

Congressional Transcript

Senate Homeland Security and Governmental Affairs Committee Hearing on Pending Nominations, including Nomination of Ronald Vitiello to be Assistant Secretary of Homeland Security for Immigration and Customs Enforcement

November 15, 2018

JOHNSON:

(OFF-MIKE) in these important positions. Today, the Committee will consider President Trump's nominee to serve as Director of U.S. Immigration Customs Enforcement or ICE. Director is responsible for leading an organization of approximately 19,000 employees with a budget of more than \$7.5 billion.

ICE is the lead federal agency responsible for enforcing federal laws related to immigration, border control, customs and trade. In addition to enforcing our immigration laws, ICE's vast law enforcement responsibilities include investigating financial and cybercrimes as well as intellectual property, commercial fraud, human rights violations, weapons, narcotics, and human smuggling, transnational gang activity and enforcing our export laws. These missions are critical to our nation's economic and national security.

President Trump has nominated qualified and capable candidates to lead the agency. Ronald Vitiello currently serves as Immigration Customs Enforcement's Deputy Director and Senior Official performing the duties of the Director.

Prior to this role, Mr. Vitiello served as Chief of the U.S. Border Patrol and the Acting Deputy Commissioner of U.S. Customs and Border Protection. He has over 30 years of experience in the federal government, including serving at two locations on both the Southern and Northern borders and recently received the President's Distinguished Executive Rank award for exemplary career federal service.

I want to thank Mr. Vitiello for his previous service his country and for his willingness to lead ICE. It's extremely unfortunate that in this political climate, the dedicated employees of ICE face constant criticism, threats of violence and calls from some members of Congress to abolish such important agency.

Today, we will also consider nominee to be the Director of DC Court Services and Offender Supervision Agency or CSOSA. The Director is in charge are 490 staff members and a budget of \$246 billion. CSOSA is responsible for overseeing probationers and parolees, as well as providing pretrial services in DC.

CSOSA's mission is to enhance public safety, reduce recidivism and promote accountability, inclusion and success through implementation of evidence based practices in close collaboration with its criminal justice partners and the community. In fiscal year 2017, CSOSA's Community Supervision Program was responsible for working with 16,407 pretrial offenders, probationers and parolees.

President Trump's nominee is dedicated to public service with a passion for public safety. Richard Tischner currently serves as Chief of the Superior Court Division in the United States Attorney's Office. A position he's held since 2011. Mr. Tischner has over 30 years of experience with United States Attorney's Office also serving as a Supervisory Assistant United States Attorney for approximately 20 years.

I want to thank both nominees for being here today. I look forward to hearing testimony. With that turn it over to a Ranking Member -- serving Ranking Member Senator Peters.

PETERS:

Well, thank you, Mr. Chairman. And I want to start by thanking the nominees for their willingness to serve and for their lifetimes of public service as well. You've both spent over 30 years in service to your community and I want to thank you for that commitment.

Mr. Vitiello, today we convene to consider your nomination to lead a critical team responsible for enforcing our laws and promoting the safety and security of our homeland. As the Director of the Immigration and Customs Enforcement you will lead thousands of public servants who put their lives on the line and dedicate their lives to protect us every day.

If confirmed, you will not only lead the men and women of ICE, but you will also have to make some very tough decisions every day that prioritize ICE resources. You will set and implement policies that determine who to arrest, who to detain and which investigations to pursue. It will be up to you to make sure that the safety of Americans does not take a backseat to talking points.

As Congress and members of this Committee, we have the important role of conducting oversight. We have a responsibility to ask hard questions and to ensure that each federal agency is acting in accordance with the law, and most importantly, the best interest of the American people.

If confirmed, I hope, that you two will ask those hard questions about how ICE is using resources to ensure the safety of all Americans. Moreover, if confirmed, you will be in charge of advocating priorities for your department. You will be aware of the buck stops for ensuring that national security and public safety come first and I look forward to your testimony here today.

Mr. Tischner, I look forward to hearing from you. The position that you have been nominated to is certainly a very important one, critical to protecting public safety and reducing recidivism here in the District of Columbia.

If confirmed, you will be tasked or taking on tremendous really difficult task, in addition to maintaining effective partnerships amid both federal and local bureaucracy. CSOSA must tackle

barriers such as successful reentry, drug addiction, mental health, affordable housing and job training just to name a few of the challenges.

These are some of the most profound challenges facing communities across the country today and are only one piece of fulfilling your mission. I look forward to hearing from you about your plans to improve the performance and increase accountability as well. Thank you, gentlemen.

JOHNSON:

Thanks, Senator Peters. I would ask consent that we enter in the record six letters in support for Mr. Vitiello, as well as a letter from the Head of the Unions and signed by a number of other union heads -- local union heads with some questions about the nominee, and I'll ask Mr. Vitiello respond to that during the question period.

It is the tradition of this Committee to swear in witnesses, so if you both stand raise your right hand. You swear that testimony you give before this Committee would be the truth, the whole truth and nothing but the truth, so help you God.

VITIELLO:

I do.

TISCHNER:

I do.

JOHNSON:

Please be seated. I have introduced both nominees in my opening statements, so we'll just turn right to Mr. Vitiello for your testimony.

VITIELLO:

Thank you, Mr. Chairman, Ranking Member Peters and distinguished Members of the Committee. Thank you for the opportunity to appear before you today. As a career law enforcement officer who has served our nation for more than 30 years, I am honored and humbled to be nominated by the President to be the Director of U.S. Immigration and Customs Enforcement. I also want to thank Secretary Nielsen for her support and confidence in me.

I am blessed to also have the support of my wife, Nuri, and my children, Alexis and Ron Jr. , who have supported me and I'm grateful for their appearance here today as well as all the sacrifices that they've made over my long career.

As the largest investigative branch within the Department of Homeland Security, ICE has a critically important mission to protect our public safety and national security by enforcing U.S.

immigration and customs laws -- whether it's combating the illegal drug trade, removing illegal aliens who are a threat to public safety, or protecting children from online predators.

This is a mission I understand well after more than three decades of experience in the Border Patrol. In 1985, I started as an agent patrolling the front lines of our border. I worked in the interior and on both the Northern and Southern Borders.

Later, I took on greater leadership and policy roles as Chief of the Border Patrol, and most recently as Acting Deputy Commissioner at U.S. Customs and Border Protection. Because of these experiences, I have a deep understanding of the laws and policies governing our immigration system and am well prepared to lead ICE.

My experience includes working to maintain professional standards and sustain morale while the Border Patrol experienced rapid growth. I helped lead efforts to improve training and strengthen accountability for use of force, which resulted in a significant decrease in the use of force.

Working with Congress, the Office of Personnel Management, and fellow senior leaders at CBP, we implemented a new pay and compensation statute that saved taxpayers more than \$110 million in the first year of implementation and added operational capacity to the agency.

Throughout my career in the Border Patrol, I worked closely with partners at ICE, which has a complex, but crucial role in our immigration system. My appreciation and understanding of the men and women who serve at ICE has only deepened since I became Acting Director in June.

Despite adverse conditions that would cripple many other workplaces, ICE employees carry out their important mission with integrity, courage and excellence. Since my start at ICE, I've made it a top priority to meet with front line personnel in the field and ensure that their voices are heard and supported.

The work ICE does to uphold public safety, national security and the rule of law both in the United States and around the world is undeniable. During fiscal year 2018, for example, arrests of illegal aliens with criminal histories increased nearly 50 percent, and removals increased over 13 percent.

ICE seized nearly 900,000 pounds of narcotics, including more than 2,300 pounds of fentanyl, which is fueling the deadly opioid crisis. We identified and rescued more than 850 children who were victims of sexual exploitation and over 300 victims of human trafficking. We made 11,000 arrests of known or suspected gang members, including more than 2,000 linked to MS-13 and removed nearly 6,000 gang members from our country.

These successes, and the dedicated men and women who achieved them, are too often drowned out or wrongly maligned by misleading rhetoric and misinformation in the public sphere. This kind of rhetoric needlessly escalates the risk in our operational environment, making an already challenging job all the more difficult and dangerous. It also harms the morale of our workforce, which is composed of people just like you who go to work each day to make our communities and our country safer.

Like you, our employees are public servants. They should not be threatened with violence or targeted at their homes. They should not face interruptions to their lawful operations. They should not have to bear the burden of attacks motivated largely by political and policy disagreements.

If confirmed, one of my highest priorities will be to better demonstrate to the public, Congress, and the media the importance and criticality of the mission to protect the homeland and improve public safety and why our agency's existence should not be up for debate.

Part of that effort is simply remembering why ICE was created in the first place. Following the attacks of September 11th, the 9/11 Commission identified critical gaps in our national security, including the need for stronger interior immigration enforcement and border security.

To address those needs and to prevent future attacks on our homeland, the government stood up ICE and the Department of Homeland Security. Eliminating these threats and vulnerabilities through cooperative, effective enforcement is as important today as it was when the Commission's report was published.

I believe Congress shares the goal of a strong border and an immigration system that has integrity. I look forward to working closely with this Committee to address this and the many other challenges our agency faces as we seek to ensure the continued security of the American people.

I also appreciate the Committee's important oversight role, and I am committed to ensuring that our agency remains accountable to Congress and the taxpayers.

The men and women of ICE are among our nation's finest and most hard-working public servants and it is a privilege to serve alongside them. I am grateful for them, their loved ones and the sacrifices they make in service to America.

Should I be confirmed, it would be a tremendous honor to support them and advocate for them as they carry out this vital mission. Thank you, and I look forward to your questions.

JOHNSON:

Thank you, Mr. Vitiello. Mr. Tischner.

TISCHNER:

Thank you, Chairman Johnson and Serving Ranking Member Peters and members of the Committee. I am grateful for your holding this hearing today to consider my nomination. I am truly honored by the nomination and, if confirmed, I stand ready to work alongside other leaders in the District of Columbia criminal justice system to continue enhancing public safety in the Nation's Capital.

I wish to acknowledge also that a number of the CSOSA's leadership are behind me today and I thank them for being here.

CSOSA plays a critical role in providing public safety, as you said Senator Peters, for those who live, work, and visit the District of Columbia. It strives to reduce recidivism by promoting successful adjustment to supervision by probationers and those returning to the community after a period of incarceration.

In those instances where individuals do reoffend, timely coordination which includes communication with the criminal justice partners is key. If confirmed as Director, I look forward to working with the talented and dedicated professionals at CSOSA to achieve these goals.

I would also be honored to continue my more than 30 years not only in public service, but in the pursuit of public safety. As a career prosecutor, I have always done my best to fairly and effectively address violations of the law, to hold offenders accountable, and attain justice for victims and the citizens of the District of Columbia.

I am especially proud of my service as Chief of the Superior Court Division, where I am responsible for leading the U.S. Attorney's Office's largest division in the investigation and prosecution of most local crimes committed by adults in the District of Columbia.

I am honored to work with hundreds of dedicated Assistant United States Attorneys, paralegals, and other staff members as we address a wide range of issues and offenses. These range from misdemeanor offenses that affect the quality of life in the District to complicated violent offenses, including sexual assaults and homicides.

The Division handles between 17,000 and 20,000 cases on an annual basis and employs a problem-solving approach, rather than simply processing cases through the system. Under my leadership, it works closely with its law enforcement partners and the community to identify public safety issues and to craft pragmatic solutions.

Having spent most of my career in the United States Attorney's Office working on strictly local criminal justice issues, I am keenly aware of the challenges faced by the entities obligated to provide public safety for this community.

I have not only been a prosecutor in the traditional sense, but I have also worked as a community prosecutor where I was tasked with solving complicated, sort of sometimes on-criminal problems and issues impacting residents and neighborhoods throughout the District of Columbia.

Additionally, my service in the DC Superior Court's drug court and mental health court has given me a broader perspective of the problems faced by those in the criminal justice system. Finally, my relationships with law enforcement, partner agencies, and the community will serve the citizens of the District of Columbia well if I am confirmed.

I thank you again for the opportunity to appear before you today and for your continued support of public safety efforts in the District of Columbia. I also want to express my gratitude to the staff of this Committee for their work in considering my nomination. I look forward to your questions.

JOHNSON:

Thank you Mr. Tischner. I also want to welcome family members here and thank them for their support of the nominees. I mean, these are important positions. Almost 24/7, 365 days a year these are serious responsibilities and there's a sacrifice on the part of family members as well offering their support. So I want to thank them.

There are three questions Committee asked of every nominee for the records so I'll ask the questions then just ask each of you to answer, give me your response first. Is there anything you are aware of in your background that might present a conflict of interest with the duties of the office to which you've been nominated, Mr. Vitiello?

VITIELLO:

No.

JOHNSON:

Mr. Tischner.

TISCHNER:

No.

JOHNSON:

Do you know of anything personal or otherwise that in any way would prevent you from fully and honorably discharging the responsibilities of the office to which you'd been nominated. Mr. Vitiello?

VITIELLO:

No.

JOHNSON:

Mr. Tischner?

TISCHNER:

No.

JOHNSON:

Do you agree without reservation to comply with any request or summons to appear and testify before any duly constituted Committee of Congress if you're confirmed. Mr. Vitiello?

VITIELLO:

I do senator.

TISCHNER:

Yes.

JOHNSON:

OK. Thank you. Mr. Vitiello, my first point, I really do appreciate in your testimony the fact you highlighted that ICE identified and rescued more than 850 children, 300 victims of human trafficking. You've made 11,000 arrests of known and suspected gang members, including 2,000 linked to MS-13, removed nearly 16,000 gang members.

That's an incredibly important part of this testimony that I want to highlight. I think you're also aware, because of the Committee let you know and I think you've got a copy of the letter sent by a number of union officials for the National ICE Council. I just want to give you an opportunity quick respond to the really that letter.

VITIELLO:

Well, I'm aware of the letter. Obviously I have as the Acting Director, and if confirmed as the Director, will have a contractual obligation to work with the ICE Council on all matters that affect employees.

I've spent quite a bit of time in the short time I've been at ICE since June, meeting with employees. I've had several town halls, San Antonio, Harlingen, Richmond, the Fairfax team of Washington field office, very interested in what is driving morale, how I can improve and articulate on their behalf in this setting, in the media, in public, amongst themselves. And so it's very important for me to understand where the employees are coming from.

The union has -- we share that mission in protecting the employees. And so I met with the President of the Union Chris Crane in August. I think the second, we had a substantive discussion on the things that I think we can most do beneficially together. And I look forward to continuing that relationship and do productive things on behalf of the workforce.

JOHNSON:

OK. I appreciate that kind of general response. But what about some specific charges about potential retaliation, not allowing union members to regain full-time employment within ICE and could you just respond to some of those tweets?

VITIELLO:

It's very technical. Most of what's outlined in that letter happened before I became the Acting Director, and so there's a number of things I want to look into, there's a number of conversations that I want to have around it.

As it relates to union officials, their role is to represent the workforce. They are paid by the government 100 percent of their time to represent the union. They do that. Again, I have responsibilities to meet and adjudicate their issues. And so we'll continue to keep the dialogue open and I look forward to working with them on specific things.

I think the pay issue, as you helped us with in my previous career with Border Patrol, is the thing that is the most urgent as it relates to that workforce, and Chris Crane, the President has specific suggestions on how to get to where we need to be on that. And I look forward to a productive conversation around that.

JOHNSON:

Can you speak directly to the incident within -- or the prolonged problem in the Portland ICE office?

VITIELLO:

The Portland was is an example -- and again that happened before I started. But Portland is an example where local authorities refusing to help or assist law enforcement officers and ICE. Protesters essentially took over the block around the federal building, prevented -- tried to prevent people from leaving the building and then prevented over the days our employees getting to work.

So we didn't have the sufficient -- local authorities don't act in a situation like that. If you -- when you call 911 and the local police don't show up, what do you do? So that thing got out of hand very quickly, because of the lack of response locally.

And it took us a number of days, a week or two to get the correct federal forces on the ground the Federal Protective Service, they're great partners. They did a great job for us there. But it got -- way the mass forces to get back into the building and then several weeks on the protests continued.

And so our employees were subject to the protests and having to walk by that on their way to work every day. It wasn't something that we predicted. Since then, we've put steps in place to monitor social media and get better at sort of protective intelligence as it relates to our spaces.

There's a regular reporting regime. I get a report every day that talks about what threats are out there on the Internet and social media. What we get from informants and other agencies. And so we've gotten better about our response. But what was critical at the time when it was needed was the local response that didn't come. And so we were behind the curve -- the whole community was behind the curve until we got the resources there.

JOHNSON:

So the charge in, why does that ICE leadership didn't respond adequately. But again just to get the timely right, this began before you were installed as acting?

VITIELLO:

We did what we could with a contingency and in a situation that we hadn't predicted before. We didn't expect that the locals would not clear the streets and allow people to get out of the building. So it took us a while to do that.

The leadership at ERO, Nathalie Asher went and visited the workforce twice. I contacted individual employees who were threatened physically and had damage done to their own home properties -- I talked to them directly. The Secretary participated with me in a virtual teleconference on video with the entire Portland office.

JOHNSON:

Again, you came in in the middle of this -- right, and then responded?

VITIELLO:

Correct.

JOHNSON:

OK. That's all I have. Senator Peters.

PETERS:

Thank you, Mr. Chairman. Mr. Vitiello, according to the FBI, hate crimes in America have risen 17 percent just last year alone. I believe this is three consecutive years in a row. We've seen hate crimes increase in this country.

I think that's why it's imperative that certainly our immigrant community, but minority communities all across this country have confidence in the U.S. government and in our leaders, particularly in key positions, like the one that you have been nominated for. So my question is, are you familiar with the group Federation for American Immigration Reform?

VITIELLO:

Yes, I'm aware of that group.

PETERS:

Are you also aware that the group is classified as a hate group by the Southern Poverty Law Center.

VITIELLO:

I did not know that.

PETERS:

Somebody in your position should you know groups that are classified as hate groups?

VITIELLO:

Well, ICE doesn't have specific responsibility to prosecute those federal crimes. Obviously, agents and officers are swear an oath to the Constitution and uphold law public, safety, community, Homeland Security.

Obviously, if we if we're referred cases for hate crime, we would work with local authorities, the FBI et cetera to get those cases prosecuted.

PETERS:

Well, I ask that question, because my understanding is that you attended a FAIR, which is the Federation for American Immigration Reform Group, a media event that was held. Is that correct that you ran an event that they held?

VITIELLO:

Correct. At a local hotel they sponsored an opportunity for local radio stations to come to D.C. and broadcast from this area. And I did a number of interviews with local stations about ICE's mission, about the employees, about our critical support to Homeland Security and local communities. I did three -- I think I did three separate interviews in that setting.

PETERS:

So you were out at their events. So you would you attended their event, but in that situation do you think you should do some background checking as to the organization and whether or not they're classified as a hate group before you show up?

VITIELLO:

The opportunity that we were trying to avail ourselves of in the press sense was to talk to these local communities. There's a couple on the Northern border, I think there was one in Ohio.

Its people that aren't unfamiliar as it relates to what happens in Washington, what happens as it relates to border enforcement, immigration -- border security and immigration enforcement. So it's an opportunity to reach into those communities in that setting.

PETERS:

Although, it is supported by a group that's classified as a hate group. So would you in a future avoid those kinds of situations, if confirmed?

VITIELLO:

obviously, having more information on a scenario like that would be better.

PETERS:

And you would commit to seeking that out prior to making public appearances?

VITIELLO:

That we can add that to our protocols, yes, sir.

PETERS:

It's a significant, I think. Also words have consequences, as you know. Just a few weeks ago an individual sent over a dozen pipe bombs to political figures across the country.

And in this hyper partisan charged political environment, I certainly am a strong believer that anyone holding positions of responsibility need to lead by example and they need to behave with civility and understand we need to be bringing this country together, not dividing this country.

So I have a question for you, as in response to a tweet from Mark Levin on September 12th of 2012, you suggested that the Democratic Party should be renamed the "liberalcratic party" or the "Neo-Klanist party". What did you mean by that tweet?

VITIELLO:

It was a mistake. I was trying to make a joke. I thought it was a direct message. I wasn't familiar with how the platform worked, as it related to that. I did not mean to suggest that the party is somehow against American values or -- and I deeply regret that I did it. It was a momentary lapse of judgment and I apologize.

PETERS:

So you don't believe that that's appropriate language for a government official charged with significant responsibilities?

VITIELLO:

It's important, and I understand the gravity of it. But it was meant as a joke, not as -- it wasn't trolly. It wasn't trying to do anything other than, you know, make a joke. And, again, I regret it.

PETERS:

So why is that funny to you -- those terms, "Neo-Klanist party."

VITIELLO:

I don't remember. There was some context about the content on the show. I was trying to respond in in that context. I don't remember exactly what the premise was. But, again, I realize that it caused the offense and I am sorry.

PETERS:

So you will commit to this Committee, you're not going to use that type of language going forward?

VITIELLO:

Absolutely, commit to that.

PETERS:

Acting Director, Vitiello, you acknowledge being I think, "Involved in discussions and operational protocols regarding the administration's most controversial immigration policy that led to family separations".

My question for you is, why didn't you or anyone recognize that family separations that would occur could cause a massive outcry from the public?

VITIELLO:

It was not perceived in the moment. What we were trying to do at CBP and in the Department was not separate families, but apply consequences as the Justice Department leaned forward and offered up additional prosecutorial resources as a so-called zero tolerance policy.

We tried to take advantage of that capacity. Since 2011, the Border Patrol has been tracking very closely -- CBP has been tracking very closely the arrests that they make, the consequences or the post arrest activity that the government involves in each and every arrest.

And what we saw over time was that if you prosecuted people where those capacities were available or if you'd sent people for removal hearings and they actually got removed, that you would see less activity at the border. The recidivism rate went down after we started tracking this in 2011.

And so when the Justice Department stepped up and said that they would do more prosecutions. We put instructions in place to take advantage of that.

PETERS:

But it was clear that families would be separated at that point?

VITIELLO:

That would have been a consequence. I just have to tell you that, in most of the venues when we refer people for their -- for the federal crime of illegal entry. When they go to court locally, a lot of them only go for the hearing long enough to be out of our custody or at CBP out of custody for less than a day and then they're returned to us.

And so the separations were -- was contemplated, but was never meant to be permanent. In most cases people got back together with their families on the same day.

PETERS:

But in many cases that didn't happen. And it certainly appears that there wasn't any planning done on how to reunite families as we went through that. It was, as I looked into this, and was out with locations in Michigan as well. It was -- there was a significant lack of planning, why was that the case?

VITIELLO:

Well, we never contemplated in having the systems work backwards, right? So the reunification piece is a function of HHS, Health and Human Services. They were in care and custody -- they have a care and custody of the children once they're out of CBP custody.

And so there was a significant recognition that they were going to need more capacity. But nobody in the discussions that I was involved in, were contemplating that these people would be separated forever.

PETERS:

So it's not separated forever. This is a question that I've been trying to get answered by DHS officials is, that we know that children were separated. How long is too long for a child to be separated from their family.

VITIELLO:

Well, we'd like to be in a place where no one got separated, right? But the separations occur when -- in most cases before zero tolerance when the guardian or the parent is not suitable to be a parent, they have a violent history or they have other crimes that need to be addressed in federal prosecution and so that requires a separation.

So, yes, we'd like to be in a place where lots of people didn't bring their kids to the border and try to cross illegally, but that's the situation we're faced with now.

PETERS:

I'm out of time -- Mr. Chairman.

JOHNSON:

Senator Hassan.

HASSAN:

Thank you, Mr. Chairman, and Senator Peters, and thank you to both of our nominees this morning. We are very grateful for your public service, we're grateful to your families for sharing that service with you. And we are grateful for your presence here today.

Mr. Vitiello, I want to start by just thanking you for visiting with me in my office last month. We discussed many things, including New Hampshire's significant Indonesian community. As you know, many members of this community came to New Hampshire fleeing religious persecution against Christians in Indonesia. They have become members of the community. They have worked jobs and paid taxes. They've raised their families in the Seacoast area of New Hampshire.

Now after many years of them living in the country, ICE has prioritized them for deportation, a decision that could put their lives at risk, if they returned to a country where violence against religious minorities remains a really serious issue.

During our meeting, you committed to looking into this matter. Could you please tell me what the product of that review was and whether as Director of ICE you would reconsider ICE's efforts to deport these members of the community.

VITIELLO:

Thank you for that question. So we're in a situation where, in the past, people were made to believe that the immigration laws or people that were subject to removal in United States wouldn't be arrested.

I've done this job for a really long time...

HASSAN:

So let me just interrupt you, because I have limited time. Did you do a review of that situation?

VITIELLO:

Yes, we looked into it and the situation involves people who have had either final orders of removal and have had their due process rights, they are not subject to relief under the asylum laws as refugees from Indonesia, and so there are in fact removable. The direction that we got from the President early on in his tenure was that no classes of aliens would be exempt from immigration enforcement.

HASSAN:

So your answer to me is that even though these people have built lives in the United States, even though they sought asylum, and they are in legitimate fear of religious persecution and violence, should they return to their countries of origin, even though they are taxpaying, even though they have built businesses, even though their families are here.

And even though there are many more people who are actually engaged in criminal behavior who ICE could be prosecuting you all are going to continue to prioritize Granite Staters who have built lives in this country and sought justice from us.

VITIELLO:

We're not going to prioritize people just because of where they're from or what the scenario that we're having. We prioritize like we always have. Threats to public safety...

HASSAN:

But you haven't always, because these people relied on behavior and statements from the United States government that gave them the belief that they would be able to stay here and build families here and build lives here and become parts of the community. And they relied on these representations by the United States government whether they were technically correct under the law or not.

The concept of justice does not lie just in technicalities. It lies in the way we treat people and it lies in an observance of our core values. So I am trying to understand why when there are people violating our core values in this country, without documentation or illegally, we are not prioritizing them and why we are prioritizing law abiding Indonesian citizen -- Indonesians who have been living in our country as Americans for a long time?

VITIELLO:

We are prioritizing threats to homeland security, threats to public safety and those who engaged in criminal activity and are also in the country illegally.

HASSAN:

So you're telling me that you have done all that work, there's nobody else to go after who are more of a threat than these law abiding people in my state?

VITIELLO:

No, I can tell you that as a country, as an agency, and as an individual I recognize that sometimes the law doesn't do what we wanted to do. We are a compassionate nation that is welcoming to immigrants.

These people have gone through their constitutional due process rights and they are not subject to relief under the Immigration and Nationality Act, and so when encountered by an immigration officer they're subject to arrest and removal.

HASSAN:

I'm not going to stay on this subject, because I have another one I want to cover. But I do want to say that I don't think that that's an accurate representation of what has happened in their case.

It isn't that people just happened upon them. They had been given reliance by the United States government that they were in compliance and they could stay here. And so they showed up for their regular checking and all of a sudden the behavior of the United States government changed towards them.

So let's move on to another subject, because I want to follow up on something that Senator Peters was talking to you about, because also during our meeting, we talked about indefinite detention of families and the policy of separating children from the families. And we specifically discussed the long-term mental health implications of both practices.

At the end of that meeting I provided you with a copy of a report issued by the American Academy of Pediatrics for March 2017 that stated that detention, and this is a quote, "Can cause psychological trauma and induce long-term mental health risks for children".

And Mr. Chairman I'd ask a copy of that report, which I have with me be entered into the record.

JOHNSON:

Without objection.

HASSAN:

Thank you. So I asked in our meeting that you read the report and you promised you would. So do you agree with the findings from our pediatricians that detention can cause long-term mental health problems for children?

VITIELLO:

I thank you for providing the report. I did read it thoroughly and I understand the American Pediatrics Association's comments and direction and the import of the report. I understand what it means. I would like, like I said earlier, that we weren't in a situation where large numbers of families with children are approaching the border. But that's not the situation that we're in.

HASSAN:

So I -- you then are accepting the findings of the American Academy of Pediatrics that detention results in long-term psychological harm to children. Is that correct?

VITIELLO:

I think any time a parent breaks the law and they're found out...

HASSAN:

That is not my question? Earlier in response to Senator Peters you referred to children as if they were tools to impose consequences on their parents. They are not, they are children.

VITIELLO:

But that's not the premise that I talked...

HASSAN:

Well, then we should clarify your remarks. So what I'm asking you now is will you accept findings of pediatricians in the United States of America that detaining children provides long-term psychological harm to those children, yes or no?

VITIELLO:

I understand the report. Yes.

HASSAN:

OK. So one of the most basic qualifications we ask of nominees is that they use their judgment to the best of their ability to protect our core American values. So could you please tell me how you are going to advocate so that children will not be detained and children will not be separated from their families.

VITIELLO:

Well, luckily, the President stopped the zero tolerance implementation as it related to families. So any family that comes into custody at ICE, referred from CBP or from other means, are either kept together or they're released on alternatives to detention.

HASSAN:

And what I would like to understand as well is what the alternatives to detention are? I would like a commitment that you all will stop pursuing permission to detain children and to change the foreign settlement and that you will stand up for American values which says we don't bully children.

VITIELLO:

Again, I'd like to be in a place where large numbers of people weren't bringing their children to the border -- sending their children...

HASSAN:

We are the United States of America. You did a very excellent job in your testimony of standing up for the men and women who work for ICE and I have visited with them, I have visited with our Border Patrol officials who are wonderful public servants.

And here's the thing, we have the capacity in the United States of America to control our borders without harming children. That is something that I am quite confident we can do. So what I would like to do is move from a situation where you and some of your colleagues are trying to defend what happened or trying to talk about the difficulty of families on the border as an excuse.

And I'd like you to start moving forward for solutions that protect children, while securing our borders, both are possible, because we're the United States we do hard things.

VITIELLO:

I agree...

HASSAN:

So could you commit to working with us to do that?

VITIELLO:

I will work with this Committee on changes in the law that allow us to enforce the border and have an immigration system that has integrity. And I appreciate your advocacy for the ICE workforce.

HASSAN:

Thank you.

JOHNSON:

Thanks Senator, Hassan.

HASSAN:

Thank you for letting me go, Mr. Chair.

JOHNSON:

Before I move on, if you put up the blue chart. I think we need a little history lesson here. Because -- again, what the ICE does-- they enforce the laws that we have allowed this reality to blossom.

But back in 2012, 11,116 individuals came this country illegally as a family unit. 2013, 15,056. And then kind of following the pattern with unaccompanied children, which -- again, I put up the other chart, we're not going to do it, but follows shortly after President Obama's DACA declaration. You had 68,684 in 2014.

Now the Obama administration found that quite troubling. And so they instituted a policy of detaining those family units, which led to a lawsuit, which led to the reinterpretation for a settlement, which included the fact that -- by the way, I agree with the Secretary Jeh Johnson that it was never contemplated before as decision included children accompanied by their parents.

But also in a reinterpretation said, no, you cannot detain a child even with a parent unit. So in order to enforce our law and not engage in total capture and release, which is what ended up happening, you were really forced into a family separations, it's what we're trying to fix with the Families Act, OK? Trying to work in good faith.

Now it's -- I just want to continue go on what's happened since then. So with the -- that detention with families intact under the Obama administration actually had an effect. It went from 68,000 down to 40,000.

After the Flores reinterpretation in 2016, a number of people coming here as families, because they realized, now we get here, they catch us, they release us and we get to stay, 77,857; 2017 to 75,802. Last year it was 107,202 individuals. I mean are you seeing a pattern here?

Last month, in October, 23,121 individuals came this country illegally. They were apprehended coming as family unit. Now, I don't think anybody projects that level is going to stay out for 12 months, but if it were that would be 276,000 people.

So we have a problem on our hands, and ICE has a significant problem, but they're trying to enforce the laws as they are currently interpreted by the courts. That's what we have to fix. So, again, I'm just trying to lay out that reality and this is what a nomination hearing of somebody who served both CBP and now with ICE, trying to enforce the law. But we need change the law.

As Secretary -- as General Kelly in his nomination hearings said, are made potential secretaries, we have to have the courage to actually fix and skill to actually change the law.

HASSAN:

And Mr. Vitiello I appreciate that very much. However, my suggestion is we have heard a lot of testimony about ways we could change our practices a law that would not -- that would tighten up our border, would have people appear for their hearings. We need more lawyers. We need more alternative to detention and we need more judges.

JOHNSON:

And we are working on that.

HASSAN:

But we do not need to detain children or separate them from their families in order to be secure. And it concerns me greatly that the greatest country on earth is not standing up for children wherever they are.

JOHNSON:

Again, nobody wants to separate families. I think, we've kind of established our goals, but Senator Harris.

HARRIS:

Thank you, Mr. Chairman. And I'd like to emphasize your point. This is a hearing to determine who will be the next Head of ICE, and so this is about reviewing the prospective, the qualifications and the experience of the nominee.

So that being said, I think Mr. Vitiello that you would -- have I pronounced your name correctly?

VITIELLO:

Vitiello.

HARRIS:

Vitiello.

VITIELLO:

Thank you.

HARRIS:

I think you would agree as a member of law enforcement that law enforcement, generally speaking, and certainly would be the case with ICE officers and agents, that a great deal of your power is discretionary.

You have limited resources and you make decisions about what you're going to do. But you exercise a great deal of discretion in terms of how you're going to use the limited resources and how you're going to prioritize them.

And then in understanding that, I think you would also agree that one's perspective and their bias, if they have bias, will influence their exercise of discretion in terms of the power they have and

how it will be used and implemented. So I want to return to the question that Senator Peters asked you.

That the statement you made describing the Democratic Party as liberalcratic or Neo-Klanist, which was -- I think, the assumption there was that you were comparing it to the Ku Klux Klan, the KKK.

So you said in response to his question, you're sorry because the words caused offense. So would you not be sorry if no one was offended by your words?

VITIELLO:

No it was wrong to do.

HARRIS:

Why was it wrong?

VITIELLO:

Because those are offensive words.

HARRIS:

Why are they offensive?

VITIELLO:

Because they have history in this country, and I honestly did not mean it that way.

HARRIS:

But please talk about the history. What is the history that would make those words wrong?

VITIELLO:

Well, the Klan was -- what we would call today, a domestic terrorist group.

HARRIS:

Why? Why would they call them domestic terrorist group?

VITIELLO:

Because they tried to use fear and force to change political environment.

HARRIS:

And what was the motivation for the use of fear and force?

VITIELLO:

Based on race and ethnicity.

HARRIS:

Right. Are you aware of the perception of many about how the power and the discretion that ICE is being used to enforce the laws and do you see any parallels?

VITIELLO:

I do not see any parallels between...

HARRIS:

I'm talking about perception.

VITIELLO:

...officers and agents.

HARRIS:

I'm talking about perception.

VITIELLO:

I do not see a parallel between what is constitutionally mandated as it relates to enforcing the law.

HARRIS:

Are you aware that there is a perception.

VITIELLO:

I see no.

HARRIS:

Are you aware that there is a perception...

VITIELLO:

That to put the ICE in the same category as the KKK, is that what you're asking me?

HARRIS:

No, I'm very specific about what I'm asking. Are you aware of a perception that the way that the discretion...

VITIELLO:

I see no parallel.

HARRIS:

...and I'm not finished.

VITIELLO:

I see none.

HARRIS:

I'm not finished. I'm not finished. Are you aware that there is a perception that ICE is administering its power in a way that is causing fear and intimidation, particularly among immigrants and specifically among immigrants coming from Mexico and Central America? Are you aware of that perception?

VITIELLO:

I do not see a parallel between the power and the authority that ICE has to do its job and agents and officers who do it professionally and excellently with lots of compassion.

HARRIS:

So how can you be the Head of an agency and be unaware of how your agency is perceived by certain communities.

VITIELLO:

There is a lot of perceptions in the media and in the public that are incorrect about the agency.

HARRIS:

But the perception exists, would you agree -- whether or not it's correct. And wouldn't you agree then that if that perception exist, there might need to be some work done to correct the perception.

VITIELLO:

I do want to advocate for the workforce, the vital public safety mission that they have to protect the homeland. And I think more people need to know how valuable they are to the society. So I agree with you on that.

HARRIS:

So I understand your point that you want to defend the honor of the good men and women, who work in the agency, and I appreciate that point and I know the vast majority of the men and women who work in the agency, doing noble and good job. I'm not talking about that.

Talking about the perception, and it seems to me that you would understand that when you use words such as the words used only three short years ago that would contribute to that perception and is harmful then.

Is harmful in terms of the mission of the agency and the work of the individuals there, and it is harmful in terms of leading those who are innocent people arriving at our border, fleeing harm, it harmful to them if they feel they will not be treated by the United States government with dignity and fairness. Do you see that?

VITIELLO:

I agree that all of the people that we encounter deserve fairness, dignity and respect in encounters with our agents and our officers.

HARRIS:

OK. In August there was a complaint filed with DHS and the complaint alleges verbal and physical threats, insults, denial of food and withholding a feminine hygiene products from parents, and these are the parents that were separated from their children, and also -- or were about to be. And these parents were also falsely told that their children would be permanently taken from them.

Following a hearing on September 18th before this Committee, I submitted questions for the record to your Associate Director, asking about these allegations. I've not received a response. So I'm going to ask you. One, I'm assuming you're aware of the allegations and I want to know what action have you taken then to investigate the veracity of these allegations?

VITIELLO:

I don't have the specifics on your request. I know that if you sent a letter to the office for -- on the deputy's testimony that we're going to put that back for you on the record. I can commit to you that the oversight role that ICE has with our detention centers and what all happens when people are in custody, is something that I watch very closely.

VITIELLO:

So my question is very specific. Are you aware of these allegations? And if so, what action have you taken as the Acting Director to investigate the veracity of these complaints?

VITIELLO:

In this specific case, I don't have chapter and verse for you. What I can tell you is, that there...

HARRIS:

Do you have any information about what you have ordered to do in the agency to determine whether these allegations, which are serious on their face, are in fact true?

VITIELLO:

There is a specific protocol when allegations like this come to light through the DHS Office of Inspector General. We have Office of Professional...

HARRIS:

So what did you do? What did you do to follow up on these allegations? And my question is about you?

VITIELLO:

I can make sure that this allegation is followed up through the protocols that...

HARRIS:

So you've not done that yet?

VITIELLO:

On this specific case I can't -- I don't know the specifics of this case. I'm happy to get more specifics with you and make sure that it is followed up in a way that is meaningful

HARRIS:

Thank you

VITIELLO:

...within the resources that ICE has.

JOHNSON:

Senator Jones, Senator Hassan has asked to ask one last question, would you yield to her?

JONES:

I would consider that.

JOHNSON:

I don't think we'll have a second round, that's why I'm -- OK.

HASSAN:

Thank you very much for yielding Senator Jones. And thank you Mr. Chair for that courtesy. Mr. Vitiello, we also talked to my office about the role of the Homeland Security Investigations or HSI division of ICE.

HSI is not part of ICE's detention and deportation force and HSI actually has little to do with immigration. HSI is a federal law enforcement branch that investigates and seeks to stop drug traffickers, arms traffickers, human smugglers, transnational gangs and terrorist organizations. It's obviously a key counterterrorism and national security entity. And we have to ensure that HSI is well supported in order to keep all Americans safe.

Last June, 19 special agents in charge of HSI field offices sent a letter to Secretary Nielsen asking that HSI be split out from ICE. They reason that their missions have been made more difficult by the public backlash against ICE's deportation force and because DHS and ICE have consistently taken money from HSI's budget to pay for the detention and deportation force at ICE.

So I have two parts to this question. Have you or will you take money from HSI and undermine their counterterrorism and national security capability in order to provide additional funding to ICE's deportation force?

VITIELLO:

So I appreciate the question. We would never take money from one part of the organization to another if it meant an increased risk to national security.

HASSAN:

So is it acceptable or not acceptable to take money from HSI to the ICE deportation force?

VITIELLO:

It's a big agency. It's a lot of taxpayer dollars -- it's \$7 billion. And when you run a big agency -- when I was in CBP, the Border Patrol budget was like \$3.4 billion. You have to fund what's necessary. You have to meet the obligations that we have. You do so in a risk based way and we would do the same at ICE going forward.

I would love to be in a place where the appropriation was adequate to cover all the needs and the mandatory authorities that we have to exercise. In every enterprise you have to make choices and you have to weigh the risks.

HASSAN:

I do understand that. Please understand that there are those of us think that the agency is not making appropriate risk based judgments when we look at the HSI concerns expressed in any number of ways. So I would look forward to continuing that conversation.

The other part of this is going back to the letter that the 19 senior members of HSI wrote. Will you consider moving HSI out of ICE and making it its own operational component, separate from the immigration missions of ICE?

VITIELLO:

I have read the letter. I considered the idea and I don't think we should take any steps in that direction. I think that what HSI brings to the table in money laundering, it's complex narcotics investigations, their work against MS-13 relies on the agency's complete resources and their authorities under Title 8 to prosecute and MS-13 gang members to clean up communities like we did in Long Island and having those two complementary missions side by side is better for America than it isn't.

HASSAN:

I thank you for the answer. I think there is a way of integrating those missions while still making sure that people understand HSI can be trusted within the community so that they can do their law enforcement.

VITIELLO:

I agree with you and the fact that jurisdictions should not be reluctant to work with a law enforcement agency that is constituted to protect the homeland.

HASSAN:

Thank you. And thank you Mr. Chair for your courtesy and Senator Jones.

JONES:

Thank you, Mr. Chairman. Thanks to both of you. Mr. Tischner, you're kind of lost in the shuffle today.

TISCHNER:

I'm here.

JONES:

Yes, I wanted to make sure you were still awake.

TISCHNER:

I don't feel left out though.

JONES:

I really don't have any questions too candidly, but I just want to congratulate you on a very distinguished career.

TISCHNER:

Thank you.

JONES:

Seriously, I'm a former union -- Assistant United States Attorney, a former U.S. attorney I've worked with a number of your former bosses who I have great respect for on both sides of the aisle, but in various administrations. So I want to just congratulate you on that and thank you for your service and willingness to serve in this new capacity and to make sure you are awake during this hearing. OK.

TISCHNER:

Thank you, senator.

JONES:

All right. Thank you. I appreciate it very much. Mr. Vitiello, I've got a couple of questions. I've heard a lot recently. You've got -- you have been -- you've done a lot of work in this field, on the border with -- through various administrations and now moving over to ICE. And I've heard a lot lately, and I've just got to kind of initially a simple question.

I assume in your various capacities, you have had discussions with members of Congress over the years on both sides of the aisle. Is that -- would that be fair?

VITIELLO:

Yes, that's true.

JONES:

Have you ever heard anyone on either side of the aisle, Republican or Democrat, who has said, "Well, sir, I want to let you know, I am for open borders". Has anyone ever said that to you?

VITIELLO:

Not to me. No.

JONES:

Have you ever -- did you ever get the sense when you talked to somebody that they are in fact for open borders?

VITIELLO:

Not in this setting.

JONES:

Right. So, I guess, one of the things I want to make sure we understand is that, everyone is wanting secure borders. We may have different agreements, different views on how to get there, but there is no one, despite what we've heard in this political kind of world, that no one is for open borders. We want to secure border.

Now do you want to go back a little bit to what Senator Harris was talking about and it kind of plays into this, and that is. I come from a state in which words had serious consequences. And I think this is where Senator Harris was certainly going. Perceptions can become realities for so many people out there.

When we hear certain words and we call certain people enemies, we create a culture of fear of people who are just seeking a better life, who are barefoot and poor and trying to get away from a very difficult situation.

And I want to make sure that a member of ICE that you are going to commit to help tone down the rhetoric that we see in our immigration debate, because I don't think it is healthy. In fact, I think it's incredibly destructive. And as we have seen, it can be very dangerous.

We only have seen things recently where 11 people were killed in a Jewish synagogue where explosive devices were sent to prominent members who opposed the administration. That words have consequences.

And I'd just like to make sure, especially given comments that you acknowledge were inappropriate and a mistake, I'd like you to just talk a little bit about that and a commitment from you that you will do what you can, if you're confirmed as a Head of ICE, to help make sure that the rhetoric is toned down.

And that you as a agency head and your directives although those that work for you understand the content, that the perception can be reality sometime. And I can attest to you there are four little girls that were murdered in Birmingham in a bomb blast that were a direct result of a governor and a police commissioner's words that empowered people to do bad things. So I really need that commitment from you.

VITIELLO:

I'm committed to working with this Committee, working with a larger legislative branch so that people in the media understand how vital the workforce is and I'm absolutely committed to doing it in a professional respectful way.

JONES:

All right. So that really didn't answer my question. So, I really am troubled by the answer, because you don't need to work with this Committee. This -- you didn't hear any of this rhetoric come out of this Committee. You hear it coming out of the administration and it does in a political context.

I want you to make sure that you stand up and do the right thing and say, wait a minute, this is not who we are. That's the commitment I'm asking from you sir, not to just -- we don't -- you don't need to work with this Committee. This committee is all on board. We're trying to make sure we keep things in and a certain level.

I want you to work with the folks above you. I want you to work with the -- if the Secretary or the President, the Vice President, whoever it might be. Can I get that commitment that you will -- even if it's behind closed doors, and not necessarily public, can I get you a commitment to stand up to just simply do the right thing and to tell people that they need to be careful with what they say.

VITIELLO:

I strive always to do the right thing and I'm committed to do that as well.

JONES:

All right. Thank you, sir. I think that's all I have.

JOHNSON:

I appreciate that. I also appreciate that Senator Peters is going to stand in as Ranking Member. I know he has a hard stop 11:00. But you have another question real quick or you need to go?

PETERS:

I do. Thank you. And thank you, Mr. Chairman. Mr. Vitiello, just a couple more questions for you. First off, the New York Times reported on October 22nd of this year, 2018 that the administration

is weighing some new policies to deter migrant families from journeying North, including a new form of family separation.

News reports have indicated that under a proposal, it's called a Binary Choice policy, is what I believe. Parents would be forced to choose between voluntarily relinquishing their children to foster care or to remain in prison together as a family. The latter option would require parents to waive their child's right to be released from detention within 20 days related court cases as you know.

So my question to you, are you involved in any way with the policy planning that would allow parents to choose between family separation or remaining detained together as a family.

VITIELLO:

In early October, as a result of the litigation the idea came out of the judge's order to agencies and the plaintiffs. So that option or that discussion is under way. It is a way for us to meet the requirement of the floor settlement agreement while giving people a complete opportunity a due process in immigration proceedings.

PETERS:

So, do you support the proposal for a binary choice policy? What are your thoughts on it?

VITIELLO:

It is a way for people to have a due process opportunity and remain in custody. And what I've seen over my long career is that people are allowed relief under the law then we should do that. That's an opportunity that ICE is responsible to give people in the process in front of the judge.

But if they're not in the rules quickly after this the due process and the safeguard back to their home, we will get less traffic. I think that's what's illustrated in the Chairman's chart. If there is a - - if we can close the loop on proceedings with due process, we'll get less recidivism at the border. We'll get less people bringing their children.

So it is an option, it's right now is being in conflict with the President's direction to keep families together.

PETERS:

But the administration is discussing it.

VITIELLO:

There's been discussions after the judge gave that information to both sides in the litigation.

PETERS:

I think we all agree that we want to expedite any of the hearings that the folks have. I think it's a universal agreement here that people have their right for due process expedited. But I'm not sure how the fact that you give folks a choice between being separated from their children are being detained and then asking them to waive the 20 day period where they children can't stay in detention. How that's going to accelerate.

There are other issues that we would need to deal with as a Committee and resources that we'll talk about to have judges and others to be able to expedite. I'm not sure how this policy actually does that.

And I guess it leads to the other question that I've been trying to get answered. In addition to how long folks could be separated. The other question is, how long should a child be detained? That you responded to Senator Harris's question that you had read the information related to how detrimental a child is or the effect on a child when they are detained.

So my question to you is how long does ICE believe a child should be detained? Well what's the view of ICE?

VITIELLO:

It's a matter of the -- before the court. In other contexts, when people are seeking relief or they're going in front of immigration proceedings, for instance, an adult male from Guatemala they're out of our custody in less than two months. And so they get their complete due process rights.

And if they have relief under the law, they are out of proceedings quickly. They're out of detention faster than that. And so, if -- when we hold people and remove them after their due process opportunity, it will abate the traffic like we saw in 2015.

PETERS:

Just the answer is pretty straightforward. You still haven't answered it. That is just, is there an upper limit to how long a child should be detained in your view?

VITIELLO:

Well the law gives us upper limits. What we're -- in this discussion, what is -- what we're trying to seek is full opportunity in the due process and that requirement. And then when it -- if they're not subject to relief, then they're held only long enough to remove them.

JOHNSON:

Let me chime in. This is where Congress bears responsibility to determine what this is. And this is why we're trying to do and I hope would be a nonpartisan basis. Look at the problem, address the problem, fix the problem and we need to make those decisions.

Rather than having somebody who's looking to confirm nomination and some who's going to have to follow the law that we write. And right now the law is broken. It's just broken because we have this kind of result.

So, again, I'm really hoping that this Committee can work in a very nonpartisan basis, fix the law, so you have something to enforce as opposed from having the administration and courts decide all these things for us.

But, with that Senator Daines.

DAINES:

Thank you, Mr. Chairman. And I want to thank both nominees for coming up here today. Mr. Vitiello, it's great to see you as well again. For over three decades you have served our country. You enforced the rule of law. Thank you for your service.

Thank you for your continued desire to protect our country in this incredibly important role. I believe you have the leadership and experience necessary to be most effective in this position.

ICE one of our country's most critical security measures and is essential in protecting its citizens. As you mentioned ICE seized nearly 900,000 pounds of narcotics, rescued more than 850 children who are victims of sexual exploitation and arrested 11,000 known or suspected gang members. And that was in FY '18.

The work that ICE does in protecting American security and upholding the rule of law cannot be overstated. The fact that some members of Congress have called for the abolishment of ICE is simply outrageous. It is long past due that we confirm you.

Mr. Vitiello, our country is facing an opioid crisis. Let me tell you something, in Montana we are facing a meth epidemic. I just literally came for a meeting with some individuals in Montana who deal with our foster care system. The numbers in our foster care system have tripled according to this group, most recently, as a direct result of meth.

The vast majority of this devastating drug comes from Mexico. The meth of old was homegrown with meth labs. The meth today is coming via cartels. As you know, coming up through Mexico, is destroying -- destroying our communities in Montana, destroying families. These effects are very personal.

While, ICE Homeland Security Investigations seized 80 pounds of meth in FY '18, families and communities are suffering. They've been destroyed. My question is how will you ensure that rural states like Montana remain a top priority for ICE? And do you have the necessary resources to control the meth epidemic that we're seeing right now in Montana?

VITIELLO:

Well, as an operator I'll always tell you we need more resources. But I appreciate that. I appreciate your kind words as well. ICE seized about 60,000 pounds of methamphetamine last year with a value of about \$475 million.

In your environment, on the northern border, our best resources on the HIS context is the border enforcement security teams. And so we have a number of those along the Northern border working directly with partners and colleagues in Canada, and in our state and local and tribal partners as well.

So providing task force funding over time for state and locals, working complex pathways identification -- how are these things coming into the country from Mexico. How are they reaching markets in the U.S. ?Then ICE has a wonderful capability that I'm very impressed with of the Dark Web marketplace.

A lot of these things now are being imported either across the border or imported. But people start that search for these goods online in the Dark Web and ICE and HSI has a great capability to combat the transactional nature of that, but then also to follow the money and the pathways of this illicit methamphetamine into the United States.

DAINES:

I would like to talk about sanctuary jurisdictions places that violate the laws of our nation, encourage illegal immigration and compromise security of law abiding citizens. Recently news broke of an illegal immigrant who has been charged with a triple murder, after being released from a county jail in New Jersey.

ICE had issued a detainer request notification prior to his release in order to place him in removal proceedings. Tragically, the detainer was not honored. This illegal immigrant made his way to Missouri where he took three innocent lives.

Sanctuary jurisdictions that protect illegal immigrants, while blatantly refusing to cooperate with federal law enforcement are a direct affront to this country's rule of law and put innocent lives at risk.

My question, Mr. Vitiello is how can ICE improve cooperation with sanctuary jurisdictions so that the rule of law is enforced and more innocent lives are not lost?

VITIELLO:

Yes, it's a very frustrating situation. I'd like to be in a place where jurisdictions could understand the risks that they take when they can't cooperate or can't honor a detainer. What we can do is be responsive to the calls for detainers for those jurisdictions that do that. And then working with state and locals and in individual jurisdictions to get them to understand what risk they're placing on the homeland and certainly their individual communities.

I think what you'll hear from some jurisdictions, those that want to cooperate, some that do cooperate, but they don't want people to know about it, is that there is some liability on their part that they'd like to have addressed by legislation. And so we have specifics on that.

We can get with you and your staff on. But I'm old enough to remember. I mean, a 100 years ago when I was an agent on the line, you could have a detainer or two a deputy at a road stop and that jurisdiction would then honor that detainer when they were finished with the pendency of that judicial process for that individual.

That's where we need to be as a country. We need the federal law to be enforced with the cooperation of state and local jurisdictions. It's a risk that the country shouldn't have to take.

DAINES:

Mr. Vitiello, you talked about the Northern border a bit. You served over 30 years with Border Patrol and part of that time was spent on the Northern border. While the great majority of Border Security is focused on the Southern border, and understandably, particularly as you look at the meth issue -- Mexican meth coming in the United States, that's what's affecting Montana.

Our border with Canada is the longest land boundary between any two countries in the world, 545 miles of which is Montana. The threats posed on the Northern border pale in comparison to those in our Southern, yet transnational criminal orgs, drug smuggling, terror threats are still present. In fact, earlier this year, DHS released its Northern border strategy.

My question is, in light of these findings and your own personal experience, can you speak to how our Northern border can best be secured and how ice will assist in that mission?

VITIELLO:

So it's our work with the state and locals -- our partners in Canada to understand the pathways. Criminal organizations as powerful as they are, are vulnerable when they cross the border, when their financial instruments cross the border.

So what we will continue to do through HSI and the best teams is integrate into those communities, understand what the discrete threats are in each of the communities and continue to apply our resources to hold to account those that traffic across the border.

DAINES:

Thank you. Thank you, Mr. Chairman.

JOHNSON:

Thanks Senator Daines. Senator Harris after significant, but effective arms twisting, as Senator Carper has gracefully agreed you to let you ask a question for his round.

HARRIS:

Senator Carper is indeed a gracious gentleman. I appreciate.

CARPER:

OK. I'll have to go a physician's office after this and have my right arm repaired. Happy to do it.

HARRIS:

I appreciate that. Thank you. Mr. Vitiello, in December of 2017, so last year, ICE issued a directive that reversed a policy that existed before, which presumed that pregnant women should not be detained.

And my question and I have asked this before of -- others of your colleagues is, since ICE issued -- and I've not received a response. Since ICE issued this directive how many pregnant women have been detained in ICE custody and have been in ICE custody?

VITIELLO:

It's important to know that all females of age are tested as they come into our custody. So sometimes we're not aware until they're already in ICE custody. So the number is very small. I don't have it in front of me.

But within 12 hours of them coming into our custody, they're tested and then once we're aware of the pregnancy, then they're referred for medical care immediately and that care is the same standard care...

HARRIS:

So my question is very specific. Since ICE issued the directive in December of last year, how many pregnant women, to your knowledge, have been detained in ICE custody.

VITIELLO:

Let me take that back and I can give you a precise answer -- very few.

HARRIS:

When will I get that answer, because I asked it before?

VITIELLO:

We can get you that by the end of the day.

HARRIS:

OK. I appreciate that. And so to follow-up, I also would like to know, how many pregnant women are currently detained?

VITIELLO:

I will get that for you. And also, I'd like a breakdown -- which I've also asked for before, by trimester. So how many of those who are pregnant are in their first or second or third trimester? And since ICE issued this policy, there has also been a question about whether -- what is exactly the policy regarding women in their third trimester. Can you tell me what the current policy is on that?

VITIELLO:

The very rare circumstance where someone would be in custody in their third trimester would only be four to effectuate a removal. It would not be for...

HARRIS:

Is that the policy? What is the policy?

VITIELLO:

The policy recognizes that that's the highest risk to the individual, so all safeguards are taken, all medical advice, rules the day. But if someone is removable and we have the opportunity to remove them, then they'll be removed.

HARRIS:

So just I'm still not clear. What exactly is the ICE policy on detaining women in their third trimester of pregnancy? Can you give me exactly what that is?

VITIELLO:

The policy is that special care is taken in the third trimester and it's presumed that we would not keep anyone in custody. But if they are in custody and we have the ability to remove them then we would do that.

HARRIS:

So the presumption is women in their third trimester should not be in custody.

VITIELLO:

It's the highest level of risk.

HARRIS:

That I'm clear about, in terms of the risk, but what's the policy.

VITIELLO:

The policy is that you follow the doctor's orders and safeguard the lives that are at stake.

JOHNSON:

Senator Carper.

HARRIS:

Sir, I'm not finished. Thank you. But I'm still on the final question.

JOHNSON:

I think we let you do one question. There's been a series of them. And...

HARRIS:

Mr. Chairman, other people have had more time than I've used right now to follow-up on their questions and I'd like to finish this line of questioning about pregnant women being detained in ICE custody.

JOHNSON:

And you can do that in written, but Senator Carper.

HARRIS:

Let the...

CARPER:

I will yield one moment to you senator.

HARRIS:

I appreciate that. Thank you. And regarding Secretary Nielsen, when she was here before, she promised this Committee that there would be an assessment of medical treatment of pregnant women in detention. I've not received a response to that question, so I'm asking you today. Has ICE conducted an assessment of the treatment of pregnant women in its detention facilities?

VITIELLO:

A specific assessment I'm not aware of. Obviously, if the Secretary ordered that, we will make sure you get that as well.

HARRIS:

OK. So that when you follow-up, I asked for that in May of this year. And then what outside medical experts, if any, has ICE engaged in conducting this assessment? And I'd like documentation provided that shows who has been consulted and what they've recommended.

And I would direct your attention to a letter that you've received or your agency received in March of this year from the Academy of Pediatrics and the American College of Obstetricians and Gynecologists and the American Academy of Family Physicians. That said very specifically, "The conditions in DHS facilities are not appropriate for pregnant women". Thank you.

JOHNSON:

Senator Carper.

CARPER:

Welcome to both of you. Thank you for being here. Thank you for your service and your willingness to serve in these roles. Mr. Tischner, I understand you've not been asked a lot of questions. That's a good thing. And I'll just not ask you a lot of questions today. But, welcome.

Mr. Vitiello, thank you so much for spending time with us here today and being here today. We may want to discuss -- talk with you further after this hearing, if that's possible. I think I mentioned to you would, I am a recovering (ph) governor, a former governor and I still think like a governor.

And when -- or the idea that ICE has a person of interest somewhere in Delaware or some other state that person is detained by state or local officials in my state or some other states. ICE has notified -- and my understanding is ICE asks the -- there's an expectation for ICE to come and take custody of a person of interest within a relatively short period of time.

We spend a lot of money in Delaware in corrections and I know we do in other states as well. When there's -- give us some idea of the period of time after -- a jurisdiction you know at ICE we've got a person of interest to you, what period of time elapses before ICE picks that person up?

Meanwhile, because the local jurisdiction has to pay for security, they've got to pay for feeding this person and that's where I think medical meals and all. And so they want to -- generally want to get that person out of their custody back to where it belongs with ICE. How long, how quickly does that happen?

VITIELLO:

Yes. I definitely understand that. We talked a little bit earlier about detainers and the detainers asks for us in ICE to get a 48 hour notice, presuming that the department or the jurisdiction is getting ready to release. And so within that timeframe, we would we would mount our response.

But in some places, given the adequate resources, distances et cetera, we would do it as quickly as we could.

CARPER:

All right. What does this quickly as we could?

VITIELLO:

As fast as we can get someone there. Again it depends on the circumstances how far things are apart, whether we have adequate detention space to take another individual into custody et cetera.

CARPER:

Yes. Well, I'm going to ask you to think about that and when we talk again and I'll ask you to come back and revisit that. That all right?

VITIELLO:

Very good.

CARPER:

Thank you. We talked yesterday about a way in Mexico, where there are more Mexicans going back into Mexico? And then there are Mexicans trying to get into the United States undocumented or illegally. And I think we basically agreed that the reason why is, because in Mexico there's more hope, more opportunity. There is crime, but it's a more safe place by far than Honduras, Guatemala, El Salvador.

And that has helped turn things around in terms of movement of Mexicans in and out of Mexico in our country. I said yesterday if you -- I lived we're raising our families in Honduras, Guatemala, Salvador, but given what they face in terms of danger and lack of opportunity and hope, we'd be tempted to pull out of there -- at least our kids and our families to a safer place and the U.S. is probably the closest safest place.

Give us just one minute on what we ought to be doing to improve the quality of life to reduce the need for folks who live in those countries to abandon everything they have to make this long journey to face an uncertain future. Talk to us about what's going on there and what we can do better.

VITIELLO:

Well, what we're doing in ICE in the HSI context, internationally we have these transnational criminal investigative units. That's an opportunity for us to work with local authorities in those countries to train and that -- their law enforcement officers and then help them guide and direct and use their law enforcement resources to improve the rule of law in those locations.

That's an important facet of what we're doing. The Secretary and Secretary Kelly before her, also is engaged in the security and prosperity plan which allows for our government to understand the resources that we're putting downrange in the Northern Triangle to help improve investment opportunities and encourage foreign direct investment in those in those locations.

CARPER:

Is that part of your Alliance for Prosperity?

VITIELLO:

Yes sir.

CARPER:

OK. All right. How important you think that Alliance for Prosperity is?

VITIELLO:

I think you got to do it all. I think we have to have -- people have to have the expectations that their property and their safety is going to -- is well cared for in those locations. And then you have to have economic opportunity and hope in those locations as well.

CARPER:

All right. I am just saying -- my Chairman we had actually a lot of interest in that part of the world and -- because of our leadership of the Committee at one time or the other. And we're asked to spend a whole lot of money for a wall on our border with Mexico. And I think there's certainly places where wall makes sense, a lot of places where it doesn't.

But I think it really makes sense if you look at what's happened in Colombia sort of 20 years. Colombia has actually turned the country around and got people not trying to get out of there to come up here. And I think the same thing could happen in the Northern Triangle if we're smart about it.

The last question I have is, and I just had concern that -- you may not appear to think through the consequences of President Trump's family separation policy when you had a role in implementing it.

President Trump appears determined to continue to implement what I think are considered maybe legally questionable immigration policies that use our scarce federal resources without making us any safer.

If confirmed how -- there is a question, if confirmed, how would you avoid repeating the errors in judgment in planning to allow the family separation policy to occur? And if you -- we don't have a lot of time, but just give us some specificity.

Question again, if confirmed, how would you avoid repeating the errors in judgment in planning that allow the family separation policy to occur?

VITIELLO:

So it wasn't a family separation policy. It was an increased level of prosecution. Right? The Department of Justice said, we -- they would involve resources to give us a zero tolerance for people who crossed the border in between the ports illegally.

And so, the lesson learned there is, we did spend a lot of time in this setting urging Congress to close these loopholes, to give us an opportunity to let people have their due process rights and then removed when they were eligible for relief under the INA.

So we'd like to have that opportunity. But in the case of what did happen, we should've been more -- we should have leaned forward more on explaining the whole process and being ready for the public outcry that occurred.

CARPER:

All right. Mr. Chairman, one thing I'd say is, I don't know we've had -- you and I have conversations about this. But the idea that folks -- our focus on the Northern Triangle, Honduras, Guatemala, El Salvador, who would like to get out of there and come and apply for asylum.

There's legislation that's been sitting (ph) and senate co-sponsor. You may be as well. That will basically allow folks who are seeking asylum to do it in their native country at our consulates or embassy, and not have to continue to get on a thousand mile journey with uncertain future. So that's something I think has a lot of merit. All right. Thank you very much. And Mr. Tischner, I would like to recognize that you were excellent in your responses today. Thank you.

TISCHNER:

Thank you.

JOHNSON:

Senator Carper, again, I think the goal we all share is to make that a legal process. Mr. Tischner, like Senator Carper said, don't feel bad about being left out, feel relieved. Just real quick, I

understand your position is incredibly important. We have a project in Milwaukee called The Joseph Project where we have a -- working with the inner city church.

We have a pastor, Pastor Jerome Smith, wonderful man, identifies people, formerly incarcerated, former drug and alcohol abusers that have reached that stage in life who want to turn around. And so we're able to -- they're able to transform their life through work.

And all we do is -- it's a four day, three hour a day training program that just instills the necessity to commit themselves to turn their lives around, commit themselves to succeed, as well as have the right kind of attitude on the job with the -- in the application process, interview process and every day on the job.

So I'm just going to throw it out there to you, if you want to see that in action, I think, it be valuable for you. And you're always welcome to come take a look at one of our sessions in Joseph Project and talk to people in terms of how it's worked. But I give you an opportunity, you kind of can respond to that or say something in this hearing.

TISCHNER:

Thank you, Chairman Johnson. I would appreciate the opportunity to review that. I know that locally there are faith based organizations that are also very helpful in giving opportunities to individuals who've been incarcerated in the past, who've had tough lives.

And I do think that that impediment -- removing the impediment of unemployment is one of many that does make individuals succeed, and are able then to come back and be productive members and contributing members to the local community. And I appreciate the offer.

JOHNSON:

The dignity of work is kind of hard to replace in terms of people transforming their lives. So, again, I want to thank the nominees for your past service rulings (ph) to serve your families for their support of you.

The nominees have been have made financial disclosures and provide responses to biographical and prehearing questions submitted by the Committee. Without objection this information would be made part of the hearing record. With the exception of the financial data, which are on file, and available for public inspection in the Committee offices.

The hearing record will remain open until noon tomorrow, November 16th, for submission of statements and questions for the record. This meeting is adjourned.

VITIELLO:

Thank you.