwise remains “free” to exercise “discretion in matters of release and
3 detention.” *Id* at 20 (citing *Flores*); *see id.* at 7 (for “children placed in federal
4 custody, there are two options,” the first option is separating the family and placing
5 the child alone in ORR custody and “the second option is family detention”).
6

7
8 **B.** Reading the Flores Agreement together with the subsequent nationwide
9 order in *Ms. L*, we understand the courts to have provided that minors who are
10 apprehended with families may not be separated from their parents where it is
11 determined that continued detention is appropriate for the parent. The Flores
12 Agreement allows this result for two reasons.
13

14
15 **First**, the Agreement’s express terms accommodate court orders like the one
16 recently issued in *Ms. L*. Paragraph 12A of the Flores Agreement provides for the
17 release of minors to a parent (or others) when possible under Paragraph 14 or,
18 alternatively, transfer to an appropriate facility with a licensed program under
19 Paragraph 19. *See Flores v. Lynch*, 828 F.3d 898, 901 (9th Cir. 2016) (“Settlement
20 creates a presumption in favor of releasing minors and requires placement of those
21 not released in licensed, non-secure facilities that meet certain standards”). But
22 these provisions include exceptions to releasing or transferring minors to
23 accommodate a ruling like that in *Ms. L* requiring families to be kept together, and
24 those exceptions permit family detention in these circumstances.
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1 *Release provision.* In Paragraph 14, the Flores Agreement specifies that a
2 minor should be “release[d] from its custody *without unnecessary delay*” to a
3 parent or other relative. Flores Agreement ¶ 14 (emphasis added). The court’s
4 order in *Ms. L*, which requires that the minor be kept with the parent, makes delay
5 necessary in these circumstances. The minor cannot be released under Paragraph
6 14 without separating him or her from their parent, as such a separation would
7 violate the injunction issued in *Ms. L*. See *Ms. L* Order at 22 (DHS is “enjoined
8 from detaining Class Members in DHS custody without and apart from their minor
9 children”). Under those circumstances, the release of the minor from custody must
10 be “delay[ed]” pursuant to the Agreement during the period the parent is detained
11 by DHS. Flores Agreement ¶ 14. Indeed, the court’s order in *Ms. L* envisions that
12 a parent would be “reunited with the child *in DHS custody*” and that a child would
13 be released only “[i]f Defendants choose to release Class Members [*i.e.*, parents]
14 from DHS custody” or if a parent consents. Order at 23 (emphasis added). This
15 application of the Flores Agreement is also consistent with another aspect of
16 Paragraph 14 of the Agreement – which sets placing the minor with “a parent” as
17 the first “order of preference.” Flores Agreement ¶ 14; *id.* ¶ 18 (requiring
18 “continuous efforts . . . toward family reunification and . . . release”) (emphasis
19 added); see *Flores*, 828 F.3d at 903 (“[t]he settlement creates a presumption in
20 favor of release and favors family reunification”) (emphasis added).
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1 *Transfer provision.* The Flores Agreement also permits transfer of a child to
2 a licensed program under Paragraph 19. *See* Flores Agreement ¶ 12A. Under
3 Paragraph 12A, during an influx DHS is required to transfer a minor for placement
4 in a licensed program “as expeditiously as possible.” *Id.* ¶ 12A.3. But the
5 obligation to transfer applies “except . . . as otherwise required by any court decree
6 or court-approved settlement.” *Id.* ¶ 12A.2. Here, the court decree in *Ms. L*
7 prohibits the transfer of the minor to a licensed program, because such a transfer
8 would separate the child from his or her parent. *Ms. L* Order at 22. A transfer
9 therefore cannot occur consistent with that court decree.¹
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12 ***Second***, both *Ms. L* and *Flores* expressly envision that adults who arrive at
13 the United States with children are properly subject to detention – a critical aspect
14 of border enforcement. Given that express conclusion in each decision, it would be
15 remarkable to read the orders together as mandating the opposite conclusion – that
16 detention may never occur. Doing so would undermine the express holdings in
17 both cases. *Ms. L*, for its part, held that DHS would retain the same authority to
18 detain the parent as it had before – it simply required that such detention be of the
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24 ¹ The issue regarding how the Flores Agreement licensing provisions apply to
25 family detention centers is the subject of ongoing litigation. But to the extent that
26 family detention centers are treated as licensed consistent with the Flores
27 Agreement, a transfer under this provision could occur consistent with *Ms. L*. We
28 have also asked this Court to modify the Agreement to permit the transfer of
families together to family residential centers without requiring a state license.

1 family as a unit. *See Ms. L* Order at 3 (“Order does not implicate the
2 Government’s discretionary authority to enforce immigration laws . . . including its
3 decision to release or detain class members”); *id.* at 22 (DHS may “choose to
4 release” class members).
5

6 Likewise, the Ninth Circuit ruling in *Flores* held that the “settlement does
7 not require the government to release parents.” *Flores*, 828 F.3d at 908; *see also*
8 *Bunikyte v. Chretoff*, 2007 WL 1074070, at *16 (W.D. Tex. 2007) (rejecting
9 argument that Flores Agreement required release of both minors and parents). As
10 the Ninth Circuit explained, providing rights to minors under the agreement “does
11 not mean that the government must also make a parent available” by releasing the
12 parent with the child. *Flores*, 828 F.3d at 908; *id.* at 909 (“parents were not
13 plaintiffs in the *Flores* action, nor are they members of the certified class,” and the
14 settlement “therefore provides no affirmative releases rights for parents”). Because
15 the Flores Agreement does not require the release of parents, and *Ms. L* requires
16 DHS to keep parents and children together when the parents are in detention, the
17 rulings work together to permit detention of parents with their minor children with
18 whom they are apprehended.
19

20 C. No other aspect of the Flores Agreement or *Ms. L* require the United
21 States to release all individuals held in border-related detention when they arrive at
22 the border with children. Instead, other aspects of the rulings lead to the opposite
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1 conclusion. The *Ms. L* ruling addresses reunification of children with their parents,
2 and specifically requires reunification “when the parent is returned to immigration
3 custody” after a release from criminal custody. Order at 10; *see id.* at 11 (court
4 order provides for “reunification during intervening . . . ICE detention prior to
5 actual removal, which can take months”). But this aspect of the *Ms. L* ruling
6 would make little sense if that reunification would necessitate an immediate release
7 of the parents from immigration custody under the Flores Agreement.
8

9
10 The *Ms. L* decree also provides that the parent may consent to the release of
11 the child without the parent. Order at 23 (parent may “affirmatively, knowingly,
12 and voluntarily decline[] to be reunited with the child in DHS custody”). This
13 authority permits the continued operation of the provisions of the Flores
14 Agreement governing release of the child – albeit with the accompanying parent’s
15 consent before they go into effect. Relying on a parent’s consent in these
16 circumstances where the family is together makes sense, particularly because
17 plaintiffs in this case have always agreed that detention of the family together is
18 permissible if the parent consents. *See Flores*, Transcript at 37-38 (April 24,
19 2015) (in response to question whether the “agreement allows[s] for an
20 accommodation to . . . a parent who wishes to remain in the [family residential]
21 facility,” “the plaintiffs’ positions is . . . a class member is entitled to waive those
22 rights” and that waiver may “parents speak for children all the time”) (relevant
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1 pages attached as exhibit); *see also*

2 <https://www.npr.org/2018/06/22/622678753/the-history-of-the-flores-settlement->
3 [and-its-effects-on-immigration](https://www.npr.org/2018/06/22/622678753/the-history-of-the-flores-settlement-and-its-effects-on-immigration) (June 22, 2018) (last visited June 29, 2018)

4
5 (counsel for plaintiffs explaining that “choice” to remain in family detention “is
6 not something the Flores settlement itself addresses or prevents”). That is a
7
8 preference expressed by other plaintiffs who have challenged family separation.²

9 This aspect of the *Ms. L* order – allowing release of the child with the consent of
10 the parent – would make little sense if the Government was under an affirmative
11
12 obligation to release the entire family together.

13 **D.** Accordingly, for the reasons explained, the Flores Agreement permits
14 the Government to detain families together given the nationwide order in *Ms. L*
15 that bars the separation of families in DHS custody. To comply with the *Ms. L*
16 injunction, the government will not separate families but detain families together
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18 during the pendency of immigration proceedings when they are apprehended at or
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20 between ports of entry and therefore subject to the *Ms. L* injunction.
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23 ² *See Mejia-Mejia v. ICE*, No. 18-1445, Complaint ¶ 4 (D.D.C. filed June 19,
24 2018) (“If, however, the government feels compelled to continue detaining these
25 parents and young children, it should at a minimum detain them together in one of
26 its immigration family detention centers”); *Padilla v. ICE*, NO. 18-928 (W.D.
27 Wash), Complaint ¶ 12 (“If, however, the government insists on continuing to
28 detain these parents and children, it must at a minimum detain them together in one
of its immigration family detention centers.”).

1 DATED: June 29, 2018

Respectfully submitted,

2
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4 Acting Assistant Attorney General

5 /s/ August E. Flentje
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23
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28 *Attorneys for Defendants*

CERTIFICATE OF SERVICE

I hereby certify that on June 29, 2018, I served the foregoing pleading on all
counsel of record by means of the District Clerk's CM/ECF electronic filing
system.

/s/ August E. Flentje
August E. Flentje
Attorney for Defendants

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

Objective:

(b)(5)

Agenda:

(b)(5)

Key Issues:

(b)(5)

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(b)(5)



History:

(b)(5)



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*

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

Staff Responsible for Briefing Memo:

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**IMMIGRATION PC MEETING
July 3, 2018**

Objective:

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Agenda:

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Key Issues:

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History:

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

Staff Responsible for Briefing Memo:

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

Objective:

(b)(5)

Agenda:

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Key Issues:

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History:

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Logistics:

(b)(5)

Attachments:

A. Participant List

Staff Responsible for Briefing Memo: Matthew T. Albence, Executive Associate Director, Enforcement and Removal Operations, (b)(6)

Reviewed and approved by: (b)(6) Enforcement and Removal Operations, (b)(6)

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

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OGC coordination is essential. Please ensure that briefing materials have been fully coordinated with OGC. Lead components are now required to coordinate with their Component Counsel and identify in their OGC submission of briefing materials, who in their component counsel office reviewed and cleared.

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

Objective:

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Agenda:

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Key Issues:

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History:

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Logistics:

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Attachments:

(b)(5)

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A. Participant List**Staff Responsible for Briefing Memo:**

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Matthew T. Albence, Executive
Associate Director, Enforcement and Removal Operations,

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Reviewed and approved by: (b)(6) Enforcement and Removal
Operations (b)(6)

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

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

Objective:

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Agenda:

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Key Issues:

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History:

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Logistics:

(b)(5)

Attachments:

A. Participant List

Staff Responsible for Briefing Memo: Matthew T. Albence, Executive Associate Director, Enforcement and Removal Operations, (b)(6)

Reviewed and approved by: (b)(6) Enforcement and Removal Operations, (b)(6)

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

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

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Agenda:

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Key Issues:

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(b)(5)



~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~

(b)(5)

History:

(b)(5)

Logistics:

(b)(5)

Attachments:

A. Participant List

Staff Responsible for Briefing Memo: Matthew T. Albence, Executive Associate Director, Enforcement and Removal Operations, (b)(6)

Reviewed and approved by (b)(6) Enforcement and Removal Operations, (b)(6)

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

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OGC coordination is essential. Please ensure that briefing materials have been fully coordinated with OGC. Lead components are now required to coordinate with their Component Counsel and identify in their OGC submission of briefing materials, who in their component counsel office reviewed and cleared.

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

Objective:

(b)(5)

Agenda:

(b)(5)

Key Issues:

(b)(5)

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~~FOR OFFICIAL USE ONLY~~

(b)(5)



~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~

(b)(5)



~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~

(b)(5)

History:

(b)(5)

Logistics:

(b)(5)

Attachments:

A. Participant List

Staff Responsible for Briefing Memo: Matthew T. Albence, Executive Associate Director, Enforcement and Removal Operations, (b)(6)

Reviewed and approved by (b)(6) Enforcement and Removal Operations, (b)(6).

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

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OGC coordination is essential. Please ensure that briefing materials have been fully coordinated with OGC. Lead components are now required to coordinate with their Component Counsel and identify in their OGC submission of briefing materials, who in their component counsel office reviewed and cleared.

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~~FOR OFFICIAL USE ONLY~~

CALL WITH SENATOR SUSAN COLLINS (R-ME)

(b)(5)

Objective:

(b)(5)

History:

(b)(5)

Key Issues:

(b)(5)

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~~FOR OFFICIAL USE ONLY~~**Attachments:**

- A. Talking Points
- B. Media Pull
- C. Biography

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

Reviewed and approved by: (b)(6) OLA, (b)(6)

OGC Reviewer:

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~~FOR OFFICIAL USE ONLY~~

CALL WITH SENATOR SUSAN COLLINS (R-ME)

Objective:

(b)(5)

History:

(b)(5)

Key Issues:

(b)(5)

~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~**Attachments:**

- A. Talking Points
- B. Media Pull
- C. Biography

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

Reviewed and approved by: (b)(6), OLA, (b)(6)

OGC Reviewer:

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~~FOR OFFICIAL USE ONLY~~

CALL WITH SENATOR SUSAN COLLINS (R-ME)

Objective:

(b)(5)

History:

(b)(5)

Key Issues:

(b)(5)

Attachments:

- A. Talking Points
- B. Media Pull

~~FOR OFFICIAL USE ONLY~~

~~FOR OFFICIAL USE ONLY~~

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

Reviewed and approved by: (b)(6) OLA, (b)(6)

OGC Reviewer:

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~~FOR OFFICIAL USE ONLY~~

CALL WITH SENATOR SUSAN COLLINS (R-ME)

Objective:

(b)(5)

History:

(b)(5)

Key Issues:

(b)(5)

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~~FOR OFFICIAL USE ONLY~~

Attachments:

- A. Talking Points
- B. Media Pull

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

Reviewed and approved by: (b)(6) OLA (b)(6)

OGC Reviewer:

~~FOR OFFICIAL USE ONLY~~

CALL WITH RANKING MEMBER CLAIRE MCCASKILL (D-MO)
June 26, 2018

Objective:

(b)(5)



History:

(b)(5)



(b)(5)

Key Issues:

(b)(5)

(b)(5)



(b)(5)

Attachments:

- A. Talking Points
- B. Media Pull
- C. June 22, 2018 Letter from Ranking Member McCaskill regarding family separation
(status: with CBP to draft response)

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

(b)(6)

Reviewed and approved by: (b)(6) OLA, (b)(6)

OGC Reviewer: (b)(6) OGC, (b)(6)

CALL WITH RANKING MEMBER CLAIRE MCCASKILL (D-MO)
June 26, 2018

Objective:

(b)(5)

History:

(b)(5)

Key Issues:

(b)(5)

(b)(5)



(b)(5)



(b)(5)

Attachments:

- A. Talking Points
- B. Media Pull

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

Reviewed and approved by: (b)(6) OLA, (b)(6)

OGC Reviewer: (b)(6), OGC, (b)(6)

CALL WITH RANKING MEMBER CLAIRE MCCASKILL (D-MO)
June 26, 2018

Objective:

(b)(5)

History:

(b)(5)

Key Issues:

(b)(5)

(b)(5)



(b)(5)



(b)(5)

Attachments:

- A. Talking Points
- B. Media Pull

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

Reviewed and approved by: (b)(6), OLA, (b)(6)

OGC Reviewer: (b)(6) OGC, (b)(6)

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6/21/2018 5:44 PM

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

Objective:

(b)(5)

(b)(5)

History:

(b)(5)

Key Issues:

(b)(5)

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(b)(5)



~~FOR OFFICIAL USE ONLY~~

6/21/2018 5:44 PM

(b)(5)

(b)(5)

~~FOR OFFICIAL USE ONLY~~

(b)(5)
Attachments:

- A. Talking Points
- B. Media Pull

Staff Responsible for Briefing Memo:

(b)(6)

, Senior Legislative Advisor, OLA,

(b)(6)

(b)(6)

Reviewed and approved by:

(b)(6)

 OLA,

(b)(6)

OGC Reviewer:

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

Objective:

(b)(5)

History:

(b)(5)

Key Issues:

(b)(5)

(b)(5)



~~FOR OFFICIAL USE ONLY~~

6/21/2018 5:44 PM

(b)(5)

(b)(5)

~~FOR OFFICIAL USE ONLY~~

Attachments:

- A. Talking Points
- B. Media Pull

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

Reviewed and approved by: (b)(6) OLA (b)(6)

OGC Reviewer:

U.S. Department of Homeland Security
500 12th Street SW
Washington, DC 20536



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR:

(b)(6)

Department of Defense

FROM:

(b)(6)

Department of Homeland Security

SUBJECT:

Request for Department of Defense Assistance in Support of
Department of Homeland Security Immigration Family Residential
Facilities

Overview

(b)(5)

(b)(5)

(b)(5)

(b)(5)

General Requirements

(b)(5)

(b)(5)

(b)(5)

Follow on Support

(b)(5)

End of Mission

(b)(5)

Funding

(b)(5)



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR:

(b)(6)

Department of Defense

FROM:

(b)(6)

Department of Homeland Security

SUBJECT:

Request for Department of Defense Assistance in Support of
Department of Homeland Security Immigration Family Residential
Facilities

Overview

(b)(5)

(b)(5)

General Requirements

(b)(5)

Location:

(b)(5)

Public Posture

(b)(5)

DHS Overarching Goal

(b)(5)

Requirements by State for FY 2018

(b)(5)

Follow on Support

(b)(5)

End of Mission

(b)(5)

Funding

(b)(5)

(b)(5)



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR:

(b)(6)

Department of Defense

FROM:

(b)(6)

Department of Homeland Security

SUBJECT:

Request for Department of Defense Assistance in Support of
Department of Homeland Security Immigration Family Residential
Facilities

Overview

(b)(5)

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General Requirements

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Location:

(b)(5)

Public Posture

(b)(5)

DHS Overarching Goal

(b)(5)

Requirements by State for FY 2018

(b)(5)

Follow on Support

(b)(5)

End of Mission

(b)(5)

Funding

(b)(5)

(b)(5)



**U.S. Immigration
and Customs
Enforcement**

MEMORANDUM FOR: James N. Mattis
Secretary of Defense

FROM: Kirstjen M. Nielsen
Secretary of Homeland Security

SUBJECT: Request for Department of Defense Assistance in Support of
Department of Homeland Security Immigration Family Residential
Facilities

Overview

(b)(5)

(b)(5)

General Requirements

(b)(5)

Location:

(b)(5)

Public Posture

(b)(5)

DHS Overarching Goal

(b)(5)

Requirements by State for FY 2018

(b)(5)

Follow on Support

(b)(5)

End of Mission
(b)(5)

Funding
(b)(5)

(b)(5)

U.S. Department of Homeland Security
500 12th Street SW
Washington, DC 20536



U.S. Immigration
and Customs
Enforcement

ACTION

MEMORANDUM FOR THE SECRETARY

(b)(6)

FROM:

Matthew Albence

(b)(6)

Acting Director, Immigration and Customs Enforcement

(b)(6)

SUBJECT:

**Department of Defense Support for Immigration Family
Residential Facilities**

Purpose:

(b)(5)

(b)(5)

Background:

(b)(5)

(b)(5)

(b)(5)

From:	(b)(6)
To:	(b)(6)
Subject:	FW: FOR REVIEW: DRAFT UPDATE MEMO
Date:	2018/06/22 12:52:48
Priority:	Normal
Type:	Note

Team,

This should be coming up through policy exec sec. Please reach out to them and just let them know we're tracking and awaiting their final document.

(b)(6)

DHS Executive Secretary

(b)(6)

From: McCament, James

Sent: Friday, June 22, 2018 12:50 PM

To: Fulghum, Chip (b)(6) Mitnick, John (b)(6) Shah, Dimple (b)(6) Baroukh, Nader (b)(6) Short, Tracy (b)(6) Scudder, Ryan (b)(6) Dougherty, Michael (b)(6)

Cc: Petyo, Briana (b)(6) Neumann, Elizabeth (b)(6)

(b)(6)

Subject: FOR REVIEW: DRAFT UPDATE MEMO

~~FOR OFFICIAL USE ONLY INTERNAL PRE-DECISIONAL
DELIBERATIVE ATTORNEY-CLIENT WORK PRODUCT~~

All, for review, edit and comment by 3:00 if possible today, attached is the draft of the memo S1 requested as noted below. Understanding that there are continued discussions which may impact timing and content, we'll want to provide this forward soonest through Exec Sec. I'm adding in Briana and Elizabeth who will assist in further tracking while I'm out of the office Monday and Tuesday (personal). Adding (b)(6) for visibility regarding the forthcoming memo through the Exec Sec process.

Thanks all for the continued quick turn around and collaboration,

James W. McCament
Deputy Under Secretary for Strategy, Policy and Plans
Department of Homeland Security

(b)(6)

From: McCament, James

Sent: Friday, June 22, 2018 9:35 AM

To: Fulghum, Chip (b)(6) Taylor, Miles (b)(6) Mitnick, John (b)(6)

Cc: MCALEENAN, KEVIN K (b)(6) Albence, Matthew

(b)(6) Shah, Dimple (b)(6) Hoffman, Jonathan

(b)(6); Wolf, Chad (b)(6) Baroukh, Nader

(b)(6); Short, Tracy (b)(6) Scudder, Ryan

(b)(6)

Subject: RE: Options for Principals

Thanks, Chip. Yes, following to yesterday's meeting and discussion, this is being incorporated into the memo from S1 to COS Kelly, WH Counsel and Director Mulvaney specifically regarding resourcing as well as general implementation status to date. (Subject to any modifications due to further discussions today).

James W. McCament
Deputy Under Secretary for Strategy, Policy and Plans
Department of Homeland Security

(b)(6)

From: Fulghum, Chip

Sent: Friday, June 22, 2018 8:15 AM

To: McCament, James (b)(6) Taylor, Miles (b)(6)

Mitnick, John (b)(6)

Cc: MCALEENAN, KEVIN K (b)(6) Albence, Matthew

(b)(6) Shah, Dimple (b)(6) Hoffman, Jonathan

(b)(6); Wolf, Chad (b)(6) Baroukh, Nader

(b)(6); Short, Tracy (b)(6) Scudder, Ryan

(b)(6)

Subject: RE: Options for Principals

In addition, Below for visibility is the input for the memo S1 requested you are working regarding overall implementation status.

(b)(5)

(b)(5)

From: McCament, James

Sent: Friday, June 22, 2018 8:12 AM

To: Taylor, Miles (b)(6); Mitnick, John (b)(6)

Cc: MCALEENAN, KEVIN K (b)(6); Albence, Matthew

(b)(6) Shah, Dimple (b)(6) Hoffman, Jonathan

(b)(6); Fulghum, Chip (b)(6) Wolf, Chad

(b)(6) Baroukh, Nader (b)(6) Short, Tracy

(b)(6); Scudder, Ryan (b)(6)

Subject: RE: Options for Principals

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All,

Attached is an overview document incorporating all of the input from the below. I've also cut and pasted for reference below.

Policy Question: Enforcing Immigration Laws while Maintaining Family Unity

(b)(5)



(b)(5)



(b)(5)



(b)(5)

James W. McCament
Deputy Under Secretary for Strategy, Policy and Plans
Department of Homeland Security

(b)(6)

From: McCament, James

Sent: Friday, June 22, 2018 7:07 AM

To: Taylor, Miles (b)(6); Mitnick, John (b)(6)

Cc: MCALEENAN, KEVIN K (b)(6); Albence, Matthew

(b)(6); Shah, Dimple (b)(6); Hoffman, Jonathan

(b)(6); Fulghum, Chip (b)(6); Wolf, Chad

(b)(6); Baroukh, Nader (b)(6)

Subject: RE: Options for Principals

Thanks Miles, and thanks all for the input. Yes I'm finalizing for delivery by/before 830.

James W. McCament
Deputy Under Secretary for Strategy, Policy and Plans
Department of Homeland Security

(b)(6)

From: Taylor, Miles
Sent: Friday, June 22, 2018 6:42:39 AM
To: Mitnick, John
Cc: McCament, James; MCALEENAN, KEVIN K; Albence, Matthew; Shah, Dimple; Hoffman, Jonathan; Fulghum, Chip; Wolf, Chad; Baroukh, Nader
Subject: Re: Options for Principals

Thanks John. James—can we get a final version this AM? S1 has prep time for her WH meetings at 1030.

Miles Taylor
Deputy Chief of Staff
U.S. Department of Homeland Security

(b)(6)

On Jun 21, 2018, at 10:47 PM, Mitnick, John (b)(6) wrote:

The Good app is not allowing me to add text to the points below, so here is my legal summary, (b)(5)

(b)(5)

(b)(5)

From: McCament, James

Sent: Thursday, June 21, 2018 8:34:24 PM

To: Taylor, Miles; MCALEENAN, KEVIN K; Mitnick, John; Albence, Matthew; Shah, Dimple; Hoffman, Jonathan; Fulghum, Chip

Cc: Wolf, Chad; Baroukh, Nader

Subject: RE: Options for Principals

All,

Here are additional points to the below questions with an additional point for the overarching discussion of enforcement of laws and maintaining family unity as outlined in Section 1. Kevin/Matt, in light of tonight's meeting and tomorrow's Border PC, please add any additional points. Chip, if there any additional resource points missed please advise. We can then format per below or more formally as needed for S1 reference. We'll need all final answers by 8AM tomorrow latest.

Thanks all,

(b)(5)

(b)(5)



(b)(5)



(b)(5)

From: McCament, James

Sent: Thursday, June 21, 2018 6:37 PM

To: Taylor, Miles (b)(6) MCALEENAN, KEVIN K

(b)(6) Mitnick, John (b)(6)

Albence, Matthew (b)(6) Shah, Dimple

(b)(6) Hoffman, Jonathan (b)(6)

Fulghum, Chip (b)(6)

Cc: Wolf, Chad (b)(6) Baroukh, Nader

(b)(6)

Subject: RE: Options for Principals

Thanks Miles, will review and incorporate points from the updated draft memo OGC has shared. Adding Chip as well re: S1's questions.

From: Taylor, Miles

Sent: Thursday, June 21, 2018 5:18 PM

To: McCament, James (b)(6) MCALEENAN, KEVIN K

(b)(6); Mitnick, John (b)(6)

Albence, Matthew (b)(6) Shah, Dimple

(b)(6); Hoffman, Jonathan (b)(6)

Cc: Wolf, Chad (b)(6) Baroukh, Nader

(b)(6)

Subject: Re: Options for Principals

See below. Please feel free to add/amend. These are very rough. As you see, S1 would like additional operational details, stats, etc added to this. James, can PLCY QB?

(b)(5)

(b)(5)



Miles Taylor
Deputy Chief of Staff
U.S. Department of Homeland Security

(b)(6)

On Jun 21, 2018, at 4:31 PM, (b)(6) wrote:

Miles- pls integrate questions.

(b)(5)

Kirstjen Nielsen
Secretary of Homeland Security

From: MCALEENAN, KEVIN K
Sent: Thursday, June 21, 2018 9:10:12 PM
To: (b)(6) Wolf, Chad
Subject: FW: Options for Principals

From: (b)(6)
Sent: Thursday, June 21, 2018 3:52:49 PM
To: MCALEENAN, KEVIN K; Albence, Matthew
Subject: Options for Principals

We're pushing the principals discussion to tomorrow at 12:30 PM. I know the timing is unfairly tight, but is there any way to have a rough sketch of option on the table by 8PM tonight? Something like:

(b)(5)

We plan to address a wider range of issues as well, so please let us know everything you'd like principals to address.

(b)(6)

(b)(6)

Office of the Deputy Chief of Staff

(b)(6)

(b)(6)

Sender:	(b)(6)
Recipient:	
Sent Date:	2018/06/22 12:52:48

INFORMATION

MEMORANDUM FOR JOHN KELLY, CHIEF OF STAFF TO THE PRESIDENT
DONALD MCGAHN, WHITE HOUSE COUNSEL
JOHN MICHAEL "MICK" MULVANEY, DIRECTOR, OFFICE OF
MANAGEMENT AND BUDGET

FROM: KIRSTJEN M.NIELSEN, SECRETARY OF HOMELAND SECURITY

SUBJECT: IMPLEMENTATION OF EXECUTIVE ORDER AFFORDING
CONGRESS AN OPPORTUNITY TO ADDRESS FAMILY
SEPARATION

Purpose:

(b)(5)

(b)(5)

Background:

(b)(5)

Operational Execution and Assessment:

(b)(5)

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DELIBERATIVE ATTORNEY-CLIENT WORK PRODUCT~~

(b)(5)

Financial Assessment:

(b)(5)

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DELIBERATIVE ATTORNEY-CLIENT WORK PRODUCT~~

~~FOR OFFICIAL USE ONLY INTERNAL PRE-DECISIONAL
DELIBERATIVE ATTORNEY-CLIENT WORK PRODUCT~~

(b)(5)



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DELIBERATIVE ATTORNEY-CLIENT WORK PRODUCT~~