



MEMORANDUM

Date: January 2, 2020

To: The Honorable Chairman and Members
Pima County Board of Supervisors

From: C.H. Huckelberry
County Administrator 

Re: **Sheriff Request for Operation Stonegarden Grant Funding**

Attached is a December 17, 2019 memorandum from Sheriff Mark Napier regarding this subject. The Sheriff would like the Board of Supervisors to reconsider and approve the original Operation Stonegarden (OPSG) grant of Federal Fiscal Year (FFY) 2018. For funding purposes, this grant would appear to expire near the end of February 2020.

As you will recall, the original May 7, 2019 approval of the OPSG grant was conditioned on receiving both humanitarian aid and indirect expenses. We now know that humanitarian aid has been denied; therefore, the Board's May 7th approval is void.

In the Sheriff's attached memorandum, he proposes methods to minimize the fiscal impact of long-term pension obligations on Page 3. In summary, Sheriff Napier proposes to limit the overtime participation by deputies to eight hours per pay period, the balance of the recommendations are not directly definable. Regarding the eight hour per pay period limitation, I would also recommend no more than 150 hours per year of total overtime per deputy. This still leaves unanswered the indirect expense reimbursement, which we believe is not only allowable, but legally required.

In addition, if the Board were to consider granting the FFY 2018 OPSG award, I would also recommend the overtime allowable for this grant be limited to no more than \$400,000 provided the full equipment request of the Sheriff in 2018, less the license plate readers, be granted.

The Sheriff also makes a point of discussing two other grants, which I believe includes the FFY 2019 OPSG grant, of which we have yet to review. After those grants, he recommends limiting future participation in overtime to \$200,000 per year.

The Sheriff also proposes a Rural Law Enforcement District, which has an approximate cost of \$2.4 million to the County. I believe the Sheriff has not fully explored the possibility of supplementing this District with straight time funding from OPSG.

The Honorable Chairman and Members, Pima County Board of Supervisors

Re: **Sheriff Request for Operation Stonegarden Grant Funding**

January 2, 2020

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Please advise if you would like this item placed on a future Board of Supervisors Agenda.

In a future memorandum, I will summarize the difficulty the County has had in receiving communication from State and federal agencies regarding the OPSG grants and lack of timely decision making by federal agencies that are now causing this request at the end of 2019.

CHH/anc

Attachment

c: The Honorable Mark Napier, Pima County Sheriff
Jan Leshner, Chief Deputy County Administrator



Pima County Sheriff's Department

Mark D. Napier – Sheriff

MEMORANDUM

Date: December 17, 2019

To: Chuck Huckelberry
County Administrator

From: Mark D. Napier
Sheriff

Subject: Stonegarden Grant

Introduction

For more than two years, we have struggled to find a way forward with the Stonegarden grant that would address community, fiscal and public safety concerns. Frustrating for the Sheriff's Department is the appearance that the goal post continues to change. At the onset, there were five (5) conditions set for acceptance. You affirmed to the Board that the conditions had been met, yet the grant was rejected. Then there was the requirement for some portion of the grant to be allocated toward humanitarian aid. We have actively been pursuing those funds. Now, there is increased concern about the impact to pension costs. The Sheriff's Department believes in the efficacy of this grant. We have consistently worked to address concerns as they are brought to our attention.

The disbanding of CLEPC was at the direction of the Board. The Sheriff's Department has formed a replacement (Sheriff's Citizens Advisory Council – SCAC), which will have its first meeting in January 2020. We will seek input from the SCAC on a variety of issues, including Stonegarden.

The Sheriff's Department has in fact done everything possible to provide a viable path forward for the acceptance of this grant. This memorandum is our attempt to provide an acceptable plan to secure approval of the current two grants and establish a long-term path forward.

The Question of Humanitarian Aid

As you are aware, our federal partners rejected the request to reallocate some portion of our Stonegarden Grant funds toward humanitarian aid (see attachment 1). When I

received this letter, I appealed for relief of the decision to the highest levels of the Department of Homeland Security available to me. This was to no avail. Doing so caused a delay in communication regarding the decision, as I held out some hope for a more thoughtful decision from a higher level of the federal government.

The Sheriff's Department has done everything in its power to bring about the requested reallocation of funds to reimburse the county for humanitarian aid expenses and address future costs. Despite our best efforts, we simply could not secure agreement from our federal partners.

In part, the decision to deny the reallocation of funds was the result of the passage of HB3401. HB3401 provides grant funding to address humanitarian issues associated with the release of asylum seeking migrants into the community. It was initially funded with \$30 million. The provision for addressing humanitarian issues is specifically covered in Title III Department of Homeland Security – Federal Emergency Management Agency: Federal Assistance section of the bill (see attachment 2). Pima County has already received some funds from this grant. Senior officials at FEMA have assured me that more than \$20 million in funds have yet to be distributed. Further, that Pima County is likely to receive funds to cover the reallocation we previously requested under Stonegarden. This assumes a compelling grant request is submitted properly.

Stonegarden is in fact an operational focused grant. IB-436 was a temporary measure to permit the reallocation of funds to address an urgent humanitarian crisis. It was never the intent of the Stonegarden Grant Program to fund other than operational activities. HB3401 is the appropriate vehicle for the county to request humanitarian aid. Doing so divests such request from Stonegarden, which in itself is beneficial.

Sheriffs have been going to Washington, DC over the past year advocating for a separate stream of funding. We believe that Washington has listened to us. As a result, we now have funding included in HB3401. Denial of the request for humanitarian aid from Stonegarden is not a dismissal of the merit of the request for such aid. Rather, it is the redirection of that request to a more appropriate funding source.

Pension Costs of Associated with Accepting Stonegarden Overtime

I have reviewed your memorandum of December 10, 2019 regarding the pension liability to the county associated with Stonegarden overtime. While I do not concur with the assertion that one dollar in overtime equates to six dollars in future pension liability, I do trust your analysis and believe this calculation must have basis. This would potentially be inflated as not all deputies are under the same PSPRS pension tier. Nonetheless, the concern is valid and must be addressed for us to move forward. I appreciate your bringing it to our attention. In all candor, some deputies openly stating that they intended to go to Ajo to get their "high three" is not been helpful.

The Sheriff's Department believes that the overtime provided under the Stonegarden Grant Program is fundamental to our ability necessary for public safety. This funding

allows us to deploy additional resources in rural areas to address transnational crime threats coming up from the border. These threats are real, undeniable and must be addressed. Pursuing these funds is not an attempt to assist our personnel in “pension spiking” or to otherwise profiteer from a federal program. We participate in Stonegarden because it serves to keep the county safer. Drug and human trafficking present a clear public safety danger to the citizens of our county, which cannot be confidently addressed with current personnel resources. As a practitioner and academic in the field of criminal justice, and the elected Sheriff of our county, I am arguably best positioned to determine the efficacy of our participation in this program. I firmly believe acceptance of Stonegarden overtime to be in the best interests of public safety in Pima County.

We have perhaps not done a good of job managing Stonegarden overtime in an ideal manner in the past. Better understanding the fiscal liability associated with the overtime can, and should, redirect our efforts. With the acceptance of two current Stonegarden grants, we will take the following steps to mitigate future pension liability and other indirect costs.

- Limit to eight (8) hours per pay period the amount that PCSD personnel may participate in Stonegarden overtime deployments
- Encourage newer deputies in the PSPRS Tier 3 pension program to participate as their future pension liability is significantly lower
- The PCDSA and FOP have agreed to work with me to encourage their members with less tenure to participate in Stonegarden overtime
- Monitor more closely the overtime our personnel engage in and assess more closely the public safety merit of the Stonegarden operations engaged in which we participate
- Work closely with AZ DOHS to increase the coverage of indirect costs associated with participating in the grant
- Work with the county as appropriate to apply political pressure to change reimbursement rate for participation in grant programs to lessen the burden on county taxpayers
- Explore alternatives for overtime expenditures that might not involve deputies deployed in traditional operational activities that may have a lower pension liability impact (I am imagining there may be an opportunity here, but do not have specifics about it at present)

While these steps will not eliminate liability to the county with respect to future pension and indirect costs, they are a step in the right direction. These costs have always been a component of participation in the Stonegarden program. Pension costs have continually risen, but have always be an accepted facet of our long history of participation in the program.

Offsetting Benefits to Participation in Stonegarden

It is relatively easy to calculate the costs associated with participating in the Stonegarden Grant. What is more difficult, and is always a challenge for law

enforcement, is monetizing the value of a given activity. To suggest, or fail to take into account, the value of participating in Stonegarden is logically flawed. It is easy for us to count the number of contacts or arrests. What is impossible to measure is the deterrent value of our presence. What was prevented? What did not occur? Were the citizens of our county made to feel safer and more secure due to our increased presence in the area? There are in fact offsetting benefits to our ability to deploy significantly more resources with grant funded overtime into rural areas of our county that have clear public safety challenges.

Over the span of the more than a decade of our participation in Stonegarden, we have benefitted by securing more than \$6 million in public safety equipment. The current grant also contains an award for equipment, notably critical equipment for our fixed wing aircraft. The current FLIR ball (a device that allows the aircraft to function at night) is reaching the end of its service life. The current warranty required to sustain the aging equipment and address repairs costs \$55,000 annually. As the device gets older, the frequency of repairs significantly increases. The warranty is a required expense to simply keep the existing FLIR operational. The replacement cost is \$502,000, which is covered under the grant. Additionally, there is \$60,000 in fuel for our aircraft covered under the existing grant. Our continued participation in Stonegarden provides federal funding for equipment that otherwise would have to be purchased with local funds. If we continue to be a Stonegarden participating department, we will pursue federal funds for additional air support equipment that could allow us to expand air operations to the Ajo Airport.

While unlikely, if we elect to discontinue participation in Stonegarden we could be required to return previously purchased equipment or provide reimbursement of the costs of it. This would be a fiscal burden. The \$6 million in equipment purchased includes parts for our helicopter that is regularly used on rescue missions to save lives. The people of our county have benefitted from our long participation in this grant under prior sheriffs.

The Path Forward

I have appreciated our ongoing dialog about Stonegarden. While we occasionally disagree, I believe we both want what is best for the County, its citizens and public safety. This requires that we find a long-term solution to Stonegarden that addresses public safety concerns, while also addressing fiscal concerns. To that end, the Sheriff's Department believes we need a new approach to Stonegarden. Further, a way to address better the policing of rural areas and address of transnational crime threats coming from our southern border. Ongoing community debate about Stonegarden and delays from our federal partners addressing our concerns have detracted from our ability to address these public safety issues effectively for many months.

The Sheriff's Department proposes the following:

1. We recommend that the Board approve the current two Stonegarden grants as originally awarded. This allows the Sheriff's Department to deploy additional personnel resources immediately and purchase the equipment awarded with grant funding.
2. The Sheriff's Department will take all steps possible to reduce the fiscal impact of grant-related overtime as outlined in this document. While these steps will not completely negate the fiscal impact, they will help. As previously stated, we do derive public safety benefit from the overtime deployment of our personnel that while hard to monetize nonetheless exist and are valuable.
3. Upon the conclusion of the current two Stonegarden grants, the Sheriff's Department agrees to cap at \$200,000 per future grant the amount of overtime funds we request. This will keep us involved in the program for equipment purposes, appropriate collaboration and intelligence sharing. It will also help us supplement our efforts with respect to item #4.
4. In the FY2021/2022 budget, the Sheriff's Department will request additional personnel as a budget supplement. Specifically, one lieutenant, two sergeants and ten deputies to create a Rural District housed at the existing facility near Three Points. These personnel will be responsible for providing enhanced public safety services to the rural areas of the county. Specifically, Sasabe, Arivaca, Amado and the border area. These personnel will be substantially less entangled with our federal partners, but will still work in a collaborative manner with them on public safety issues affecting the county. This approach will also address the large service area between our current San Xavier District and Ajo, providing better service to the community.

The community has frequently called for the Sheriff's Department to have the resources it needs to address border and rural public safety issues, as opposed to being tied to Stonegarden funding. This approach answers that call by providing us those resources.

This approach would have less fiscal impact in the long-term as it addresses the additional future pension costs associated with substantial amounts of Stonegarden overtime. Personnel hired to address the required additional staffing would be new employees coming in with PSPRS Tier 3 pension benefits (far less expensive). This presents a long-term solution to the angst surrounding Stonegarden, but keeps us involved to a minimal level to secure equipment funding and maintain the equipment already awarded. Importantly, it ensures the department can effectively address border/rural public safety challenges.

Initially, this would require some minor facility improvements and additional four-wheel drive vehicles. The Sheriff's Department can likely find the funds necessary for the facility improvements, as they are probably relatively minor. We will require some additional funds for the vehicles. Four-wheel drive vehicles

would be required to service fully the very rural areas that are currently significantly underserved.

Lastly, the Sheriff's Department would intend to make the personnel assigned to our Rural District very nimble. They could be redeployed temporarily to rural areas throughout the county or as needed to buttress existing resources addressing episodic public safety challenges.

If we are able to secure funding to stage some of our air assets at the Ajo Airport, we finally could provide full-service law enforcement to the rural and western part of the county. With the creation of the Rural District, these would be resources that we more completely control. Under Stonegarden funding, we do give up some small measure of control of personnel as they are participating almost exclusively in joint operations.

Conclusion

We believe this proposal constitutes a solid compromise. We address, to the best of our ability, the concern about pension costs associated with Stonegarden. We move forward with the current grant awards to address immediately public safety issues and secure much needed equipment. Finally, we engage a long-term solution that addresses the call from the community for a more autonomous approach, maintains an appropriate level of engagement with our federal partners and significantly enhances our ability to serve rural areas of the county at a lower cost.

We request that the current two Stonegarden grants be approved and we proceed under the conditions outlined in this memorandum.

Attachment 1

November 14, 2019

Susan Dzbanko
Assistant Director of Planning and Preparedness
Arizona Department of Homeland Security
1700 West Washington Street
Suite 210
Phoenix, AZ 85007

Ms. Dzbanko:

We are writing as follow-up to our June 13th conference call and June 25th letter that summarized the call and provided guidance on the process for Pima County to follow for a reallocation of a portion of its FY 2018 Operation Stonegarden (OPSG) funding for humanitarian aid.

Based on the Department of Homeland Security, U.S. Customs and Border Protection (CBP), United States Border Patrol's (USBP) operational review of the following OPSG reallocation request: OPSG FRAGO AZ Pima FY18 18-TCATCA-09-007 V1, USBP has determined that there is no border security operational benefit derived from this reallocation request.

The Federal Emergency Management Agency's (FEMA) OPSG administrative review of the USBP operational determination is within the guidelines and special conditions associated with OPSG, and CBP and FEMA collaborated to gain a full understanding of operational aspects of this issue and all parties' concerns relating to the border security mission. We greatly appreciate your patience as we worked through this issue.

USBP has found insufficient basis for the reallocation of operational funds in the previously approved Campaign Plan: (OPSG OO AZ Pima FY18 18-TCATCA-09-007 V0). This Campaign Plan¹ was developed based upon a risk analysis conducted by the USBP. The risks identified during this analysis and in the corresponding Integrated Planning Team (IPT) meeting are still present. Pima County's reallocation request to move operational funding to humanitarian aid does not establish an appropriate and prevalent border security risk for mitigation. While reviewing this reallocation request, USBP's operational review weighed the previous voluntary return of over \$1.2 million in FY17 operational funds by Pima County, which resulted in the loss of over 11,000 Operation Stonegarden-funded overtime hours. A determination to convert additional FY18 OPSG operational funding for humanitarian relief contravenes border security operations as a USBP priority.

The operational intent, terms and conditions, the risk and threats, and the identified border security requirements of the approved Campaign Plan¹ have not changed. Reallocation of the identified funds from approved operational overtime and equipment to the administrative costs associated with humanitarian relief is not consistent with the use of OPSG funds to mitigate existing border security gaps and vulnerabilities. Pima County demonstrates the ongoing necessity for prioritizing this

¹ OPSG OO AZ Pima FY18 18-TCATCA-09-007 V0.

equipment/operational capability by its stated intent to procure the aircraft mounted FLIR per its stated structuring within the FRAGO²: “The \$123,179 will be used to purchase the same originally approved Aircraft Mounted FLIR, and PCSD will pay for the remaining balance from non-OPSG funding” (\$378,821 from Pima County budget funds).

FEMA Information Bulletin (IB) No. 436, issued November 27, 2018, expanded the allowability of humanitarian relief for unaccompanied minors and families with minors under OPSG. According to IB No. 436, such proposed reallocations must be coordinated with the applicable USBP sector and approved by USBP and FEMA. CBP has determined that, in this case, it is not operationally prudent to make changes to the previously agreed upon budget amounts under Pima County’s OPSG subaward to redirect funding from law enforcement operations toward humanitarian relief because reducing the available operational funding during this critical time will be detrimental to the security efforts along the southwest border.

As a reminder, there are other potential sources of DHS grant funds that can support humanitarian needs, including the State Homeland Security Program (SHSP) and the supplemental Emergency Food and Shelter National Board Program (EFSP).

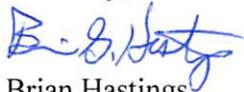
Determination:

No change in relevant risk/threat has been provided to support reprioritization as delineated in this reallocation request as a border security requirement. USBP has determined there is no border security operational benefit derived from this reallocation request. Pima County’s reallocation request (OPSG FRAGO AZ Pima FY18 18-TCATCA-09-007 V1) is therefore operationally disapproved.

Staff may direct questions regarding this decision to:

CBP USBP OPSG Assistant Chief Maurice T. Gill at Maurice.gill@dhs.gov
FEMA GPD Branch Chief Alexander R. Mrazik Jr. at Alexander.MrazikJr@fema.dhs.gov

Sincerely,



Brian Hastings
Chief of Law Enforcement Operations
US Border Patrol Headquarters



Bridget Bean
Assistant Administrator
Grant Programs Directorate
Federal Emergency Management Agency

Cc: DISTRIBUTION: US Customs and Border Protection
DISTRIBUTION: Federal Emergency Management Agency
DHS Office for State and Local Law Enforcement

² OPSG FRAGO AZ Pima FY18 18-TCATCA-09-007 V1

Attachment 2

One Hundred Sixteenth Congress
of the
United States of America

AT THE FIRST SESSION

*Begun and held at the City of Washington on Thursday,
the third day of January, two thousand and nineteen*

An Act

Making emergency supplemental appropriations for the fiscal year ending September 30, 2019, and for other purposes.

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That the following sums are appropriated, out of any money in the Treasury not otherwise appropriated, for the fiscal year ending September 30, 2019, and for other purposes, namely:

TITLE I

DEPARTMENT OF JUSTICE

GENERAL ADMINISTRATION

EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

For an additional amount for “Executive Office for Immigration Review”, \$65,000,000, of which \$45,000,000 shall be for the hiring of 30 additional Immigration Judge Teams, of which \$10,000,000 shall be used for the purchase or lease of immigration judge courtroom space and equipment, and of which \$10,000,000 shall be used only for services and activities provided by the Legal Orientation Program: *Provided*, That Immigration Judge Teams shall include appropriate attorneys, law clerks, paralegals, court administrators, and other support staff: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

UNITED STATES MARSHALS SERVICE

FEDERAL PRISONER DETENTION

For an additional amount for “Federal Prisoner Detention”, for necessary expenses related to United States prisoners in the custody of the United States Marshals Service, to be used only as authorized by section 4013 of title 18, United States Code, \$155,000,000, to remain available until expended: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

H. R. 3401—2

TITLE II

DEPARTMENT OF DEFENSE

OPERATION AND MAINTENANCE

OPERATION AND MAINTENANCE, ARMY

For an additional amount for “Operation and Maintenance, Army”, \$92,800,000, for necessary expenses to respond to the significant rise in unaccompanied minors and family unit aliens at the southwest border and related activities: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, MARINE CORPS

For an additional amount for “Operation and Maintenance, Marine Corps”, \$13,025,000, for necessary expenses to respond to the significant rise in unaccompanied minors and family unit aliens at the southwest border and related activities: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, AIR FORCE

For an additional amount for “Operation and Maintenance, Air Force”, \$18,000,000, for necessary expenses to respond to the significant rise in unaccompanied minors and family unit aliens at the southwest border and related activities: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

OPERATION AND MAINTENANCE, ARMY NATIONAL GUARD

For an additional amount for “Operation and Maintenance, Army National Guard”, \$21,024,000, for necessary expenses to respond to the significant rise in unaccompanied minors and family unit aliens at the southwest border and related activities: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

TITLE III

DEPARTMENT OF HOMELAND SECURITY

U.S. CUSTOMS AND BORDER PROTECTION

OPERATIONS AND SUPPORT

For an additional amount for “Operations and Support” for necessary expenses to respond to the significant rise in aliens at the southwest border and related activities, \$1,015,431,000; of which \$819,950,000 shall be available until September 30, 2020:

H. R. 3401—3

Provided, That of the amounts provided under this heading, \$708,000,000 is for establishing and operating migrant care and processing facilities, \$111,950,000 is for consumables and medical care, \$35,000,000 is for transportation, \$110,481,000 is for temporary duty and overtime costs including reimbursements, and \$50,000,000 is for mission support data systems and analysis: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

PROCUREMENT, CONSTRUCTION, AND IMPROVEMENTS

For an additional amount for “Procurement, Construction, and Improvements” for migrant care and processing facilities, \$85,000,000, to remain available until September 30, 2023: *Provided*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT

OPERATIONS AND SUPPORT

For an additional amount for “Operations and Support” for necessary expenses to respond to the significant rise in aliens at the southwest border and related activities, \$208,945,000: *Provided*, That of the amounts provided under this heading, \$35,943,000 is for transportation of unaccompanied alien children, \$11,981,000 is for detainee transportation for medical needs, court proceedings, or relocation from U.S. Customs and Border Protection custody, \$20,000,000 is for alternatives to detention, \$45,000,000 is for detainee medical care, \$69,735,000 is for temporary duty, overtime, and other on-board personnel costs including reimbursements, \$5,000,000 is for the Office of Professional Responsibility for background investigations and facility inspections, and \$21,286,000 is for Homeland Security Investigations human trafficking investigations: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

FEDERAL EMERGENCY MANAGEMENT AGENCY

FEDERAL ASSISTANCE

For an additional amount for “Federal Assistance”, \$30,000,000, to remain available until September 30, 2020, for the emergency food and shelter program under title III of the McKinney-Vento Homeless Assistance Act (42 U.S.C. 11331 et seq.) for the purposes of providing assistance to aliens released from the custody of the Department of Homeland Security: *Provided*, That notwithstanding sections 315 and 316(b) of such Act, funds made available under this section shall be disbursed by the Emergency Food and Shelter Program National Board not later than 30 days after the date on which such funds become available: *Provided further*, That the

Emergency Food and Shelter Program National Board shall distribute such funds only to jurisdictions or local recipient organizations serving communities that have experienced a significant influx of such aliens: *Provided further*, That such funds may be used to reimburse such jurisdictions or local recipient organizations for costs incurred in providing services to such aliens on or after January 1, 2019: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS—THIS TITLE

SEC. 301. Notwithstanding any other provision of law, funds made available under each heading in this title shall only be used for the purposes specifically described under that heading.

SEC. 302. Division A of the Consolidated Appropriations Act, 2019 (Public Law 116–6) is amended by adding after section 540 the following:

“SEC. 541. (a) Section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391) shall be applied—

“(1) In subsection (a), by substituting ‘September 30, 2019,’ for ‘September 30, 2017,’; and

“(2) In subsection (c)(1), by substituting ‘September 30, 2019,’ for ‘September 30, 2017.’

“(b) The Secretary of Homeland Security, under the authority of section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391(a)), may carry out prototype projects under section 2371b of title 10, United States Code, and the Secretary shall perform the functions of the Secretary of Defense as prescribed.

“(c) The Secretary of Homeland Security under section 831 of the Homeland Security Act of 2002 (6 U.S.C. 391(d)) may use the definition of nontraditional government contractor as defined in section 2371b(e) of title 10, United States Code.”

SEC. 303. None of the funds provided in this Act under “U.S. Customs and Border Protection—Operations and Support” for facilities shall be available until U.S. Customs and Border Protection establishes policies (via directive, procedures, guidance, and/or memorandum) and training programs to ensure that such facilities adhere to the National Standards on Transport, Escort, Detention, and Search, published in October of 2015: *Provided*, That not later than 90 days after the date of enactment of this Act, U.S. Customs and Border Protection shall provide a detailed report to the Committees on Appropriations of the Senate and the House of Representatives, the Committee on the Judiciary of the Senate, and the House Judiciary Committee regarding the establishment and implementation of such policies and training programs.

SEC. 304. No later than 30 days after the date of enactment of this Act, the Secretary of Homeland Security shall provide a report on the number of U.S. Customs and Border Protection Officers assigned to northern border land ports of entry and temporarily assigned to the ongoing humanitarian crisis: *Provided*, That the report shall outline what resources and conditions would allow a return to northern border staffing levels that are no less than the number committed in the June 12, 2018 Department of Homeland Security Northern Border Strategy: *Provided further*, That the report shall include the number of officers temporarily assigned

to the southwest border in response to the ongoing humanitarian crisis, the number of days the officers will be away from their northern border assignment, the northern border ports from which officers are being assigned to the southwest border, and efforts being made to limit the impact on operations at each northern border land port of entry where officers have been temporarily assigned to the southwest border.

SEC. 305. None of the funds appropriated or otherwise made available by this Act or division A of the Consolidated Appropriations Act, 2019 (Public Law 116–6) for the Department of Homeland Security may be used to relocate to the National Targeting Center the vetting of Trusted Traveler Program applications and operations currently carried out at existing locations unless specifically authorized by a statute enacted after the date of enactment of this Act.

SEC. 306. The personnel, supplies, or equipment of any component of the Department of Homeland Security may be deployed to support activities of the Department of Homeland Security related to the significant rise in aliens at the southwest border and related activities, and for the enforcement of immigration and customs laws, detention and removals of aliens crossing the border unlawfully, and investigations without reimbursement as jointly agreed by the detailing components.

TITLE IV

DEPARTMENT OF HEALTH AND HUMAN SERVICES

ADMINISTRATION FOR CHILDREN AND FAMILIES

REFUGEE AND ENTRANT ASSISTANCE

For an additional amount for “Refugee and Entrant Assistance”, \$2,881,552,000, to be merged with and available for the same period as funds appropriated in Public Law 115–245 “for carrying out such sections 414, 501, 462, and 235”, which shall be available for any purpose funded under such heading in such law: *Provided*, That if any part of the reprogramming described in the notification submitted by the Secretary of Health and Human Services (the “Secretary”) to the Committees on Appropriations of the House of Representatives and the Senate on May 16, 2019 has been executed, such amounts provided by this Act as are necessary shall be used to reverse such reprogramming: *Provided further*, That amounts allocated by the Secretary for costs of leases of property that include facilities to be used as hard-sided dormitories for which the Secretary intends to seek State licensure for the care of unaccompanied alien children, and that are executed under authorities transferred to the Director of the Office of Refugee Resettlement (ORR) under section 462 of the Homeland Security Act of 2002, shall remain available until expended: *Provided further*, That ORR shall notify the Committees on Appropriations of the House of Representatives and the Senate within 72 hours of conducting a formal assessment of a facility for possible lease or acquisition and within 7 days of any acquisition or lease of real property: *Provided further*, That not less than \$866,000,000 of amounts provided under this heading shall be used for the provision of care in licensed shelters and for expanding the supply of shelters for which State licensure will be sought, of which not less than \$27,000,000 shall be available for the purposes of adding shelter

beds in State-licensed facilities in response to funding opportunity HHS-2017-ACF-ORR-ZU-1132, and of which not less than \$185,000,000 shall be available for expansion grants to add beds in State-licensed facilities and open new State-licensed facilities, and for contract costs to acquire, activate, and operate facilities that will include small- and medium-scale hard-sided facilities for which the Secretary intends to seek State licensure in an effort to phase out the need for shelter beds in unlicensed facilities: *Provided further*, That not less than \$100,000,000 of amounts provided under this heading shall be used for post-release services, child advocates, and legal services: *Provided further*, That not less than \$8,000,000 of amounts provided under this heading shall be used for the purposes of hiring additional Federal Field Specialists and for increasing case management and case coordination services, with the goal of more expeditiously placing unaccompanied alien children with sponsors and reducing the length of stay in ORR custody: *Provided further*, That not less than \$1,000,000 of amounts provided under this heading shall be used for the purposes of hiring project officers and program monitor staff dedicated to pursuing strategic improvements to the Unaccompanied Alien Children program and for the development of a discharge rate improvement plan which shall be submitted to the Committees on Appropriations of the House of Representatives and the Senate within 120 days of enactment of this Act: *Provided further*, That of the amounts provided under this heading, \$5,000,000 shall be transferred to “Office of the Secretary—Office of Inspector General” and shall remain available until expended for oversight of activities supported with funds appropriated under this heading: *Provided further*, That such amount is designated by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985.

GENERAL PROVISIONS—THIS TITLE

SEC. 401. The Secretary of Health and Human Services (the “Secretary”) shall prioritize use of community-based residential care (including long-term and transitional foster care and small group homes) and shelter care other than large-scale institutional shelter facilities to house unaccompanied alien children in its custody. The Secretary shall prioritize State-licensed and hard-sided dormitories.

SEC. 402. The Office of Refugee Resettlement shall ensure that its grantees and, to the greatest extent practicable, potential sponsors of unaccompanied alien children are aware of current law regarding the use of information collected as part of the sponsor suitability determination process.

SEC. 403. (a) None of the funds provided by this or any prior appropriations Act may be used to reverse changes in procedures made by operational directives issued to providers by the Office of Refugee Resettlement on December 18, 2018, March 23, 2019, and June 10, 2019 regarding the Memorandum of Agreement on Information Sharing executed April 13, 2018.

(b) Notwithstanding subsection (a), the Secretary may make changes to such operational directives upon making a determination that such changes are necessary to prevent unaccompanied alien children from being placed in danger, and the Secretary shall provide a written justification to Congress and the Inspector General

of the Department of Health and Human Services in advance of implementing such changes.

(c) Within 15 days of the Secretary's communication of the justification, the Inspector General of the Department of Health and Human Services shall provide an assessment, in writing, to the Secretary and to Committees on Appropriations of the House of Representatives and the Senate of whether such changes to operational directives are necessary to prevent unaccompanied children from being placed in danger.

SEC. 404. None of the funds made available in this Act under the heading "Department of Health and Human Services—Administration for Children and Families—Refugee and Entrant Assistance" may be obligated to a grantee or contractor to house unaccompanied alien children (as such term is defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2))) in any facility that is not State-licensed for the care of unaccompanied alien children, except in the case that the Secretary determines that housing unaccompanied alien children in such a facility is necessary on a temporary basis due to an influx of such children or an emergency, provided that—

(1) the terms of the grant or contract for the operations of any such facility that remains in operation for more than six consecutive months shall require compliance with—

(A) the same requirements as licensed placements, as listed in Exhibit 1 of the Flores Settlement Agreement that the Secretary determines are applicable to non-State licensed facilities; and

(B) staffing ratios of one (1) on-duty Youth Care Worker for every eight (8) children or youth during waking hours, one (1) on-duty Youth Care Worker for every sixteen (16) children or youth during sleeping hours, and clinician ratios to children (including mental health providers) as required in grantee cooperative agreements;

(2) the Secretary may grant a 60-day waiver for a contractor's or grantee's non-compliance with paragraph (1) if the Secretary certifies and provides a report to Congress on the contractor's or grantee's good-faith efforts and progress towards compliance;

(3) not more than four consecutive waivers under paragraph (2) may be granted to a contractor or grantee with respect to a specific facility;

(4) ORR shall ensure full adherence to the monitoring requirements set forth in section 5.5 of its Policies and Procedures Guide as of May 15, 2019;

(5) for any such unlicensed facility in operation for more than three consecutive months, ORR shall conduct a minimum of one comprehensive monitoring visit during the first three months of operation, with quarterly monitoring visits thereafter; and

(6) not later than 60 days after the date of enactment of this Act, ORR shall brief the Committees on Appropriations of the House of Representatives and the Senate outlining the requirements of ORR for influx facilities including any requirement listed in paragraph (1)(A) that the Secretary has determined are not applicable to non-State licensed facilities.

SEC. 405. In addition to the existing Congressional notification for formal site assessments of potential influx facilities, the Secretary shall notify the Committees on Appropriations of the House of Representatives and the Senate at least 15 days before operationalizing an unlicensed facility, and shall (1) specify whether the facility is hard-sided or soft-sided, and (2) provide analysis that indicates that, in the absence of the influx facility, the likely outcome is that unaccompanied alien children will remain in the custody of the Department of Homeland Security for longer than 72 hours or that unaccompanied alien children will be otherwise placed in danger. Within 60 days of bringing such a facility online, and monthly thereafter, the Secretary shall provide to the Committees on Appropriations of the House of Representatives and the Senate a report detailing the total number of children in care at the facility, the average length of stay and average length of care of children at the facility, and, for any child that has been at the facility for more than 60 days, their length of stay and reason for delay in release.

SEC. 406. (a) The Secretary shall ensure that, when feasible, no unaccompanied alien child is at an unlicensed facility if the child—

- (1) is not expected to be placed with a sponsor within 30 days;
- (2) is under the age of 13;
- (3) does not speak English or Spanish as his or her preferred language;
- (4) has known special needs, behavioral health issues, or medical issues that would be better served at an alternative facility;
- (5) is a pregnant or parenting teen; or
- (6) would have a diminution of legal services as a result of the transfer to such an unlicensed facility.

(b) ORR shall notify a child's attorney of record in advance of any transfer, where applicable.

SEC. 407. None of the funds made available in this Act may be used to prevent a United States Senator or Member of the House of Representatives from entering, for the purpose of conducting oversight, any facility in the United States used for the purpose of maintaining custody of, or otherwise housing, unaccompanied alien children (as defined in section 462(g)(2) of the Homeland Security Act of 2002 (6 U.S.C. 279(g)(2))), provided that such Senator or Member has coordinated the oversight visit with the Office of Refugee Resettlement not less than two business days in advance to ensure that such visit would not interfere with the operations (including child welfare and child safety operations) of such facility.

SEC. 408. Not later than 14 days after the date of enactment of this Act, and monthly thereafter, the Secretary shall submit to the Committees on Appropriations of the House of Representatives and the Senate, and make publicly available online, a report with respect to children who were separated from their parents or legal guardians by the Department of Homeland Security (DHS) (regardless of whether or not such separation was pursuant to an option selected by the children, parents, or guardians), subsequently classified as unaccompanied alien children, and transferred to the care and custody of ORR during the previous month. Each report shall contain the following information:

(1) the number and ages of children so separated subsequent to apprehension at or between ports of entry, to be reported by sector where separation occurred; and

(2) the documented cause of separation, as reported by DHS when each child was referred.

SEC. 409. Funds made available in this Act under the heading “Department of Health and Human Services—Administration for Children and Families—Refugee and Entrant Assistance” shall be subject to the authorities and conditions of section 224 of division A of the Consolidated Appropriations Act, 2019 (Public Law 116–6).

SEC. 410. Not later than 30 days after the date of enactment of this Act, the Secretary shall submit to the Committees on Appropriations of the House of Representatives and the Senate a detailed spend plan of anticipated uses of funds made available in this account, including the following: a list of existing grants and contracts for both permanent and influx facilities, including their costs, capacity, and timelines; costs for expanding capacity through the use of community-based residential care placements (including long-term and transitional foster care and small group homes) through new or modified grants and contracts; current and planned efforts to expand small-scale shelters and available foster care placements, including collaboration with state child welfare providers; influx facilities being assessed for possible use, costs and services to be provided for legal services, child advocates, and post release services; program administration; and the average number of weekly referrals and discharge rate assumed in the spend plan: *Provided*, That such plan shall be updated to reflect changes and expenditures and submitted to the Committees on Appropriations of the House of Representatives and the Senate every 60 days until all funds are expended or expired.

TITLE V

GENERAL PROVISIONS—THIS ACT

SEC. 501. Each amount appropriated or made available by this Act is in addition to amounts otherwise appropriated for the fiscal year involved.

SEC. 502. No part of any appropriation contained in this Act shall remain available for obligation beyond the current fiscal year unless expressly so provided herein.

SEC. 503. Unless otherwise provided for by this Act, the additional amounts appropriated by this Act to appropriations accounts shall be available under the authorities and conditions applicable to such appropriations accounts for fiscal year 2019.

SEC. 504. Each amount designated in this Act by the Congress as being for an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 shall be available (or rescinded or transferred, if applicable) only if the President subsequently so designates all such amounts and transmits such designations to the Congress.

SEC. 505. Any amount appropriated by this Act, designated by the Congress as an emergency requirement pursuant to section 251(b)(2)(A)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 and subsequently so designated by the President,

and transferred pursuant to transfer authorities provided by this Act shall retain such designation.

SEC. 506. Not later than 180 days after the date of the enactment of this Act, the Comptroller General of the United States shall submit a report to the Committees on Appropriations of the House of Representatives and the Senate on the number of asylum officers and immigration judges, including temporary immigration judges, and the corresponding number of support staff necessary—

(1) to fairly and effectively make credible fear determinations with respect to individuals within family units and unaccompanied alien children;

(2) to ensure that the credible fear determination and asylum interview is completed not later than 20 days after the date on which a family unit is apprehended; and

(3) to fairly and effectively review appeals of credible fear determinations with respect to individuals within family units and unaccompanied alien children.

In addition, the report shall determine if there is any physical infrastructure such as hearing or courtroom space needed to achieve these goals.

This Act may be cited as the “Emergency Supplemental Appropriations for Humanitarian Assistance and Security at the Southern Border Act, 2019”.

Speaker of the House of Representatives.

*Vice President of the United States and
President of the Senate.*