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United States Senate

COMMITTEE ON THE JUDICIARY

WASHINGTON, DC 20510-6275

KOLAN L. DAVIS, *Chief Counsel and Staff Director*
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August 31, 2016

The Honorable Sarah R. Saldana
Assistant Secretary
U.S. Immigration and Customs Enforcement
Washington, D.C. 20536

The Honorable R. Gil Kerlikowske
Commissioner
U.S. Customs and Border Protection
Washington, D.C. 20229

Dear Assistant Secretary Saldana and Commissioner Kerlikowske:

Thank you for your response on July 11, 2016, to my letter regarding the increased smuggling of undocumented immigrants into the United States, the disturbing trend of recidivism among human smugglers, and the concern that countries with ties to terrorism are using gaps in policy and border security to smuggle individuals into the United States. In addition to this national security threat, failure to detain known human smugglers jeopardizes the health and safety of individuals who may be trafficked by smugglers in the future. This issue is particularly salient in light of a recent U.S. Southern Command Intelligence report expressing concern that Sunni extremists are using South American alien smuggling networks to infiltrate our borders.¹

According to your response, there is a recidivism rate of 30% among smugglers, some of whom were apprehended on dozens of separate occasions after being released. While this information is helpful in understanding the smuggling crisis, your responses give rise to additional questions with respect to Border Patrol and ICE's processes used to combat human smuggling.

Accordingly, please answer the following questions and provide the requisite information by September 14, 2016:

¹ Bill Gertz, "Southern Command Warns Sunni Extremists Infiltrating from South," The Washington Free Beacon (August 22, 2016), available at <http://freebeacon.com/national-security/southern-command-warns-sunni-extremists-infiltrating-south/>.

1. The response stated that 10,000 of the approximately 33,000 apprehended smugglers from FY 2012-2016 were apprehended multiple times, resulting in 39,000 removals. Given this 33,000 figure, how does DHS account for the 39,000 removals? Were all those apprehended eventually deported by ERO? What actions are taken regarding smugglers who are not involuntarily deported?
2. Please explain how biometrics are used to prevent recidivism. How are smugglers whose biometrics are on file still able to act as repeat offenders?
3. What form(s) of “administrative charge” does Border Patrol impose on known smugglers? What action by a smuggler will result in an administrative charge without an accompanying criminal prosecution? Please explain.
4. Your response noted that Border Patrol works with “the Department of Justice and ICE to seek prosecution, when applicable” of apprehended smugglers. How often does ICE refer a smuggler to DOJ for prosecution? How does ICE determine which cases to refer?
5. Exactly how many underage smugglers were apprehended from FY 2012 through March of FY 2016? What is the recidivism rate for underage smugglers? If federal criminal and/or administrative prosecution are not available for underage smugglers, what other controls can your Department use to prevent this demographic from human smuggling?
6. Can you define the term “special interest alien” used in your response?² Please release the Department’s internal list of countries and territories of counterterrorism interest whose migrants are identified as special interest aliens to Congress.

Thank you for your attention in this important matter. Should you have any questions, please contact Katherine Nikas of my Committee staff at 202-224-5225.

Sincerely,



Charles E. Grassley
Chairman
Committee on the Judiciary

² I have previously written Secretary Johnson to ask for this definition and have yet to receive a response.

cc:

The Honorable Patrick Leahy
Ranking Member,
Senate Committee on the Judiciary