

CALL WITH RANKING MEMBER CLAIRE MCCASKILL (D-MO)
Talking Points

(b)(5)



Page 002

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

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:	TVPPRA 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)

(b)(5)

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

Response: (b)(5)

(b)(5)

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

Response: (b)(5)

(b)(5)

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

Response: (b)(5)

(b)(5)

Question#:	10
Topic:	Screening for Trafficking II
Hearing:	TVPRA 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)

(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)

(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)

(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:	TVPRA 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:	TVPPRA 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)

(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)

(b)(5)

Question#:	21
Topic:	Operational Challenges
Hearing:	TVPPRA 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)

(b)(5)

(b)(5)

Question#:	21
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Hearing:	TVPPRA 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)

(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:	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)

(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)

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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:	TVPPRA 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.

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Response:

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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:	TVPPRA 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:	TVPPRA 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)

(b)(5)

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

Response: (b)(5)

(b)(5)

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

Response: (b)(5)

(b)(5)

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

Response: (b)(5)

(b)(5)

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:	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:	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:	TVPPRA 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:	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:	TVPRA 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:	TVPPRA 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:	TVPRA 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)

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:	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)

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)

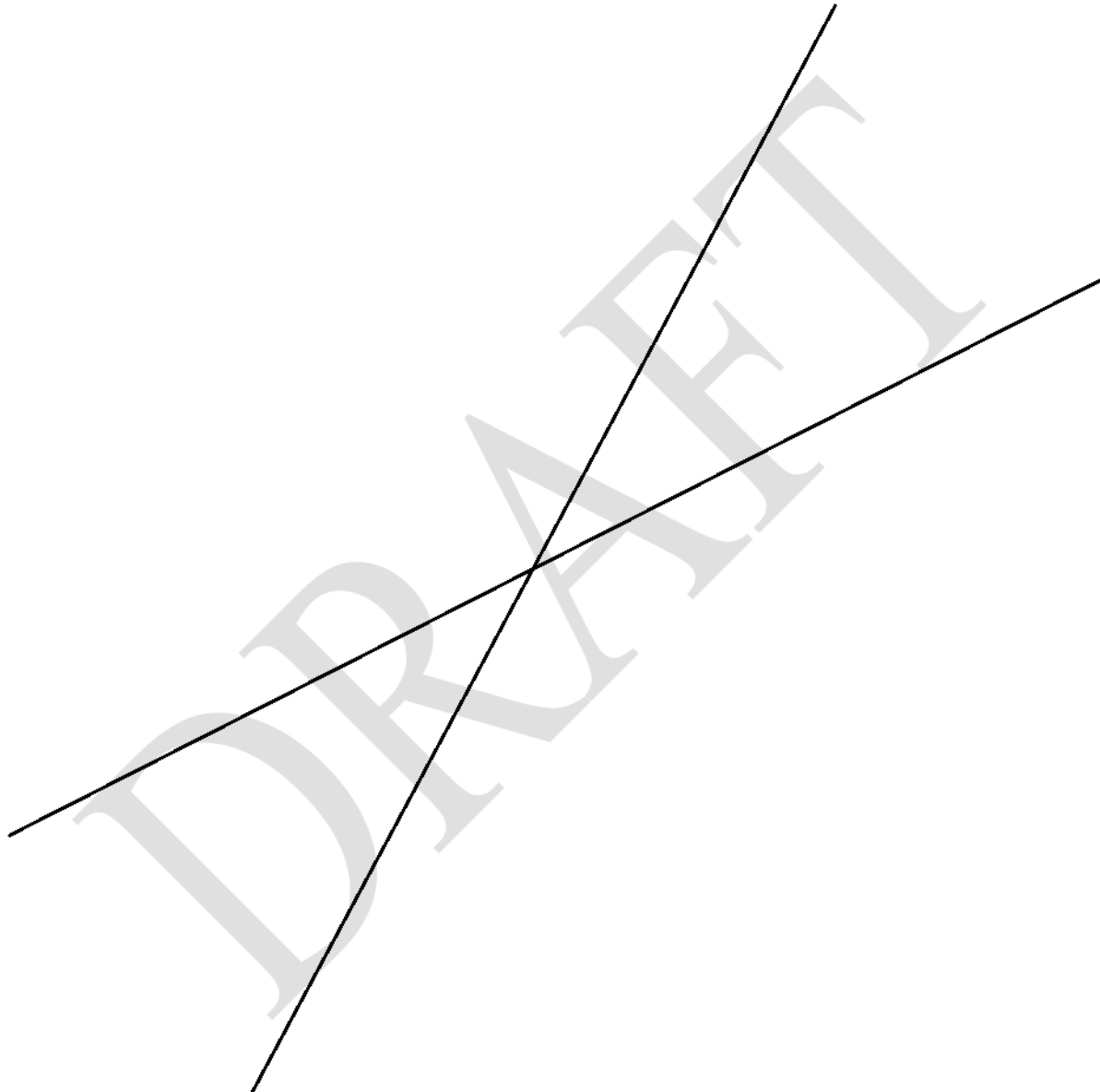
(b)(5)

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)

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

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

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)

(b)(5)

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

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

Response:

(b)(5)

(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)

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)

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)

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)

(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)

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)

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)

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)

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
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Primary:	The Honorable J. Luis Correa
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(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

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)

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Primary:	The Honorable Nanette Diaz Barragán
Committee:	HOMELAND SECURITY (HOUSE)
Date:	MAY 22, 2018

(b)(5)

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)



TESTIMONY OF

Carla L. Provost
Acting Chief
U.S. Border Patrol
U.S. Customs and Border Protection

BEFORE

U.S. Senate
Committee on the Judiciary

ON

“Oversight of the Administration’s Family Reunification Efforts”

July 31, 2018
Washington, DC

Page 102

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 103

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

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)

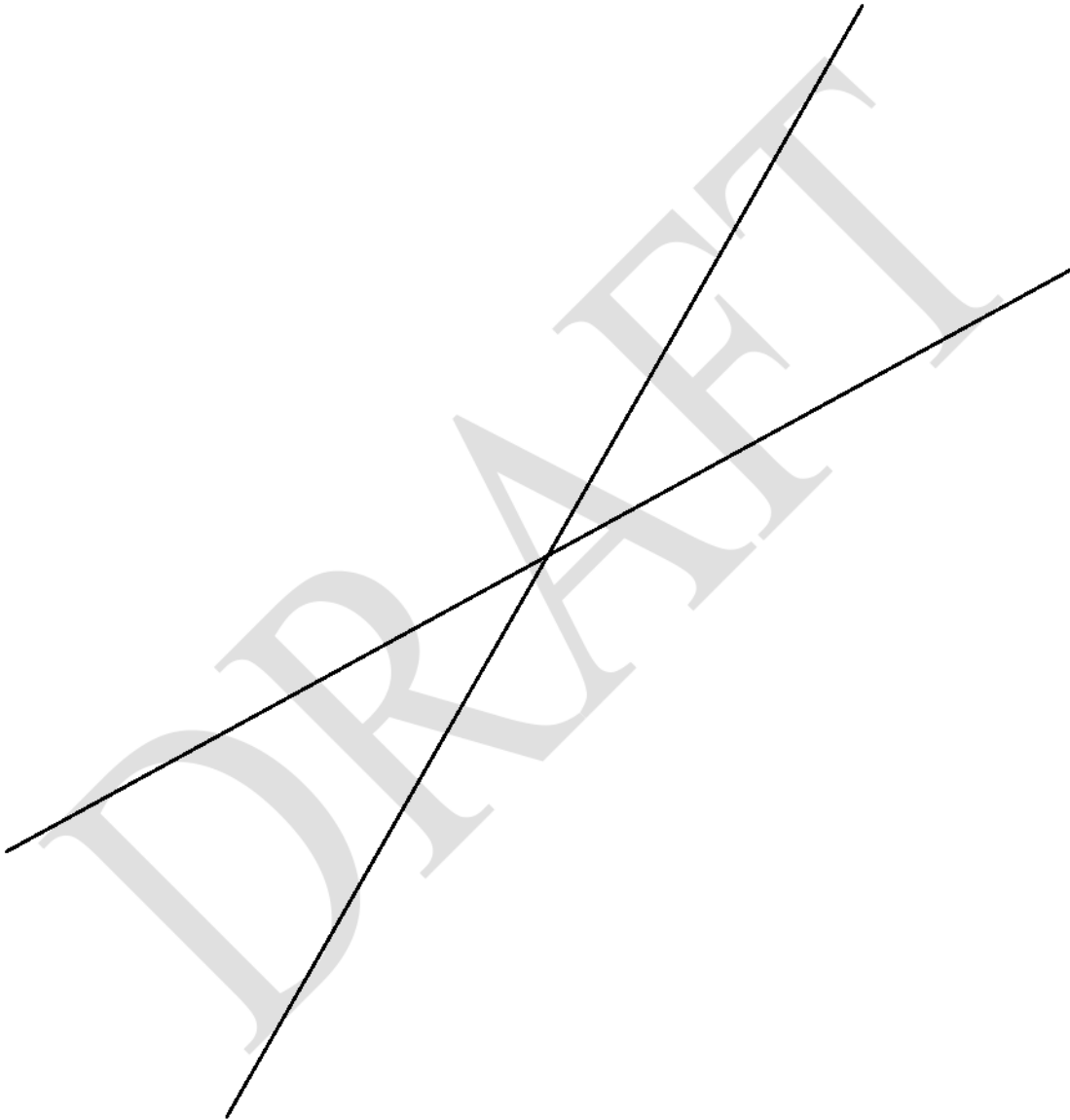
(b)(5)

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)

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

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

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)

(b)(5)

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

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

Response:

(b)(5)

(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)

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)

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)

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)

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)

(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)

Question#:	13
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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)

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Hearing:	Stopping the Daily Border Caravan: Time to Build a Policy Wall
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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
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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)

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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)

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

Response: (b)(5)

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

Response: (b)(5)

(b)(5)

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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)

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(b)(5)

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Question#:	18
Topic:	CBP Verification Process
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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
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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
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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)

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TESTIMONY OF

Carla L. Provost
Acting Chief
U.S. Border Patrol
U.S. Customs and Border Protection

BEFORE

U.S. Senate
Committee on the Judiciary

ON

“Oversight of the Administration’s Family Reunification Efforts”

July 31, 2018
Washington, DC

Page 137

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Page 140

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Page 142

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Page 147

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Page 150

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Page 153

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Page 156

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Page 157

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Page 158

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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:	TVPPRA Compliance
Hearing:	TVPPRA 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)

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)

(b)(5)

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

Response: (b)(5)

(b)(5)

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

Response: (b)(5)

(b)(5)

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

Response: (b)(5)

(b)(5)

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)

(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:	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:	TVPRA 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:	TVPPRA 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:	TVPRA 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:	TVPPRA 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:	TVPPRA 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:	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)

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)

(b)(5)

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:	TVPPRA 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)

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)

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)

(b)(5)

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

Response: (b)(5)

(b)(5)

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

Response: (b)(5)

(b)(5)

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

Response: (b)(5)

(b)(5)

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:	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:	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:	TVPPRA 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:	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:	TVPRA 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:	TVPPRA 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:	TVPRA 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:	TVPPRA 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:	TVPPRA 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:	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)



TESTIMONY OF

Carla L. Provost
Acting Chief
U.S. Border Patrol
U.S. Customs and Border Protection

BEFORE

U.S. Senate
Committee on the Judiciary

ON

“Oversight of the Administration’s Family Reunification Efforts”

July 31, 2018
Washington, DC

Page 226

Withheld pursuant to exemption

(b)(5)

of the Freedom of Information and Privacy Act

Page 227

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(b)(5)

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