

Question#:	21
Topic:	Binary Choice II
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: The Trump Administration is considering a policy dubbed as the "binary choice." Under this proposal, immigrant parents apprehended at the Southwest border would be given the option of being separated from their children or being placed in long-term detention as a family unit.

Are you aware of the so-called "binary choice" policy proposal?

Did you play any role in developing the "binary choice" policy? If so, what role did you play?

Were child welfare experts consulted in the development of the "binary choice" policy? Please provide the names and organizations consulted on the "binary choice" policy.

Was the American Academy of Pediatrics (AAP) consulted on the "binary choice" policy? If not, why was AAP not consulted?

Response: DHS does not comment on or release internal, deliberative, and pre-decisional information.

Question#:	22
Topic:	CBP List
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: According to news reports, Customs and Border Protection (CBP) put together a list of 59 journalists, attorneys, and activists who should be stopped for questioning by border agents when crossing the Southwest border. Apparently, at least 21 people who are on the list have either been questioned or arrested by border agents.

Are you aware of the list of 59 journalists, attorneys, and activists referenced in the NBC News story?

Did you play any role in the compilation of the list? If so, what role did you play?

Did you express any concern to your superiors regarding CBP maintaining such a list?

Does CBP maintain any other similar lists of journalists, attorneys, and/or activists?

Response: CBP does not does not profile, target, or discriminate against any individual for being an attorney or for exercising his or her First Amendment rights. All persons and merchandise transiting the border are subject to inspection. As the Supreme Court has explained, “That searches made at the border, pursuant to the longstanding right of the sovereign to protect itself by stopping and examining persons and property crossing into this country, are reasonable simply by virtue of the fact that they occur at the border, should, by now, require no extended demonstration.” *United States v. Ramsey*, 431 U.S. 606, 616 (1977). In addition to the long-standing Supreme Court precedent recognizing border search authority, numerous federal statutes explicitly authorize searches of people and things entering the United States. *See e.g.*, 19 U.S.C. §§ 482, 1461, 1496, 1581, 1582.

As part of the inspection process, CBP officers must verify the identity of persons, determine the admissibility of travelers, and look for possible terrorists, terrorist weapons, controlled substances, and a wide variety of other prohibited and restricted items. Occasionally, CBP may inconvenience law-abiding persons in our efforts to detect, deter, and mitigate threats to our homeland caused by few individuals involved in illicit activities. CBP relies on the patience, cooperation, and understanding of travelers to ensure the effective protection of our borders.

Question#:	23
Topic:	Remain in Mexico
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: On January 25, 2019, DHS published the Migrant Protection Protocols (MPP), otherwise known as the "Remain in Mexico" policy. It allows Central American asylum seekers, who have already entered the United States to be processed, to be sent back to Mexico to await their processing instead of in the U.S. This policy change creates yet another hurdle for migrants in need of counsel on U.S. immigration law, and like metering, places migrants in Mexican border cities and towns that are unsafe and lack the resources needed to ensure the wellbeing of families.

Does CBP believe migrants in Mexico have the same access to legal counsel as they would in the United States?

Does CBP recognize that those who are turned away at the border and forced to wait in Mexico may be in significant danger?

Response: There is likely a difference in access to legal counsel when an alien is not in the United States. However, that does not change the fact that aliens in removal proceedings have the right to counsel of their choosing at no expense to the U.S. Government; aliens are not forced to go through the immigration process without a legal advocate. Aliens subject to MPP are afforded the same right to counsel and provided with the DOJ Executive Office for Immigration Review's list of pro bono legal services providers in the area.

CBP cannot comment on the security situation of local communities in Mexico; it is the responsibility of the Government of Mexico (GOM) to determine appropriate care for migrants in their territory. To that end, GOM has noted publically that individuals under Migrant Protection Protocols (MPP) "are afforded all rights and freedoms recognized in [Mexico's] Constitution, the international treaties to which Mexico is a party, and its Migration Law." Given that GOM has acceded to both the 1951 *Convention relating to the Status of Refugees* and its 1967 *Protocol*, and ratified the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, it is bound by non-refoulement obligations, as reflected in Mexico's Law on Refugees, Complementary Protection, and Political Asylum and other migration laws.

Question#:	24
Topic:	Data Collection
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: What data will CBP collect about (1) the number of people sent back to Mexico and (2) wait times for asylum seekers at ports of entry along the border who have been sent back? Please provide as much detail as possible about any such data and findings.

Response: CBP tracks the number of individuals returned to Mexico under MPP, and deliberately coordinates their return for their hearings. They are given detailed information on when and where to report for their hearings, then processed and provided transportation to their appointment. CBP does not track wait times specific to asylum seekers who have been returned to Mexico.

Question: What data will CBP collect regarding families that have been sent back to Mexico under this policy? Please provide as much detail as possible about any such data and findings.

Response: CBP collects all the same data points we collect on a standard Notice to Appear. This includes:

- Full Name
- Date of birth
- Country of Citizenship
- Country of birth
- Gender
- Fingerprints (depending on age)
- Photo (depending on age)

Question#:	25
Topic:	Daily Processing
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: During the past two years, CBP officials have said that the agency cannot immediately process all of the migrants who arrive at the ports of entry along the U.S.-Mexico border. The growing wait times for people who have reached the border, including asylum seekers in particular, are well documented. Despite CBP being aware of this issue and knowing the likely increase of asylum seekers reaching the border, actions have not been taken to assist with the increased volume of processing those entering the country.

How many asylum seekers is CBP processing daily at ports of entry?

Response: CBP processes all applicants for admission, and ensures that any claim of fear is referred to an appropriate adjudicator. In Fiscal Year 2019 through May 31, 2019, CBP processed an average of 218 asylum seekers daily at CBP ports of entry.

Question: What is the estimated capacity for processing asylum seekers and other individuals at the ports of entry along the U.S.-Mexico border? Please provide a breakdown of estimated capacity for processing asylum seekers by port of entry.

Response: CBP has not conducted any official agency-wide assessment of the ports of entry to capture that information. Each Port Director must manage their resources to assess their mission requirements to process lawful trade and travel, to address our counter-narcotics mission, and to process people without documents. The number of inadmissible travelers CBP is operationally capable of processing varies depending on overall port volume and enforcement actions.

Question#:	26
Topic:	Granted Daily
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: How many asylum applications are being granted daily? Among those grants, how many are for people who did not cross the border at official ports of entry?

Response: U.S. Citizenship and Immigration Service (USCIS) adjudicates affirmative asylum applications and also screens individuals for a credible fear of torture or persecution on account of race, religion, nationality, membership in a particular social group, or political opinion. USCIS has jurisdiction over asylum applications filed by individuals who are not in removal proceedings. USCIS also has initial jurisdiction over asylum applications filed by UACs, including UACs in removal proceedings. In FY 2019, through April, USCIS granted 10,904 affirmative asylum applications in total, which amounts to 76 applications per business day on average. Of those granted, 1,061 of the individuals appear to have entered into the United States without inspection.

USCIS does not adjudicate asylum applications for individuals placed in expedited removal. UACs are not subject to expedited removal. Individuals in expedited removal who express a fear of persecution or torture, or an intention to apply for asylum, or a fear of return to their home country are referred to USCIS for credible fear screenings. The purpose of a credible fear screening is to determine whether an individual is eligible to file an application for asylum, withholding of removal under the INA, or withholding or deferral of removal under the Convention Against Torture in immigration court. In FY 2019, through April, USCIS made positive credible fear determinations in 44,121 cases in total, which amounts to 306 cases on average per business day. Individuals who receive a positive credible fear determination are placed into removal proceedings where they may pursue asylum and/or withholding of removal, or any other relief or protection from removal, before an immigration judge.

USCIS defers to the Executive Office for Immigration Review (EOIR) for statistics regarding the number of asylum applications granted daily for individuals in removal proceedings, as well as how many are for people who did not cross the border at official ports of entry.

Question#:	27
Topic:	Recent Figures
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: What are the most recent figures available for the number of people found outside ports of entry who are (1) removed from the United States immediately, versus those who are (2) referred for "credible fear" or "reasonable fear" interviews?

Response: CBP has returned 84,928 subjects for FY 2019 through April. CBP has apprehended 38,154 subjects that were processed for expedited removal and claimed credible fear for FY 2019 through April.

Question#:	28
Topic:	Temporary Processing Facilities
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: Previous administrations have opened temporary processing facilities to increase processing capacities along the border. During the last two years, has CBP opened any temporary processing facilities along the border?

Response: CBP has deployed two soft-sided structures. One structure is located in El Paso, Texas, and the other in McAllen, Texas. These structures can accommodate up to 500 subjects, are weatherproof, climate-controlled and provide areas for eating, sleeping, recreation and personal hygiene.

Question: In your assessment, what other steps can CBP take to process asylum seekers more effectively?

Response: CBP is already maximizing the effectiveness of the resources available for the processing of all who come to our borders. As areas for improvement or operational gaps are identified, CBP will develop means to mitigate them.

Question#:	29
Topic:	Death Notification
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: In the early hours of December 8, 2018, Jakelin Caal Maquin, a seven-year-old girl from Guatemala who had arrived at the U.S. border with her father, died after being detained by the Border Patrol. She had been apprehended on the evening of December 6, and according to an initial diagnosis she died of dehydration, fever, and septic shock just over a day later.

Why was Congress not notified of the death of Jakelin Caal Maquin prior to the Senate Judiciary Committee hearing at which you testified on December 12, 2018?

Were you aware of the death of Jakelin Caal Maquin prior to your testimony at the hearing?

Response: CBP leadership first learned of the death on the morning of December 8, 2018. CBP was in the process of solidifying a privacy waiver; CBP did not have confirmation that the mother had been notified in Guatemala, and, most importantly, CBP did not want to risk politicizing the death of a child while the then-Commissioner was imploring Senators to fix the laws that are inviting families to take this dangerous path.

Over the years, in response to such tragic events, being mindful and respectful of the oversight role of Congress, CBP has endeavored to walk the fine line between appropriately notifying our Congressional Oversight Committees and taking care to protect the privacy interests of the family as well as the integrity of the investigation. Following the tragic loss of Jakelin, it became clear that we had to do better.

On December 17, 2018 the then-Commissioner signed a policy memorandum detailing the notification process for deaths occurring in CBP custody. We outlined this process in keeping with Federal law enforcement best practices. This new policy meets both the spirit of and legal requirements of Congressional actions over the past few years. Should we identify additional best practice procedures, it is our intention to update further our own process accordingly.

Question#:	30
Topic:	Improve Conditions
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: In light of Jakelin Caal Maquin's death while in Border Patrol custody, what is the Border Patrol doing to improve detention conditions and procedures to ensure the safety and wellbeing of all individuals and families in its custody?

Response: The U.S. Border Patrol prioritizes the health and safety of all aliens in our custody, particularly vulnerable aliens such as minors. Accordingly, the USBP adheres to the guidance provided in the CBP *National Standards on Transportation, Escort, Detention, and Search* (TEDS) policy. Additionally, USBP continually assesses the conditions of all USBP hold rooms to ensure continuous operational capability and compliance with established, policy, law and judicial rulings such as the *Flores* Settlement Agreement.

CBP has also expanded its intake screening to 100% of all aliens in locations with contracted medical staff and is actively working toward conducting medical assessments on 100% of all juveniles in custody as contract medical staffing increases.

CBP's Management Inspection Division conducts announced and unannounced inspections of USBP facilities to verify compliance with CBP policies related to short-term detention conditions such as TEDS.

In addition to internal assessments of hold room conditions, various external agencies such as the DHS Office of Inspector General (OIG) continue to inspect our facilities.

Question: A 2016 report by the Department of Homeland Security's Office of the Inspector General (OIG) found that Customs and Border Protection (CBP) Forward Operating Bases along the U.S.-Mexico border, including the one where Jakelin Caal Maquin was temporarily held, lacked safe drinking water. These Forward Operating Bases "are staffed by Border Patrol agents on temporary duty assignments from their permanent duty station." Are you aware of any inspections and any necessary corrective actions been undertaken to ensure that these facilities have safe drinking water?

Response: In 2016 all CBP operated Forward Operating Bases, to include the Antelope Wells FOB, received and installed state-of-the-art water treatment and filtration systems that provide commercial bottled quality water. Each system was designed by a water engineer and sized for the usage at each site.

The following is a list of preventative maintenance regularly conducted on the system at the Antelope Wells FOB:

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- Yearly complete maintenance and media replacement – meets or exceeds manufacturer guidance
- Monthly bacteriological sampling at the kitchen sink in the FOB
- Yearly comprehensive sampling (to include Legionella) at two locations in the FOB – kitchen sink and mop sink
- Monthly sampling for Legionella post positive result for 6 continual months

Additionally, CBP is implementing the following improvements to the water system at Antelope Wells FOB:

- Adding anti scald devices to keep hot water heater constant 140 degrees
- Installing an automatic flushing system

Question#:	31
Topic:	Protocol
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: What is the protocol that Border Patrol agents are supposed to follow for individuals who become ill while in Border Patrol custody?

Response: The protocols are covered in the CBP *Transport, Escort, Detention, and Search* (TEDS) policy, and include reporting injuries or illnesses involving individuals in custody to a supervisor and ensuring that appropriate medical care is provided or sought in a timely manner.

Question: Are medical staff, including staff trained in pediatric care, available at all Border Patrol facilities to ensure the safety and wellbeing of those held in Border Patrol custody?

Response: Mid-level medical staff are trained, licensed, and credentialed to triage and treat medical issues in juveniles, adults, and pregnant females. They are available at the highest priority Border Patrol facilities along the southwest border utilizing a combination of contracted medical personnel and Federal medical personnel. Prioritization is based on the flow of unaccompanied alien children and family unit aliens per location along with the proximity and availability of local medical treatment facilities. USBP is rapidly expanding contracted medical staff to all remaining priority Border Patrol facilities before the end of FY 2019.

Question#:	32
Topic:	Translators
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: Are translators available at all Border Patrol facilities, and are all documents signed by individuals in Border Patrol custody provided in a language that they understand?

Response: CBP complies with its obligations under Executive Order 13166 of August 11, 2000. CBP's Language Access plan is available here:

<https://www.dhs.gov/sites/default/files/publications/final-cbp-language-access-plan.pdf>.

All USBP agents are trained in the Spanish language during basic training at the U.S. Border Patrol Academy. USBP utilizes over the phone interpretation services for other languages. These contract services are available at all times and offer language services in over 150 languages. Copies of processing disposition documents are not provided in any language other than English. However, the processing documents such as a Notice to Appear are explained to the alien in their native language either by an agent or through use of the contract interpretation service.

Question#:	33
Topic:	Metering II
Hearing:	At the Breaking Point: The Humanitarian and Security Crisis at our Southern Border
Primary:	The Honorable Cory A. Booker
Committee:	JUDICIARY (SENATE)

Question: An OIG report released on September 27, 2018, detailed CBP's policy of "metering" individuals seeking asylum at ports of entry. Through the metering process, individuals or families seeking asylum at ports of entry are turned away and told that they will not be processed or that they will have to wait days or weeks in order to be processed. This report noted:

While the stated intentions behind metering may be reasonable, the practice may have unintended consequences. For instance, OIG saw evidence that limiting the volume of asylum-seekers entering at ports of entry leads some aliens who would otherwise seek legal entry into the United States to cross the border illegally. According to one Border Patrol supervisor, the Border Patrol sees an increase in illegal entries when aliens are metered at ports of entry. Two aliens recently apprehended by the Border Patrol corroborated this observation, reporting to the OIG team that they crossed the border illegally after initially being turned away at ports of entry. One woman said she had been turned away three times by an officer on the bridge before deciding to take her chances on illegal entry.

The OIG report added that "[t]he fact that both aliens and the Border Patrol reported that metering leads to increased illegal border crossings strongly suggests a relationship between the two."

In your assessment, do you agree that "limiting the volume of asylum-seekers entering at ports of entry leads some aliens who would otherwise seek legal entry into the United States to cross the border illegally"? Please provide an explanation for your response.

Response: The DHS Office of Inspector General report referenced covered a specific period of time in June 2018 when the data did suggest that it was possible that queue management practices at ports of entry may led to increased illegal border crossing. Interviews with two agents at that time indicated that one or two different family groups stated they decided to cross illegally rather than wait. Then CBP Commissioner McAleenan accepted the Inspector General's conclusion.

Question: In your assessment, do you agree that "the Border Patrol sees an increase in illegal entries when aliens are metered at ports of entry"? Please provide an explanation for your response.

Response: As of May 30, 2019, the USBP has made 583,856 apprehensions in FY 2019 along the southwest border alone. The number of aliens that opt to enter illegally rather

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than present themselves at a port of entry is difficult to assess. Generally, very few aliens who are apprehended after entering illegally state that they chose to enter between the ports of entry due to being denied admission at a port of entry.

Question: In your assessment, has this "metering" policy made Border Patrol agents' work between ports of entry more difficult? Please provide an explanation for your response.

Response: CBP cannot prove or disprove that the queue management practice encourages illegal crossings between POE and is not aware of any data that could be used to do so. Numerous factors motivate migrants to cross in between the ports of entry.

Question: Do the above findings from the OIG report correspond to any anecdotal evidence you have received from Border Patrol agents regarding the relationship between "metering" and the volume of U.S.-Mexico border crossings between ports of entry?

Response: CBP cannot prove or disprove that the queue management practice encourages illegal crossings between POE and is not aware of any data that could be used to do so. Numerous factors motivate migrants to cross in between the ports of entry.

Question: Has the Border Patrol collected or otherwise obtained any data regarding the relationship between "metering" and the volume of U.S.-Mexico border crossings between ports of entry?

Response: There are numerous factors that motivate migrants to cross in between the ports of entry.

CBP does not capture any metrics that would allow us to determine if someone waited at a POE and then decided to cross illegally.