

House Appropriations Subcommittee on Homeland Security Hearing; "U.S. Immigration and Customs Enforcement Oversight; Testimony by Matthew Albence, Acting Director, U.S. Immigration and Customs Enforcement; WAX71772519HH94

Congressional Documents and Publications

July 25, 2019

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Section: U.S. HOUSE OF REPRESENTATIVES DOCUMENTS

Length: 5107 words

Body

INTRODUCTION

Chairwoman Roybal-Allard, Ranking Member Fleischmann, and distinguished Members of the Subcommittee:

As you are aware, the United States is currently facing an unprecedented border security and humanitarian crisis at the southwest border. Over the past year, the number of aliens apprehended at or near the southwest border has increased significantly. From October 1, 2018, to June 30, 2019, enforcement actions on the southwest border reached 780,633--an increase of 103% over the prior fiscal year (FY). The increase of aliens arriving in the country has strained U.S. Customs and Border Protection (CBP) to a breaking point. As Acting Secretary McAleenan recently testified, supplemental funding provided to the Department of Homeland Security (DHS) in the recent supplemental funding package has been used to address the urgent humanitarian needs at the border, helping to free up CBP officers to return to their front-line duties.

Today, however, I am here to address other parts of the immigration system that remain in desperate need of resources and funding, as well as to highlight the need for legislation that would help put an end to the current border crisis once and for all. The fact is, the majority of aliens encountered at or near the border are released into the interior of the United States pending removal proceedings before the Department of Justice's (DOJ) Executive Office for Immigration Review (EOIR)--which currently has a backlog of more than 900,000 cases and growing. The women and men of U.S. Immigration and Customs Enforcement (ICE) are responsible for managing these cases, as well as those of the more than 3 million aliens currently on ICE's docket. As I will further discuss, many aliens do not appear for removal proceedings, violating the terms of their release--including the terms of the Alternatives to Detention (ATD) program-- or fail to comply with the removal orders issued by EOIR. The result requires a strong interior enforcement component that lends certainty to lawfully issued orders from Immigration Judges. If we only enforce our immigration laws at the border and fail to provide adequate resources to ensure those who have entered illegally proceed through the immigration process and, if ordered removed, are actually removed, the entire system will break down. Such failure will continue to serve as a magnet for additional aliens to illegally enter the country.

With this in mind, I come to ask for your assistance in providing ICE the funding it desperately needs to address not only the humanitarian crisis, but the also enforce our Nation's immigration laws. The FY 2020 President's Budget for ICE includes \$8.8 billion in discretionary funding, reflecting a \$1.2 billion increase from the FY 2019 enacted budget. Additionally, the Budget estimates \$527.4 million in budget authority derived from mandatory fees, bringing total estimated ICE spending authority to \$9.3 billion. This increase in funding is critical for ICE to meet its diverse mission needs. The FY 2020 Budget will support current efforts and enable ICE to invest in much needed areas:

immigration enforcement, custody and care of the detained population, transportation and processing of aliens, criminal investigations, dismantling transnational criminal organizations, particularly those responsible for smuggling drugs and people into our country, workforce expansion and training, and the information technology needed to meet the security challenges of the 21st century.

Additionally, I would also like to highlight urgent legislative changes needed by DHS. To be clear, this budget request provides the necessary funding and resources for ICE to address the symptoms of the crisis. Legislative changes are the only viable option to swiftly put an end to the current crisis, reducing the victimization of migrants looking for a better life, and starving the cartels and the transnational criminal organizations of a major segment of their illicit enterprises. Absent these reforms, current laws will continue to be exploited and the pull factors they create will only result in more illegal immigration. For the safety and security of our country we implore you:

* Terminate the Flores Settlement agreement and clarify the government's detention authority with respect to alien minors, including minors detained as part of a family unit.

* Amend the Trafficking Victims Protection Reauthorization Act (TVPRA) to provide for the prompt repatriation of any Unaccompanied Alien Children (UACs) who are not victims of human trafficking and who do not express a fear of return to their home country and provide for similar treatment of all UACs from both contiguous or noncontiguous countries to ensure they are swiftly and safely returned to their countries of origin.

* Address the credible fear standard--a threshold standard for those subjected to expedited removal to be able to pursue asylum before the immigration courts. The current standard has proved to be ineffective in screening out those with fraudulent, frivolous, or legally insufficient claims.

ENFORCING IMMIGRATION LAWS

ICE's immigration enforcement efforts are led by the more than 6,000 law enforcement officers of Enforcement and Removal Operations (ERO). ERO's deportation officers enforce our nation's immigration laws by identifying, arresting, detaining, and removing illegal aliens. To ensure the national security and public safety of the United States and the faithful execution of the immigration laws passed by Congress, ICE officers may conduct targeted enforcement actions against any removable alien who is present in violation of immigration law. Despite what is often sensationally misreported, these are not indiscriminate "raids" or "sweeps"; instead, ERO's operations are carefully planned, based on person-specific intelligence-driven leads, focusing on those who represent a public safety threat as well as those who have received a lawfully issued order of removal from an immigration judge (IJ). Approximately 90 percent of ERO's administrative arrests in the interior of the country are of aliens that have prior criminal convictions, face pending criminal charges, are immigration fugitives, or have been previously removed from the country and have illegally reentered, the latter of which is a federal felony that ICE prosecutes thousands of times per year.

While ICE's immigration enforcement is focused on the interior, the current situation at our border directly impacts this agency and its resource requirements in numerous ways. CBP's 780,633 encounters include more than 390,000 members of family units and 63,000 unaccompanied alien children (UAC)--this represents 63 percent of all southwest border encounters in FY 2019 year-to-date. Notably, in the last few months, ICE has been forced to release more than 215,000 members of family units into the interior of the United States due to the Flores Settlement Agreement. The majority of individuals encountered now originate from the three countries of Central America known as the Northern Triangle, which includes Guatemala, Honduras, and El Salvador. These changes in demographics are significant because, unlike single adult migrants from Mexico who previously accounted for the majority of those attempting to cross the border illegally, family units and UAC from Central America cannot be swiftly repatriated, which means current arrivals from these groups are further exacerbating the already extensive backlog across our immigration system to a greater extent than ever before.

Typically, when an alien is apprehended by CBP, they are transferred to ICE custody pending removal proceedings. However, ICE's resources have been overburdened by the record numbers of CBP apprehensions at the southwest

border and Congress' repeated **failure** to fund ICE detention and transportation requirements at ICE requested levels, despite the demonstrated need for these resources.

Further, the crisis on the border has impacted ICE's interior enforcement mission, particularly with regard to criminal aliens. Resources dedicated to removing dangerous criminals from the street have necessarily been redeployed to manage the increased workload stemming from the border surge, resulting in an over 14% decrease in criminal alien arrests this FY. Additionally, ICE has reassigned members of Fugitive Operations teams to manage detained dockets or to help respond to the border crisis. The **failure** of Congress to increase funding for Fugitive Operations teams over the course of several years, has created a large strain on ICE's ability to effectuate arrests of specific aliens who have failed to comply with removal orders or with release conditions, including those who have absconded while on ATD.

Moreover, Homeland Security Investigations has reassigned hundreds of special agents and intel analysts to border patrol facilities to ferret out fraudulent family units and UAC, to reduce the victimization of children stemming from the cartels and smuggling organizations making hundreds of millions of dollars on the suffering and desperation of others.

The influx at the border has especially strained ICE's detention resources. As of July 2019, ICE is currently detaining over 53,000 single adults, and there are approximately 8,000 single adults in CBP custody awaiting processing or transfer to ICE custody. Comparing FY 2019 year-to-date n1 In FY 2019 year-to-date, 89 percent of those arrested by ICE have criminal convictions or pending criminal charges. Of the small fraction of the current detained population that was not apprehended by CBP and do not have a criminal history, many are foreign fugitives, known or suspected gang members, or have violated the terms of their enrollment in ICE's ATD program. with FY 2018 year-to-date, there has been a 79% percent increase (184,461 to 330,049) in intakes resulting from CBP apprehensions and an almost 11 percent decrease (121,095 to 107,923) in intakes resulting from ICE arrests. n2 75 percent of ICE's intakes stem from a CBP apprehension, and

Based on increased enforcement activity on the border and the need to ensure interior enforcement, additional ICE detention capacity is necessary. Specifically, the budget includes nearly \$2.7 billion to expand detention capacity to support an average daily adult population of 51,500 aliens and an average daily family population of 2,500, for a total of 54,000 beds. The budget also includes transportation costs commensurate to the requested detention population and flow of UACs, as well as funding for the ATD program to increase the number of enrolled participants to 120,000. Given the current apprehension rates, ICE is focusing on expanding both detention capacity and ATD enrollment capacity to avoid releasing individuals who are subject to mandatory detention, have a criminal history, or pose a public safety or a flight risk, and to better manage both the detained and non-detained dockets.

ICE cannot abandon its interior enforcement mission. The perceived lack of interior enforcement is a major driving force behind the current crisis, and DHS cannot secure the border without simultaneously ensuring strong interior enforcement to reduce this pull factor. As such, ICE will continue to conduct interior enforcement actions in line with the **agency's** mission and the laws passed by Congress to uphold the rule of law.

MANAGING THE DETAINED POPULATION

ICE oversees the civil **immigration** detention of one of the most highly transient and diverse populations of any detention or correctional system in the world. This entails the execution of a highly complex range of services and significant dedicated resources to areas such as medical care for detainees and transportation of aliens, including single adults, family units, and UAC.

ICE takes the health, safety and welfare of those in its custody extremely seriously. Comprehensive medical care is provided from the moment detainees arrive into ICE custody and throughout the entirety of their stay. All ICE detainees receive a medical intake screening, which includes mental health, within 12 hours of arriving at each detention facility, a full health assessment within 14 days of entering ICE custody or arrival at a facility, and access to daily sick call and 24-hour emergency care. In FY 2018, ICE spent \$269 million on health care services.

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With regard to transportation, ICE transports aliens domestically for purposes of detention, release, and transfer to other agencies, in accordance with existing laws and policies. Transportation may be from the Southwest Border after apprehension to the interior of the country, between ICE's interior Areas of Responsibility (AORs), or between agencies (ICE does not maintain custody of UAC outside the responsibility of transportation between CBP and Health and Human Services). In FY 2018, ICE spent \$475 million on these transportation costs, and is requesting \$557 million to support the efficient and expeditious transportation of aliens going forward.

ALTERNATIVES TO DETENTION

As of July 2019, ICE's non-detained docket has grown to more than 3 million aliens, including more than 1 million who have already received a final order of removal from an IJ. n3 Due to its very limited detention capacity, ICE must generally reserve its detention space for those who pose a national security, public safety, or flight risk. Thus, when an alien is not subject to mandatory detention, ICE maintains the authority to release aliens on a case-by-case basis in accordance with existing laws and regulations and based on the totality of the circumstances in each case.

ICE's ATD program is a tool that monitors compliance of some non-detained aliens going through removal proceedings. Due to the extremely high volume of CBP apprehensions at the border, the growing size of ICE's non-detained docket, and the current backlog of more than 900,000 cases before the immigration courts, the budget includes funding for the ATD program to further increase the number of average daily participants to 120,000. This is in addition to existing enrollments, which have increased from 23,000 in FY 2014 to more than 100,000 as of July 2019.

However, it is important to understand that ATD has significant limitations, especially considering ICE's other resource needs. First, individuals, and especially family units, on ATD abscond at significant rates. In FY 2019 year-to-date n4, the absconder rate for family units stands at 26.2 percent, significantly higher than the 12 percent absconder rate for non-family unit participants, demonstrating the growing challenges such enrollments create for immigration enforcement. Moreover, ATD has been found to be especially ineffective in effectuating removals of aliens so ordered by an immigration judge or for those who have recently arrived in the United States and lack community ties. Without sufficient numbers of Fugitive Operations officers to search for and arrest aliens who fail to comply with ATD, as well as sufficient detention space for those aliens to be detained once they are located and arrested, ATD will continue to offer limited incentive for aliens to comply.

LEGAL SUPPORT

Additional resources are also requested in FY 2020 to ensure that ICE's Office of the Principal Legal Advisor (OPLA) is able to carry out its statutory responsibility to prosecute administrative immigration cases before the DOJ's immigration courts. n5 During FY 2018, OPLA attorneys prosecuted more than 800,000 immigration-related cases before the immigration courts obtaining 122,750 orders of removal for a ratio of 156 cases per immigration line attorney versus the FY 2017 ratio of 135 cases per immigration line attorney. While Congress has increased the number of funded DOJ immigration judges and support positions during recent budget cycles, OPLA funding has not kept pace. Without these dedicated attorneys, the immigration court process simply does not work. To handle this growing immigration court system, OPLA will need to hire 128 additional attorneys and 41 additional support staff. Without this funding, immigration judges will be unable to effectively manage their dockets and ICE's enforcement efforts will fall short of Administration objectives to appropriately enforce federal law.. n6

COMBATTING TRANSNATIONAL CRIMINAL ORGANIZATIONS

ICE's Homeland Security Investigations (HSI) protects the United States against terrorists and other criminal organizations through criminal and civil enforcement of federal laws governing border control, customs, trade, and immigration. As the largest investigative arm of DHS, HSI utilizes its broad legal authorities to investigate immigration and customs violations, including those related to export control, human rights abuses, narcotics, weapons and contraband smuggling, financial crimes, cybercrime, human trafficking and smuggling, child exploitation, intellectual property infringements, transnational gangs, immigration document and benefit fraud, and

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worksite enforcement. The FY 2020 Budget maintains HSI's critical operations abroad, supports hiring of an additional 150 special agents and increases our efforts to target and combat dangerous transnational gangs and other criminal organizations.

In FY 2018, HSI agents arrested 44,069 individuals, making 34,344 criminal arrests and 9,725 administrative arrests. FY 2018 was a positive year for many of our key enforcement initiatives and we continue to request resources to sustain and improve on our successes. HSI made 4,333 arrests of gang leaders, members, and associates, including 959 Mara Salvatrucha (MS-13) members. Our special agents and investigators helped take more than 900 firearms off the streets through these criminal investigations, and we hope to build on that success going forward. We continue targeting transnational criminal gangs like MS-13. Results from across the country show that these policies are working and help make communities safer for all children, including UACs and recent immigrants, who are frequently the prime targets for initiation, joining the very gangs for which they have purported to flee their home countries.

HSI identified and assisted more than 1,562 crime victims in FY 2018, including 308 human trafficking victims and 859 child exploitation victims. We initiated more child exploitation cases and achieved more arrests, indictments and convictions paying immediate dividends when you consider the long-term, lasting damage these criminals can inflict upon their young victims. HSI is prioritizing the identification and rescue of child victims of sexual exploitation, working to disrupt and dismantle the transnational criminal organizations (TCOs) responsible for the sexual exploitation of children through cyber-crime and child sex tourism. Knowing that criminal activities involving the sexual exploitation of children routinely cross our physical and virtual borders, we are continuing efforts to increase global collaboration in these investigations.

Since April 2019, HSI has dedicated over 400 personnel to combatting the increase in fraudulent family relationship claims at the Southwest Border. These personnel are protecting children from being smuggled and are identifying and disrupting the criminal organizations that generate false documents and smuggle children. To date, this effort has resulted in the identification of 400 fraudulent families, the discovery of 991 fraudulent documents or claims, and the presentation of 790 individuals for prosecution, 682 of which have been accepted. Additionally, HSI has identified 59 fraudulent UACs in CBP custody, prosecuting 58 of them. In addition, these teams have successfully expanded a rapid DNA pilot project with the assistance of U.S. Border Patrol. As of July 15, 2019, rapid DNA testing has been established at multiple locations along the southwest border as another tool to help investigators identify suspected fraudulent family units. This testing is being utilized to identify child exploitation, human smuggling and trafficking, and to help remove children from these dangerous situations.

HSI conducted 5,981 Employment Eligibility Verification (Form I-9) inspections; issued over \$10.0M in judicial fines, forfeitures and restitutions against employers found to be in violation of employment eligibility verification requirements; conducted over 1,500 presentations to 8,257 employers regarding the requirements and benefits of the ICE Mutual Agreement between Government and Employers (IMAGE) program, designed to reduce unauthorized employment and minimize fraudulent identity documents; and certified 18 exceptional employers as new IMAGE members. Through the Visa Security Program, HSI screened approximately 2.2 million non-immigrant visa applicants at 36 high-risk posts.

Narcotics enforcement efforts throughout FY 2018 resulted in more than 11,400 criminal arrests and the seizure of approximately 1 million pounds of illicit narcotics. Our workforce is dedicated to disrupting and dismantling the TCOs responsible for the manufacture, distribution and sale of these illegal and deadly drugs. Leveraging the Border Enforcement Security Task Force, or BEST unit resources, HSI is increasing investigation and enforcement activities combating organizations that illicitly introduce and distribute fentanyl, heroin, methamphetamine and cocaine into and throughout the United States.

In addition to leveraging domestic assets, HSI works closely with attache personnel deployed to 77 offices in 51 countries worldwide. These personnel are uniquely positioned to utilize established relationships with host country law enforcement, including Transnational Criminal Investigative Units (TCIUs). These TCIUs are composed of DHS-vetted and -trained host country counterparts who have the authority to investigate and enforce violations of law in

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their respective countries. The use of TCIUs enables HSI to promote direct action on its investigative leads while respecting the sovereignty of the host country and cultivating international partnerships. These efforts, often thousands of miles from the U.S.-Mexico border in countries like Colombia and Panama, act as an outer layer of security for our Southwest Border.

Terrorism remains one of the most significant threats law enforcement faces in protecting the homeland. Our counterterrorism and anti-criminal exploitation efforts seek to prevent terrorists and other criminals, such as human rights violators, from exploiting the Nation's immigration system. HSI's overstay analysis efforts provide timely, relevant, and credible information on entry, exit, and immigration overstay status of visitors to the United States in order to enhance security, facilitate legitimate trade and travel, and ensure the integrity of the immigration system, all while protecting the privacy of visitors.

POSITIONING OUR WORKFORCE TO MEET THE MISSION

The FY 2020 Budget includes \$313.9 million to hire additional personnel critical to mission success. This funding would allow ICE to hire 850 ERO Officers, 150 HSI Criminal Investigators, 128 attorneys, and 538 support staff including intelligence analysts, case management specialists, and other operational support personnel. For ICE to be able to address the crisis, these positions are urgently needed.

INVESTING IN INFORMATION TECHNOLOGY AND INFRASTRUCTURE

The FY 2020 Budget includes \$7.8 million to fund the deployment and modernization of ICE's information technology applications - systems infrastructure that support our front-line personnel and improves information sharing with DHS and partner organizations.

Tactical Communication (TACCOM) is an integral part of all successful ICE law enforcement operations, including criminal apprehension, emergency response, surveillance, and multi-agency task force operations. In addition to daily operational needs, TACCOM provides critical support necessary for National Special Security Events (NSSEs) and responses to natural and man-made disasters. ICE needs to procure and deploy multi-band mobile and portable radios and the required radio infrastructure nationwide to support interoperability communications, improve officer safety, increase mission effectiveness, and reduce capability gaps. The FY 2020 Budget sustains \$53.6 million in IT resources for this effort.

In addition to information technology enhancements, ICE facilities and vehicle recapitalization plans are funded within the FY 2020 Budget. An additional \$71 million is requested to make vital repairs and sustain ICE owned facilities, many of which house over 3,500 migrant detainees. Funding for the 5-year vehicle recapitalization plan is also included, providing \$49.4 million to support the lease and acquisition of 1,000 new law enforcement vehicles. With over 12,000 vehicles in the inventory, this 5-year plan is critical to ensuring our officers and agents have law enforcement assets that meet daily demands including mileage and age replacement thresholds. Underfunding the plan would increase the officer safety risk, vehicle and technology obsolescence, and cost of replacement.

ICE relies on the availability of these mission-essential systems to perform critical functions across the enterprises. These systems, in turn, rely on modern and up-to-date infrastructure to ensure operational readiness and optimal performance.

LEGISLATIVE CHANGES

By requiring the release of family units before the conclusion of immigration proceedings, seemingly well-intentioned court rulings, like those related to the Flores Settlement Agreement (FSA), and legislation like the TVPRA, in its current form, are exploited by transnational criminal organizations and human smugglers. In fact, smugglers may provide a discount to family units or those purporting to be family units, because having a minor in the group creates barriers to immigration enforcement. Additionally, they have created an entire illicit industry, with untold millions of dollars being made through the sale, rental, and recycling of children utilized by unscrupulous adults to pose as family units. These same loopholes also encourage parents to send their children on the

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dangerous journey north, and further incentivizes illegal immigration. As the record numbers indicate, these loopholes have created an enormous pull-factor. Amendments to the laws and immigration court processes are needed to help ensure the successful repatriation of aliens ordered removed by an immigration judge.

CONCLUSION

Every day, the dedicated, courageous, professional men and women at ICE work to promote homeland security and public safety through broad enforcement of over 400 federal laws governing border control, customs, trade, and immigration. We have and will continue to exercise all lawful authorities we possess to secure the border and to ensure the integrity of the immigration system; our success, however, rests on Congress' shoulders, and we need your support.

ICE continues to faithfully implement the laws established by Congress to protect the integrity and credibility of our country's borders, as well as our national security and the safety of communities nationwide. Our agency continues to work to balance effective law enforcement with the large number of aliens, including family units, arriving at our borders. The increase in the flow of migrants and the change in those arriving at our border are putting migrants, particularly young children, at risk of harm from smugglers, traffickers, criminals, and the dangers of the difficult journey, and are placing unsustainable pressure on our entire immigration system.

Our workforce also remains dedicated to eliminating the transnational criminal organizations responsible for the manufacture, distribution and sale of illegal and deadly drugs. Opioids, in particular, continue to devastate communities across America. As part of this Administration's all-of-government approach to combatting this epidemic, ICE is determined to work with its local law enforcement partners to meet this crisis head-on and reverse the unacceptable toll these substances are taking on our communities.

Eighteen years after 9/11, the threat of terrorism to the homeland remains significant and is now more diffuse than ever. The investigative authorities bestowed by Congress will allow ICE to continue to deploy innovative approaches to safeguard our national security and keep Americans safe by combating terrorism at home and abroad.

Funding people, technology, and equipment are especially prudent investments given today's challenges. We believe no other investment will return more operational value on every dollar than the extraordinary men and women of ICE. Removing illicit narcotics, dismantling gangs, and detaining and removing illegal aliens along with ICE's ability to counter emerging threats will continue to be important investments in the safety and security of the Nation into the future.

Ultimately, to solve the border crisis, we must work collectively to ensure the integrity of the immigration system, as a whole. Failing to adequately resource interior enforcement efforts--such as fugitive operations, detention beds, and ICE attorneys--creates nothing more than the appearance of border enforcement. Perhaps that is what some people want; however, it creates a pull factor that ultimately drives more people to make the dangerous journey to the United States, incentivizes more illegal activity, and delays justice for those with meritorious claims for asylum.

As a nation of laws, we owe it to the citizens of our country to maintain the integrity of our immigration system, especially when faced with a serious and ongoing national crisis. Accordingly, I ask that you provide the funding sought in the President's FY 2020 budget for ICE.

Thank you again for inviting me to testify today. I am honored and humbled to represent the more than 20,000 American patriots with U.S. Immigration and Customs Enforcement. I look forward to your questions.

n1 Through the end of June 2019.

n2 As of July 13, 2019.

n3 ICE National Docket data is a snapshot as of July 6, 2019.

n4 As of May 31, 2019.

n5 6 U.S.C. [Sec.] 252(c).

n6 In addition to representing DHS in proceedings before EOIR, OPLA is responsible for advising ICE **leadership** and operational personnel on legal matters and addressing an array of other litigation and legal matters facing the **agency**, which have seen significant increases in tempo and complexity.

Read this original document at: <http://docs.house.gov/meetings/AP/AP15/20190725/109836/HHRG-116-AP15-Wstate-AlbenceM-20190725.pdf>

Classification

Language: ENGLISH

Publication-Type: Report

Journal Code: COSHC

Subject: BORDER CONTROL (89%); TERRITORIAL & NATIONAL BORDERS (89%); ENFORCEMENT ACTIONS (89%); **IMMIGRATION** (89%); US FEDERAL GOVERNMENT (89%); SUPPLEMENTAL APPROPRIATIONS (87%); LAW ENFORCEMENT (71%); NATIONAL SECURITY (71%); SPECIAL INVESTIGATIVE FORCES (71%); EXCISE & CUSTOMS (69%); JUSTICE DEPARTMENTS (67%); NEGATIVE PERSONAL NEWS (66%)

Organization: **US IMMIGRATION** & CUSTOMS ENFORCEMENT (93%); US DEPARTMENT OF HOMELAND SECURITY (92%); US CUSTOMS & BORDER PROTECTION (83%); US DEPARTMENT OF JUSTICE (72%); US DEPARTMENT OF JUSTICE EXECUTIVE OFFICE FOR **IMMIGRATION** REVIEW (71%)

Person: LUCILLE ROYBAL-ALLARD (76%)

Geographic: UNITED STATES (93%)

Load-Date: July 26, 2019