AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

S. Hrg. 108–171

NOMINATIONS OF C. STEWART VERDERY, JR. AND MICHAEL J. GARCIA

HEARING

BEFORE THE

COMMITTEE ON GOVERNMENTAL AFFAIRS UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

ON THE

NOMINATIONS OF C. STEWART VERDERY, JR., TO BE ASSISTANT SECRETARY FOR POLICY AND PLANNING, BORDER AND TRANSPORTATION SECURITY DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY, AND MICHAEL J. GARCIA, TO BE ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

JUNE 5, 2003

Printed for the use of the Committee on Governmental Affairs

U.S. GOVERNMENT PRINTING OFFICE

88–253 PDF WASHINGTON : 2003

For sale by the Superintendent of Documents, U.S. Government Printing Office
Internet: bookstore.gpo.gov Phone: toll free (866) 512–1800; DC area (202) 512–1800
Fax: (202) 512–2250 Mail: Stop SSOP, Washington, DC 20402–0001

COMMITTEE ON GOVERNMENTAL AFFAIRS

SUSAN M. COLLINS, Maine, *Chairman*

TED STEVENS, Alaska
GEORGE V. VOINOVICH, Ohio
NORM COLEMAN, Minnesota
ARLEN SPECTER, Pennsylvania
ROBERT F. BENNETT, Utah
PETER G. FITZGERALD, Illinois
JOHN E. SUNUNU, New Hampshire
RICHARD C. SHELBY, Alabama

JOSEPH I. LIEBERMAN, Connecticut
CARL LEVIN, Michigan
DANIEL K. AKAKA, Hawaii
RICHARD J. DURBIN, Illinois
THOMAS R. CARPER, Deleware
MARK DAYTON, Minnesota
FRANK LAUTENBERG, New Jersey
MARK PRYOR, Arkansas

MICHAEL D. BOPP, *Staff Director and Counsel*
JOHANNA L. HARDY, *Senior Counsel*
ROB OWEN, *Preofessional Staff Member*
JOYCE A. RECHTSCHAFFEN, *Minority Staff Director and Counsel*
KEVIN J. LANDY, *Minority Counsel*
SUSAN E. PROPPER, *Minority Counsel*
JENNIFER E. HAMILTON, *Minority Research Assistant*
DARLA D. CASSELL, *Chief Clerk*

CONTENTS

	Page
Opening statements:	
Senator Collins	1
Senator Levin	15

WITNESSES

THURSDAY, JUNE 5, 2003

Hon. John W. Warner, a U.S. Senator from the State of Virginia	2
Hon. Don Nickles, a U.S. Senator from the State of Oklahoma	3
Hon. Saxby Chambliss, a U.S. Senator from the State of Georgia	4
C. Stewart Verdery, Jr., to be Assistant Secretary for Policy and Planning, Border and Transportation Security Directorate, Department of Homeland Security	5
Michael J. Garcia, to be Assistant Secretary for Immigration and Customs Enforcement, Department of Homeland Security	7

ALPHABETICAL LIST OF WITNESSES

Chambliss, Hon. Saxby:	
Testimony	4
Garcia, Michael J.:	
Testimony	7
Prepared statement	76
Biographical and professional information	82
Pre-hearing questionnaire	87
Post-hearing questions and responses from Senator Lieberman	141
Post-hearing questions and responses from Senator Levin	184
Post-hearing questions and responses from Senator Durbin	189
Nickles, Hon. Don:	
Testimony	3
Verdery, C. Stewart, Jr.:	
Testimony	5
Prepared statement	24
Biographical and professional information	27
Pre-hearing questionnaire	36
Post-hearing questions and responses from Senator Lieberman	72
Post-hearing questions and responses from Senator Levin	73
Post-hearing questions and responses from Senator Durbin	74
Warner, Hon. John W.:	
Testimony	2
Prepared statement	23

NOMINATIONS OF C. STEWART VERDERY, JR. AND MICHAEL J. GARCIA

THURSDAY, JUNE 5, 2003

U.S. SENATE,
COMMITTEE ON GOVERNMENTAL AFFAIRS,
Washington, DC.

The Committee met, pursuant to notice, at 10:37 a.m., in room SD–342, Dirksen Senate Office Building, Hon. Susan M. Collins, Chairman of the Committee, presiding.

Present: Senators Collins and Levin.

OPENING STATEMENT OF CHAIRMAN COLLINS

Chairman COLLINS. The Committee will come to order.

Good morning. Today the Committee on Governmental Affairs is holding a hearing to consider the nominations of Charles Stewart Verdery to be Assistant Secretary for Policy and Planning in the Border and Transportation Security Directorate of the Department of Homeland Security, and Michael J. Garcia to be the Assistant Secretary for the Bureau of Immigration and Customs Enforcement at the Department of Homeland Security.

The Department of Homeland Security was officially born on January 24 of this year. It is however, still far from being fully staffed. That is why it is so important for this Committee and the Senate to move quickly to fill the openings at the Department so that it can move forward with its mission of protecting our country from terrorist attacks.

I think I know how a minister or a priest feels now. But let me say that we are absolutely delighted to have family members present so that they can participate in this hearing.

Mr. Verdery will face many challenges as Assistant Secretary for Policy and Planning. The Border and Transportation Security Directorate is charged with the responsibility for securing our Nation's borders and transportation systems. To accomplish this daunting task, the functions of the U.S. Customs Service, the Immigration and Naturalization Service's enforcement functions, the Animal and Plant Health Inspection Service, the Transportation Security Administration, the Federal Law Enforcement Training Center, and the Federal Protective Service have all been transferred to this directorate.

Streamlining and better coordinating their functions are critical steps in improving security. As the Department acts to improve security at our borders and transportation systems, it must balance those efforts with other national interests. In securing our borders, the Department must be careful to ensure that the flow of legiti-

mate commerce is not unduly impeded. Families and businesses in border communities know particularly well how important it is for many Americans to be able to travel back and forth without undue restrictions.

The Department also must balance security with privacy concerns and civil liberties. For example, concerns have been raised regarding programs such as CAPPS–II. The department must strive to develop screening processes that will be effective in identifying and preventing terrorists from entering our country but which do not unduly invade the privacy of law-abiding citizens.

As the past Acting Director of the Immigration and Naturalization Service, Mr. Garcia knows these issues well. He knows the issues and the battles that lie in front of him. The Bureau of Immigration and Customs Enforcement brings together some 14,000 employees to focus on the enforcement of immigration and customs laws and the protection of Federal buildings. It encompasses the immigration and customs investigations and intelligence functions, Custom's air and marine interdiction, immigration detention and removal, and the Federal Protective Service.

One of the major challenges awaiting Mr. Garcia may be from within the Department itself, ensuring proper cooperation, communication, and coordination among key components of the new Department.

The two nominees before us today will be charged, if confirmed, with carrying out extraordinarily important missions and taking on the many challenges confronting the new Department. The experience and background that they bring to the Department, I believe, will serve them well as they tackle their new responsibilities.

It is now my great pleasure to recognize my colleagues who are here today. I think it speaks extremely well for these nominees that they have with them such distinguished members of the U.S. Senate who are willing to take time from their busy schedules to introduce them.

I am trying to figure out who has seniority here, but I think I will go with my Chairman on the Armed Services Committee, always a wise choice, and I will call on the distinguished senior Senator from the Commonwealth of Virginia, Senator John Warner.

STATEMENT OF HON. JOHN W. WARNER,[1] A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator WARNER. I thank you very much, Madam Chairman. I guess this is my 25th year, quarter of a century, in this institution. So maybe I have a year or two on some of my colleagues. Not too much on Senator Nickles, but I do see a freshman at the end, and he is a powerful voice already in this body.

But we are here for very important business, Madam Chairman and hearing these young voices of the children just reminds me of when I came before a committee so many years ago for advise and consent, and my children were small. And it is very important that the families join. So I would like to start by asking Stewart Verdery, who is a part of my family in the Senate, and I look upon my staff as a family, would you introduce your family?

[1] The prepared statement of Senator Warner appears in the Appendix on page 23.

Mr. VERDERY. Sure, of course, Senator. Thank you.

My mother, Linda; my wife, Jenny; my father, Charlie; my stepmother, Marty; father-in-law, Harvey; my daughter Isabelle; my son Chase who is out in the hall. My mother-in-law, Phyllis; and sister-in-law, Lisa.

Chairman COLLINS. Thank you.

Senator WARNER. Given that we have so many colleagues waiting, I will put my full statement in the record.

Chairman COLLINS. Without objection.

Senator WARNER. But this fine nominee, selected by the President and the Secretary of Homeland Security, has had a broad and extensive career. And each challenge he has met and succeeded and left a record of accomplishments. They are all documented in here very carefully.

And it is my privilege to put my complete credibility behind this man, such as it is in this institution, to say that he will do extremely well in this position.

As chairman of the Rules Committee at one time, Stewart worked for me and performed a number of very important legislative tasks and the Committee has investigation responsibilities, as this Committee does, all of which were performed wonderfully.

As a matter of fact, he performed so well that the leadership stole him. And I will let the Senator from Oklahoma explain the circumstances under which he was hijacked out of my office.

I thank the Chairperson, and you are on your own.

Chairman COLLINS. I thank the Senator from Virginia.

I am very pleased to call on my friend and colleague, the senior Senator from Oklahoma and the Chairman of the Budget Committee, for his remarks.

STATEMENT OF HON. DON NICKLES, A U.S. SENATOR FROM THE STATE OF OKLAHOMA

Senator NICKLES. Madam Chairman, thank you.

I wish to join with Senator Warner in urging the speedy confirmation. I very much appreciate your having this confirmation hearing and I would urge colleagues on this Committee to vote in the affirmative as soon as possible for the confirmation of Stewart Verdery to be Assistant Secretary for Border and Transportation, Department of Homeland Security.

I have had the pleasure, Senator Warner mentioned he is part of the family, and Stewart Verdery is. He and his wife, Jenny, were married while they were on my staff, or he was on staff and we wanted to have Jenny on our staff. So I have been friends with both for a long time. I knew Stewart when he was counsel to the Rules Committee. Also, he served as counsel on the Judiciary Committee, and did an outstanding job in those capacities.

He has experience in the private sector, as well, before coming to the Senate, graduating from the University of Virginia.

I have had the pleasure of working with him when he was general counsel to me as Assistant Majority Leader. He just did a fantastic job.

He not only worked for me, but frankly worked for the entire U.S. Senate, and in that capacity performed a number of functions. As all Senators do, we deal with a lot of issues, a lot of legal issues.

And Stewart Verdery was my legal counsel and he did a good job not only for me but for the entire Senate.

So Madam Chairman, it is with great pleasure and honor that I recommend to this Committee and to the full Senate a friend and a person who I know will do an outstanding job as Assistant Secretary of the Department of Homeland Security.

Chairman COLLINS. I thank the Senator very much for his comments. I know that he has a busy schedule and I would be happy to excuse him if he needs to leave.

It is now with great pleasure that I turn to an outstanding new Member of the Senate, Senator Saxby Chambliss, who represents the State of George so ably. We are very pleased to have you here today to introduce Mr. Garcia.

STATEMENT OF HON. SAXBY CHAMBLISS, A U.S. SENATOR FROM THE STATE OF GEORGIA

Senator CHAMBLISS. Thank you, Madam Chairman.

It is indeed a privilege and a pleasure for me to be here appearing before you, and I appreciate and thank you for the great work that you do on this Committee. You and I serve on the Armed Services Committee together and it is a pleasure to serve there with you.

I am pleased to introduce Michael Garcia as the President's nominee to be Assistant Secretary for the Bureau of Immigration and Customs Enforcement within the Department of Homeland Security.

I would also like just to take a minute to recognize his wife, Liana, and their three children, Manuel, Sophia, and Michael. And those of us who have children know and understand that two out of three is not bad, when you get them in a scenario like this. They are certainly beautiful children, and a beautiful and very supportive wife. They will be a great asset to Michael in his position.

I want to say some things about Michael specifically, but one thing that really pleases me about this nominee to the Department of Homeland Security is the fact that I have had the opportunity to work with Secretary Ridge from the very first day the President considered him for his original position, and I have been extremely impressed with the fact that the first thing he did was to surround himself with good people.

Michael is one of these folks who comes from the private sector, and that always impresses me, when somebody is willing to come from the private sector into the public sector and make a commitment to public service. This young man has done that and he has distinguished himself significantly during his years in public service.

He served as Acting Commissioner of the Immigration and Naturalization Service from December 2002 to February 2003. In his new role at the Enforcement Bureau, I am confident he will continue to improve the security of this country from the threat of terrorism.

Mr. Garcia previously served as an Assistant Secretary of Commerce for Export Enforcement from August 2001 to November 2002. He is a distinguished Federal prosecutor who has worked in counter-terrorism and national security issues for 10 years. In fact,

he is the only nominee who has successfully prosecuted and convicted a terrorist to date.

His prosecutions include the defendants who bombed two American embassies in East Africa, the defendants in the first World Trade Center bombing, and the defendant in the conspiracy to plant bombs aboard 12 American passenger airlines in the Far East. For these cases and his prosecution thereof, Mr. Garcia received the Attorney General's award for exceptional service, the Department of Justice's highest reward.

Madam Chairman, it is indeed a great privilege and a pleasure for me to recommended and to introduce to you Michael Garcia this morning. Thank you.

Chairman COLLINS. Thank you very much, Senator. We very much appreciate your taking time to be here today, and it certainly speaks well of the nominee, that you are willing to do so. So thank you for your testimony.

Both nominees have filed responses to biographical and financial questionnaires, answered pre-hearing questions submitted by the Committee, and had their financial statements reviewed by the Office of Government Ethics. Without objection, this information will be made part of the hearing record with the exception of the financial data, which are on file and available for public inspection in the Committee's office.

Our Committee rules require that all witnesses at nomination hearings give their testimony under oath, so I am going to ask that you each stand and raise your right hand.

[Witnesses sworn.]

Chairman COLLINS. Thank you. You may be seated.

Mr. Verdery, do you have a statement that you would like to make at this time?

TESTIMONY OF C. STEWART VERDERY,[1] TO BE ASSISTANT SECRETARY FOR POLICY AND PLANNING, BORDER AND TRANSPORTATION SECURITY DIRECTORATE, DEPARTMENT OF HOMELAND SECURITY

Mr. VERDERY. I do, Madam Chairman. I will try to keep this relatively quick.

Madam Chairman and the Governmental Affairs Committee, it is a great honor to be before you today as a nominee to be an Assistant Secretary for Homeland Security for Policy and Planning at the Border and Transportation Security Directorate.

This is a very unwieldy title but perhaps it is indicative of the challenges that this new Department will encounter in its first year as the primary face of our country's efforts to deter, detect, and defend against acts of terrorism.

I am grateful for the kind introductions of my two former bosses, Senators Warner and Nickles. Senator Warner was kind enough to give me my start in public service. And his career, especially three decades of leadership on national security issues, is a particular inspiration to those of us who grew up in Virginia, as I did.

As Senator Nickles mentioned, he and I worked through impeachment and Columbine and campaign finance, and other issues

[1] The prepared statement of Mr. Verdery appears in the Appendix on page 25.

and events big and small. And each day in the Capitol, working for him, was a day I just loved coming to work.

The most memorable of those days, of course, were those following September 11, 2001. We all remember well the bipartisan effort which spawned a host of responses to the terrorist attacks, including the Patriot Act, and the creation of the Transportation Security Administration, TSA. Those days exemplified the kind of public service which is truly gratifying. In that spirit, I hope and I believe that this new Department of Homeland Security will embody a national endeavor to secure our borders, our economy, our freedoms and our lives.

Thanks to Senator Warner's kind introduction, I have already introduced my family members and I just would like to say for the record how much I appreciate them being here and their support for me and my career. It means a lot, of course, and I could not do it without all of them.

The Office of Policy and Planning, which I would direct if confirmed, occupies a key role in DHS, and specifically in the Border and Transportation Security Directorate, BTS. The office is charged to develop, evaluate, and coordinate policy for BTS.

In advising the BTS Under Secretary, Asa Hutchinson, the Assistant Secretary for Policy is responsible for working on a day-to-day basis with the agencies which comprise much of what I like to call the meat and potatoes of homeland security. Thus, the Policy Office will seek to ensure that the policies implemented by BTS component agencies, which are the Bureau of Immigration and Customs Enforcement—for which Mr. Garcia has been nominated and is actively running—the Bureau of Customs and Border Protection, TSA, the Federal Law Enforcement Training Center, and the Office of Domestic Preparedness, are designed to fulfill BTS' responsibilities.

This office will also coordinate BTS policy initiatives with other agencies within DHS, such as the Bureau of Citizenship and Immigration Services, and outside DHS, such as Departments of State and Justice. To address these duties, BTS is building a top-notch staff of policy professionals with deep experience in immigration, customs, transportation, international affairs, and strategic planning.

My full statement, which I will place in the record, goes through some of the most important tasks that this office will be working on, including identifying and denying entry to those trying to enter the country illegally or to do us harm, securing our transportation systems, constructing our anti-terrorism efforts so they enhance and not diminish traditional missions of the agencies, such as combating narcotics, and fulfilling all of these responsibilities within the bounds of the law, with respect for our foreign neighbors, and with appropriate communication with the Congress, and with the public at large.

I am confident that if confirmed my experience both in the public and private sectors will serve me well in this new endeavor, and my full statement goes into some of the experiences I have which Senator Warner and Nickles have already detailed.

I joined DHS as a consultant in April while my nomination was pending before your Committee. And each day I have seen first-

hand the skill and determination of dedicated public servants such as Secretary Ridge, Under Secretary Hutchinson, my colleague Michael Garcia, and the rest of the DHS leadership. These officials, of course, are represented in the field by over 170,000 professionals dedicated to protecting our Nation.

If I am confirmed, I am extremely excited to travel to our border crossings, our ports, our airports, and other sites on the front lines to learn from these agents and inspectors who form the backbone of our homeland security regime.

Last, Madam Chairman, having been a creature of the Congress, I believe in Congress's prerogative to obtain timely and accurate information about Executive Branch activities. If confirmed, I will make every effort to work with this Committee and those other committees which create the authorities and budgets under which we operate.

Thank you again for the chance to appear before you today and I look forward to any questions you might have. Thank you.

Chairman COLLINS. Thank you very much. Your full statement will be made part of the record. Mr. Garcia.

TESTIMONY OF MICHAEL J. GARCIA,[1] TO BE ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Mr. GARCIA. Thank you. Good morning, Madam Chairman.

Let me thank you for the gracious welcome that you have given to my family here today. Their support, obviously, is so important as well as their sometimes quite vocal support today.

It is an honor to appear before the Committee as the nominee for the position of Assistant Secretary for the Bureau of Immigration and Customs Enforcement, or BICE, within the Department of Homeland Security.

I would like to thank the President for the confidence he has shown in me by again nominating me to serve as a leader of a critical law enforcement agency within his administration.

The leadership demonstrated by Congress in swiftly passing the Homeland Security Act, and the President's commitment to expeditiously implement the Act, are monumental achievements in the defense of our Nation against the threat of terrorism.

If confirmed, I will continue to implement the Act consistent with its intent and will remain focused on its overarching mission of providing greater security to our country.

For the past 10 years, my career in public service has been devoted to counter-terrorism and national security issues. This experience provides me with a unique perspective regarding the threats confronting our homeland and the tools and capabilities required to effectively meet them. I would bring this perspective and experience to the job of Assistant Secretary for Immigration and Customs Enforcement should I be confirmed in this position.

I would like briefly to describe my career in public service. After completing a clerkship for Judith Kaye on the New York Court of Appeals, I had the privilege of joining the U.S. Attorney's Office for the Southern District of New York. I joined that office at a unique

[1] The prepared statement of Mr. Garcia appears in the Appendix on page 77.

time in its history. Six months after my appointment as an Assistant U.S. Attorney in February, 1993, the first attempt to topple the World Trade Center took place. It was, at the time, the single most devastating act of terrorism ever committed on U.S. soil. I was one of the prosecutors assigned to lead the investigation into that attack.

This was new territory for law enforcement. From the investigative techniques brought to bear to the laws used to bring the terrorists to justice, the case was a new model for terrorism prosecutions. All available tools were used, including statutes covering violations of the immigration law.

Agents from every Federal law enforcement agency brought their authorities and expertise to the case. As a member of the prosecution team, I was responsible for guiding this effort, presenting evidence to gain indictments, and presenting the case in court. All four defendants were convicted on all counts in that case, and I received the Attorney General's Award for Exceptional Service, the highest award presented by the U.S. Department of Justice, for my work.

My work on the World Trade Center bombing case would define my career in government service. Less than 1 year after the verdict in the World Trade Center case, an explosion took place halfway around the world in Manila, where Ramzi Yousef, the mastermind of the World Trade Center attacks, and his associates were mixing chemicals in an apartment in preparation for attacks on 12 U.S. airplanes. Their plan was to detonate bombs aboard those planes while they were airborne and filled with passengers on their way from Asia to the United States. I flew to Manila and directed the investigation and prosecution of that terrorist conspiracy. I oversaw a case that, unlike the 1993 World Trade Center bombing, involved terrorist activity outside the United States aimed at this country's national security.

In bringing charges against Yousef and his co-conspirators, including then-fugitive Khalid Sheikh Mohamed, I was the first to use some of the antiterrorism statutes passed by Congress after the Trade Center bombing.

I also coordinated the cooperation in the trial of a number of foreign governments. In 1996, Yousef and two other terrorists were convicted on all counts. I again received the Attorney General's Award for Exceptional Service for my work on that case.

In 1998, followers of Osama Bin Laden bombed our embassies in Nairobi, Kenya and Dar es Salaam, and Tanzania. More than 200 persons were murdered in these attacks. I was assigned as one of the lead prosecutors on the case against four al Qaeda operatives who stood trial in New York on charges related to those attacks.

In preparing this case, I managed and led a team of investigators and staff in a worldwide effort to gather evidence, return terrorists to the United States, and coordinate efforts with the intelligence community. The jury returned guilty verdicts in this trial on all 302 counts.

The case raised a number of issues of first impression with regard to crimes committed against U.S. interests overseas and the intersection of criminal investigations and intelligence gathering.

In addition to the Attorney General's Award for Distinguished Service, I was awarded the CIA's "Agency Seal Medallion" for my efforts in coordinating our criminal case with the intelligence community.

My extensive management of complex counter-terrorism prosecutions has taught me important lessons about counter-terrorism that I would bring to my role in BICE if confirmed. Three of the most important are: First, the need to use all of our enforcement tools and authorities in support of our counter-terrorism efforts.

Second, the importance of coordination across agencies and with the Intelligence Community.

And third, that prevention and disruption need to be vital components of our counter-terrorism strategy.

After the guilty verdicts in the embassy bombing case, I was nominated by the President and confirmed by the Senate as Assistant Secretary of Commerce for Export Enforcement. In this position, I led an enforcement agency with a national security mission, preventing sensitive technology from falling into the hands of those who would use it to harm U.S. national security.

In December 2002, the President designated me Acting Commissioner of the INS. As Acting Commissioner, I was honored to lead the transition of that agency into the Department of Homeland Security, while at the same time ensuring that the critical day-to-day work of the Agency continued uninterrupted. This was a monumental task, involving dissolution of a 36,000-person Agency.

After the creation of DHS and the transfer of INS functions to that department, I was named Acting Assistant Secretary of DHS for the Bureau of Immigration and Customs Enforcement. BICE, with 14,000 employees and 5,500 special agents, is the second largest investigative Federal law enforcement agency. On March 1, that agency stood up a management structure that enabled all BICE employees to continue on with their critical enforcement missions while seeking to take advantage of the new opportunities presented by having the tools and authorities of the legacy components of INS, Customs, and the Federal Protective Service.

This is the challenge of BICE, to create a unified law enforcement agency capable of bringing all its law-enforcement tools to bear in an efficient and effective manner on the vulnerabilities to our homeland security. We are in the process of a reorganization that will provide BICE with a unified investigative structure, both in the field office and at headquarters.

The reorganization will also create one unified intelligence division from the Agency's legacy components. If confirmed, I would bring to the task of leading this new enforcement agency a perspective gained from a career dedicated to antiterrorism and national security. I would use this experience to guide my vision of a unified Agency, committed to a partnership with its Federal, State and local counterparts, and committed to full and fair application of the tools and authorities given to BICE.

Madam Chairwoman, in conclusion, I would again like to commend Congress on its efforts to protect the American people from those who seek to do us harm. It is an honor to be nominated as the Assistant Secretary to lead dedicated law-enforcement officers in this unprecedented time.

If confirmed, I vow to work together with this Committee and with Congress to strengthen our Nation's defense and protect the American people.

Thank you again for your consideration, and I look forward to answering your questions.

Chairman COLLINS. Thank you very much, Mr. Garcia.

I am going to begin my questioning this morning with standard questions that we ask of all nominees for the record. There are three of them.

First, is there anything that you are aware of in your background which might present a conflict of interest with the duties of the office to which you have been nominated? Mr. Verdery.

Mr. VERDERY. Madam Chairman, as part of my written answers, I have detailed several issues I have discussed with the designated ethics officer. I do not feel that any of them are an actual conflict of interest, but they have been disclosed in the written answers to your questions.

Chairman COLLINS. Mr. Garcia.

Mr. GARCIA. None that I am aware of.

Chairman COLLINS. Second, do you know of anything personal or otherwise that would, in any way, prevent you from fully and honorably discharging the responsibilities of the office to which you have been nominated? Mr. Verdery.

Mr. VERDERY. I do not.

Chairman COLLINS. Mr. Garcia.

Mr. GARCIA. I do not.

Chairman COLLINS. And third, do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of Congress if you are confirmed? Mr. Verdery.

Mr. VERDERY. I do.

Chairman COLLINS. Mr. Garcia.

Mr. GARCIA. Yes, I do.

Chairman COLLINS. Well, you passed those very well. Now we will turn to some substantive questions.

Mr. Garcia, an issue that has arisen in my home State of Maine lately has affected many of the residents in border communities where there are very small numbers of people living but they cross freely back and forth through border crossings to Canada. The Immigration Service and Customs have closed or restricted the hours of some of these border crossings, which has created a number of difficulties for many of my constituents.

Just to give you a fuller understanding of the border communities, frequently family members live on the Canadian side of the border. People cross the border to go to church, for medical care, to buy groceries, to visit friends, even to work. So the crossings are very routine and occur literally daily.

What has happened with some of these smaller crossings is the Federal Government has greatly restricted the hours that the crossings are open. For example, they may be closed from Friday at 4 o'clock until Monday at 8 a.m. Thus, in one community's case, restricting the ability of citizens to cross the border to go to church on the Canadian side.

Could I have a commitment from you to work with my office to try to come up with solutions that respect the traditions of these communities while at the same time recognizing the new security considerations that we face in a post-September 11 environment?

Mr. GARCIA. Absolutely, Madam Chairman. And in fact, you have my commitment, it is also one of the objectives of the enabling legislation, the statute creating the Department of Homeland Security. One of the missions of this Department is to protect national security but also to protect, and not interfere with, the free and lawful flow of goods and people across our borders. We are committed to that mission and I look forward to working with you, and with my colleagues in the other bureaus and agencies in affecting that very important part of our mission.

Chairman COLLINS. Mr. Garcia, I do appreciate that commitment.

Last month a terrible tragedy occurred in Victoria, Texas in which 19 illegal immigrants died in a tractor-trailer as they were being smuggled across the border into the United States. Could you talk to us about how this case was investigated by your Department? How were resources allocated? Because I think it would help the Committee understand how the new organization of the Department is being brought to bear when you have a terrible tragedy such as that one.

Mr. GARCIA. Yes, Senator. The case in Victoria, Texas, is a terrible tragedy, 19 people murdered in the back of a tractor-trailer near our Southern border.

Our response to that tragedy, I think, exemplifies what we bring now as one unified agency within BICE, within the Department of Homeland Security. Approaching that case, instead of the traditional way of approaching it, which would be to send experienced investigators in anti-smuggling to the scene, we did that. But in addition, we sent assets from our other legacy components.

So in the Victoria case, we sent immigration investigators trained in anti-smuggling. We sent Customs investigators, trained in financial crimes, to bring that expertise to the smuggling field, something we could not do in the past. We brought technical experts from what was the Customs Service, now part of BICE, to the location in Texas to bring their expertise to bear in tracking telephones and other follow up of technical investigative avenues.

As a result of that effort, which involved incorporation of all our enforcement tools, we saw tremendous success working with the U.S. Attorneys Office. Within a matter of days there were 11 charges filed against defendants, and I believe eight individuals are in custody charged with crimes related to that terrible tragedy.

In fact, the U.S. Attorney Shelby from Houston has made statements in Houston to the effect that this is the model for going forward that he would like to see. That in fact, BICE's response to this terrible crime is what the Department of Homeland Security should be doing to bring all our assets to bear in new ways, in more effective ways, on the crimes that are within our jurisdiction.

We are going to take our model from Victoria and use it to go forward as best practices to approach anti-smuggling and to approach other criminal acts within our jurisdiction. So, I think Victoria showed that BICE could respond as a unified agency and

showed us the road map for going forward and being an effective and unified law enforcement agency.

Chairman COLLINS. Thank you.

Mr. Garcia, immigration issues are being dealt with in three separate bureaus within the new Department, the Bureau of Immigration and Customs Enforcement, the Bureau of Customs and Border Protection, and the Bureau of Citizenship and Immigration Services.

The Immigration and Naturalization Service historically has been a troubled agency and one that has had difficulties in reconciling its service functions with its enforcement functions. In fact, I would say that if you talked to Members of Congress, you will hear more complaints about INS than virtually any other Federal agency.

How do you plan to improve the performance of these bureaus and also ensure that they coordinate their efforts better and not duplicate each other's efforts, given the three separate bureaus with joint responsibility.

Mr. GARCIA. I have heard a number of complaints from Members of Congress. It is obviously one of our top priorities. I think first, the structure that we have been given by Congress, the enabling legislation, addresses a number of the issues that INS had in the past. By breaking us into basically three separate components, we are able to focus on our specific missions more effectively, more efficiently, inspectors with inspectors at the border, investigators with our investigators within BICE, our important service groups reporting directly to the Deputy Secretary.

The challenge for us now, given that advance in our ability to function, is to continue to coordinate and cooperate among those agencies so we do not have duplication, so we do not have people going at cross-purposes, so we coordinate policy and the way policy is implemented.

We have done a number of things to make sure that this happens. I touched on them in detail, I believe, in my written responses to the Committee's questions, but I have a strong relationship with Commissioner Bonner and with Acting Director Aguirre. And I am in communication with them directly.

We have established working groups at very high levels to address specific issues and implement procedures. And we have designated very high-level persons within our front offices to act as liaison, involved in issues that are interagency, involved in the issues of our colleagues as they go forward as BCIS and BCBP. And we are doing all of those things to bring to bear our tools in an effective way, but also to make sure that we are coordinating as we go forward. And I believe that is the challenge, now that we have gone forward as separate agencies, the challenge is to also maintain good communication and good coordination.

Chairman COLLINS. The Department of Justice's Inspector General released a report recently that criticized the handling of hundreds of immigrants who were taken into custody by the Federal Government in the months following September 11. The report highlighted some 21 recommendations dealing with issues such as the need to develop uniform arrest and detainee classification policies, methods to improve information sharing among Federal agen-

cies, and improving the oversight of detainees housed in contract facilities.

I realize that the report has only been out for a brief time, but could you give us your comments on it? And what role will you play in ensuring that these recommendations by the Inspector General will be implemented?

Mr. GARCIA. I have seen the report and I have read it. We are committed at BICE to working to respond to the recommendations made by the Inspector General in that report, obviously very serious and important issues raised in that study. We have already begun work with our colleagues, both within BICE, within the Department of Homeland Security, and also within the Department of Justice and government in responding to the IG's concerns and to the recommendations and the issues raised there.

I think it is a very important study properly done, to look at a time in our history that was unique. And it is important for us now to look at that, look at the IG's recommendations, and go forward.

Chairman COLLINS. Mr. Verdery, the Office of Domestic Preparedness is currently within the Border and Transportation Security Directorate. And that has never made a great deal of sense to me. As you know, ODP is responsible for allocating the homeland security grants through the States to our first responders.

I have introduced legislation that moves the Office of Domestic Preparedness from the Border and Transportation Security Directorate to the Office for State and Local Government Coordination within the Secretary's office.

Do you agree that ODP should be moved out of the Directorate that you are going to be involved with? And has there been any discussion at DHS about this transfer?

Mr. VERDERY. It is my understanding that the Bush Administration and the Homeland Security Department officially support your legislation and are anxious to get it moving, and get it passed. I agree with that position.

The one thing I would add to that is ODP, while it is within BTS, is actively working to evaluate grants, to get money out. Billions of dollars are flowing out to first responders through the States. And so we are actively fulfilling our responsibilities now while supporting your legislation to move that office to the Secretary's office.

Chairman COLLINS. A major project for BTS is the development and implementation of the U.S. VISIT System. I believe that it is very important that we secure our borders. But, as I indicated in my earlier remarks, we must also ensure that the United States remains open for business. And I would be concerned if this new system were to somehow hamper the ability of legitimate visitors and commerce to enter the United States.

What policy issues do you believe need to be addressed to ensure that the U.S. VISIT System, or any other entry/exit system, would be able to do the job that it is intended for without causing long delays or problems at our border crossings?

Mr. VERDERY. The U.S. Visit System, which is now the name for the entry/exit system which was mandated by Congress in several different pieces of legislation, is a top priority for the Department and for the Under Secretary. The program office for the U.S. Visit System reports directly to Under Ssecretary Hutchinson as of about

a month ago. I cannot think of anything the Department spends more time on, especially the Under Secretary, than on this issue.

As you know, the U.S. Visit entry/exit system will be phased in over several years, with it applying to air and seaports for the end of this year, and land entry facilities and exit facilities in following years. That phase-in gives us time to build systems, both hardware, software, and infrastructure, to try to alleviate any kind of backlogs that would be created by the checks that passengers will undergo as they enter and exit the country.

We are working feverishly to make sure that the checks of passengers are done quickly, that they had access to relevant databases, and that it does not slow down traffic. Again, for this year that means airports and seaports.

We are anxiously moving a spending plan to the Congress to get money flowing for this year's deployment. And it is my understanding your Committee has asked for a briefing on this issue, and we would be happy to do that as soon as we can get it scheduled.

Chairman COLLINS. Thank you.

Mr. Verdery, I recently learned that the Transportation Security Administration has submitted a proposal to the Appropriations Committee to reallocate some 40 percent of the funding that is appropriated for port security grants. This is a huge concern to me personally, and to many Members of this Committee. We have held hearings which indicated, from many experts, that port security remains, if not the biggest vulnerability facing the United States, certainly one of them.

It is obviously much more difficult to secure a seaport than an airport, and it is critical that funding appropriated for the process of improving port security go forward. In fact, the Coast Guard has reported that it believes it will cost more than $4 billion to improve port security over the next decade.

TSA's proposal makes me question whether the new Department is giving port security the priority that it clearly warrants. I have asked Secretary Ridge for an update of the Department's plan, but in your new position I would like to know how you plan to ensure that port security receives the attention and the funding it deserves?

Mr. VERDERY. Madam Chairwoman, I have seen the letter you sent to Secretary Ridge earlier this week. It is clear that the Department is doing a lot in the area of port security, everything from the Container Security Initiative, which attempts to secure the large containers coming into our country, to money that the Coast Guard is spending on grants, to the vulnerability assessments that are being undertaken by the Information Analysis and Infrastructure Protection Directorate at DHS. There is a lot going on in this field.

Now you mentioned specifically the reprogramming issue, of money at TSA for port security. It is my understanding that TSA has spent, I believe, several hundred million dollars in port security money over the last couple of years but that some money is being targeted for reprogramming to meet the statutory requirements that TSA is under in terms of aviation safety, which is obvi-

ously a top priority of the administration and of the Congress in light of the events of September 11.

If I am confirmed, though, I will be happy to work hard with our budget folks to try to come up with additional resources for port security. I will be taking a look at TSA's spending. As you know, I was not part of the development of last year's budget but I am anxious to get over there and begin working on this year's and next year's budget plans.

Chairman COLLINS. Thank you. Senator Levin.

OPENING STATEMENT OF SENATOR LEVIN

Senator LEVIN. Thank you, Madam Chairman. I will try to be relatively brief. It looks like the kids are ready for lunch, but I do have a short opening statement as well as a few questions of our nominees.

With this hearing, we are moving closer to a fully functioning Department of Homeland Security. And today's nominees, if confirmed, will play crucial roles in U.S. border security, immigration policy, with critical implications not just for national security but also for law enforcement, transportation, trade, and even protecting the public's health with issues like SARS.

It is critical that we get more top level personnel confirmed at the Department because right now there is a lot of confusion at the Agency, confusion about who is responsible for what, who can answer questions, and when needed programs are going to get underway. Here are just a few examples.

For 2 years a number of us have been pushing Customs to set up reverse inspection programs, where for example, U.S. personnel can inspect cars and trucks before they cross our bridges or travel through our tunnels to enter the United States. Clearly better for security and for alleviating traffic congestion.

We were able to include language in the 2003 Omnibus Appropriations Bill authorizing reverse inspections. And Michigan, for example, is ready, willing, indeed eager to set up a pilot program in Detroit at the Ambassador Bridge, which I believe carries more freight across into the United States and Canada than any other single crossing. Indeed, a large percentage of the total imports and exports in this is our biggest customer.

Customs has told us, DHS has told us, the Department has told us, and Mr. Verdery, you have told us that reverse inspections are a good idea. But after 2 years, we have yet to get anyone to move even on a pilot program. That is difficult to understand given the merits of the issue, the importance to our national security and trade, why we have been unable to get this acted upon.

Another example of confusion involves the issue of money laundering. For years Customs has taken the lead in complex Federal money-laundering investigations, developing an expertise that is really unmatched in any other Federal agency. Due to this expertise, after the September 11 tragedy, the administration directed Customs to set up an interagency effort called Operation Green Quest, to take the lead in identifying and stopping terrorist financing, which often uses the same offshore banks, wire transfers, and transfer pricing techniques that other money-launderers use to hide drug money or the proceeds of financial fraud.

This Committee's Permanent Subcommittee on Investigations has conducted a number of money laundering investigations over the years and become aware of the Customs expertise and ongoing work in this area. So it was troubling to me to read in the paper that the administration recently approved a plan to shift responsibility for money-laundering from Green Quest to the FBI section which has much less expertise.

My concerns are that we are throwing away expertise that took literally decades to develop, and that we might lose ground not only on terrorist financing investigations, but also money laundering investigations in narcotics trafficking and financial fraud.

It is also unclear who at the Department has money-laundering issues as part of his or her portfolio. Mr. Garcia, I know you have experience in money-laundering prosecutions and care deeply about this issue, but I do not know if you will have the responsibility for this issue.

Another example of confusion involves Canadian waste issues. Every day about 180 trucks come across the bridge from Canada into Michigan with Canadian waste—180 trucks a day, filling our landfills with Canadian trash. After September 11, we pointed out the security risk of allowing large trash trucks to do this with minimal inspections. I think all of us can picture a scenario in which trash trucks are used by terrorists to hide weapons, laundered funds, or hazardous materials like radioactive waste.

Now in January 2003, Customs issued a new directive changing its practice and requiring additional inspection for trash trucks. But then a month later it reversed course and restored the practice of classifying trash trucks as low risk imports, requiring minimal inspection.

I, along with Senator Stabenow and Congressman Dingell, sent a letter to Customs asking what happened, but we have 4 months later not yet received even a response, which I assume is more evidence of confusion.

One last example of confusion was reported to me by my Detroit office. It used to be that when we had immigration problems, my office would call the Detroit INS officials to get an answer. Now they are told they have to call Washington. We do not know why.

Confusion obviously cannot be totally avoided when establishing a huge new agency like the Department, but it also needs to be tackled. I know that you two will be playing an instrumental role in trying to eliminate that confusion.

I think I have run out of time. Shall I ask a few questions?

Chairman COLLINS. If you would like to proceed with your questions, feel free.

Senator LEVIN. As I have said, Congress authorized the creation of integrated border inspection areas between the United States and Canada. These areas could include conducting shared border inspection or reverse customs inspection at U.S.-Canadian border crossings. So our Customs officers in Canada could protect our bridges and tunnels and also would enhance and facilitate trade.

In your answers to questions submitted to you before this hearing, Mr. Verdery, you stated that reverse inspections are a good thing, and that is good to hear but some of us have been hearing that for the last 2 years.

Now we are just wondering what is it going to take to get this thing accomplished? Is it ready to be acted upon?

Mr. VERDERY. It is my understanding, as you said, Senator Levin, that the administration does support the concept of reverse inspection, that there have been ongoing discussions with the Canadian Government through our Customs Service and now BCP.

The hang up, as I understand it, is that there are some very tricky legal questions, largely on the Canadian side, with interpretations of Canadian constitutional measures.

In my view, this is the type of issue that is a perfect issue for a new policy office within BTS to become involved in, and I look forward to working on it. In fact, I would love to come up and visit Ambassador Bridge and see exactly how that would play out, with a reverse inspection zone, in your State.

Senator LEVIN. We would love to have you there, but the Canadians have been looking at this for a long time. We need an answer. So we would love to have you there, we look forward to having you there, but we also look forward to the Canadians being told—since there is a river there, I should say fish or cut bait. But we need an answer from the Canadians on this.

Mr. VERDERY. I will try to bring answers along with my luggage.

Senator LEVIN. That would be great. Do you know whether we have officially asked Canada to set up that pilot program?

Mr. VERDERY. I do not know if it has been officially made. I would be happy to get back to you.

Senator LEVIN. Would you let us know that?

Our Chairman asked whether or not the recent IG report was read by you. And I think, Mr. Verdery, you commented on her question. I was talking to my staff and may not have heard.

Chairman COLLINS. Mr. Garcia was the one who commented.

Senator LEVIN. Thank you, Madam Chairman.

I think that our Chairman asked questions about whether you are going to be taking steps to implement some of the suggestions in the report. My question is a little bit different because I was troubled by these findings, especially where the Inspector General pointed to systemic failures by the Department of Justice to adhere to the concepts of fairness and justice.

Perhaps what was most disturbing was the clear violation of the civil rights of individuals that I raised with officials at the Department of Justice over a year ago. Examples of harsh treatment from several agencies including the Immigration and Naturalization Service, were common. A majority of detainees were not provided with the timely opportunity to contact a lawyer. Some detainees were held as long as a month before being presented with charging documents. Other detainees were unable to contact their families because of a "communications blackout." Several detainees were physically and verbally abused with some being confined to their cells for 23 hours a day.

Rather than my commenting on it beyond that, I would like to ask for your reaction to the report. Why don't both of you give me your reaction?

Mr. GARCIA. As the report makes clear, it was an unprecedented time in the Nation's history. That being said, there are certainly findings in that report that are troubling. As you mentioned, par-

ticularly so are any allegations of mistreatment of detainees within the U.S. system. Particularly they looked at two institutions, I believe, in that process, one which was a contracting facility for the INS at that time.

I think those issues have to be addressed. My understanding is we have a regulation going through the process now that would make that more of a formal procedure. I would note that in the report, with respect to that Passaic facility, they did find that within that facility detainees were provided with access to counsel and were provided presentations by groups outlining their rights within the system.

They did conclude that the INS needed to do a better job of regularly inspecting and visiting the facility. We are, as I said, working with a regulation to make that procedural requirement.

I think it is a timely report. Clearly, it is the responsibility of the IG to look at these issues and to make the recommendations, the difficult issues, and ones we are committed to addressing with the IG and with our colleagues in DHS and Department of Justice.

Senator LEVIN. Madam Chairman, I am wondering if it would be in order for me to request that after Mr. Garcia's confirmation, a reasonable period of time, perhaps 60 or 90 days, that he give us a report on the steps taken in response to that report?

Chairman COLLINS. I think that would be helpful and I would be happy to join in making that an official Committee request.

Senator LEVIN. Any comment, Mr. Verdery, on that?

Mr. VERDERY. Senator, as we know, the activities that took place, that are the subject of that report, came when INS was part of the Department of Justice and many of the issues raised in the report were based on decisions taken by the Attorney General or the Deputy Attorney General. Some of those were a matter of discretion.

Now that INS has been split up and has been moved into DHS and into these various parts, a number of those points of discretion now will sit with the Secretary. And I am very much looking forward to continuing to read the report, I have seen the Justice Department's response to it, and slogging through what were apparently some very difficult legal questions and discretionary decisions made by the head of the agency, who is now Secretary of Homeland Security.

I met yesterday with our new Officer for Civil Rights and Civil Liberties to discuss this. And I know that the regulations that were discussed will be moving through BICE, then BTS and DHS. And so it would be a timely report for us to issue to you all within a few months.

Senator LEVIN. Thank you. I have two final questions. My red light has been on a long time.

Chairman COLLINS. It has. Go right ahead.

Senator LEVIN. Thank you. Just two final questions.

I want to describe a couple of hundred trash trucks coming into our State with Canadian trash which is a security issue. It is an environmental issue, as well, but a security issue, that is the relevance to your positions.

We sent a letter to Mr. Bonner about this, the we again being Senator Stabenow, Congressman Dingell and I, in January. We have not received a response.

First of all, did we send it to the right person? Customs is now split up. We have a Bureau of Immigration and Customs Enforcement and we have a Bureau of Customs and Border Protection. Mr. Bonner has got the Bureau of Customs and Border Protection. And Mr. Garcia, I think you are Acting Secretary already of the Bureau of Immigration Customs Enforcement. Did we send it to the right place, first of all? Should we have sent it to you?

Mr. GARCIA. Yes, you did.

Senator LEVIN. Is that because you would rather it go there, or it should go there.

Mr. GARCIA. Actually Senator, it is obviously a very serious matter. Commissioner Bonner, formally Commissioner of the U.S. Customs Service, now head of BCBP, is responsible for the inspection issues at the border. We are committed to working with him on any issues that we can be helpful. Obviously, I am happy to go back to him and raise this particular issue with them.

Senator LEVIN. If it is in the right place, we will continue to raise it with him ourselves. We appreciate the offer, but we cannot pile that on you, as well.

Mr. Garcia, just on the money-laundering responsibilities, will the anti-money-laundering responsibilities be part of your portfolio?

Mr. GARCIA. Absolutely, Senator. As you mentioned earlier, I believe, I had experience as a prosecutor doing money-laundering cases. I recognize what an incredibly important and powerful tool that is in the counter-narcotics, counter-terrorism broad spectrum of crimes.

The money-laundering expertise in what was Customs investigations, I agree, unmatched in their ability to apply their tools and authorities they have, in this way, to the crimes within their jurisdiction.

You mentioned an agreement we have with the FBI. It is a division of responsibilities agreement. It provides that going forward there is formal coordination. There is exchange of high level management positions. We cannot afford to be duplicating efforts.

But we cannot afford to lose any of the expertise in our program. We are not sending our agents to the FBI that were doing Green Quest, or sending them to the task force. We will continue with a robust financial money-laundering program that looks at the vulnerabilities that BICE is uniquely qualified to address. You are familiar with them, bulk currency transfer, black market peso, looking at the hubs in Atlanta and other places where currency is being exported in violation of our law.

This is uniquely Homeland Security jurisdiction. We are committed to it. I personally can give you my commitment that, if confirmed, this will be one of my top priorities to not only maintain that expertise but to go forward with it as part of a new agency in an even more effective manner.

Senator LEVIN. Thank you. Thank you both. We look forward to your confirmation. I hear you are both well qualified for these positions, and we all need your help. Thank you.

Chairman COLLINS. Thank you, Senator Levin.

Mr. Verdery, it has been recently reported that TSA has hired some screeners with criminal backgrounds. This is extraordinarily troubling to those of us who thought that the Federal Government's

take over of the screening process would ensure high-quality screeners with clean backgrounds.

According to the *Washington Post,* for example, at the Los Angeles International Airport, airport officials have learned that six TSA screeners admitted to serious felonies on written questionnaires, including felony gun possession and assault with a deadly weapon.

What specific steps are you going to take to ensure that this problem does not reoccur, and that the employees not only receive adequate background checks but that someone pays attention to the results before they are hired?

Mr. VERDERY. It is my understanding that, as TSA was being stood up and hiring an unprecedented number of screeners, close to 50,000 within about a 10-month span, they put in an innovative methods to do background checks. it is my understanding that over 97 percent of the screeners that were eventually hired, had that fingerprint check.

Now we know that a number of people, as the checks came back in, were found to have disqualifying criminal histories. Those were fired, several hundred, I believe, close to 1,000. But again, over 98 percent have had background checks and are actively on the job with no criminal problem.

Chairman COLLINS. Given the size of the workforce, if you have 2 percent that are still slipping through the process with criminal backgrounds, that 98 percent figure is not of much comfort to me.

Mr. VERDERY. I believe, as Admiral Loy testified in the house earlier this week, the 2 percent is not 2 percent with criminal background in their history. It is 2 percent who did not have the check. So they are actively rushing to finish those 2 percent that did not have a full check when they were originally hired.

Now you asked, as a matter going forward, we should not have a similar problem because all new applicants are going through full checks before they are hired. So this is an issue of trying to clean up around the margin where people fell through the cracks when TSA was rushing to hire close to 50,000 people.

So I think this is a problem that is going to be solved within the summer, and people can have complete confidence that the screeners that are on the job do not have any kind of disqualifying criminal background history.

Chairman COLLINS. Another issue that has arisen with TSA is the Department's plan to lay off some 6,000 airport screeners by September 30. I know, in the case of the plans for the airport in Portland, Maine, that the reductions proposed did not take into account that there was a third screening lane and that the airport was entering its peak travel season, as those of you who go to Maine in the summer are well aware.

I am very pleased that in response to my request, TSA is reconsidering its plan for Portland's airport, but I am concerned about how this happened in the first place. Could you share with us what approach you are going to take to make sure that TSA does have adequate staff to do the job and to take into account travel fluctuations, as well as the need to avoid inordinate delays for passengers?

Mr. VERDERY. As you know, I was not part of the original decisionmaking. And as you mentioned, it is my understanding that

TSA is revising the screener reduction by airport in response to reanalysis and other factors, and I believe that is going to be announced shortly.

Again, TSA is trying to respond to changes in passenger traffic and also to a decision to go to a different type of philosophy where they are going to have more roving law enforcement officers throughout the airport and fewer standing at particular checklines. So that new philosophy is going to allow them to have some cutbacks without sacrificing the world-class security and world-class services that they are trying to achieve.

So I am anxious to get on the job, work with TSA on their screening plan. As you know, they do face a budget shortfall and so they are trying to be as prudent with the taxpayer's money as they can with the screener program without sacrificing any kind of safety in Maine's airports or anywhere else.

Chairman COLLINS. Finally, I want to ask you a question about the CAPPS Program, which is the Computer Assisted Passenger Pre-screening System. As I understand the CAPPS–II program, it will use commercial and classified databases to select which passengers should be subjected to heightened scrutiny before they board aircraft. Is that essentially correct?

Mr. VERDERY. Yes. CAPPS–II is trying to accomplish two different things at the same time before a passenger would board a plane. One is using commercial sources to do an identity verification. Is the person trying to buy the ticket the person they say they are? And they are using all kinds of commercial databases to do that identity verification. Second, CAPPS–II will also generate a risk assessment score that a TSA employee could review until the information is deleted which will be after the person flies. There is no bleed over into other types of checks. No one has any clue what the information is other than the risk assessment score.

Second, CAPPS–II is trying to perform a risk analysis of the individual using intelligence information to compare versus a person who is attempting to fly. As you know, a lot of that information is classified. We would be happy to sit down with you in a more appropriate setting and go through some of those measures. But that is the basics of what CAPPS–II is trying to achieve.

Chairman COLLINS. If properly implemented, I could see where CAPPS–II could be very helpful in focusing attention on passengers that should be subjected to increased screening and scrutiny, and that should make travel easier for the low-risk passenger ideally.

However, if the databases on which the new system will rely contain faulty or incomplete or inaccurate information, the possibility is high that passengers could be selected for increased scrutiny who do not deserve that kind of risk analysis. I think any of us who have ever had problems with inaccurate information being reported on a credit report, for example, or with identity theft are very much aware of the potential pitfalls of this approach.

How are you going to ensure that the information on which CAPPS is relying is adequate and accurate, as well?

Mr. VERDERY. The CAPPS–II system will be relying on a number of commercial databases not a single source. Furthermore, if a person has inaccurate information in his credit reports, as happens frequently, the fact that that is in somebody's report will not affect

his ability to fly. Obviously it is a separate issue for him, but it is not going to affect his ability to fly, the fact that there is inaccurate information in their report.

Obviously, TSA needs to work and make sure that they pick the best commercial databases available, and I am happy to sit down and work with TSA to make sure that CAPPS–II is designed properly, if I am confirmed.

As you mentioned, the goal is to make it much easier for the large majority of passengers to board with no delay. As you know, currently people are selected for enhanced screening based on a number of factors. This should make it much more narrowly tailored who is selected for the additional screening, based on that identity verification or risk analysis score.

Chairman COLLINS. The final caution that I would give to you on the program is that many of us are concerned about the Federal Government aggregating large databases with personal information on law-abiding Americans. That is just contrary to the heritage of our country, with its respect for individual privacy. I think this is an area where we have to proceed with a great deal of caution in order to respect the privacy rights of law-abiding Americans.

Mr. VERDERY. We agree with that completely. The Chief Privacy Officer of the new Department has been involved on a day-to-day basis with how the CAPPS–II system is being developed. Remember, this is still a year away from full deployment. The Secretary has said it will not be deployed until she approves it. And I think she feels comfortable where this is going, remembering that the commercial information that is being accessed is a one-time hit. You have a score, it is checked. You are either sent onto the plane or given secondary screening, and then that score vanishes. The next time you fly, on a separate trip, that prior score has no interaction. It is just a one-time check. There is no retention of the data once your flight plan is completed.

Chairman COLLINS. Thank you, Mr. Verdery.

Mr. Verdery, Mr. Garcia, I want to thank you both for your testimony today.

I also want to thank you for your willingness to serve your country. It is a sacrifice for many families to enter the public arena, and we need people with your ability, your integrity, and your commitment to be willing to serve in Federal Government. So I want to express the gratitude that I feel toward both of you for your willingness to serve.

It is my hope that we can move very expeditiously on both of your nominations to get you confirmed quickly by the full Senate, and on the job as soon as possible.

Without objection, the hearing record will be kept open until 5 p.m. today for the submission of any written questions or statements for the record. This hearing is now adjourned.

[Whereupon, at 11:51 a.m., the Committee was adjourned.]

APPENDIX

PREPARED STATEMENT OF SENATOR WARNER

Chairman Collins, and my other distinguished colleagues on the Senate Governmental Affairs Committee, it is my honor to come before the Committee today and introduce Stewart Verdery to serve as the first Assistant Secretary for Policy and Planning at the Border and Security Directorate at the Department of Homeland Security.

I am pleased to welcome his family and friends in attendance today, including his wife Jenny, his children Isabelle and Chase, and his parents, Charles and Linda Verdery.

Mr. Verdery has a vast and distinguished career in public and the private sector. I know that with his strong leadership skills, meritorious academic and professional credentials, Mr. Verdery will be an asset to the Department and its mission to protect the nation against further terrorist attacks.

The Border and Transportation Security Directorate, where Mr. Verdery currently serves as a Senior Advisor to Under Secretary Asa Hutchison, is the largest of the Departments five major divisions. Many new and unforeseen challenges lie ahead for this Directorate.

I am a personal witness to the abilities of Mr. Verdery. During his service as Counsel on the Senate Rules Committee when I served as Chairman, he adeptly directed a challenging investigation of the contested 1996 Louisiana Senate election.

As Counsel on the Committee, he was also responsible for drafting some of the initial versions of campaign finance reform legislation. Many of the concepts from his work are reflected in the campaign finance legislation enacted in 2002.

With his experience on the Senate Judiciary Committee, serving as lead Counsel for the Crime and Drug Policy Unit, Mr. Verdery is aware of the intricate complexities of dealing with security of our nation's borders and transportation infrastructure.

I look forward to working with Mr. Verdery as he takes on this new task in public service. I commend his qualifications to you and urge the Committee's favorable consideration of his nomination.

Prepared Statement of C. Stewart Verdery, Jr.
Nominee for Assistant Secretary for Homeland Security for Policy and Planning,
Border and Transportation Security Directorate,
Department of Homeland Security
Senate Governmental Affairs Committee
June 5, 2003

Madam Chairman, Ranking Member Lieberman, and members of the Governmental Affairs Committee, it is a great honor to be before you today as the nominee to be an Assistant Secretary for Homeland Security for Policy and Planning at the Border and Transportation Security Directorate. It's an unwieldy title, but perhaps it is indicative of the challenges that this new department will encounter in its first year as the primary face of our country's efforts to deter, detect, and defend against acts of terrorism.

I am grateful for the introductions by two of my former bosses, Senators Warner and Nickles. Senator Warner was kind enough to give me my start in public service, and his career, especially the three decades of leadership on national security issues, is a particular inspiration to those of us who grew up in Virginia. Later, as his general counsel, Senator Nickles and I worked together through impeachment, Columbine, campaign finance, and other issues and events big and small. Each day in the Capitol with him was a day I loved coming to work.

The most memorable of those days, of course, were those following September 11, 2001. We all remember well the bipartisan effort which spawned a host of responses to the terrorist attacks, including the PATRIOT Act and the creation of the Transportation Security Administration. Those days exemplified the kind of public service which is truly gratifying. In that spirit, I hope and believe that this new Department of Homeland Security will embody a national endeavor to secure our borders, our economy, our freedoms, and our lives.

Before turning briefly to my background and the position for which I have been nominated, I would like to recognize my family members who have supported me with love and understanding. My wife Jenny is here, with our two children Isabelle and Chase. Thank you, Jenny, for bearing the sacrifices that my work has and will create for you. My parents, Charles and Linda Verdery, and a number of other family members and friends have traveled to see the Senate in action. Thank you for being here.

The Office of Policy and Planning, which I would direct if confirmed, occupies a key role in DHS and specifically in the Border and Transportation Security Directorate ("BTS"). The office's charge is to develop, evaluate, and coordinate policy for BTS. In advising the BTS Under Secretary, the Assistant Secretary for policy is responsible for working on a day-by-day basis with the agencies which comprise much of the "meat and potatoes" of homeland security. Thus, the policy office will seek to ensure that the policies implemented by BTS component agencies – the Bureau of Customs and Border Protection, the Bureau of Immigration and Customs Enforcement, the Transportation Security Administration, the Federal Law Enforcement Training Center and the Office of Domestic Preparedness -- are designed to fulfill BTS's responsibilities. This office will also coordinate BTS policy initiatives with other agencies within DHS, such as the Bureau of Citizenship and Immigration Services, and outside DHS, such as the Departments of State and Justice. To address these duties, BTS is building a top-notch staff of policy professionals with deep experience in immigration, customs, transportation, international affairs, and strategic planning.

The Office of Policy and Planning will develop policy initiatives to address the same issues with which the Congress and this Committee, in particular, have grappled the past several years:

- Identifying and denying entry to or detaining those attempting to enter the country illegally or to do us harm, without hindering the flow of legitimate foreign visitors so crucial to our economy, culture, and educational system;
- Identifying and seizing the implements of terrorism, without hindering the flow of commerce indispensable to our standards of living;
- Securing our transportation systems, including aviation, rail, mass transit, highways, and seaports, from terrorist attack, without hindering the flow of people and goods to, from, and within our country;
- Constructing our anti-terrorism efforts so that they enhance, not diminish, the traditional missions assigned to BTS agencies, such as enforcement of immigration and customs laws and combating importation of unlawful goods and narcotics;
- Providing the funds and training to states and localities to assist their ability to respond to terrorist incidents;
- Training our law enforcement officers to handle these missions, new and old, in the most efficient and effective ways possible;
- Developing organizational structures for the new BTS Directorate and its component agencies; and
- Fulfilling all of these responsibilities within the bounds of the law, with respect for our foreign neighbors, and with appropriate communication with the Congress and the public at large.

I am confident that, if confirmed, my experience, both in the public and private sectors, will serve me well in this new endeavor. While serving as counsel on the Senate Judiciary Committee and in the Senate leadership staff, I tackled complex public policy issues including numerous law enforcement and terrorism initiatives, such as the PATRIOT Act and counter-narcotics legislation. I officially worked at different times for three Senators and two committees, but in many respects I worked for dozens of Senators and members of the House, helping to negotiate and enact meaningful public policy across the aisle and across the Capitol.

I joined DHS as a consultant in April while my nomination was pending before your committee, and each day I have seen first-hand the skill and determination of accomplished public servants such as Secretary Ridge, Under Secretary Hutchinson, my colleague Michael Garcia, and rest of the DHS leadership. These officials, of course, are represented in the field by over 170,000 professionals dedicated to protecting our nation. I am extremely excited about the opportunity, if I am confirmed, to travel to our border crossings, airports, sea ports, and other sites on the front lines to learn from those agents and inspectors who form our homeland security backbone.

Lastly, having been a creature of the Congress, I believe in Congress's prerogative to obtain timely and accurate information about executive branch activities. If confirmed, I will make every effort to work with this Committee and those other Committees which create the authorities and budgets under which we operate.

Thank you again for the chance to appear before you today and I look forward to any questions you might have.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

Charles Stewart Verdery, Jr.

2. **Position to which nominated:**

Assistant Secretary for Policy and Planning, Border and Transportation Security Directorate, Department of Homeland Security

3. **Date of nomination:**

April 10, 2003

4. **Address:** (List current place of residence and office addresses.)

Residence:
Office: 3801 Nebraska Avenue, N.W., Washington, D.C. 20393

5. **Date and place of birth:**

January 7, 1967; Richmond, VA

6. **Marital status:** (Include maiden name of wife or husband's name.)

Married to the former Jenifer Anne Eisen

7. **Names and ages of children:**

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

University of Virginia School of Law, Charlottesville, VA, 1990 - 1993, J.D. received 1993;
Williams College, Williamstown, MA, 1985 - 1989, B.A. *cum laude* with honors received 1989;
Exeter College, Oxford University (Williams-at-Oxford program), Oxford, England, 1987 - 1988, no degree granted;
Woodberry Forest School, Woodberry Forest, VA, 1982 - 1985, diploma *magna cum laude* received 1985; and
St. Christopher's School, Richmond, VA, 1979 - 1982, no degree or diploma granted.

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

See Attachment A

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

Bush-Cheney Presidential Transition, advisor to Attorney General nominee John Ashcroft, 2000 – 2001; and
U.S. House of Representatives Committee on Oversight, Special Counsel (while employed at Baker & Hostetler), Washington, D.C., 1995.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

In addition to the employment record detailed in response to Question 9, I have also held the following positions since college:

Charles S. Verdery Irrevocable Trust, co-trustee, 1992 – present;
The Federalist Society, Internet Subcommittee, Telecommunications & Electronic Media Practice Group, Co-Chairman, 2002;
Internet Education Foundation, Member of Board of Directors, 2002 – 2003;
University of Virginia School of Law Class of 1989, class officer, 1993 – present;
University of Virginia School of Law *Journal of Law & Politics*, Notes Editor, 1992 – 1993; and
Williams College Class of 1989, Secretary, 1999 – present.

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

CURRENT
District of Columbia Bar, admitted 1994
Federal Communications Bar Association, Member, 2002 - present
The Federalist Society and various practice groups, Member, approximately 1991 - present
Gold's Gym, Member, approximately 1997 - present
Lyon Village Civic Association, Member, 2001 – present
Republican National Committee, Sustaining Member, approximately 1995 – present
RightClique, Member, approximately 2001 - present
Supreme Court of the United States Bar, admitted 1997
United States District Court for the District of Columbia, admitted 1995
United States District Court for the Eastern District of Virginia, admitted 1994
United States District Court for the Western District of Virginia, admitted 1994
United States Golf Association, Member, 1995 - present
United States Tennis Association, Member, approximately 1998 - present
University of Maryland Terrapin Club, Member, 1995 - present
University of Virginia Alumni Association, Member, 1993 - present
University of Virginia School of Law Washington D.C. Activities Committee, 2002 - present
Virginia Bar Association and various sections, Member, 1993 - present
Virginia State Bar, admitted 1993 (currently on inactive status)
Washington Golf & Country Club, membership application pending
Williams College Alumni Association of Washington, D.C., Member, approximately 1993 - present
Woodberry Forest School, Parents and Alumni Assisting Woodberry, Volunteer, approximately 1997 - present

FORMER (since 1985)
American Bar Association and various sections, Member, 1992 - 1997
Arlington County Taxpayers Association, Member, 2001 - 2002
Ball for Children charitable event, Host Committee, 1996 - 1998
Exeter College, Oxford University, basketball team, 1987 - 1988
Exeter College, Oxford University, soccer team, 1987 - 1988
Exeter College, Oxford University, tennis team, 1988

Fort Myer Officers' Athletic Club, Summer Member, 2002
Golf Society of the U.S., Member, approximately 1997 - approximately 1998
National Republican Lawyers Association, Member, approximately 1996 - approximately 2002
Overlee Community Association, Summer Member, 2001
PGA Partners Club, Member, approximately 1997 - approximately 1999
Sport & Health, Member, 1993 - approximately 1997
University of Virginia, Birdwood Golf Club, Student Member, 1991 - 1993
University of Virginia, Law and Graduate Republican Club, Member, 1990 – 1993
University of Virginia School of Law, Entertainment and Sports Law Forum, Member, 1992 - 1993
University of Virginia School of Law, *Journal of Law & Politics*, Member, 1990 - 1993
University of Virginia School of Law, North Grounds Softball League, Member, 1992 – 1993
University of Virginia School of Law, Student Legal Forum, Member, 1990 - 1993
Williams College, Brodie Mountain, Student Member, 1985 - 1989
Williams College, History Scholars Program, approximately 1988 - 1989
Williams College, Intramural Soccer, 1986 - 1989
Williams College, James Garfield Republican Club, approximately 1985 - 1989
Williams College, Junior Varsity Tennis, 1985
Williams College, Student Defense Alliance, approximately 1988 - approximately 1989
Williams College, Varsity Baseball, 1985 - 1987

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Arlington County (VA) Republican Committee, Member, approximately 1996 - 1998;
Bush-Cheney Presidential Transition, advisor for Attorney General nominee John Ashcroft, 2000 - 2001;
George W. Bush for President, advisor (no official title), 1999 - 2000;
(Jerry) Kilgore for Attorney General (VA), Arlington County director, 1993;
Republican National Committee; Sustaining Member, approximately 1995 - present; Volunteer, Republican National Convention, 1996, 2000; and
Republican Party of Virginia, Delegate, Convention, 1993, 1997.

In addition, I have served as an unpaid volunteer on numerous federal, state, and local campaigns since 1989.

(c) Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

I have made a number of contributions of $150 or less during the past five years to individual federal, state, and local candidates and campaign organizations, political parties, political action committees, and similar entities. Specific contributions concerning which I have records which aggregated $50 or more are listed on Attachment B. In addition, I attended campaign events on behalf of the Universal Studios Political Action Committee where political contributions were made by that PAC during 2002 and 2003.

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Elected Secretary, Williams College Class of 1989, 1999;
Elected Class Officer, University of Virginia School of Law Class of 1993, 1993;
Named Notes Editor, *Journal of Law & Politics*, University of Virginia School of Law, 1991;
Awarded Honors in History major, Williams College, 1989;
Mead Government Scholar award, Williams College, 1987; and
Spanish Prize, Woodberry Forest School, 1985.

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

Columnist, Williams College *Alumni Review*, Class of 1989 class notes, quarterly, 1999 - present;
Article, University of Virginia School of Law Alumni Review, *"A Front Row Seat at the Impeachment Trial of President Clinton,"* Spring 1999;
Article, Woodberry Forest School Alumni magazine, *"A Front Row Seat at the Impeachment Trial,"* Spring 1999;
Columnist, Williams College magazine, *Parallax*, various articles, 1985 - 1989;
Editor and Writer, *Williams College Record*, various articles, 1985 - 1988;
Editor and Writer, Woodberry Forest School newspaper, *The Oracle*, various articles and editorials, 1982 - 1985; and
Writer, Saint Christopher's School newspaper, *The Pine Needle*, various articles, 1979 - 1982.

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

None

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

While I cannot specifically describe the President's decision-making which led to my nomination, I believe that my experience with difficult public policy issues and particularly those related to law enforcement and terrorism, as well my experience in developing public policy among numerous stakeholders, may have been positive factors in his evaluation of my credentials.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

While serving as General Counsel for U.S. Senator Don Nickles in his Assistant Majority (Republican) Leader's Office, I worked extensively on matters related to law enforcement, terrorism, and immigration, including development of legislation and oversight of relevant agencies. In particular, I played a significant staff role in Congressional consideration of anti-terrorism legislation related to the Department of Justice and other federal agencies, of law enforcement and terrorism budgets and appropriations, immigration legislation, and other crime and law enforcement issues. In addition, as Counsel to the U.S. Senate Committee on the Judiciary, I served as Unit Head for the Crime and Drug Policy Unit, which handled oversight of the Department of Justice and developed legislation and policy for all law enforcement, terrorism, and criminal matters. In both of these capacities, I worked with numerous Members of Congress, Congressional Committees, executive branch officials, businesses and business associations, labor unions, consumer groups, and thinktanks. In addition, in my recent role as Senior Legislative Counsel at Vivendi Universal Entertainment, I have enhanced my relationships with stakeholders in relevant Congressional offices and committees. Importantly, I have significant experience in balancing the appropriate needs of law enforcement and commerce with privacy and civil liberties considerations. Lastly, my experience

working in and with the Congress has provided me with insight as to the appropriate role of the Congress in evaluating executive branch activities and in operating in an ethical manner as a public servant.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

I resigned my position with Vivendi Universal Entertainment on April 25, 2003 and joined the Department of Homeland Security on April 28, 2003 as a senior advisor to the Under Secretary for Border and Transportation Security.

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

No

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

No

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

Yes

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

My most recent employers, Vivendi Universal and Vivendi Universal Entertainment, have an interest in enforcement in federal laws related to the illegal importation and/or distribution of copyrighted works which may be enforced by components of the Border and Transportation Security Directorate, specifically the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement. My former employers' interests normally align with those of numerous other companies and industries and with the government's interest in protecting legitimate businesses from illegal competition.

In addition, Vivendi Universal Entertainment, which owns and operates facilities which are potential targets of terrorist attacks, including theme parks, has a common interest with the Department of Homeland Security in ascertaining and minimizing the risk of such attacks.

Lastly, my wife is employed by Intel Corporation which has an interest in several public policy issues related to legal immigration which may be handled by components of the Department of Homeland Security.

I have obtained opinions and direction from the designated agency ethics official concerning these matters, including my ethics agreement letter dated April 15, 2003, and I will continue to do so in the event of other possible conflicts of interest.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

While employed at Vivendi Universal and Vivendi Universal Entertainment in 2002 and 2003, I was engaged in directly and indirectly influencing the passage, defeat, or modification of legislation and in affecting the administration and execution of numerous laws and public policies. Specific areas of legislation and regulation with which I was involved included copyright, technology, crime and law enforcement, and telecommunications. In addition, while an attorney at Baker & Hostetler from 1993 through 1995, I was engaged in directly and indirectly influencing the passage, defeat, or modification of legislation and in affecting the administration and execution of laws and public policies, particularly but not exclusively as a special counsel to the House Committee on Oversight working on public policy matters related to campaign finance and election reform.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

I was a co-plaintiff in a civil action, *Bailey et al v. Klein*, in Arlington (VA) General District Court in May of 1998 seeking return of a lease security deposit. The co-plaintiffs and I recovered a judgment in the case.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

None

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

C. Stewart Verdery, Jr. **AFFIDAVIT**

C. Stewart Verdery being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

C. Stewart Verdery

Subscribed and sworn before me this 2nd day of May, 20 03

Notary Public

NOTARY PUBLIC
DISTRICT OF COLUMBIA

My Commission Expires April 14, 2004

ATTACHMENT A

United States Senate

COMMITTEE ON
GOVERNMENTAL AFFAIRS
ROOM SD-340
(202) 224-4751
WASHINGTON, D.C. 20510-6250

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

TITLE	EMPLOYER	LOCATION	DATES OF EMPLOYMENT
Senior Advisor	U.S. Department of Homeland Security Border and Transportation Security Directorate	Washington, D.C.	2003 - present
Senior Legislative Counsel	Vivendi Universal Entertainment	Washington, D.C.	2003
Senior Legislative Counsel	Vivendi Universal	Washington, D.C.	2002
General Counsel	U.S. Senate, Office of the Assistant Republican (Majority) Leader	Washington, D.C.	1998 - 2002
Counsel	U.S. Senate, Committee on the Judiciary	Washington, D.C.	1998
Legislative Counsel	U.S. Senate, Committee on Rules and Administration	Washington, D.C.	1996 - 1998
Legislative Counsel	U.S. Senate, Office of Senator John Warner	Washington, D.C.	1996
Attorney	Baker & Hostetler	Washington, D.C.	1993 - 1995
Student Representative	West Publishing	Charlottesville, VA	1991 - 1993
Summer Associate	Baker & Hostetler	Washington, D.C.	1992
Summer Associate	Womble, Carlyle, Sandridge & Rice	Charlotte, N.C.	1992
Summer Associate	Hunton & Williams	Raleigh, N.C.	1991
Research Assistant	University of Virginia School of Law	Charlottesville, VA	1991
Media Analyst	Media Research Center	Alexandria, VA	1989 - 1990
None (office work)	Sydnor Hydrodynamics	Richmond, VA	1989

ATTACHMENT B

United States Senate

COMMITTEE ON GOVERNMENTAL AFFAIRS
ROOM SD-340
(202) 224-4751
WASHINGTON, D.C. 20510-6250

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

13(c) **Political affiliations and activities:** Itemize all political contributions to any individual, campaign organization, political party, political action committee, or similar entity of $50 or more for the past 5 years.

Recipient	Office(s) Sought (if applicable)	Amount	Date(s)
George Allen	U.S. Senate (VA)	$150.00	October 16, 2000
	"	$ 50.00	July 1, 2000
	"	$ 15.00	December 3, 1999
	"	$ 25.00	June 28, 1999
George W. Bush	President	$ 25.00	July 18, 2000
	"	$100.00	May 21, 1999
Bush-Cheney Recount Fund	n.a.	$ 50.00	December 4, 2000
Ben Cline	Virginia Delegate	$100.00	October 1, 2002
Tim Hugo	Virginia Delegate	$100.00	August 14, 2002
Jerry Kilgore	Virginia Governor	$ 50.00	October 14, 2001
	"	$ 50.00	June 20, 2001
	"	$ 50.00	February 12, 2001
Mike Lane	Arlington (VA) County Board	$ 20.00	January 17, 2000
	"	$ 25.00	October 10, 1999
	"	$ 25.00	March 29, 1999
Neil Quinter	Maryland Delegate	$150.00	August 14, 2002
Republican National Committee	n.a	$ 25.00	June 23, 2002
	"	$ 25.00	May 19, 2002
	"	$ 25.00	July 18, 2001
	"	$ 25.00	July 18, 2000
	"	$ 25.00	January 17, 2000
	"	$ 25.00	December 7, 1998
Republican National Lawyers Association	n.a	$ 50.00	May 18, 2001
	"	$ 50.00	May 17, 2000
	"	$ 25.00	May 17, 1999
	"	$ 25.00	April 20, 1998
Paul Ryan	U.S. House of Representatives (WI)	$ 50.00	August 6, 1998
Bobby Sturgell	Maryland State Senate	$ 50.00	September 27, 1998
	"	$ 50.00	June 24, 1998
Scott Tate	U.S. House of Representatives (VA)	$ 25.00	October 29, 2002
	Arlington (VA) County Board	$ 25.00	August 11, 2000

U.S. Senate Committee on Governmental Affairs
Pre-hearing Questionnaire for the
Nomination of C. Stewart Verdery, Jr. to be
Assistant Secretary for Policy and Planning, Border and Transportation Security Directorate
Department of Homeland Security

I. Nomination Process and Conflicts of Interest

1. **Why do you believe the President nominated you to serve as an Assistant Secretary of Homeland Security?**

   While I cannot specifically describe the President's decision-making which led to my nomination, I believe that my experience with difficult public policy issues and particularly those related to law enforcement and terrorism, as well my experience in developing public policy among numerous stakeholders, may have been positive factors in his evaluation of my credentials.

2. **Were any conditions, expressed or implied, attached to your nomination? If so, please explain.**

   No.

3. **What specific background and experience affirmatively qualifies you to be an Assistant Secretary of Homeland Security?**

   While serving as General Counsel for U.S. Senator Don Nickles in his Assistant Majority (Republican) Leader's Office, I worked extensively on matters related to law enforcement, terrorism, and immigration, including development of legislation and oversight of relevant agencies. In particular, I played a significant staff role in Congressional consideration of anti-terrorism legislation related to the Department of Justice and other federal agencies, of law enforcement and terrorism budgets and appropriations, immigration legislation, and other crime and law enforcement issues. In addition, as Counsel to the U.S. Senate Committee on the Judiciary, I served as Unit Head for the Crime and Drug Policy Unit, which handled oversight of the Department of Justice and developed legislation and policy for all law enforcement, terrorism, and criminal matters. In both of these capacities, I worked with numerous Members of Congress, Congressional Committees, executive branch officials, businesses and business associations, labor unions, consumer groups, and thinktanks. In addition, in my recent role as Senior Legislative Counsel at Vivendi Universal Entertainment, I have enhanced my relationships with stakeholders in relevant Congressional offices and committees. Importantly, I have significant experience in balancing the appropriate needs of law enforcement and commerce with privacy and civil liberties considerations. Lastly, my experience working in and with the Congress has provided me with insight as to the

appropriate role of the Congress in evaluating executive branch activities and in operating in an ethical manner as a public servant.

4. **Have you made any commitments with respect to the policies and principles you will attempt to implement as an Assistant Secretary? If so, what are they and to whom have the commitments been made?**

No.

5. **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.**

My most recent employers, Vivendi Universal and Vivendi Universal Entertainment, have an interest in enforcement of federal laws related to the illegal importation and/or distribution of copyrighted works which may be enforced by components of the Border and Transportation Security Directorate, specifically the Bureau of Customs and Border Protection and the Bureau of Immigration and Customs Enforcement. My former employers' interests normally align with those of numerous other companies and industries and with the government's interest in protecting legitimate businesses from illegal competition.

In addition, Vivendi Universal Entertainment, which owns and operates facilities which are potential targets of terrorist attacks, including theme parks, has a common interest with the Department of Homeland Security in ascertaining and minimizing the risk of such attacks.

Lastly, my wife is employed by Intel Corporation which has an interest in several public policy issues related to legal immigration which may be handled by components of the Department of Homeland Security.

I have obtained opinions and direction from the designated agency ethics official concerning these matters, including my ethics agreement letter dated April 15, 2003, and do not believe there any particular issues from which I may have to recuse myself because of a conflict of interest or the appearance of a conflict of interest. I will continue to obtain opinions and direction from the designated agency ethics officer in the event of other possible conflicts of interest.

II. Role and Responsibilities of an Assistant Secretary of Homeland Security

1. **How do you view the role of Assistant Secretary of Homeland Security? Please describe the role of Assistant Secretary for Border and Transportation Policy. If**

confirmed, what will be your specific duties and responsibilities?

My duties and responsibilities will include developing, reviewing, and overseeing policies implemented by the Border and Transportation Directorate ("BTS") at the Department of Homeland Security ("DHS"). These duties will include advising the Under Secretary for Border and Transportation Security. More specifically, if confirmed, I will oversee an office of professionals that has been tasked to consider the merits, costs, and benefits of policies developed and reviewed within the jurisdiction of BTS and its component agencies. The experienced staff at Office of Policy and Planning includes persons who have worked at the White House Office of Homeland Security, in Congress, and at many of the component DHS agencies.

A key component of this development and oversight process will be to ascertain congressional intent and priorities to implement those across the BTS Directorate. Among the substantive issues within the jurisdiction of the BTS Directorate are: immigration and customs, transportation security, federal law enforcement training, and domestic preparedness.

2. **What is the reporting structure anticipated for the position of Assistant Secretary for Border and Transportation Policy as it relates to the Border and Transportation Security Directorate and DHS as a whole?**

I will report directly to the Under Secretary for Border and Transportation Security ("BTS") at the Department of Homeland Security ("DHS"). The Under Secretary, in turn, reports to the Secretary and Deputy Secretary of DHS. I anticipate working closely with the Assistant Secretary for Immigration and Customs Enforcement ("ICE"), the Commissioner of Customs and Border Protection ("CBP"), the Administrator of the Transportation Security Administration ("TSA"), the Director of the Federal Law Enforcement Training Center ("FLETC"), and the Director of the Office of Domestic Preparedness ("ODP").

3. **How do you plan to communicate to the staff at DHS on efforts to address relevant issues?**

I believe communication is the key to an effective organization, and it will be a cornerstone of the policy development process within the Border and Transportation Security Directorate ("BTS"). Part of my job, if confirmed, will be to act as a liaison to both the components of BTS and to the Department of Homeland Security as a whole. Policy development will be an interactive process with BTS stakeholders, including: the offices of the Secretary and Deputy Secretary, which will be setting department-wide policies; the policy offices at the Bureau of Immigration and Customs Enforcement ("ICE"), the Bureau of Customs and Border Protection ("CBP"), the Transportation Security Administration ("TSA"), the Federal Law Enforcement Training Center

("FLETC"), and the Office of Domestic Preparedness ("ODP"). The operations offices and desks for each of the BTS component agencies will also shape and influence the policies BTS may wish to implement. Additionally, I expect the offices of legislative affairs, public affairs, general counsel, civil liberties, privacy, and inspector general offices at the Department of Homeland Security each to play a significant role in the development and communications of BTS policies.

4. **What do you believe are the most important responsibilities of the position to which you are nominated and what challenges do you expect to face?**

The most important responsibilities of the Assistant Secretary position include providing analysis and counsel to the Under Secretary for Border and Transportation Security ("BTS") in the substantive policy areas within his jurisdiction. Many of the policy issues facing BTS are crucial to the security of our country, such as development of an effective system to track the entry and exit of foreign visitors into our country and the improvement of systems that deter and detect importation of weapons of mass destruction. However, each such policy project must be considered in light of costs to the taxpayer, impact on legitimate commerce and travel, and the effect on individuals' civil liberties.

In addition to the substantive policy challenges, the first Assistant Secretary for Policy and Planning will face logistical challenges inherent to the creation of any new entity. The policy and planning staff have come or will come from BTS component agencies, other areas of the government, or the private sector, and will need encouragement and direction to unite as a policy team. Moreover, relationships within BTS and its component agencies are still evolving as they attempt to unite as a Directorate team.

5. **What objectives would you like to achieve in your tenure as Assistant Secretary? Why do you believe these objectives are important to DHS and to the government?**

My objectives as Assistant Secretary include the following:

- Assist the Under Secretary for Border and Transportation Security ("BTS") and the rest of the Department of Homeland Security ("DHS") leadership to review, develop, implement, and improve upon public policy initiatives designed to help fulfill the BTS Mission Statement: "To protect national security and promote public safety by enforcing our nation's immigration and customs laws, providing a strong defense against all external threats, including international terrorists, and other threats such as illegal drugs and other contraband, while preserving the free flow of legitimate trade and travel."
- Ensure that stakeholders within DHS, in other governmental agencies, in Congress, and in private industry have an opportunity to have their views and needs considered as part of the policy development process.
- Consider the effects of any proposed policy on civil liberties of American citizens and

other constitutionally-protected classes of persons, on the free flow of commerce and travel, and on taxpayers who must bear the cost of any programs implemented by BTS.

- Make the BTS Office of Policy and Planning the premiere location for development of sound and effective policies related to border and transportation security in the United States.

These objectives are at the core of the mission of the DHS as directed by Congress, and as envisioned by President Bush, Secretary of Homeland Security Tom Ridge, Under Secretary for Border and Transportation Security Asa Hutchinson, and the rest of the DHS leadership.

III. Policy Questions

1. **Current federal regulation exempts certain persons, such as U.S. citizens, from presenting a passport when arriving into the U.S. from most countries in the Western hemisphere. Inspectors can allow a person to enter based upon only an oral claim of citizenship. Inspectors intercept thousands of aliens each year who falsely claim to be a U.S. citizen in order to unlawfully enter the United States.**

   If confirmed, what policy changes, if any, would you recommend that would mitigate an alien's ability to successfully enter the United States by falsely claiming to be a U.S. citizen?

   It is my understanding that one of the most important priorities of the Department of Homeland Security ("DHS") is to increase vigilance over those claiming to be U.S. citizens without unnecessarily impeding the entry of legitimate U.S. citizens or their cargo into the country. As DHS implements the U.S. Visitor and Immigrant Status Indication Technology system ("US-VISIT"), more fully described in my answers to questions 4 and 35, a key component of the system will be to review documents by those claiming to be U.S. citizens more carefully. If confirmed, I look forward to reviewing current legal requirements for the entry of U.S. citizens into the United States via a land border, including the presentation of travel documents or other identification.

2. **On May 13, 2003, Robert Cramer from the General Accounting Office testified at a Congressional hearing that undercover agents testing security measures at the country's airports and border crossings were repeatedly allowed to enter the country after showing customs inspectors counterfeit driver's licenses and birth certificates. Some were allowed to enter without showing any documentation. The agents were always successful at entering the country, according to the testimony.**

   Do you believe the GAO findings are accurate?

How would you recommend that the Directorate respond to the weaknesses and vulnerabilities exposed by the GAO?

The reorganization of our border resources means that, for the first time in our country's history, all agencies of the United States Government with significant border responsibilities are unified, under the Bureau of Customs and Border Enforcement ("CBP"). The Border and Transportation Security Directorate ("BTS") and specifically CBP are now able to take a holistic view of our borders and to devise a comprehensive strategy covering the over 300 ports of entry and the areas between them. The goal is to create a system that integrates people, processes, and technologies to combat the multitude of problems inherent in enforcing our customs and immigration laws.

One such issue that we are facing is reducing the distribution of fraudulent documents that allow access to the U.S. As mentioned in my answer to question 1, current federal law does not require U.S. citizens to present any travel documents or other identification when entering the United States via a land border. Despite this fact, I am aware of several means being employed by the Department of Homeland Security ("DHS"), and particularly by CBP to reduce this vulnerability. First, dedicated inspectors are detecting and stopping individuals every day who are attempting to enter the U.S. with false and/or fraudulent documents. Second, DHS is working with private sector representatives who are developing technology to confirm that a driver's license has been validly issued to the person presenting a state-issued driver's license as a form of identification. Third, enforcement officials, including the U.S. Secret Service, are working actively with state and local law enforcement officials and other federal entities, including the Federal Bureau of Investigation and the Federal Trade Commission, on issues of identity theft, which often includes the creation and use of false identity documents. DHS will continue these efforts and continue to work with the Department of Justice and Congress to ensure that there are appropriate penalties for these crimes.

I look forward to reviewing the General Accounting Office testimony concerning counterfeit documents, and, if confirmed, working to examine ways we can shape policy to address weaknesses and vulnerabilities in document fraud and abuse.

3. **The Immigration Interior Enforcement Strategy, issued by INS in January 1999, was intended to focus limited enforcement resources on areas that would have the greatest impact on reducing the overall population of illegal residents in the United States. In priority order, the strategy's goals were to: (1) identify and remove criminal aliens, (2) deter, dismantle, and diminish smuggling or trafficking of aliens, (3) respond to community reports and complaints about illegal immigration, (4) minimize immigration benefit fraud and other document abuse, and (5) block and remove employers' access to undocumented workers.**

Is it your view that these remain the right priorities in the right order? Are any

immigration-related interior enforcement policy changes needed in light of the events of September 11? If so, please explain.

It is clear following September 11, 2001, that the immigration priorities of the country must focus on preventing terrorists and others who would do harm to the nation from entering into the United States of terrorists and to remove those who have already entered who might have similar objectives. The Homeland Security Act, the Enhanced Border Security and Visa Entry Reform Act, and other legislation enacted in the aftermath of September 11, 2001 reflect this shift in priority.

Of course, the other parts of an overall Department of Homeland Security ("DHS") strategy on immigration enforcement, such as those objectives mentioned in the question, remain important. The shift of Immigration and Naturalization Service ("INS") responsibilities into three new bureaus (Customs and Border Protection ("CBP"), Immigration and Customs Enforcement ("ICE"), and Citizenship and Immigration Services ("BCIS")) reflects a reorganization and more efficient focus on the means by which our nation's new immigration priorities will be met, while continuing efforts to fulfill traditional immigration functions.

CBP's principal focus will be to keep dangerous persons and items from entering the country. ICE's principal focus will be to investigate those who would break our immigration and customs laws. BCIS's mission, to provide services to those who wish to enter the country legally, has been placed within the DHS Deputy Secretary's office to ensure that proper focus and attention are paid to that mission, as opposed to the enforcement or inspections functions. Of course, close coordination between the three new entities will be required to ensure the consistent application of our immigration laws and regulations. I look forward to working with this Committee and other Committees in Congress which have a keen interest in our important immigration enforcement strategy.

4. **Congress appropriated $380 million for the entry/exit system in fiscal year 2003 and the Department of Homeland Security (DHS) requested $480 million for the system in fiscal year 2004. DHS will continue to confront many risks associated with acquisition and implementation of the entry/exit system, including those relating to system design, the documents required of the traveling public, staff recruitment and training, and physical infrastructure.**

What are the top five risks facing the Bureau as it begins acquisition and implementation of this system? What are the Bureau's strategies for addressing each risk? Do any policy modifications need to be made to help assure the success of the entry/exit system?

Development of an effective entry/exit system is a top priority of the Department of Homeland Security ("DHS") and particularly the Border and Transportation Security

Directorate ("BTS"). In a major address on April 29, Secretary of Homeland Security Tom Ridge announced that the system is being named US-VISIT ("U.S. Visitor and Immigrant Status Indication Technology") and that the program is designed to make entering the U.S. easier for legitimate tourists, students and business travelers, while making it more difficult to enter the U.S. illegally through the implementation of biometrically authenticated documents. Under Secretary for Border and Transportation Security ("BTS") Asa Hutchinson addressed this same topic in a speech on May 19, providing additional details on the program.

The system will draw heavily on developing technologies and scientific capabilities to utilize biometric identifiers and build an electronic check in/check out system for people coming to the U.S. to work, study or visit. The US-VISIT system will replace the currently existing National Security Entry-Exit Registration System ("NSEERS") program, integrate the Student and Exchange Visitor Information System ("SEVIS") program, and encompass the Congressional requirements of the automated entry/exit system.

The US-VISIT system is a critical new border security and enforcement tool that will capture point of entry and exit information on visitors. The system is expected to be in its first phase of operation at international air and sea ports of entry by the end of 2003, and Secretary Ridge has indicated that this first phase will include a biometric capability in advance of the Congressional mandate which requires a biometric in travel documents by October 26, 2004. In this first phase, the US-VISIT system will have the capability by the end of the year to capture fingerprints and photographs from foreign visitors. The system will be capable of comparing those biometric identifiers against databases and watchlists to determine whether a foreign visitor should be denied entry to the country, be detained, or be the subject of additional screening. The system will be also be capable of reviewing entry and immigration benefit information to determine whether foreign visitors exiting the country have overstayed or otherwise violated their visa requirements.

In line with Secretary Ridge's recent comments, BTS has recently announced a major restructuring of how the US-VISIT program will be managed within BTS. An executive director with significant experience in developing complex information programs has been detailed to BTS, reporting directly to Under Secretary Hutchinson. The BTS Office of Policy and Planning, which I would head, if confirmed, is currently reviewing all major policy decisions which need to be resolved, and will be a key element of DHS's and BTS's cooperation with the program office and interaction with other stakeholders, including other parts of the U.S. government, foreign governments, and business and travel concerns. One such policy issue is with which databases the US-VISIT program will be capable of interacting.

I know that Secretary Ridge and Under Secretary Hutchinson are committed to moving this project forward. A key part of that process is to comply with the legislative

requirements that we obtain approvals of certain spending decisions. BTS is working aggressively to establish a partnership with the General Accounting Office to meet the requirements of the FY03 Omnibus Appropriations Act and the Emergency War Supplemental Act.

Some of the risks facing the program include:

- Construction of physical facilities to implement the "exit" part of the system, especially at major land border crossings currently lacking such facilities and where environmental and space limitations may be a concern;
- The length of time it will take foreign countries to begin issuing travel documents such as passports and visas with biometric capabilities;
- The fact that, because travel documents are often valid for a long time span, documents issued recently and before a switch to biometric capabilities may require the US-VISIT system to take biometric information such as fingerprints from individual travelers;
- Development of robust data evaluation systems which can review travel documents and other identifying information, including biometric information, and compare it with information on persons who should be denied entry or subjected to enhanced security reviews, without hindering legitimate flow of commerce and travel - these systems will be garnered through use of a contractor to be selected;
- Budgetary considerations.

I recognize the need for an effective entry-exit system is also a top priority of the Congress, and if confirmed, look forward to working with Congress on the US-VISIT program.

5. **To ensure the enforcement of immigration laws, the Directorate of Border and Transportation Security has absorbed agents and investigators from the Immigration and Naturalization Service, the U.S. Customs Service, and the Transportation Security Administration in addition to other enforcement personnel.**

In developing policy for enforcing these laws, what steps will you take to ensure that the knowledge these agents and investigators bring to BTS will be maximized and incorporated in your office's policies?

As part of the Department of Homeland Security ("DHS") and Border and Transportation Security Directorate ("BTS") reorganization, the investigative agency Bureau of Immigration and Customs Enforcement ("ICE") has merged seven legacy components into one bureau: immigration investigations, immigration intelligence, and immigration detention and removal from the former Immigration and Naturalization Service ("INS"), customs investigations, customs intelligence, and customs air and marine interdiction from the former U.S. Customs Service, and the Federal Protective Service. Moreover, the new Bureau of Customs and Border Protection ("CBP") merged the inspection functions formally performed by the former U.S. Customs, INS, the Border Patrol, and the Animal

and Plant Health Inspection Service. Lastly, the Transportation Security Administration, along with its investigators, was moved to BTS.

The new ICE organization announced its plan to reorganize its various components into single, unitary structures on May 16, and I understand that the new CBP organization is developing a similar transition plan. If confirmed, I would seek to ensure that as part of those reorganizations, each entity will seek to solicit the input and maximize the talents of its agents and investigators, no matter in which agency they were formerly housed. The BTS Office of Policy and Planning will include personnel representing each of the legacy agencies to provide insight as to how to best maximize their talents, experience and skills.

6. **A central issue in the rank and file Border Patrol and Customs officer will be the reconciliation of the highly disparate pay and benefit systems with which they are compensated. While seemingly a very narrow issue, these officers are the front line of border enforcement and essential to the protection of the nation. Resolution of this issue seems essential to ensuring that the workforce is melded into a single high performing organization.**

How will you approach the resolution of these pay and benefit issues?

Section 881 of the Homeland Security Act requires that the Department of Homeland Security ("DHS") enact a plan to address pay and benefit disparities. The legislation also authorized DHS to design a human resource management system. I understand that as part of that system, the Secretary of Homeland Security has announced a department-wide review of all pay and benefit systems which will be managed by DHS Under Secretary for Management Janet Hale and her staff. This review will analyze the Bureau of Border and Customs Enforcement ("CBP") pay and benefit systems, among others. I understand that the Border and Transportation Security Directorate ("BTS") and CBP are participating in this process to ensure that the CBP workforce is a well-motivated and well-organized organization, and, if confirmed, I would also participate in this review.

7. **Implementation and transformation of the Department of Homeland Security (DHS) is an enormous responsibility that will require its leadership to confront a number of daunting challenges. To ensure a successful transformation, it is essential that the Department and its components implement results-oriented practices, including strategic planning to establish results-oriented goals and measures.**

How do you think your office can assist the Department in this process? What are Border and Transportation Security Policy's top priorities and performance goals?

In order for the Department of Homeland Security ("DHS") and the Border and Transportation Security Directorate ("BTS") to succeed, BTS is developing and will

implement a general strategic plan of policy and operations. This plan will be developed by the strategic planning component of the BTS Office of Policy and Planning, and its implementation will be driven by the other policy office components.

A first step in the development of the strategic plan has been to adopt the following mission statement: "To protect national security and promote public safety by enforcing our nation's immigration and customs laws, providing a effective defense against all external threats, including international terrorists, and other threats such as illegal drugs and other contraband, while preserving the free flow of legitimate trade and travel." Beyond that, as the strategic plan is being developed, Under Secretary for Border and Transportation Security Asa Hutchinson has identified the following first year priorities, which are listed in no particular order:

- To distribute first responder grants to the states in a coordinated and timely manner consistent with the President's National Strategy for Homeland Security;
- To establish within BTS an Office of International Enforcement that oversees the visa issuance program in countries around the world;
- To establish a clear plan for implementation of a nationwide entry-exit system (US-VISIT);
- To work with our Chief Information Officer to develop BTS information architecture that allows for rapid flow of critical information between BTS agencies and sister law enforcement partners;
- To consolidate and reorganize the management structures of the bureaus of Immigration and Customs Enforcement ("ICE") and Customs and Border Protection ("CBP");
- To harmonize the component agencies of BTS in a cohesive manner; and
- To communicate effectively and forthrightly with Congress and the American public as to the operations and policies of BTS.

8. **Over the years the Customs Service has recognized the natural tension between "enforcement" and "facilitation" when processing cargo and passengers entering the United States. Striking a balance between the two can be complicated by the fact that the cargo and passenger transportation networks are predominantly controlled by the private sector.**

What views and options will you bring to the Department of Homeland Security to help mitigate this tension? Recognizing that it is a difficult proposition, how best can we gain reasonable assurance that laws will be enforced without unduly clogging supply chains and slowing the flow of passenger traffic?

Given the fact that the cargo and passenger transportation networks are predominantly controlled by the private sector, how can the government and private sector work in a partnership to ensure that security becomes a natural and

reinforced part of the supply chain in a cost-effective and operationally efficient manner?

Although the goals of enforcement and facilitation may at first glance seem to be in conflict, I believe that we can, and must, improve security at the borders while simultaneously improving the facilitation of legitimate cargo and passengers. Good examples would be a number of programs that the Department of Homeland Security ("DHS") and the Bureau of Customs and Border Protection ("CBP"), specifically, have implemented and are planning that can achieve both goals by implementing "smart border" initiatives that make effective use of risk management principles. These initiatives enable us both to add security and facilitate the flow of legitimate cargo and passenger traffic by focusing resources strategically. Thus, high-risk cargo and passengers will receive substantial attention, while we facilitate the passage of low-risk cargo and passengers through the border ports of entry. Some of the "smart border" initiatives already being implemented include the Container Security Initiative ("CSI"), the Customs-Trade Partnership Against Terrorism ("C-TPAT"), the Free and Secure Trade ("FAST") program, and the NEXUS program. Each of these programs blend information technology, applied technology, and personnel resources to create a more efficient and effective border screening capability and also extend our zone of security beyond our borders with cooperation with foreign governments and the private sector. If confirmed, I would work to expand the application of these principles into other arenas within the Border and Transportation Security Directorate to meet the seemingly conflicting goals of enforcement and facilitation.

I also am aware of the many ways that the government and private businesses are working together to improve and institutionalize supply chain security programs. More and more private companies are developing very sophisticated supply chain security programs, which have significant collateral benefits -- reduced theft, greater inventory control, and potentially lower insurance rates. As mentioned above, the government has partnered with industry to increase supply chain security, the best example of which is C-TPAT. Under C-TPAT, CBP provides incentives for companies to substantially increase the security of their supply chains in return for benefits, such as expedited processing at the ports of entry, reduced examination rates, and less onerous audit procedures.

If confirmed, I will work to develop additional mechanisms whereby the private sector can partner effectively with government to ensure enhanced security and productivity. Furthermore, I would encourage close coordination between the BTS Office of Policy and Planning and BTS component agencies with the DHS Private Sector Liaison.

9. **A class action lawsuit had been filed in the late 1990s against Customs, alleging that it was unfairly profiling African American women in airports. In March 2000, the GAO published a report finding that passengers of certain race and gender categories were consistently more likely to be strip searched but were less likely to**

be found carrying contraband. The GAO recommended that Customs could improve targeting efficiency by analyzing the characteristics of passengers searched and the results of those searches.

What is your opinion of using "profiling" to select candidates for intrusive personal searches?

What kinds of policies and processes do you see as important for oversight of such searches so that the process is fair and efficient?

The President has made it clear that "racial profiling" is not to be tolerated in this administration and has spoken out for several years on this issue. Effective law enforcement requires attention to facts, not stereotypes. It is my understanding that the legacy U.S. Customs Service, now part of the Bureau of Customs and Border Protection ("CBP"), has implemented many of the recommendations from an independent commission in 1999, including extensive training for its employees and agents designed to minimize the likelihood of "racial profiling", such as courses on personal search techniques and respecting cultural differences. These policies, and others developed in the BTS Office of Policy and Planning, should differentiate between properly identifying suspects based on specific factual allegations and inappropriate "profiling" based on assumptions about the likely activities of certain individuals based on general characteristics.

10. **INS' National Border Patrol Strategy - issued in 1994 - called for allocating Border Patrol agents and technology in a four-phased approach, starting first with the sectors that had the highest levels of illegal alien apprehensions, and moving to areas with lower levels of illegal immigration activity. GAO reports on the implementation and effects of the strategy found that (1) after 7 years of implementing the southwest border strategy, INS was possibly 10 years away from fully implementing it; (2) there was no clear indication that overall illegal entry into the United States along the southwest border had declined; (3) illegal alien apprehensions shifted from areas that had received additional enforcement resources to more remote areas where the Border Patrol could more easily detect and apprehend aliens entering illegally; and (4) this shift has also come at a cost to human life as a sizable number of aliens still attempted to enter through harsh environments.**

Do you intend to keep the National Border Patrol Strategy that INS has attempted to implement over the past 9 years?

What changes would you consider making to the strategy to increase its effectiveness and reduce migrant deaths?

It is my understanding that, while the National Border Patrol Strategy, issued by Immigration and Naturalization Service in 1994, is still a baseline strategy for combating illegal immigration, the strategy has been modified and expanded where new developments and trends have warranted. One important change, discussed below, has been a new emphasis on the northern border. With the creation of the Department of Homeland Security, the Border Patrol has been merged into the new Bureau of Customs and Border Protection ("CBP"), part of the Border and Transportation Security Directorate ("BTS"). While illegal alien apprehension certainly is still a major problem, it appears that the strategy has had some successes in disrupting major alien smuggling corridors.

The Border Patrol's National Strategic Plan has been the basis for the deployment of personnel and resources for increasing control of our Nation's borders between ports of entry. It uses a systematic four-phased method to strengthen control of the border with a national focus of "prevention through deterrence." One of its critical concepts was to strengthen the immediate border by the use of physical and technological barriers, such as high intensity lighting and multi-tier fencing systems, underground sensors and remote cameras.

I understand that, following the attacks of September 11, both the Border Patrol and the Congress responded with increased emphasis on the northern border. Through a combination of redeployments and additional authorizations, the number of agents has been increased by 70%, with additional agents authorized in the recent emergency wartime supplemental appropriations act. Emphasis has been placed on liaison and intelligence sharing with other law enforcement agencies and the Canadian government. Greater efforts have been applied to the strategic deployment of enforcement-related technology to act as a force multiplier.

I also am familiar with the Border Safety Initiative ("BSI"), implemented in 1998 in an attempt to reduce injuries and deaths in the southwest border region, especially in more remote areas with hazardous terrain and extreme conditions. The BSI seeks to inform and educate potential migrants on the hazards of crossing the border illegally, respond to those who are in a life-threatening situation with expanded search and rescue capabilities, identify deceased migrants for family notification, and collect related data for reporting and analysis.

I look forward, if confirmed, to working with this committee and other interested parties in Congress to review existing strategies and obtain the continued support for personnel, resources and technology to allow for future success in border security. One aspect of success should be, especially in light of the tragedy in Texas in May, reduction in the number of deaths suffered by those attempting to enter our country.

11. What are the five most important policy issues you will face in border and transportation security? How would you prioritize those issues?

In my view, the five most important policy issues facing the Department of Homeland Security ("DHS") and the Border and Transportation Security Directorate ("BTS") listed below are each so important that it would be difficult to rank among them:

- Overseeing the visa issuance process around the globe via a new office to be established within BTS called the Office of International Enforcement;
- Implementing the nationwide entry-exit system now called US-VISIT;
- Distributing first responder grants to the states in a coordinated and timely manner consistent with the President's National Strategy for Homeland Security;
- Continuing development and deployment of business-friendly initiatives that can detect potentially harmful cargo or individuals while facilitating passage of the overwhelming percentage of legitimate cargo and travelers;
- Capitalizing on the investments already made in aviation safety, and working with the Coast Guard and the Information Analysis and Infrastructure Protection Directorate to enhance security in other primary transportation systems such as rail, maritime, transit and highways.

12. What are the most serious vulnerabilities the U.S. has at this time in transportation security? In border security? How would you address each of those vulnerabilities?

While the United States has made great progress in reducing a number of vulnerabilities, most notably in the aviation arena, clearly there is much more to be done. I understand that the Secretary of Homeland Security has outlined his view that we need to identify significant sectors of our economy and infrastructure, then review the vulnerabilities that the threat of terrorism poses for each sector, then analyze the ability we have to minimize those vulnerabilities and the cost of doing so, both from a public and private sector view. Among the areas which the Department of Homeland Security ("DHS") is focusing are: aviation (please see my answer to question 21 for means to address these vulnerabilities) and rail, highway, and mass transit (see my answer to question 18). The grant funds recently distributed by DHS to enhance security in a number of these areas reflect this focus.

13. What do you believe are the five best ways of preventing terrorists from entering the United States? Will any of those preventative measures be your responsibility and how will you improve performance by DHS in those areas? If so, what milestones will you establish to measure progress in these areas and what timetable do you expect to meet for each milestone?

To say that preventing terrorists from entering the country requires many different strategies and programs is an understatement. Obviously our foreign policy endeavors, intelligence capabilities, and military actions can do much to deter, detect, and destroy terrorists and terrorist groups. In terms of specific strategies and programs to prevent

terrorists and their weapons from entering the country, I would identify the following five priority initiatives, in no particular order:

- Establishment of an effective entry/exit system to check foreign visitors attempting to enter the country for possible connections to terrorism and to determine those who have violated the terms of their visa – The Border and Transportation Security Directorate ("BTS") hopes to implement the US-VISIT system along the lines as outlined in my answer to questions 4 and 35 and I look forward, if confirmed, to participating aggressively in the development and deployment of that program;

- Enhancing our review of cargo which could contain weapons of mass destruction or other instruments of terror – BTS and the Bureau of Customs and Border Protection ("CBP") are implementing a host of coordinated programs to increase our capabilities in this area as outlined in my answer to question 8, and if confirmed, I would seek to widen use of these programs and develop similar initiatives which leverage our technology and intelligence capabilities to inspect potentially dangerous and suspect cargo while speeding delivery of legitimate goods to our country;

- Maintaining unmatched investigative resources within the United States and overseas to investigate crimes with connections to terrorists and to follow up on relevant leads – Through its establishment of the Bureau of Immigration and Customs Enforcement ("ICE") and the robust management plan being implemented by Under Secretary for Border and Transportation Security Asa Hutchinson and Acting Assistant Secretary for ICE Michael Garcia, ICE is making great strides in combining the investigative functions formerly conducted by the Immigration and Naturalization Service and the U.S. Customs Service, and if confirmed, I would play an important role in the policy development for ICE;

- Creation of a border which is tougher to penetrate between our ports of entry – This issue is a responsibility now in the hands of CBP and, if confirmed, I would recommend the use of technology to deploy modern sensors and surveillance methods to identify those attempting to cross the border; and

- Integrating and improving our intelligence capabilities to identify terrorists, both before they attempt to enter our borders and as they are being processed at ports of entry – This intelligence capability would entail coordinating the revamped intelligence side of ICE with the efforts of the Information Assessment and Infrastructure Protection Directorate at DHS and other federal agencies.

In each of these areas, I anticipate that the strategic plan being developed for BTS within the Policy and Planning Office will recommend particular benchmarks for analyzing the progress to reaching these goals.

14. **What is your view of the funding and implementation priorities thus far on border and transportation security? How would you describe the relative importance of each and do you have any policy recommendations for changing them?**

The Administration has put forward a budget request for FY04 of $18.1 billion for the Border and Transportation Directorate to meet the border and transportation security needs of the country. Shoring up potential weaknesses in our security systems is a priority, and the FY04 budget attempts to steer funds to the highest of those priorities while creating a more integrated border and transportation security organization.

Among these priorities are:

- Among the additional $1.7B sought for the Bureau of Customs and Border Protection, $18M in funding for the Customs-Trade Partnership Against Terrorism Program, which increases supply chain security and expedites the clearance of international commercial cargo, and an additional $62M for the Container Security Initiative, which puts personnel in key international ports to examine high-risk cargo before it is placed on U.S.-bound ships, money for capital improvements to our information technology systems, including the automated commercial environment system, and $119M for non-intrusive inspection equipment;

- A budget of $2.8B for the Bureau of Immigration and Customs Enforcement ("ICE"), a 16 percent increase over FY02 to allow ICE to conduct investigative activities in important areas such as immigration fraud, smuggling of illegal aliens, international money laundering, export enforcement, forced labor, trade agreement investigations, and smuggling of narcotics, weapons of mass destruction and other contraband;

- $4.8B for the Transportation Security Administration, partially overset by the collection of security fees, $4.3B of which supports direct aviation security activities, including professionalized passenger and baggage screening workforce and additional equipment to prevent weapons and other contraband from being taken aboard aircraft, and also including funds for the federal air marshal service, enhancements to our air cargo and passenger screening methods, and for an important new initiative -- the transportation worker identification credential.

- Funds for the Office for Domestic Preparedness, the Federal Law Enforcement Training Center, and the U.S.-VISIT entry/exit system.

If confirmed, I look forward to reviewing these and other programs, and working with the Congress during the FY04 budget cycle and within the administration on budget priorities for FY05 and beyond.

15. **On January 30, 2003, Secretary Ridge released a Border and Transportation Security Reorganization Plan. This plan created the Bureau of Customs and Border Protection, to "bring together the various border agencies," and the Bureau of**

Immigration and Customs Enforcement (in lieu of the Bureau of Border Security created by the Homeland Security Act (HSA)), "to refocus homeland security inspection and investigation functions." According to the Border Reorganization Fact Sheet released by DHS, the purpose of these changes was to "enable Department leadership to establish coherent policies for the incoming agencies... reduce duplication of efforts and ... ensure improved information-sharing."

Other agencies incorporated into the Directorate of Border and Transportation Security, such as the Transportation Security Administration (TSA) and the Federal Law Enforcement Training Center (FLETC), were not addressed in this reorganization plan. Although the HSA requires TSA to remain a distinct entity for two years, some of its functions must be integrated with those of the new Bureaus. Are you aware of, or do you anticipate, any barriers to effective coordination between TSA and those responsible for border security due to TSA's presence outside these Bureaus?

Do you foresee any need for further reorganization within the Directorate, and if so, what recommendations will you make as Assistant Secretary for additional changes to the structure or operation of the Directorate?

I believe that the Transportation Security Administration ("TSA") will be able to coordinate effectively within the Border and Transportation Directorate ("BTS"), including with those agencies most responsible for border protection. One of the prime objectives of BTS is to coordinate the activities of these agencies and departments to ensure that their goals, policies, and procedures are aligned and complimentary. The BTS strategic plan, which is being developed in the BTS Policy and Planning Office, will be focused in large part on these coordination issues.

As far as further reorganization of BTS, it is my understanding that the Under Secretary for Border and Transportation Security is planning establishment of an Office on International Enforcement which would handle the visa issuance functions delegated to DHS by Section 428 of the Homeland Security Act. Also, the Under Secretary has announced that the regional structure of the Bureau of Immigration and Customs Enforcement ("ICE") and Bureau of Customs and Border Enforcement ("CBP") will be revamped into a robust regional structure designed to have harmonized footprints and a single point of contact for DHS issues in a particular region. In addition, as mentioned in answers to questions 4 and 35 concerning the entry/exit program, the acting executive director of the US-VISIT program office now reports directly to the Under Secretary.

The Committee is also aware of the reorganization of ICE announced on May 16 and effective June 9, which created a headquarters structure for the bureau's operational components and a field structure that provides an integrated chain of command and more streamlined operations. At the headquarters level, the reorganization plan establishes a

structure that supports five distinct operational divisions of ICE: Investigations, Detention & Removal, Intelligence, Air & Marine Interdiction, and Federal Protective Service. The structure integrates the former U.S. Customs Service and former Immigration and Naturalization Service ("INS") investigative functions into a single Investigations division and former Customs and former INS intelligence divisions into a single Intelligence division. At the field level, the plan creates 25 Special Agents in Charge for ICE Investigations, each responsible for directing ICE investigative operations and resources in a specific geographic area of the United States. The field reorganization plan also aligns the reporting structures of Detention and Removal field units with the interim ICE Special Agent in Charge offices.

16. **The Bureau of Immigration and Customs Enforcement is headed by an Assistant Secretary who reports to the Under Secretary for Border and Transportation Security; the Bureau of Customs and Border Protection is headed a Commissioner who also reports directly to the Under Secretary. The Reorganization Plan describes the duties of the Assistant Secretary and the Commissioner to include establishing and administering the policies of their respective Bureaus. What role, if any, will you have as Assistant Secretary for Border and Transportation Policy in establishing or administering policies for these two Bureaus? Will the heads of these Bureaus report to you regarding the establishment or administration of policy? What other responsibilities will you have that relate to the functions of these Bureaus, if any?**

The Assistant Secretary for Policy and Planning for the Border and Transportation Security Directorate ("BTS") reports directly to the Under Secretary for Border and Transportation Security, as do the Assistant Secretary for the Bureau of Immigration and Customs Enforcement and the Commissioner of the Bureau of Customs and Border Protection. In addition, the Administrator of the Transportation Security Administration, the Director of the Federal Law Enforcement Training Center, and other agencies and programs report directly to the Under Secretary. The Under Secretary has given the Policy and Planning Office a broad charter to develop and coordinate policy and planning for all of the component agencies within BTS. In fulfilling that role, if confirmed, I would anticipate working closely with the respective bureau and agency heads and their policy development personnel to fulfill the responsibilities of my office. I would also anticipate that the Policy and Planning Office would review and comment on all major policy initiatives planned by the component agencies before they were presented to the Under Secretary for his review.

17. **The Aviation and Transportation Security Act (ATSA) gave TSA responsibility for security in all modes of transportation. To date, TSA has focused almost exclusively on aviation security, and little has been done by the agency as yet to systematically improve security in other modes of transportation.**

What will you do as Assistant Secretary to broaden TSA's focus to other modes of transportation? What additional resources do you believe TSA will require to broaden its focus effectively to other transportation modes?

While the events of September 11, 2001 certainly justified the Congressional creation of the Transportation and Security Administration ("TSA") and direction for TSA to focus intently on aviation security vulnerabilities, the prospect of future terrorist attacks in non-aviation transportation modes means that the Department of Homeland Security ("DHS") must place additional focus on these sectors. At the same time, DHS must undertake to fulfill its responsibilities for providing security in these modes while facilitating the movement of goods and people, within the context of assessing legitimate threats to these modes and the crucial infrastructure contained therein. It is my understanding that the Border and Transportation Security Directorate ("BTS") is coordinating its security efforts for non-aviation modes between TSA and other BTS components, such as the Bureau of Customs and Border Protection, and with other DHS entities including the Coast Guard, the Information Analysis and Infrastructure Protection Directorate and the Science and Technology Directorate. BTS and TSA, in concert with the other Directorates and entities, will coordinate closely with the operating administrations of the Department of Transportation and with the transportation industry, to ensure that there are neither duplications nor gaps in critical federal transportation security initiatives. This cooperation and collaboration will encompass regulatory rulemaking, standards setting, resource utilization, research and development, and administration of transportation security related grant funds.

BTS is developing the National Transportation System Security Plan, a capstone document under which supporting transportation security plans must align. As this plan is developed, I would look forward, if confirmed, to working with Congress to develop and enhance cross-modal transportation security priorities.

18. **For each of the following transportation modes, (a) aviation, (b) rail, (c) maritime, (d) public transit, (e) highways, (f) pipelines, please state:**

What you will do as Assistant Secretary to improve security in that transportation mode

What milestones you will establish to measure progress in each area

What timetable you expect to meet for each milestone

In the aviation area, I am looking forward, if confirmed, to working with the Transportation Security Administration ("TSA") to reinforce the layers of security implemented before and since September 11, including programs designed to increase the effectiveness of baggage and passenger screening, and further enhance the security of airplanes, airports and terminals.

With reference to rail transportation security, BTS agencies, including TSA and the Bureau for Customs and Border Enforcement ("CBP") have undertaken a number of initiatives which, if confirmed, I would review and hope to expand. I understand that TSA has been working closely with the Federal Rail Administration to ensure coordination and cooperation on security matters. TSA also is communicating with rail industry and Amtrak officials regarding threats and security measures. CBP has undertaken initiatives related to detection of radiological and explosive materials within our rail systems.

Regarding the area of port and maritime safety, please see my answer to question 22. Public transit is also an area with significant security concerns, and I am aware of TSA's close work with the Federal Transit Administration ("FTA") at the Department of Transportation to capitalize on FTA's progress in undertaking security assessments for rail transit systems and in providing training to transit operators. In addition, I am aware of Congress's recent appropriation of limited grant funding for intercity bus security measures. I understand that these funds should be awarded by TSA in coming weeks and could be used for screening purposes for baggage and passengers, security assessments, and driver protection. Moving forward, I would expect and encourage TSA to work closely with the FTA, the Intelligence Assessment and Infrastructure Protection Directorate, and the many public and private transit operators to enhance this cooperation in areas such as standards setting and training.

As far as highway security, I am aware of TSA's recent publication of regulations to implement the requirement in the USA Patriot Act that commercial drivers with hazardous materials endorsements undergo fingerprint-based background checks. I understand that TSA also has increased its outreach to important stakeholders to develop best practices and security standards and to identify security weaknesses in the highway arena. The Administration's FY04 budget also includes funds for the Transportation Worker Identification Credentialing and Operation Safe Commerce programs which should help ensure supply chain security.

In the area of liquid product and natural gas pipelines, it is my understanding that TSA has been working with operators to review their critical infrastructure security plans and procedures, and intends to complete this security review this year for the major pipeline operators carrying the majority of the nation's energy products. TSA plans to determine "best practices" for the pipeline industry as a basis for proposed regulations. TSA has been working in cooperation with the Office of Pipeline Safety in the Research and Special Programs Administration ("RSPA") at the Department of Transportation. As part of the review process, TSA is collecting information regarding facilities deemed "critical" by the operator to include in a national critical inventory database. If confirmed, I will seek to ensure that TSA continues this work, coordinated with the Information Analysis and Infrastructure Protection Directorate, RSPA, and industry stakeholders, to refine the

definition of a critical facility so as to focus on facilities, which if disrupted, could significantly impact the nation.

In each of these areas, the Strategic Planning unit of the Office of Policy and Planning, as part of its development of an overall strategic plan for the Border and Transportation Directorate, is developing meaningful milestones to measure progress in reaching enhanced security and other goals. These strategic benchmarks are in the formative process at this stage, but, if confirmed, I look forward to directing the development of this strategy and these security goals.

19. **In June, 2002 the Transportation Research Board of the National Academies issued *Special Report 270: Deterrence, Protection and Preparation: The New Transportation Security Imperative*. This report examined how security should be systematically integrated into our transportation system in the wake of the September 11 attacks and what role TSA can and should play in that process. A key recommendation of the report suggested that TSA establish a strategic research and planning office, distinct from its operational and enforcement responsibilities, that could (among other things) "devise and evaluate alternative security system concepts for the different modes of transportation" in collaboration with the public and private sector owners, operators and users, and encourage the integration of security goals and enhancements in transportation planning and design. Do you believe that such an office should be created by TSA? Please explain why or why not.**

The office which I would lead, if confirmed, will have, as one of its most significant responsibilities, development of policy and strategic planning for TSA. BTS and this office more specifically certainly will work with the existing policy development arm of TSA to meet the goals described in the answer to question 18.

20. **Although TSA has broad responsibility for security in all modes of transportation, other agencies with responsibilities that may involve security in other modes of transportation exist outside the Directorate for Border and Transportation Security (BTS), such as the Coast Guard, and outside DHS itself, such as the Federal Transit Administration and others within the Department of Transportation.**

How will you work with other agencies outside BTS to ensure coordination and consistency in planning and policy? What challenges do you believe could arise in working across these divisional and departmental lines and how will you bridge these gaps?

It is my understanding that Border and Transportation Security Directorate and the Transportation Security Administration ("TSA") are already coordinating closely with other components at the Department of Homeland Security ("DHS") that either have the lead, or share, responsibility for security in non-aviation transportation sectors, including the U.S. Coast Guard, the Bureau for Customs and Border Protection, the Information

Assessment and Infrastructure Protection Directorate, and the Science and Technology Directorate. Furthermore, TSA has enjoyed a close working relationship with the modal administrations at the Department of Transportation ("DOT") and coordinates extensively with DOT to capitalize on their expertise to ensure security in the transportation modes. If confirmed, I would make it a priority to continue and enhance this close coordination between TSA and both DHS and non-DHS agencies.

21. **TSA has recently announced its intention to cut 6000 screeners from its workforce by the end of FY 2003. A May 9 editorial in the *New York Times* criticized this move, asking "Is aviation security really an area of the budget in which to be seeking 'efficiencies' at this time?" The *Times* noted that 700 screeners would be cut in the New York area and questioned whether these cuts will cause travelers to doubt the government's commitment to domestic security or to shy away from flying altogether, which could have further adverse effects for the already-troubled aviation industry and economy. TSA has received complaints about the impact of layoffs in certain airports and has agreed to make some changes in its plan but still intends to reduce its workforce by 6000, according to a May 7 *Washington Post* article. Since Congress decided to federalize the screener workforce in part to ensure that airport security checkpoints were adequately staffed and that screening was carried out more effectively, how will you, as Assistant Secretary, ensure that these goals continue to be met under this layoff plan? Do you believe changes in the plan are needed to avoid future problems, and if so, what changes will you recommend?**

I am aware of the Transportation Security Administration's ("TSA") announced reduction in the overall number of federal airport screeners by September of this year. Although most of the public's awareness of TSA's activities has centered on the federalized screener workforce, I understand that TSA, working with Congress, has adopted a layered approach to providing security in the aviation arena, including improving screening of passengers and baggage before boarding, enhanced airport security, hardening of cockpit doors, deployment of Air Marshals, improved screening of air cargo, and other initiatives. Both the Under Secretary for Border and Transportation Security and the TSA Administrator have emphasized their commitment to providing top notch security and excellent customer service and believe that it is consistent with these goals to adjust screener staffing in light of changes in airport passenger traffic. If confirmed, I look forward to reviewing the policies determining the levels of TSA screeners in various facilities to ensure that airport security is maintained at the high level Congress sought when it federalized the screener workforce.

22. **An independent task force report issued last year by the Council on Foreign Relations, entitled *America - Still Unprepared, Still in Danger*, identified U.S. seaports as a key vulnerability and noted the "vital role seaports play in linking America to the world, both economically and militarily." A study by the U.S. Coast Guard estimated that it will cost $4.4 billion to improve basic security at U.S. ports, with close to $1 billion required in the first year. The Administration's FY 2004**

Budget allocates no money for port security grants. What actions will you take, as Assistant Secretary, to put port security requirements (such as those identified by the Coast Guard's study) in place, and what timeframe do you believe will be necessary to complete these actions? Will the current level of resources requested for port security be adequate to achieve these goals, and if not, what is your plan for securing the necessary additional funding?

There is no doubt that port and maritime security are key elements of our homeland security. There are three major components to this security strategy.

The first major component is the area of Coast Guard operations which have been crucial in securing our ports and waterways both before and since September 11. In addition to its traditional missions, which have included providing regulatory guidance and standards and security training for port operators, I understand that the Coast Guard has launched several new initiatives aimed at reducing the threat of terrorism to our seaports. Among these are the Sea Marshals program, which places officers on ships entering our ports to reduce the risk of being their being hijacked, and Maritime Safety and Security Teams to protect ports in the case of an emergency.

The second major component is container security, beginning with the Container Working Group ("CWG") which brought together the most significant government agencies with the key private sectors associations involved in container shipping. The CWG, which includes the Bureau of Customs and Border Protection ("CBP"), the Coast Guard, the Transportation Security Administration ("TSA") and other government agencies from the Departments of Transportation and Commerce, was designed to assess key components of the shipping process including: development of criteria to identify high-risk containers, implementing prescreening operations to check high-risk containers before they are shipped to the United States, and deploying security measures to secure containers during shipping, both to the United States and within the country. Another important program is the Container Security Initiative, administered within the Border and Transportation Security Directorate ("BTS") by CBP. This program identifies high-risk cargo and prescreens this cargo in participating foreign ports. Other priority programs designed to ensure container security include: the Customs-Trade Partnership Against Terrorism ("C-TPAT"), discussed more fully in my answer to question 13; Operation Safe Commerce, a large pilot project to secure the entire cargo supply chain, and the Automated Commercial Environment ("ACE") and International Trade Data System ("ITDS") computer tracking systems that allow monitoring of imports and better risk management.

The third component is vulnerability assessment and mitigation, overseen by the Directorate of Information Analysis and Infrastructure Protection ("IAIP"), and undertaken specifically by the Coast Guard with funding and personnel support from BTS. This project aims to complete port vulnerability assessments at the 55 most

important commercial and military ports. Related to vulnerability assessment is the Radiological Dispersal Device and Improvised Nuclear Device ("RDD/IND") working group which was originally chartered by the Homeland Security Council. This group is now overseen by BTS, and more specifically by the BTS Office of Policy and Planning, which I would head if confirmed. This interagency group continues developing deterrence, preparation, and response capabilities and includes consideration of our seaports.

I am aware of recent grant funding for port security, and I look forward to reviewing proposed budgets in light of the threats to our sea ports and maritime commerce and making recommendations as part of the FY05 budget process and subsequent years.

23. **As part of the FY 03 omnibus appropriations bill, Congress authorized the creation of integrated border inspection areas between the United States and Canada. These areas could include conducting shared border inspection or reverse Customs inspection at U.S.-Canadian border crossings. Such inspections would enable the U.S. Customs Service to inspect vehicles for hazardous material before they cross bridges or tunnels into the United States. Congress believed conducting inspections this way would both enhance security and alleviate traffic congestion at border crossings. With the increased security risk faced by our nation, inspecting vehicles for dangerous contents such as bombs and explosives after they enter our tunnels or cross our bridges is inadequate. Some Northern Border crossing stations are ready and eager to quickly establish integrated border inspection areas such as reverse Customs inspection. What is being done to implement these programs and are additional steps needed and being taken with Canada in order to implement them quickly?**

I understand that, following the "Smart Border Declaration" and the U.S. - Canada Shared Border Accord, the Bureau of Customs and Border Protection ("CBP") is exploring the possibility of establishing "Integrated Border Inspection Areas" ("IBIAs"). This concept encompasses the potential for "reverse inspections" and would create a single physical location where federal inspections agencies of both the United States and Canada share facilities and conduct their respective border operations with full powers. The benefits of IBIAs to both Canada and the United States are a stronger security and physical infrastructure and a more proactive communication and response mechanism. Necessary legal analysis is being conducted, and efforts with the Canadian government are ongoing under the auspices of the Shared Border Accord. If confirmed, I look forward to working with CBP and other federal entities to move forward on this initiative, and will consult with Congress on this process, especially if additional statutory changes are required.

24. **In a statement prepared for his May 6, 2003, testimony before the House Subcommittee on Technology, Information Policy, Intergovernmental Relations and the Census, Admiral James Loy testified that "[t]he purpose of CAPPS II is to**

identify foreign terrorists and those with links to foreign terrorists that pose a threat to civil aviation security." In response to questioning, Admiral Loy testified that the system was not designed to apprehend domestic criminals, such as an "axe murderer." According to Admiral Loy, "[i]n extremely rare cases, the system may identify an individual who is a known foreign terrorist or the associate of a known foreign terrorist." TSA officials later confirmed in a briefing for Governmental Affairs Committee staff that the system was not designed to target either domestic terrorists or domestic criminals. The system is designed to expose some passengers to more intensive screening and scrutiny based on information about them contained in commercial databases, and to search for people posted on government watch-lists of known or suspected foreign terrorists.

What is the policy rationale for not targeting dangerous domestic criminals or potential domestic terrorists?

Do you believe the application of an algorithm to commercial databases will provide more accurate information about risks posed by individuals than information in the National Crime Information Center database?

Would it help TSA identify known threats to transportation safety if CAPPS II included the FBI's NCIC database, which has information about wanted criminals?

As Admiral Loy has testified, CAPPS II is being designed as a risk assessment tool that will identify threats to the commercial aviation system. While I believe that the Border and Transportation Security Directorate ("BTS") and the Transportation Security Administration appreciate the need to identify and capture serious criminals, whether they be violent felons or tax evaders, they also recognize that the CAPPS II must be limited strictly to identifying threats to commercial aviation security. It is important to remember that American citizens have constitutional rights of travel and privacy which should not be inappropriately infringed or eroded. Thus, under current planning, CAPPS II will not access the National Crime Information Center ("NCIC") database, because the majority of information in that database is unrelated to aviation safety or terrorism. However, it is expected that CAPPS II will review information from the State Department's TIPOFF list, which includes the data from the terrorism-related sections of NCIC. If confirmed, I would look forward to working with Congress as the system is finalized and implemented to devise the best possible aviation screening system.

25. **At the May 6 House subcommittee hearing, Admiral Loy testified that CAPPS II will use commercial databases only to authenticate individual identities. At a recent staff briefing a TSA official explained that the algorithm used by CAPPS II to analyze information in commercial databases would look for patterns indicating a similarity to a terrorist profile.**

Are these statements contradictory?

Will CAPPS II use commercial databases to look for patterns or profiles that may be associated with terrorism? If not, how will CAPPS II make use of information in commercial databases?

As I understand the CAPPS II system, it will review commercial databases for identity authentication purposes, but will not be searching those databases for "patterns" that might indicate associations with terrorism.

26. **In the past, the Federal Trade Commission has brought legal action against the credit bureaus for their failure to maintain accurate records, and inaccuracies in credit reports continue to be one of the leading sources of consumer complaints to the FTC. Do you believe these and similar inaccuracies will affect the reliability of the commercial databases used by the CAPPS II system? If so, how do you think this problem should be addressed?**

As I understand the CAPPS II system, it will not review "credit scores" or "credit histories", and thus inaccuracies in credit reports will not be relevant to how the CAPPS II system functions with regard to any particular airline passenger. In addition, the system will rely only on commercial data sources for identity authentication purposes, and even that function will be undertaken outside of strict firewalls separating it from the risk analysis component of CAPPS II.

27. **Admiral Loy also testified on May 6 that the CAPPS II system was intended to be a "national transportation security system" and might be used in the rail and cruise ship industries.**

How might the system be used in these and other industries? What additional privacy safeguards would be needed?

It is my understanding that the CAPPS II system is being designed to assess the relative terrorism-related risk posed by given airline travelers in order to better aviation security resources. Once CAPPS II is completed and implemented, the Transportation Security Administration may determine whether the concept behind CAPPS II's risk analysis capability might be applied in other venues, including other modes of transportation. If confirmed, I look forward to reviewing the CAPPS II system, its possible application to other arenas, and possible implications for individuals' personal privacy.

28. **Section 428(e) of the Homeland Security Act gives the Secretary of Homeland Security the authority to assign DHS personnel overseas to provide advice, assistance and training to consular officers issuing visas.**

What will be your role in deciding policies regarding when DHS personnel should be sent to diplomatic posts?

What will be your role in deciding the responsibilities of those DHS personnel posted overseas?

What factors should guide the decision whether or not DHS personnel are sent to a particular diplomatic post?

Should DHS personnel sent to diplomatic posts overseas be authorized to override decisions of consular officers regarding the issuance of individual visas?

Section 428 of the Homeland Security Act also gives the Secretary of Homeland Security the authority to evaluate the performance of consular officers. Should the Secretary of Homeland security be able to discipline or remove consular officers?

There was a significant degree of criticism over the fact that most of the 9/11 hijackers were not interviewed during the visa application process. Do you think that a higher percentage of visa applicants in high-risk areas should be interviewed? Do you think consular officers need more training regarding interview techniques? What role will DHS play in giving consular officers these skills?

Section 428 of the Homeland Security Act gives the Secretary of Homeland Security the exclusive authority to issue regulations to administer and enforce the provisions of the Immigration and Nationality Act with respect to the issuance of visas. However, it provides that such authority shall be exercised "through the Secretary of State." If the Secretary of Homeland Security wishes to deny an individual visa or class of visas, but the Secretary of State disagrees, whose decision would control?

Section 428 of the Homeland Security Act ("HSA") vests exclusively in the Secretary of Homeland Security "all authorities to issue regulations with respect to, administer, and enforce the provisions of [the Immigration and Nationality Act], and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with the granting or refusal of visas." The Under Secretary for Border and Transportation Security ("BTS") is ultimately in charge of the Department of Homeland Security ("DHS") role in visa processing, and it is my understanding that BTS Under Secretary Asa Hutchinson plans on delegating day-to-day responsibility for the operations of this program, including training of consular offices, to an Office of International Enforcement ("OIE"). The structure of that office is still under development. The Office of Policy and Planning, which I would head if confirmed, will advise the Under Secretary and the OIE on visa issuance policies. I would anticipate that the Office of Policy and Planning would also provide advice as to general personnel

issues, but that specific personnel issues relative to a certain consulate would be determined by OIE or the Department of State, as appropriate.

The Memorandum of Understanding currently being negotiated by DHS and the Department of State will address issues related to the division of responsibility between DHS and the Department of State, the division of responsibility between DHS employees and consular officers, and the reporting, evaluation, and training structures for these personnel.

As far as increasing the number of personal interviews conducted during the visa issuance process, I understand that DHS agrees with and supports the recent cable issued by the Department of State which would require an increase in these interviews.

29. What bureau or official will be in charge of implementing the DHS role in visa processing? What role would you play in setting policies in this area?

As discussed in my answer to question 28, the Under Secretary for Border and Transportation Security ("BTS") is ultimately in charge of the Department of Homeland Security ("DHS") role in visa processing, and BTS Under Secretary Asa Hutchinson plans on delegating day-to-day responsibility for the operations of this program to an Office of International Enforcement ("OIE"). The structure of that office is still under development. The Office of Policy and Planning, which I would head if confirmed, will advise the Under Secretary and the OIE on visa issuance policies.

30. What is the status of the Memorandum of Understanding between DHS and the Department of State? How should DHS oversee the implementation of its policies by consular officials?

The negotiations over a Memorandum of Understanding ("MOU") between the Department of Homeland Security ("DHS") and the Department of State, as mandated by Congress, have been ongoing for several months and have resulted in agreement in a number of significant areas. It is anticipated that a final MOU may be signed soon, which would address how DHS oversees the implementation of visa issuance policies by consular officers.

31. With the dissolution of the INS and the creation of three separate bureaus responsible for different aspects of immigration law, there is no single official devoted solely to ensuring consistent and coordinated immigration policy and implementation:

In the absence of such a leader, does the Department of Homeland Security need some type of structure or coordinating instrument to ensure consistent policies and application of laws?

What kinds of coordination already exist at the local and national levels between the three bureaus, and what additional coordination efforts do you feel need to be put into place?

What role will you have in ensuring effective coordination between the three bureaus?

While the Congress and Administration believed that the dissolution of the former Immigration and Naturalization Service ("INS") into several component agencies was necessary to improve the performance of each of the former INS's missions, that dissolution into three parts, which are now housed in two different parts of the new Department of Homeland Security ("DHS"), raises the need for effective coordination among these new bureaus. I am aware of several initiatives taken by the former INS and the current Bureau of Immigration and Customs Enforcement ("ICE"), Bureau of Customs and Border Protection ("CBP"), and Bureau of Citizenship and Immigration Services ("BCIS"), which are designed to maintain continuity of operations. These actions and others are to be described in a report due to be submitted to the Congress this month.

One, ICE continues to provide BCIS and former parts of INS now housed in CBP the provision of support services. These services include Legal Advisor, Management (including records), Human Resources, and Policy and Planning.

Two, a number of working groups have been established between ICE, CBP, and BCIS to ensure coordination between the new organizations on issues of mutual concern, including long-term responsibility overlaps, policy development, area operations, information-sharing, and training. Specific working groups are addressing smuggling, criminal aliens, and immigration law. I anticipate that the efforts of these working groups will expand now that each has made it through an initial transition period, and especially with ICE and CBP having completed reorganization plans to reflect their new missions. The BTS Office of Policy and Planning will be an integral part of these cross-bureau working groups.

32. **Immigration records are used by all three bureaus. What is the rationale for assigning the records function to the Bureau of Immigration and Customs Enforcement?**

The Bureau of Immigration and Customs Enforcement ("ICE") was assigned all areas of shared corporate and administrative support when the former Immigration and Naturalization Service was dissolved on March 1. Thus, the Office of Management, which includes the Records Division, along with functions such as the General Counsel and Public and Congressional Relations, were assigned to report through the ICE chain of

command for the time being. As the report described, a number of working groups have been established to transition these shared services into the three new immigration bureaus, and I anticipate that the Office of Policy and Planning, which I would head if confirmed, would be involved to a great degree in these deliberations.

33. **The Homeland Security Act establishes the positions of civil rights officer and Office of Inspector General (OIG) in the Department. Preventing and policing civil rights abuses or other illegal actions by Border and Transportation Security staff may require the Bureaus and agencies within BTS to cooperate with the civil rights officer or OIG on an investigation after a complaint is received. What role will you have in ensuring effective coordination and appropriate cooperation with these officials with respect to such investigations?**

The training policies utilized by the Border and Transportation Security Directorate ("BTS") and its component agencies are to be reviewed and improved by the BTS Office of Policy and Planning, and if confirmed, I would work to ensure that BTS agencies provide appropriate training and guidance to its employees to minimize the likelihood of violations of civil rights or other legal requirements. In the event that investigations are conducted in these sensitive areas, I would aspire to ensure that the Office of Inspector General, Office of Civil Rights and Civil Liberties, and/or Chief Privacy Officer, as the case may be, receive appropriate cooperation from BTS and its components.

34. **In March 2003, the DOJ Inspector General issued a report on the implementation of SEVIS. ("Evaluations and Inspections Report: Follow-up Review on the Immigration and Naturalization Service's Efforts to Track Foreign Students in the United States through the Student and Exchange Visitor Information System," Report Number I-2003-003, March 2003) The report determined that SEVIS was not implemented by the statutorily mandated deadline of January 1, 2003, and found a number of deficiencies. What needs to be done to improve the SEVIS system? What would be your role in overseeing the system?**

I am aware that the Student and Exchange Visitor Information System ("SEVIS") program has been hindered by several operational flaws to date. Recognizing the complexities associated with a quick implementation of this program, the legacy Immigration and Naturalization Service and the Department of Justice opted to issue regulations setting forth a phased approach for SEVIS. As the US-VISIT program is established, it will begin to encompass SEVIS in order to establish a unified and comprehensive database and enforcement tool.

SEVIS is part of the overall Student and Exchange Visitor Program, which also includes a certification process for schools, internal and external training, and enforcement. SEVIS is an Internet-based system designed to provide the government with access to accurate and current information about non-immigrant students (F-1, F-3, M-1, and M-3

visas) and exchange visitors (J-1 visa), and their dependents (F-2, M-2, and J-2 visas). SEVIS enables schools and program sponsors to transmit information via the Internet to DHS and to the Department of State throughout the duration of a student or exchange visitor's stay in the United States. SEVIS receives information about an individual's school admission, visa issuance, entrance into the United States, registration for classes, changes of address, name or program of study, program extensions, and employment authorization.

The required use of SEVIS by schools has been phased, beginning with new students, followed by reporting related to continuing students, an approach unveiled before Congress and via regulations last year. In addition, while appropriated funding of $36.8 million in FY02 was instrumental to the ability to develop SEVIS, the ongoing costs are envisioned by statute to be supported by the collection of fees. Schools are charged a fee for the certification process and, once regulations are promulgated, students would be charged a SEVIS processing fee. These regulations are currently in development. If confirmed, I look forward to reviewing the status of and problems associated with SEVIS, how these flaws might be improved, and how the program will be integrated into the US-VISIT system.

35. **Secretary Ridge recently promised that the new version of the entry-exist system, the "U.S. VISIT" system, relying on biometric identifiers, will be installed at airports and seaports by the end of 2003. In a recent study, the General Accounting Office estimated that implementing visas with biometrics would cost between $1.3 billion and $2.9 billion. U.S. General Accounting Office, Technology Assessment: Using Biometrics for Border Security, GAO-03-174 (November, 2002). The Administration's budget request for FY 04 contained no reference to funds for technologies using biometric identifiers, and seeks only $480 million for the entire entry-exit system.**

How would the $480 million budgeted for the entry-exit system be spent? How much of the money would go towards developing systems using biometrics?

What additional funds are contained in the Administration's budget for developing a system using biometric identifiers, beyond the $480 million for the entry-exit system?

Are there sufficient funds in the budget to develop and implement an operational entry-exit system with biometric identifiers by the end of the year? Do you consider the GAO estimate accurate or inaccurate?

What will be your role in overseeing and implementing the entry-exit system? What steps do you believe need to be taken to ensure that it is operational by the statutory deadline?

There has been some discussions of using the entry-exit system to fulfill law enforcement missions. For example, the system could be linked with other databases to prevent adults from leaving the U.S. with abducted children or to prevent wanted persons from leaving the country. Will the entry-exit system be used for such purposes?

Development of an effective entry/exit system is a top priority of the Department of Homeland Security ("DHS") and particularly the Border and Transportation Security Directorate ("BTS"). In a major address on April 29, Secretary of Homeland Security Tom Ridge announced that the system is being named US-VISIT ("U.S. Visitor and Immigrant Status Indication Technology") and that the program is designed to make entering the U.S. easier for legitimate tourists, students and business travelers, while making it more difficult to enter the U.S. illegally through the implementation of biometrically authenticated documents. Under Secretary for Border and Transportation Security ("BTS") Asa Hutchinson addressed this same topic in a speech on May 19, providing additional details on the program.

The system will draw heavily on developing technologies and scientific capabilities to utilize biometric identifiers and build an electronic check in/check out system for people coming to the U.S. to work, study or visit. The US-VISIT system will replace the currently existing National Security Entry-Exit Registration System ("NSEERS") program, integrate the Student and Exchange Visitor Information System ("SEVIS") program, and encompass the Congressional requirements of the automated entry/exit system.

The US-VISIT system is a critical new border security and enforcement tool that will capture point of entry and exit information on visitors. The system is expected to be in its first phase of operation at international air and sea ports of entry by the end of 2003, and Secretary Ridge has indicated that this first phase will include a biometric capability in advance of the Congressional mandate which requires a biometric in travel documents by October 26, 2004. In this first phase, the US-VISIT system will have the capability by the end of the year to capture fingerprints and photographs from foreign visitors. The system will be capable of comparing those biometric identifiers against databases and watchlists to determine whether a foreign visitor should be denied entry to the country, be detained, or be the subject of additional screening. The system will be also be capable of reviewing entry and immigration benefit information to determine whether foreign visitors exiting the country have overstayed or otherwise violated their visa requirements.

In line with Secretary Ridge's recent comments, BTS has recently announced a major restructuring of how the US-VISIT program will be managed within BTS. An executive director with significant experience in developing complex information programs has been detailed to BTS, reporting directly to Under Secretary Hutchinson. The BTS Office

of Policy and Planning, which I would head, if confirmed, is currently reviewing all major policy decisions which need to be resolved, and will be a key element of DHS's and BTS's cooperation with the program office and interaction with other stakeholders, including other parts of the U.S. government, foreign governments, and business and travel concerns. One such policy issue is with which databases the US-VISIT program will be capable of interacting.

I know that Secretary Ridge and Under Secretary Hutchinson are committed to moving this project forward. A key part of that process is to comply with the legislative requirements that we obtain approvals of certain spending decisions. BTS is working aggressively to establish a partnership with the General Accounting Office to meet the requirements of the FY03 Omnibus Appropriations Act and the Emergency War Supplemental Act.

36. **Have government watchlists on terrorists been centralized and coordinated so that they will be readily available and useful to border security personnel? If not, is there a timetable for centralization and coordination? Do you believe that the terrorist watchlisting currently being done is adequate for border security purposes? What changes would you propose in the current terrorist watchlisting system?**

I understand that, while the procedures are updated frequently, the Bureau of Customs and Border Protection ("CBP") believes that the current terrorist watchlist procedures are adequate for CBP's border security efforts. Although not all of the terrorist watchlists have been consolidated in a single database, CBP can access extensive and comprehensive terrorist watchlist information through active coordination with the intelligence and law enforcement communities. With a single query in CBP's main watchlist database, the Interagency Border Inspection System ("IBIS") within the Treasury Enforcement Communications System ("TECS"), CBP can compare personal information against the overwhelming majority of terrorist watchlist and criminal information maintained by the Federal Government.

First, IBIS/TECS allows CBP to check persons against the three major terrorist watchlists: (1) the Federal Bureau of Investigation's NCIC/Violent Gang and Terrorist Organizations File ("VGTOF"); (2) the Department of State's TIPOFF database, which includes information from the Central Intelligence Agency; and (3) the Transportation Security Administration's No-Fly list. Additionally through IBIS/TECS, CBP can check persons against lookout lists from legacy Immigration and Naturalization Service, the Drug Enforcement Administration, the Bureau of Alcohol, Tobacco, and Firearms, the U.S. Secret Service, and the Internal Revenue Service, as well as against the National Law Enforcement Telecommunications System ("NLETS") criminal history files and the RCMP's criminal information database. These database checks are also often made more effective by the use of the IAFIS system, which uses a ten-fingerprint biometric to access

criminal records on particular suspect individuals. This system is currently deployed in a number of CBP/Border Patrol stations, as well as in certain legacy immigration secondary inspection areas.

If confirmed, I look forward to learning more about CBP's watchlist procedures and capabilities, and working with the Information Analysis and Infrastructure Protection Directorate and the Chief Information Officer to ensure that the development of any unified watchlist(s) is coordinated appropriately with efforts already undertaken within the Border and Transportation Security Directorate.

IV. Relations with Congress

1. **Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?**

   Yes, consistent with the constitutional prerogatives of the Congress and of the Executive Branch, I agree that if I am confirmed, I would make every effort to respond to requests to appear and testify before any duly constituted committee of Congress.

2. **Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?**

   Yes, consistent with the constitutional prerogatives of the Congress and of the Executive Branch, I agree that if I am confirmed, I would make every effort to respond to reasonable requests for information from any duly constituted committee of Congress.

V. Assistance

1. Are these answers your own? Have you consulted with DHS or any interested parties? If so, please indicate which entities.

   These answers are my own, and I take responsibility for them. In developing these answers, I have sought assistance from many staff within the Department of Homeland Security and its components agencies, and have reviewed prior statements made by Secretary of Homeland Security Tom Ridge, Under Secretary for Border and Transportation Security Asa Hutchinson, and other members of the DHS leadership.

AFFIDAVIT

I, C. Stewart Verdery, Jr., being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 2 day of June, 2003.

Notary Public

City / County of Arlington
State of Virginia

Sworn to and subscribed before me this
2 day of June, 2003.
Witness my hand and official seal.

Notary Public
My Commission expires: 02/29/2004

Post-Hearing Questions for C. Stewart Verdery
Nominee for Assistant Secretary for Homeland Security for Policy and Planning,
Border and Transportation Security Directorate,
Department of Homeland Security
Senate Governmental Affairs Committee

QUESTIONS FROM SENATOR JOSEPH I. LIEBERMAN

Question: I am deeply concerned that the Administration's current timeframe for improving port security is significantly too long. In light of your commitment at today's hearing, what specific steps will you take as Assistant Secretary to shorten the current timetable for disbursing port security grants and implementing appropriate security measures?

Answer: The President's FY 2004 Budget requests $62 million in the Infrastructure Analysis and Infrastructure Protection ("IAIP") Directorate's budget intended for the Coast Guard to complete security assessments for the remaining of the 55 top militarily and economically significant ports. In addition, the President's budget request for the Bureau of Customs and Border Protection includes $62 million to improve seaport and container security through the Container Security Initiative ("CSI"), and $12 million for the Customs-Trade Partnership Against Terrorism ("C-TPAT"). Furthermore, TSA has worked closely with the Coast Guard and the Department of Transportation's Maritime Administration to develop and refine the criteria for the award of port security grants, and has recently announced the award of $170 million in port security grant awards. These funds are in addition to $75 million in port security grants as part of the Office of Domestic Preparedness funds in the urban area initiative, and $105 million for port security grants that will be awarded later this summer by TSA.

Should I be confirmed, I would seek to ensure continued coordination among these agencies, in addition to the Office of Domestic Preparedness, in the speedy development and consideration of grant award criteria and applications, regulations, standards, and departmental budgets. I would also seek to further the development and deployment of additional mechanisms to provide security for the nation's ports.

Question: I am also disturbed that TSA's action to divert port security funding will significantly delay or even preclude ports from taking the steps necessary to put security measures in place. What will you do to ensure that sufficient resources are available to ports for these security needs?

Answer: Port security is a critical focus for the Department. The Department is not diverting port security funding.

QUESTIONS FROM SENATOR CARL LEVIN

Reverse Inspections

CBP has been working diligently over the past few years both on its own and with its Canadian counterparts to establish a form of "reverse inspection" that would allow U.S. personnel to inspect vehicles before entering the U.S. We appreciate that some Northern Border crossings are eager to implement these types of programs, whether they be strictly "reverse inspection" stations or "Integrated Border Inspection Areas" (IBIAs). While the U.S. does fully support the advancement of such programs, they involve extremely complex and novel issues of law both for the U.S. and Canada.

(a) Has the United States officially asked Canada to establish a reverse inspection program at the Ambassador Bridge or at any other Northern Border crossing? If so, please provide the date and circumstances.

Answer: The Bureau of Customs and Border Enforcement ("CBP") has officially asked Canada, through the highest levels, to participate in an IBIA or reverse inspection-type program at nonspecific ports of entry along the Northern Border. Specific locations have been discussed as being of particular concern, including the Ambassador Bridge. The two countries are currently discussing the best way to implement such a program and addressing all issues, legal and operational, associated with each option.

(b) If not, when will the United States officially ask Canada to establish a reverse inspection program including, for example, a pilot program? Please provide a time line for plans to commence a reverse inspection program as mandated by Congress.

Answer: As noted above, the U.S. is working with Canada to develop this type of program. While there are critical legal issues that must be addressed, I understand both the U.S. and Canadian governments are interested in reaching such an arrangement.

(c) At the hearing, you indicated that Canada may have legal concerns which are impeding its agreeing to establish shared border inspection areas and reverse inspections. Please describe these legal concerns or provide documentation from Canada identifying and explaining them.

Answer: It is my understanding that the Canadian Charter of Rights and Freedoms, and its interpreting case law, is very restrictive with respect to enforcement actions by the government, especially relative to those allowable under the U.S. Constitution. As such, the Canadians are currently reviewing methods by which these types of programs may exist pursuant to their current authorities and, if they are not possible, examining what types of legal changes may be required, whether by legislation or constitutional amendment. The primary issues the Canadians are examining include, but are not limited to: exercise of full authorities, arrest and extradition, detention and arrest of persons, detention and seizure of merchandise, search and seizure of persons, forfeiture of merchandise, liability, judicial review, privacy rights, refugees status, information sharing

and weapons carry.

(d) Does DHS believe that additional legislative language is necessary to establish a reverse inspection program? If so, please describe what additional language would be needed and provide the Committee with a draft provision sufficient to resolve any remaining concerns.

Answer: Whether or not additional legislation is needed to establish these programs will depend upon the final agreement between the U.S. and Canada on an implementation model. If confirmed, I look forward to participating in this effort and working with the Congress with a goal of establishing an effective reverse inspection program.

QUESTION FROM SENATOR RICHARD J. DURBIN

On November 8, 2002 the Inspector General of the Department of Justice issued a Memorandum to the Attorney General and Deputy Attorney General outlining the top management challenges facing the Department. It is noteworthy that the Inspector General expressly recognized at that time the strong likelihood that the Immigration and Naturalization Service (INS) would be transferred from the Justice Department to the then-proposed Department of Homeland Security (DHS). In light of that, the Inspector General did not include INS programs in the list of top management challenges facing DoJ.

Instead, the Inspector General developed a separate list of top management challenges facing the INS, noting that this separate list was drafted to assist officials in the proposed DHS in managing and assimilating the INS.

If confirmed for the post as a top management official responsible for policy and planning for the Border and Transportation Security Directorate at DHS, this list of identified management challenges that will confront you runs the gamut from border security weaknesses, enforcement and removal gaps, and tracking inadequacies to computer security challenges and information technology planning. The issues the Inspector General has identified are, in many respects, problems of long duration that may not have quick-fix solutions. I remain concerned that corrective action efforts not be delayed or relegated to the back-burner as you develop new organizational arrangements and make future policy and planning decisions.

QUESTIONS:

Have you reviewed the DoJ Inspector General's "Management Challenges for INS" report issued on November 8, 2002? What was your reaction?

Response: I have reviewed the report, and believe that its findings will be useful in implementing the new structures implemented by the new Bureau of Immigration and Customs Enforcement's ("ICE") and the Bureau of Customs and Border Protection ("CBP") and providing effective and efficient immigration enforcement and investigations.

How will you integrate the findings and recommendations into your planning, policy development, prioritization, and management initiatives so that the problems identified by the Inspector General are promptly addressed?

Response: If confirmed, assisting ICE and CBP to meet overall immigration enforcement and investigative goals consistent with Border and Transportation Security Directorate goals and objectives will be a top priority. It is also my understanding that ICE is establishing a planning and policy office, which will consider these recommendations. Should I be confirmed, I will seek to ensure that the ICE and CBP planning and policy offices coordinate closely with the BTS Office of Policy and Planning to ensure that their policies are consistent overall BTS objectives. I also would look forward to working with the new Bureau of Citizenship and Immigration Services.

Statement of Michael J. Garcia
Nominee for Assistant Secretary
Bureau of Immigration and Customs Enforcement
U.S. Department of Homeland Security

Good morning, Madam Chairwoman, Senator Lieberman and distinguished Members of the Committee. It is an honor to appear before the Committee as the nominee for the position of Assistant Secretary for the Bureau of Immigration and Customs Enforcement, or BICE, within the Department of Homeland Security. I would like to thank the President for the confidence he has shown in me by again nominating me to serve as a leader of a critical law enforcement agency within his Administration.

The leadership demonstrated by Congress in swiftly passing the Homeland Security Act and the President's commitment to expeditiously implement the Act are monumental achievements in the defense of our Nation against the threat of terrorism. If confirmed, I will continue to implement the Act, consistent with its intent, and will remain focused on its overarching mission of providing greater security to our country.

For the past ten years, my career in public service has been devoted to counter-terrorism and national security issues. This experience provides me with a unique perspective regarding the threats confronting our homeland and the tools and capabilities required to effectively meet them. I would bring this perspective and experience to the job of Assistant Secretary for Immigration and Customs Enforcement should I be confirmed in this position.

I would like to briefly describe my career in public service. After completing a clerkship for Judge Judith Kaye on the New York Court of Appeals, I had the privilege of joining the United States Attorney's Office for the Southern District of New York. I joined that office at a unique time in its long history.

Six months after my appointment as an Assistant U.S. Attorney, in February 1993, the first attempt to topple the World Trade Center took place. It was, at the time, the single most devastating act of terrorism ever committed on U.S. soil. I was one of the prosecutors assigned to lead the investigation into that attack.

This was new territory for law enforcement. From the investigative techniques brought to bear to the laws used to bring the terrorists to justice, the case was a new model for terrorism prosecutions. All available tools were used. Statutes covering bombing of government vehicles and immigration law violations, among others, were used against the defendants in that case. Agents from every federal law enforcement agency brought their authorities and expertise to the case. As a member of the prosecution team, I was responsible for guiding this effort, presenting evidence to gain indictments, and presenting the case in court. All four defendants were convicted on all counts in that case. I received the Attorney General's Award for Exceptional Service, the highest award presented by the U.S. Department of Justice, for my work on this case.

My work on the World Trade Center bombing case would define my career in government service. Less than one year after the verdict in the World Trade Center case,

an explosion took place halfway around the world -- in Manila -- where Ramzi Yousef, the mastermind of the World Trade Center attacks, and his associates were mixing chemicals in an apartment in preparation for attacks on 12 U.S flagged commercial airliners. Their plan was to detonate bombs aboard those jetliners while they were airborne and filled with passengers on their way from Asia to the U.S.

I flew to Manila and directed the investigation and prosecution of that terrorist conspiracy. I oversaw a case that, unlike the 1993 World Trade Center bombing, involved terrorist activity outside the U.S. aimed at this country's national security. In bringing charges against Yousef and his coconspirators, including then-fugitive Khalid Sheikh Mohamed, I was the first to use some of the anti-terrorism statutes passed by Congress after the World Trade Center bombing. I also coordinated the cooperation in the trial of a number of foreign governments, including the Philippines and Pakistan. In 1996, Ramzi Yousef and two other terrorists were convicted on all counts in that case. I received the Attorney General's Award for Exceptional Service for my work on this case.

In 1998, followers of Usama Bin Laden bombed our embassies in Nairobi, Kenya and Dar es Salaam, Tanzania. More than 200 persons were murdered in these terrorist attacks. I was assigned as one of the lead prosecutors on the case against the four al Qaeda operatives who stood trial in New York for those attacks. In preparing this case, I managed and led a team of investigators and staff in a worldwide effort to gather evidence, return terrorists to the U.S., and coordinate efforts with the intelligence community. The jury returned guilty verdicts in this trial on all 302 counts.

This case raised a number of issues of first impression with regard to crimes committed against U.S. interests overseas and the intersection of criminal investigations and intelligence gathering. In addition to the Attorney General's award for Distinguished Service, I was awarded the CIA's "Agency Seal Medallion" for my efforts in coordinating our criminal case with the intelligence community.

My extensive management of complex counter-terrorism prosecutions has taught me important lessons about counter-terrorism that I would bring to my role in BICE, if confirmed. Three of the most important include:

1. The need to use all of our enforcement tools and authorities in support of our counter-terrorism efforts.
2. The importance of coordination across agencies and with the intelligence community.
3. Prevention and disruption need to be vital components of our counter-terrorism strategy. Criminal prosecutions are just one tool in that effort to protect the homeland.

After the guilty verdicts in the embassy bombing case, I was nominated by the President and confirmed by the Senate as Assistant Secretary of Commerce for Export Enforcement. In this position, I led an enforcement agency with a national security mission – preventing sensitive technology from falling into the hands of those who would use it to harm U.S. national security.

In December 2002, the President designated me Acting Commissioner of the Immigration and Naturalization Service. As Acting Commissioner I was honored to lead the transition of that agency into the Department of Homeland Security while at the same time ensuring that the critical day-to-day work of the agency continued uninterrupted. This was a monumental task involving dissolution of a 36,000-person agency.

After the creation of DHS and the transfer of INS functions to that Department, I was named Acting Assistant Secretary of DHS for Immigration and Customs Enforcement. BICE, with 14,000 employees and 5,500 special agents, is the second largest federal law enforcement agency. On March 1, that agency stood up a management structure that enabled all BICE employees to continue on with their critical enforcement missions while seeking to take advantage of the new opportunities presented by having the tools and authorities of the legacy components of INS, Customs, and the Federal Protective Service.

This is the challenge of BICE. To create a unified law enforcement agency capable of bringing all its law enforcement tools to bear, in an efficient and effective manner, on the vulnerabilities to our homeland security. We are in the process of a reorganization that will provide BICE with a unified investigations structure, both in the field offices and at headquarters. The reorganization will also create one unified intelligence division from the agency's legacy components.

If confirmed, I would bring to the task of leading this new enforcement agency a perspective gained from a career dedicated to anti-terrorism and national security. I would use this experience to guide my vision of a unified agency, committed to a partnership with its federal, state and local counterparts, and committed to full and fair application of the tools and authorities given to BICE.

Madam Chairwoman, Senator Lieberman, and Members of the Committee, in conclusion, I would again like to commend Congress on its efforts to protect the American people from those who seek to do us harm. It is an honor to be nominated as the Assistant Secretary to lead dedicated law enforcement officers in this unprecedented time. If confirmed, I vow to work together with this Committee and Congress to strengthen our Nation's defense and protect the American people.

Thank you again for your consideration and I look forward to answering your questions.

BIOGRAPHICAL AND FINANCIAL INFORMATION REQUESTED OF NOMINEES

A. BIOGRAPHICAL INFORMATION

1. **Name:** (Include any former names used.)

   Michael J. Garcia

2. **Position to which nominated:**

   Assistant Secretary of Homeland Security for the Bureau of Immigration and Customs Enforcement

3. **Date of nomination:**

   March 11, 2003

4. **Address:** (List current place of residence and office addresses.)

   425 I Street, NW
   Washington, DC 20536

5. **Date and place of birth:**

   October 3, 1961
   Woodhaven, NY

6. **Marital status:** (Include maiden name of wife or husband's name.)

   Married.
   Wife: Liana M. Davila

7. **Names and ages of children:**

8. **Education:** List secondary and higher education institutions, dates attended, degree received and date degree granted.

   Valley Stream Central High School, 1976 to 1979, high school diploma June 1979
   Adelphi University, 1979-1980
   State University of New York at Binghamton, 1980 to 1983, B.A. May 1983
   College of William and Mary, 1983 to 1984, M.A. August 1984
   Albany Law School of Union University, 1986 to 1989; J.D. June 1989

9. **Employment record:** List all jobs held since college, including the title or description of job, name of employer, location of work, and dates of employment. (Please use separate attachment, if necessary.)

American Institute of Physics, Woodbury, NY, copy editor, January 1985 to October 1985

Weekly Newspaper Group, 222 Sunrise Highway, Rockville Centre, NY, 11570, Editor, October 1985 to July 1986

New York State Office of Mental Health, 44 Holland Avenue, Albany, NY, 12229. legal intern, June 1987 to August 1987

Cahill Gordon & Reindel, 80 Pine Street, New York, NY, 10005, June 1988 to August 19988, summer associate, and September 1989 to July 1990, associate

Judge Judith S. Kaye, 230 Park Avenue, New York, NY, 10169, Law Clerk, July 1990 to August 1992

U.S. Attorney's Office, Southern District of New York, 1 St. Andrew's Plaza, New York, NY, 10007, Assistant U.S. Attorney, September 1992 to July 2001

Department of Commerce, 14 Street and Constitution, NW, Washington, D.C., Assistant Secretary for Export Enforcement, August 2001 to December 2002.

Immigration and Naturalization Service, 425 I Street, NW, Washington, D.C., 20536, Acting Commissioner, December 2002 to March 2003

Department of Homeland Security, 425 I Street, NW, Washington, D.C., Acting Assistant Secretary for Immigration and Customs Enforcement, March 2003 to present

10. **Government experience:** List any advisory, consultative, honorary or other part-time service or positions with federal, State, or local governments, other than those listed above.

None.

11. **Business relationships:** List all positions currently or formerly held as an officer, director, trustee, partner, proprietor, agent, representative, or consultant of any corporation, company, firm, partnership, or other business enterprise, educational or other institution.

None.

12. **Memberships:** List all memberships and offices currently or formerly held in professional, business, fraternal, scholarly, civic, public, charitable and other organizations.

New York State Bar Association

13. **Political affiliations and activities:**

(a) List all offices with a political party which you have held or any public office for which you have been a candidate.

None

(b) List all memberships and offices held in and services rendered to all political parties or election committees during the last 10 years.

Republican party member

(c) Itemize all political contributions to any individual, campaign organization, political party,

political action committee, or similar entity of $50 or more for the past 5 years.

None

14. **Honors and awards:** List all scholarships, fellowships, honorary degrees, honorary society memberships, military medals and any other special recognitions for outstanding service or achievements.

Outstanding Academic Performance Honors S.U.N.Y. Binghamton, 1983

Merit Scholarship, Albany Law School 1986-1989

Trustees Award, Albany Law School (valedictorian award) 1989

Attorney General's Award for Exceptional Service 1994 (for work on the 1993-94 trial of four defendants convicted of bombing the World Trade Center in 1993)

Attorney General's Award for Exceptional Service 1997 (for work on the 1996 trial of Ramzi Yousef and two others convicted of plotting to bomb twelve U.S. jetliners while those planes were scheduled to be airborne)

Attorney General's Award for Distinguished Service 2002 (for work on the 2001 trial of four followers of Usama Bin Laden convicted of bombing of two U.S. embassies in East Africa)

Central Intelligence Agency's Seal Medallion for work on the embassy bombing case

15. **Published writings:** List the titles, publishers, and dates of books, articles, reports, or other published materials which you have written.

None.

16. **Speeches:** Provide the Committee with four copies of any formal speeches you have delivered during the last 5 years which you have copies of and are on topics relevant to the position for which you have been nominated.

17. **Selection:**

(a) Do you know why you were chosen for this nomination by the President?

See discussion of qualifications in next answer.

(b) What do you believe in your background or employment experience affirmatively qualifies you for this particular appointment?

I have a strong background in law enforcement having served as an Assistant United States Attorney and as the head of Export Enforcement, a federal law enforcement agency. As an A.U.S.A., I investigated and prosecuted a number of terrorism cases and approached those cases by bringing to bear the various resources of the law enforcement agencies working with the Joint Terrorist Task Force, including the Immigration and Naturalization Service. I also prosecuted many other types of crimes, including narcotics cases, money laundering, document and immigration fraud, and perjury.

As head of Export Enforcement at the Department of Commerce, I ran a relatively small law enforcement agency but one with a national security mission. Export Enforcement aimed at preventing the transfer of sensitive technology to terrorists and terrorist-supporting nations. Enforcement of these highly complex laws and regulations required a knowledge of the legal issues, an understanding of the threat posed by

illegal export, and a strategy for using limited enforcement resources. During my time at Export Enforcement, I also designed a training course aimed at practical enforcement of the export control laws.

I also have had three months of service as Acting Commissioner of INS, during which time I became familiar with issues related to immigration law, enforcement of those laws, and issues related to the benefits and inspections functions that were previously performed by that agency. This experience has been very valuable to me in approaching the issues raised by the creation of the Bureau of Immigration and Customs Enforcement.

I believe that this experience in investigating and prosecuting criminal cases and running a complex law enforcement agencies and the former INS, has prepared me for the challenge of creating a new federal law enforcement agency dedicated to protecting the Homeland.

B. FUTURE EMPLOYMENT RELATIONSHIPS

1. Will you sever all connections with your present employers, business firms, business associations or business organizations if you are confirmed by the Senate?

   N/A

2. Do you have any plans, commitments or agreements to pursue outside employment, with or without compensation, during your service with the government? If so, explain.

   No

3. Do you have any plans, commitments or agreements after completing government service to resume employment, affiliation or practice with your previous employer, business firm, association or organization?

   No.

4. Has anybody made a commitment to employ your services in any capacity after you leave government service?

   No.

5. If confirmed, do you expect to serve out your full term or until the next Presidential election, whichever is applicable?

   Yes.

C. POTENTIAL CONFLICTS OF INTEREST

1. Describe any business relationship, dealing or financial transaction which you have had during the last 10 years, whether for yourself, on behalf of a client, or acting as an agent, that could in any way constitute or result in a possible conflict of interest in the position to which you have been nominated.

   None. Government Service for the past ten years.

2. Describe any activity during the past 10 years in which you have engaged for the purpose of directly or indirectly influencing the passage, defeat or modification of any legislation or affecting the administration and execution of law or public policy other than while in a federal government capacity.

None.

3. Do you agree to have written opinions provided to the Committee by the designated agency ethics officer of the agency to which you are nominated and by the Office of Government Ethics concerning potential conflicts of interest or any legal impediments to your serving in this position?

Yes.

D. LEGAL MATTERS

1. Have you ever been disciplined or cited for a breach of ethics for unprofessional conduct by, or been the subject of a complaint to any court, administrative agency, professional association, disciplinary committee, or other professional group? If so, provide details.

No.

2. To your knowledge, have you ever been investigated, arrested, charged or convicted (including pleas of guilty or nolo contendere) by any federal, State, or other law enforcement authority for violation of any federal, State, county or municipal law, other than a minor traffic offense? If so, provide details.

No.

3. Have you or any business of which you are or were an officer, director or owner ever been involved as a party in interest in any administrative agency proceeding or civil litigation? If so, provide details.

No.

4. Please advise the Committee of any additional information, favorable or unfavorable, which you feel should be considered in connection with your nomination.

E. FINANCIAL DATA

All information requested under this heading must be provided for yourself, your spouse, and your dependents. (This information will not be published in the record of the hearing on your nomination, but it will be retained in the Committee's files and will be available for public inspection.)

AFFIDAVIT

Michael J. Garcia being duly sworn, hereby states that he/she has read and signed the foregoing Statement on Biographical and Financial Information and that the information provided therein is, to the best of his/her knowledge, current, accurate, and complete.

Subscribed and sworn before me this 14th day of April, 2003

Notary Public

U.S. Senate Committee on Governmental Affairs
Pre-hearing Questionnaire for the
Nomination of Michael J. Garcia to be
an Assistant Secretary of Homeland Security

I. Nomination Process and Conflicts of Interest

1. **Why do you believe the President nominated you to serve as an Assistant Secretary of Homeland Security?**

   Response: I have extensive experience in national security/terrorism matters as described more fully below in the response to Question 3. I served for nine years as an Assistant United States Attorney (AUSA) and prosecuted a number of terrorism cases, including the 1993 bombing of the World Trade Center and the 1998 bombings of the U.S. Embassies in East Africa. In managing these complex cases, I gained experience in legal issues related to terrorist prosecutions, investigative techniques, and the use of intelligence in the counter-terrorism field. In prosecuting terrorism cases, I led teams of prosecutors, state and local agents and support staff.

   In August 2001, I was confirmed by the Senate as Assistant Secretary of Commerce for Export Enforcement. In this position, I led a law enforcement agency with a critical national security mission, responsible for controlling the export of our most sensitive technology.

   President Bush named me Acting Commissioner of the Immigration and Naturalization Service (INS) three months prior to the transfer of those functions to the Department of Homeland Security. During this time, I gained experience in managing a large complex agency and in immigration matters. I also led the transition of INS components into the new Department.

2. **Were any conditions, expressed or implied, attached to your nomination? If so, please explain.**

   Response: No.

3. **What specific background and experience affirmatively qualifies you to be an Assistant Secretary of Homeland Security?**

   Response: Having served as an Assistant United States Attorney and as the head of Export Enforcement I have a strong background in law enforcement, specifically in national security-related investigations. As an AUSA, I investigated and prosecuted a number of terrorism cases and approached those cases by bringing to bear the various resources of the law enforcement agencies working within the Joint Terrorism Task

Force, including the Immigration and Naturalization Service. I also prosecuted many other types of crimes, including narcotics cases, money laundering, document and immigration fraud, and perjury.

As head of Export Enforcement at the Department of Commerce, I led a law enforcement agency with a national security mission. Export Enforcement has as its goal preventing the transfer of sensitive technology to terrorists and terrorist-supporting nations. Enforcement of these complex laws and regulations required knowledge of the legal issues, an understanding of the threat posed by illegal export, and a strategy for using limited enforcement resources to accomplish this mission. During my tenure at Export Enforcement, I also designed a training course aimed at practical enforcement of export control laws.

I also served as Acting Commissioner for a period of three months and led INS' transition to the Department of Homeland Security. As Acting Commissioner, charged with responsibility for dissolving INS pursuant to the Homeland Security Act, I managed the continuing operations of a 36,000-person agency; deployed and led the partitioning of the INS components, including the transfer of the Border Patrol (apx. 12,000), and the inspection division (apx. 6,000) to Bureau of Customs and Border Protection (BCBP) and the service functions (apx. 6,000) to Bureau of Citizenship and Immigration Services (BCIS).

I believe that the experience of managing complex investigations and litigation, as well as my experience running a law enforcement agency with a national-security mission such as Export Enforcement, in addition to my time as Acting Commissioner of INS, has prepared me to meet the challenges of being an Assistant Secretary for Homeland Security.

4. **Have you made any commitments with respect to the policies and principles you will attempt to implement as an Assistant Secretary? If so, what are they and to whom have the commitments been made?**

Response: The Homeland Security Act sets forth the mission principles of DHS and Border and Transportation Security (BTS). Having been designated as the Acting Assistant Secretary of Homeland Security for Bureau of Immigration and Customs Enforcement (BICE) by the President, I am committed to upholding and furthering these mission principles.

5. **If confirmed, are there any issues from which you may have to recuse or disqualify yourself because of a conflict of interest or the appearance of a conflict of interest? If so, please explain what procedures you will use to carry out such a recusal or disqualification.**

Response: None to my knowledge.

II. Role and Responsibilities of an Assistant Secretary of Homeland Security

1. **How do you view the role of Assistant Secretary of Homeland Security?**

   Response: I view the role as first and foremost upholding and furthering the primary mission of the new Department as described in the enabling legislation. Those mission components include the prevention of terrorist attacks in the United States and the reduction of U.S. vulnerability to such attacks and establishing a premier law enforcement agency with extensive immigration and customs enforcement authorities including those related to anti-smuggling, child exploitation, and financial crimes. In this respect, I believe leading the BICE provides tremendous opportunities and responsibilities.

2. **How do you plan to communicate to the staff at DHS on efforts to address relevant issues?**

   Response: We have established methods and structures for timely and effectively reporting to DHS leadership and the component agencies, including daily reporting of significant events. We provide DHS an the component agencies with comprehensive approach to reporting using this dissemination tool.

   I have a direct line of communication with the Under Secretary for BTS and regular communication with the Secretary, Deputy Secretary and the Secretary's Chief of Staff.

3. **What do you believe are the most important responsibilities of the position to which you are nominated and what challenges do you expect to face?**

   Response: As noted above in the answer to Question 1 of this section, it is imperative that the Assistant Secretary of BICE use all enforcement resources effectively, efficiently and fairly in carrying out the primary mission of DHS. This responsibility includes enhancing capability based upon the combination of enforcement resources and creating a unified law enforcement agency dedicated to the primary mission of securing the homeland. The Assistant Secretary of BICE would also play a critical role in carrying out the statutory mandates of BTS, including establishing national immigration enforcement policies and procedures.

   We are in the midst of unprecedented government reorganization. Creating a unified law enforcement agency dedicated to homeland security from various components with different missions and authorities is a monumental challenge.

4. **What objectives would you like to achieve in your tenure as Assistant Secretary? Why do you believe these objectives are important to DHS and to the government?**

Response: Overcoming the unprecedented challenge of this reorganization and creating a unified law enforcement agency, and effectively leading the new agency in the execution of the homeland security mission.

III. Policy Questions

1. **On March 1, 2003, functions of the former Immigration and Naturalization Service were transferred into separate bureaus within the Department of Homeland Security. For example, the Bureau of Citizenship and Immigration Services (BCIS) is to screen all applicants for immigration benefits through the Interagency Border Inspection System. Applicants initially identified as potentially terrorism-related or as a threat to national security are to be referred to the Bureau of Immigration and Customs Enforcement (BICE) for investigation and resolution prior to any benefits being adjudicated.**

Since the screening and adjudication functions and the investigation and resolution activities will reside in two separate bureaus, how will you assure efficient and effective coordination between BCIS and BICE to expeditiously resolve cases involving terrorism or national security?

Response:. I am in regular contact with Acting Director Aguirre. In addition, I have appointed an individual to serve as the BICE's liaison to BCIS to maintain communication and offer a direct avenue to my office on any pertinent issues. Finally, there are high-level to working groups made up of BICE and BCIS representatives looking at specific issues.

2. **Several thousand criminal aliens illegally in the United States have been ordered removed, but cannot be because their countries of origin refuse to accept them. As a result, the aliens are either (1) held for long periods, or (2) released into the community. The Immigration and Nationality Act requires the State Department, upon being notified by the Attorney General (authority transferred to the Secretary of the Department of Homeland Security) to discontinue granting visas to citizens of countries that refuse to accept aliens ordered removed to their countries of origin.**

What will be your policy toward using this tool as a means to eliminate the undesirable conditions that are generated by countries' refusals to accept the return of their citizens, subjects or residents?

Response: Countries are obligated to accept the return of their nationals who have been removed from the United States. We continue to work closely with all counties to coordinate these returns. BICE will use all legal authorities to effectuate its removal mission.

3. **The new Bureau is responsible for numerous and a wide range of activities including identifying and removing aliens unlawfully in the country, including possible terrorists and other criminal aliens, investigating violations of immigration and customs laws including human smuggling, terrorist financing, cyber crimes, money laundering, as well as collecting, analyzing and disseminating intelligence to field staff.**

   Given limited resources, what would you see as the Bureau's major priorities should you be confirmed?

   Response: BICE, as a component of DHS, has as its core mission protecting the homeland as set forth in the legislation. This mission will be accomplished by focusing the enforcement authorities on national security. At the same time, priority will be placed on the anti-smuggling, child exploitation, and financial crimes programs.

4. **The Census Bureau has estimated that at least 8 million undocumented aliens live in the U.S. It is well recognized that the vast majority of undocumented aliens come to the U.S. for employment purposes. It is also well recognized that the employment verification process established by the 1986 immigration law to prevent employers from hiring undocumented aliens has had limited effect primarily due to undocumented aliens' widespread use of fraudulent documents to bypass the process.**
   What in your opinion should be done to enhance the employment verification process and/or the employer sanctions provisions of the law in order to prevent employers from hiring undocumented aliens?

   Response: BICE will enforce the criminal provisions of federal statutes and the administrative provisions of the Immigration and Nationality Act. We will investigate and refer for prosecution violations including those employers exploiting foreign nationals either physically or economically. Consistent with our mission to secure the homeland, we are focusing our resources on employers with workers who have access to sensitive and critical infrastructure and high profile events that may be targeted by terrorists.

5. **The Student Exchange and Visitor Information System (SEVIS) was developed to convert a manual, paper-driven process to an automated Internet-based system designed to collect, maintain, and track information relative to international students and exchange visitors. It is to provide current information on students and exchange visitors, including current address, disciplinary action taken, date of commencement of studies, and academic status. It is also designed to analyze data, and to recognize, predict, and report trends and violations such as students that fail to enroll. Although SEVIS was to be fully implemented on January 30, 2003, numerous questions and concerns remain about the system and its abilities. These include:**

   1. **Since the SEVIS program now will involve two different Bureaus in the Department of Homeland Security, how will the adjudication and enforcement aspects of the program be coordinated?**

Response: BICE and BCIS have developed a detailed plan to transition the Student and Exchange Visitor Program (SEVP), including SEVIS, to BICE. This plan calls for certain specific responsibilities to remain with BCIS and some will be the responsibility of the BCBP. The SEVP will include representatives/team members from BCIS and BCBP to ensure that the needs and requests of those Bureaus are included when developing policy and system changes. This structure is similar to the Department of State (DOS) where the DOS Bureau of Educational and Cultural Affairs and the DOS Bureau of Consular Affairs have specific roles and responsibilities within the SEVP.

Specifically, BICE will assume responsibility for policy and program development, school certification required for access to SEVIS, the ongoing monitoring of schools for compliance, as well as any decision to take an adverse action against a school for violation of the terms of the SEVP. Additionally, BICE will be responsible for enforcement actions against individual students and exchange visitors who violate their status.

BCIS will retain responsibility for adjudicating applications for benefits filed by individual students such as change of status, extension of stay, work authorization and reinstatement to status. BCIS will also retain responsibility for change of status applications submitted by potential exchange visitors.

BCBP is responsible for the actual admission of students and exchange visitors to the United States at the ports-of-entry. In doing so, they will be using SEVIS data to assist in their admission decisions and then providing information to SEVIS regarding the admission.

   2. **Has the monitoring piece of SEVIS been developed, who will collect and analyze adverse data, and how will subsequent investigations be handled? What priority and resources will be given to these areas?**

Response: BICE developed monitoring procedures that support basic queries of student and school data. More advanced reports are being developed to support the specific functions of the benefit and enforcement programs. These reports will be analyzed at the Headquarters level and used to identify specific investigative targets as well as overall trends that may require additional attention. We will be creating a statistical analysis team to analyze SEVIS data to determine various trends and anomalies. Booze/Allen/ Hamilton has been hired to prepare the statistical analyses, and recently produced the first SEVIS generated "no-show" list. This report identified 71 SEVIS violators.

These leads, as with leads that are manually reported via a toll-free number until August 1, 2003, are reviewed by Headquarters BICE and referred to the BICE Law Enforcement Support Center (LESC). The LESC conducts searches of public and governmental databases for records that indicate an entry into (and continued presence in) the United States. The leads are then returned to Headquarters BICE where they are prioritized based on national security interest and are referred to the field offices for further investigation. The field offices are given 30 days to complete the investigations and return the files to Headquarters.

As the SEVIS program progresses, reports can be used to generate leads related to non-compliance by schools. These leads will also be referred to the field offices for investigation.

As part of its-restructuring, BICE will add a "compliance enforcement program" which will oversee investigations related to SEVIS. A student fee regulation is under consideration to address enforcement resource needs.

3. **As some universities expected, technological problems have arisen that have precluded their compliance with SEVIS. What is the scope of these technological problems and how will they be addressed? What are the timeframes for addressing the problems?**

Response: There have been some problems detected in the SEVIS application. This situation resulted, in some cases, in very long periods of waiting for documents to be printed or saved. Between January 2003 and March 2003, we upgraded SEVIS servers and implemented software upgrades to increase system performance and expedite data entry. We believe the issues of delays and performance have been resolved. However, we continue to monitor the system closely. It is important to note that during the period when the system was experiencing delays, we were in constant communication with the educational associations.

Other high visibility technological problems that were identified in the early months of SEVIS operation have since been addressed to include:

- Data crossover (e.g. bleeding): Some schools indicated that they were seeing other sponsors' program records and printing other programs' forms. To resolve this issue, we deployed additional resources and engaged Mitre, a not-for-profit company that provides systems engineering, research and development, and information technology support to the Government, to assist in analyzing and addressing the issue. We were able to solve the problem, and as of May 12, 2003, we deployed a fix to eliminate data crossovers.

- Records not available to Consular Officials: SEVIS records are "pushed" from the SEVIS database to the DOS and integrated with State's Consolidated Consular Database (CCD). Consular officers use the CCD to verify data submitted by visa applicants. Student and exchange visitor visas cannot be issued without this verification. Some records entered into SEVIS were not transferred to the CCD, causing some delays in visa issuance. In April and May 2003, DHS and the DOS Bureau of Consular Affairs collaborated on correcting the problem to ensure that all records entered into SEVIS are reflected in the CCD. DHS and the Bureau of Consular Affairs believe the problem has been corrected and records reconciled, but will continue to monitor the data share closely.

- Help Desk responsiveness: In response to greater than expected demand on Help Desk resources, we are examining options to automate some Help Desk functions. Additionally, we have increased the size of the Help Desk staff and are providing additional training.

4. **Since SEVIS was the cornerstone of INS' efforts to track and monitor foreign students (some who may have been involved in terrorist or national security issues as revealed in 9/11), is BICE undertaking any other efforts or special projects to ensure the immigration system is not being used fraudulently by this group?**

Response: BICE manages the SEVIS program to tracks foreign students and ensure their compliance with the terms of their visas. In additional to SEVIS, certain students must comply with registration requirements of the National Security Entry Exit Registration System (NSEERS) program.

5. **When does BICE expect SEVIS to be fully operational? What challenges may affect time lines and how does BICE expect to address these implementation issues? Does BICE have a transition plan in place for SEVIS? What is it?**

Response: The DHS has met the aggressive deadline for SEVIS implementation as set forth in the USA PATRIOT Act (January 1, 2003). On July 1, 2002, six months before the deadline, DHS deployed SEVIS to begin preliminary enrollment of accredited schools on a volunteer basis. Also in July 2002, the core foreign student functionality was made operational and schools began to utilize SEVIS. By January 1, 2003, DHS successfully developed and deployed all facets of the SEVIS system, including exchange program and exchange visitor functionality, and all system interfaces. By regulation, all schools and exchange programs, certified to admit foreign students or exchange visitors, were required to utilize SEVIS as of February 15, 2003, for all new students. All continuing foreign students must be entered into SEVIS no later than August 1, 2003. The primary reason for a phased approach to information collection on foreign students (e.g., entering students followed by continuing students) was to ensure program integrity. The schools needed adequate time to review and convert the considerable data on their continuing students to SEVIS.

This multi-phase approach was described in proposed regulations published in May 2002 and highlighted in testimony before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Border Security, and Claims (September 18, 2002), as well as before the U.S. House of Representatives, Committee on Education, Workforce Subcommittees on Select Education and 21st Century Competitiveness (September 24, 2002). Finally, the multi-phase approach was codified in final regulations in December 2002.

Until August 1, 2003, foreign students already in the United States continue to be monitored under the paper-based processes of legacy INS information systems. Schools are still required to maintain records and report updated information on these continuing students and are to report violations of status to DHS.

BICE developed a transition plan for SEVIS that is well under way. (see answer to question 5 (1) above) It is expected that this transition will not be completed until the end of FY 2003.

6. **What, if anything, has SEVIS done to address school concerns regarding SEVIS access problems? What quality assurance measures has SEVIS implemented to ensure that the data is reliable and secure?**

Response: Since January 2003, we have added CPU power and upgraded SEVIS servers to increase system performance. With these improvements, system usage has shown a 30 percent average CPU utilization, and reports of poor performance have virtually ceased. We continue to review and evaluate the SEVIS application and system architecture to ensure system and data reliability. We will continue to implement upgraded SEVIS software to enhance the system and to continue to ensure reliability.

In addition to these efforts and enhancements to the dedicated SEVIS Help Desk, we conduct a weekly teleconference with universities and exchange programs and their membership organizations. BICE/SEVP managers, policy analysts, and senior technical staff participate on these weekly calls, as well as representatives from DOS Educational and Cultural Affairs Bureau and the DOS Consular Affairs Bureau. These calls address policy, process, regulation, and technical issues, and also general feedback and stakeholder concerns.

6. **The new Bureau of Immigration and Customs Enforcement brings together the investigation arms of the Customs Service, the investigative functions of the former Immigration and Naturalization Service, and the Federal Protective Service. This unification of investigative functions is intended to enhance information sharing between federal bureaus and provide for more cohesive enforcement of immigration and customs laws within the interior of the United States in addition to protecting federal institutions and interests. Yet, information on how the Bureau will be organized is vague.**

   a. **Can you describe in more detail the nature of the Bureau's functions and how you plan to delegate specific roles and responsibilities within the Bureau?**

Response: BICE is responsible for:

- Customs and immigration investigations;
- The collection, analysis, and dissemination of customs and immigration intelligence;
- The work of the Federal Protective Service;
- Air & marine interdictions and;
- Detention & removal functions.
- Immigration trial attorneys.

Our restructuring plans, which will be effective June 9, 2003, will:

- Integrate INS and Customs investigations;
- Integrate INS and Customs Intelligence;
- Establish a separate chain-of-command for Detention & Removal; and
- Align the geographic areas of responsibility of Investigations, Detention & Removal, and Intelligence.

   1. **Given the substantial scale of this undertaking, what steps do you plan to implement to ensure that it is done in a balanced manner, in terms of resource allocation and the melding of different "cultures," without unduly jeopardizing operational effectiveness?**

Response: We are implementing a restructuring of BICE that incorporates and preserves all of the expertise and authorities of the component agencies. In doing this, we have ensured that senior management at headquarters and in the field is representative of legacy component.

2. **How do you intend to integrate the information technology and other systems of the different entities?**

Response: As part of the transition, DHS has established information technology and systems working groups to ensure the successful integration of these systems. BICE has actively participated in DHS' Under Secretary for Management is agency-wide evaluation of system integration. As part of this review, case management systems, email systems, and information databases are all being evaluated.

7. **Within the new Bureau, the customs component is implementing *Project Shield America*. This initiative is intended to prevent illegal exporters, foreign countries, terrorist organizations, and others from, among other things, trafficking in weapons of mass destruction (WMD) and/or their components.**

   1. **Given DHS' stated objective to protect the homeland of the United States from foreign attack, what steps do you plan to implement to ensure that *Project Shield America* receives the institutional attention and priority and attendant resources?**

Response: Project Shield America is an industry outreach program that seeks the assistance and cooperation of those companies involved in the manufacture, sale, and export of U.S. strategic technology and munitions items. This program targets choke point technology and munitions used in nuclear, chemical, biological, and missile delivery systems, that could be illegally exported to enemies of the United States.

To focus high-level attention on Project Shield America, as well as other programs of national security interest, we have established a National Security Investigations Division within the Office of Investigations. The Strategic Programs Branch within this Division provides oversight for Project Shield America and assists field offices by identifying those entities involved in the manufacture, sale and export of critical technologies, preparing outreach materials, and evaluating and monitoring the program's progress.

   2. **Also, how do you plan to evaluate the success or effectiveness of this initiative over time?**

Response: To successfully evaluate Project Shield America, the Strategic Investigations Program maintains an accurate record of the number of industry outreach visits and compares this information to resulting case activity. Since December 2001, approximately 6,900 industry outreach contacts have been conducted and 85 criminal investigations have been initiated. In addition, a record of successes (case activity reports showing visits resulting in successful conclusions; e.g., arrests, indictments, prosecutions, and convictions) is also maintained.

8. **Congress appropriated $380 million for the Entry Exit system in fiscal year 2003 and DHS requested $480 million for the system in fiscal year 2004.**

   1. **Has the Bureau developed any type of economic analysis (e.g., cost effectiveness analysis, cost/benefit analysis) to ensure that this system will be acquired and implemented in a manner that will deliver value commensurate with costs? If not, does it have plans to complete one? If so, when? If not, why not?**

Response: The Border and Transportation Security Directorate has the responsibility for the US VISIT program. As part of that program, BICE is responsible for compliance enforcement of that system. It is my understanding that, the US VISIT Program has developed an expenditure plan, currently under review within DHS, which includes an acquisition strategy, risk management plan, privacy assessment, work breakdown structure, concepts of operations, system security plan, and roles and responsibilities matrix. In addition, the FY 2003 Omnibus Appropriations Act requires that none of the funds appropriated for the US VISIT program may be obligated until DHS submits an expenditure plan that (1) meets the capital planning and investment control review requirements; (2) complies with federal acquisition rules; (3) is reviewed by GAO; and (4) has been approved by the Committees on Appropriations. According to US VISIT the results of this expenditure plan are expected to be submitted to our appropriation committees in early June 2003.

   2. **What are the top five risks facing the Bureau as it begins acquisition and implementation of this system? What are the Bureau's strategies for addressing each risk?**

Response: According to US VISIT program managers, the top five risks as identified by the BTS level program are:

1. Aggressive timeframe and schedule–US VISIT will leverage existing proven technologies with existing contracts.
2. Approval and release of funds–US VISIT is working to streamline our process to allow for more review time by OMB, GAO, and the appropriations committees.
3. Public support–we will conduct an outreach campaign.
4. Privacy issues–a privacy assessment is being conducted and system safeguards to protect privacy will be developed. In addition, DHS now has a privacy officer.

5. Acquisition--we will use existing technology and contracts where possible. The US VISIT office will engage industry in the very near term, and issue an Request For Proposal RFP in the fall to select a prime systems integrator to assist us in meeting the timeframes.

3. **What requirements and assumptions is the fiscal year 2004 request based on? Are these requirements and assumptions still current? If not, what has changed and what is the impact of the changes on funding request?**

Response: The requirements are based upon the legislation, such as the Data Management Improvement Act, USA PATRIOT Act, and the Enhanced Border Security and Visa Reform Act.

9. **The Data Management Improvement Act requires that (1) the initial phase of the Entry Exit system be implemented at all airports and seaports by December 31, 2003, and (2) the final phase of the system incorporate biometric technologies and be implemented by December 2005.**

1. **Is the initial phase of the system on schedule to be implemented by December 31, 2003? If not, what is the current schedule? Given the current status of the Entry Exit system (for example, the fact that a contractor is not yet on board) what is the basis for this position?**

Response: The US VISIT Program has three important phases culminating respectfully at the end of the calendar years 2003, 2004, and 2005. The schedules for each of the phases are extremely aggressive. Phase I will be achieved on schedule.

Many of the functioning systems are already in place, such as APIS, IBIS, SEVIS, and IDENT. US VISIT will utilize existing contracts and integrate these existing systems and technology to meet the December 31, 2003, timeframe.

DHS will issue an Request For Proposal (RFP) in the fall. This will enable private industry to assist us in meeting the December 31, 2005, timeframe.

2. **What specific system functionality mandated in legislation will not be delivered by December 31, 2003? What benefits, in terms of greater homeland security, will be provided by this initial phase of the system?**

Response: It is my understanding that; US VISIT will meet all of the system functionality, such as electronic manifests and the matching of arrival and departure records by December 31, 2003.

3. **What is the current schedule for implementing the final phase of the Entry Exit system? What specific system functionality is mandated in legislation?**

Response: The US VISIT Program is being managed at the BTS level. Therefore, this question would better be answered by BTS.

10. **A recent report by the Justice and State Departments and the National Institute of Standards and Technology stated that implementation of the Entry Exit system at land borders was at least 1 year behind schedule.**

1. **What is the Bureau's current estimate for when it will field the Entry Exit system at land border ports-of-entry?**

Response: It is my understanding that US VISIT anticipates meeting the legislatively mandated dates. Implementation is scheduled for the top 50 land border crossings by December 31, 2004, and all land ports by December 31, 2005.

2. **What is the Bureau's position on the Justice and State Department reports?**

Response: The US VISIT Program is being managed at the BTS level. Therefore, this question would better be answered by BTS.

11. **The Entry Exit system will likely require substantial increases in staff and infrastructure modifications at approximately 150 land ports, particularly for the departure component.**

1. **What assessments has the Bureau performed to determine the extent of additional staff needed?**

Response: The US VISIT Program is being managed at the BTS level. Therefore, this question would better be answered by BTS.

2. **What assessments has the Bureau performed to determine the physical infrastructure changes that might be needed and their associated costs?**

Response: The US VISIT Program is being managed at the BTS level. Therefore, this question would better be answered by BTS.

3. **What do these assessments show? If either assessment has not been performed, why hasn't it and when will it?**

Response: The US VISIT Program is being managed at the BTS level. Therefore, this question would better be answered by BTS.

12. **Prior to the creation of the DHS, both the INS and Customs were piloting more advanced document readers at selected ports-of-entry.**

    1. **What is the status of these pilots?**

Response: These programs formerly within INS have been transferred to US VISIT and BCBP.

    2. **How do these pilots relate to the planned Entry Exit system? For example, will the more advanced document readers be used as part of the planned system?**

Response: US VISIT will address these issues with BCBP.

13. **Prior to creation of DHS, the Customs Service initiated the Automated Commercial Environment (ACE) to modernize its trade processing system and, separately, INS initiated efforts to acquire an Entry Exit system to document and monitor the entry, exit, and stay of foreign nationals in the United States.**

    With the consolidation of Customs and INS into DHS' Border and Transportation Security Directorate and DHS' associated effort to integrate border protection and immigration and customs enforcement, what are the implications for continuing ACE and Entry Exit as stand-alone systems?

Response: It is my understanding; the US VISIT program will leverage a variety of the DHS databases that will facilitate the sharing of data with the law enforcement and intelligence communities. In addition, DHS is developing an overall enterprise architecture plan for all of the systems and technologies.

14. **It was recently reported that an employee of the DHS, formerly with the INS, was indicted by a federal grand jury in Michigan on charges of obtaining improper visas and illegally smuggling aliens into the United States.**

    a. **Is this a wide spread problem throughout the Department or is this an isolated case? If isolated, how can you be sure?**

Response: We believe the vast majority of our employees are dedicated and law abiding. We are committed to maintaining the integrity of the system; we have a robust internal audit system in place and procedures for referring appropriate cases to the Office of the Inspector General.

1. **What is being done and what can be done by the Department to ensure that situations like this one in Michigan don't happen again? What is the screening process for potential employees at DHS and BICE?**

Response: Various program offices have initiatives that deal with honesty, proper conduct and ethics. The Office of Human Resources Management provides a session on Standards of Conduct during new employee orientation; the Office of Security checks for any misconduct issues during background reinvestigations which we are in compliance with the Reinvestigations Program, the Office of Internal Audit has various programs which addresses ethics training in addition to conducting investigations of any allegations of employee misconduct; the Office of Training and Development teaches ethics in the Immigration Officer Basic Training Course as well as the Advanced Courses; the Leadership Development Center teaches ethics in various supervisory/managerial training courses, e.g., Basic Supervision Course for first-line supervisors, Basic Management Skills course. Additionally, all potential hires undergo background checks as required by the Office of Personnel Management.

15. **In a recently released Department of Justice study, the INS was given very poor grades on its ability to run airport inspection facilities. The Department of Justice made seven recommendations to the INS to help bring the airport inspection facilities to a level where they could be effective. The INS, and you as Acting Commissioner, concurred with several of the recommendations and set specific dates for their implementation.**

The INS stated that the implementation and further comment of several of the recommendations that would be fulfilled by May 31, 2003. Specifically, can you update us on the progress on the following two:

RECOMMENDATION 5: Establish a program of periodic reviews and testing of security systems including: (a) tests of locks, alarms, and cameras, (b) documentation of review results, (c) recommendations to airlines and airport authorities for needed repairs, and (d) plans to monitor actions taken.

Response: The Department of Justice report was issued in January 2003 and on March 1, 2003, the Bureau of Customs and Border Protection obtained jurisdiction over these matters.

RECOMMENDATION 6: Ensure that the INS communicates the results of its border integrity security reviews to airlines and airport authorities and establishes a program to monitor actions taken.

Response: The Department of Justice report was issued in January 2003 and on March 1, 2003, the Bureau of Customs and Border Protection obtained jurisdiction over these matters.

16. **What are the responsibilities of BICE, and how are they distinct from those of the Bureau of Customs and Border Protection (BCBP) and the Bureau of Citizenship and Immigration Services (BCIS)?**

Response: The responsibilities of BICE are to:

- Enforce the immigration and customs law of the United States;
- Police and secure federal facilities across the nation; and
- Remove individuals who are unlawfully present in the United States.

These responsibilities are distinct from BCIS because they relate to enforcement rather than the BCIS responsibility to provide immigration services.

BCBP is responsible for inspection and border patrol functions rather than investigations.

17. **What will be your priorities at BICE? What portion of the Bureau's resources and attention will be directed to each of the Bureau's goals?**

Response: Our priorities are to enhance national security; promote public safety; disrupt and dismantle the financial infrastructures of organizations that would harm the United States; and identify and remove individuals, especially criminals and others who pose threats to national security and public safety, who are unlawfully present in the United States. The recently announced BICE organizational structure is based on these priorities. We are continuing to refine our strategies and corresponding budgets. See also question 3 above.

18. **Section 441 of the Homeland Security Act transferred the immigration enforcement and border protection functions of the INS to the Under Secretary for Border and Transportation Security. Section 442 established the Bureau of Border Security (BBS), and authorized the Under Secretary to delegate to the BBS the functions listed in section 441. On January 30, 2003, the President submitted to Congress a modification to his previous reorganization plan; the modification created two bureaus that perform immigration enforcement and border protection functions, the Bureau of Customs and Border Protection (BCBP) and the Bureau of Immigration and Customs Enforcement (BICE). The modification renamed the BBS to BICE, but only gave it some of the functions listed in section 441.**

1. **What was the rationale for assigning the immigration enforcement and border protection functions listed in section 441 to two separate bureaus?**

Response: Consistent with the President's plan, the two bureaus were established to break down the barriers to communication and enhance protection of the homeland. It will join investigators with investigators and inspectors with inspectors to capitalize on expertise and resources. See answer to question 18 (2) below.

2. **How will the division of the immigration enforcement and border protection functions facilitate the Directorate's strategic goals, reduce duplication of efforts, or ensure improved information sharing?**

Response: The division of interior enforcement and border protection into two separate bureaus allows for greater mission focus through specialization, creates economies of scale for the operational components that have been integrated in BICE, and builds in mechanisms for intra-bureau information sharing. The integration of the investigations and intelligence functions in BICE and inspections functions in BCBP will reduce duplication of efforts. Unified chains-of-command for inspectors, investigators, and intelligence specialists will improve information sharing.

3. **In your view, is the division of the immigration enforcement and border protection functions of the INS into two separate bureaus consistent with Congress' intent in having created a single Bureau of Border Security?**

Response: Yes. Integrating authorities and expertise into a unified chain-of-command at BICE and BCBP will promote border security.

4. **Did the President modify the original reorganization plan "on the basis of consultations with the appropriate congressional committees," as required by Section 1502(c) of the Homeland Security Act? If so, please describe the nature of the consultations that occurred prior to the January 30, 2003, announcement of the modification.**

Response: Yes, consistent with Section 1502(c) of the Homeland Security Act, the Under Secretary for Border and Transportation Security, personally spoke with the appropriate Members of Congress prior to the implementation of this modification.

19. **The Federal Protective Service (FPS) with 1,500 personnel is responsible for protecting the security of federal buildings and facilities.**

1. **Why was FPS included in BICE?**

Response: FPS is responsible for the security of approximately 8,800 federally-owned and leased facilities throughout the United States and its territories, and as such has a law enforcement and security mission related to the interior security of the nation.

2. How is the mission of the FPS relevant to the immigration and customs enforcement missions of BICE?

Response: The FPS mission is accomplished through law enforcement, intelligence and investigative entities that focus on activity related to approximately 8,800 federally-owned and leased facilities throughout the United States and its territories. Those activities, which focus on homeland security not directly related to the border security issues, require close coordination and information sharing in the development of a holistic approach to the safety and security of the interior of the nation.

3. How will the transfer of FPS into BICE facilitate the Directorate's strategic goals, reduce duplication of efforts, or ensure improved information sharing?

Response: FPS will contribute to the fulfillment of the strategic goals, reduction of duplication, and improve information sharing by participating directly with BICE in intelligence, investigative, and law enforcement operations specific to the mission of the Directorate. Examples of this new-found efficiency is the potential for expansion of FPS communications capabilities, through the use of the consolidated Megacenters, to accommodate the security and wireless monitoring and dispatching needs of the entire Directorate.

4. What are your plans for improving or altering the performance and priorities of the FPS?

Response: With the events of September 11, 2001, the FPS is facing the new reality of protecting and securing federal facilities. Major investments included in the FY 2004 President's Budget request include developing a highly trained workforce and completion of a legislatively mandated communications systems upgrade. In order to recruit, train, and retain a workforce that is well equipped to respond to threats to federal facilities, the FPS has implemented Administrator-approved pay and benefit enhancements, as well as established an expanded program for in-house specialists for emergency response. The FPS is also in the process of updating the command centers (mega centers) communications and nationwide radio communications system for compliance with the legislatively-mandated narrow band radio frequency conversion. FPS will continue with its primary mission of identifying and reducing the vulnerabilities of federal facilities and providing recommendations for and implementation of new security equipment and features to reduce that vulnerability in the future.

20. **Which Customs enforcement functions were included in BICE? How will the inclusion of these functions in BICE facilitate the Directorate's strategic goals, reduce duplication of efforts, or ensure improved information sharing?**

Response: All customs investigative functions were transferred to BICE. This will further the strategic goals of BTS – namely administering the customs laws of the United States--by placing the authority to investigate violations of customs laws into a single law enforcement agency that's primary responsibility is to enforce the various legal authorities that fall within DHS. There are important synergies to be gained, for example, in the area of counter-smuggling and in case management systems that provides full access to investigative functions.

21. **How, if at all, will the management, operations, and priorities of the transferred Customs entities be changed as a result of the transfer to BICE?**

Response: BICE will shortly be implementing a new Headquarters and field structure that integrates the talents and expertise of the transferred Customs entities (Office of Investigations, Air and Marine units, and Intelligence officers) with the enforcement elements of the former INS. This new design will integrate functions to better achieve the BICE mission and will establish accountability through clear chains of command, with fewer management layers, thus providing BICE with the ability to respond to threats and enforcement situations in a quick and flexible manner.

The priorities of the transferred Customs entities will be those of BICE: the protection and security of the homeland and the American public. The historic responsibilities of the transferred Customs entities, such as the prevention of trade fraud, narcotics smuggling, child exploitation, trafficking in arms and weapons of mass destruction, and money laundering, will not be abandoned, but rather melded into the overall DHS mission.

22. **What relationship will BICE have with the BCBP in overseeing cargo security throughout the inter-modal transportation system? Specifically:**

1. **What role will BICE have in the Container Security Initiative?**

Response: Currently, multidisciplinary teams (comprised of BCBP and BICE personnel) work together in the foreign-port environment in support of the Container Security Initiative (CSI) program to enhance container security. BICE will continue to support this effort.

2. **Will BICE or BCBP be responsible for auditing the program and inspecting containers not identified as "high-risk" by the Automated Targeting System, to ensure that "low risk" containers are, in fact, low risk?**

Response: The primary responsibility for CSI rests within BCBP, including the audit function. Again, BICE will provide all necessary support for this important program.

3. **Will BICE verify that the security measures implemented by trusted shippers, freight forwarders, Non-Vessel Owning Common Carriers (NVOCC's), etc. are adequate to justify expedited processing of their containers?**

Response: BCBP will lead this effort. BICE will support the initiative and assist as needed in the verification process.

23. **What in your view is the mandate of the Bureau of Immigration and Customs Enforcement? What are BICE's interior enforcement goals?**

Response: See responses to questions 3 and 17 in part III above.

24. **What liabilities and problems did BICE inherit from the INS and what plans have been and will be implemented to take care of these liabilities and problems?**

Response: Congress abolished the INS and separated the services and enforcement functions – addressing the most fundamental problems faced by the INS. With the BICE reorganization, we have clear mission focus. As part of the reorganization we are conducting a comprehensive review of all programs that were merged into BICE, including those initiated by the INS.

25. **One of the legislatively mandated primary missions of the DHS is to "ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland." How is your Bureau balancing this mandate with its other enforcement and security mandates?**

Response: I am committed to maintaining our nation's proud history of being a nation of immigrants by ensuring that lawful migration to the United States is not impeded by our responsibilities to ensure the public's safety and enforce the immigration laws of this country.

26. **Section 442 of the Homeland Security Act of 2002, which established the Bureau of Border Security (BBS), also charged the BBS with several specific responsibilities and duties, including: advising the Under Secretary of any policy or operation that may affect BCIS; designing a managerial rotation program; establishing the position of Chief of Policy and Strategy to consult with Bureau personnel in local offices, research policy issues, analyze and make policy recommendations on enforcement issues and coordinate immigration policy with Chief of Policy and Strategy for BCIS; and establishing a legal advisor to provide legal advice and represent the bureau in proceedings before the Executive Office of Immigration Review. On January 30, 2003 the President submitted to Congress a reorganization**

that consolidated border agencies into the BCBP and renamed the BBS the BICE. Is BICE legally required to carry out the responsibilities mandated in section 442 of the Act? If not, why not? If so, please describe how you have begun to comply with these responsibilities, and how you intend to in the future.

Response: BICE is legally obligated to carry out the responsibilities mandated in section 442 of the Homeland Security Act (HSA). The following respond to the section 442 requirements:

- Pursuant to section 442(a)(3)(C), the Assistant Secretary shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of BICE that may affect the Bureau of Citizenship and Immigration Services (BCIS), including potentially conflicting policies or operations.

  See response to question 2 in part II and question 1 in part III above.

- Pursuant to section 442(a)(4), the Assistant Secretary is responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including SEVIS established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

  See response to question 5 in part III above.

- Pursuant to section 442(a)(5), the Assistant Secretary shall design a managerial rotation program.

  We are in the process of designing this program as part of our comprehensive restructuring.

- Pursuant to section 442(b), there shall be the position of Chief of Policy and Strategy. The Chief of Policy and Strategy is to consult with Bureau personnel in local offices, research policy issues, analyze and make policy recommendations on enforcement issues and coordinate immigration policy with Chief of Policy and Strategy for BCIS.

  We are working with DHS to fill this position.

- Pursuant to section 442(c), there shall be a legal advisor to the Assistant Secretary who shall provide specialized legal advice to the Assistant Secretary, and shall represent the bureau in proceedings before the Executive Office of Immigration Review (EOIR).

  There is presently a BICE Principal Legal Advisor.

27. **Section 442(a)(2) requires the Assistant Secretary of the BBS (renamed BICE) to have a minimum of 5 years of management experience. What positions have you held that you would count towards this requirement of 5 years of management experience? For each position, describe the nature of your managerial responsibilities, the number of employees you supervised, and the time period during which you held the position.**

Response:

Experience:

- March 1, 2003 to Present: Acting Assistant Secretary of BICE. Supervising approximately 14,000 employees.
- December 2002 to February 2003: Acting Commissioner of INS. Supervising approximately 36,000 employees.
- August 2001 to November 2002: Assistant Secretary of Commerce for Export Enforcement. Supervising approximately 160 employees.
- January 1995 to July 2001: Assistant United States Attorney. Oversaw and managed the investigation and prosecution of terrorist cases, including the trial of Ramzi Yousef and the followers of Usama Bin Laden accused of bombing the United States embassies in East Africa, and the investigation that led to the indictment of Khalid Shaikh Mohammed.

28. **In 1996, the Department of Justice Office of Legal Counsel ruled in a published opinion that local police departments were precluded from arresting aliens for violations of civil provisions of immigration law; that ruling was reiterated in November of 2001. (Assistance by State and Local Police in Apprehending Illegal Aliens, February 5, 1996, Office of Legal Counsel, http://www.usdoj.gov/olc/immstopo1a.htm) Last year, the Office of Legal Counsel prepared a legal opinion authorizing the use of state and local law enforcement in pursuing undocumented aliens. This opinion has not been made public. However, in letters to Senators, dated May 7, 2003, Acting Assistant Attorney General Jamie Brown confirmed that the opinion had concluded that "states possess inherent authority to arrest individuals whose names have been entered into the FBI's National Crime Information Center (NCIC) database because they have both (1) violated civil provisions of the Federal immigration laws that render them deportable and (2) been determined by Federal authorities to pose special risks, either because they present national security concerns or because they are absconders who have not complied with a final order of removal or deportation."**

1. **Why is the opinion not being made public?**

Response: The opinion, like all Office of Legal Counsel opinions, is legal advice given to a client and any decision about release of the opinion is made by the client. Neither BICE nor the INS were the client for whom the opinion was rendered, and hence release of the opinion is not a matter within BICE control.

As noted in the letters of Acting Assistant Attorney General Brown, the opinion remains an internal advice document within the Department of Justice. Further questions concerning that decision should be addressed to the Department of Justice.

2. **Will state and local police agencies be involved in enforcing civil provisions of immigration law? If so, by what authority and in what circumstances? Will the authority to arrest violators of civil immigration laws be limited to the categories listed in the May 7, 2003 letter from the Department of Justice?**

Response: State and local police agencies may, to the extent allowed by their state laws and local ordinances and consistent with the Fourth Amendment and other applicable Constitutional limitations, assist in enforcement of civil immigration violations by detaining those persons they encounter who are the subject of immigration records in NCIC.

3. **Which Department has the authority to set policy on the arrest of violators of civil immigration laws, the Department of Justice or the Department of Homeland Security? Do you consider the legal opinion of the DOJ Office of Legal Counsel binding on BICE?**

Response: With the creation of the Department of Homeland Security (DHS), the predominant authority to set immigration enforcement policy clearly lies with DHS. Under 8 U.S.C. § 1103(a)(1), the Attorney General retains the authority to make controlling determinations of law. The Attorney General has this same authority pursuant to 28 U.S.C. § 511. The Office of Legal Counsel exercises authority delegated by the Attorney General, and its opinions are therefore fully binding on DHS. BICE does not question the authority of the OLC legal opinions. Further, BICE does not intend to challenge or otherwise revisit the conclusions drawn in OLC legal opinions.

4. **According to the Department of Justice letter of May 7, 2003, violators of civil immigration laws whose names have been entered into NCIC because they "present national security concerns" can be arrested by state and local law enforcement authorities. Is "national security concerns" limited in this context to individuals against whom there are well-grounded suspicions, or does it extend more broadly? For example, could it extend to all individuals from predominantly Muslim countries, or to the "similarly situated seagoing**

migrants" Attorney General Ashcroft referred to in ordering the detention of all Haitian boat-people on national security grounds? *See* **In re D-J-, U.S. Department of Justice, Office of the Attorney General, 23 I&N Dec. 572 (A.G. 2003).**

Response: Any question related to the Department of Justice's May 7, 2003 letter should be directed to the Attorney General for clarification.

5. **Is BICE currently providing information to the FBI on violators of civil immigration laws for inclusion in NCIC, or does it intend to in the future? If so, in what circumstances? Will BICE decide which names to provide for inclusion in NCIC, or will the FBI access the information directly?**

Response: The BICE Law Enforcement Support Center (LESC) has agency responsibility for the NCIC program. BICE has entered two categories of individuals into NCIC. The BICE LESC has placed approximately 101,000 Deported Aggravated Felon records and 6,000 alien absconders subject to criminal penalties for willful failure to depart into NCIC.

LESC NCIC responsibilities include case entry, modification of records, validation and hit confirmation.

6. **How many undocumented aliens have been apprehended by law enforcement officers as a result of information in the NCIC?**

Response: Since May 2002, over 2,700 aliens have been arrested as a result of being entered into NCIC.

7. **How will you ensure that state and local law enforcement personnel are adequately trained in, and understand, the technical rules that govern immigration law?**

Response: Over the years, BICE legacy agencies have provided training to state and local law enforcement personnel by a variety of means, such as the Law Enforcement Support Center. BICE continues its collaboration with police professional organizations such as the International Association of Chiefs of Police (IACO) to provide for additional training seminars. The IACP training workshop, "Responding to Criminal Aliens," is an example of a joint training program offered eight times a year in selected cities to local police and enforcement officials. We are also developing new training materials for state and local law enforcement officers to reflect the organizational changes brought about by the creation of the Department of Homeland Security.

Section 287(g) of the Immigration and Nationality Act specifically authorizes state and local law enforcement officers to enforce provisions of the immigration laws, pursuant to a written agreement and only after establishing that they are properly trained and qualified to perform such duties. We have established a rigorous training program to meet the requirements of this section. To date, the only state that has participated in this program is Florida. We understand the importance of high standards and intend to maintain them.

29. **Many local police departments have resisted enforcing immigration law. Many of these reasons that undocumented aliens will be reluctant to report crimes against themselves or others if they fear that contacting the local police will lead to their deportation. How do you respond to this concern?**

Response: I am unaware of any local police departments that have resisted enforcing immigration laws. In fact, in the last fiscal year, LESC received 426,896 inquires from state and local law enforcement officials.

I agree that a good relationship between immigrant communities and those who uphold the law is an important mechanism in maintaining a safer and stronger-functioning society at local and national levels. Local and state law enforcement are well adept to devising and implementing a variety of measures aimed at fostering greater communications and understanding between law enforcement and the local populace.

It is noteworthy that federal law and policies provide for immigration benefits, both of a temporary and permanent nature, for aliens who assist with investigations and prosecutions, as well as for some categories of crime victims. Victims, informants, and witnesses may be eligible for temporary relief from removal including employment authorization and, in some cases, even longer-term or permanent relief.

30. **In the last five months, the INS and DHS have required non-citizens from predominantly Muslim and Arab countries to register upon arriving at ports of entry, and at INS or BICE offices inside the country. According to one press account describing the NSEERS program (New York Times, p. A-1, April 24, 2003), government officials reported that 130,000 immigrants and visitors have been questioned, 11 suspected terrorists detained, 800 criminal suspects and deportable convicts arrested, and 9,000 undocumented aliens apprehended.**

1. **What are the goals of the NSEERS program? Is its primary purpose to detect potential terrorists and capture wanted criminals, or was the program established to apprehend undocumented aliens?**

Response: NSEERS was designed as a first step in an overall entry and exit control system to ensure the integrity of the borders and the integrity of the legal immigration process.

2. **Deportation proceedings have been initiated against the undocumented aliens who voluntarily appeared to register. Many of them have been detained in jails and detention facilities. Some law enforcement officials have expressed concern that acting in this manner against undocumented aliens who have not violated criminal laws and are not suspected terrorists might make some members of the Arab and Muslim communities in this country more reluctant to cooperate in the war against terrorism. How do you address this concern?**

Response: I have not heard that concern voiced by law enforcement officials. I agree that all registrants, the vast majority of whom are law abiding, should be treated with respect. Where registrants are found to be in violation of immigration laws a case-by-case determination is made on how to proceed. At the present time, out of 125,000 registrants, less than 100 remain in custody.

3. **Some undocumented aliens with pending applications for adjustment were nevertheless detained during NSEERS, with deportation proceedings commenced against them. What is the BICE policy with respect to detaining and deporting aliens with applications for adjustment pending?**

Response: Decisions on detention are made on a case-by-case basis based on risk of flight and danger to the community. Factors considered include the following: the likelihood that the adjustment application is legitimate, the application will be approved, any past criminal history, and the probability the alien will appear for a removal hearing.

4. **In a speech on April 29, 2003, Secretary Tom Ridge said that the phase-in of the new Visitor and Immigrant Status Indication Technology (VISIT) system "will provide us with the crucial biometric information needed to end the domestic registration of people from certain countries, which has been conducted for the past several months under a system known as NSEERS." When will the domestic registration requirements terminate? What elements of the new VISIT system will make domestic registration unnecessary?**

Response: Domestic Registration for NSEERS registrants concluded on April 25, 2003. No suspension is planned for the required 30-day and annual re-registration. The port of entry registration will continue. Currently, there are no recommendations to expand the list of current countries. To the extent required by 8 CFR 264.1(f)(2)(i), the public will be notified, by publication of a notice in the Federal Register, of expansion of the nationalities subject to special registration at ports of entry.

31. **Section 452 of the Homeland Security Act of 2002 establishes the position of Ombudsman, who reports to the Deputy Secretary. The Ombudsman is responsible for identifying problems and proposing changes in the services provided by BCIS, its practices and its dealings with individuals. Would you support extending the ombudsman's responsibilities to enforcement problems at BICE? If not, why not?**

Response: A robust Internal Affairs program and Internal Audit, coupled with the responsibilities and capabilities of the Department's Inspector General, is BICE's mechanism for identifying problems and proposing changes in the work carried out at BICE. As a law enforcement agency, BICE will benefit from this model, which is consistent with standard practice in law enforcement agencies nationwide. I do not support extending the ombudsman's responsibilities in this manner.

32. **Recent GAO testimony and previous GAO reports have pointed to a number of areas of concern with internal enforcement that BICE will have to overcome in order to be a well-functioning bureau. U.S. General Accounting Office, *Homeland Security: Challenges to Implementing the Immigration Interior Enforcement Strategy*, GAO-03-660T (April 10, 2003). Please respond to each of the areas of concern listed by indicating the priority or the level of concern BICE has assigned to the issue as well as the efforts that have been taken and will be taken to address each issue:**

Response: All recommendations by GAO in this regard have a high priority and a high level of attention. Some responses and remedies will be guided by our comprehensive restructuring—for example reporting intelligence.

1. **Development of data on how to allocate staff effectively, the use of a workload analysis model in identifying needed levels of funding, resources and staffing, and reduction in the staff attrition rates;**

Response: BICE is developing a comprehensive system for capturing data in order to interface past data resources with regard to the levels of workload and performance-related data ranging from individual case level up to various program levels. For example, the future integrated BICE case management system will facilitate workload analysis of needed levels of funding, resources and staffing for BICE. A short-term solution is to leverage the performance of the existing systems that best meets our data needs. With regard to reduction in the staff attrition rates, BICE will be implementing several program and human resource management mechanisms to enrich duties and job responsibilities as well as to upwardly reclassify positions in order to consolidate program functions and support higher pay grades where appropriate.

2. **Development of integrated information systems, providing staff access to the informational databases, and development of a nationwide data system containing the universe of criminal aliens for tracking the hearing status of each inmate;**

Response: BICE will identify all program business processes and develop a sound business case for the IT investment review board and approvals. BICE will seek optimal integrated information systems that will effectively support its business processes. For example, these integrated systems should provide staff with real-time access and interface capabilities with appropriate informational databases. With regard to criminal alien cases, we will continue to leverage the concept of a case-tracking system that will capture a nationwide data system containing the universe of criminal aliens. Currently, BICE relies on the modular-design concept of ENFORCE. The ENFORCE booking module will integrate data into the Enforcement Integrated Database (EID) repository that supports tracking criminal aliens from the time of apprehension to removal. ENFORCE provide access is given to staff responsible for tracking the hearing status of each detainee.

3. **Increased guidance and procedures for program staff for opening investigations and reporting intelligence information;**

Response: The process of opening investigations and intelligence information collection is an integral and interdependent aspect of case management method by recording, tracking and consolidating all lead information into a single data repository, for usage by both BICE Investigations and Intelligence programs. A new Comprehensive Investigations Reporting, Control and Analysis (CIRCA) manual for the immigration investigative program, was issued in October 2002 and directs that all complaints, leads or various requests for investigations be entered into an automated reporting system and uploaded into the national data system. All these entries must be reviewed and evaluated by a Supervisory Agent no later than five working days after receipt by Investigations. Each entry is reviewed in relation to the Degree of Harm, which incorporates these factors: national security, integrity of legal immigration system, and/or public safety. The supervisor further considers such factors as case workload, likelihood of a successful outcome, and how the complaint, lead or request fits within the strategic focus and priorities of BICE. Thus, there is a process in place to ensure that complaints, and other matters are prioritized and that resources are used optimally within the BICE Intelligence program.

Regarding guidance on opening benefit fraud investigations, the factors listed in CIRCA for determining whether to assign a matter for investigation apply to all types of investigation. CIRCA also provides detailed descriptions of the purposes of fraud investigations, and the techniques and coordination that such an investigation may require. This information allows the supervisor to make an informed decision on the disposition of the complaint, lead or request prior to assigning the matter for investigation. A comprehensive review of overall policy and procedures in this area will be a necessary part of our comprehensive restructuring.

4. **Development of outcome-based performance measures to be used to develop an interior enforcement strategy;**

Response: BICE will endeavor to identify and develop a series of outcome-based performance measures based on strategic and business plans. These performance measures will be built upon the critical role that BICE will play in ensuring accountability in the areas of protecting national security and public safety by targeting crimes of violence and other serious threats to critical infrastructures. For example, a long-range outcome-based performance goal is that BICE Investigations will endeavor to:

- Provide the residents of the United States with an immigration and customs enforcement presence that responds to domestic security concerns within 24 hours of notification;
- Increase the number of cases directed at significant, high-level, or pervasive threats;
- Ensure compliance with our immigration and customs laws by instituting consequences for those who violate them; and
- Strategically enhancing partnerships with international, federal, state, and local businesses and governments to help identify, prosecute, and/or dismantle criminal organizations and/or remove individuals who threaten national security and peace in the United States.

5. **Development of collaboration plans and mechanisms with the other immigration and border security bureaus in an effort to meet BICE's interior enforcement goals;**

Response: We are developing plans and systemic mechanisms with various internal components of BICE and other immigration and border security bureaus for meeting interior enforcement goals. In order to develop a common baseline, standard operational procedures for each agency are being carefully mapped, analyzed and reviewed for consolidation and issuance of revised procedures or for the development of new means for effectively and efficiently responding to BICE's interior enforcement goals.

Additionally, BICE's new organizational structure and key management team are in place to assume the role of BICE leadership and coordination. These managers bring to the leadership table draft strategic and business plans and institutional knowledge in an effort to collaborate on a new vision for BICE interior enforcement goals. They continue to maintain existing working relationships with our other DHS components and intend to further develop and refine plans and mechanisms to achieve interior enforcement goals.

6. **Further development of training and internal controls for personnel to ensure that they can perform their duties correctly and recognize the rights of citizens and aliens; and**

Response: A BICE working group comprised of subject matter experts in immigration and customs law, current academy trainers and field personnel are developing several comprehensive and robust basic/introductory and ongoing service training programs to ensure that all current employees and new hires will perform their duties in an exemplary manner. In all phases of training, BICE employees will recognize the rights of citizens and aliens.

BICE is also working on updated training curricula for supervisory personnel to ensure compliance with all laws, rules, regulations and DHS policies. In addition, internal BICE components with internal affairs and ethics office training responsibilities provide the safety-net mechanisms for promotion and the compliance of respective professional responsibilities.

7. **Development of management controls to help ensure compliance with DHS policies and procedures.**

Response: BICE will assure management controls to help ensure compliance with DHS policies and procedures. BICE is developing its issuance procedures for policy development and dissemination. Policy will guide the process by which BICE operational and administrative policy is drafted, coordinated, reviewed and approved. BICE will standardize formats for the policies and determine the optimal methods for dissemination and retrieval. For example, the methods will include a numerical system of issuance and a BICE-wide electronic, Web-based or CD-ROM system to disseminate and store policy. Additionally, BICE will ensure compliance with DHS policies and procedures by coordinating with appropriate external and internal oversight and by incorporating management control and tracking systems for audit and investigation.

33. **Please clarify BICE's policies with regard to the detention of asylum seekers. Are only arriving aliens subject to detention? If an individual is found to have a credible fear of persecution, and the individual does not present a flight risk or a danger to the community, will he or she be released?**

Response: Any alien placed in proceedings under the INA may be detained. Arriving aliens who are placed in expedited removal proceedings are subject to mandatory detention by law. The law further provides that, in general, aliens found to have a credible fear of persecution may be released on parole provided that they can establish their identity and present neither a security risk nor a risk of absconding. The policy of BICE is to evaluate each case individually and make decisions consistent with BICE detention resource priorities.

34. **On April 17, 2003 Attorney General Ashcroft issued an opinion on the detention of undocumented Haitian migrants pending deportation proceedings. The Attorney General ruled that releasing undocumented seagoing Haitian migrants on bond would give rise to adverse consequences for national security, by encouraging a**

mass migration, and by diverting agency resources. Consequently, the Attorney General ruled that the respondent should be detained without bond, and declared the opinion's national security rationale binding on "all similarly situated aliens." In re D-J-, U.S. Department of Justice, Office of the Attorney General, 23 I&N Dec. 572, 579-81 (A.G. 2003).

1. **Is the Attorney General's decision binding on BICE? If so, why?**

Response: The Homeland Security legislation kept the Executive Office of Immigration Review within the Department of Justice. Further, EOIR retained jurisdiction over administrative removal hearings before immigration judges. These immigration judge decisions, including any appeals or certified decisions of the Attorney General, are binding on hearings involving BICE attorneys.

2. **Will BICE detain all seagoing Haitian migrants, without an individualized determination as to whether the alien presents a flight risk or a danger to the community?**

Response: The Department of Justice issued regulations, which have transferred to DHS, that placed all individuals who arrive illegally by sea, with the exception of Cuban nationals, created by the Cuban American Adjustment Act of 1966, into expedited removal and subject to detention pending their removal proceedings. BICE believes that the policy's underlying rationale of deterring a mass migration, preserving the lives of those willing to make life-threatening trips by boat, and ensuring that national security assets are not diverted from their mission is still sound and still serves as the basis for BICE's enforcement/interdiction operations.

3. **Will the same national security rationale be applied to justify the detention of all seagoing migrants, from all countries?**

Response: See response to question 34(2) in part III above.

4. **Will the national security rationale be applied to cases not involving seagoing migrants?**

Response: We will review each case on a case-by-case basis, examining all factors relevant at that time.

35. **In an additional justification for his ruling, the Attorney General noted "an increase in aliens from countries such as Pakistan using Haiti as a staging point for migration to the United States." The opinion continued, "the Government's capacity to promptly undertake an exhaustive factual investigation concerning the individual status of hundreds of undocumented aliens is sharply limited and strained to the limit." Id., at 580.**

1. **What is the evidence that "aliens from countries such as Pakistan [are] using Haiti as a staging point for migration to the United States"?**

Response: Questions regarding the basis for the Attorney General's statement are properly addressed to the Department of Justice. Information concerning the smuggling of third-county nationals in the Caribbean has been developed by BICE. Vulnerabilities in the security of the U.S. border, including migration by sea, presents the opportunity for exploitation by individuals intent on harming U.S. security.

b. **Why is it difficult for BICE personnel to distinguish between Pakistanis and Haitians, in the course of routine background screening and investigation?**

Response: Identity verification is difficult for any illegal alien who arrives without documentation. As described above, this vulnerability in our border security also presents the risk that third country nationals enter undetected.

36. **Recognizing that it is cost-prohibitive to detain all individuals who are undergoing immigration removal hearings, and that we must utilize available detention beds for those who pose a risk to the community or present a flight risk, Congress appropriated $3 million in the FY '03 omnibus appropriations measure to be spent on alternatives to immigration detention. Because in FY '02 the bulk of a similar appropriation ($2.5 million) was spent on the Broward County non-secure detention facility, the conference report on the FY '03 appropriation makes clear that the $3 million for alternatives to detention should be used "to promote community based programs for supervised release from detention such as the Vera Institute for Justice's Appearance Assistance Project or other similar programs." It explicitly states that these funds "shall not be available for new or existing detention facilities, including non-secure detention and/or shelter care detention facilities."**

1. **Do you agree that the Vera Project was successful in increasing the appearance rates for those individuals released from detention, and in saving the government money?**

Response: BICE agrees that the VERA project was successful in increasing *appearance rates* for individuals released from detention, however, it was not successful in increasing *removal rates*. Based on program reports that have been published by The Vera Institute for Justice on the Appearance Assistance Program (AAP), 91% of the AAP participants appeared in immigration court as compare to 71% for comparison groups. However, virtually none of those aliens who received final orders of removal actually appeared for removal.

BICE is working on building on the experience and lessons learned from the VERA Project and is developing a new intensive supervision program to improve both court appearances and removals rates. While there are no longitudinal studies or empirical research studies on the effectiveness of intensive supervision programs for illegal immigration populations, except for the INS AAP pilot (Vera) project reports, BICE's program is identical to the Intensive Supervision Appearance (ISP) programs that have proven effective with criminal populations and similar to the model piloted by the Vera Institute.

2. What specific alternatives to detention do you intend to implement this year, in line with the FY '03 appropriation?

Response:

Family Residential Services:
This staff-secure residential program is for illegal immigrant families that are required by law to be held in the custody of DHS. The Philadelphia District Office in Berks County, PA developed a Family Residential Service program model. This program has received positive recognition from the Office of Inspector General, advocates, and constituency groups. This model will be utilized for replication by Headquarters Detention and Removal Operations (HQDRO). A solicitation for 3 new sites will be published in June 2003.

Condition of Release Program:
This program is for illegal immigrants that require services to adapt to life outside of a detention setting. The program duration varies based on each illegal immigrant's individual needs and does not exceed one year. This program is currently being piloted for Post Order Custody Review (POCR) detainees. Currently, a number of these detainees need programs for mental health, substance abuse, and anger management.

Female Residential Services:
This program is designed to provide a staff-secure, community-based residential facility that maintains a less restrictive security level than that required for criminal aliens. Facilities would not have the security hardware associated with prisons and jails. The target groups will be adult females that are asylum seekers and non-criminals. A solicitation will be published in June 2003.

Electronic Monitoring Devices (EMD):
EMDs alert the provider/agency when a participant violates a condition of release or tampers with the electronic monitoring equipment. The target groups for this program

will be asylum-seekers, non-criminal aliens, and criminal aliens on an Order of Supervision. A pilot program is underway in Alaska, and soon will begin in Florida, and California.

Intensive Supervision Appearance Program (ISAP):
This new program is similar to the Intensive Supervision Probation services that have been provided in the criminal justice system for years. Sources shall provide a non-residential program of highly structured and closely supervised Orders of Supervision that emphasizes compliance with Immigration Court requirements. The work statement calls for individual service plans and case management with frequent reporting, home visits, and monitoring of daily activities of an estimated 200 participants per year per location. The geographical area of consideration for program offices is a location within 50 miles of the local DHS area office in the following locations: Baltimore, MD; Philadelphia, PA; Miami, FL; St. Paul, MN; Denver, CO; Kansas City, MO; San Francisco, CA; and Portland, OR.

3. **Should BICE consider spending in excess of the appropriated $3 million on alternatives to detention, to reduce the numbers of people being detained and save money?**

Response: Any decision on expending additional funds on alternatives to detention will depend on many factors, including the number of detainees, facts and circumstances of those cases, and available detention space. Decisions will also be made consistent with our objective of decreasing the number of absconders.

37. **As part of Operation Liberty Shield, the federal government has detained all asylum-seekers from certain predominantly Muslim and Arab countries, without the usual individualized determination regarding whether the asylum seeker represents a danger to the community or a flight risk.**

1. **Why is the individualized determination, made for other asylum seekers, not sufficient in the cases of these Muslim and Arab asylum seekers?**

Response: The list used for the Liberty Shield program was compiled without regard to race or religion. Asylum seekers from certain countries where al-Qaeda was active were detained. Our actions in Liberty Shield were based on intelligence information, as well as the ongoing war activities at that time.

2. **Is the stricter detention standard implemented under Operation Liberty Shield still in effect?**

Response: No.

38. **Will BICE detention facilities and BICE-contractor facilities meet the Detention Standards formerly applied to INS detention facilities and contractor facilities? Should the detention standards be applied to county jails holding BICE detainees? Why or why not?**

Response: BICE will continue to ensure compliance with the National Detention Standards implemented by Legacy INS. BICE will continue to utilize the Detention Management Control Program to conduct annual detention reviews of all Service Processing Centers, Contract Detention Facilities and Inter-Governmental Service Agreement Facilities used to hold BICE detainees for over 72 hours. There have been instances in which BICE has discontinued use of certain facilities that either failed our inspection or refused to cooperate with our inspection program.

BICE will also continue to conduct an annual abbreviated review of facilities utilized to hold detainees for under 72 hours to ensure that all detention facilities are operated in a safe, secure and humane condition for both detainees and staff.

39. **What are your plans to ensure that unaccompanied minors are held in the least restrictive setting possible? How quickly will each minor be transferred to the custody of the Office of Refugee Resettlement?**

Response: As specified in the DAS enabling legislation ORR is to oversee all detention facilities, shelters and foster homes that are used for placements of unaccompanied alien minors in federal custody. BICE transferred their unobligated 2003 funds for juvenile detention ($19.961 million) to ORR to cover detention and transportation costs. Therefore, any questions regarding the types of settings in to which unaccompanied juveniles are placed are best directed to that office. BICE and ORR are currently negotiating a memorandum of understanding to address how unaccompanied minors will be transferred between the two agencies. BICE has recommended that the memorandum of understanding state that ORR will provide a placement decision within 8 hours of notification by BICE. BICE will then transport the unaccompanied minor to the ORR designated placement. This issue, however, is still being discussed.

40. **What will be your policy for the detention of family units? Do you intend to continue the practice of separating detained families?**

Response: BICE intends to continue to provide detention facilities to meet the needs of families. BICE currently has one staff-secure residential program for illegal immigrant families that are required by law to be held in the custody of DHS. This program has received positive recognition from the Office of Inspector General, advocates, and constituency groups. This model will be utilized for replication by HQDRO. A solicitation for 3 new sites will be published in June 2003.

41. **Federal regulations guarantee a right to counsel whenever an "examination" is provided for under 8 CFR section 292.5(b).**

    1. **Does an individual have a right to counsel during BICE investigative visits to a home or workplace?**

    Response: Generally, no. However, like other types of law enforcement encounters, including questioning by police pursuant to criminal investigations, officers may ask questions, and the person is free to refuse to answer.

    2. **Does an individual have a right to counsel after a referral to BICE Investigations during the Special Registration program?**

    Response: It would depend on the facts underlying the referral.

    3. **Will BICE personnel allow representation to those who want to be represented?**

    Response: As a matter of policy, both BCIS and BICE offices make every effort to accommodate all requests of aliens to be accompanied by counsel during appropriate phases of processing relating to the National Security Entry Exit Registration System (NSEERS).

42. **Likely due primarily to space constraints, INS frequently transferred detained individuals away from areas where they had counsel, without prior notice to the attorneys involved. This effectively ended representation for many people, as lawyers cannot afford to continue to represent individuals who have been moved a substantial distance. How do you plan to address this issue?**

    Response: I am unaware of the facts supporting the statement that this process "ended representation for many people."

    Detainees also have the option of exercising their request for a change of venue if transferred outside of the jurisdiction where their attorney is located. The authority to grant that request is with the Executive Office for Immigration Review.

43. **With the dissolution of the INS and the creation of three separate Bureaus responsible for different aspects of immigration law, there is no single official devoted solely to ensuring consistent and coordinated immigration policy and implementation.**

1. **In the absence of such a leader, does the Department of Homeland Security need some type of structure or coordinating instrument to ensure consistent policies and application of laws?**

Response: Each bureau has an office responsible for policy and strategy. The heads of these offices will be responsible for coordinating with each other on immigration policy matters. They will also advise their principals, who hold regular leadership meetings. Coordination issues were discussed earlier in this response.

2. **What are your plans to have BICE coordinate with BCBP and BCIS? What kinds of coordination already exist at the local and national levels between the three bureaus, and what additional coordination efforts do you feel need to be put into place?**

Response: See response to question 2 in part II and question 1 in part III above.

3. **How will you actively review your Bureau's actions and compare notes with the leadership of BCIS and BCBP in order to determine where there are areas that need attention or additional collaboration?**

Response: See response to question 2 in part II and question 1 in part III above.

44. **What cross-training and other initiatives are in place, or do you plan to implement, to make sure that immigration policies are coordinated and consistent within the three bureaus? More specifically, please discuss the steps being taken to ensure uniformity of decision-making between bureaus, and appropriate use of prosecutorial discretion? For example, in at least one office, a foreign national's ability to remain in the United States reportedly has been interpreted differently by BICE and BCIS. Reportedly, BCIS will not place in removal proceedings someone who is eligible for, and has applied for, adjustment of status to permanent residence. But if BICE were to encounter the same person, for example in the Special Registration process, it would put that same person in removal proceedings.**

Response: Generally, see response to question 1 in part III above. I am unaware of this specific issue but there is general INS policy on the exercise of discretion.

45. **Immigration records are used by all three Bureaus. What is the rationale for assigning BICE the records function?**

Response: It is my understanding that the responsibility for the handling of immigration records is still being developed. We are currently working with both BCIS and BCBP on developing an effective system to manage the records.

46. **How will BICE deal with issues of benefits (i.e., ascertaining whether an individual is lawfully present, or ruling on an application for asylum or adjustment of status)**

when deferring, detaining, or seeking to remove the individual? How will it ensure that these actions are consistent with the benefit determinations made by the BCIS?

Response: BICE officers and agents are trained in all aspects of immigration law, including ascertaining whether or not an individual is lawfully present in the United States. They do not, however, rule on applications for asylum or adjustment of status. These determinations have been made, and will continue to be made, by BCIS personnel or immigration judges. If a BICE official determines that an individual is not in valid immigration status, the officer will issue a Notice to Appear, the charging document that commences removal proceedings before the immigration court. At this time, the individual will have the opportunity to pursue any and all benefit applications to which he or she is eligible. Decisions to detain an individual will continue to be made based on risk of flight, danger to the community and eligibility for relief, including pending benefit applications as previously discussed. Decisions by BCIS to confer benefits on an individual will not be disturbed by BICE, unless information is obtained indicating the individual was not eligible for the benefit because of fraud when it was conferred or is no longer eligible for the benefit due to a specific reason, such as criminal conviction.

47. **Section 442 of the Homeland Security Act requires that the Under Secretary be advised of any policy or operation that may affect the Bureau of Citizenship and Immigration Services. How is BICE interpreting and implementing this process? How will BICE convey that information to BCIS?**

Response: See response to question 1 in part III above.

48. **Are BCIS policies reviewed by you or anyone else at BICE before they are implemented? When conflicts over new policies arise between the two bureaus, how are they resolved?**

Response: Unless appropriate, such as where BCIS policies may directly affect BICE operations, BCIS policies are not reviewed by anyone in BICE before they are implemented. Informally, however, BICE and BCIS liaisons meet regularly to discuss various issues, including policy decisions made by both BCIS and BICE. Although there is no formal review process, through these communications BICE is able to share its perspective and concerns with BCIS and vice versa. In addition, the Assistant Secretary and the Director, BCIS, communicate regularly. Thus far, no conflicts over new policies have arisen between the bureaus. It is anticipated that should such a conflict arise, it will be coordinated within DHS.

49. **Will BICE have to coordinate with agencies outside of the Department of Homeland Security, such as the Departments of State, Justice, and Health and Human Services? If so, how do you plan to facilitate effective coordination?**

Response: BICE anticipates that issues will arise necessitating coordination with agencies outside of the Department of Homeland Security. In these cases, BICE will rely on contacts that it developed with key personnel prior to March 1, 2003, as well as the strong working relationships we have with the various agencies to effectively coordinate issues affecting other agencies. In addition, BTS and DHS have actively coordinated BICE issues with other agencies where appropriate.

50. **The Homeland Security Act establishes the positions of civil rights officer and Office of Inspector General (OIG) in the Department. Preventing and policing civil rights abuses or other illegal actions by BICE staff may require BICE to cooperate with the civil rights officer or OIG on an investigation after a complaint is received. How do you plan to ensure effective coordination and appropriate cooperation with these officials?**

Response: The organizations that have been brought together to form BICE all required their employees to report misconduct. We will continue that requirement in BICE. Those organizations' internal affairs elements have considerable experience in working closely with offices of the inspector general to ensure alleged and suspected employee misconduct are addressed promptly and thoroughly by the appropriate authorities. We will build on that experience in our relationship with the DHS Inspector General.

Under a March 25, 2003 Memorandum of Understanding between the Undersecretary for Border and Transportation Security and DHS Inspector General, BICE – like all BTS components – refers to the IG all allegations of criminal misconduct by employees and all allegations of serious, non-criminal misconduct by law enforcement officers, categories which encompass civil rights abuses. If requested, BICE Internal Affairs agents assist the Federal Bureau of Investigation or the DHS OIG with investigative activities associated with these serious allegations of misconduct.

We have had preliminary contact with the newly-arrived DHS Officer for Civil Rights and Civil Liberties, and we plan on further discussion. Although the new head of this office is now organizing his program, he has been working actively with the Inspector General and BICE staff toward determining the best ways to support his assessment of complaints alleging abuses of civil rights, civil liberties, and racial and ethnic profiling.

51. **Is it true that BICE and BCIS are dividing evenly the cost of maintaining the former INS legal staff, but that a disproportionately high percentage of the staff is working for BICE and only a very small percentage of the staff is working for BCIS? Please describe as precisely as possible the division of staff and funding obligations, and explain the reasons for any disproportionate divisions.**

Response: Approximately 90% of the attorneys from the former INS Legal Program represent the agency before the immigration courts and continue to do so. The Homeland Security Act placed the responsibility for representation before the immigration courts

under the Principal Legal Advisor for the Bureau of Border Security [now the Bureau of Immigration and Customs Enforcement (BICE)]. At this time, the positions have been mapped for budget purposes so that the funding source aligns as closely as possible with the placement of the position. At this time, we anticipate that approximately 87% of the former INS legal program positions will be assigned to BICE and these positions will be funded from appropriated funds, breached bond funds and user fee funds. Approximately 12% of the former INS legal program positions will be assigned to the Bureau of Citizenship and Immigration Services. These positions will be funded exclusively by Exams Fees. Additional assignments of attorneys to and from BCBP may be made at a later date.

52. **Is it true that BCIS is implementing and paying for the enforcement-related special registration program and other security initiatives, and that BCIS has not been reimbursed for the cost of the programs? If so, what have been the unreimbursed costs to BCIS, and what are your plans to have BICE reimburse BCIS for their costs in these areas?**

Response: It is my understanding that the US VISIT program seeks to reimburse BCIS for work on the special registration program. US VISIT will seek to fund such reimbursement from the Entry-Exit funds that Congress appropriated in FY 2003.

53. **How will you coordinate with BCIS on the investigation of fraud surrounding immigration benefits? How will you identify the high priority cases?**

Response: BICE and BCIS are working to coordinate investigative activities concerning fraudulent applications and petitions for immigration benefits. For example, BICE and BCIS are currently working to standardize the referral process for which types of fraud cases will be referred from BCIS to BICE for further investigation. Possible referral criteria being considered are large-scale fraud schemes and trends as identified by the BCIS Service Centers, cases with a national security interest, and special interest cases as defined by BCIS and BICE Headquarters. Additionally, efforts are underway to create an effective way to track these referrals and the outcomes of any investigative inquiries. Policy memorandum outlining the referral criteria and tracking processes discussed above are still being developed and discussed and have not yet been finally approved by the either BCIS or BICE.

54. **What bureau will be in charge of implementing the DHS role in visa processing, BICE or BCBP? If BICE is in charge of visa processing, how will you ensure that the appropriate determinations are made with respect to allowing and denying entry into this country?**

Response: It is my understanding that the visa authority will be managed at the BTS-Directorate level.

55. What is the status of the Memorandum of Understanding between DHS and the Department of State?

Response: It is my understanding that, in January, Secretaries Ridge and Powell directed that Undersecretary Hutchison and Assistant Secretary Harty establish negotiating teams to ensure the prompt entry into force of the memorandum of understanding (MOU) required under section 428(e).

56. In March of 2003, the DOJ Inspector General issued a report on the implementation of SEVIS. ("Evaluations and Inspections Report: Follow-up Review on the Immigration and Naturalization Service's Efforts to Track Foreign Students in the United States through the Student and Exchange Visitor Information System," Report Number I-2003-003, March 2003) For each of the factual findings listed below, please describe the Bureau's reasons for disputing the findings and, where applicable, what you will do to correct the identified deficiency:

1. **The certification reviews of all school applications had not been completed.**

Response: SEVP was designed for phased-in completion beginning with the successful deployment of all facets of SEVIS on January 1, 2003. The deadline for school certification was similarly phased-in. The Bureau established January 30, 2003 as the deadline for all schools to be certified in SEVIS in order to issue I-20s for new foreign students. August 1, 2003 was established as the deadline for all continuing students to be entered into SEVIS.

A multi-phase approach to the full implementation of SEVIS was adopted to ensure program integrity from a systems perspective and to give schools the necessary time to comply. The phased-in approach was fully disclosed in proposed regulations published in May 2002 and highlighted in testimony before the U.S. House of Representatives, Committee on the Judiciary, Subcommittee on Immigration, Border Security and Claims (September 18, 2002) as well as before the House Committee on Education, Workforce Subcommittees on Select Education and 21st Century Competitiveness (September 24, 2002). Finally, the multi-phase approach was codified in DHS final regulations in December 2002.

2. The oversight of contractors is inadequate to ensure that schools are bona fide.

Response: The primary role of the contractors conducting the on-site review of schools was to gather information pursuant to a standardized questionnaire developed by BICE. Once the information is collected, it is forwarded to BICE adjudicators where it is

incorporated with other information and used in the decision-making process with respect to a school's certification or denial to SEVIS.

BICE has actively managed the on-site contractors. Initially three firms were employed by BICE for on-site reviews. Due to poor performance, one of the three firms was removed. The two remaining firms have demonstrated sufficient capacity to complete the on-site reviews without delay. Adjudicators have been instructed to bring deficient reports to the attention of the Contacting Officer's Technical Representative (COTR) so that these issues may be addressed with the relevant contractor. The COTR meets and communicates regularly with managers from the two contractors to discuss deficiencies as well as best practices. When fully staffed, BICE will use its compliance officers to perform many of the functions currently performed by the contractors.

3. **The review of schools' record keeping and internal controls is insufficient to ensure that schools are complying with SEVIS record keeping requirements or to identify internal control weaknesses that could allow fraud to occur undetected.**

Response: The fee regulation under consideration by the Department of Homeland Security envisions hiring compliance officers. The primary task of these individuals will be to ensure that schools are in compliance with all aspects of the SEVP. Ensuring compliance will include analysis of the schools' internal controls and record keeping.

Currently, the SEVP relies on existing BCIS field officers to ensure compliance among participating schools. Information evaluated by the BCIS field officers includes information gathered from on-site visits by BICE contractors including analysis of historic record keeping of student schools student data. BICE will also, as part of its restructuring, create a compliance enforcement program to investigate non-compliance of SEVIS requirements by schools.

4. **The SEVIS database will not include information on all foreign students until August 1, 2003.**

Response: Pursuant to the phased-in approach for the full implementation of SEVIS, the Bureau adopted August 1, 2003, as the deadline for inclusion of all continuing students in SEVIS. However, in order to issue I-20s for new foreign students, a school had to be enrolled in SEVIS no later than February 15, 2003 (see response to Question 56(1) above).

5. **Adequate training and guidance has not been provided to adjudicators or inspectors at ports of entry.**

Response: During the week of January 13, 2003, a total of 107 Ports-of-Entry (POE) were provided with SEVIS training using FTS 2001 Teleconferencing and Net Conferencing. The training was to provide the POEs with instructions on the changes in guidelines, regulations and processing of the new version of the SEVIS Form I-20 and DS-2019. The training program featured a power-point presentation with real-time interaction between participants and subject matter experts at BICE headquarters and the Immigration Officer Academy (IOA). A pre/post learning test was included to gauge the effectiveness of the training. All sites were encouraged to offer the training to as many participants as possible. The feedback from training participants was very positive, in particular, the real-time interaction with representatives from headquarters and the IOA. The presentation is available to local training officers for use with new employees or as a refresher course. We are reviewing the training in light of our experience and will be providing a revised training course later this summer.

The Inspector General, Department of Justice, has raised questions about the adequacy of training for adjudicators on SEVIS regulations, the mechanics of the adjudicative process and recognition of fraud indicators. Certainly, these concerns will be addressed in developing a comprehensive training program for the new "Compliance Officers" that BICE is proposing to monitor schools' compliance with the terms of the SEVP (see proposed student fee regulation). However, BICE has provided intensive training for district officers, in June and August of 2002, on the changes in SEVIS guidelines, regulations and processing of the new versions of forms I-17 and I-20. Additionally, new officers are regularly brought into headquarters for one-on-one instruction on SEVIS. Finally, the "Adjudicator's Field Manual" was recently updated (April 17, 2003) that includes updated training on students and schools (see Chapter 35).

BICE conducts weekly conference calls with the district officers. The calls cover procedures and guidance on adjudicating I-17's, including the interpretation of regulations, use of the checklist prepared by contractors from on-site visits to the schools and procedures for reporting problems. The calls provide the field with SEVIS updates from headquarters, however, the primary focus is to answer questions raised by the district officers.

6. Procedures have not been established to use SEVIS to identify and refer potential fraud for enforcement action.

Response: Procedures have been set up to identify and refer potential fraud for enforcement action. Leads are received from schools and a variety of other sources including SEVIS itself. The leads are entered into a database and record checks are conducted by the Law Enforcement Support against a number of databases.

When it is determined that a student or exchange visitor entered the U.S., failed to comply with his or her status and then failed to depart, the lead is referred to BICE. After the reorganization as described above, BICE's Compliance Enforcement Program will then be responsible for further vetting and dissemination of those leads to the field. The program will also generate leads through review of SEVIS data.

7.Sufficient resources have not been provided for enforcement activities.

Response: We are in the process of crafting a fee proposal that would provide sufficient investigative resources.

57. **BICE merges the staff from the U.S. Customs Service, Federal Protective Service (FPS), and units of the former Immigration and Naturalization Service. Does merging the staff of three federal agencies require cross training between agencies, and long-term training for new staff? How do you plan to address this issue?**

Response: BICE has established a Career Development and Training working group to develop integrated career paths and training programs for all of BICE's components. BICE considers a unified basic training for agents, and appropriate cross-training for current employees, a top priority. Cross-training, due to budget and space availability constraints, will be done on a priority basis.

58. **As acting Assistant Secretary of BICE, do you have access to the budget justification documents for FY '04 for those entities that now make up BICE? If so, can you share them with the Committee? If you don't have them, how was the Administration able to prepare a budget figure for BICE without the detailed line-item information?**

Response: I have access to the same FY 04 President's Budget Congressional Justification materials that were provided to you in late March 2003. I am providing these materials again for your reference. Requests for additional budget details should be made to the Office of the Chief Financial Officer at the Department of Homeland Security.

59. **The Entry Exit system, mandated by Congress, is to be used at ports-of-entry such as airports, seaports, and land border crossings. The Administration's FY '04 budget request includes the system as part of the BICE budget, not the BCBP budget.**

Response: The Border and Transportation Security (BTS) Directorate will continue to have responsibility and management of the US VISIT Program. During the DHS transition an agreement was reached between BICE and BCBP that the previous Entry Exit Program Office (US VISIT) responsibility would fall under the BICE budget. The US VISIT Office now reports directly to the Under Secretary of BTS.

1.Why has operation of the entry-exit system been assigned to BICE, despite the fact that it appears to be a border security function?

Response: The US VISIT Program has been assigned directly within the Directorate of Border and Transportation Security (BTS). The US VISIT Program affects all of the functions, such as pre-entry, entry, status, and exit. The US VISIT Program has the responsibility to develop a system in which some of the operational functions fall under the direction of BCBP.

2.Which bureau's personnel will operate the system? Which bureau's personnel will use the system at the nation's ports of entry? How many BICE personnel will be involved in developing and operating the entry-exit system?

Response: It is my understanding that the US VISIT Program is currently working on staffing requirements.

3.With the entry-exit system being installed at the nation's ports of entry, will coordination or management problems result from the fact that the system will be operated by BICE? How do you plan to address any such problems? Will this require BICE to have a greater presence at ports of entry than it otherwise would?

Response: As stated in the answer above, the US VISIT Program will be operated at the BTS not the BICE level.

60. **Congress has mandated that visas and travel documents for immigrants and foreign visitors to the U.S. contain biometric identifiers. Secretary Tom Ridge recently promised that the new "U.S. VISIT" system, relying on biometric identifiers, will be installed at airports and seaports by the end of 2003. In a recent study, the General Accounting Office estimated that implementing visas with biometrics would cost between $1.3 billion and $2.9 billion. U.S. General Accounting Office, Technology Assessment: Using Biometrics for Border Security, GAO-03-174 (November, 2002). The Administration's budget request for FY '04 contained no reference to funds for technologies using biometric identifiers, and seeks only $480 million for the entire entry-exit system.**

1.How would the $480 million budgeted for the Entry Exit system be spent? How much of the money would go towards developing systems using biometrics?

Response: It is my understanding that, the DHS is currently reviewing the FY 2003 expenditure plan. The DHS is in the process of preparing the FY 2004 expenditure plan.

a. **What additional funds are contained in the Administration's budget for developing a system using biometric identifiers, beyond the $480 million for the entry-exit system?**

Response: I am unfamiliar with budget items related to this issue.

b. **Are there sufficient funds in the budget to develop and implement an operational entry-exit system with biometric identifiers by the end of the year? Do you consider the GAO estimate inaccurate?**

Response: I am not sufficiently familiar with current US VISIT Program planning to offer an opinion.

IV. Relations with Congress

1. **Do you agree without reservation to respond to any reasonable summons to appear and testify before any duly constituted committee of the Congress if you are confirmed?**

   Response: Yes.

2. **Do you agree without reservation to reply to any reasonable request for information from any duly constituted committee of the Congress if you are confirmed?**

   Response: Yes.

V. Assistance

3. **Are these answers your own? Have you consulted with DHS or any interested parties? If so, please indicate which entities.**

   Response: The answers are my own and represent my views. I have consulted with subject matter experts at BICE on specific questions. These answers were reviewed and transmitted through DHS.

AFFIDAVIT

I, Michael J. Garcia being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 30th day of May, 2003.

Notary Public

My Commission Expires 5/4/04

U.S. Senate Committee on Governmental Affairs
Pre-hearing Questionnaire for the
Nomination of Michael J. Garcia to be
an Assistant Secretary of Homeland Security

Additional Questions from Senator Lieberman

1. **On May 16, 2003, the Bureau of Immigration and Customs Enforcement (BICE) unveiled a restructuring plan. The reorganization will establish five divisions: investigations; intelligence; detention and removal; air and marine interdiction; and Federal Protective Service.**

   1. **How will the reorganization plan affect the organization and responsibilities of the each of the Bureau's current component entities?**

   Response: The reorganization plan leaves intact the structures of Air and Marine Interdiction and the Federal Protective Service. The plan's main changes are: (1) to integrate legacy Immigration and Customs Investigations, (2) to integrate legacy Immigration and Customs Intelligence, and (3) to establish a separate chain of command for Detention & Removal.

   Investigations. INS Investigations, along with Detention & Removal, is currently part of an Interior Enforcement component within BICE. Under the reorganization plan, INS Investigations will be combined with Customs Investigations at both the HQ and field levels. In the field, Investigations is built around 25 special agents in charge, or SACs, each with a corresponding Area of Responsibility (AOR).

   Intelligence. The Office of Intelligence integrates former INS and Customs intelligence operations. The Office of Intelligence's primary clients are the other four BICE operational components, as well as BCIS and the larger DHS, law enforcement, and intelligence communities. The Intelligence field structure includes six Field Intelligence Units (FIUs) and corresponding AORs that align with the Investigations field structure.

   Detention & Removal. Detention & Removal, along with INS Investigations, is currently part of an Interior Enforcement component within BICE. However, Detention & Removal has a very distinct mission and supports not just BICE, but also BCBP and BCIS. Consequently, a distinct division and operational chain-of-command was established for this program.

   2. **What was the rationale for reorganizing the Bureau?**

      See below.

   3. **How will the reorganization facilitate the Directorate's strategic goals, reduce duplication of efforts or ensure improved information sharing?**

Response to Q.2 and Q.3: The rationale behind the BICE restructuring has at its core a streamlined structure driven by mission. The keys to this structure are:

- Fulfilling broad mission and mandates, while supporting DHS strategic objectives;
- Integrating operations where it makes sense;
- Fostering accountability through clear chains of command;
- Promoting strategic agility;
- Minimizing management layers;
- Managing spans-of-control;
- Using proven law enforcement structures;
- Facilitating coordination between BICE programs via complementary footprints;
- Promoting coordination within DHS, and with other federal, state and local authorities; and
- Balancing Headquarter's control with field accountability and responsibility.

2. **How will the Customs and immigration intelligence functions be consolidated? In what ways are the two functions related? In what ways are they different, and how, if at all, will those differences make the consolidation difficult? What advantages are gained through the consolidation of the intelligence functions?**

Response: BICE is combining the legacy intelligence components inherited from immigration and customs operations into one unified structure. This process will be part of the overall BICE reorganization that is to take effect June 9, 2003.

Under the new structure, there will be one Director of Intelligence with management authority over all BICE intelligence assets. Liaison functions with DHS, the Headquarters Reporting Center, and BCBP will report directly to the Director of Intelligence. Also reporting to the Director will be the Intelligence Programs; these include intelligence assets related to the specific investigative programs of BICE. Field Intelligence, also reporting to the Director, will include all field intelligence units and field operations. The Intelligence Support division will control, among other things, site security and the secure facilities for storing and discussing classified information.

The BICE Office of Intelligence (OIA) includes former customs intelligence analysts specializing in money laundering, narcotics, strategic investigations, fraud and cyber crime with former INS intelligence analysts specializing in human trafficking. BICE's combination of these intelligence functions into a single comprehensive intelligence unit promotes the BICE mission. Although the specific areas of former customs and former INS expertise had different mission goals each of these intelligence functions is focused upon information gathering related to the investigation of crimes for profit. The intelligence gathering and analysis methods related to the investigation of crimes for profit are similar. In addition, the combination of these intelligence functions enhances BICE investigations under both customs and immigration authorities. For example, a human trafficking ring will typically employ financial structuring methods and therefore

BICE intelligence methods are particularly suited to support the investigation of such a crime.

3. **How will the Bureau's intelligence division coordinate with the Department's other intelligence-related entities, and with the Terrorist Threat Integration Center?**

Response: Since April 2003, BICE OIA communicates daily reports to BTS and attends weekly meetings with BTS that include representatives from TSA and BCBP. In April 2003, BTS established an interagency working group (IWG) for the purpose of developing a programmatic review of existing BTS intelligence components and programs. The IWG has representatives from IAIP, BTS, TSA, BCBP and BICE intelligence components. The BICE Director of Intelligence represents BICE on the IWG.

Currently the IWG is developing a survey methodology that will allow the members on the Programmatic Review Team to identify and assess BTS-wide intelligence programs and capabilities. The goal is to ensure that all mechanisms are in place to for a comprehensive and functional connectivity and interface with IAIP, TTIC and the BTS Bureaus. BICE has also established a working relationship with TTIC and BICE Intelligence is currently identifying a full time liaison with that unit.

4. **How will the Customs and immigration investigations functions be consolidated? In what ways are the two functions related? In what ways are they different, and how, if at all, will those differences make the consolidation difficult? What advantages are gained through the consolidation of the investigations functions?**

Response: The consolidation of legacy Immigration and Customs investigations will take place at the field and headquarters levels. At the headquarters level, one Director of Investigations will oversee all investigations programs. Four program offices will report to the Director, including National Security Investigations; Financial Investigations, Smuggling/Public Safety Investigations; and Investigative Services. Within these divisions, several new programs will be created such as "Compliance Enforcement" described earlier in these answers and "Human Rights Violations."

With respect to the field office structure, historically, the INS had 33 districts reporting to three regional offices. Those regions then reported to headquarters. The INS District Director also had oversight over services, inspections and detention and removal functions. Customs had 20 field offices headed by a Special Agent in Charge or SAC. That SAC reported directly to Customs Headquarters. Each structure had regional or satellite offices with managers reporting to the District Director or SAC.

On March 1, 2003, BICE became operational and the services and inspections functions were organized under separate management structures within BCIS and BCBP respectively. Detention and Removal remained under the control of the District Director for BICE. Customs and Immigration investigations had their own chains of command

and reporting structure – both ultimately reporting in to BICE headquarters.

A new restructuring has been announced and will become effective on June 9, 2003. Under this plan, immigration and customs investigations will be combined under one unified SAC structure. At the same time, Detention and Removal functions will be organized in a "stand alone" chain of command reporting in to BICE Headquarters.

As of June 9, there will be 25 SAC offices, each with a designated "area of responsibility" or AOR. Interim leadership, representing both immigration and customs legacy experience has been named for each SAC office. The footprint was proposed by a working group that considered a number of factors including location of high volume smuggling corridors, money laundering infrastructure, proximity to sub offices, ports, and transportation and distribution centers, staffing and workload of existing offices, federal judicial lines, and spans of control.

Under the new structure, immigration and customs investigations will now operate under one chain of command. All investigative components in the AOR will report to the SAC and the SAC will report directly to BICE Headquarters.

Both Customs and Immigration investigations involve enforcement of complex and wide-ranging federal criminal laws. In both cases, effective enforcement requires training in basic investigative techniques and additional training in specialty areas. Both areas of investigation involve counter-narcotics work. Both also involve counter-smuggling as a border security issue: Customs of course focusing on contraband and Immigration on illegal immigration. In both legacy components, traditional law enforcement tools such as wiretaps, undercover operations, and source development were used to further investigations. Both agencies had well-established expertise in fraud detection, albeit aimed at different activity.

Customs had a structure and mission dedicated to enforcement. This facilitated and supported the development of cases and a systematic program approach to enforcement of the laws within Customs' jurisdiction. INS had a hybrid structure that had services, inspections, investigations, and detention and removal all supervised by one management chain made up of leaders with backgrounds in any one of those disciplines; so, for example, agents in one office might be supervised by a person with a services background. This also led to a lack of mission focus with respect to investigations and lack of a robust career development path for leaders in the investigations branch. Combining the investigations functions will require leadership from both legacy functions and a clear, unifying mission and streamlined chain of command. There are also disparities between Customs and INS pay-grade structures both at the line and management level. These disparities can be demoralizing and are not consistent with a unified agency. BICE is working with DHS management to address these disparity issues in a timely fashion.

The consolidation will provide BICE with the opportunity to bring all our enforcement

tools to bear on our investigations. For example, it will provide the needed structure for bringing Customs legacy financial expertise to traditional alien smuggling investigations. This model has been very successful in the case involving the 19 deaths in Victoria, Texas. Counter-narcotics work previously being done by the component agencies will now be done by one agency with combined expertise. Document fraud cases will benefit from Customs legacy expertise in computer forensics. In addition, economies will be realized as BICE consolidates, for example by implementing a unified national firearms program and a unified investigative support program (covering areas such as computer evidence recovery, an important field in enforcement today).

5. **On May 15, 2003, the Bureau acknowledged that its Air and Marine Interdiction Coordination Center (AMICC) had earlier that week participated in the search for the airplane of a Texas legislator.**

   1. **What action was requested of the AMICC, and by whom?**

   2. **What action, if any, was actually taken by the AMICC? Which federal officials were involved in directing that action be taken?**

   3. **What other federal agencies were involved, if any, and what actions did they take?**

   4. **If any action was taken by the Homeland Security Department, please explain how these actions fall within the Department's mission?**

   5. **If actions were taken in error, or in contravention of Department policy, what steps will be taken to ensure that similar mistakes will not happen again?**

Response: On May 15, 2003, the matter was referred by BICE to the Office of Inspector General, Department of Homeland Security. Therefore, it would be inappropriate to offer comment on the questions above. However, BICE did release a statement prior to referring it to the Inspector General. I have included the statement below.

"May 15, 2003
Statement from the
Bureau of Immigration and Customs Enforcement (BICE)

On Monday afternoon, a BICE officer working at his desk in Riverside, California at the Air & Marine Interdiction Coordination Center (AMICC) received an urgent phone call from a concerned Texas Department of Public Safety (DPS) officer.

After clearly identifying himself and his rank, the Texas DPS officer stated: "We got a

problem and I hope you can help me out. We had a plane that was supposed to be going from Ardmore, Oklahoma to Georgetown, Texas. It had state representatives in it and we cannot find this plane."

The Texas DPS officer expressed concern that the plane had not arrived at its intended destination, after what was supposed to be an hour and 13 minute flight from Ardmore to Georgetown. He noted again that: "We cannot find this plane." The Texas DPS officer provided the tail number of the missing aircraft to AMICC and asked AMICC to help find it.

From all indications, this request from the Texas DPS was an urgent plea for assistance from a law enforcement agency trying to locate a missing, lost, or possibly crashed aircraft. AMICC routinely responds to requests for assistance from law enforcement agencies. In this case, AMICC responded by making the appropriate telephone calls as described below.

Believing the aircraft may have crashed or be lost, the AMICC made phone calls to the FAA's Fort Worth Center; to the airport authority in Mineral Wells, Texas; and to a fixed base operator in Plainview Texas. During some of these calls, the AMICC officer noted that he was trying to locate a missing/lost plane that may have "government officials" on board.

AMICC was ultimately unable to locate this aircraft. AMICC advised the Texas DPS officer of this result and provided him with a number to call at the FAA in order to initiate lost aircraft procedures.

At no time did AMICC launch or use any Department of Homeland Security aircraft in response to this contact by the Texas DPS."

AFFIDAVIT

I, Michael J. Garcia, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 30th day of May, 2003.

Notary Public

My Commission expires 8/4/04

U.S. Senate Committee on Governmental Affairs
Post-hearing Questions for the
Nomination of Michael J. Garcia to be
an Assistant Secretary of Homeland Security

Questions from Senator Joseph I. Lieberman

1. Section 442(a)(2) of the Homeland Security Act requires the Assistant Secretary of the Bureau of Immigration and Customs Enforcement (BICE) to have a minimum of five years of management experience. In your answer to the pre-hearing questions, you counted your work as an Assistant United States Attorney towards that statutory requirement.

   1. **How many employees did you supervise during your service as an Assistant U.S. Attorney? What was your role in supervising the work of those employees, in terms of hiring, evaluating job performance, and other responsibilities?**

   Response: I directly supervised a total of 10 employees while at the United States Attorney's Office. My role in supervising these employees included interviewing and making hiring decisions for 7 of the 10 employees. Additionally, I directly supervised the day- to-day activities including assigning taskings; performing oversight of projects; reviewing and editing work products; evaluating work performance and preparing employee reviews; and other general supervisory activities.

   2. **In what other ways did you gain managerial experience at the U.S. Attorney's Office? How will that experience help you to be an effective administrator of BICE?**

   Response: In my last 6 years at the United States Attorney's Office, I was responsible for managing trial teams and complex litigation that included over 100 law enforcement agents. These responsibilities included direction of investigative course of action including issues relating to overseas investigations and cooperation with foreign governments; coordinating collection of evidence; and issues related to the arrest and detention of persons charged with crimes of terrorism. In particular, I directed these agents in preparing evidence and making presentations to numerous grand juries and in organizing courtroom presentations. These presentations, which lasted months at a time, required preparing and scheduling numerous witnesses, both government and civilian. This experience in directing large and complex investigations, particularly the substantial enforcement resources involved in these terrorism prosecutions, has direct application in managing a law enforcement agency such as BICE, should I be confirmed.

2. The Administration's budget for FY '04 requested $2.79 billion in budget authority for BICE, compared to FY '02 spending of $2.57 billion. The '04 request for BICE included

$480 million for the Entry Exit system, according to budget documents. Your written answers to pre-hearing questions indicated that the Entry Exit System is no longer a BICE program. With the $480 million subtracted from the BICE budget request, the Administration is requesting $2.31 billion for FY '04; this represents a 10% decrease compared to FY '02 spending.

1. **What is the rationale for decreasing spending by 10% for functions in BICE's jurisdiction? Does this decrease in requested spending reflect a shift in priorities?**

2. **Would BICE be able to fully perform its many important duties and missions with a budget that has shrank by 10% in two years? How would the Bureau adjust to a 10% decrease in funding?**

Response: With regard to the $480 million for the US VISIT program for FY 2004, the Budget in Brief was, in part, inconsistent with the President's official budget request. The FY 2004 President's budget request for the Bureau of Customs and Border Protection (BCBP) includes the $380 million in base resources for US VISIT, plus $64.3 million in enhancements, for a total of $444.30 million.

The FY 2004 President's budget request for BICE only includes an enhancement of $35.7 million, 355 positions (225 Investigations, 22 Intelligence and 108 Legal Proceedings) for US VISIT. This enhancement will, in part, enable BICE to track down and prosecute overstays identified as part of the US VISIT departure control system.

The FY 2004 President's BICE budget is as follows:

Investigations and Protective Services Base	$1.43 billion
Detention and Removals Base	1.31 billion
US VISIT Enhancement	35.7 million
Atlas Enhancement	17.6 million
Total FY 2004 President's request	$2.79 billion

The $35.7 million will remain with BICE for enforcement–related expenditures as described above. BICE, therefore, has a total request of $2.79 billion for FY 2004, an increase over FY 2002 spending.

3. In the additional pre-hearing questions from Senator Lieberman, you were asked about the role of the Air and Marine Interdiction Coordination Center (AMICC) in searching for the airplane of a Texas state legislator. You responded that the matter had been referred to the Office of Inspector General, and "[t]herefore, it would be inappropriate to offer comment on the questions above." You also noted that BICE had released a statement describing the incident the same day it had referred the matter to the Office of the Inspector General.

1. **Why do you believe it would be inappropriate to comment?**

Response: I received direction from the Inspector General's (IG's) Office to refer all inquiries regarding this matter to that office.

2. **Did the Office of Inspector General ask you not to comment?**

Response: As noted above, the IG's office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office.

3. **Will you refuse to provide Congress with information on any matter being investigated by an inspector general? If your willingness to provide information to Congress would depend on the circumstances, please specify in what circumstances you would refuse to provide information.**

Response: Generally, I would defer to the IG's office for direction on inquiries relating to any matter actively being investigated by that office; in this case I was directed to refer all inquiries to the Inspector General's Office. I would also rely on the advice of the Department's Office of General Counsel in responding to congressional inquiries.

4. **As Acting Assistant Secretary for BICE at the time the incident occurred, do you have any knowledge of the circumstances of your Bureau's involvement, either direct or second-hand? Did you take any steps to learn about the Bureau's role? Were you involved in deciding how the Bureau should respond to the incident, and to the news reports that described the incident?**

Response: See response to questions 1 through 3 above.

AFFIDAVIT

I, Michael J. Garcia, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 13th day of June, 2003.

Notary Public

ABBIE D. SWEAT
Notary Public of District of Columbia
My Commission Expires April 14, 2007

U.S. Senate Committee on Governmental Affairs
Post-hearing Questions for the
Nomination of Michael J. Garcia to be
an Assistant Secretary of Homeland Security

Additional Questions from Senator Lieberman

In post-hearing questions from Senator Lieberman, you were asked about the reasons why you thought that an ongoing Inspector General (IG) investigation made it inappropriate for you to answer earlier questions about the role of the Air and Marine Interdiction Coordination Center (AMICC) in searching for the airplane of a Texas state legislator. In answers to separate questions, you responded, "I received direction from the Inspector General's (IG's) Office to refer all inquiries regarding this matter to that office" and "the IG's office directed that it would not be appropriate to comment on this issue and that all inquiries be directed to that office." In response to a question about whether you would refuse to provide Congress with information on any matter being investigated by an inspector general, you responded "(g)enerally, I would defer to the IG's office for direction on inquiries relating to any matter actively being investigated by that office." You declined to answer whether you had any knowledge of the circumstances of your Bureau's involvement in the incident, and what actions you took in its aftermath; instead, you referred to your previous answers.

In the opinions of lawyers at the Congressional Research Service (CRS) and the Senate Legal Counsel, there is no legal basis for refusing to provide information to Congress because of an ongoing IG's investigation. Both noted that Congress has on many occasions investigated matters that were the subject of criminal investigations.

The Assistant Inspector General at the Department of Homeland Security, who is conducting the investigation into the Texas incident, informed my staff that the IG's Office had no policy that would have precluded you from answering questions about your role in the Texas incident, or from providing answers based on information provided to you by personnel at the Bureau of Immigration and Customs Enforcement (BICE). The Assistant Inspector General also informed my staff that no one at the IG's Office had ever had any communications with you.

1. Please list each communication you have had in which the IG's office directed you that it would be inappropriate to comment on this issue. For each communication, describe with whom you had the communication, the date of the communication, what was communicated to you, and how the communication was conveyed to you.

Response: I requested that my Principal Legal Advisor contact the Office of Inspector General through the Chief Legal Counselor of DHS for guidance on this issue in the context of the confirmation hearing process. On June 4, 2003, the Chief Legal Counselor received email guidance, attached, from Richard Reback, Chief Counsel to the Inspector General, stating, "Attached is language that Mr. Garcia can use if questioned on the Texas state legislators issue." The attachment reads, "The OIG has asked that any questions relating to this matter be directed to them." I then

responded to the questions based on this email. In addition, those answers related to this matter were cleared through the DHS Chief Legal Counselor based on her understanding of her communications with the Office of Inspector General.

2. How do you explain the apparent contradiction between your answers and the information received from the IG's office?

Response: I believe there is no contradiction. The guidance I received came in the manner described in question number 1 above. Also, see attached letter from the Chief Legal Counselor.

3. Given the statements from personnel at the CRS, Senate Legal Counsel, and IG's office, on what basis would you conclude that you should not provide information to Congress because of an ongoing IG investigation?

Response: I am unaware of the basis for the CRS and Senate Legal Counsel conclusion. I based my responses on the e-mail referenced in number 1 above. Additionally, I am committed to coordinating and communicating in the future with DHS to provide appropriate responses to congressional inquiries.

4. On what basis did you conclude that an IG is authorized to direct you not to provide information to Congress?

Response: The authority of the Office of Inspector General and the Chief Legal Counselor for DHS.

5. Did anyone else advise you not to answer the questions about the Texas incident? If so, who gave you the advice, and what was the nature of the advice?

Response: No.

6. Did anyone outside the IG's office communicate to you, or to Department personnel generally, that you should not comment on the incident because of the IG's investigation or for some other reason? For each such communication, describe from whom you received the communication, the date of the communication, what was communicated to you, and how the communication was conveyed to you.

Response: None other than communications described in question number 1 above.

7. As Acting Assistant Secretary for BICE at the time the incident occurred, do you have any knowledge of the circumstances of your Bureau's involvement, either direct or second-hand? Did you take any steps to learn about the Bureau's role? Were you involved in deciding how the Bureau should respond to the incident, and to the news reports that described the incident?

Response: On May 15, 2003, it was brought to my attention that a news article had appeared in a Dallas newspaper referring to the inquiry made by the Texas

Department of Public Safety (DPS) to AMICC. I had no prior knowledge, direct or indirect, of this matter. I then spoke to my Director of the Air and Marine Division who informed me there was a taped call of the inquiry and that he, the Director, had reviewed that tape. He relayed the substance of the tape as described in the May 15 press release previously provided to the Committee. Later that evening, my Director of Operations informed me that additional taped conversations related to the DPS inquiry might exist. At that point, on the evening of May 15, I directed my Principal Legal Advisor to refer the matter to the Office of Inspector General. My Principal Legal Advisor informed me later that evening that the referral had been made. Because of the pending Inspector General investigation, I made no further inquiries into the facts of this case and obtained no further information pending the Office of Inspector General's investigation or facts underlying that investigation.

8. Please provide answers to question #5 in the Pre-hearing Committee Questionnaire, Additional Questions from Senator Lieberman.

Response: Regarding the initial pre-hearing questions on this matter, I would refer you to the attached Office of Inspector General report being released today for specifics on the incident. My activities with respect to the AMICC matter are described above in answer number 7. With the release of the report today indicating no misconduct on the part of AMICC and that AMICC personnel followed their established procedures, I have nonetheless asked my Director of Operations to obtain a management audit of AMICC procedures to see if any changes are necessary.

AFFIDAVIT

I, MICHAEL J. GARCIA, being duly sworn, hereby state that I have read and signed the foregoing Statement on Pre-hearing Questions and that the information provided therein is, to the best of my knowledge, current, accurate, and complete.

Subscribed and sworn before me this 10th day of June, 2003.

Notary Public

My Commission expires 4/4/04

U.S. Department of Homeland Security

June 16, 2003

The Honorable Joseph Lieberman
United States Senate
Washington, DC 20510

Dear Senator Lieberman:

To assist Mr. Garcia in responding to questions raised in the course of his confirmation hearing on June 5, 2003 and in subsequent Questions for the Record of June 13, 2003, I write to provide the following clarification.

In response to a request the Office of the General Counsel made to the Office of Inspector General (OIG) with respect to potential questions to Mr. Garcia, regarding the Texas DPS Air and Marine matter, in the context of his confirmation hearing, the OIG responded that Mr. Garcia should refer all questions related to this matter to the OIG. Based upon this communication, the Department of Homeland Security understood and advised Mr. Garcia that it would be inappropriate for him to make any comments on this matter during the confirmation process other than to refer such questions to the OIG.

I hope that this explanation clarifies any misunderstanding related to Mr. Garcia's testimony. Should you have any further questions, please do not hesitate to contact me or to have a member of your staff contact me. I thank you for your time and attention to this matter.

Sincerely,

Lucy G. Clark

Lucy G. Clark
Chief Legal Counselor

Cc: Richard Reback
Lisa Redman

-----Original Message-----
From: Reback, Richard <Richard.Reback@HQ.DHS.GOV>
To: Clark, Lucy <Lucy.Clark@HQ.DHS.GOV>
Sent: Wed Jun 04 12:10:10 2003
Subject: Garcia nomination

Lucy,
Attached is language Mr. Garcia can use if questioned on the Texas state legislators issue. (Unfortunately, I don't think I can receive e-mails from you or others in DHS at this point -- we are trying to fix the problem). My telephone number is (202) 254-4039.

<<Garcia.doc>>

GARCIA.DOC

{Attachment to 6/4/03 e-mail from Richard Reback to Lucy Clark}

Question: What action are you taking on the issue of diversion of Department of Homeland Security resources to search for Texas State legislators?

Answer: My office referred the matter to the Department's Office of Inspector General (OIG) on the evening of May 15, 2003. The OIG has asked that any questions relating to this matter be directed to them.

U.S. Department of Homeland Security

PRINT

OIG Concludes Investigation of Alleged Misuse of DHS Resources in Search for Missing Texas State Legislators

The Department of Homeland Security, Office of Inspector General (OIG), has completed an investigation into allegations that Air and Marine Interdiction Coordination Center (AMICC), Bureau of Immigration and Customs Enforcement (BICE), Department of Homeland Security (DHS), assets were misused in assisting the Texas Department of Public Safety (DPS) to locate an aircraft transporting Texas state legislators from Oklahoma to Texas on May 12, 2003.

While the investigation found that AMICC responded to a request for assistance from the Texas DPS in locating a purported "missing aircraft," the response had no reducible effect on its mission or resources. Additionally, the investigation concluded that the actions taken by the dispatcher in response to the request for assistance were appropriate under AMICC's guidelines. Essentially, AMICC's response entailed making eight phone calls, which consumed no more than 40 minutes of one dispatcher's time. This is a nominal use of DHS resources.

A copy of the OIG report of investigation and the exhibit containing the transcript of telephone calls made by AMICC, redacted principally for personal privacy concerns, is posted below.

Office of Inspector General- Report of Investigation: Air and Marine Interdiction Coordination Center

REPORT OF INVESTIGATION

IN03-OIG-LA-0662-S

Office of Inspector General

United States Department of Homeland Security

U.S. Department of Homeland Security
Office of Inspector General – Investigations **REPORT OF INVESTIGATION**

Case Number	IN03-OIG-LA-0662-S
Case Title	Air and Marine Interdiction Coordination Center
Report Status	Final
Alleged Violation(s)	Misuse of Resources

SYNOPSIS

This report documents the results of an Office of Inspector General (OIG) investigation into allegations that Air and Marine Interdiction Coordination Center (AMICC), Bureau of Immigration and Customs Enforcement (BICE), Department of Homeland Security (DHS) assets were misused in assisting a state law enforcement agency. Specifically, the Texas Department of Public Safety (DPS) requested AMICC to locate an aircraft transporting Texas state legislators from Oklahoma to Texas on May 12, 2003.

On May 15, 2003, Acting Inspector General Clark Kent Ervin received a telephone call from Mark Wallace, Principal Legal Advisor to Michael Garcia, Assistant Secretary Designee for BICE, referring for investigation a matter concerning alleged DHS involvement in a federal effort to find missing Texas state lawmakers. Subsequently, Members of Congress wrote to the OIG requesting an investigation into this matter and requested that several issues described later in this report be addressed by the OIG. The scope of the OIG investigation was limited to the specific issue involving alleged misuse of DHS assets in assisting state law enforcement in locating a reported "missing aircraft." The OIG investigation did not address the actions of the DPS following their request for AMICC assistance, nor did the OIG assess the propriety of AMICC's existing guidelines relating to the rendering of assistance to other law enforcement agencies. The alleged destruction of notes by the DPS was referred to the Federal Bureau of Investigation (FBI), San Antonio, Texas, for their consideration.

The OIG investigation found that DPS did contact the AMICC and reported that they "had a problem," and "could not find this plane" which contained Texas state representatives. The DPS requested DHS to assist them in locating the aircraft. The OIG investigation concluded the assistance rendered by AMICC was limited to not more than forty minutes of telephone calls

Reporting Agent	
Name: [redacted]	Signature: [redacted]
Title: Supervisory Special Agent	Date: 6/13/03
Approving Official	
Name: Joseph Artes	Signature: [illegible] for
Title: Special Agent in Charge	Date: 6/13/03

This report contains sensitive law enforcement material and is the property of the OIG. It may not be copied or reproduced without written permission from the OIG. This report is FOR OFFICIAL USE ONLY and its disclosure to unauthorized persons is strictly prohibited and may subject the disclosing party to liability. Public availability to be determined under 5 U.S.C. §§ 552, 552a.

Redacted for public release pursuant to 5 U.S.C. 552 (b)(2), (6), (7)(C).

made by an AMICC employee to various Federal Aviation Administration (FAA) and airport representatives in Texas, and a series of conversations with [redacted] supervisors. The AMICC personnel involved in this incident described this assistance as a typical request from a law enforcement agency, which reportedly occurs at least thirty times a day and is in compliance with their standard operating procedures. At no time did AMICC launch any aircraft or otherwise use DHS resources to assist the DPS. The telephone calls made by AMICC at the request of DPS involved a nominal use of DHS assets.

AMICC's account of these events was documented on audiotape (and transcript), which was reviewed by OIG investigators and found to be consistent with the statements of AMICC employees involved in the incident. There was every indication that the employee rendering assistance to the DPS on the telephone believed he was searching for a missing aircraft.

DPS officials interviewed by the OIG declined to provide any information identifying the person or persons who requested they contact AMICC for assistance. DPS officials claimed they destroyed all notes, memoranda, or other correspondence related to this incident.

This case is closed with the submission of this report.

This report contains sensitive law enforcement material and is the property of the OIG. It may not be copied or reproduced without written permission from the OIG. This report is FOR OFFICIAL USE ONLY, and its disclosure to unauthorized persons is strictly prohibited and may subject the disclosing party to liability. Public availability to be determined under 5 U.S.C. §§ 552, 552a.

Form OI 08

REPORT OF INVESTIGATION

INTRODUCTION

On May 15, 2003, Acting Inspector General Clark Kent Ervin[1] received a telephone call from Mark Wallace, Principal Legal Advisor to Michael Garcia, Assistant Secretary Designee for BICE, referring for investigation a matter concerning alleged DHS involvement in a federal effort to find missing Texas state lawmakers. At this time Wallace advised that his office was in possession of an audiotape related to this matter. (Exhibit 1)

Subsequently, the OIG received three letters from Members of Congress. The first letter, dated May 15, 2003, was from Representative John Conyers, Jr. and other members. The second letter, dated May 21, 2003, was from Representative Lloyd Doggett and other members. The third letter, dated May 22, 2003, was from Senator Joseph Lieberman. All these letters requested the OIG to investigate this matter to determine if DHS assets were misused in attempting to locate the missing Texas state lawmakers. Senator Lieberman's letter also requested that the OIG expand its investigation to include the alleged destruction of documents by the DPS. (Exhibit 2)

The scope of the OIG investigation was limited to the actions of AMICC personnel in rendering assistance to DPS in locating a reported "missing aircraft." This investigation did not address the post incident actions of the DPS or the actions of any other federal agency rendering assistance to DPS. Insofar as the assistance provided by AMICC was *de minimis*, the OIG did not expand the scope of this investigation or investigate the document destruction by DPS. The conduct of DPS was referred to the FBI for whatever action they deemed appropriate.

DETAILS

Allegation: It was alleged that AMICC misused its resources by providing assistance to track and locate an aircraft transporting State of Texas legislators.

On May 20, 2003, the OIG recovered from General Counsel's Office, BICE, audiotapes and a videotape (audio only) relating to the recording of the assistance provided by AMICC, on May 12, 2003. (Exhibit 3)

Charles E. Stallworth, Director, Air and Marine Interdiction (A&MI), BICE, DHS, Washington, D.C., was interviewed and stated that [redacted] Texas Department of Public Safety, Austin, Texas, had requested the assistance of AMICC. AMICC attempted to assist DPS in the

[1] On May 16, 2003, Acting Inspector General Clark Kent Ervin recused himself from any participation in this investigation due to his prior employment by the State of Texas, and the possibility he might know one or more of the State of Texas employees involved in this matter. See Exhibit 1.

This report contains sensitive law enforcement material and is the property of the OIG. It may not be copied or reproduced without written permission from the OIG. This report is FOR OFFICIAL USE ONLY, and its disclosure to unauthorized persons is strictly prohibited and may subject the disclosing party to liability. Public availability to be determined under 5 U.S.C. §§ 552, 552a.

Form OI-08

location of an aircraft allegedly carrying Texas state lawmakers. According to Stallworth, AMICC acted appropriately and in accordance with agency guidelines in responding to what AMICC, based on information available at the time, believed to be a legitimate law enforcement request for assistance. (Exhibit 4)

[redacted] Senior Detection Systems Specialist (DSS), AMICC, BICE, DHS, Riverside (all further references to AMICC are for this site), was interviewed and stated that on May 12, 2003, a call was received from [redacted] requesting assistance in determining the location of an aircraft believed to be overdue. [redacted] assigned the call to [redacted] DSS, AMICC, to provide assistance in locating the aircraft.

According to [redacted] AMICC receives 30 to 40 calls daily requesting assistance as a matter of public safety from individuals, localities, states, etc. [redacted] provided a copy of the "AMICC Training and Operations Manual," which states, in part, that when resources allow, support will be provided to assist federal, state, and local law enforcement agencies for humanitarian efforts. [redacted] concurred with the steps [redacted] took in an attempt to locate the aircraft. (Exhibits 5, 6)

[redacted] was interviewed and stated that on May 12, 2003, [redacted] was assigned to assist [redacted] in locating an aircraft with Texas officials on board. [redacted] attempted to locate the aircraft but was unsuccessful. [redacted] advised [redacted] of [redacted] results and related [redacted] could contact [redacted] the Dallas Fort Worth Airport to request search and rescue. At that time, [redacted] declined [redacted] offer to be put in touch with FAA to initiate a search and rescue. However, [redacted] later called [redacted] back and requested the information on how [redacted] could go about requesting a search and rescue [redacted] provided [redacted] with the contact information for Ft. Worth Center to initiate the search and rescue. (Exhibits 7, 8)

[redacted] DSS, AMICC, was interviewed and stated that on May 12, 2003, [redacted] received a call from the FAA, as a result of a call placed to them earlier by [redacted] explaining the FAA had no contact with the alleged missing aircraft [redacted] provided the information to [redacted] (Exhibit 9)

[redacted] and [redacted] AMICC, stated that all calls on the operations floor, incoming and outgoing, are recorded. (Exhibit 10)

[redacted] AMICC, was on the operations floor at AMICC, on May 12, 2003, when [redacted] briefed [redacted] about the alleged missing aircraft and [redacted] attempts to locate the aircraft. [redacted] concurred with the actions [redacted] had taken in attempting to locate the aircraft. AMICC assists in looking for downed aircraft for humanitarian reasons. In this specific case, AMICC was assisting a law enforcement agency. It is always the policy to assist law enforcement agencies that are attempting to locate an aircraft. On the average, this type of assistance occurs "30 to 40 times per day," according to [redacted] (Exhibit 11)

This report contains sensitive law enforcement material and is the property of the OIG. It may not be copied or reproduced without written permission from the OIG. This report is FOR OFFICIAL USE ONLY, and its disclosure to unauthorized persons is strictly prohibited and may subject the disclosing party to liability. Public availability to be determined under 5 U.S.C. §§ 552, 552a.

Form OI-01

REPORT OF INVESTIGATION

[redacted] Special Crimes Service, Texas Department of Public Safety, Austin, Texas, was interviewed and stated [redacted] knew that the U.S. Customs Service (referred to here as AMICC) tracked airplanes, so [redacted] made the contact. [redacted] stated that several individuals, whom [redacted] would not identify, requested [redacted] look for the airplane. [redacted] did not recall with whom at AMICC [redacted] had spoken. According to [redacted] AMICC attempted to locate the airplane and ultimately advised [redacted] they could not locate it. [redacted] believed that the total time the AMICC employee assisted [redacted] was 15 minutes. (Exhibit 12)

[redacted] AMICC, was interviewed and stated [redacted] began receiving calls from newspapers, news services, and television news programs, on May 13, 2003. Additionally, [redacted] received a call from Congressman Ken Calvert's office which expressed shock that AMICC was involved in looking for the aircraft. [redacted] referred the callers to the public affairs office for BICE, DHS, Washington, D.C. [redacted] stated [redacted] had not had any requests from Congress or the Administration relating to the aircraft. (Exhibits 13, 14)

The OIG attempted to interview [redacted], DPS, on May 22, 2003, relating to alleged missing notes prepared by [redacted] in [redacted] attempt to locate the missing aircraft. At that time, [redacted] stated [redacted] was unavailable for an interview. It was later determined that an interview of [redacted] was not necessary due to the scope of this investigation. (Exhibit 15)

[redacted] FBI, San Antonio, Texas, was interviewed and stated the FBI was not interested in investigating the alleged destruction of notes and documents by the Texas DPS related to the Texas state lawmakers. (Exhibit 16)

Joseph Bendig, Director, AMICC, was interviewed in response to comments attributed to him in an article appearing in the Washington Post newspaper, dated June 7, 2003. According to Bendig, his comments were taken out of context. Bendig stated the reporter asked, "How often does AMICC get calls from law enforcement for this type of assistance?" Bendig construed this to mean requests for assistance to locate a lost aircraft with politicians on board and stated that such calls are unusual. Bendig further clarified that AMICC does get calls from law enforcement, but not necessarily calls to locate aircraft carrying politicians. (Exhibit 17)

[redacted] was interviewed to determine if AMICC verifies the identity of callers requesting assistance. According to [redacted] when requests for information are received by AMICC, they call back the requestor to verify their identity. In this instance, when the call for assistance came in on May 12, 2003, a call-back procedure was not deemed necessary. Rather, [redacted] noted that the AMICC phone system displayed that the call originated from a "Texas Government" telephone extension. [redacted] believed that further verification was unnecessary. (Exhibit 18)

This report contains sensitive law enforcement material and is the property of the OIG. It may not be copied or reproduced without written permission from the OIG. This report is FOR OFFICIAL USE ONLY, and its disclosure to unauthorized persons is strictly prohibited and may subject the disclosing party to liability. Public availability to be determined under 5 U.S.C. §§ 553, 552a.

Form OI-06

EXHIBIT 8

U.S. CUSTOMS DEPARTMENT OF HOMELAND SECURITY

PHONE ON CONSOLE 07 - 12MAY03

STENOWRITERS
12512 Bryce Circle
Cerritos, California 90703
562.860.8300

1 [redacted] how may I help you?
2 [redacted]: [redacted] my name is [redacted] I'm a
3 [redacted] with DPS in Austin, Texas.
4 [redacted] Yes.
5 [redacted]: Got a problem. Hope you can help me
6 out. We had a plane that was supposedly to be going from
7 Ardmore, Oklahoma to Georgetown, Texas. It had state
8 representatives in it, and we cannot find this plane.
9 [redacted] Okay. What's the tail number of
10 the airplane?
11 [redacted]: NORA-711 ROBERT DAVID.
12 [redacted]: Robert David.
13 [redacted]: Now we checked with the Austin
14 flight line, and they had no flight plan for that plane.
15 [redacted] And you said it was going from --
16 [redacted] Ardmore, Oklahoma.
17 [redacted] -- To Georgetown?
18 [redacted]: To Georgetown, Texas. And they have
19 supposedly left at 5:00.
20 [redacted] Okay. You haven't talked to any of
21 the FAA people or --
22 [redacted] No, I have not.
23 [redacted] Okay. Can I get a phone number for
24 you?
25 [redacted] [redacted]--

[redacted] And my name is [redacted] Last name is [redacted] and I'm with DPS.

[redacted] Okay. I'm going to go ahead and try to contact some FAA people and see if they have any information on this, and we'll check to see if we have any flight plans on it.

[redacted] Okay.

[redacted] See if we can find it and give you a call back here, okay?

[redacted] Okay.

[redacted] All right.

[redacted] Bye.

[redacted] Okay. Bye.

[redacted] Bye.

(Call ends).

[redacted] Fort Worth Center [redacted]

[redacted] Hey, [redacted] This is [redacted] with Customs Radar. I'm trying to find an airplane.

[redacted]: Okay.

[redacted]: It's NOV-711 ROMEO DELTA. It was due in to Plainview, Texas.

[redacted]: It was due in to Plainview?

[redacted]: Yeah.

[redacted]: Today?

[redacted]: Yeah, today.

[redacted]: Huh.

[redacted]: And it's saying 00:45 and the people's trying to find it, and I can't see it on the radar or anything, and they don't have an active flight plan on it, but there is a proposal coming out of Ardmore, Oklahoma going down to Plainview.

[redacted]: All right. Hang on a second.

[redacted]: Okay.

[redacted]: At 23:48.

[redacted]: 23:48.

[redacted]: [redacted] was about 11 miles south of Ardmore, and we show [redacted] went via far into Mineral Wells.

[redacted]: Mineral Wells?

[redacted]: Yes. MWL.

[redacted]: MWL. All right. And [redacted] went -- you know what time [redacted] landed there?

[redacted]: No, I did not.

[redacted]: Okay. You wouldn't happen to have

a phone number for them, would you?

[redacted] I can find one.

[redacted] Okay. If you would please.

[redacted] Okay. Airport 2 you want --

[redacted] Probably an FBO or manager or somebody there. If it has the tower, that would be great, but I don't think so.

[redacted] I don't have a tower.

[redacted] Okay.

[redacted] Let's see here. Airport Authority or -- that's about all we got here [redacted]--

[redacted] [redacted]--

[redacted]: [redacted]--

[redacted] [redacted]--

[redacted]

[redacted] [redacted] And Mineral Wells exactly where is that?

[redacted] It melts out via war do you know where that's at?

[redacted] No.

[redacted] Well, it's west of Fort Worth about 40 miles.

[redacted] 40 miles west of Fort Worth?

[redacted] Yeah.

[redacted] Okay, [redacted] Appreciate that. Thank

you, [redacted]

[redacted]: You bet.

[redacted] All right. Bye.

(Call ends).

(Phone Busy).

[redacted] Airport.

[redacted] Yes, [redacted] My name is [redacted] I work with U.S. Customs out of Riverside, California.

[redacted] Yes.

[redacted] Trying to track down an airplane for some people up in Oklahoma.

[redacted] Uh-huh.

[redacted] It's supposed to have some government officials on it.

[redacted] Okay.

[redacted] NOV--711 ROMEO DELTA, and I just spoke with Dallas Fort Worth Center, and they said about 23:48 he was 11 miles heading into Mineral Wells, and that was the last thing that they knew about [redacted]

[redacted] And what time was that?

[redacted] 2348 ZULU. It's about an hour ago.

[redacted] All right. About an hour ago?

1 [redacted] 50 minutes ago.
2 [redacted] Let's see. It's not on the fuel
3 log. I haven't heard that pin number yet. 711 ROMEO
4 Delta?
5 [redacted] Right.
6 [redacted] No, haven't heard that.
7 [redacted] All right. Is there any way we can
8 get somebody to check out the airport see if it is
9 actually there?
10 [redacted] Yeah. I can go through all the
11 hangers and everything else.
12 [redacted] Okay. You know -- we -- I'm just
13 trying to find it for this guy up in Ardmore, Oklahoma.
14 It was supposed to be going into Plainview, Texas later
15 on but...
16 [redacted] was going to make a stop here
17 for fuel or?
18 [redacted] I don't know if it was stopping
19 there for fuel or what. But I'm just going by what
20 Dallas Fort Worth gave me.
21 [redacted] What kind of plane was it?
22 [redacted] PA-2.
23 [redacted] PA-2.
24 [redacted] Yeah, PAY-2.
25 [redacted] Okay.

[redacted] Pagan 2.

[redacted] Okay. Well, I'll go and check all the ramps and drive through all the feed hangers and --

[redacted] Okay, sir. And my phone number here -- if you give us call back and just ask for the New Mexico desk.

[redacted] Okay.

[redacted] Is [redacted] And what was your name, sir?

[redacted] This is [redacted]

[redacted]

[redacted]

[redacted]

[redacted] Yeah.

[redacted] Okay, sir. I appreciate your help.

[redacted] Okay.

[redacted] All right, sir.

[redacted] All right.

[redacted] Bye.

[redacted] Bye.

(Call ends).

1 the airport to see if [redacted] can find the aircraft there.
2 [redacted] That's all we want to do is --
3 [redacted] Yeah.
4 [redacted] No contact being made.
5 [redacted] Yeah.
6 [redacted] Okay.
7 [redacted] No contact at this time, you know,
8 we're just going out there to see. I just want to let
9 you know on the update that we hadn't forgot about you.
10 [redacted] Great.
11 [redacted] And we'll give you a call as soon
12 as we find out anything, sir.
13 [redacted] Okay, [redacted]
14 [redacted] Okay.
15 [redacted] Thank you.
16 [redacted] Bye.
17 (Call Ends).
18
19
20
21 (Phone Recording as Follows): This is Miller
22 Flight Service. We're either out of the office for a few
23 minutes or closed for the day. If you would like to
24 leave a message you may do so at the beep [redacted]
25 [redacted]

1 [redacted]
2 [redacted]
3 [redacted]
4 (Call ends).
5
6
7 [redacted] This is [redacted]
8 [redacted] Yes. [redacted] from
9 (inaudible) Airport.
10 [redacted] Yes, [redacted]
11 [redacted] Are you who I spoke with?
12 [redacted] Yes, [redacted] it is.
13 [redacted] I checked everywhere, and it's
14 not on the ground here.
15 [redacted] It's not on the ground there?
16 [redacted] No. What kind of plane was that
17 anyway, twin engine?
18 [redacted] PAY-Y2.
19 [redacted] Hopper or Navy?
20 [redacted] No. It's a Pasan. I'm not for
21 sure. I don't have a picture of it. Okay. But you
22 can't find anything on that airplane, huh?
23 [redacted] No. Haven't heard anything.
24 [redacted] I appreciate it, [redacted]
25 [redacted] I'll let you know if it does come

[redacted]: This is [redacted]

[redacted]: Yeah, [redacted] this is [redacted] with U.S. Customs out of Riverside.

[redacted]: Yes, [redacted]

[redacted]: What I found out so far, I have not found your airplane yet.

[redacted]: Okay.

[redacted]: At 23:48 ZULU Dallas Fort Worth said that they had [redacted] 11 miles outside of Mineral Wells, Texas going into Mineral Wells.

[redacted]: Okay.

[redacted]: I've just spoke with the port authority or the police department there a [redacted]

[redacted]: Uh-huh.

[redacted]: [redacted] is going out and check the area right now to see if [redacted] can find the airplane, and [redacted] give us a call back here.

[redacted]: What time did you say 20 --

[redacted]: 23:48 Zulu which was just about 52 minutes ago.

[redacted]: Okay.

[redacted]: That's --

[redacted]: Outside of Mineral Wells?

[redacted]: Outside of Mineral Wells. And I do have the police authority there going out and looking at

in.

[redacted] Okay. I appreciate it. Bye.

(Phone ends).

[redacted] Yes, sir, is this [redacted]?

[redacted]: Who are you calling?

[redacted] I'm trying to get ahold of [redacted] Plainview, Texas.

[redacted] Okay. You got [redacted]

[redacted] Okay. All right. [redacted] my name is [redacted] I work with U.S. Customs out of Riverside, California.

[redacted]: Uh-huh.

[redacted] There was an airplane that was supposed to come in at Plainview there out of Ardmore, Oklahoma a NOV-711 ROMEO DELTA.

[redacted]: Uh-huh.

[redacted] And the people up in Oklahoma is trying to find the airplane. They have not heard from it in a while. They were just wondering if it made it there?

[redacted]: Well, [redacted] doesn't base over at our side of the airport.

[redacted] Okay, [redacted]

[redacted]: So I don't -- I wouldn't have any way of knowing because I don't have a key to their hanger or anything.

[redacted]: Okay. Who could I contact on the other side to see if [redacted] over there?

[redacted]: Oh, well, [redacted] is the owner, but I don't -- [redacted] lives in [redacted] and [redacted] out of town some so I'm not sure whether there would be anybody you could find over there tonight or not.

[redacted]: Okay. Is there any way that I can find out where -- if the airplane is at the airport there? I mean, I don't know how big the airport is. I'm out in California.

[redacted]: Right.

[redacted]: And these people up in Oklahoma they said that these people were like government officials, and they're trying to find them.

[redacted]: Yeah, I'm kind of familiar with that whole -- deal.

[redacted]: Okay.

[redacted]: It made the paper today.

[redacted]: Okay. I don't know what's going on. I'm just trying to find the people that's all.

[redacted]: Yeah, I understand. Yeah, I don't know. Let's see trying to think of somebody. There's no

way I can find out because, like I say, if it's here and in the hanger, I wouldn't have anyway to find out.

[redacted] Okay.

[redacted]: You have --

[redacted] Do they just park the airplanes outside or --

[redacted]: No. It's got a hanger it belongs in. It wouldn't be left out here because we have such threat of thunderstorms.

[redacted] Okay.

[redacted]: But it supposedly left Ardmore is what they're saying?

[redacted] Yeah. FAA Fort Worth Center last contact they had with the airplane was at 23:48 Zulu which was just a little bit over an hour ago, and it was 11 miles outside of Mineral Wells, Texas, which is probably 40 miles outside of Fort Worth.

[redacted]: Yeah, I know where Mineral Wells is.

[redacted] Yeah.

[redacted]: An hour ago outside of Mineral Wells?

[redacted] Yeah.

[redacted]: Huh, let's see, well -- the guy that's kind of in charge over there -- when [redacted]

1 is gone [redacted]
2 [redacted] Okay, sir,
3 [redacted]: I don't know. Just a second.
4 [redacted] Okay, sir.
5 [redacted]: Well, supposedly, [redacted] phone
6 number is [redacted]
7 [redacted] [redacted]
8 [redacted]: Uh-huh.
9 [redacted] Okay. And you say [redacted] kind of in
10 charge when the other guys --
11 [redacted]: When the owner is gone, [redacted]
12 kind of in charge of the business for [redacted]--
13 [redacted] Okay.
14 [redacted]: So [redacted] probably, if anybody,
15 knows [redacted] probably know.
16 [redacted] Okay. All right, [redacted] I
17 appreciate it very much.
18 [redacted]: Okay. Thanks.
19 [redacted] Bye.
20 (Call ends).
21
22
23 (Phone call no answer).
24
25

[redacted] Front desk [redacted]

[redacted] Yes, [redacted] [redacted] this is [redacted] with Customs Radar again.

[redacted] Yes.

[redacted] I think spoke with you about 20 minutes ago when A NOV-711 ROMEO DELTA.

[redacted] Uh-huh.

[redacted] Okay. I've called over to Mineral Wells. They can't find anything anyone there at the Mineral Wells Airport.

[redacted] Uh-huh.

[redacted] I called over, and I talked to the FBO people. They don't know anything about it in the Plainview. Is there any way that you can contact some of the FAA folks that might have talked with anyone its route over to Plainview to see if they have any updates on everything to find out if we can find this airplane?

[redacted] Yeah. We can call around and see if we can find them somewhere. You say you called some FBOs or --

[redacted] I called Miller Flying and --

[redacted] At Mineral Wells?

[redacted] No. At actually Plainview.

[redacted] At Plainview?

[redacted] Yeah. And I called the airport

1 authority there at Mineral Wells. They did send a car
2 out and called us back and said they couldn't find it
3 laying out there anywhere or, you know, in the area that
4 wasn't locked up or anything.
5 [redacted] Right.
6 [redacted] So they gave me a name for a [redacted]
7 [redacted] there at Plainview. That's on the other side
8 of the flying or the FBO. And I can't get no answer over
9 there. I was going to send out maybe -- maybe call the
10 local police department there and see if they can send a
11 car out and check the airport to just see if it is out
12 there. But they said it's usually inside of a hanger
13 over there.
14 [redacted] Yeah, that's probably likely it
15 would be in a hanger already.
16 [redacted] Yeah, so, I don't know which --
17 which of your facilities might have talked to them or?
18 [redacted] I'll tell you what, we'll check
19 with Lubbock approach and see if they talked to [redacted]
20 and --
21 [redacted] Okay.
22 [redacted] -- and maybe go from there.
23 [redacted] Okay. And if you could, if you
24 could, you know, whatever information get me, you know,
25 if you could just give us a call back here at [redacted]

1 [redacted] Just ask for New Mexico position.
2 [redacted] [redacted]
3 [redacted] Yes, [redacted]
4 [redacted] That's going to be the New Mexico
5 position?
6 [redacted] Yes, [redacted]
7 [redacted] All right. We'll see what we can
8 find out, I'll call you back here in just a few minutes.
9 [redacted] Thanks, [redacted]
10 [redacted] All right. Bye.
11 [redacted] Bye.
12 (Call ends).
13
14
15 (Phone busy).
16
17
18 [redacted] New Mexico desk. Can we help
19 you?
20 FAA: Yes. This is Fort Worth Center calling
21 back about that 711 ROMEO DELTA.
22 [redacted] Go ahead, [redacted]
23 FAA: We talked to the approach control there at
24 Lubbock, Texas, and see if they had worked [redacted] sometime
25 today either (inaudible) via fire or I afire, and they

have not been able to locate any records that they talked to them. They said they're familiar with the aircraft though.

[redacted] Okay.

FAA: But [redacted] is, I guess, [redacted] based up there in Plainview.

[redacted] In Plainview? All right.

FAA: Yeah, they said they remembered talking to [redacted] probably yesterday, but they do not recall talking to [redacted] today, but they are going to continue their search, and I told them to call us back if they could come up with anything.

[redacted] Okay. That's great. I appreciate the work there.

FAA: That's all we know so far.

[redacted] All right. Thank you.

FAA: Good bye.

(CAll ends).

(Phone busy).

(Phone disconnected message).

[redacted]: This is [redacted]

[redacted] This is [redacted] with U.S. Customs.

[redacted] Yes.

[redacted] I have not found your airplane yet.

[redacted] Okay.

[redacted] Tell you what I have done. I have talked to the police authority over there. They could not find it at Mineral Wells. I have talked to the FBO Miller Flying Service out of Plainview. They said they're familiar, but they wouldn't service it. It would be across the field into a hanger over there --

[redacted] Okay.

[redacted] -- on the other side. They gave me a [redacted] phone number [redacted] Area code is [redacted] I cannot get anybody to answer that phone number.

[redacted] Okay.

[redacted] I've talked to Dallas Fort Worth Center. They talked to Lubbock Approach who handles that area. They remember the airplane from yesterday.

[redacted] Uh-huh.

[redacted] But they don't remember it today.

[redacted] Okay.

1 [redacted] I can give you a number to [redacted]
2 [redacted] at Forth Worth Center.
3 [redacted] I think what we're going to do is
4 we're going to send some people up there to start
5 looking.
6 [redacted] Okay.
7 [redacted] At different places.
8 [redacted] Okay. And this was the city of
9 Ardmore --
10 [redacted] Yeah.
11 [redacted] -- airplane. And did it have --
12 you said it had have government officials onboard?
13 [redacted] Yeah.
14 [redacted] Is it just city of Ardmore
15 officials or --
16 [redacted] No U.S. -- I mean Texas
17 representatives.
18 [redacted] Texas?
19 [redacted] Right.
20 [redacted] Reps?
21 [redacted] Uh-huh. We're trying to locate, you
22 know, I don't know -- well, we're trying to do some
23 checking down here on it. Since there was no flight plan
24 and all that we're -- we're checking some other things.
25 I guess I'm really not at liberty to go too much further

1 than that.
2 [redacted] Okay.
3 [redacted]: Okay.
4 [redacted] All right. It's no problem. I can
5 given you [redacted] and they can do a search and
6 rescue for you.
7 [redacted]: No, that's okay.
8 [redacted] Okay.
9 [redacted]: We don't want to go that far.
10 [redacted] Okay. All right. All right. No
11 problem. They also had a [redacted] I think,
12 number that I had in the book here for the airport for
13 the hanger that it should be --
14 [redacted] Okay. What's [redacted] number?
15 [redacted] Let me look that up for you real
16 quick, okay? Hang on one second, all right?
17 [redacted]: (Conversation had by [redacted] not with
18 [redacted] Keep trying to call those guys they -- it rolls
19 over to their --
20 [redacted] Yeah, [redacted] all right.
21 Okay. [redacted] and they say [redacted] the area manager.
22 And when I talked to the flying service down there, they
23 said when [redacted] not there, this [redacted] handles
24 everything.
25 [redacted]: Okay.

1 [redacted]: So I tried [redacted] number, and I didn't
2 try the [redacted] number because [redacted] told me [redacted] wasn't in
3 so...
4 [redacted]: Okay, [redacted].
5 [redacted]: Okay, Wil.
6 [redacted]: I appreciate your help, man.
7 [redacted]: Okay. No problem. Thank you.
8 Bye.
9 [redacted]: Bye.
10 (Call ends).
11
12
13 [redacted]: Texas.
14 [redacted]: Is [redacted] there?
15 [redacted]: Yes, this is [redacted].
16 [redacted]: [redacted] this is Wil Crais.
17 [redacted]: Yeah.
18 [redacted]: Hey, I just talked to the one of the
19 representatives down here.
20 [redacted]: Okay.
21 [redacted]: State representative. They want to
22 do a search and rescue.
23 [redacted]: Okay, sir.
24 [redacted]: What does it take? Now I told them
25 that we had an individual? Is this [redacted]--

where is [redacted] out of?

[redacted] Plainview.

[redacted]: Plainview?

[redacted] Yeah.

[redacted] I told [redacted] about that, and [redacted] says, no, let's do the search and rescue.

[redacted] Okay. I can give you the number for [redacted] at Forth Worth Center.

[redacted]: Okay.

[redacted]: And it's area code [redacted]

[redacted]: [redacted] --

[redacted]: [redacted] --

[redacted]: [redacted] --

[redacted]: [redacted]

[redacted]: Okay.

[redacted]: And the FAA is usually the ones that's responsible for trying to find an airplane that's flying from Point A to Point B when it's missing.

[redacted]: Okay.

[redacted]: And they'll institute their procedures for going ahead and, you know, going from Point A to Point B and trying to find.

[redacted]: Do I need to explain that I have talked to you and all?

[redacted] Yeah. You can go ahead and do

that. You can tell [redacted] I've talked to [redacted] a couple of times.

[redacted]: The [redacted] is?

[redacted]: I do not know [redacted] name. [redacted] just got a title there [redacted] for the FAA.

[redacted]: Okay.

[redacted]: And [redacted] go ahead and talk with you. I'm sure that they'll go ahead and implement whatever needs to be done and everything.

[redacted]: Okay.

[redacted]: Okay, Wil?

[redacted]: Okay. Thank you.

[redacted]: All right. Bye.

(Call ends).

SATO TRAVEL: Thank you for calling Sato Travel. Our office is currently closed. Our office hours are 7:30 a.m. to 5:30 p.m. local time Monday through Friday. We are closed on federal holidays. If this is an emergency, please, call the emergency service center at 1 (800) --

(Call ends).

1 SATO TRAVEL: Attention Sato Travel customers:
2 Our menu options have changed. Please listen carefully
3 and thank you for calling Sato Travel. For quality
4 assurance purposes, this call may be monitored or
5 recorded. Please listen to the menu in its entirety as
6 it has changed.
7 If you're calling for international reservations
8 including Alaska, Hawaii, and the Caribbean please push 1
9 now. If you're calling for an Amtrak reservation, please
10 press 2 now. If you require a car and/or hotel only
11 reservation please press 3 now. For all other domestic
12 air reservations within the 48 Continental United States,
13 please press 4 now.
14 (Button pushed).
15
16
17 Thank you calling for Sato Travel. Our office
18 is currently closed. Our office hours are 7:30 a.m. to
19 5:30 p.m. local time Monday through Friday. We are
20 closed on federal holidays. If this is an emergency,
21 please call the emergency service center at [redacted]
22 [redacted]
23 (Call ends).
24
25

1 SATO TRAVEL: Thank you for calling Sato Travel.
2 Our office is currently closed. Our office hours are
3 7:30 a.m. to 5:30 p.m. local time Monday through. We are
4 closed on federal holidays. If this is an emergency,
5 please, call --
6 (Call ends).
7
8
9 SATO TRAVEL: Thank you for calling Sato Travel.
10 Our office is currently closed. Our office hours are
11 7:30 a.m. to 5:30 p.m. local time Monday through Friday.
12 We are closed on federal holidays --
13 (Call ends).
14
15
16
17
18
19
20
21
22
23
24
25

I, [redacted], a Shorthand Reporter do hereby state:

That said taped phone conversation transcribed under my direction and supervision, and I hereby state the foregoing taped phone conversation is a full, true, and correct transcript of my shorthand notes so taken.

I further state that I am neither counsel for nor related to any party to said action nor in anyway interested in the outcome thereof.

[redacted]

**POSTHEARING QUESTIONS BY SENATOR CARL LEVIN (D-MI)
REGARDING NOMINATIONS OF
MICHAEL J. GARCIA TO BE
ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY**

(1) Inspector General Report

On June 2, 2003, the Office of the Inspector General for the U.S. Department of Justice released a report entitled, "The September 11 Detainees: A Review of the Treatment of Aliens Held on Immigration Charges in Connection with the Investigation of the September 11 Attacks." In the report, Inspector General Fine wrote: "While our review recognized the enormous challenges and difficult circumstances confronting the Department in responding to the terrorist attacks, we found significant problems in the way the detainees were handled." Among other problems, the report noted that a majority of detainees were not provided with the timely opportunity to contact legal counsel; some were held as long as a month before being presented with charging documents; others were subjected to what the Report calls a "communications black out" barring contact with family members; and several were physically and verbally abused, with some confined to their cells for 23 hours a day. At the hearing, Chairman Collins and I asked the Bureau of Immigration and Customs Enforcement to report back to the Governmental Affairs Committee within 60-90 days regarding specific steps undertaken to address the Report's findings and implement its recommendations. **Will you make a personal commitment, if confirmed, to providing this information to the Committee on a timely basis?**

Response: BICE has been reviewing the Inspector General's report since it was issued and I am committed to providing a timely report to Congress on specific steps taken regarding the findings and recommendations in that report.

(2) Money laundering

Over the years, Customs has built up a reputation for excellence in anti-money laundering investigations unmatched by any other federal agency. Due to this expertise, after the 9-11 tragedy, the Administration directed Customs to establish an inter-agency effort called Operation Green Quest to lead efforts to uncover and halt terrorist financing. Recently, however, the Administration decided to shift responsibility for terrorist financing away from Green Quest to the FBI's Terrorist Financing Operations Section. At the hearing, you indicated that Customs would nevertheless continue to work on money laundering issues which would be one of your top priorities.

(a) Please describe what you see as the top anti-money laundering priorities at DHS for the first year you are in office. Please include, where possible, specific goals or objectives.

Response: BICE's Financial Investigations Program will initiate and coordinate investigations related to the protection of the critical infrastructure in the financial services sector. This will be accomplished through the enforcement of financial statutes and regulations, including money laundering, Bank Secrecy Act, immigration fraud, telemarketing fraud, terrorist finance and credit card fraud violations. BICE will aggressively foster partnerships, communication and outreach with law enforcement, the intelligence community, and the financial and trade communities. Such a unified partnership will be the cornerstone in detecting potential threats to our Homeland through the nation's financial infrastructure.

BICE's Financial Investigations Program will target and protect financial systems that are vulnerable to exploitation by criminal elements. These systems include bulk cash smuggling, money service businesses, traditional and non-traditional banking systems, trade based money laundering (BMPE, Illicit Insurance Schemes) and Charities and Non-Government Organizations.

(b) Please indicate, if confirmed, what role you will play on behalf of DHS in the development of the National Money Laundering Strategy, an annual government-wide strategy produced jointly by the U.S. Treasury and Justice Departments.

Response: Pending the extension of the National Money Laundering Strategy pursuant to the Money Laundering and Financial Crimes Strategy act of 1998, BICE will execute the appropriate response as defined by DHS as to BICE's financial investigative role. BICE will continue to investigate crimes that exploit our financial systems as they relate to cross border crime. Historically, the former U.S.Customs Service played a prominent role in the development of the National Money Strategy and accomplishment of the goals and objectives set out in the strategy.

(c) At the hearing, you stated that the Bureau of Immigration and Customs Enforcement had entered into an agreement with the FBI concerning their respective roles in the areas of terrorist financing and money laundering. Please provide a copy of this agreement or, if no written agreement or memorandum of understanding exists, a description of their respective roles in the money laundering field.

Response: Please find attached a copy of the Memorandum of Understanding.

MEMORANDUM OF AGREEMENT BETWEEN THE DEPARTMENT OF JUSTICE AND THE DEPARTMENT OF HOMELAND SECURITY CONCERNING TERRORIST FINANCING INVESTIGATIONS

1. Definitions. For purposes of this agreement:

(a) " Secretary" means the Secretary of Homeland Security, and his successors, on behalf of all covered entities they head, supervise or represent.

(b) "Attorney General" means the Attorney General of the United States, and his successors, on behalf of all covered entities they head, supervise or represent.

(c) "Director" means the Director of the Federal Bureau of Investigation, and his successors.

(d) "Parties" means the signatories to this Agreement and their successors, on behalf of all covered entities they head, supervise or represent.

2. Understanding the importance of waging a seamless, coordinated campaign against terrorist sources of financing, the undersigned agree that the Department of Justice will, as part of its responsibilities as the lead law enforcement agency in combating terrorism, and in accordance with the President's National Strategy for Homeland Security, lead the federal law enforcement effort against terrorist financing. The Federal Bureau of Investigation (FBI) will lead terrorist financing investigations and operations, utilizing the intergovernmental and intra-agency National Joint Terrorism Task Force (NJTTF) at FBI Headquarters and the Joint Terrorism Task Forces (JTTFs) in the field to conduct terrorist financing investigations and operations. Through the Terrorist Financing Operations Section (TFOS), the FBI will provide overall operational command to the NJTTF and the JTTFs.

3. The Secretary and the Attorney General will ensure that all appropriate information and intelligence relating to terrorist financing is shared with the members of the NJTTF and JTTFs, including Department of Homeland Security (DHS) detailees, to the greatest extent permissible by law and applicable guidelines, and consistent with the March 3, 2003, Memorandum of Understanding Between the Intelligence Community, Federal Law Enforcement Agencies, and the Department of Homeland Security Concerning Information Sharing. The parties agree to promptly take all reasonable and necessary steps to permit the maximum allowable information sharing relating to terrorist financing information and intelligence among the members of the NJTTF and the JTTFs. To further increase information sharing and coordination, the Attorney General and the Director agree to detail appropriate personnel to the financial crimes division of the Bureau of Immigration and Customs Enforcement (ICE). The Secretary shall ensure that such detailees are provided full and timely access to all data developed in ICE's money laundering and financial crimes cases on an ongoing basis.

4. After June 30, 2003, DHS will pursue terrorist financing investigations and operations solely through its participation in the NJTTF, the JTTFs, and TFOS, except as expressly approved by TFOS as provided in this paragraph. Both DHS and the Department of Justice (DOJ) will, however, continue independently to investigate money laundering and other financial crime matters that are unrelated to terrorism. DHS will focus its activities on protecting the integrity of U.S. financial infrastructures. To determine whether a money laundering or financial crime matter is related to terrorism or terrorist financing and to ensure effective deconfliction, all appropriate DHS leads relating to money laundering and financial crimes will be checked with the FBI. The parties agree to develop, as soon as possible but no later than June 30, 2003, specific collaborative procedures to enable the Section Chief of TFOS and Deputy Section Chief of TFOS detailed from DHS (or, if prior to the appointment of the Deputy Section Chief from DHS, the Associate Chief referenced in paragraph 3) to determine which leads should be provided to TFOS to enable TFOS to determine whether such leads may be related to terrorism or terrorist financing. Such procedures will provide for joint and continuous analysis of leads. Beginning on July 1, 2003, in any given matter, if TFOS determines that the matter is unrelated to terrorism or terrorist financing, the leadership of the investigation regarding the matter shall not be governed by this MOA. Determinations by TFOS shall take into account the following factors: strength of the terrorism or terrorist financing nexus; impact on the investigation of non-terrorism matters; and stage and development of the respective investigations. If TFOS, after consultation with DHS, determines that the matter is related to terrorism or terrorist financing, the investigation and operation of the matter shall be led by the FBI in accordance with paragraph 2. In pursuing investigations, TFOS will consider, among other things, the following factors: preservation of the government's flexibility and options to pursue investigations of both terrorism and non-terrorism matters; maintenance of the continuity of investigative personnel and management where appropriate (including the option, at the discretion of TFOS, to allow ICE to conduct terrorist financing investigations); and utilization of relevant expertise and authorities.

5. The parties agree that when the position of Deputy Section Chief of the TFOS next becomes vacant or by December 1, 2003, whichever comes first, the position shall be filled by a DHS employee detailed to the FBI, and shall continue to be filled by a DHS employee in the future. The employee will be chosen by mutual agreement of the Secretary and the Attorney General. Until such time as the position of Deputy Chief is filled by a DHS employee, the parties agree that a DHS employee shall be detailed to the FBI in a newly created position of "Associate Chief" of TFOS. The employee will be chosen by mutual agreement of the Secretary and the Attorney General.

6. The parties agree that the federal campaign against terrorist financing must utilize the significant expertise and capabilities of ICE. To this end, the parties will ensure that the appropriate ICE personnel have a significant and active presence on the NJTTF at headquarters and the JTTFs in the field. The Secretary will detail a significant number of appropriate personnel to the task forces, and the Director will ensure that the detailees are fully integrated into the FBI's efforts to combat terrorist financing, both at Headquarters and in the field, and are able to assist in the process described in paragraph 4, supra. The

Secretary will ensure that the performance of DHS agents detailed to the FBI under this Agreement is recognized as a critical component of the DHS mission and that Customs Service's pre-existing financial investigative expertise is preserved and developed through recruitment, training and retention initiatives.

7. The Secretary agrees that no later than June 30, 2003, Operation Green Quest (OGQ) will no longer exist as a program name. The Secretary agrees to ensure that any future DHS initiative or program to investigate crimes affecting the integrity and lawful operation of U.S. financial infrastructures will be performed through the financial crimes division at ICE. DHS will investigate matters related to terrorism and terrorist financing only with the consent of the FBI in accordance with this Memorandum of Agreement.

8. The Attorney General and the Secretary shall direct the Director and the Assistant Secretary for ICE to provide a joint written report to the Attorney General, the Secretary, and the Assistant to the President for Homeland Security on the status of the implementation of this Agreement four months from the effective date of this Agreement.

9. The parties shall immediately pursue implementation of the terms of this Agreement. Within ten days of the effective date of this Agreement the parties shall jointly issue guidance to all FBI and ICE supervisory agents regarding this Agreement.

10. Except where otherwise indicated, the terms of this Agreement shall be effective upon the signature of all parties.

11. These provisions are not intended to and do not create any rights, privileges, or benefits, substantive or procedural, enforceable by any individual or organization against the United States, its departments, agencies, or other entities, its officers or employees, or any other person.

John Ashcroft
Attorney General of the United States

5-13-03
Date

Tom Ridge
Secretary of Homeland Security

May 13, 2003
Date

POST-HEARING QUESTIONS FOR MICHAEL GARCIA TO BE ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT DEPARTMENT OF HOMELAND SECURITY
Submitted by Senator Richard J. Durbin

On November 8, 2002 the Inspector General of the Department of Justice issued a Memorandum to the Attorney General and Deputy Attorney General outlining the top management challenges facing the Department. It is noteworthy that the Inspector General expressly recognized at that time the strong likelihood that the Immigration and Naturalization Service (INS) would be transferred from the Justice Department to the then-proposed Department of Homeland Security. In light of that, the Inspector General did not include INS programs in the list of top management challenges facing DoJ.

Instead, the Inspector General developed a separate list of top management challenges facing the INS, noting that this separate list was drafted to assist the proposed Department of Homeland Security in managing and assimilating the INS.

If confirmed for the post as a top management official responsible for immigration and customs enforcement at DHS, this list of identified management challenges that will confront you runs the gamut from border security weaknesses, enforcement and removal gaps, and tracking inadequacies to computer security challenges and IT planning. The issues the Inspector General has identified are, in many respects, problems of long duration that may not have quick-fix solutions. I remain concerned that corrective action efforts not be delayed or relegated to the back-burner as you develop new organizational arrangements and make future policy and planning decisions.

QUESTIONS:

Have you reviewed the DoJ Inspector General's "Management Challenges for INS" report issued on November 8, 2002? What was your reaction?

Response: Yes, I have recently reviewed the report and it raises concerns we must consider seriously with respect to the three former INS components now within the Department (located within BICE, BCIS and BCBP). The findings will serves as a useful analytical framework as we go forward with our new structure and try to obtain maximum results in the most efficient manner possible.

How will you integrate the findings and recommendations into your planning, policy development, prioritization, and management initiatives so that the problems identified by the Inspector General are promptly addressed?

Response: As to the findings and recommendations applying to BICE, we are in the process of establishing a planning and policy office within BICE and consideration of the recommendations will be one of the top priorities of that office as well as the BICE leadership of each program identified in the report.

○