



TESTIMONY OF

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BEFORE

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ON

“Examining DHS’ Failure to Prepare for the Termination of Title 42”

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## **Introduction**

Chairman Higgins, Ranking Member Correa, and distinguished Members of the Committee, I appreciate the opportunity to appear before you today to discuss the Department of Homeland Security's (DHS or Department) ongoing efforts to secure and manage our nation's borders.

I have been serving as the Assistant Secretary for Border and Immigration Policy since March 26, 2023, having previously acted in this capacity since October 1, 2021. Prior to this role, I served as the Chief Operating Officer at U.S. Customs and Border Protection (CBP), as well as the Vice Chair for the Secretary of Homeland Security's Southwest Border Taskforce.

For more than three years, starting in March 2020, DHS enforced the public health Order that the Centers for Disease Control and Prevention (CDC) issued, under Title 42 of the U.S. Code, in response to the COVID-19 pandemic. On May 11, 2023, at 11:59PM ET, the public health emergency officially expired and the pandemic-era Title 42 public health Order came to an end.

DHS led a planning effort for more than 18 months to prepare for the end of the Title 42 public health Order. This effort included record deployments of personnel, infrastructure, and resources to support our frontline personnel as well as the development of a series of policy measures intended to disincentivize unlawful entries at the land border while incentivizing migrants to use safe, orderly, and lawful processes and pathways to come to the United States. In the weeks since May 12, DHS has executed on this plan by leading a whole-of-government effort to ensure the safe, orderly, and humane management of the nation's borders and the continued enforcement of U.S. immigration laws. We did so even as Congress failed to adequately fund these efforts, appropriating less than half of the \$4.9 billion that DHS requested to prepare for the end of Title 42.

The end of the Title 42 Order allowed DHS to fully return to processing all noncitizens under its longstanding Title 8 immigration authorities. DHS has strengthened the consequences for those who are apprehended crossing the border unlawfully, who are now subject to the Circumvention of Lawful Pathways rule on asylum eligibility. Migrants who do not use the expanded lawful pathways and processes to come to the United States in a safe and orderly manner are subject to a rebuttable presumption of asylum ineligibility unless they meet an exception or are able to rebut the presumption.

The result of this comprehensive planning effort has been a significant reduction in unlawful entries between ports of entry along our Southwest Border (SWB), which have decreased by more than 70 percent since May 12. The plan we put forward is working. We are cognizant, however, that the conditions in the hemisphere that are driving unprecedented movements of people are still present and that the cartels and coyotes will continue to spread disinformation about any potential changes to policies at the border in order to put migrants' lives at risk for profit. We will remain vigilant and continue to execute our plan, making adjustments where needed.

Surges in migration have been a regular occurrence for more than a decade under Republican and Democratic Administrations. Presidents of both parties have attempted to use their

executive authorities to address these challenges—as we have. This, in turn, has invited litigation from both sides of the political spectrum and has resulted in courts across the country dictating border and immigration policy in ways that are contradictory and detrimental to our ability to manage the border. It is abundantly clear that executive action cannot solve the entrenched challenge of migration in our region, and that neither party can address its impact on our border by itself. Until and unless Congress comes together in a bipartisan way to address our broken immigration and asylum system, we will continue to see surges in migration at our border.

### **Contextualizing Migratory Flows**

There are more people displaced throughout the world today than at any other time since World War II. Violence, food insecurity, severe poverty, corruption, climate change, the fall-out of the COVID-19 pandemic, and dire economic conditions have all contributed to a significant increase in irregular migration around the globe. In the Western Hemisphere, failing authoritarian regimes in Venezuela, Cuba, and Nicaragua, along with an ongoing humanitarian crisis in Haiti, have driven millions of people from those countries to leave their homes. Moreover, violence, corruption, and the lack of economic opportunity—challenges that are endemic throughout the region—are driving many others from countries as diverse as Colombia, Ecuador, Guatemala, Honduras, and Peru to make the dangerous journey to our border.

Transnational criminal organizations encourage and facilitate these migratory flows, spreading disinformation about what individuals will encounter along the route and at our border, so they can exploit migrants as part of a billion-dollar criminal enterprise. The increasing role that drug cartels are playing in human smuggling throughout the region is particularly concerning given their complete disregard for human life, which has led to tragedies in the United States, Mexico, and other countries.

The increased migratory flows at our border are a direct result of global trends that have been building for many years. Historically, encounters along the SWB in the 1980s and 1990s consisted overwhelmingly of single adults from Mexico, most of whom were migrating for economic reasons and regularly crossed back and forth across the border. Until the early 2000s, annual encounters routinely numbered more than a million. In the early 2010s, after three decades of bipartisan investments in border security and strategy, encounters along the SWB reached modern lows, averaging fewer than 400,000 per year from 2011 to 2017. However, even during this period of relatively low encounters, DHS faced significant surges in migration by unaccompanied children in 2014, and family units in 2016, which strained our operations given the unique challenges posed by those demographics. Between 2017 and 2019, encounters along the SWB more than doubled, and—following a significant drop during the beginning of the COVID-19 pandemic, which shut down travel across the world and depressed migration — continued to increase in 2021 and 2022.

In fiscal year (FY) 2021, encounters at the SWB reached levels not seen since the early 2000s, with a total of 1.7 million encounters. In FY 2022, DHS reached a high-water mark for encounters at the SWB with 2.4 million total encounters. A surge in migration of nationals from

Cuba, Haiti, Nicaragua, and Venezuela (CHNV) accounted for more than two-thirds of the increase in encounters from FY 2021 to FY 2022. DHS encountered more than 626,000 CHNV nationals in FY 2022 comprising 26 percent of total encounters and 35 percent of unique encounters—by far the highest proportion these groups had ever accounted for. This surge was largely driven by deteriorating conditions in these countries, as well as DHS’s general inability to impose immigration consequences on nationals from these countries that were encountered at the border because of the requirement to implement the Title 42 public health Order. Venezuela does not allow repatriations via charter flights, which significantly limits DHS’s ability to remove Venezuelan nationals. Nicaragua and Cuba have historically placed restrictions on the number of charter flights that DHS can operate. DHS has, however, recently restarted removal flights to Cuba, conducting two individual flights on April 24 and May 10—the first since the onset of the COVID-19 pandemic in 2020. While DHS does continue to operate removal flights to Haiti, the deteriorating security, economic and political situation on the ground there, including the security situation at the Port-au-Prince airport, has raised operational challenges in doing so at particular times.

These historic challenges were exacerbated by the unpredictable impacts that the application of Title 42 at the SWB had on migration in our hemisphere. Because Title 42 expulsions had no immigration consequence for migrants, these expulsions did not have the same impact as traditional Title 8 processing. Unlike a Title 42 expulsion, a removal under Title 8 carries with it at least a five-year bar to admission, among other legal consequences such as potential criminal prosecution for repeated entries. The application of Title 42 at the border—which DHS was required by a court order to continue to implement after the CDC initially determined it should have been ended in April 2022—may have actually *increased* border encounters, particularly for single adults expelled to Mexico. This is due to the significant increase in recidivism—or multiple encounters of the same person—observed for individuals processed under Title 42 as compared to those processed under Title 8 authorities. From the start of the pandemic and the initiation of Title 42 expulsions through December 31, 2022, 39 percent of all Title 42 expulsions were followed by a re-encounter of the same individual within 30 days, compared with a 30-day re-encounter rate of 9 percent for Title 8 repatriations. Similarly, the 12-month re-encounter rates were 51 percent for Title 42 expulsions versus 20 percent for Title 8 repatriations. Overall, in April 2023, 26 percent of encounters at the SWB involved individuals who had at least one prior encounter during the previous 12 months, compared to an average one-year re-encounter rate of 14 percent for FY 2014–2019.

### **A Whole-Of-Government Approach to Manage and Secure the Border**

DHS led a comprehensive all of government effort to prepare for the end of the Title 42 public health Order that lasted more than a year and a half. In the Fall of 2021, DHS began contingency planning efforts that included building an operational plan and conducting regular interagency tabletop exercises. Through the Southwest Border Coordination Center (SBCC), formally launched in February 2022, DHS leveraged its components, including CBP, U.S. Immigration and Customs Enforcement (ICE), U.S. Citizenship and Immigration Services (USCIS), U.S.

Coast Guard, and the Federal Emergency Management Agency (FEMA), in coordination with interagency partners across the federal government, to strategically position resources and accelerate processing efficiencies that enable DHS to better manage the operational environment along the SWB. DHS is also working closely with the Department of State (DOS) to engage partners in the region to streamline repatriation processes, increase removal flights, and address migratory flows downstream.

In April 2022, Secretary of Homeland Security Alejandro N. Mayorkas issued the DHS Plan for Southwest Border Security and Preparedness, laying out a six-pillar plan to manage an increase in encounters once the Title 42 Order was no longer in effect. DHS updated this comprehensive plan in December 2022, and continues to build upon the impact DHS has seen as a result of these efforts, which include: 1) surging resources, including personnel, transportation, medical support, and facilities to support border operations; 2) increasing CBP processing efficiency and moving with deliberate speed to mitigate potential overcrowding at U.S. Border Patrol (USBP) stations and to alleviate the burden on the surrounding border communities; 3) administering consequences for unlawful entry, including removal, detention, and prosecution; 4) bolstering the capacity of non-governmental organizations (NGOs) to receive noncitizens after they have been processed by CBP and are awaiting the results of their immigration proceedings; as well as ensuring appropriate coordination with and support for state, local, and community leaders to help mitigate increased impacts to their communities; 5) targeting and disrupting the transnational criminal organizations (TCOs) and smugglers who take advantage of and profit from vulnerable migrants, and who seek to traffic drugs into the United States; and 6) deterring irregular migration south of the border, in partnership with the DOS, other federal agencies, and nations throughout the Western Hemisphere, to ensure responsibility sharing. This robust plan leverages a whole-of-government approach to prepare for and manage potential increases in encounters of noncitizens at the SWB.

At our current funding level, DHS has:

- Surged personnel to reinforce the more than 24,000 USBP and Office of Field Operations (OFO) personnel at the border, with approximately 1,000 law enforcement officers from across the DHS network, as well as other federal agencies, thousands of contract personnel, 1,500 active-duty military personnel, and hundreds of volunteers from across DHS and interagency partners.
- Dedicated and retrained more than 1,000 USCIS officers to conduct credible fear interviews of migrants encountered at the border, allowing DHS the ability to more quickly provide relief to those who are eligible and expeditiously remove those who are not.
- Enhanced surveillance capacity by adding 81 new autonomous surveillance towers since the start of FY 2022 for a current total of 223. The President's FY 2024 budget also requests more than \$500 million in border technology.
- Expanded CBP temporary holding capacity at the border by nearly 50 percent, from 13,230 in January 2021 to over 19,000 today.
- Made available several thousand detention beds in the ICE network by updating guidelines to reflect the latest CDC guidance regarding congregate settings in detention facilities.

- Increased contracted medical personnel by 75 percent since the start of FY 2022.
- Arrested nearly 10,000 smugglers and disrupted thousands of human smuggling operations, such as raiding smuggler stash houses, impounding tractor trailers that are used to smuggle migrants, and confiscating smugglers' information technology.

We have also been working closely with the DOS and countries throughout the hemisphere—including Mexico, Guatemala, Costa Rica, Colombia, Ecuador, and Panama—to expand efforts to counter human smuggling organizations, humanely secure borders, increase labor mobility, and expand protection and lawful pathways for intending migrants. A key part of this coordination with foreign partners has been working to increase our capacity to remove individuals who do not establish a legal basis to remain in the United States. These efforts have included significantly increasing the number of flights that ICE is able to operate to countries throughout the hemisphere—with the number of removal flights doubling or tripling for some countries—while streamlining the requirements that countries place on operating those flights, and generally making it easier to repatriate individuals. As an example, we have increased the number of weekly flights that we can operate to countries such as Ecuador and Colombia from two and one in 2021, to 8 and 12 today, respectively.

Through this planning effort and intensive international negotiations, DHS has repatriated—through removals, returns, and expulsions—record numbers of noncitizens over the past two years. Since January 2021, DHS repatriated 3.4 million individuals to 146 countries, including a record 1.5 million individuals in FY2022.

### **New Measures to Effectively Manage an Orderly and Humane Immigration System**

In addition to coordinating an all of government response and surging personnel, infrastructure, and other resources to the border, DHS has taken a number of innovative policy steps that seek to change the calculus for intending migrants. These measures impose new consequences on individuals who cross the border unlawfully and do not qualify for an exception, while significantly expanding lawful pathways to incentivize noncitizens to use safe, orderly, and lawful pathways to come to the United States without having to put their lives in the hands of drug cartels and smugglers. As part of these efforts, we have also overseen the largest expansion in lawful pathways in decades even as we have set records for repatriations.

As described above, most of the increase in encounters from FY 2021 to FY 2022 was driven by a surge in migration from CHNV nationals—countries for which the U.S. had limited ability to impose consequences on unlawful entry. In the fall of 2022, Venezuelan migrants began to take the extraordinarily dangerous path to our border in increasing numbers—a journey that goes through the most dangerous border crossing in the world, the Darién region, a jungle between Colombia and Panama. By early October 2022, DHS was encountering more than 1,100 Venezuelan migrants a day between ports of entry (POEs) and Panama was encountering roughly 4,000 a day exiting the Darién. In response to this challenge, DHS developed—in close coordination with the Government of Mexico—an innovative approach that provided Venezuelans with a safe, orderly way to come to the United States and imposed new consequences on those who crossed unlawfully. Venezuelans who did not use this new process and were encountered at the land border

would, for the first time, be returned to Mexico. As part of this process, U.S.-based supporters provide financial support for Venezuelan nationals who can be authorized to travel directly to the interior of the United States—after clearing national security and public safety vetting—to seek a discretionary grant of parole based after a case-by-case determination.

The Venezuela process significantly reduced irregular migration to the border, and throughout the entire hemisphere. Two weeks after the announcement, encounters of Venezuelan nationals between POEs had declined to under 200 per day. This significant reduction continues today with a daily average of 162 the week ending June 2. Panama has seen a similarly dramatic decline in Venezuelans exiting the Darién, reflecting a paradigm shift in regional migratory flows.

In November and December 2022, DHS began to see a surge in migration from nationals of Cuba and Nicaragua, with CHNV encounters between POEs peaking at 3,644 encounters on December 10. On January 5, 2023, DHS announced the expansion of the Venezuela process to Cubans, Haitians, and Nicaraguans. Encounters of CHNV nationals between POEs at the SWB immediately declined, from a 7-day average of 1,231 on the day of the announcement on January 5, to a seven-day average of 205 two weeks later. The reduction occurred even as encounters of other noncitizens began to rebound from their typical seasonal drop and represented a decline of 94 percent from the early December 10<sup>th</sup> peak; and CHNV encounters between POEs are even lower today, averaging 182 per day the week ending June 2<sup>nd</sup>, down 95 percent from the December peak.

The significant decrease in unlawful entries after the implementation of the CHNV enforcement processes—a decrease that holds months later—demonstrates clearly that migrants will wait to utilize a safe, lawful, and orderly pathway to the United States if one is available, rather than putting their lives and livelihoods in the hands of ruthless smugglers.

It is also true that smugglers will look for any opportunity to deceive migrants about U.S. law and immigration policies at the border in order to drive migration. We saw this phenomenon play out in the weeks leading up to the end of Title 42, when smugglers weaponized misinformation to convince migrants in Mexico that the U.S. was no longer returning Venezuelan nationals at the border and used the promise of heightened consequences starting on May 12th to convince migrants to part with their money and risk their lives to attempt to enter unlawfully before that date. This resulted in an increase in encounters of Venezuelan nationals to their highest levels since the implementation of the parole process in October 2022—even as encounters of Cubans, Haitians, and Nicaraguans remained at historically low rates. Encounters of Venezuelans once again declined precipitously with the resumption of Title 8 processing and the implementation of stricter consequences for noncitizens who unlawfully cross the border into the United States. As noted above, after May 12 CHNV encounters declined precipitously once again, to an average of fewer than 182 per day the week ending June 2<sup>nd</sup>.

On May 12, 2023, after a robust regulatory process that included responding to more than 50,000 comments from the public, DHS and the Department of Justice began implementing

the Circumvention of Lawful Pathways rule, which is designed to build on the success of the CHNV enforcement processes. The rule is designed to cut the transnational criminal organizations that prey on migrants out of the process, making migration safer and more orderly. Its provisions incentivize migrants to use the new and existing lawful processes that DHS has established and disincentivize dangerous border crossings by placing a commonsense condition on asylum eligibility for those individuals who fail to do so, and who do not otherwise qualify for an exception.

Under the rule, individuals who circumvent the expanded lawful, safe, and orderly pathways into the United States—including the CHNV processes, the significant expansion in refugee and temporary work visas, and use of the CBP One mobile app to schedule a time and place to arrive at a port of entry—and also fail to seek protection in a country through which they traveled on their way to the United States, are subject to a rebuttable presumption of asylum ineligibility in the United States unless they meet specified exceptions. Individuals who cannot establish a valid claim to protection under the standards set out in the rule are subject to prompt removal under Title 8 authorities, which carries at least a five-year bar to admission to the United States and the potential to be criminally prosecuted for repeated unlawful entry.

To implement the rule to the maximum extent possible, DHS has surged resources, including training more than 1,000 USCIS officers to support an unprecedented increase in credible fear interviews for those placed into expedited removal proceedings. This ambitious plan included adding more than 600 private interview spaces in CBP and ICE facilities to provide noncitizens in our custody who wish to consult with legal services providers the opportunity to do so—if legal service providers are available.

Since May 12, USCIS has conducted more than 13,000 credible fear interviews—a record number of interviews conducted by USCIS personnel during a three-week period.

DHS has made clear through these efforts that there are consequences for unlawful entry. From May 12 to June 2, 2023, DHS repatriated over 38,400 noncitizens under Title 8 authorities, including single adults and families, to more than 80 countries. This includes over 1,400 noncitizens from Cuba, Haiti, Nicaragua, and Venezuela who were returned to Mexico under Title 8 authorities—the first time in our bilateral history that the Government Mexico has allowed the repatriation of non-Mexican nationals at the border under Title 8 authorities.

Consequences are, by themselves, not sufficient to deter migration. Migrants have, time and time again, shown that they are willing to endure unfathomable suffering for an opportunity to come to the United States. And our nation has, for generations, been made stronger by those migrants that have come. To be effective, the consequences we apply must be paired with incentives for migrants to use lawful processes. This Administration has overseen a historic increase in access to lawful processes for migrants to come to the United States in a safe, orderly, and lawful manner.

The CHNV processes described above have allowed more than 130,000 individuals who have U.S.-based supporters and have passed the requisite national security and public safety vetting, to

come directly to the United States. We have significantly expanded the number of temporary work visas available for migrants in the region, especially in Northern Central American (NCA) countries of El Salvador, Guatemala, and Honduras, through the H-2A and H-2B programs. As of May 11, 2023, 11,991 H-2B visas were issued to nationals of El Salvador, Guatemala, Honduras, and Haiti. This is almost double the number of H2-B visas issued for these populations last FY and a 300 percent increase compared to the entire FY2019.

We have also dramatically expanded refugee resettlement in the Western Hemisphere, working in conjunction with the DOS. We resettled 2,485 individuals in FY 2022, a 521 percent increase over FY2021 and an eight-year high for the region. As of April 30, 2023, we have already resettled 2,826 refugees from the Western Hemisphere—a nearly 20 percent increase over the total fiscal year 2022 with five months left in the FY. With the establishment of Safe Mobility Offices in South and Central America, we will significantly increase the number of individuals processed for refugee resettlement in the coming months and years.

We have also significantly expanded access to our land border ports of entry. The CBP One mobile app, which is available to download for free to a mobile device, allows individuals of any nationality who are in Central or Northern Mexico to schedule an appointment to present at a POE along the SWB in a safe and orderly manner. The advance biographic and biometric information captured by the app allows CBP to significantly streamline its processes at the border, which in turn has allowed CBP to greatly increase its ability to process inadmissible individuals at land border POEs compared to its 2014-2019 pre-pandemic average. On June 1, CBP expanded the number of available daily appointments to 1,250 per day—almost four times our pre-pandemic average. These individuals have presented in a safe and orderly manner at a port of entry each day during their scheduled appointment time. Since its launch on January 18, 2023, more than 125,000 noncitizens have successfully scheduled an appointment to present at a designated POE through the CBP One app, and more than 109,000 of those appointments have been processed thus far at POEs along the SWB. This app, available in English, Spanish, and Haitian Creole, effectively cuts out the smugglers, decreases migrant exploitation, and improves safety and security in addition to making the process more efficient.

We also recognize that the United States cannot address this issue on its own. As endorsed by the 21 countries that signed the Los Angeles Declaration on Migration and Protection in June last year, it is our collective responsibility to address the factors causing irregular migration throughout our hemisphere. A key pillar of these efforts includes DHS and DOS are continuing to deliver on our commitments by establishing Safe Mobility Offices in South and Central America, starting with Guatemala and Colombia, which formally announced their participation on June 1 and June 5, respectively. Safe Mobility Offices enable eligible individuals to begin the process of accessing protection and other lawful pathways to the United States or other partner countries including Canada and Spain.

We have also seen governments in the region step up their enforcement measures since May 12. For instance, The GOM is also undertaking an unprecedented migration management effort on its southern border with Guatemala, and along key transit routes, and along our

shared border. For its own sovereign reasons, the GOM continues to be a leader in the region when it comes to innovative and balanced efforts to manage migration. The Government of Guatemala (GOG) has also taken important steps to address migratory flows. In addition to our work together to establish safe mobility offices, the GOG has augmented its border control activities by deploying military and law enforcement personnel on its own southern border. And finally, recognizing that the unmonitored flow through the Darién region has increasingly been managed by transnational criminal organizations, is dangerous for the migrants who use it, and contributes significantly to the volume of irregular migratory flows in the region, the Governments of Colombia and Panama are, for the first time, working together to attack transnational criminal networks operating in the Darién. Finally, throughout the region, DHS and DOS are working bilaterally with numerous partner countries to encourage the strengthening of visa policies, better and more targeted screening of individuals flying into the hemisphere, and enhanced capture and exchange of biometric data. All these efforts, when taken together, represent significant strides forward in managing the extraordinary migration challenge that is facing this hemisphere.

## **Conclusion**

The bottom line is that this approach is working. Since the CDC's Title 42 public health Order ended and the Biden-Harris Administration's comprehensive plan to manage the border went into full effect on May 12, 2023, encounters between POEs at the border have decreased by more than 70 percent compared to the 48 hours preceding the end of Title 42, with CBP averaging 3,400 USBP encounters in between POEs per day and less than 300 non-CBP One OFO encounters at POEs per day.

Our message has been clear—there are safe, lawful pathways to come to the United States, and consequences for those who do not use them. Those who come lawfully will be able to stay and work in the United States for the time that they are authorized to be here, while those who come unlawfully will be subject to strengthened consequences and quickly removed.

DHS is encouraged by this progress, but we recognize that the underlying conditions prompting historic migration across the Western Hemisphere remain, and smugglers will continue to weaponize disinformation to put migrants lives at risk for profit. DHS remains vigilant and will continue to deliver the strengthened consequences that have been put in place at the border for migrants who fail to take advantage of the historic increase in lawful pathways to come to the United States. We will continue to work with our foreign partners, including the GOM, to coordinate enforcement efforts and provide lawful pathways for migration throughout the Hemisphere.

We have demonstrated our commitment to work innovatively within our statutory authorities, and using the resources made available by Congress, to address the challenges we are facing at our border and in the region—challenges that have led to repeated surges in migration over the past decade years under presidents of both political parties. However, it is clear that there is no lasting solution to these challenges that does not include the U.S. Congress working on a bipartisan basis to update our hopelessly outdated immigration

laws—laws that have not been touched in decades, and that were created to deal with a dramatically different migratory challenge. The fact that DHS’s efforts continue to be the subject of ongoing litigation—from both sides of the political spectrum, and often on the same issue—clearly demonstrates the need for congressional action. Neither party can solve this problem on its own, and letting the courts continue to dictate immigration and border policy is simply untenable.

The Department remains eager to work with this committee and other congressional leaders, on a bipartisan basis, to update the United States’ immigration framework, including by modernizing the asylum system. Until that happens, DHS will continue to utilize every tool currently at its disposal and within DHS’s authorities to secure the border and create a safe, orderly, and humane immigration system.

I am proud of the work that DHS and the men and women on the front lines have been doing to address these challenges. The best way for Congress to support them is by once and for all fixing our outdated, broken immigration system.

I look forward to working together and to answering your questions. Thank you.