

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

5003.2: Congressional Hearing Policy

Issue Date: October 25, 2021

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Superseded: 5003.1: Congressional Hearing Policy (December 5, 2012).

Federal Enterprise Architecture Number: 306-112-002b

1. **Purpose/Background.** The Office of Congressional Relations (OCR) assists ICE leadership provide information and respond to Members of Congress and Congressional Staff regarding ICE's missions, programs, operations, and initiatives. OCR serves as ICE's primary point-of-contact for all congressional activities. This Directive outlines the congressional hearing policy for hearings held by committees exercising congressional oversight of ICE, including pre-hearing preparation and post-hearing activities. OCR leads all liaison activities, and coordinates with the Director, Deputy Director, Executive Associate Directors (EADs), and other key leaders within ICE, and the Department of Homeland Security (DHS).
2. **Policy.** Congressional hearings are opportunities for ICE officials to formally and publicly represent ICE to Congress. Professional and responsive representation to Congress is critical to the success of ICE's missions, programs, operations, and initiatives; ICE officials testifying before Congress must be thoroughly prepared to testify. The public nature of congressional hearings requires a high degree of scrutiny in the preparation of testimony and statements, background materials, and witnesses. OCR's preparation of witnesses includes, but is not limited to, timely submission of briefing materials; conducting pre-briefs; coordinating the drafting, review, and clearance of hearing testimony through DHS and the Office of Management and Budget; and identifying potential issues and key questions likely to be raised by committee Members during the hearing.
3. **Definitions.** The following definitions apply for purposes of this Directive only.
 - 3.1. **Briefing Book.** A book of ICE staff-generated materials addressing program, policy, legal, operational and/or financial issues relevant to a specific congressional hearing.
4. **Responsibilities.**
 - 4.1. The **Assistant Director (AD) of OCR** is responsible for leading the congressional preparation and briefing process.
 - 4.2. The **Deputy Assistant Directors (DAD(s)) of OCR** are responsible for developing, administering, and managing procedures for all personnel preparing ICE officials for congressional engagements.

4.3. OCR Branch Chiefs are responsible for communicating and applying OCR procedures during congressional testimony preparation.

4.4. Other Directorates and Program Offices are responsible for:

- 1) Providing OCR with the necessary briefing book materials in a timely manner;
- 2) Making themselves available for congressional hearing pre-briefs and other preparation meetings and activities, as necessary;
- 3) Providing input to testimony and other materials as needed; and
- 4) Ensuring coordination and clearance through OCR for all hearing-related activities.

5. Procedures/Requirements.

5.1. Pre-Hearing Procedures. Prior to the hearing, OCR will:

- 1) Inform the Office of the Director (OD), the appropriate EAD(s), the appropriate Directorates and Program Offices, the Office of Public Affairs (OPA), the Office of Partnership and Engagement (OPE), the DHS Office of Legislative Affairs and/or the DHS Management Directorate, and the DHS Office of the Chief Financial Officer (DHS MGMT/OCFO) of congressional requests for ICE participation in hearings.
- 2) Prior to accepting an invitation to testify, consult with the OD as required, regarding:
 - a) Whether ICE should participate in the hearing; and
 - b) Identification of witness(es) and hearing format (i.e., single witness, panel, etc.).
- 3) The OCR AD, in consultation with the OD, as required, negotiate and/or reply to hearing invitations on the Agency's behalf;
- 4) As soon as practicable once a hearing date is confirmed, notify the appropriate DHS coordinating unit (DHS Executive Secretary for authorization committee hearings or DHS MGMT/OCFO for appropriation committee hearings) when an ICE official has been requested to appear as a witness before a committee per DHS guidelines, and notify relevant parties within ICE of deadlines for testimony submission;
- 5) Add the hearing as an entry on the daily OCR Close of Business Report;
- 6) As soon as practicable after notice of the hearing is given, communicate with the relevant Directorates and Program Offices and the OD regarding hearing themes provided by the committee, hearing objectives developed by OCR, intended messaging of the testimony, and points for inclusion in the testimony;

- 7) Immediately begin drafting testimony following the format in the ICE testimony template (Attachment 8.1) to maintain consistency among all ICE testimonies;
- 8) Ensure the witness's scheduler clears the witness's calendar for the date and time of the hearing;
- 9) Identify one individual within OCR to serve as the lead for coordinating materials for the hearing;
- 10) Collaborate with the responsible Directorate or Program Office to develop background materials and produce potential questions and answers to prepare the ICE witness to appropriately address hearing themes and objectives;
- 11) Formally task appropriate Directorates and Program Offices for background materials;
- 12) Collaborate with the responsible Directorate or Program Office to produce potential questions and answers addressing hearing themes in order to meet objectives
- 13) Coordinate at least three pre-briefs with the ICE witness, directly inviting each of the following ICE personnel, as appropriate: EAD, Homeland Security Investigations (HSI); EAD, Enforcement and Removal Operations (ERO); EAD, Management and Administration (M&A); and any other staff as needed;
- 14) Deliver draft testimony, along with deadlines, to the Office of the Principal Legal Advisor, HSI, ERO, M&A, and the ICE Office of the Chief Financial Officer for concurrence, and subsequently to the OD for final ICE clearance. Transmit OD-cleared testimony to DHS for final clearance;
- 15) Condense the witness's cleared testimony into an oral statement that is no longer than the length as specified by the committee (typically five minutes). Before providing the oral statement to the witness, read aloud and time the statement. This is done in coordination with ICE's speech writer and the Office of Public Affairs (OPA);
- 16) Prepare briefing books for principals (as described in section 5.2, below);
- 17) Check with congressional member staff and professional committee staff on a continual basis for information critical to ICE's success at the hearing and include the information in the "recent updates" hearing memo. The memo must follow the format in the recent updates memo template (Attachment 8.2), and the updates should include, but are not limited to:
 - a) Likely Member attendance at the hearing;
 - b) Key concerns of each attending Member;

- c) Questions each Member may ask; and
 - d) Potential problem areas for the witness or agency;
- 18) Provide the cleared, final copy of the written testimony to the committee as required by the committee;
 - 19) As needed, schedule an advance meeting between the witness(es) and committee staff prior to the hearing date, and, if requested, a pre-brief with committee staff or Members;
 - 20) Offer and schedule coordination meetings with other DHS or federal agency witnesses who are to testify at the same hearing;
 - 21) As soon as possible, and no later than 24 hours prior to the start of the hearing, send to the ICE Office of the Executive Secretariat for OD clearance a draft broadcast message announcing the hearing following the format provided in the OCR broadcast message template (Attachment 8.3), to be broadcast to the agency by OPA no later than the morning of the hearing;
 - 22) Provide a cleared, final copy of the written testimony to OPA;
 - 23) Determine, in coordination with the witness, the personnel to accompany the witness to the hearing. Witnesses will be accompanied by as few ICE personnel as necessary. This, for most hearings, will mean one OCR representative, one OPA representative, and one subject matter expert; and
 - 24) Designate OCR staff to view or attend the hearing in order to provide the summary described in post-hearing procedure 5.3, below.

5.2. Briefing Books.

- 1) The briefing book will be cleared by the OCR AD, and must contain the following:
 - a) Table of contents;
 - b) A copy of the official invitation from the congressional committee (if provided);
 - c) Committee Member profiles;
 - d) Witness list with panel breakdown, as appropriate;
 - e) A copy of the prepared oral statement;
 - f) A copy of the prepared written testimony;

- g) Copies of all other witness testimony (if applicable);
 - h) A final “recent updates” hearing memo (as described in section 5.1, above);
 - i) Possible questions and answers (Q&A) from committee Members;¹
 - j) Copies of any outstanding congressional correspondence with committee Members; and
 - k) Additional background material as needed.
- 2) OCR will provide a hard or electronic copy of the briefing book to the witness as soon as is practical, but no later than close of business on the day before the first pre-brief for the hearing.
 - 3) OCR will provide an electronic copy of the briefing materials to each Directorate or Program Office invited to the pre-brief as soon as practical, but no later than close of business on the day before any pre-brief. If unable to meet this deadline, OCR will provide a copy of the materials (hardcopy or electronic) to each invited Directorate and Program Office prior to the pre-brief.

5.3. Post-Hearing Procedures. Following the hearing, OCR personnel will:

- 1) Prepare a brief hearing summary, to include ICE get backs, and distribute it to OCR leadership within 24 hours of the close of the hearing;
 - 2) Task and coordinate responses to ICE get-backs (note: Questions for the Records (QFRs) for all hearings are tasked by the DHS Executive Secretariat directly to DHS components; OCR should not task QFRs for response).
 - 3) Obtain a transcript of the hearing;
 - 4) Review the draft hearing transcript to ensure any factual errors are corrected and submit revised testimony to the committee per the committee’s instructions; and
 - 5) No later than one week following the hearing, coordinate a “hot-wash” briefing with the ICE witness(es), the OCR AD, and appropriate OCR staff to review hearing preparation materials and processes to identify areas for improvement, if any.
- 6. Recordkeeping.** OCR will retain electronic copies of hearing transcripts, summaries, and all briefing book materials for ten years from the hearing dates or in accordance with any applicable National Archives and Records Administration-approved records schedule, whichever is shorter.

¹ The answers provided in this Q&A document should contain no more than three-four bullets of two-three sentences each, for easy delivery.

7. **Authorities/References.**

- 7.1. Department of Homeland Security, DHS Management Directive 2110, Congressional Hearing Preparation for DHS Officials (Jan. 24, 2003).
- 7.2. Department of Homeland Security, Standard Operating Procedure *Hearing Checklist* (May 2010).

8. **Attachments.**

- 8.1. ICE Testimony Template.
- 8.2. Recent Updates Memo Template.
- 8.3. OCR Broadcast Message Template.

- 9. **No Private Right.** These guidelines and priorities are not intended to, do not, and may not be relied upon to create any right or benefit, substantive or procedural, enforceable at law by any party in any administrative, civil, or criminal matter.



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