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House Appropriations Subcommittee on Homeland Security Holds Hearing on Fiscal 2021 Budget Request for Immigration and Customs Enforcement

LIST OF PANEL MEMBERS AND WITNESSES

ROYBAL-ALLARD:

The subcommittee will come to order. Today, we welcome Matthew Albence, the acting director of U.S. Immigration and Customs Enforcement. Thank you for being here this morning. As you are aware, we continue to monitor the situation on the southern border and the impact it has on ICE resources. We look forward to hearing your perspective on ICE's operations and the funding priorities you have for the agency.

As chair of this subcommittee, my priorities are to ensure the integrity of our borders and our immigration system, but also to ensure we are appropriately balancing all our legal responsibilities in a way that exemplifies our American values. As I told the secretary, I believe the administration has erred exclusively and determinedly on the side of enforcement and removal to the detriment of the due process rights of migrants, particularly asylum seekers and the human treatment of anyone within DHS custody.

I believe that it is critical that we protect those fleeing violence and persecution and ensure they have meaningful opportunities to seek asylum or other forms of protection in accordance with our laws and values. I believe we must take corrective actions to get this balance right.

Mr. Albence, I know we likely disagree on whether the administration's immigration policies strike that right balance. But, it is my hope that you will work with this subcommittee to improve the conditions within your facilities to ensure individuals in your custody are treated with dignity and respect, to follow congressional intent on the use of appropriated funds, correct due process deficiencies that make increasingly--make it increasingly difficult for immigrants navigating our immigration system, respect the rights of asylum seekers, and prevent immigration enforcement activities from having a chilling effect on the willingness of immigrants to interact with their local law enforcement agencies.

These are important issues because, from my perspective, the basic fault of the current approach is that immigrants in removal proceedings are too often treated like criminals. Those in detention are held in facilities that can only be described as penal. In many cases, they are held in prison cells or local jails even though immigration detention is supposed to be civil detention. Whether or not they are in violation of immigration law, they are not criminals. Even those categorized by ICE as criminal aliens have paid their debt to society by completing any sentence imposed on them in a court of law.

Unfortunately, the rhetoric and the policies of this administration continue to make it difficult to achieve the right balance between enforcement and due process, between security and humane treatment because they have instilled fear in my community and across the nation. I hear repeatedly of families afraid to go to work, of Dreamers who live with anxiety about their future in the only country they know as home, and of elementary school teachers who state their young students exhibit signs of PTSD because they are

afraid that one day they will come home to an empty house. By all indications, the administration has exacerbated our challenges in the interior and especially at the border where they have put the lives and wellbeing of thousands of migrants at risk.

This subcommittee must also be mindful of the resource limitations we face. The fiscal year 2021 budget request for the department included several holes that we will need to fill, such as an assumption of \$600 million in savings from a TSA passengers security fee increase that will almost certainly not be authorized.

Furthermore, detention is a very expensive option to taxpayers. It should be reserved for cases where public safety or flight risk is a valid concern based on an individualized analysis. When public safety is not a concern, ICE should consider alternatives to detention. When used as intended with appropriate case management support, alternatives to detention have proven to be effective in mitigating flight risk and improving compliance with immigration court requirements.

For example, the Family Case Management Program had an extremely high rate of compliance before it was terminated. More than 99 percent of participants attended the required check in appointments and immigration court hearings. The Alternatives to Detention Program, however, does have room for improvement. That is why we included funding in the fiscal year 2020 appropriations for an independent study to develop recommendations on a path forward. Nevertheless, improving ATD's effectiveness will also require a commitment from ICE which I hope we can count on your for.

For those in detention, I remain seriously concerned about substandard conditions. And I'm disappointed that progress has not been made, not just under your tenure, but well over the last decade or more. The change that is needed requires leadership attention and a will to do better.

Today, we will discuss many pressing challenges and problems. Consequently, it is important to note that any policy disagreements we may have with this administration is in no way intended to vilify the ICE workforce. Therefore, I want to recognize the dedication and commitment of the ICE women and men who carry out the agency's varied missions every day with dedication and in good faith.

The subcommittee will continue to work with you to ensure they have the resources and oversight needed to carry out their missions effectively, safely, responsibly, lawfully, and humanely. We have always endeavored to work collaboratively with you to fix problems where needed, and we will continue to do so, hopefully with your partnership.

Thank you, again, for being here, and before I turn to the acting director for a summary of his written statement, the text of which will be included in the hearing record, let me first recognize our distinguished ranking member, Mr. Fleischmann, for any remarks he wishes to make.

FLEISCHMANN:

Thank you, Madam Chair, and I thank you for having this hearing today. Welcome, Director Albence. It's a pleasure to be with you today, as always, sir. Want to thank you for your time and your testimony before the subcommittee today to present the Immigration and Customs Enforcement fiscal year 2021 budget request. The administration's proposal includes a robust \$2 billion increase over the current year budget, with the goal of increasing the number of law enforcement officers, homeland security investigators, detention beds, as well as attorneys and legal and support teams.

These are challenging times for your agency, sir. Last year, nearly 900,000 people presented themselves at the border illegally, and a large percentage of these people are now under your watch as claims for asylum and status are adjudicated. The surge last year compounded an already heavy caseload of those people on the non-detained docket prior to the calendar year 2019. Funding in 2021 must keep pace with this workload, including more ERO (SP) officers. We need to do better to address these requirements.

Further, we cannot overemphasize the importance of ICE homeland security investigations, work to cripple transnational criminal organizations and terrorist networks. We need a robust force in HSI to combat drug trafficking, human trafficking, terrorist organizations, and the exploitation of vulnerable people. I see in your written testimony that you have the numbers demonstrating that investments in HSI will result in criminal arrests. I will continue to advocate for robust funding for this cause in the coming year.

Compounding the growing complex and heavy workload, your agency is facing an incredible challenge as ICE personnel must deal with an increasingly hostile atmosphere in many communities as they go about their jobs and enforce the laws of this country. This is not safe for anyone, the officers, the people on the dockets, nor the communities themselves.

I very much appreciated your visit the other day, sir. I think the more dialog we can have about the operations and responsibilities of enforcing the laws under your jurisdiction, the better we can all understand the challenges of your mission. Conversely, the committee--for the committee to be a partner, we look to ICE to be transparent, its operations and financial picture. Together--together, we will find a path forward to a successful '21--2021 year appropriations bill where these funding needs can be addressed. I think this hearing today can be a good first step in that direction.

I look forward to your testimony today, sir, Director Albence, as we discuss these many issues. Thank you, Madam Chair. I yield back.

ROYBAL-ALLARD:

(OFF MIC)

GRANGER:

Thank you--thank you, Director Albence, for being here and the work you do. I know it's very, very difficult. I was just at the border a short time ago, a few weeks. It's my sixth time to be there and to look at this. And so, I know the crisis. It's better, significantly better.

But, we all still have the same situation about illegal drugs that are being carried across our border and the criminals who are bringing them to our country. And I know that the cartels aren't limiting themselves to drug trade. They're also taking advantage of the border crisis and are now in the transportation field because they're bringing thousands of people, some only infants, across our borders, victims of human trafficking, which one of the most disgusting and--and brings such concern to all of us because it affects the lives of the--the flow of drugs destroying some communities.

Again, I see a great deal of improvement in the situation there. But, a strong immigration customs enforcement reduces that. We just all need to be on the same page. It's true that some of the people that reach our borders aren't criminals. Some are just fleeing violence and trying to find a better life, no way to make a living, and their neighborhoods are very dangerous. We need to continue to encourage the

countries they come from the places they travel from to do their job in making their country safer and those communities where they can stay as families.

I'll continue to work with the administration to ensure that ICE has the resources needed to apprehend criminals in our country and conduct the investigations needed to hold the cartels accountable. We owe you that. And, again, thank you for your job. We're anxious to hear your report. Thank you.

ROYBAL-ALLARD:

First, a housekeeping matter. The order in which members will be called for questioning will be based on the seniority of those present when the hearing was called to order, alternating between majority and minority members. Also, to ensure everyone has ample opportunity to ask questions, I would ask each member to try to stay within the allotted five minutes per round. Mr. Albence, please begin your statement.

ALBENCE:

(OFF MIC)

ROYBAL-ALLARD:

Oh, you don't have a mic. Here.

ALBENCE:

Usually people don't want me in front of a mic. Okay. Thank you, Chairman Roybal-Allard, Ranking Member Fleischmann, and distinguished members of the subcommittee. It is an honor to appear before you today representing the 20,000 outstanding professionals of ICE. And ma'am, I do want to thank you for recognizing the incredible that they do under extremely difficult and complex circumstances. I know it's much appreciated by our workforce to hear that kind of platitude. So, thank you.

As you're aware, in FY2019, DHS experienced an unprecedented humanitarian and homeland security crisis along the southwest border. During this time, the number of aliens apprehended at or near that border increased significantly. From October 1, 2018 through September 30, 2019, the U.S. border patrol apprehended more than 851,000 aliens between southwest border ports of entry, including more than 470,000 members of family units, more than 301,000 single adults, and more than 76,000 unaccompanied alien children.

The increase in the number of aliens strained both CBP and ICE resources. This presented an urgent need for additional detention beds, transportation expenses, and other critical resources to not only care for a growing detained population, but aggressively attack the transnational smuggling organizations exploiting and profiting from this crisis.

With this in mind, I request your assistance in providing ICE the funding it needs to uphold our immigration laws humanely and effectively, to continue to protection national security and public safety, and to preserve the integrity of the global infrastructure through which legitimate trade, travel, and finance move. The president's FY2021 budget includes \$10.4 billion in net discretionary funding. This increase in funding is critical for ICE to meet its diverse and expansive mission needs.

Despite a decline from the peak numbers of apprehensions during the summer of FY2019, DHS and ICE continue to grapple with the lasting effects of the border surge. ICE projects that until fundamental changes are made to the immigration enforcement process, including legislation to address current legal loopholes that incentivize high levels of illegal immigration, periodic surges at the border will continue as will unforeseen circumstances that profoundly impact our operational landscape.

Even if the measures enacted this past year prevent another historic surge, the effects of the enormous number of illegal entries over the last two years will reverberate for years, if not decades. Today, ICE's non detained docket includes a record 3.3 million cases with over a million of these aliens having already received final orders of removal. The Department of Justice's executive office of immigration review issued roughly 181,000 final orders of removal in FY2019 and approximately 70,000 final orders of removal in just the first quarter of FY20.

As the numbers continue to climb, they will further outpace ICE's ability to conduct its work identifying, apprehending, and detaining the staggering number prior to effectuating removal. Unfortunately, ICE's inability to swiftly remove individuals so ordered by a federal judge weakens the integrity of the entire United States immigration system, further adding to the misperception that there are no repercussions for illegally entering the United States and adding strength to this already significant pull factor.

As a result, the administration's budget requests a law enforcement attorney and support staffing enhancements required to maintain the safety and security of our detained population, move cases in a timely fashion through the immigration court process, as well as to conduct enforcement actions to identify, arrest, and remove those with final orders. Without this backend enforcement component, you will never have true border security, and our country will be less safe.

In FY2019, ERO experienced a significant increase in overall book-ins due to the border crisis. During this time period, overall book-ins increased by 29 percent compared to FY2018 while book-ins resulting from CBP activity jumped from 61 percent of overall book-ins in FY18 to 73 percent in FY19. At the peak of the crisis in August 2019, ERO had over 56,000 aliens in detention, and both ERO and CBP were forced to conduct unprecedented direct releases of hundreds of thousands of aliens into the United States. During this time, ICE directly released approximately 200,00 family unit members from custody.

While the increase in detention beds was significant, it must be put in context. ICE detains a mere 1.5 percent of all aliens on its dockets, with most of those resources dedicated to aliens for whom Congress has already directed are subject to mandatory detention, felons, public safety threats, and flight risks. This budget request funding supporting a total of 60,000 detention beds, including 55,000 adult beds and 5,000 family beds, which are necessary for ICE to respond to border surges, prevent the return to wholesale catch and release, manage individuals with medical conditions requiring cohorting, and to affect the proper and efficient removal of aliens with final orders.

The FY2021 budget requests \$62.7 million for staffing and facilities funding for the ICE Office of Principal Legal Advisor to address severe structural staffing shortfalls. The funding supports and additional 421 attorneys and 122 legal support staff to handle litigation matters from a growing number of immigration judges that has far outpaced OPLA's growth. Since 2017, EOIR authorized and funded number of IJs has increased 77 percent, while in comparison, OPLA's funded number of personnel has only increased 12 percent.

The continual increase of EOIR resources without a corresponding increase in OPLA resources will not only not reduce the immigration court backlog, it will likely increase it. The FY2021 budget sets us on a

path toward achieving a staffing resource balance with EOIR to ensure the properly trained, equipped, and prepared OPLA attorney is ready to represent the U.S. government in immigration court.

FY2021 budget includes an increase of \$259.3 million for Homeland Security Investigation, the principal investigative arm of DHS responsible for investigating transnational crime and for disrupting and dismantling global criminal enterprises and terrorist networks that threaten or seek to exploit the customs and immigration laws of the United States. Appropriations received in FY2019 resulted in numerous record breaking successes for HSI with investigative efforts leading to 37,547 criminal arrests, the highest arrest total since the agency's inception and 2,000 more than FY18's record breaking year.

Additionally, HSI continued the success of protecting the most vulnerable among us, arresting 2,197 criminals for human trafficking offenses and 3,957 predators for child exploitation violations, while at the same time rescuing and/or identifying 428 victims of human trafficking and 1,069 victims of child exploitation.

Moreover, HSI addressed the threat to our communities posed by violent transnational gangs, leading to the criminal arrests of 3,886 gang members, including 337 arrests of members of the notoriously violent MS13 gang. HSI also kept more than six tons of opioids to include nearly two tons of fentanyl out of our communities while seizing over \$775 million in illegally obtained currency and assets. In FY2019, HSI was also integral to DHS's response to the border crisis by dedicating hundreds of special agents and analysts to combat the trend of fraudulent families crossing the border.

As a result of these efforts to date, HSI has identified 761 fraudulent family units, 1,100 fraudulent documents, and prosecuted 1,106 people. One of the tools utilized by these teams is rapid DNA technology. Through this initiative, HSI has identified 275 fraudulent family units and present 372 cases for prosecution. While seeing the fraud rate drop from 19 percent when the project began to less than ten percent now.

HSI also began receiving intelligence about children being forced to pose as part of family units who were then departing the United States back to their home countries shortly thereafter only to be recycled and used again for the same purpose repeatedly. To combat this form of trafficking, HSI initiated Operation Noble Guardian in May of 2019 and to date has encountered over 790 children who entered the United States as part of a family unit and then separately returned to Central America. This operation has resulted in 444 administrative arrests, six criminal arrests, the rescue of eight children, and has led to several significant ongoing HSI investigations involving hundreds of recycled children.

With regard to alternative to detention, ICE's ATD program uses technology and case management to monitor aliens' court appearances and compliance with release conditions while the removal proceedings are pending on the non-detained docket. While more resources would improve the efficacy of ATD at the current level of enrollment, the program already faces significant resource and enforcement challenges and is not a viable solution for addressing the more than 3.3 million cases on the continually expanding non-detain docket.

While ICE has expanded its use of ATD from approximately 23,000 participants in FY2014 to the current participant level of approximately 90,000 in FY20, year to date, at the request of Congress in response to the crisis at the border, this expansion has come with a number of challenging--challenges, including a high level of absconders, particularly among recently enrolled family units. In FY2019, the absconder rate for family units was 26.9 percent, demonstrating the growing challenges such enrollments creates for immigration enforcement.

Additionally, in FY2014, ICE spent \$91 million on ATD, which resulted in 2,157 removals. ATD funding increased to \$274.6 million in FY2019. However, removals of participants has insignificantly increased as only 3,125 were removed that fiscal year. This additional investment of \$183.6 million only led to an additional 960 removals in the last fiscal year at a cost of nearly \$190,000 per additional removal.

In order for this program to have any chance of success, ICE needs the resources to keep all ATD participants enrolled through the pendency of their proceedings and a significant augmentation of the personnel and detention beds to locate, arrest, detain, and ultimately remove those who violate the terms of their enrollment or receive final orders, which the vast majority of aliens do.

ICE's most valuable resource is its people, the incredible dedicated professional men and women who are on the front lines building cases that topple transnational criminal organizations, representing the government in court, and enforcing our immigration laws. To that end, the FY2021 president's budget supports robust growth in ICE personnel to ensure ICE has the right people in the right locations working on the right matters to keep our borders secure and our country and its citizens safe. Specifically, the FY2021 budget request includes 2,844 law enforcement officers, including 2,095 deportation officers and 749 criminal investigators. As mentioned, this budget also supports 421 attorneys who will represent the United States government immigration proceedings and 1,371 operational support personnel.

In conclusion, ICE continues to balance effective law enforcement with often overwhelming demand, prioritizing its limited resources across a multitude of investigative enforcement disciplines for which it is responsible. Funding additional people, technology that makes those people work smarter and more effectively, and equipment to keep them safe are especially prudent investments given today's challenges. We believe no other investment will return more operational value on every dollar than that on the extraordinary men and women of ICE.

Shutting down dangerous cartels, dismantling gangs, protecting our economy system, and keeping our communities safe by removing criminals and public safety threats along with ICE's ability to counter emerging threats to the homeland constitutes an operational success that continues to yield important results for the safety of all who reside in this great nation. Thank you, again, for inviting me to testify today. I look forward to your questions.

ROYBAL-ALLARD:

Thank you, Mr. Albence. The budget proposes funding for an average daily population of 60,000. This is a drastic increase of 14,726 over the capacity that was funded in FY2020. This proposed increase would require an additional \$710 million. The budget justification materials provided no analysis to substantiate this historically high request for increased detention capacity.

Further, during the budget roll out briefings, no such analysis was provided to committee staff, despite an advanced request for that analysis. After I raised this issue with the secretary, a few weeks ago, ICE finally shared the model with us. However, I do not believe that the model supports the ADP requirement in the FY21 request. Could you please walk us through the analysis that went into supporting a detention bed requirement of 60,000 in fiscal year 2021, or is the proposed ADP primarily a reflection of anticipated policy choices?

ALBENCE:

It's--it's a matter of numbers that we have seen. So, we look at recent history. Obviously, last year as an anomaly with a large number. So, it's going to increase the ADP that we're projecting for the--the forthcoming year. And obviously, we built this budget, you know, some time ago. But, there are also, not only policy decisions, but there's legal decisions or--or--and court decisions that could have a significant impact upon what happens with regard to both cases at the border and the increase of individuals coming to this country illegally that may need to be detained as well as--as we just mentioned, there were 900,000 cases added to the non-detain docket in just the past two years.

Those individuals are ultimately going to have decisions made on those cases. As you saw, EOIR issued 181,000 removal orders last year and 70,000 already thus far this year. If we're going to have integrity of our immigration system, there has to be an expectation that when the judge orders these individuals removed, that we are actually going to go out, take those individuals into custody, detain them for a short period of time, and effectuate those removals. We need the--so, even with, as you mentioned, ATD--even with the ATD at the front end, on the back end of the process, we're still going to need to detain these people for a short period of time while we get travel documents, while we arrange for flights.

So, we are going to need that type of capacity. Additionally, NPP (SP) at this point has effectively kept our ADP below what we're currently funded at this fiscal year. If something should happen to NPP such that we're no longer able to utilize it as we are currently or it has to be scaled back depending on what the court rules--and there's litigation ongoing with the Supreme Court. So, I don't know where that's going to turn out. But, there are other avenues where we can process and--and deal with these cases that would require detention.

So, for example, the interim federal regulation on asylum--so, many of the individuals that would be subject to that IFR are currently being put into NPP, meaning that they're going to be returned to Mexico and will go through their court hearing process via that program. If we are in a position where we can no longer utilize NPP or not use it as robustly as we currently are, those individuals generally are going to be subject to that IFR--that asylum IFR and, as such, will be processed for expedited removal and subject to detention--mandatory detention during the course of that hearing. So--so, we're going to have to have that capacity to build it.

And then, finally, we need to have some flex capacity. I can tell you--you don't--two falls ago, when we started to see the huge uptick, we had significant discussions with DHS--and Chip Fulghum was the CEO at the time, as you all know--with regard to what should we do. We saw that the numbers that were coming in the border were going to outpace what we could detain. And, you know, there was a conscious decision made. We were on a CR as to not make the capital investment into additional detention beds at that time because we didn't feel it would be fiscally prudent, not knowing what the budget was going to be and not having the resources with which to pay for it.

However, what that resulted in is when we finally got the budget in the latter part of the spring in that year, we were having to play catch up. So, we were trying to obtain these additional detention beds at that time, which, as you know, we had to contract with those beds. The contractors have to recruit, train, vet, screen all these employees. And it took 90 to 120 days to turn some of those beds on. So, some of the overcrowding that you saw in those border patrol facilities was a direct result of our inability to have those beds turned on and to have that standing capacity, which is what we're trying to maintain with this new budget.

ROYBAL-ALLARD:

I'm running out of time. But, what I'm understanding from you then, that a lot of this is primarily a reflection of what you're anticipating. So, my follow up question would be that--over the last year the department rolled out several new programs that result in the removal of migrants directly from CBP custody instead of being transferred to ICE. You mentioned the migrant protection protocols. There was also the prompt asylum claim review, the humanitarian asylum review process, the asylum cooperative agreements, and the increased use of electronic nationality verification.

Specifically, how were these programs factored into that 60,000 bed requirement, and was the fact that this committee provided increased funding for alternatives to detention programs, which allows asylum seekers to live in their communities instead of detention facilities also part of that calculation? And I think you some--in some way, answered some of that. But, if you could just elaborate a little bit more.

ALBENCE:

Sure. So, a lot of those individuals, when you look at how they're being processed and where they're going, are not directly coming into--into ICE custody. So, what we are getting, in a lot of those cases--so, as you look at the ENV (SP) cases--most individuals that are being subjected to ENV and that are returned and having that vetting done in their home countries by their home governments were individuals that would come into our custody and generally would be removed in a short period of time anyway. They would be a seven to ten day removal. Those are the ones that had the electronic travel documents. We had consular officials on site. We were able to move those--those individuals. So, it kept our ability to turn over those beds more quickly.

Now, that those individuals are only coming to our beds for a very short period of time and going out through those programs, the people that we're getting into custody are actually longer--staying in--in our beds longer. If you look at (INAUDIBLE), you'll see that our (INAUDIBLE) has jumped significantly from last year to this year because we don't have those short term detainees now coming in artificially pulling our (INAUDIBLE) numbers down.

ROYBAL-ALLARD:

Okay. But--I'm sorry. But, I'm still not clear. Were these programs factored into that analysis?

ALBENCE:

We do. We do.

ROYBAL-ALLARD:

They were?

ALBENCE:

We--we look at all of that. We look at the various existing framework of things that we have going on, whether it's policy or legal decisions, which would impact, at the time we build the model, which we know of, as well as potential policy changes and--and estimating where we think a potential policy change or a potential court decision may have an impact.

And you mentioned ATD. We did get resources--and we're appreciative of it--for ATD last year to increase the number of officers that are able to back end ATD enforcement. So, we expect that there's going to be a higher number of fugitives this year arrested than there were last year, which obviously, again, are going to need to be detained prior to removal.

ROYBAL-ALLARD:

Okay. I'm going to have to gavel myself.

ALBENCE:

Okay.

ROYBAL-ALLARD:

I'm over time. Mr. Fleischmann, I'll be generous with your time as well.

FLEISCHMANN:

Thank you, Madam Chair. You always are. It's a pleasure. Thank you, Mr. Director. I'd like to ask you some questions about ICE morale and--and hiring, sir. Mr. Director, it's unfortunate to me that your agency has become so politicized in recent years. It's important to remember the reason this agency was first created in the years following September 11th was to enforce our immigration laws and ensure the detention of removal of criminal aliens as well as aliens from countries whose government supports state-sponsored terrorism.

Today, sadly, some people, even some members of Congress, are calling for the abolishment of the agency simply because the men and women of ICE are--are enforcing the laws that Congress has enacted. Mr. Director, can you please describe how this current environment has had an impact on ICE retention and recruitment efforts as well as the morale of your ICE employees? And as a follow up question to that, sir, will you be able to meet your recruiting and hiring targets this current fiscal year, sir?

ALBENCE:

Thank you, Congressman. I will tell you--and--and having been in the federal government for 25 years, I don't think there is a more determined, professional, resilient workforce than currently exists in Immigration and Customs Enforcement. If you look even, you know, from the time the agency stood up in 2003, at which time I was a part of it, and the challenges that we went through--I mean, we've been baptized by fire. We're gone through a lot of--unfortunately, is has become political. There shouldn't be anything political about enforcing the laws that Congress has passed.

We can only enforce those laws. We can't enforce laws that we make up. We can't enforce policies that--that--that we--we have to do everything found in law and--which we are. I can tell you in going out and talking to my people out in the field, the number one complaint I get from them is the fact that--why are they being vilified when they're going out there every day, putting their lives on the line, doing an incredibly complex and dangerous job for not a whole lot of money, you know, not sure if they're going to go home to the safety of their families every night, and yet, the individuals in--within the beltway and

some of the media continuing to vilify and criticize them for doing a tremendous job under incredibly complex circumstances?

And I--and I speak to the resiliency--when you look at our--to your question about retention and recruitment--our non-retirement retention rate is, you know--our attrition rate is below like three percent. Our people are dedicated. They believe in the mission. They believe in this country. They believe why they're here. They believe in what they're doing every day when they get up to do it. So, we have no problem recruiting. We expect to meet our goals. When we put our announcements, especially when you look at the law enforcement officers, those jobs go posted on USA Jobs, and they get closed very quickly because we get more applicants than the system can handle.

You look at what we've done in the attorneys--we've got--OPLA has been very successful at hiring attorneys. So, again, if we get that funding for the additional attorneys, we can put those people into--into our workforce very quickly.

FLEISCHMANN:

Yes, sir. And, again, I thank you for your dedication and their dedication as well, sir. The budget request calls for a very ambitious hiring effort in fiscal '21 across the agency to include a request for over 2,8000 new law enforcement officers and over 1,300 operational support positions. Two questions, sir. Do you think you'll reasonably be able to hire into this amount of positions in just one year, and why are these positions particularly the support positions, critical to your work, sir?

ALBENCE:

Again, I think we can. We have pipelines already built from prior announcements that we're filling in. I know all of our classes at the academy are filled through the next two or three months from the last time I saw that we're filling our classes very quickly and very easily. So, we do have a lot of people. There are a lot of people despite the ugly rhetoric that's out there. There are a lot of people that want to come work for this agency because they believe in the mission.

Operational support obviously is hugely important, you know, especially when you start looking at--at some of the positions on the HSI side, for example, like the intel analysts. What we've seen with the intel analysts--the return on an intel analyst--we have seen almost a double--100 percent return of--of statistics from an investigative standpoint, so, 100 percent more cases that intel analysts are involved in. And they're only involved in about 12 percent of cases right now. But, we have 100 percent more arrests, indictments, and convictions on those cases because with those intel analysts we're able to do a much more thorough job investigating these--these transnational criminal organizations and--and all the--within the various disciplines that we're doing.

So, that's one where intel analysts are cheaper than agents. We can bring them on board faster because they don't need to go through the academy and those various things. So, that's some place where support staff pays off significantly.

FLEISCHMANN:

Thank you. Madam Chair, I'm about out of time. So, I will yield back to give other members who wish to ask--thank you so much.

ROYBAL-ALLARD:

(OFF MIC)

FLEISCHMANN:

No, not at all. I was just--just thinking of your distinguished colleagues. Thank you.

ROYBAL-ALLARD:

Mr. Ruppertsberger.

RUPPERSBERGER:

Yes. Well, thank you for being here. I'm concerned about the ICE's discretion regarding who you arrest. I think a lot of the perception out there--why people are concerned or afraid of ICE is because of the fact that it seems that a lot of people who you are detained--I'm going to get into those numbers--haven't committed a crime other than trying to come here for--for different reasons. I was a former prosecutor. I know that when you're dealing in crime and the--and the areas that you do and--that you need to prioritize. And, in my opinion, there's some really bad people that are coming into our country and are here in this country illegally.

You've got gangs, MS13. You have cartels. You have drugs. And, you know, we all know that you have dedicated people and that we wrote the laws. But, it's a matter of prioritizing. So, in that regard, my question is--can you break down--I know you gave a lot of numbers. I couldn't keep up with it. But, can you break down the number of immigrants held in your facilities who have no criminal history?

ALBENCE:

So, I--I--

RUPPERSBERGER:

--And who are these people--

ALBENCE:

--So, mostly the individuals that are in our custody that don't have a criminal history are recent border entrants that were arrested entering the country illegally, have been processed for expedited removal by the border patrol, and they are subject to mandatory detention. So, those are non-discretionary (INAUDIBLE)--

RUPPERSBERGER:

--Okay, and why are they subject to--

ALBENCE:

--By law--

RUPPERSBERGER:

--Okay.

ALBENCE:

By law, by the statutes, sir. So, those are non discretionary beds, non discretionary arrests that we have in custody. So, I think a bigger--and so, we have about 36 percent of individuals right now in custody--have criminal convictions.

RUPPERSBERGER:

Of the people you have in custody, 36 percent do not have criminal convictions?

ALBENCE:

No, 36 percent have criminal convictions.

RUPPERSBERGER:

Have criminal convictions.

ALBENCE:

So, the remainder of 64 percent are individuals that are generally going to be those individuals that were arrested crossing the border illegally that are now going--that are subject to mandatory detention. Some of them maybe claiming asylum. Some of them may be waiting for travel documents to return home. But, whatever the case may be, we don't have the discretion with which to release those individuals into the country.

And most of those individuals, again, have no ties to the community. They're going to be flight risks. These are individuals that crossed the border this morning, were arrested by the border patrol by lunchtime, and are now in a bed by (INAUDIBLE).

RUPPERSBERGER:

Do you have a breakdown? Are these families? Are these--how many--how many--

ALBENCE:

--It's mostly going to be single adults. So, we don't have the legal authority to hold the children. So, those are going to go--the UACs go over to HHS. So, those--the only--they spend a very short period of time, just while they're being transported from border patrol facility to HHS in--in ICE custody.

The families--we have about 2,500 family detention beds. We're utilizing most of those beds as we speak, and a lot of those individuals that are in those beds are in the process of waiting to be removed because they--they have--have made an asylum claim for which they were deemed to be not eligible or they're--have been reviewed by a judge and hasn't.

But, again, we can only hold those for 20 days, which is why you saw the criminal--the criminal organizations and the smuggler organizations exploiting that last year, why you saw, you know, almost a half a million families coming into this country because they knew we couldn't hold these people. And that's why you had these children being recycled and these--and children being rented so that these family units could come here--the unrelated adults paying for this child so they could come here and pose as a family, knowing full well that they're going to be released.

And we had a case just a couple months ago where we were doing DNA testing and there was a woman that was presenting with a two month old baby. And the agents that were working that case didn't--smelled something wrong with that case. And they started investigating it, and they did DNA testing. And the baby kept coming back with two different strains of DNA. After the third test, they finally found out what was going on. The woman, who was completely unrelated to that baby, was spitting in that child's mouth, trying to beat the DNA system.

That's what we're dealing with at the border. That's the type of environment that we're--that we're challenged with.

RUPPERSBERGER:

Yeah. But, let me get--let me get back. And I understand that. Let me get back to what I said in the beginning now.

ALBENCE:

I can answer those questions.

RUPPERSBERGER:

My issue clearly is--I would hope that your priority would be the bad guys. There are a lot of bad guys.

ALBENCE:

I get it. If you look at what we did just from an ERO side last year, we arrested 143,000 people; 123,000 of them were either criminally convicted or have pending criminal charges. And you're talking about 1,900 homicides, 5,000 sexual assaults, 1,800 kidnappings, 45,000 assaults, 67,000 drug charges, 74,000 DUIs. And if you look at those (INAUDIBLE)--

RUPPERSBERGER:

--How about--how many gang--

ALBENCE:

--I don't know the--I think gang was around 3,000 or 4,000. I can get you that number. But, I don't want--

RUPPERSBERGER:

--And drugs--

ALBENCE:

--Sixty-seven thousand. So--and if you look at--and if you look at those individuals, that 123,000 accounted for almost half a million crimes. So, each of these individuals averaged four--so, if you take that out, that's an average of four criminal offenses per person that we put in custody. So, it--

RUPPERSBERGER:

--Okay. Well, I've got more real quick, and I don't want to run out of time. I would hope you priority--prioritize on the bad guys and that's important. And if you could get those numbers of my staff, I appreciate it--

ALBENCE:

--Absolutely, sir.

RUPPERSBERGER:

Okay. And there's--maybe three or four months ago--an article--I represent the Baltimore region--about how you are using the Motor Vehicle Administration to gain information. And that--I've gotten a lot of calls, people concerned about their privacy, and they're opposed to the idea of your agency categorically rounding up everyone who you suspect to be here illegally. Could you explain your relationship with our Motor Vehicle Administration, how that's not being abused?

ALBENCE:

So, we use the DMV data just like every other law enforcement agency in this country.

RUPPERSBERGER:

Okay.

ALBENCE:

The DMV data within the state of Maryland does not have identifiers with regard to anybody's legal status. So, even though Maryland issues drivers license to--drivers' licenses to illegal aliens--and that's a whole separate policy, national security decision and--and discussion for another time. When we look into that database, we don't know who's legal, who's--and who's not illegal. And I don't need the state of Maryland to tell me. I don't want the state of Maryland to tell me.

When we're looking at somebody, we have--we do targeted enforcement. Again, as you look at the numbers that we have, nine out of ten people that we arrest are convicted criminal, pending criminal charges, an immigration fugitive, or an illegal reentrant. We know every single person that we're going after. What we're trying to do is find them. And that DMV data is often integral to those thing and as well as--when you start looking at what we're doing from an HSI standpoint. When you have officers that are doing undercover operations and the cover surveillance team sees two cars pull in that--we don't know what those guys are there--are those the bad guys that are coming to do a drug deal with us, or is it somebody coming to rip us? So, we need that information in real time to make these decisions.

RUPPERSBERGER:

And the final thing--and I would like your staff to get back to me on that too. I have a lot of constituents that are calling concerned, and I want to be able to explain where it is, including the fact that all other law enforcement agencies use that.

ALBENCE:

Happy to do that.

RUPPERSBERGER:

The final thing is real quick--is that person that died in your custody. I think that's something--whatever the issue is, you have to be aware of. We have to make sure it doesn't happen again. Real quickly, can you discuss?

ALBENCE:

Yeah. I mean, look, every death in our custody is--is--is a tragedy. It's the last--the--the--the two worst emails I get in my job is an email about one of my officers of agents getting hurt or being killed in the line of duty or a detainee dying in custody. These are things we want never to happen.

It's unfortunate that, you know, looking at the incredibly diverse and transient population that we take into custody and looking at the manner in which many of these individuals get here, they go through significant trials and tribulations sometimes getting to this country. Many of them have never had medical care in their home countries and have undiagnosed diseases or--or ailments that they don't even know until we find it when we screen them upon intake. So, it's incredibly unfortunate that we get these individuals that sometimes are--are, you know--are--

RUPPERSBERGER:

--Okay. Well, in that case, could you get the information to my staff? I'd like to look at it, make sure we view it--

ALBENCE:

--Certainly, sir. Certainly will. And we fully investigate, and we do it--absolutely.

RUPPERSBERGER:

Who--who is involved, how many doctors? I want all the facts on that.

ALBENCE:

And we have--and we do. We have a tier layered system to investigate any such death. We have a full medical review board.

RUPPERSBERGER:

Yeah. You'll get--you'll get that to my staff. I yield back.

ALBENCE:

Yes, sir. Absolutely.

ROYBAL-ALLARD:

Ms. Granger.

GRANGER:

The committee has made major investments in the integration courts. And yet, you--as you testified, the dockets are backlogged with over a million pending cases. And even though we added more courts, it--it seems like we still have this crisis situation that doesn't seem to get better.

The--the '21 budget request asks for 374 positions to match up the number of ICE legal teams with the number of immigration courts. Tell me--if--if--if that were--were supported, if we say, "Okay, we'll fund that," what kind of report will you give to us next year?

ALBENCE:

I will be able to tell you that we are--are--have made good progress towards getting to a situation where these cases are moving into a timely fashion, and we're able to get to--

GRANGER:

--What does good progress mean--

ALBENCE:

--Again, we're--we're playing catch up at this point. So, we've got--there's a huge gap between what EOIR has been given over the past couple years as opposed to what ICE has been given. So, this is a good down payment, what we've requested in this fiscal year. But, it's--I would say in order to make long term systematic improvements and correction to a system that's been, you know, woefully--

GRANGER:

--We understand the system--

ALBENCE:

--Right. But--

GRANGER:

--But, this is year after year after year and more and more and more money--

ALBENCE:

--Right--

GRANGER:

--And so, even though I--I've--I just came back from the--the border--sixth time I've been there to see what's going on. And it looks so much better. It really does. I mean, I came out feeling very optimistic. This is not optimistic. What--your report is not optimistic at all.

ALBENCE:

No, it's not.

GRANGER:

So, we're saying--you're asking for more. What do we get for that? What's--what's--not just some progress.

ALBENCE:

So, that's--again, that's one of the things when you look at the 900,000 people that were added to the--to the docket in the past two years. Those cases and those individuals are a workload for the border patrol or CBP for the three to six days that they're in their custody. And then, they move on, and border patrol never gets to deal with them again.

Meanwhile, they come to us, and we may have to deal with these cases for three, four, five, seven years. Madam Chairwoman, you mentioned the family case management program. That program was five years ago. Eighty percent of those cases have yet to be adjudicated. That's what happens on the non-detained docket. And there is no disincentive for these individuals to get order removed, to continue to file motions to reopen or appeal it to all the various appellate options that they have.

So, the--the non-detained setting has been--has not been fundable. We move cases in a detained setting very well, 60, 70, 80 days. The detained cases move. But, as long as you have a system whereby we don't have enough attorneys to actually present the government's case in court--

GRANGER:

--You--

ALBENCE:

--I mean, I--I--

GRANGER:

--When this started, one of the things we said--why are these people coming across? Well, as you--some are coming because the conditions in their countries are so bad, they will do anything to get out of that. Others are just criminals, and they're--they're using this. But--but, we--we started with this and saying, "We're going to work with those countries, and we're going to work with the countries they come through to try and stop it there."

Doing what we're doing right here, more money, more money, and it just becomes the same amount of people--don't you have to stop and some point and say, "Is this the right process?" Is this--

ALBENCE:

--Well, again, I mean, these individuals have the right to--to--to due process and to make their asylum claims in--in court and have a judge adjudicate those claims. It's just a matter of volume. And--and frankly, the vast majority of these individuals do not have asylum claims which--or claims which meet the legal threshold for asylum. Right now, the asylum grant rate is below ten percent.

So, most of these individuals--this is about the release. These individuals want to come here and be released because they know, regardless of whether they show up for court, regardless of whether or not they get removal order issued by a judge, if they're not in a detention bed at the time that removal order is issued, the likelihood of them being actually removed from this country is nil. And they can go--they can go work illegally. They can raise their children. The children can go to school. And ultimately, even if they get arrested five, six, seven, eight years later, they're in the exact same position they would have been if they had gotten arrested and removed at the border. They didn't lose a single thing, and they made all this--this money and everything while they're here.

That's why--why we're saying is--you need to have backend enforcement of these removal orders. You need to get the removal orders quicker, which is why we need immigration judges, and we need more resource to actually effectuate those removal orders. I have 600,000 people on my immigration fugitive

docket. I arrested, at large, about 36,000 people last year. And about 2,500 of them--if you look at just the 900,000--or over the last two years, we arrested about 2,500 non-criminal fugitives last year.

If we do that based on just the numbers that came in the last two years, it would take us close to 140 years just to clear up that backlog--

GRANGER:

--(OFF MIC)

ROYBAL-ALLARD:

(OFF MIC)

AGUILAR:

Thank you, Madam Chair, Mr. Ranking Member. Acting Director, I wanted to ask a couple questions about DACA.

ALBENCE:

Okay.

AGUILAR:

The Supreme Court hasn't ruled yet on DACA, and we don't expect a ruling until potentially this summer. Are DACA cases being reopened for people in good standing who have had their DACA status renewed?

ALBENCE:

So, the DACA cases that were terminated previously--many of the cases that were in family immigration court were terminated under the prior administration.

AGUILAR:

Administratively closed.

ALBENCE:

Terminated--administratively closed.

AGUILAR:

Okay.

ALBENCE:

And--have been re docketed to go through the--the immigration court process. So, some of the individuals that are currently DACA recipients are still going through the immigration--still have to have their cases adjudicated in immigration court. In order to do that, those cases would be docketed. So, even if an individual--until this DACA case is resolved--let's say we re-docket a case on an individual that currently has DACA and the judge orders that individual removed, we could not effectuate that removal order until such time as the Supreme Court has ruled on the DACA case itself. But, it is a matter of getting these cases back into the system so that--

AGUILAR:

--How many cases are we talking? Have you--have you reopened--or that--that have previously been administratively close--

ALBENCE:

--I honestly don't know. I'll have to get back to you. I don't know. But, I'll certainly get back with you on that.

AGUILAR:

Will they be targets for enforcement and, in some cases, detention?

ALBENCE:

Again, each case is--as I mentioned, we prioritize our cases based on individuals that pose a public safety threat. We do have many individuals that have DACA status that we've arrested, and we currently do, that get involved in criminal activity, violate their DACA status, become public safety threats that we put in custody.

AGUILAR:

I'm not talking about those who violate their status. I'm talking about those in good standing.

ALBENCE:

Okay. But--but, again--again, individuals--

AGUILAR:

--And DACA specifically talks about in good standing--

ALBENCE:

--So--so, we prioritize our enforcement resources against those individuals that pose the greatest public safety threat. Do we do so at the exclusion of other individuals who have been order removed by an immigration judge? No.

AGUILAR:

Is DHS pursuing a policy because it plans to deport DACA recipients immediately after the Supreme Court rules?

ALBENCE:

Not that I'm aware of.

AGUILAR:

Would ICE agents face repercussions if you found out they were planning to detain a DACA recipient in good standing?

ALBENCE:

Yes. I mean, we've--DACA's been around for a long time. We have had no issues with regard to that sort of concern.

AGUILAR:

Have you issued any guidance to your field offices that explains that they should not target DACA recipients in good standing?

ALBENCE:

There was significant amount of guidance that went out back in the prior administration when--when DACA was issued, and there was no changes to that guidance.

AGUILAR:

Nothing in the last four to six months specifically related to--

ALBENCE:

--Not--not that I'm--didn't come from me--

AGUILAR:

--If the Supreme Court overturns DACA, how will ICE respond? Will--will you treat DACA recipients who are in good standing and have successfully renewed their status--how would they be treated?

ALBENCE:

Well, if the Supreme Court rules that DACA is not a legal exercise of executive branch power, then these individuals that have final orders of removal are now subject to removal. Then, those individuals, if they come to our attention, are subject, would be subject to removal.

AGUILAR:

And what about those who had cases administratively closed previously?

ALBENCE:

So, we can only remove people that have removal orders. So, if they have an individual that's going through the court process, and it was administratively closed and has yet to be adjudicated, we would have to wait until that case was adjudicated and then make--and then, obviously if the judge issues an order or grants a form of relief, we would act accordingly.

AGUILAR:

How many DACA recipients have final orders of removal?

ALBENCE:

I don't know.

AGUILAR:

But, your office would have that information?

ALBENCE:

We could find out for you. I have--yeah, CIS would have it because they're the ones that actually are adjudicating those cases. But, we'll--I can get that for you.

AGUILAR:

Do you know how many were previously in immigration proceedings prior to DACA?

ALBENCE:

I don't.

AGUILAR:

Acting Director, have you been part of any conversations that would envision closing our southern border in response to COVID-19?

ALBENCE:

No, I have not.

AGUILAR:

Would it surprise you if some of those conversations are happening.

ALBENCE:

I would suspect that there's conversations being held with regard to exploring all contingencies in the result of--of an emergent situation.

AGUILAR:

It just seems to me some of the rhetoric has been that that's a possibility. Mexico, as of this morning, had seven cases. Canada had 93. The United States had over a thousand. I think if anybody's going to close their borders, it should be those--those countries considering closing their U.S. borders.

A February 6th report described treatment of migrants in detention by ICE personnel. When these detainees attempted to hold a hunger strike to protest what they believed were unfair treatment, they were pepper sprayed, dragged on the floor, and placed in hot showers. These detainees were later placed in solitary confinement. What--what steps are taken to ensure that excessive use of force in ICE is addressed, and have you provided any guidance to staff at the detention centers? And would you be willing to share that guidance with the committee?

ALBENCE:

So, we have standards, which cover all areas of--of the conditions of--of detention of individuals in our custody to include situations where we have--I mean, we've had tragic circumstances where there's been riots in facilities that have been very--and it's the number one concern we have in a detention setting is the safety and security of those individuals that are in there.

So, when there are individuals that disrupt the safety and security of those facilities or cause a disturbance or cause problems that put other people in harm's way, it's incumbent upon that facility to ensure that those issues are taken care of swiftly. And obviously if an individual was pepper sprayed, one of the first thing you do with pepper spray is you wash that pepper spray off that--that individual (INAUDIBLE). That's the standard operating procedure across law enforcement of how you deal with--with somebody that's been--that's been pepper sprayed.

So, if there are times where you have large contingents of people that--that band together to create disruptions and disturb the safe and orderly function of the facility--there are times when they're going to need to be moved. We don't have solitary confinement. We have segregation. But, it is not solitary confinement in any of our detention settings.

AGUILAR:

Thank you, Madam Chair. I yield back.

ROYBAL-ALLARD:

(OFF MIC)

NEWHOUSE:

Thank you, Chairwoman Roybal-Allard, Ranking Member Fleischmann. And Mr. Albence, welcome to the committee.

ALBENCE:

Thank you, sir.

NEWHOUSE:

Appreciated hearing your update. Let me--let me start off, first, by saying thank you for your decades of service and also wanted to give recognition to--I think you said 20,000, give or take--men and women in ICE.

ALBENCE:

Yes, sir.

NEWHOUSE:

And thank--

ALBENCE:

--Hopefully 22 after this budget--

NEWHOUSE:

--Okay.

(LAUGHTER)

Hope springs eternal. But, thank them also for their dedication to the mission as well. I would guess that you probably lead one of the most scrutinized departments within the agency. So, it's not an easy job, and we recognize that and appreciate your work.

ALBENCE:

Thank you, sir.

NEWHOUSE:

So, I just wanted to make a comment, I think, first, and then, I have a question about some of the detention centers. So, get thinking about that.

ALBENCE:

Okay.

NEWHOUSE:

My understanding in reading through your report and what I've learned over the last couple of years that ICE relies on a lot of information systems, databases, spreadsheets, and paper based solutions. If that's still the case, my estimation of these--of what I've learned--that these are outdated and suffer from deficiencies and vulnerabilities. So, it's my hope that this committee can help address those issues to provide you with the need--what you need to modernize ICE's IT systems. And I would hope that we can work together to address those issues.

ALBENCE:

Absolutely. And this budget that we are currently in gave us a nice down payment to start that process, and we have some additional requests going. But, we're certainly appreciative of that. It's great--it's better for everybody, obviously.

NEWHOUSE:

Good. Well, anything we can do to help you do your job, I think we should. But, I wanted to--like I said, I wanted to talk to you about--or ask you about the contract facilities. I've been to the Tacoma detention center. Have concerns about the attack on that facility last summer. So, could you talk about the--what you see as the--the relationship between ICE and the government service contractors? You rely on the private sector to help facilitate your mission, obviously. How important are these relationships? When they're, for instance, at Tacoma--when they're threatened by acts of violence, how does that threaten the mission of ICE itself? So, if you could just speak to that.

ALBENCE:

Certainly. It's absolutely critical. You know, Congress made decisions many years ago that, you know, in looking at analysis, that contract detention facilities were certainly a much more cost effective way to go with regard to detaining individuals in the immigration context. We only own--to put it in context, we only own five detention facilities that we actually own. And even those are contractor run. Simply put, you look at the number of--you couldn't do what we need to get done if you had to rely on the government

system. I mean, let's face it. We're all in the government. We all know what bureaucracy looks like. We swim in it and sometimes drown in it every day.

But, like--you look at last year when we had to turn on 10,000, 12,000 beds in short order to try and deal with the massive surge at the border, we were able to do that by--contractors have a certain amount of flexibility that they can go out and go to the private sector, hire people, pay more money, all these various things that it takes to turn on the detention facility. Plus, they own the facilities and have the experience and trained personnel to run those facilities.

If we had, you know, wanted to create--turn on an ICE facility, besides having to procure it and the year long--years long process that would take, then trying to staff it and getting funding--it would--it would never get done. We would--we would--detention in an immigration context would largely be nonexistent if it were not for our detention contractors. And many of these contractors are local sheriffs.

We rely heavily upon those individuals who are great partners with us. And--and then some of the--the--you know, the larger contract detention facilities and service processing centers that we have.

And--and detention contractors are utilized, you know, throughout the landscape. They--they do--a lot of the ones--facilities that we use are shared by the marshals as well. So, they're used by other agencies within the Department of Justice.

A lot of states use them. Some of the facilities that we moved into last year were ones that were previously run by--well, they were still contractor run, but they were run for state inmates. For example, California cleared out a couple of facilities in--in the southwest and--and southeast. And we were able to backfill those beds with our detainees.

NEWHOUSE:

Well, I would just submit, I think, Madam Chair, that it's important for us to be able to provide a safe environment not only for the detainees, but for the men and women that work in those facilities. It's important that we have these relationships with the private contractors.

We, collectively, I think, need to be cognizant of what we say in this--you know, granted a very controversial can be subject. But, truly, what we say here can impact the health and safety of people--

ALBENCE:

--It does--

NEWHOUSE:

--In these facilities. And we've seen that in Tacoma. I hate to see the--the--whatever rhetoric might be happening here impact people's actions in the public. And so, I just want people to be aware that--

ALBENCE:

--I--

NEWHOUSE:

--Words have--have consequences.

ALBENCE:

I agree. I mean, calling, you know, our detention facilities concentration camps, calling our officers Nazis, that--that's--

NEWHOUSE:

--Not helpful--

ALBENCE:

--Not--not helpful to anybody. And there's plenty of people out there that are just on the fringe that will -- will act upon--

NEWHOUSE:

--Absolutely--

ALBENCE:

--That type of information. And we have been more transparent with our--within our detention settings than--than any other agen--agency--excuse me--any other time in this agency.

We have let more cameras and we've had multiple cameras going through northwest detention center routinely. You can go to the national news. You can go to go our website and click on it and see what the conditions of those confinement are. And clearly, we're not running concentration camps.

NEWHOUSE:

Absolutely not. And--and like I said, I've been there myself. Conditions are as good as you can expect and hope. Medical care is--is fantastic. People are treated very, very well.

And so, I would hope that we can reflect that.

ALBENCE:

Thank you for that. I know my employees will appreciate that.

NEWHOUSE:

Yeah. But, thank you for your report--report and look forward to working with you.

ALBENCE:

Thank you, sir.

NEWHOUSE:

Thank you, Chairman.

ROYBAL-ALLARD:

Ms. Meng.

MENG:

Thank you, Madam Chair. And thank you for being here today and your whole team.

Question. A few weeks ago, acting DHS Secretary Wolf was here testifying before this committee. And we discussed the importance of having full participation of every living person in the U.S. for the 2020 decennial census.

This administration has often created a climate of fear within immigrant communities, which has created a challenge for the Census Bureau to have an accurate count of our population. During my line of questioning, I asked Secretary Wolf whether he would consider halting raids so that the Census Bureau would not be seen as coordinating with law enforcement. Secretary Wolf replied that he would bring this concern back to his team.

So, I wanted to ask, first question, has Secretary Wolf or his office reached out to you or your team about halting these raids? And have you and the secretary discussed taking any action in response to this concern?

ALBENCE:

Okay. I mean--I mean, first, I--I--I'm sorry, but I have to object to the premise that we do raids. We don't do raids. We do targeted enforcement actions.

When we go out to knock on a door or make a vehicle stop, we know who we're looking for.

We have a warrant in hand. We have identified this individual. We have determined that individual's here illegally in the country and we are taking a concerted direct enforcement action against that individual.

We don't do raids and we don't do sweeps.

Now, to your question, I have not had any discussions with the acting secretary on this yet. It's possible that it's been done at the staff level, but I haven't--haven't directly.

MENG:

Okay. Thank you. We'd love to follow up with your team.

ALBENCE:

Sure.

MENG:

Afterwards. I understand what you're saying about raids. There's just a lot of, you can understand, confusion amongst the community.

There's a lot of advocates who've reported confusion about whether ICE agents are from the NYPD. People--just the average person simply might not be able to tell the difference.

And we are really concerned that there is that same level of confusion for when the people from the Census Bureau are going around door to door when we start the census.

Is there any possibility to consider halting raids and making any public statements or--or visits from--from your perspective? Visits and halting them so that we can pause such enforcement efforts in our communities so that the Census Bureau won't be seen as coordinating with law enforcement?

ALBENCE:

Okay. There's a couple of things there.

First off, our officers are clearly marked to define who they are. We don't have any of our officers--NYPD's out there working and they're wearing--if they have plain clothed officers, they not in uniform, obviously.

But, if they have plain clothed officers that are working and they're doing a--you know, serving a warrant or ex--executing a search warrant, they're going to wear NYPD raid jackets and--and--and the like and--and vests that say NYPD.

Ours say ICE police, identify who we are. So, there should be no confusion with regard to who we are when we're doing an enforcement action.

And you know, we wouldn't do any enforcement--we would never do anything with regard to posing as census workers or somehow where there'd be any sort of confusion as to whether, you know, a law enforcement officer and--and--with a--with a jacket on, identifying who they are and a bulletproof vest and--and a weapon versus I'm sure the census individuals have certain IDs that they're presenting when they go up to the door saying this is--I'm a census worker. This is--this is who I am.

So, I don't really know where there should be any confusion with regard to what we're going to do. I mean, when you look at the type of people as I--as I, you know, mentioned to Congressman Ruppberger, when you look at the public safety threats and the--and the bad people that we are arresting, we are certainly not in a position where I can say we're going to stop enforcing immigration laws so that the census can be done.

That means that murderers, rapists, human traffickers, gang members, or like are going to be able to walk with impunity among our--among us because that's our job to get them off the street and we do it every day.

I mean, we arrest thousands of criminals every week out there and we can't stop doing that. It's like saying the same--I mean, you can say the same thing about the police. Why don't the police stop doing their job? Don't make any traffic stops in this neighborhood or don't enforce any, you know, drug laws in this neighborhood because the people might be afraid to answer the door to the census worker.

Law enforcement is going to have to do their job. And there's really--should be no intermingling between what census has to do and what we have to do.

MENG:

Okay. Thank you. Well, as--as you talk about the importance, you and Congressman Ruppertsberger, about prioritizing people will--in--in relation to the coronavirus outbreak, again, there is that same concern that individuals who are undocumented but might be symptomatic won't seek prop--proper necessary medical attention.

So, in that same vein, as prioritizing people who are in the process of deportation, would you consider releasing detainees who are considered high risk for the COVID-19? Those who are older adults, pregnant, or who have underlying medical condition.

It would be a prudent course of action for ICE to take steps now to minimize the number of detainees in your facilities as we re--maybe reassess the need for detention for people who are not a public threat or--or flight risk or the most dangerous folks.

ALBENCE:

Right. So, the pe--the people we have in detention are there because they are--are public safety threats or--or flight risks. We have, unfortunately or fortunately, depending how you look at it, extensive experience in dealing with communicable diseases in our detention facilities.

So, for example, at the height of the crisis last summer, we had four, five, 6,000 people that were--that were quarantined and cohorted as a result of mumps or measles or--or any other variety of--of communicable diseases. So, we have extensive experience with regard to keeping them isolated so that that--that doesn't spread.

We also have extensive medical experience with it. We have Immigration Health Services Corps, which are dedicated, you know, public health service officers--commissioned public health service officers that--whose primary job is the safety and security of the individuals that we have in our custody.

MENG:

Can--can I --sorry to interrupt. Can I just ask what the quarantine protocols are? Are they in--in line with CDC guidance, for example, in light of the virus?

ALBENCE:

We are. So, we're in constant communication. There's daily calls. I--I believe they're daily calls being held with the DHS chief medical officer, our people, CDC, and all the entities that are involved. It's a whole of government approach.

MENG:

All right. Thank you. I yield back.

ALBENCE:

Thank you.

ROYBAL-ALLARD:

Mr. Rutherford.

RUTHERFORD:

Thank you, Madam Chair. Director, thank you and--and thank you to all your men and women who, by enforcement of our laws, help keep our communities safe. And--and they are doing it in a very politicized environment right now.

In--in--in fact, I'd like you to talk a little bit about--I'm--I'm going to call it the tale of two cities and talk a little bit about a sanctuary city where, for political reasons, people are not working with your officers. They--they refuse detainees, to honor them. They're--they're not providing information to your officers in the--in those communities.

And the impact that that has on public safety in those communities versus a community that might have a 287G program working within their corrections facility where individuals who are already being arrested or actually being identified held for ICE to get those criminals off the street. There's a real difference, I--I think in the level of public safety that's being provided to those--to those two cities.

And can--can you talk a little bit about the danger that that creates not just for your officers but all law enforcement in those communities and the people that live in those communities? The very people that these folks think they're actually protecting, they're actually, I--I think, putting at risk.

Can you talk a little bit about that?

ALBENCE:

Absolutely. We--we've seen time and again with--with sometimes tragic results. Individuals that were in the custody of law enforcement.

It makes no sense to me as a career law enforcement officer that you have a police department that makes an arrest. It's--determines that it's worth their resources to make an arrest for this individual for a crime of domestic violence or a weapons charge or dealing drugs and it's okay for them to exercise their authority on that individual.

But, when we come in to exercise our own federal authority to deal with those individuals from an immigration perspective, they prohibit us from doing so. If the individual's a public safety threat when you arrested him, he's a public safety threat when we arrest him.

And oftentimes, as we've seen, a lot of these individuals are recidivists. We've had several tragic--tragic incidents. And you've seen the--the chief law enforcement officers from these jurisdictions come out very strongly against the California Trust Act when there's been individuals that were in their custody that they wanted to call us about and they went out and later on killed one of their officers. Those are preventable deaths.

I mean--

RUTHERFORD:

--Right.

ALBENCE:

Look, ICE could actually--has--has--has one--is one of the few law enforcement--you're a career law enforcement officer. Cops can't do a whole lot to--to prevent crime. Most of it's reactive. That's the difference between what we can do.

We can actually individuals that we know have a propensity for crime because they've got long criminal histories and continually get arrested. And we can take them out of communities, prevent the crimes, and, more importantly, prevent the (INAUDIBLE).

I'll--I'll use the example of the Bail Reform Act in New York. And you've seen the police commissioner of New York and the mayor of New York come out and say, hey, look, this is bad. We keep turning all these individuals that have a propensity for committing a lot of crime and you know what? We're getting more crime.

RUTHERFORD:

Right.

ALBENCE:

I'm, like, yeah. No kidding. We've been saying--

RUTHERFORD:

--I'm surprised--

ALBENCE:

--That for a decade.

RUTHERFORD:

Yeah.

ALBENCE:

So, give us those individuals. We actually went out and arrested 110 people that were released under the Bail Reform Act in the last three weeks. Rapists, kidnappers, child sexual assaulters. I mean, these are dangerous criminals that we're getting off the street and preventing them from reoffending.

RUTHERFORD:

In--in--incredibly, poor judgment, I think.

Can--so, I--I do want to congratulate ICE on--on the Warrant Service Officer Program. And can you talk a little bit about that? I know you signed an agreement with Lieutenant Governor Nunez in Florida and my good friend, Bob Gualtieri--Sheriff Gualtieri.

Can you--can you talk a bit--a little bit about that and how that can help alleviate some of this?

ALBENCE:

Sure. Look, Sheriff Gualtieri and--and--and the National Sheriff's Association have been instrumental in working with us, trying to develop these--these programs.

The Warrant Service Officer Program is something that we came up with jointly to try to deal with the detainer challenges that exist out there. So, you've got varying degrees with regard to law enforcement agency.

You've got some jurisdictions that are sanctuary jurisdictions that are never going to cooperate with us no matter what even if they could. And you have other jurisdictions that would like to cooperate with us but because there's been challenges surrounding the detainer, because it's not a mandatory forum and they're--they get concerned with Fourth Amendment violations, are being sued about it. And these jurisdictions have small litigation budgets. They can't defend themselves against the ACLU or some of these NGOs that come in and sue them.

RUTHERFORD:

Right.

ALBENCE:

They're not cooperating with us. We've been--under the prior Congress and this one, we--we provided technical assistance with regard to how that problem could be rectified. It hasn't been done.

But, what the warrant service officer does is give local law enforcement agencies and--and we train them, we deputize them, and we give them the authority to issue an arrest warrant and a detainer on our behalf. Just as if one of our officers was issuing that.

Once that happens, that individual becomes--is now in federal custody.

RUTHERFORD:

Right.

ALBENCE:

So, the issues with a state holding somebody on a federal detainer have gone away.

RUTHERFORD:

And--and here's--and here's where I see the real importance of this. When--when you look at those who are on the docket, that 900,000, 2 percent, I--I think you said, are--are actually in custody, 2 percent

ALBENCE:

It's less than that. It's about 1.5.

RUTHERFORD:

And the rest are in our communities every day. Every day. And we know many of them are, as--as you answered for Mr. Ruppertsberger, many of these are--are serious felons that--that--that we need to keep off of our streets. And that's why I--I was glad to see you ask for the 60,000 detention beds in--in this budget.

Those--those folks are the ones that we've got to get off the street to keep our communities safe.

And so, again, I--I thank you for--for all your work in that.

ALBENCE:

Thank you, sir. Thanks for your support.

ROYBAL-ALLARD:

I--I just want to make a couple of points on--on the conversation that just took place. It's because it isn't just a political decision always in terms of the--the--the police in--in--in the sanctuary cities.

When ICE has been in--in these communities in what some would consider raids, the--the fact is that the--the local police found that the crimes that were being committed because--I'll use Los Angeles. We have a lot of gangs. M6-13 started in Los Angeles.

But, then people were not coming forward to provide them with the information they needed to address those crimes. So, it's more--it's--it's a little bit more complicated than just a political decision.

But, also, I think it's important that when people commit crimes, you know, murder, assault, rape, and--and some of the other things that were mentioned, you know, our cri--our criminal justice system steps in to address those problems. And it's not ICE's job to arrest someone for such crimes.

So, it--it--so, I'm not--

RUTHERFORD:

--Madam Chair, can I--can I respond to that--

ROYBAL-ALLARD:

--Totally dis--I'm just saying this is--it's much more complicated and there's so many more issues that are involved than--than the way it has been portrayed. It's not that simple black and white.

RUTHERFORD:

But, if--if--

ROYBAL-ALLARD:

--And I just wanted to make that point.

RUTHERFORD:

If I could just respond to that very briefly.

ROYBAL-ALLARD:

Of course.

RUTHERFORD:

Look, I--I understand how complicated it is. I--I ran a very large law enforcement agency for--for many years.

But, that's exactly what the U visa program is for. It's so that we don't have to create these sub-cultures within our communities where when you go in and you discover that these individuals are committing rape, domestic violence against their own people.

Not--not the citizen--not--not the--not the legal citizens in their community. Against their own people.

The rape, the domestic violence, the aggravated batteries, they are off the chain. And the reason is because these men and women are not being allowed to do their job.

And so, that process is there. That U visa process is there. So, if you're a victim or a witness to a crime, you don't have to worry about coming forward. You can apply for that U visa. And that's--that is what makes sanctuary cities, I believe, unnecessary.

ROYBAL-ALLARD:

Well, it's not that easy to just all of a sudden apply for a U visa in--in certain communities.

So--so--so, I--I don't think that we--I think what's happening is what we're doing is shining a light on just how difficult this situation is. And that it isn't, you know, a black and white situation.

And that--and so, my only concern was that the way it was being portrayed was not taking into consideration other factors that I think also have to be taken into consideration that aren't as was--it was originally portrayed as political, but there's also some--some very real reasons why there's some disagreements.

Now, maybe I--I--I believe that--that you mentioned that there may be a possibility to try and figure out how to make these agreements in a way that would be--you know, that would balance the concerns. And if--if that would be possible, I mean, I think that's something worth looking into.

ALBENCE:

Can--can I speak to that? So, I mean--

ROYBAL-ALLARD:

--That's the only point that I wanted to--to make.

ALBENCE:

No. Just--just your--just your one point where you got--with regard to it's not ICE's job to--to prosecute these crimes. You're right.

But, it's ICE's job to effectuate the immigration consequences. Congress has deemed--you know, look at 101A43 of the INA. It lists all of the aggravated felons.

Congress has said you shall take these individuals into custody and--and put them--so, that--that is our job to apply the INA with regard to individuals that have committed criminal action and this thing.

With regard to individuals coming forward, I hear that frequently, but yet I don't see a whole lot of evidence for it. Because I can tell you we get--our law enforcement support center has more immigra--or immigration alien submissions every year--year after year. Meaning that crimes are being reported because individuals are being arrested for that.

And I've had this discussion with the police chief in a--in a major city. And he said that, you know, the--the crimes of domestic violence are down in--in my city. So, people aren't reporting it because of the immigration consequences.

I said, no. I would submit that the crimes in your city are down because we've arrested 25,000 people over the last three years that have been convicted of assault, domestic and family violence in your city.

And that's why crimes are down, because we got rid of the criminals. They're not out there reoffending.

So, again, secure communities was built with the whole intention of getting criminals out of the street. We don't know who victims are. Unless an individual's been arrested by a criminal justice agency and run and booked for a criminal violation, we don't know who the victims are. We don't know who the witnesses are.

And frankly, I think it's--a lot of the NGOs and--and the like that are out there that are stirring this up that we're arresting victims or witnesses because we're--it's not the case. It's just simply not.

ROYBAL-ALLARD:

And I think every city jurisdiction is different as well. So, again, why this is such a complicated issue that really does need to be looked at. And maybe--

ALBENCE:

--I'm happy to work with you on that--

ROYBAL-ALLARD:

--There's a way to--

ALBENCE:

--Absolutely--

ROYBAL-ALLARD:

--Solve it. Ms. Wasserman Schultz.

WASSERMAN SCHULTZ:

Thank you, Madam Chair.

Mr. Albence, the FY '19 and FY '20 enacted appropriations laws contained provisions that have expressly prohibited ICE from engaging in enforcement actions against those who come forward to sponsor unaccompanied immigrant children based on information shared by the Office of Refugee Resettlement, or ORR.

But, the HHS Secretary Azar has testified and publicly available information confirms that ORR continues to share sponsor information with ICE. And that ICE persists in trying to maximize opportunities to engage in enforcement activities that--that disrupt ORR's child welfare oriented mission.

The Washington Post reported that ICE has been attempting to circum--circumvent section 216 of the FY '20 appropriations act by engaging in enforcement actions against so-called rejected sponsors, even though sometimes sponsors are--are rejected simply because another sponsor comes forward or they withdraw their applications.

Now, Chairwoman, correct me if I'm wrong, but I believe the intent of this subcommittee and of the Congress, because section 216 became law, applied to all individuals who come forward to seek to sponsor an unaccompanied child regardless of whether the application is ultimately approved.

Does--does ICE--and--and I'm getting head nods from our staff and the chairwoman. Does ICE have that same understanding?

ALBENCE:

It does. I can explain to you what we've been doing, if you'd like.

So, we work closely with HHS with regard to--prior to the language being put in, obviously, we were looking at individuals with criminal histories and we found about a third of the sponsors were--were criminal aliens. And obviously, we were looking at taking enforcement actions against those individuals, especially primarily with the goal of--of the safety and security of these children.

But, since those laws were enacted, we are looking to do enforcement actions if there are individuals based on their certain criminality that are carved out from that statute where they have sexual offenses and things like that that are carved out that are still subject to enforcement action that this committee has authorized in--in the law.

WASSERMAN SCHULTZ:

In section 216?

ALBENCE:

Yes.

WASSERMAN SCHULTZ:

That's not my understanding.

ALBENCE:

Yeah. There's--there's a carved--there's carved--

WASSERMAN SCHULTZ:

--I mean, I'm not advocating that sexual offenders, you know, obviously--

ALBENCE:

Well, there's a certain carve out for certain--for certain ones. And that's--based on that our concer--with is why we went--went to HHS looking for the rejected sponsors saying, hey, if these individuals were rejected because they fall within these parameters of these dangerous criminals that would put these children at risk, then it would be incumbent upon all of us to try to get these individuals off the street.

And in our discussions with HHS, there were times that there were individuals with multiple--had--had tried to sponsor multiple unrelated children. And we had concerns that those individuals--

WASSERMAN SCHULTZ:

--Okay--

ALBENCE:

--Might be traffickers.

WASSERMAN SCHULTZ:

My time is a little bit limited.

ALBENCE:

I'm sorry.

WASSERMAN SCHULTZ:

So, I want to get a little more--

ALBENCE:

--Yes, ma'am--

WASSERMAN SCHULTZ:

--Granular with you.

The Washington Post reported that ICE attempted to embed ICE enforcement officers within the Unaccompanied Children's Program at ORR. Such a move would fundamentally alter the child welfare focus of ORR reunification process and cause harm and distress among vulnerable immigrant youth.

If you're literally having an ICE enforcement officer sit in the ORR offices, that's a huge problem and certainly not in the spirit or the letter of section 216.

I represent a district that is nearly 40 percent Hispanic or Latino. I understand that ICE is an agency that strikes fear in the hearts of many people in these communities, even many who are American citizens or here legally. And even during a more benevolent administration, that was the case.

But, under this administration, ICE has been utterly weaponized against these communities, putting ICE officers inside an agency responsible for taking care of tender unaccompanied children who have already been through so--so much trauma seems downright cruel to me.

So, can you please commit to this subcommittee today that ICE will not be continuing to try to embed or place any enforcement officers within ORR shelters?

ALBENCE:

Okay. So, it wasn't in--in a shelter. It was here at headquarters and it was solely--

WASSERMAN SCHULTZ:

--Or in--

ALBENCE:

It--it was for--

WASSERMAN SCHULTZ:

--This was not just in headquarters.

ALBENCE:

Okay. So, if you're talking about in the field, we have--

WASSERMAN SCHULTZ:

--In the field--

ALBENCE:

--We have field office juvenile coordinators who work hand in hand with HHS every single day with regard to getting individuals over to their custody. Getting the transport from Border Patrol to--

WASSERMAN SCHULTZ:

--But, they're not supposed to be ICE officers embedded in field offices of ORR.

ALBENCE:

I'm--I'm answering your question, ma'am. The only person we're looking to embed--

WASSERMAN SCHULTZ:

--Not--

ALBENCE:

--Was here at headquarters level. Do we--we have 24 field office juvenile coordinators. We have a juv-- juvenile family management residential--

WASSERMAN SCHULTZ:

--So, you don't have any ICE enforcement officers who are embedded in ORR field offices.

ALBENCE:

They're--they're not embedded in the field. They're deportation officers. That is their job.

But, part of their job as deportation officers is the field office juvenile coordinator. They work hand in hand with HHS to make sure people get to their hearings.

WASSERMAN SCHULTZ:

Okay. That, to me, is an attempt to circumvent section 216. If you have a deportation officer sitting in an ORR field office--

ALBENCE:

--That's not what I said. That's not what I said.

WASSERMAN SCHULTZ:

You just said.

ALBENCE:

I said--

WASSERMAN SCHULTZ:

--You just--

ALBENCE:

--They work hand in hand with them. I didn't say they were embedded with them. They work hand--if--if you--if you are concerned about the safety of these--

WASSERMAN SCHULTZ:

--Do you or do you not--

ALBENCE:

--If you're concerned about the safety of these--

WASSERMAN SCHULTZ:

--Excuse me. Reclaiming my time.

ALBENCE:

No. If you're concerned about the safety of these children--

WASSERMAN SCHULTZ:

--Sir, the time is mine and I am reclaiming it. If you--do you or do you not have deportation officers from ICE in ORR field offices?

ALBENCE:

No.

WASSERMAN SCHULTZ:

Not any at all.

ALBENCE:

Not that I'm aware of.

WASSERMAN SCHULTZ:

So, the only place that deportation officers are--are in headquarters at ORR?

ALBENCE:

No. We have year ERO field offices. ERO field offices are in the same locations where ORR shelters are. When children are being placed in the shelter, there is coordination that takes place with regard to information that we have that we provide to those shelters we provide to ORR.

We work hand in hand. It's for the benefit of the child to have those field office juvenile coordinators working these cases with ORR so these individuals do make their cases to the hearing.

WASSERMAN SCHULTZ:

Mr. Albence, my understanding is that your attempt to embed deportation officers at ORR was rebuffed by HHS and rightly so. Do you know why HHS rejected your plan?

ALBENCE:

Okay. The only individual that we were looking to embed with ORR was here in DC where there'd be no interaction with children. And it was for that child welfare focus for those individuals I described earlier that posed a public safety threat to the UAC.

WASSERMAN SCHULTZ:

Let me remind you that HHS has insisted that ORR's agency mission is to safeguard children, not facilitate arrests of their relatives. And they've tried to keep your people out of their field offices.

And so, I would expect then in the spirit of section 216, which is law, that you would not try to circumvent them and do that and--by going around them.

ALBENCE:

Absolutely are not trying to circumvent anything.

WASSERMAN SCHULTZ:

Okay. Well, we'll be keeping an eye on you just to make sure. I yield back.

ROYBAL-ALLARD:

Mr. Cuellar.

CUELLAR:

Thank you, Madam Chair. Again, thank you for what your men and women do. Sometimes we might disagree on policy, but we should never bend--blame our men and women.

I know a lot of them. San Antonio, Laredo, the valley, and--and they do a good job. And like I said, we might disagree with the policy, that's a different thing.

Couple of things. When we were dealing with Mexico on the trade agreement, there were two things that they were very interested in. One is that we pass the USMCA, which we've done.

And the second thing is how do we stop arms from going south? I know you and I have spoken about this.

ALBENCE:

Absolutely.

CUELLAR:

We talked about the best program that we set up some years ago. Can you give us some ideas what we can do to stop arms? Because that's the biggest issue that they have and the drug cartels are using that to kill thousands of people.

ALBENCE:

That--that's a great question, Congressman, and I appreciate it and all the support. You've been for a long time support of ICE and the men and women that do their tremendous jobs. So, thank you for that.

So, in January of this year, we started Operating Without A Trace, which is a unified DHS strategy to combat that illicit flow of firearms and firearms components from U.S. to Mexico. We're looking at it holistically, just like HSI does on all their investigations, right?

When we're investigating a drug case, we don't look at just the drugs. We look at the financial network. We look at the money laundering, all of the--holistically.

Same thing we're doing in this context. So, look at the financing behind these--these organizations, the movement of these--of these guns and these components. And the communications that are being used by these transactional criminal organizations.

In fact, the--the--you know, this program was adopted by U.S. Council on Transnational Crime as a means to combat firearms trafficking into Mexico.

So, again, just started in January. We've got 13 open investigations right now. To date, we've seized 96 firearms, 230 magazines, and--and over 34,000 rounds of ammunition.

We're also working very closely with our partners at CBP. As you know, down in the border environment, we all got to work together. And looking--especially looking at the intelligence assets. You know, leveraging those assets for both domestic and foreign data sources, to share that information and try to do an (INAUDIBLE) of the strategy.

Obviously, CBP's got limited resources. Only so many conveyances that they can target on an outbound setting, right?

So, where can we get intelligence? Where can we analyze that intelligence to try to do better targeting and get smarter about who we--who CBP does outbound targeting on. So, we're looking to do that, work with ATF also to do the same thing.

We've also had our HSI guys provide some forensics training down range to help deal with these organizations--or, excuse me, with these law enforcement agencies to help them understand how to, you know, exploit material that might be on electronics communications devices, things that--information that'll be gleaned from seizures and the like.

So, it's--it's working--I mean, we're off to a running start and I think it's something that'll be very, very well received.

CUELLAR:

Could--could you provide to us, to the chairwoman, the ranking member, members of the committee what we can do to address this issue? Because this is their number one issue when we talk about the Republic of Mexico.

So, if you can give us ideas as to how you can work with ATF and other agencies, we would appreciate it.

Could I ask a quick question because I got--I think we all got ag and defense. We're running around. Just a real quick question.

And I assume this is your budget request and--and I think this got done before you did on the MPP, \$126 million to address the annual operating cost for Laredo, my hometown, and--and Brownsville for Congressman Filemon Vela.

We--we had a problem--well, we had a situation where we approached--the city approached the administration and said, look, for \$1--\$1, we will get you 18 months of a facility right by the river. I mean, it--it--it--they would do everything. It would've been good for the--you know, the folks that are coming in through the process and--and--and for the--and for the employees also.

But, unfortunately, we met on a Thursday and by Monday morning, they were setting up tents in Laredo. They had not got--gotten the--they didn't even get the clearance from the International Boundary Commission because it's a flood zone. I think eventually they got it.

They set up tents. They put out a contract. I think the contract to--a contractor in Rome, It--Rome--not Italy--Rome, New York. Got it for \$70 million. Basically, \$35 million for the Laredo area and \$35 million for the Brownsville area.

So, you know, you compare the tents to this facility. And again, I don't want to get into the merits at MPP, but I'm saying if this continues, I just cannot see how we're wasting--and I'm not blaming you. But, the decision was made somewhere else. How we're wasting 35 or 70 million--well, at least \$35 million in Laredo--when the city was willing--the local community was willing to do it for \$1--\$1 for 18 months.

And if we add 35 and you add another 35, you're talking about \$70 million of taxpayers' dollars that would've been waste--or been wasted right now that is just beyond me. I would ask you, because I'm sure this is done somewhere else--I would ask you to look at this because I cannot see how we're wasting \$35 million of--or \$70 million of taxpayers' dollars.

ALBENCE:

Certainly, we'll look into what happened on that, what the background was.

CUELLAR:

Thank you.

ALBENCE:

Thank you, sir.

CUELLAR:

And I got to run off.

ROYBAL-ALLARD:

Mr. Price.

PRICE:

Thank you. Welcome to the subcommittee. We are all running around here today, but I'm--I'm--I'm--I'm glad to be able to ask an important question about what seems to be a persistent and increasing level of conflict with state and local government. So, I hope you can bear with me here.

I--I have a few--a few pieces of evidence that--that I'd invite you to react to.

ICE is directly--we know this from the director of your Atlanta office. ICE is directly retaliating against localities where sheriffs have ended voluntary agreements. Voluntary agreements, including 287G agreements.

ICE is engaging in what you called enhanced arrest campaigns to flood the streets of so-called sanctuary cities. I know one of the defenses of this is it's picking up lots of criminals. But, actually, the figures there aren't very convincing at all.

The percentage of people who are ICE's detainee who have no convictions has--has now grown to--to something like 64 percent. And of the 36 percent who do have convictions, many of those crimes represent immigration violations or traffic citations and--and the like.

So, we're--we're--we're apprehending fewer criminals, not more.

There is--there's a deployment we've heard about, Border Patrol Tactical Units away from the southern border to major cities to conduct enforcement actions alongside ICE. Departments threaten to withhold crucial funding opportunities to what they call sanctuary cities. And of course, that--the rhetoric about this has started from the--from the very top of this administration.

Administration is suing California and New Jersey over laws that federal officials say undermine immigration enforcement and on and on.

Now, as you well know, state and local law enforcement officials are doing what they think on--on good evidence is--is necessary to--to protect local communities, to protect community safety by maintaining their access, by maintaining their ability to work with those communities. By--by--by not being the long-arm of ICE, but by concentrating on--on their job, local law enforcement.

State and federal courts have ruled that state and local officials have no responsibility to be an extension of--of ICE.

So, what's going on? And why are you doing it? Why are you engaging in these retaliatory violations against states and localities who, I underscore, aren't breaking any laws?

And--and I--I also want to--and--and--let me just--and to--to take this in a more practical direction, perhaps, I--I do want to hear your defense. But, I want to also know what your options are.

I can't imagine the only two options that you have are--are doing nothing and--and the kind of retaliatory actions I'm--I'm--I'm describing. A--a kind of dragnet approach in--in these communities.

What are the other options? How can you actually work with states and localities on serious enforcement activities while simultaneously respecting their authority to protect their communities.

And--and quite honestly, the--the variations across this country and public opinion and public attitudes toward--toward these matters. Surely, there must be some way to work through this better than what we're seeing.

ALBENCE:

Thank you, Congressman. Let me try and unpack that. There's a bunch there.

First off, we do not participate in any retaliatory enforcement actions. What we have said and we said this during the prior administration when I was running the enforcement division within ERO and--and what

we continue to say is that in jurisdictions where we do not have cooperation and there are criminal aliens on the street, we are going to have to send resources out there to arrest those individuals.

In--in some of the counties in--in North Carolina where those formerly 287G programs--the 287G program was doing all that work. They were getting those criminals while they're in their custody. And it's safest for everybody.

I would love it if my officers could go into every jail in this country and get the criminals directly from those facilities and--and put them into custody where we don't have to send out people to make at-large arrests or put our officers in danger.

And--and five, six years ago, it was that way. In FY '13, we arrested about 150, 160,000 criminals because most of them were getting out of the jails. And we still do. We get about 70 percent of our arrests annually are still coming out of jails.

So, most jurisdictions around the country do cooperate with us and have found ways to work with us.

It's those jurisdictions where--and--and--and take the California--when the California Trust Act was initially passed, there was not a provision which prevented us from getting into the facilities to do our work. But you had jurisdictions that would just say, well, I can't help you. I can't assist you. And--and you know what? I'm also going to lock the door so you can't come in.

So, we already know about these individuals when they're being arrested. We've got the fingerprints. We're looking for them.

We're going to have to go out in the communities to get them. We haven't been, you know, secretive about that. We--we are going to do our job. It's what we're charged with doing. That's why, you know, cap and fug ops are funded for hundreds of millions of dollars every year. That's--that's their primary mission.

And with regard to the number of criminals in detention, that's an inverse relationship to the border. As the border numbers go up, the number of criminals that are in detention go down. Both one as a percentage because we're getting more border arrests.

So, last year, when we were in the height of the crisis, the number of criminals in detention was smaller because we're having mostly recent entrants from the border.

But, secondly, last year, when we were dealing with the crisis, we had to redeploy a bunch of ERO resources, including fugitive operations down to the border or to these new detention facilities to deal with the massive humanity that had come to this country illegally.

We had to take them off the street and re--and not go out and arrest the criminals, which is why we arrested fewer criminals last year.

So, when we talk about--and I've talked about it before, it's not just a border security crisis. It's a public safety crisis. So, we've got fewer people getting the bad guys out of communities, which I think everybody agrees we should be doing, we're all less safe, which is why having a secured border requires strong interior enforcement.

ROYBAL-ALLARD:

Okay. We're going to go one more round.

Mr. Albence, we learned by reading the news that CBP is detaining personnel to support ICE's interior enforcement operations in sanctuary cities. And Acting Commissioner Morgan testified that currently there are 100 total such CBP detailees, 50 border patrol agents and 50 CBP officers.

It would've been--my hope is that such a significant shift in the use of resources would have resulted at least in the--in a courtesy call to sub-committee staff so that members and I could have learned about it firsthand rather than from the press.

But, setting that aside, I have some questions about the intent of this effort. And I--I want to get through the questions. If you could just answer yes or no and then--

ALBENCE:

--Okay--

ROYBAL-ALLARD:

--I'm going to give you time--

ALBENCE:

--All right--

ROYBAL-ALLARD:

--To elaborate on--

ALBENCE:

--Fair enough--

ROYBAL-ALLARD:

--These. It has been reported that a goal of this joint operation is to increase the risk in sanctuary jurisdictions by at least 35 percent. Is that accurate?

ALBENCE:

I'm not sure if I've seen that number.

ROYBAL-ALLARD:

Okay.

ALBENCE:

I can get back with you. I--I don't know for sure--

ROYBAL-ALLARD:

--Okay--

ALBENCE:

--That I've seen that number.

ROYBAL-ALLARD:

It is also my understanding that detailees will serve roughly 90 assignments. Is--is that correct?

ALBENCE:

Yes.

ROYBAL-ALLARD:

Okay. And what kind of training will they receive before they execute these--these new duties? And are there any plans to use CBP personnel to augment your interior enforcement operations beyond the May timeframe?

ALBENCE:

So, there's training that they're receiving onsite. Obviously, they've all been through basic academy training and--and they're certified--or certified law enforcement officers who meet the statutory definition for immigration officer. So, they can enforce Title 8.

There's--there's training in--in the--at the field level when they get there. There's training with--with OPLA Fourth Amendment training and then operations training.

Again, especially when you look at the individuals and you're looking at the individuals that were previously on bor tac or Intel analysis. So, generally, the more senior officers that have a lot more experience.

Border Patrol does border cap in some locations, right? They do at-large enforcement in--in many locations.

So, it's--it's not an unusual duty for them. So, I mean, we're comfortable--and they're obviously working directly under the supervision of our supervisors and--and--and leadership in the field. So, they're augmenting our teams that way.

ROYBAL-ALLARD:

Okay.

ALBENCE:

I--I don't know--I don't--at this point, we're doing 90 days and then we're going to revisit. So, I--to your second question.

ROYBAL-ALLARD:

Okay. Well--well, the questions that--that need to be answered for this subcommittee are how will the work performed by these detailees be funded? And if ICE intends to reimburse CBP for this time, will that require transferring funds to cover these costs?

So, as a follow up to this hearing, if you could please provide detailed financial staffing and outcome data related to the work that CBP detailees are performing for your operations and how you intend to manage this increase in operations within the funding provided to you in your appropriations.

ALBENCE:

Absolutely.

ROYBAL-ALLARD:

Okay. Before I go on--go on to the--the next question, I--I--I just want to make two points.

First, I--I--I wanted to point out that none of the funds that ICE proposed last year for new hiring for interior enforcement were included in the fiscal year 2020 appropriations. And this new joint operation appears to be, once again, an attempt to subvert congressional intent.

And second, I find it quite confusing and concerning that CBP personnel are being diverted to ICE interior enforcement and USCIS asylum officer duties while at the same time their budget proposes a large increase in CBP personnel to address what it says is an urgent need at the border.

There seems to be a little bit of a conf--a conflict there.

An article recently came out in the New York Times stating that an additional 500 HSI agents will be pulled from their stations to assist in interior enforcement efforts.

As you know, the HSI mission is to combat human trafficking, child exploitation, drug smuggling, and the exploitation of workers. And I am concerned that pulling agents away from their stations will undermine these investigative efforts.

Is this report accurate? And if so, has an analysis been done to assess the impact this staffing shift will have on HSI's core mission, such as finding missing children and fighting organized crime? Especially since this agency is already understaffed and underfunded in spite of efforts by this subcommittee to provide them what is need--the resources that they need.

So, if you could please describe the plan--

ALBENCE:

--Sure--

ROYBAL-ALLARD:

--For this reassignment of duties, including timelines, training provided, number of staff, the operations they will be pulled from. And most importantly, how this kind of staffing shift will effect HSI's critical core mission.

ALBENCE:

So, I'll--you--you accurately stated it with regard to the critically important mission that HSI does. But, it also has a concurrent mission which has significant intermingling with regard to civil immigration enforcement.

So, if you look at numbers last year, HSI made 11,500 administrative arrests. They have many disciplines in which--enforced over 400 laws. There's many disciplines which have both civil and criminal components.

So, when you look at the Joint Terrorism Taskforce where we're doing significant numbers of disruptions for the FBI, when you look at the Document Benefit Fraud Taskforce--for example, you look at CTCU, which is the biggest one, right, where you have overstated leads, individuals with potential national security concerns that we go out there.

I mean, we--this agency gets hammered all the time for not doing more on the overstays. That falls into HSI's portfolio.

So, it's not--it's just a--a traditional taskforce environment where each agency or, in this case, each component, is bringing their own respective duties and responsibilities to that taskforce environment. So, while we're out there--while ERO is working their targets, HSI is working their targets concurrently.

And additionally, what we--what we routinely find when ERO is out there doing the work is there's evidence of criminality involving crimes that HSI routinely investigates. So, there'll be times when we go there and get weapons. We find individuals that are involved in--in--in narcotics trafficking, human smuggling, labor traffic.

All these various disciplines that HSI investigates, a lot of the information and leads come out of these individuals when we arrest them. When we're arresting somebody that's been convicted of narcotics trafficking, it's on--it's only reasonable to expect that there's potential for evidence of a narcotics trafficking when we go and arrest that individual. And we look to--to leverage that.

So, I mean, these are duties that--that routinely HSI would do anyway. And right now, we're just joining forces between the two components.

And frankly--I mean, this is one of the areas--I mean, I--I've--I've been beaten up by Congress and--and this agency has for many years being said that why don't HSI and ERO work better together? This is HSI and ERO working perfectly together.

We're--both of our disciplines are being utilized in--in--in furtherance of public safety and national security.

ROYBAL-ALLARD:

Well--well--well, working together and cooperating with each other, sharing information is one--is one thing, but pulling--actually pulling those agents--agents away from their duties is--is entirely something else. So--

ALBENCE:

--But, these are--these are part of their duties. And in--and--and--

ROYBAL-ALLARD:

--Well--

ALBENCE:

--To be--to be frank, we get pulled from duties all the time. We have to give 600 special agents for--on three month, three week rotations for the protective details. We had to give 600 agents to the democratic and republic national committees.

ROYBAL-ALLARD:

Well--

ALBENCE:

--We had to give 1,200 agents to UNGA. Nobody complains when we have to shut everything down to support all these other needs.

But, now, that we're doing more concerted immigration enforcement, which falls within our portfolio, there's others--I don't understand the angst over the fact that this is part of our mission.

ROYBAL-ALLARD:

Well, let--let--let me just ask then, was an analysis done to--to assess the impact of this increased enforcement of pull--pulling them away from--

ALBENCE:

--So--so, especially do--

ROYBAL-ALLARD:

--What they do on a daily basis?

ALBENCE:

Right.

ROYBAL-ALLARD:

Was there an analysis done as to what impact this would actually have on their ability to deal with human trafficking, to deal with the international, you know, cartels? Or was the decision just made without any such analysis?

ALBENCE:

No. There was a lot of coordination at the headquarters level, obviously, between the EADs and the various programs and--and their leadership here. But, also going to the special agents in charge saying, hey, here's what we've got.

Again, most of these spe--these SACs (PH) have CTCU groups. They have DBFTF groups. They have JTTF groups. We've got many places where you have ERO assigned to HSI. That's--that's always been that way.

We've got border patrol assigned to--to BEST(PH) taskforces assigned to HSI.

So, we intermingle all the time. So, the SACs who are best--in--best situated to make a determination as to where to pull those resources from--if they had to pull additional resources made those decisions.

ROYBAL-ALLARD:

Okay. Let me--let me just say that, you know, without the agency actually sitting down and sharing the information, explaining to us what the analysis is, how these decisions were made, I--I--I can honestly tell you that it--it just appears that ICE's priorities are upside down and is placing a higher priority on interior enforcement actions than anti-human trafficking work, child exploitation, investigation efforts, and drug enforcement.

So, maybe this--may--maybe--we still may have a disagreement, but this maybe an example of why there needs to be more transparency and more information given to this subcommittee so we can better understand--

ALBENCE:

--Absolutely--

ROYBAL-ALLARD:

--Some of the actions that you take.

ALBENCE:

That--that one's on me and we will--we will get better going forward. So--

ROYBAL-ALLARD:

--Mr. Fleischmann.

FLEISCHMANN:

Thank you, Madam Chair. Mr. Director, again, thank you for your testimony here today. It's been very thoughtful, very candid, and--and very thorough.

And--and on a personal note, I wish, again, for me to convey to the men and women who work in your agency our sincere thanks.

I think you eluded to it in your last response. At a moment's notice, you are requested from other agencies within the department to move people, to assist. And they step up in an exemplary role.

And I've heard from other agencies that they have been very thankful for the--the role and--and the job that they've done. So--

ALBENCE:

--No. I mean, if I--

FLEISCHMANN:

--Specifically, Secret Service.

ALBENCE:

Yeah. No. But, I--I--if I could even dovetail on that, you know, last year at the height of the crisis, we had to detail 400 special agents down to the border. We had to pull them off of other cases they were working, too, just to deal with this emerging family fraud issue where the loopholes have--have yet to be rectified within our--our fra--our legal framework still exists.

So, it--I mean, look, we respond to--to--to challenges across the board.

FLEISCHMANN:

Well done. Yes, sir. To add--to follow a line of questioning from one of my colleagues, we on the committee have had a constant struggle over the number of ICE detention beds that have been funded each year. Further, the agency's detention needs can fluctuate year after year due to changes in migration patterns and other factors.

How important are private-public partnerships for the agency to achieve core mission requirements as well as meet the needs of the individuals in its custody?

ALBENCE:

They're critical. I mean, we would not be able to do our jobs without those--without those relationships. I mean, look, law enforcement is used to relying on law enforcement. Cops generally band together, regardless of what agency you work for, what your badge looks like.

But, in the situation such as this where we're--we don't have a way to detain people in federal custody that we--we manage and run. We don't have, you know, wardens and--and jailers and the like that's--it's critical for us to do our mission.

And if you are detaining people, what you're seeing at the border--what you saw at the border last year would be through the roof.

FLEISCHMANN:

Yes. Much to my surprise and chagrin, as you know, a number of states have chosen to either pass laws to either ban ICE facilities or give the state power to come in and inspect a federal ICE facility. What is this impact having on the agency, sir?

ALBENCE:

Well, obviously, we're always in a better position when we can--can pick detention facilities and locations where we have existing resources in order to make operational sense, whether they're near an airstrip, whether they're near courts.

So, it certainly had it--I mean, it--it's created additional expenses for us where we've had to increase transportation cost, detail person to open detention facilities where we don't have personnel just so we can have this detention space and detail personnel and spend money for that purposes.

And--and I'd also say it's had a correspondingly negative impact on--on some of the aliens because now you have a situation where individuals that used to be kept within their communities where their families could go visit them, where their attorneys could readily have access to them, we're now having to send them four, 500, 1,000 miles away because places like California have shut down our ability to have these detention facilities.

So, it's--it happens across the board. So, they're almost cutting their nose despite their face when they make laws like that.

FLEISCHMANN:

Yes, sir. I understand that. Thank you, sir, for your testimony. Madam Chair, I yield back.

ROYBAL-ALLARD:

Ms. Meng.

MENG:

Thank you. Sorry. Mr. Director, I wanted to ask about a case that happened in New York City last month. ICE had shot an unarmed man who was actually not the subject of a warrant right outside of his own home.

Very concerned about excessive use of force and that case is actually now the subject of a DHS OIG investigation.

Wanted to ask what type of training is given to ICE officers about the use of force. And when an ICE officer uses a weapon while conducting enforcement action, what steps are taken to ensure appropriate force was used?

ALBENCE:

So, obviously, as--as we go through--our officers go through extensive basic training, depending on which--which component they're worth--they're down there 15, 18, 19 weeks. Use of force, the use--of less than lethal of force as well are significant aspects of--of the training of our defensive tactics of--of firearms.

And it's something, obviously, that we take very seriously. No--no officer wants to be put in a pos--I guarantee you no officer wants to be in the position where we have to pull that gun out and--and pull that trigger.

We also have, obviously, when those unfortunate incidents occur where we have an officer that needs to use deadly force to generally defend themselves or--or--or the public. We have an extensive review process. We have our Office of Professional Responsibility that--that can review it.

Obviously, we have the--the--the DOJ Office of Inspector General that can step in and do it. You know, if there's allegations of--of civil rights violations and obviously DOJ Civil Rights has--has the ability to go in and look at these cases.

So, there's a multi-tiered avenues for which these--and--and again, a lot of cases--or in every case, probably, the local jurisdiction would have--would conduct an investigation as well, right? If somebody used deadly force in it, they're going to conduct an investigation to see whether or not there's charges to be brought for--for that.

So, I can tell you that the--the--the use of--of deadly force instances have--have--are--are very small. Even--even claims of excessive force are--are very small against our agency. In the past three years, there's not been one claim that's been sent for investigation with regard to use of excessive force outside of a detention setting.

So, look, we're out there every day. We're making, you know, between criminal and administrative arrests, couple of hundred thousand arrests a year.

Making an arrest is an inherently dangerous--the most dangerous thing that a--that a law enforcement officer has to do. It's an inherently dangerous task.

And--and based on the complexities of these circumstances you know, it's--our officers are--have the right to defend themselves and--and go home at the end of every day. And it's never okay to assault a law enforcement officer while they're in the process of doing their job.

MENG:

Yeah. No. I did not say that was the--yeah.

ALBENCE:

No. No. No. I just--

MENG:

--I just want to make sure that the community is safe. And I wanted to go back to your comments from our previous discussion about--I think you had said that everyone in detention is a flight risk or a danger to the community. Wanted to push back a little bit on that.

There is, as you probably know, a federal court order that requires ICE to comply with its own pro-guidance because there are indeed individuals who are not a flight risk, they're not a danger to the community, and who actually eligible for a humanitarian parole.

Specifically, my question is also about--I think there are about 15,000 southeast Asians living in the U.S. with an order of removal. Many of these individuals are long-time lawful permanent res--residents who resettled in the U.S. after U.S. engagement in southeast Asia.

Most are resettled in low income neighborhoods. Many made mistakes, got involved with the criminal legal system. But, many of those targeted for deportation have already served their sentences and are being prosecuted for convictions from maybe over three decades ago.

We've heard reports from community members recently who are working directly with some of these people that ICE agents have threatened to prolong detention in order to coerce them to fill out ICE forms, including listing foreign relatives where--even where an individual might not have one.

So, just wanted to ask about this. Have ICE agents threatened to--to do this?

ALBENCE:

I'm not aware of them threatening to do this. I--I will tell you that the individuals are required by law to comply with efforts to remove them. That's one of--obviously, that's one of the issues, obviously, on (INAUDIBLE), right?

One of the issues is--is--is the individual complying with efforts to remove that--remove that person? If they have a final removal, it's incumbent upon them to provide information that we can utilize to get a travel document.

A lot of times, it's--it's--it's them not even com--cooperating with their--their local--their--their government officials from their home country. And--and I mean--and there--it's not a lot but there are cases we prosecute for individuals that do refuse to comply with--with the removal orders and--and--and frustrate our efforts to do it.

So, individuals that do that are subjected to longer detention as opposed to if an individual gives all the information that's necessary to where their country can issue a travel document in three weeks as opposed

to having to wait six months to get this information from that individual, they're going to be out of detention a lot sooner.

MENG:

So, I mean, people like this are not necessarily flight risks. They've, in many cases, they have already served and completed their sentences, been here for decades. Convictions were prosecuted decades ago.

ALBENCE:

Right. But--but, again, under the immigration laws of this country, they're subject to mandatory detention. If they've been convicted of an aggravated felony or they have a final order of removal, Congress has already said these individuals pose either a flight risk or a public safety risk and as such need to be kept in mandatory detention until such time as their case is resolved.

This is not ICE making up laws. This is ICE applying the laws that Congress has passed.

Certainly, Congress can change those and we'll apply those laws. But, you can't ask us to pick and choose--no other law enforcement agency in this country is being asked to ignore a lawfully issued order by a federal judge. And when you're saying, don't hold these people that have been ordered by an immigration judge and don't remove them, that's exactly what we're being asked to do.

MENG:

I--I am not--

ALBENCE:

--No. I'm--I'm not saying you.

MENG:

Yeah. Yeah. Yeah.

ALBENCE:

I'm saying the--the--the larger you.

MENG:

I understand. And it's part of a larger complicated situation and laws that have to be changed that go beyond you. I--I totally understand that.

Thank you. I yield back.

ROYBAL-ALLARD:

Okay. Mr. Rutherford.

RUTHERFORD:

Thank you, Madam Chair. Director, I--I want to talk a minute about border enforcement and interior enforcement. You hear--you hear a lot of people make that dichotomy.

Yet, understanding that when the--when--when these drug traffickers, when these human traffickers, when--when these folks are moving across the border, they--they go all over the interior, correct?

I--I mean, and--and so, CB--H--HSI is simply going to where the criminals are at, correct? Is--is that--

ALBENCE:

--Absolutely. I mean, look, a lot of--a lot of, you know, large seizures, especially when you start talking about money--the big money seizures are not at the border. They're not at the ports of enter between the border. They're in the interior.

They're in Chicago, in New York, and places like that where you have these large scale criminal organizations that are laundering all the money for these cartels and these transnational criminal organizations.

So, it's why we have HSI agents in--in, you know, 100 or so cities across this country and 70 so countries.

RUTHERFORD:

And a large of those individuals I presume never even cross the border. They actually fly in--

ALBENCE:

--It--it--

RUTHERFORD:

--Across the border.

ALBENCE:

They use all different means. I mean--

RUTHERFORD:

--Right--

ALBENCE:

--It's--

RUTHERFORD:

--Oh. Okay. I want to go back just a minute, too, to the--to--to the importance of your '21 request on the 60,000 beds because I--I--I think that's a--a significant request. And--and I want to be sure it's fully vetted.

Can you talk a little bit about the time that it takes to process those who are on the docket, E--ERO--EOIR? For those that are on--on ATD and those that are--that 2 percent that are in custody, the--the difference in how that--how --how those are processed.

ALBENCE:

So, obviously, the detained docket are prioritized. DOJ, UIR assigns specific judges to work those dockets. We assign specific attorneys to hopefully to work those dockets. Those cases generally move very quickly, you know, especially if you're talking a--a--a border case or so and you're a couple of months or a criminal alien, those things will move fairly quickly.

It's the non-detained docket where, you know, as--as I mentioned in the--in the FCM, Family Case Management, context, you know, five years later, 800 of those are still pending. They haven't been resolved yet.

You know, for an al--when we have an alien in detention, we can swiftly execute that removal order or get that individual out of custody and we stop paying for them.

When we have individuals not attained, especially, you know, in--in--on ATD, you know, understanding--and--and there is a place for ATD and--and, you know, it's supposed to be used in lieu of deportation. Excuse me. Excuse me.

RUTHERFORD:

Detention.

ALBENCE:

In lieu of detention. But, it doesn't also--you know, it doesn't have the same result.

The--the--the goal of ATD should not be to have individuals appear for a couple of meetings with their office--their assigned officer or the field officer at a couple of immigration hearing. The goal should be that it allows us and facilitates us to execute the judge's order regardless of what that order is.

So, if the judge issues--offers the individual asylum and gives them withholding removal or whatever the case may be, that individual can be receive--receive that benefit swiftly, get it, go on about their life and never hear from us again.

RUTHERFORD:

And--and can you--and can you--

ALBENCE:

--But, in order to move, we've got to be able to execute that removal order in--in a timely fashion and ATD doesn't allow--allow that.

RUTHERFORD:

Right. And--and so--and so, can you talk a little bit about how that time delay, that in years, not--not months, how that can actually turn into a draw policy, like catch and release?

ALBENCE:

Well, certainly. I mean, it's--it's a huge--I mean, that's what we saw last year is--it's all about the release, right?

These individuals, most of them, again, even if they're living and have--in places that have harsh economic conditions, most of them do not have claims that reach the legal threshold to get asylum in this country. But, they--their goal is just to get here.

That's why you see caravans forming to try to have massive rushes on the border. That's why you saw people paying to have children that are not related to them--

RUTHERFORD:

--Mm-hmm--

ALBENCE:

--Pose as family to come because they want to get here and they can't be released. The--the small--you know, that's why you didn't have a whole lot of single adults last year because it was all families coming in or, quote, unquote, families because they were paying to rent these kids to come in as a family because they knew they're being released.

I mean, we had criminal investigations where our IHS--half of these guys are under surveillance cutting off ankle bracelets, right? And if--if they don't show up for their hearing, you know, the chances of them being arrested and located by us is--is small.

I mean, we have, you know, again, 600,000 people on--on the fugitive docket. We arrested 36,000 people at large by ERO last year, 90 percent of them--86 percent of them criminals.

We've got no bandwidth to ever effectuate those removal orders in a--in a meaningful fashion. To--and to me, when we do effectuate--and that's those cases you hear in the media where this individual's here six, seven, eight years have set down route how cruel it is for ICE to come in and pull this person out. They've got a kid here. They got medical issues.

The system has set that problem--that problem up. It's not ICE that has done it.

RUTHERFORD:

Right.

ALBENCE:

The system that allowed him to stay here for seven years and set up a life has done it. To me, it's a lot more humane to put these individuals in a safe, secure, humane environment in a facility for two or three months, which is exactly what we did in 2014 when we built family detention under the prior administration. Let them have their day in court.

For those individuals that meritorious towards asylum claims, it's far better for them as well. Let them get their asylum within three months and go on about their lives as opposed to waiting in limbo for seven years.

RUTHERFORD:

Mm-hmm.

ALBENCE:

And for those that don't have meritorious claims, they get out of the country. And other individuals will see that and they'll stop coming.

This--you--you will never have strong border security, you'll never have a secured border if there's not a corresponding interior enforcement component. It's just not going to happen because people will continually put pressure upon that border and try five, six, seven, eight, nine times and eventually try to get past the border patrol and eventually they will.

And if we're not there to get them in the interior--

RUTHERFORD:

--And if we could recognize that, it would make our country safer and those people safer.

ALBENCE:

Absolutely.

RUTHERFORD:

Thank you, Madam Chair. I yield back.

ROYBAL-ALLARD:

And--and--and just another fa--a factor in--in this is--is two things. Number one, we don't have enough judges. And judges prioritize those that are in detection and that's why it takes so long to do these others.

So, again, a--a very complicated issue that we need--

ALBENCE:

--Can I--can I beg you for some attorneys with those judges you can have all those judges? Without those attorneys, you're going to have a judge, an alien, and no one from the federal government in there representing ourselves. It's--it's--we're not going to be able to.

ROYBAL-ALLARD:

Any other questions? Okay. There being no further questions, then this hearing is adjourned.

List of Panel Members and Witnesses

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REP. KAY GRANGER (R-TEXAS), EX-OFFICIO

WITNESSES:

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT DEPUTY DIRECTOR MATTHEW T. ALBENCE

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