Question#:	12
Topic:	Fraudulent Family Unit
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: At the hearing before the Senate Judiciary Committee on June 11, 2019, you testified that DHS has identified almost 4,800 migrants this year presenting as family units that were determined to be fraudulent.

How does DHS define a fraudulent family unit?

Response: CBP defines a family unit as a group of aliens that include child(ren) under the age of 18 accompanied by a parent(s) or legal guardian(s). A fraudulent family unit is a group of aliens that present themselves as a family unit however, through interview or investigation, it is determined that this group of aliens (regardless of whether there was willful misrepresentation) lacks one or more elements of the family unit definition. Though it should be noted that these fraudulent family units are often in possession of fraudulent documents, such as birth certificates, etc.

Question: Do any of the fraudulent family units include children traveling with a relative other than a parent (such as an older sibling, aunt, uncle, or grandparent)?

Response: Yes. CBP is always concerned about human smuggling and trafficking and is sensitive to any situation, which changes the custody of child. Based on existing federal law, including the Homeland Security Act of 2002 and the Trafficking Victims Protection Reauthorization Act of 2008 (TVPRA), DHS policy states that a family unit is an alien parent or legal guardian and alien children under age 18. If an alien child arrives with an adult relative who is not the parent or legal guardian, such as an aunt, uncle, grandparent, or adult sibling, the child will be processed as a UAC and separated from the adult as required by federal law. Therefore, family units only consist of verified family members including child(ren) under the age of 18 accompanied by a parent(s) or legal guardian(s). As an example, family units comprised of other than a parent/child relationship will present fraudulent documents that falsely identifies them as a true family unit.

Question: You testified that we are seeing "enormous numbers" of fraudulent families. Of all migrants apprehended at the U.S.-Mexico border this year, what percentage were determined to be part of fraudulent families? Please specify for the percentages for this fiscal year and this calendar year.

Response: For FY 2019 through the end of May, 1.43 percent of migrants apprehended at the border were determined to be part of fraudulent family units under CBP's definition.

Question#:	13
Topic:	Did Not Appears
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: You testified that DHS did an expedited pilot this year in which 7,000 family units were referred to ICE and the immigration courts. Of those 7,000, 90% did not appear at their hearings and received final orders of removal in absentia.

How were families selected for this pilot?

Is the sample used for this pilot representative of all migrants apprehended at the Southern border this year?

Is it fair or accurate to say that 90% of all migrants apprehended at the Southern border do not appear at their immigration hearings?

Response: Prior to September 2018, ICE identified ten cities with the largest volume of family units in immigration proceedings: Atlanta, Baltimore, Chicago, Denver, Houston, Los Angeles, Miami, New Orleans, New York, and San Francisco. Thereafter, ICE requested the DOJ EOIR develop a pilot docket in these cities' immigration courts to process family unit cases more expeditiously. Starting in September 2018, each of these immigration courts created an expedited family unit docket wherein they would prioritize family unit cases and commit to fully adjudicating them within a year of initiation.

As of August 9, 2019, there have been approximately 57,735 cases placed on the family unit docket under this initiative. Based on ICE's informal tracking of these cases,[2] EOIR has conducted over 87,000 hearings. The majority have been master calendar hearings (preliminary hearings to resolve issues of removability, obtain counsel, and/or submit applications and evidence for relief), but several individual hearings have also been held and completed. Overall, EOIR has completed over 16,000 family unit cases. In 13,048 cases (81 percent), the aliens failed to appear in court as required and the Immigration Judge (IJ) ordered them removed from the United States *in absentia*. IJs have granted relief from removal in only 562 cases (3.5 percent). Of those, 327 cases (2.03 percent) were grants of voluntary departure and 229 (1.42 percent) were grants of asylum and other types of protection from removal. The remaining 15,518 cases (96 percent) were orders of removal, including the *in absentia* orders of removal referenced above.

[2] EOIR is the best source for immigration court data and statistics, including statistics regarding *in absentia* orders in cases involving migrants apprehended at the southern border.

Question#:	14
Topic:	Notices to Appear
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: Due process requires that migrants in removal proceedings be properly served with legally sufficient Notices to Appear (NTAs). However, the immigration courts sometimes fall short of that due process standard. Please refer to the U.S. Supreme Court's opinion in Pereira v. Sessions (2018).

Is it correct that some migrants have received Notices to Appear that did not specify the date and time of their immigration hearing?

Is it correct that some migrants have received final orders of removal in absentia after the Notice to Appear was returned to ICE as undeliverable or otherwise improperly served?

Response: In the past, DHS served aliens with NTAs that did not include a specific date and time of a future immigration hearing. Subsequently, DOJ would serve the alien with a notice of hering that contained the dated and time of their first removal hearing. However, with the exception of detained cases, ICE now uses the DHS Portal to obtain available hearing dates and times and include such information on NTAs. For detained cases, ICE works directly with EOIR to obtain a hearing date or indicates on the NTA the hearing is "to be determined" (TBD). Similarly, after *Pereira*[3], USCIS issued policy guidance that most NTAs (except for credible fear NTAs) should contain the date and time of the hearing. USICS uses the DHS Portal to schedule hearing so NTAs contain a date/time when the NTA issued. For credible fear NTAs, USCIS works with local EOIR courts to obtain a hearing date/time or indicates the hearing is TBD. CBP is using the DHS Portal to obtain hearing dates for individuals placed in MPP. For CBP cases not placed in MPP, CBP continues to issue NTAs that bear TBD dates and times. EOIR will then issue a notice specifying the date and time of the hearing once the NTA is filed with the court.

Under current case law and applicable regulations, NTAs with TBD dates and times are legally sufficient and vest jurisdiction with the immigration court over an alien's removal proceedings if the immigration court subsequently provides the alien with a notice of hearing specifying this information.[4] *See Matter of Bermudez-Cota*, 27 I&N Dec. 441, 447 (BIA 2018) (confirming that, "[a] notice to appear that does not specify the time and place of an alien's initial removal

[3] https://www.supremecourt.gov/opinions/17pdf/17-459_1o13.pdf

[4] The U.S. Court of Appeals for the Seventh Circuit and Eleventh Circuits have recently stated that an NTA does not specifiy the time and place of the initial removal hearing is, without any additional notifications, deficient under the statute. *See Ortiz-Santiago v. Barr*, 924 F.3d 956 (7th Cir. 2019); *Perez-Sanchez v. Barr*, 935 F.3d 1138 (11th Cir. 2019). The Seventh and Eleventh Circuits, have determined, however, that the statutory requirement to specify a time and place is simply a claim-processing rule; thus, an alien may forfeit any objection to the lack of such information by failing to raise the issue promptly.

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hearing vests an Immigration Judge (IJ) with jurisdiction over the removal proceedings . . . so long as a notice of hearing specifying this information is later sent to the alien."). The U.S. Supreme Court's decision in *Pereira v. Sessions*, 138 S. Ct. 2105 (2018), is distinguishable because the "narrow" issue before the Supreme Court was, "whether a notice to appear that does not specify the time and place at which proceedings will be held . . . triggers the 'stop-time' rule for purposes of cancellation of removal." *Matter of Bermudez-Cota*, 27 I&N Dec. at 443. Therefore, the statutory notice requirements are met even if the alien's NTA does not specifically state the date and time of their hearing, so long as EOIR subsequently provides the alien with a hearing notice with this information.

As to your inquiry regarding the use of *in absentia* removal orders, an NTA may be served "in person to the alien (or, if personal service is not practicable, through service by mail to the alien or to the alien's counsel of record, if any)." INA § 239(a)(1). The vast majority of NTAs are served in person to the alien. Where those NTAs contain the time and place, there is no question of proper service. "In the case of any change or postponement in the time and place of such proceedings, the Immigration Court shall provide written notice to the alien specifying the new time and place of the proceeding[.]" 8 C.F.R. § 1003.18(b). To obtain an *in absentia* order, the actual written notice must be served on the respondent. *Matter of G-Y-R-*, 23 I&N Dec. 181, 184-85 (BIA 2001). *See also* INA § 240(b)(5). Service of the notice may be in person or by mail. *G-Y-R-*, 23 I&N Dec. 184-85. "'Actual notice" – i.e., proof of personal service – "will always suffice.'" *Matter of J.J. Rodriguez*, 27 I&N Dec. at 764 (quoting *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 314 (1950)). The regulations specify that "[i]f the [alien] fails to provide his or her address as required under [8 C.F.R.] § 1003.15(d), no written notice shall be required for an IJ to proceed with an in absentia hearing." *See* 8 C.F.R. § 1003.26(d); *see also* 8 U.S.C. § 1229a(b)(5)(B). Thus, the alien not only bears the responsibility to provide EOIR with a correct and valid address, but is also required to notify EOIR regarding any address or phone number changes, when applicable, within five working days. An IJ may order an alien removed *in absentia* if the alien fails to appear at their removal hearing only if ICE submits evidence that "establishes by clear, unequivocal, and convincing evidence" that the alien was properly notified of the hearing and that the alien is removable as charged in the NTA. *See* 8 U.S.C.§ 1229a(b)(5); 8 C.F.R. § 1003.26. Notably, however, written notice to the alien "shall be considered sufficient . . . if it was provided at the most recent address provided by the alien [and] no written notice shall be required for an Immigration Judge to proceed with an in absentia hearing [if the respondent fails to provide his or her address as required by the regulations.]" 8 C.F.R. § 1003.26(d). The return of an NTA or a hearing notice to ICE and/or EOIR as undeliverable is evidence ICE and the IJ would consider in determining whether the alien received proper notice of the hearing or whether the alien failed to properly notify EOIR of their address; however, each alien's case is factually distinct and requires an individual inquiry to

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determine if the alien properly received notice of their hearing.[5] Where an ICE attorney or the IJ has any evidence that the alien was not properly provided notice, the ICE attorney would either move for the IJ to renotice the alien of a future hearing date using the address information provided by the alien or move to dismiss the case. Ultimately, the IJ and ICE attorney ensure the integrity of the immigration system and that it is fair and just.

[5] Aliens ordered removed *in absentia* may also file a motion to reopen to rescind the *in absentia* order within 180 days after the date of the order of removal if the alien demonstrates that the failure to appear was due to exceptional circumstances as defined in INA § 240(e)(1), or at any time if the alien demonstrates that he or she did not receive notice in accordance with INA § 239(a)(1), (2), or that he or she was in federal or state custody and the failure to appear was through no fault of the alien. *See* 8 C.F.R. § 1003.23(b)(4)(ii).

Question#:	15
Topic:	Pull Factors
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: You testified about the "pull factors" for migrants from Central America to travel to the United States.

Have you read the U.S. State Department 2018 Country Reports on Human Rights Practices in El Salvador, Guatemala, and Honduras?

Response: Yes. DHS uses the U.S. Department of State country reports to consider policies, conduct analysis, and train our personnel who are on the front lines of addressing the migrant crisis at the southwest border.

Question: Do you believe widespread crime and gang violence in El Salvador, Guatemala, and Honduras have forced individuals to flee from these countries?

Response: Yes. Then Acting Secretary McAleenan traveled to El Salvador, Guatemala, and Honduras and heard first-hand about the factors that push Central Americans to migrate. Along with a lack of economic opportunities and a desire for family reunification, we know that crime and gang violence are just two of the many factors in the region that lead individuals to migrate to the United States.

Question#:	16
Topic:	Process Refugee Applications
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: In order to qualify for asylum or refugee status in the United States, a person must show past persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. The Secure and Protect Act would establish refugee processing centers in Mexico and Central America. Any asylum seeker who resides in a country with a refugee processing center, or a country contiguous to a country with a refugee processing center, would have to apply for refugee status at the center and await adjudication outside of the United States.

If a person qualifies for refugee status, is that person safe in his or her home country?

Response: Under U.S. law, refugees must generally be outside their country of origin. However, under some circumstances, we can process certain individuals in their home countries if authorized by the President. The U.S. Refugee Admissions Program (USRAP) has a long history of processing certain applicants in their home countries, such as specific categories of Iraqi and Cuban applicants under Priority-2, groups of special humanitarian concern identified by the U.S. refugee program. While it is not safe for all individuals fleeing persecution to remain in their home countries while seeking resettlement as a refugee, our experience with in-country refugee processing has been that many applicants have been successfully processed for resettlement while remaining in their home countries.

Question: On average, how long does it take the U.S. government to process refugee applications?

Response: USCIS defers to the Department of State, which has responsibility for the overall management of the U.S. Refugee Admissions Program, on the current average length of time to process a refugee application.

Question#:	17
Topic:	Remain in Mexico II
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: You testified that you believe the United States should enter into a Safe Third Country agreement with Mexico. This would require a Central American asylum-seeker traveling to the United States through Mexico to apply for asylum in Mexico since that is the first "safe country" in which he or she has arrived; if the Mexican government grants the asylum application, the individual would remain in Mexico.

Response: A Safe Third Country Agreement (STCA) does *not* require a Central American asylum-seeker traveling to the United States through Mexico to apply for asylum in Mexico since that is the first "safe country" in which he or she has arrived.

Rather, 8 USC § 1158(a)(2)(A) states that if "an alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or…last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the [Secretary] finds that it is in the public interest for the alien to receive asylum in the United States."

In short, a STCA creates a relationship between two countries where, based on specific negotiated parameters, individuals seeking protection in one country can be removed to another country to complete that protection claim. There is no statutory requirement that the migrant has to have transited through the country to which he/she is removed pursuant to the STCA.

Qustion: Based on DHS's own reports, how many Mexican nationals were granted asylum affirmatively or defensively in the United States between 2015 and 2017?

Response: USCIS granted affirmative asylum to 1,456 Mexican nationals from FY 2015 to FY 2017. USCIS defers to the DOJ EOIR to report on the number of asylum grants issued through the defensive asylum process.

Question: Do you believe Central American asylum-seekers are safe in Mexico?

Response: Yes. While the determination is made on a case-by-case basis, Mexico has the capacity to provide appropriate protections to those seeking reflief. Further, Mexico, is continually improving its asylum system. The Mexican government has reiterated its commitment to providing humanitarian assistance and protection to anyone seeking refuge in Mexico.

Question#:	18
Topic:	Fort Sill
Hearing:	The Secure and Protect Act: a Legislative Fix to the Crisis at the Southwest Border
Primary:	The Honorable Sheldon Whitehouse
Committee:	JUDICIARY (SENATE)

Question: This week, the Department for Health and Human Services announced that it will house 1,400 unaccompanied migrant children at Fort Sill Army Base in Oklahoma - a facility used to intern Japanese Americans during World War II.

Is Fort Still equipped to provide food, shelter, and medical care for 1,400 children?

Are staff members at the facility trained to provide trauma-informed care to these children?

What steps are being taken to reunify these children with their families?

How long will the children be housed at the facility before they are reunified with their families?

Response: ICE defers to HHS ORR.