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NOMINATIONS OF MICHAEL J. GARCIA TO BE ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY AND JACK LANDMAN GOLDSMITH III TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

HEARING

BEFORE THE

COMMITTEE ON THE JUDICIARY
UNITED STATES SENATE

ONE HUNDRED EIGHTH CONGRESS

FIRST SESSION

JULY 8, 2003

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NOMINATION OF MICHAEL J. GARCIA TO BE ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY; JACK LANDMAN GOLDSMITH III TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

TUESDAY, JULY 8, 2003

UNITED STATES SENATE,
COMMITTEE ON THE JUDICIARY,
Washington, DC.

The Committee met, pursuant to notice, at 2:37 p.m., in room SD–226, Dirksen Senate Office Building, Hon. Saxby Chambliss presiding.

Present: Senators Chambliss, Leahy, and Kennedy.

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

Senator CHAMBLISS. The Committee will come to order.

I understand that Senator Kennedy is on his way, but he is going to be a few minutes, and we have one of our very distinguished colleagues here that I do not want to hold up any longer than we have to.

Senator Allen, we are very pleased to have you join us today, and we would welcome any comments you have regarding introduction of either of our panelists today.

PRESENTATION OF JACK LANDMAN GOLDSMITH III, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE, BY HON. GEORGE ALLEN, A U.S. SENATOR FROM THE STATE OF VIRGINIA

Senator ALLEN. Thank you, Mr. Chairman. Good afternoon and thank you for your courtesy, as always, and your wonderful leadership.

I am here, Mr. Chairman and members of the Committee, to support the nomination of a fellow Virginian, Mr. Jack Goldsmith, to be Assistant Attorney General in the Office of Legal Counsel at the United States Department of Justice. I also have with me a statement I would like to have put in the record for my good colleague and teammate from Virginia, Senator Warner, also in support of Jack Goldsmith for this position.

Senator CHAMBLISS. Certainly. Without objection, Senator Warner's statement will be entered.

Senator ALLEN. Thank you, Mr. Chairman.

I know that this Committee and the members will review the background of Mr. Goldsmith. I have been very impressed by the expressions of support that I have received from professors at the University of Virginia School of Law expressing Mr. Goldsmith's strong qualifications for the position to which he has been nominated. These letters and comments say a great deal about their view and people who know him the best call him "a superb lawyer and legal scholar of impeccable credentials" who has "played an important role in helping our country wage the war on terror while serving at the Department of Defense," and that is just in recent years.

One letter says Mr. Goldsmith is "a leading expert on international law," and certainly when you look at his record, he is a leading expert on international law and has influence extending beyond the academic world into the broader community of specialists and policymakers.

The University of Virginia Law School has been very gracious enough to loan Mr. Goldsmith to the Department of Defense where he currently serves as Special Counsel. However, I am also pleased—and I confirmed it with him on cross-examination before this hearing—that he has pledged to return to the University of Virginia following his service in the Department of Justice.

Now, the recent 5 years, Mr. Goldsmith served as an associate professor at the University of Chicago Law School specializing in foreign affairs and in international law. In addition to his outstanding academic legal career, Mr. Goldsmith had the extensive and wonderful pleasure of having some impressive clerkships, with Judge J. Harvie Wilkinson, who was the chief judge of the Fourth Circuit Court of Appeals; he also served in a clerkship with Justice Anthony Kennedy of the United States Supreme Court, and Judge George Aldrich of the Iran–U.S. Claims Tribunal.

Mr. Goldsmith earned his first bachelor's degree from Washington and Lee University in Lexington, Virginia, and a second bachelor's degree from Oxford University. He received his master's degree from Oxford University and his law degree from the Yale Law School.

I also would like to have you, Mr. Chairman and members of the Committee, Senator Leahy, to recognize some of Mr. Goldsmith's family members who are here with us today: first, his lovely wife, Leslie, straight behind me; his son, Jack Goldsmith IV, who is now playing with his stickers, has a pacifier of sorts.

Senator LEAHY. He is the happiest one in the room.

[Laughter.]

Senator ALLEN. That is right. Happy pup.

Also his mother, Brenda O'Brien, is here with us, and his mother-in-law, Glenda Williams; and his two brothers, Stephen and Brett O'Brien.

Mr. Chairman and members of the Committee, it is my sincere pleasure to present to this Committee this exceptional nominee, an outstanding Virginian, to you this afternoon, and I recommend him

with the highest qualifications and hope that you will be able to move on him with all expedition and swiftness.

And I thank you, Mr. Chairman, for your courtesies and appreciate the outstanding job that you do in this Committee in reviewing nominees and moving as quickly as possible to allow the Department of Justice to do its job in protecting America's freedoms as well as our security.

Thank you, Mr. Chairman.

Senator CHAMBLISS. Well, thank you, Senator Allen, for coming and introducing Mr. Goldsmith to us. And I assure you, coming from you and Senator Warner, that recommendation is received with the high regard that it deserves. We appreciate very much you taking the time to come be with us today.

Senator ALLEN. Thank you.

Senator CHAMBLISS. Thank you.

We have two nominees today, Michael Garcia and Jack Goldsmith, for consideration. I think what we will do is have them come up individually as opposed to having them come up together.

So at this time I would like to ask Michael J. Garcia, who is nominated to be Assistant Secretary, United States Department of Homeland Security, if you will come forward. And before you sit down, if you will raise your right hand. Do you swear the testimony you are about to give will be the truth, the whole truth, and nothing but the truth, so help you God?

Mr. GARCIA. I do.

Senator CHAMBLISS. We are very pleased to have Mr. Michael Garcia before the Committee today as the President's nominee to be Assistant Secretary for the Bureau of Immigration and Customs Enforcement, which is known as BICE. This is a very important position, and we look forward to working with the Bureau to perform its essential duties within the Department of Homeland Security.

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

For his prosecutions of several high-profile cases, including the first World Trade Center bombing, Mr. Garcia received the Attorney General's Award for Exceptional Service, the Department of Justice's highest award. With his experience and knowledge, Mr. Garcia will be able to successfully lead the new Immigration Enforcement Bureau, the second largest Federal law enforcement agency.

I had the privilege of introducing Mr. Garcia over at the Government Reform Committee a few weeks ago. I am very impressed with his background, with him personally, and it is indeed a privilege to have you here. I know he has with him his wife, Liana, who, Senator Leahy, does a very good job of looking after him. If he does not do what she tells him to do, she is a Special Agent for the Federal Bureau of Investigation, so she can handle him.

But we are indeed privileged to have both of you committed to public service. And, Mr. Garcia, before I turn it over to you for any comments you want to make or statements you want to make, I will turn to Senator Leahy for any comments he has before we proceed with you.

STATEMENT OF HON. PATRICK J. LEAHY, A U.S. SENATOR FROM THE STATE OF VERMONT

Senator LEAHY. Well, Mr. Chairman, thank you for doing this. I am glad that we have these people before us. I am only concerned that we are rushing these through so fast that as a result we are not having a chance to prepare as we might want to on some of these, especially as some of the material on some of these nominees—and some of them are going to be up before us tomorrow—have barely arrived or are in the process of arriving so that we end up actually getting the material after the fact. And it makes it somewhat impossible to give the kind of advice and consent that we are supposed to.

I do want to thank you, though, Mr. Chairman, and also Chairman Hatch and Senator Kennedy, for working together with me to seek and obtain the unanimous consent that the nomination of Michael Garcia be referred to the Judiciary Committee after Government Ops. Immigration policy is the responsibility of this Committee. Oversight over the way the new powers are being used should be ours. Like me, Mr. Garcia is a former prosecutor—I still think the best job I ever had. As an Assistant U.S. Attorney, he prosecuted cases involving terrorism, immigration, document fraud, was involved in several high-profile cases, including the trial of four defendants following the first World Trade Center bombing in 1993; the trial of Ramzi Yousef and the prosecution of four defendants following the 1998 embassy bombings in East Africa.

Shortly before 9/11, he was appointed Assistant Secretary for Export Enforcement, and, of course, we have the rest of the things on his resume. He has served as Acting Assistant Secretary of BICE since March of 2003, where he has responsibility for the enforcement of immigration and customs laws.

Also, if you don't mind a point of actually parochial pride, he will be responsible for a number of Vermonters who have worked for the INS and for Customs before transition to DHS. I have asked Under Secretary Asa Hutchinson and Eduardo Aguirre, the head of the Bureau of Citizenship and Immigration Service, about their restructuring plan, what impact that is going to have on the employees in Vermont, the employees who consistently get awards as among the most productive in the service. Both of them have assured me that reorganization will make use of those workers. Both have assured me that Vermont will not lose jobs as a result.

I think you will find that the Vermonters you have inherited from the legacy INS offices in Vermont, including the Eastern Region administrative centers, are among the most dedicated, conscientious people you will ever meet. And I encourage you to come and visit them.

I think when some of these offices—1 day I was up there, I think a day or two before we had something like 12 or 15 inches of snow overnight. And I asked what time people showed up for work, and

they looked at me like that was kind of a foolish question. They all showed up for work on time. Was there any particular reason why they would not? So that will give you an idea what they are like.

I have sent a letter about the legacy of INS Detention and Removal personnel based in the former INS Eastern Region office. I have received an answer back from DHS staff, but I would like a more thorough reply, and also about the Law Enforcement Support Center. When we passed the Homeland Security Act, we made clear that as we divide immigration services and immigration enforcement, we have to keep open and clear information between the two and communication to make them work.

So I look forward to your answers. I understand from your staff that you have an ambitious plan to reduce the absconder rate of aliens who have been ordered removed from the country to zero within 6 years. There is one major reason for the absconder rate. We do not have the facilities to house aliens while they awaiting removal, and that is going to require an enormous of resources. I look forward to hearing how that will be done.

And, lastly, I would be remiss not to mention the recent OIG report on the treatment of September 11 detainees. The report addresses the treatment that many permanent residents and other aliens received in detention, the long delays in removing aliens who had final removal orders. I hope that will be instructive to you, and I hope it will be helpful.

I am concerned about the discrepancy between the reasons you gave for refusing to answer questions asked of you by the Senate Governmental Affairs Committee, the discrepancy between your refusal and the response, very clear response, provided to the Committee by the Inspector General's Office. That is an area I want to clear up, too.

Thank you, Mr. Chairman.

Senator CHAMBLISS. Thank you.

Mr. Garcia, we will insert any written statement you want to put into the record, and we will call on your this time for any comments you would like to make before questions begin.

STATEMENT OF MICHAEL J. GARCIA, NOMINEE TO BE ASSISTANT SECRETARY FOR IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

Mr. GARCIA. Thank you, Mr. Chairman, and thank you very much for that introduction today. Senator Leahy, thank you also for your remarks. It's an honor to appear before this Committee as 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 his confidence he has shown in me by again nominating me to serve as the 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 counterterrorism 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 history. Six months after my appointment as an AUSA, 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 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 that case.

My work on the World Trade Center bombing would define my career in Government service. Less than 1 year after the verdict in the Trade Center case, an explosion took place halfway around the world in Manila, where Ramzi Yousef, the mastermind of the Trade Center attacks, and his associates were mixing chemicals in an apartment in preparation for attacks on 12 U.S.-flag commercial jetliners. Their plan was to detonate bombs aboard those jetliners 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 bombing, involved terrorist activity outside the U.S. aimed at this country's national security.

In bringing charges against Yousef and his co-conspirators, including then-fugitive Khalid Shaikh Mohammed, I was the first to use some of the anti-terrorism statutes passed by Congress after the 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 that case as well.

In 1998, followers of Osama 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. 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.

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 counterterrorism prosecutions has taught me the important lessons about counterterrorism that I would bring to my role in BICE, if confirmed. Three of the most important include: first, the need to use all our enforcement tools and authorities in support of our counterterrorism 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 counterterrorism strategy. Criminal prosecutions are just one tool in that effort to protect the homeland.

After 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 of 2002, the President designed 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 investigative Federal law enforcement agency. On March 1st, 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 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 have just completed a reorganization that will provide BICE with a unified investigation structure, both in the field offices and

at headquarters. The reorganization also created 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 commit it to full and fair application of the tools and authorities given to BICE.

Mr. Chairman, in conclusion, I would again like to commend Congress on its effort 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 any questions.

[The biographical information of Mr. Garcia follows:]

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

   Michael J. Garcia

2. Address: List current place of residence and office address(es.)

   11107 West Ave.
   Kensington, MD 20815

   425 I Street, NW
   Washington, DC 20536

3. Date and place of birth.

   October 3, 1961
   Woodhaven, NY

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

   Married.
   Wife: Liana M. Davila
   Wife's Occupation: Special Agent, Federal Bureau of Investigation, U.S. Department of Justice, Washington, D.C.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

   Adelphi University, 1979-1980
   State University of New York (SUNY) 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

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

   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 T987 to August 1987

Cahill Gordon & Reindel, 80 Pine Street, New York, NY, 10005, June 1988 to August 1988, 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, 14th Street and Constitution, NW, Washington, DC Assistant Secretary for Export Enforcement, August 2001 to December 2002

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

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

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

Outstanding Academic Performance Honors, SUNY 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 1993-1994 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

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

New York State Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

None.

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

Member, New York Bar
Southern District of New York, 1992 to Present
Eastern District of New York, 1992 to Present
Second Circuit Court of Appeals, 1998 to Present

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

None.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent. Last exam was in 2000.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

2. whether you practiced alone, and if so, the addresses and dates;

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

Cahill Gordon & Reindel, 80 Pine Street, New York, NY, 10005, June 1988 to August 1988, 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

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I spent less than one year at a large commercial law firm as an Associate. I served 2 years as a Law Clerk. For nine years, I represented the U.S. in criminal matters as an Assistant United States Attorney (AUSA).

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

U.S. Government

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

Frequently.

2. What percentage of these appearances was in.

   (a) federal court; --100 percent
   (b) state courts of record;
   (c) other courts.

3. What percentage of your litigation was:

   (a) civil:
   (b) criminal. --100 percent except for a brief period as an associate in a large commercial litigation firm.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

   Six cases total. (1 as Associate Counsel, 1 as Sole Counsel and 4 as Chief Counsel.)

5. What percentage of these trials was:
   (a) jury; -- 100 percent
   (b) non-jury.

6. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   U.S. v. Salameh et al. 93 Cr. 180 (KTD), 152 F.3d 88

   Trial of four defendants accused of the 1993 World Trade Center bombing. This attack resulted in the murder of six people. The case involved a six-month investigation into the plot to bomb the twin towers and a six month trial. I represented the United States in all phases of the litigations, from the pretrial grand jury proceedings through the trial, appellate proceedings and habeas petition stages. All four defendants were convicted on all counts at trial and each defendant was sentenced to more than 100 years in prison. The convictions were upheld on appeal. Post-appeal attacks on the verdicts were also rejected by the District Court and the Court of Appeals. This case continued from 1993 through the time of my departure from the U.S. Attorney's Office in 2001. Significant legal issues arose with respect to charging crimes of terrorism under existing statutes – prior to the 1996 revisions to the U.S. Code – that did not include crimes specifically designed to cover such acts.

This case was litigated in the Southern District of New York, before the Honorable Kevin Thomas Duffy and before the Second Circuit Court of Appeals.

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908 965 2010

2. **U.S. v. Ramzi Yousef et al.** S5 93 Cr. 180, 327 F.3d 56

Investigation and trial of Ramzi Yousef and two coconspirators for planning to plant bombs aboard twelve U.S. jetliners set to detonate while those planes were airborne and loaded with passengers on their way from Asia to the United States. This case involved the first use of certain anti-terrorism statutes passed by Congress after the 1993 World Trade Center bombing. I, along with one other prosecutor, managed this case from the 18-month investigation through the four-month trial. All three defendants were found guilty on all counts and were sentenced to life in prison plus a certain term of years. After the verdict in the case, I was then responsible for the appellate work on the matter. Recently, the Second Circuit Court of Appeals rejected the appeals of two of the defendants (the third has yet to file an appellate brief) and affirmed the convictions. I represented the United States on this case from 1995 through 2002 (when I argued for the Government in front of the Circuit Court as a Special Assistant United States Attorney).

The case was tried before the Hon. Kevin Thomas Duffy.

Co Counsel

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3. **U.S. v. Suleiman, 29 F.Supp.2d 177**

Perjury prosecution against an individual accused of lying to the grand jury investigating the 1993 World Trade Center bombing. I represented the Government for the entire World Trade Center grand jury investigation but also specifically for defendant Suleiman's appearance in 1996 through his indictment and trial and throughout the appellate process which ended in 2000. The trial lasted approximately three weeks in 1998. Suleiman was convicted of two of the three counts of perjury (the jury was unable to reach a verdict on the third count) and sentenced to approximately two years in prison. On appeal, the conviction was affirmed and on cross appeal the Government prevailed in its theory that the sentencing guidelines had not been properly applied. This was the first case to consider this sentencing issue and established precedent in the Circuit.

This case was tried in the Southern District of New York before the Hon. Whitman Knapp. The Second Circuit Court of Appeals decided the appeals.

Co Counsel
None

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4. **U.S. v. Bin Laden et al** 98 Cr. 1023 (LBS), 126 F.Supp.2d 264

Prosecution of four followers of Usama Bin Laden for the simultaneous bombing of the United States embassies in Nairobi, Kenya and Dar es Salaam, Tanzania. These attacks killed more than 200 persons. I represented the United States from the time of the bombings in 1998 through the verdict in the trial in July 2001. This case raised novel issues related to prosecution of these extraterritorial crimes. It was also the first time the Government sought imposition of the death penalty in the Southern District of New York since the 1960's. All defendants were convicted on all counts (302 counts total in the indictment) and were sentenced to life in prison.

The case was tried before the Hon. Leonard B. Sand.

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17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

U.S. v. Khalid Sheikh Mohamed

Investigation into the role of this coconspirator in the failed attempt to bomb twelve U.S. jetliners described above. I represented the United States in making the grand jury presentation that resulted in the indictment of Mohamed in 1996 on charges related to that foiled terrorist plot. Mohamed remained a fugitive until his recent capture in March 2003. I worked on this case from 1995 until I left the office in 2001.

U.S. v. Alvarez

This was a passport fraud case that resulted in a plea of guilty. Alvarez was subsequently arrested and charged with violating the conditions of his supervised release as a result of a driving drunk and hitting three pedestrians, including two children. I then litigated his sentence on the violation in the district court and obtained an upward departure under the sentencing guidelines. This resulted in Alvarez receiving a two-year federal prison sentence in addition to the time he served in State prison for the vehicular assault conviction. The upward departure was upheld on appeal to the Second Circuit. I represented the United States from the time of the initial charge of passport fraud in 1992 through the appeal of the enhanced sentence.

The conviction was entered before the Hon. Kimba Wood, Southern District of New York.

U.S. v. Galletti

Galletti was prosecuted for his actions in running a large-scale heroin distribution ring in New York. I represented the United States in the grand jury stage of this matter through the defendant's indictment and arrest. I traveled to Puerto Rico and supervised the application for search warrants in that district and the arrest of Galletti and appeared in the proceedings to return him to New York. Galletti subsequently pled guilty to charges related to the conspiracy to distribute heroin. I did not represent the United States at the plea stage. The case was before the Hon. Sonya Sotomayer.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

   None.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

   None.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

   No.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure report, required by the Ethics in Government Act of 1978, may be substituted here.)

   See attached financial disclosure report.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

   No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

   At Cahill Gordon & Reindel, I worked on a pro bono matter involving an individual who was attempting to establish his identity for work authorization purposes and was being told by New York City that they had no record of his birth and in fact was told they had a death certificate for him. I spent a number of hours on this matter in 1988.

   I am also active with the Cornelia de Lange Syndrome Foundation and have participated in fundraisers and other activities for this group. CdLS is a rare, random, genetic disorder.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

   No, I do not belong to any such organizations.

Senator CHAMBLISS. Mr. Garcia, thank you for your commitment and service to the United States in the various capacities in which you have already served, and you certainly bring a strong background in law enforcement to this particular position, which is going to be so critical as we move forward with the establishment of the Department of Homeland Security.

Let me start off by asking you about—there have been several statutory requirements passed over the last few years where Congress has mandated an entry/exit system to control our borders and track visitors while they are in the country. What is the role of your Bureau toward implementing this entry/exit system? And what challenges lie ahead before this system will be operational, particularly with the December 31, 2003, deadline starting us in the face?

Mr. GARCIA. Yes, Mr. Chairman. As to the role of BICE, in the Department of Homeland Security what was the entry/exit program, NSEERS, have been combined into one umbrella named U.S. VISIT. The Secretary and the Under Secretary Asa Hutchinson place great importance and emphasis on this program and have elevated it—it was a program within the former INS—have elevated the status of that program to a BTS, a Directorate level initiative. So the U.S. VISIT program encompassing entry/exit is now being run out of Under Secretary Asa Hutchinson's office.

BICE will continue to have a role in this project, primarily as an enforcement agency. We recently established as part of our reorganization a compliance enforcement program. Part of that compliance enforcement program will be to enforce against violators of the entry/exit system of NSEERS, of SEVIS.

With respect to SEVIS, which is the student registration part of the entry/exit controls, that program still resides within BICE, managed within BICE, of course, cutting across agencies within BTS, primarily the inspections function at the border.

There is an aggressive plan for certain implementation steps in U.S. VISIT, entry/exit, to be taken by December of 2003. I discussed the timing and the scheduling for those plans with the folks at the U.S. VISIT program. They assured me that they were on target to meet that deadline for December 2003.

My experience with the program, with SEVIS, with entry/exit, is that the biggest challenge clearly is technology and building the infrastructure at our ports and our borders that will support the entry/exit concept. I think the biggest challenge there lies in the exit function. This country before 9/11 was not equipped to register particularly people who came here to visit and then exited the country. On the Northern border in particular, we had facilities and have facilities that are ill-equipped to do that. And as part of the assessment of U.S. VISIT, much work has been done in looking at those facilities and what will be needed to meet the deadlines there.

But I see the biggest challenge being the technology to control the exit/entry and the infrastructure that we need, primarily on the exit side of entry/exit, to get that system operating 100 percent.

Senator CHAMBLISS. You mentioned SEVIS, and August 1, 2003, is the statutory deadline for a school to submit information on student visas and exchange students into the SEVIS database. Can

you give us an update on whether or not that deadline is going to be met? And, also, how will your Bureau interface with the Bureau of Citizenship and Immigration Services with regard to SEVIS?

Mr. GARCIA. Certainly, Mr. Chairman. With respect to the deadline, implementation of SEVIS has been done on a rolling basis. There were January deadlines for prospective students which were met so that all students, new students at these colleges going forward would be entered into the SEVIS database through this Web-based system.

The August 1st deadline applies to ongoing students, so students who were in prior classes that have not been entered into the system yet. The deadline for that is August 1. We have made substantial progress on that deadline. In checking that for this hearing, I was told that of the 1,600, I think, approximately, institutions that are still in the pipeline here for August 1, more than 1,200 were later filers or people who didn't—institutions that didn't file with the appropriate fee. We're doing everything we can to get those on board by August 1, but they didn't meet for getting their applications in. The other schools have been prioritized, and we hope to meet the deadline for all those who applied in a timely way to get on the system.

That being said, it's also a rolling process, so that if the school meets the deadline August 3rd and their student comes in August 4th, they would be admitted. They wouldn't have a problem. But we are working hard to prioritize the schools. We are working hard to get those into the system that haven't met the deadlines for applying.

With respect to our relationship with BCIS, BCIS is primarily responsible in this context for adjustments of status with respect to the students. The schools issue the I–20's to have the students come into the country to attend school. If after the course of study or at some period therein a student wishes to adjust his status to get worker status or some other type of relief entitling him to work or to stay longer in this country, they would apply through BCIS. BCIS would adjudicate that application, and we would be guided by BCIS' decision in that case.

Senator CHAMBLISS. Senator Leahy?

Senator LEAHY. Thank you, Mr. Chairman. My own statement I will place in the record.

[The prepared statement of Senator Leahy appears as a submission for the record.]

Senator LEAHY. And as I am fast losing my voice here, you may have been confused by my compressing two things together. When I referred to the testimony before the Government Operations, I was referring to the testimony about your agency being involved in the political actions between members of the Texas Legislature. And on June 16th at 11:00 p.m., about 12 hours before the Governmental Affairs Committee met to consider your nomination, you said you were directed by the IG's office not to answer their questions. But the Assistant IG for Investigations reported that she told your principal legal adviser, Mark Wallace, earlier that day that no one had directed you or anyone else what to say.

Is there a conflict there that you would like to clear up?

Mr. GARCIA. There is something I would like to clarify, Senator, and I appreciate—

Senator LEAHY. I thought you might.

Mr. GARCIA. I appreciate the opportunity to do so. I understood that you were referring to two different IG reports in your earlier statement. This refers to the inquiry into what happened down at AMIC, the Air–Marine facility out on the West Coast. When I was in front of the Government Affairs Committee, I was initially asked some questions on that prior to the hearing. On May 30th, I submitted a written response indicating that because the matter was pending before the IG, I didn't believe it was appropriate to comment. I made the same representation on June 2nd in a staff interview, Government Affairs staffers. They asked what I based that on. I said it was based primarily on my experience as a prosecutor, knowing the sensitivities of an ongoing criminal investigation.

At that time the minority counsel expressed disagreement with that view and said, in fact, there was law related to Senate inquiries that I was unaware of. That was on June 2nd.

I was also aware that Secretary Ridge in a hearing in front of the House prior to that time, I believe in late May, had also declined to answer based on the ongoing criminal investigation into the matter.

After the June 2nd interview, I went through my legal counsel, through counsel to the Department, to the IG to get clarification given the continuing interest and given the representations of minority counsel at the staff meeting. At that time I was sent an e-mail from the—through the counsel from the counsel to the Inspector General, which stated—and I read verbatim—"Attached is language that Mr. Garcia can use if questioned on the Texas State Legislature issue"—"legislators issue."

The attachment reads, "The OIG has asked that any questions relating to this matter be directed to them." I received that on June 4th. At the same time, through the chief legal officer at DHS—

Senator LEAHY. Just because I think in reading in all this—I will let you submit it for the record—we are going to be way past the time to even answer the question. By June 16th—you just mentioned June 4th. By June 16th, a week and a half later, it had been cleared up there was on restraint, if I am correct, from the IG's office for you to answer questions. Is that correct?

Mr. GARCIA. Yes.

Senator LEAHY. But you still didn't want to answer questions.

Mr. GARCIA. No. I did answer the questions on that date, Senator. If you look at my June 16th response—

Senator LEAHY. You were directed at that time—you said you had been directed by the IG not to answer questions.

Mr. GARCIA. That's correct.

Senator LEAHY. But, in fact, by that time it was all right for you to answer questions.

Mr. GARCIA. That's correct. And I did at that time answer questions.

Senator LEAHY. Let me ask you just one basic question. Will you make sure that they not be involved in this? I mean, this is kind of penny-ante political actions of using the Federal Government on things like this. I mean, I don't care whether it is involving Repub-

licans or Democrats. It detracts very much from both the legitimacy of your agency, but also it detracts very, very much from the confidence the American public has to have in an agency that is supposed to be outside of partisan politics.

Mr. GARCIA. Senator, if I might briefly reply. One, I agree with you, and I also regret any confusion over the communications with respect to my answers in the prior committee. I do think we need to do a better job internally of communicating that way. I'm glad I had the opportunity to answer the questions.

I agree with you that misuse of any Government resources, particularly homeland security resources, is an egregious matter. The allegation that that was done is what prompted me to refer that matter to the Inspector General. I was very relieved to see the Inspector General's report and the conclusions therein. Nevertheless, I directed that a management review take place over at AMIC to make sure that our procedures, while followed, were the appropriate ones to have in place. I was subsequently notified by the IG's office that they would like to do that review and to stand down, which, of course, I will and cooperate with the IG's review in any way.

I take these allegations very seriously. I take the role of the IG very seriously. And my responses to the prior questions were in no way meant to be disrespectful or non-responsive to the Committee's inquiries. But given my background and what I understood to be the rules regarding a potential criminal inquiry by the Inspector General—and I do regret any confusion that was caused and the miscommunication surrounding that position, and I take responsibility for some of that confusion.

Senator LEAHY. Well, I will submit the rest of my questions for the record, Mr. Chairman. I would just suggest one thing to the nominee. In the past, the Department of Justice has been reluctant to get involved in prosecuting some of these cases. We find that there have ben fraudulent applications, there may be a dozen fraudulent applications, and if you kind of follow the thread back, it is one person who sort of organized them all.

Might I recommend—I know in our State, I have checked with the U.S. Attorney, and they are perfectly willing to prosecute these if Justice would let them. Go and bring some prosecutions. You have got somebody who is putting together some kind of shop where they are lining up a dozen, two dozen, three dozen people to make fraudulent applications, I am not so much concerned about throwing the people out who have probably been duped the whole way down the line, but figure out some way to go and get the ones doing it. And I think if you did a half dozen of those prosecutions, you are going to find your life and your inspectors' lives are going to be a lot easier.

Mr. GARCIA. Thank you, Senator.

Senator LEAHY. Thank you, Mr. Chairman.

Senator CHAMBLISS. Thank you.

Senator Kennedy has joined us. Senator Kennedy, if you want to make any statement, we will be happy to hear from you, and it will not be charged to your questioning time, although we are going to grant leeway with respect to questions. So feel free.

STATEMENT OF HON. EDWARD M. KENNEDY, A U.S. SENATOR FROM THE STATE OF MASSACHUSETTS

Senator KENNEDY. Well, thank you very much, Mr. Chairman. I want to thank you for calling today's hearing on Mr. Garcia's nomination. And I would like to put sort of the opening comments in the record. I want to just underline a few of the points.

As Mr. Garcia understands, we have had a long interest on issues of immigration policy here in this Committee. We know you have 500 million people that are coming in or out of the United States every single year. And so what we are trying to understand is how we are going to ensure that those that pose a particular threat to the United States are going to be able to be identified; and, on the other hand, to also understand the importance that so many of those that do come in and out of the United States are members of families, have legitimate interests, great friends of the United States, and want to be able to at least, according to the law, to carry forward their particular kind of mission here in the United States.

So this is a tough issue, and we have tried to work with the agency over a period of time. We have acted on the issues of border security, bringing in new kinds of coordination of computers, and also have been strongly supportive of the intelligence agency working with the FBI and the development of the watch list to get information to immigration personnel so that they are going to be able to make judgments in local communities and support their efforts so that they can do the job, which in too many instances in the past has not been the case.

And we know that you are going to be challenged as you move through in terms of the development of all these new technologies. You are going to be also selecting other kinds of new technologies to help to try and carry forward your own agency to be able to do it more completely. So these are going to be the kinds of issues you are going to be faced with that sort of no one in the past has had to deal with it. You have had obviously an impressive past in terms of the apprehension and prosecution of the individuals who have violated the laws.

I am interested initially in hearing you out—and I know that some of these you have reviewed with the Governmental Affairs Committee, but I am interested in hearing you out on how you are going to be able to coordinate the various Bureaus, the three different Bureaus. I would like to also hear you out a little bit about the role that you play in terms of then service agencies, how you view the service agencies in this kind of function, how we are going to be able to coordinate policy, how we are going to ensure that the agencies are having similar instructions to those workers in the field, and also if you could talk a little bit about how you look at the service agencies. I am interested in that. And then I want to come back to the issues on unaccompanied immigrant children and some others.

Mr. GARCIA. Thank you, Senator. You touch on a very important issue here in terms of communication, and I would break it down as you suggest into two parts. It's a challenge in the Department of Homeland Security coordinating immigration policy in that what was INS has split not only into three—mainly three separate agen-

cies, two of those agencies reside within BTS Directorate, while the services—BCIS—agency headed by Director Aguirre reports directly to the Secretary. So there's communication to be done between BICE and BCBP, the border agency within BTS, and as you mention, communication to be done with BCIS, primarily the services agency, which is in a separate Directorate.

With respect to BCBP, in many ways less of a challenge residing under the same Directorate, participating in policy councils weekly with Under Secretary Hutchinson, I also meet regularly with Commissioner Bonner, and we have working groups at a very high level working together. In fact, as we exchanged basically personnel, that has raised very specific issues with respect to the functioning of our two Bureaus.

With respect to BCIS, Director Aguirre's operation, agency, as I mentioned before, this is a different challenge given that we cut across agency lines. A number of things go into a good relationship, a good working relationship and good communication with that agency in my view. One, it obviously starts at the top. Director Aguirre and I have known each other since before he came on board—slightly before he came on board, as we met when he was in the process, developed a very good personal relationship, are on the same floor of the building, and meet frequently informally to discuss issues that affect our respective agencies. I think it's important to formalize that and have been meaning to meet with him to set up a type of more formal meeting arrangement, particularly if he moves on to a different facility. But right now we have constant contact within the building and a very good personal relationship, which I know he also enjoys with the Under Secretary, Under Secretary Hutchinson.

We also have each appointed high-level representatives. Mona Raghib is my representative who works with BCIS on policy issues, on issues going forward that affect both agencies. She deals with her counterpart. They both have direct access to the principals, to Mr. Aguirre and to me.

In addition, we have set up a number of working groups to look at issues ranging from legal issues as we look at our legal shop, personnel issues, administrative support issues, incredibly complex areas, incredibly important to the functioning of each agency, complex because of the nature of the break as we went into DHS.

My view of the services agency, of Director Aguirre's agency, is tremendous respect for what they do. I had some authority over those functions for a brief period of time, approximately 4 months, as Acting Commissioner of INS. I know how dedicated those workers are. I know the challenges that they face. I know the workload that they face. I appreciate the work that Director Aguirre is doing to try to facilitate some of the application processes involved in benefits adjudication that he works with.

I understand the need for us to communicate both in terms of information that services side needs from us and in terms of information that we need on services side in our work. I think there needs to be still a great level of coordination and communication, both at headquarters and in the field. I think one of the pros is that in many areas, most areas, we are still collocated in the field and still share support services in the field, making the physical connection

there. But I believe, as I do with BCBP, that as we go forward probably more of the work we do between agencies will have to be memorialized in terms of agreements we work out for procedures.

You know, many of them still function as a result of good personal relationships that have developed over the years, particularly with services, BCBP, where people were in the same agency before. But we need to formalize that good working relationship for the future.

Senator KENNEDY. Will the Policies and the Services Bureau be reviewed by the Enforcement Bureau—

Mr. GARCIA. Senator—

Senator KENNEDY. —before they are implemented? And when conflicts arise, how will these be decided?

Mr. GARCIA. Excuse me. I didn't mean to interrupt. There's no formal review by BICE of BCIS policies. There are policy personnel in BTS, in my Bureau as well as in Eduardo Aguirre's Bureau that speak to each other. It would be the situation that I would see, if there is a conflict, as we are talking, that that would be elevated up at least to the level of Asa Hutchinson and Director Aguirre to resolve and their policy folks to resolve. I think we've done a good job so far of communicating and coordinating, and I haven't seen that level of elevation come about.

Senator KENNEDY. The Homeland Security Act established the position of an ombudsman who is responsible for identifying the problems, proposing changes by the service Bureaus' practices and its dealing with the individuals. I understand you do not support extending ombudsman responsibilities to enforcement issues in your Bureau.

Mr. GARCIA. That's correct. That is my prior answer to that question, Senator, and if I could briefly explain why. I value the role of ombudsman. I value the role of oversight, integrity oversight. I think particularly in a law enforcement agency—and I have said this when I have spoken publicly to our folks—what we have is our integrity. If you lose that, you lose your effectiveness as an enforcement agency.

We have a very robust internal affairs program that we have inherited from Customs, former Customs Service, close to 200 agents in that program who do that work. We also have an internal audit function both from prior Customs Service, prior INS, that look at procedures and processes in the field and at headquarters. I strongly support that. I think that will probably need to be enhanced as we look at the client base we are serving and if we are going to serve across agency borders to look at that.

We also have a new IG relationship and a new MOU with the IG in terms of criminal cases we refer and important non-criminal cases that we refer to the IG, a more encompassing docket for the IG, I believe, which also impacts our IA function. But I believe that that new IG function as well as our robust internal affairs and audit functions serve the oversight, integrity insurance functions that the ombudsman would serve at the BCIS side.

Senator KENNEDY. Well, I think you have certainly outlined those agencies which will be monitoring and reviewing the function. But I suppose it is still of value—I would think still be of value to have sort of that independence be available, accessible to

you to give you the best judgment as to how in the areas of enforcement the whole institution is working. But we will work with you on this down the line and see where we are.

I am interested in that OIG report. As you are aware, they released the report on the September 11th detainees and found significant problems in the way detainees were handled, and the Department of Justice used the terrorism excuse to adopt harsh tactics that trampled on the rights and liberties of immigrants, and their detention is now the responsibility of your Bureau.

What steps is the Bureau taking to see that the problem found by the report are corrected? As I understand, you are going to do a review of the report, and I think you said you were going to report to the Governmental Affairs Committee within 60 or 90 days. Are we going to get a copy of that report as well? Could we get a copy of that report?

Mr. GARCIA. Certainly, Senator. I will make sure that you do.

Senator CHAMBLISS. Let's make sure we do.

Senator KENNEDY. Good. But let me just ask you what is your own preliminary reaction to this report and—

Mr. GARCIA. I—I'm sorry, Senator.

Senator KENNEDY. And what are you doing about it before you get your own report or you are waiting for it? What is the story?

Mr. GARCIA. Sure, Senator, I'd be happy to. One, obviously I have studied the report. I think it's a very important document. It highlights, obviously, the conditions and the time these actions were taken, a unique time in our country's history, unfortunately.

I take nothing more serious than allegations of abusing people who are on detention. I found that the most disturbing. I think that we are—we will respond to each of the recommendations and in the preliminary stage going through it concur with, if not all, nearly all of those recommendations. In fact, since we have seen some of the preliminary work on that report, we have already been taking steps to address some of the concerns.

With respect to detainees, although the detention and removal facility there that was studied in Passaic, I believe, generally fared fairly well in terms of treatment and in terms of access to counsel, there was criticism that there was no formal detention standard that required visitation weekly to these contract facilities. That detention standard has been drafted. It's in the process of being reviewed. And, in fact, my understanding is we are doing those reviews now, but we are going to have a formal detention standard in place.

With respect to getting information for bail hearings, where there was criticism in the report that the FBI and DOJ and INS were holding people without bail, without supporting information, in the recent Liberty Shield time frame where we had people held in detention, we required written communication from the FBI if they were going to ask us to hold someone without bail for their own—you know, for reason of their own. Otherwise, we went forward based on the facts and circumstances of the case as we understood them.

So we are working towards addressing implementing changes based on that report. I welcome the report. I think it's part of the process we were just discussing. Actions are taken. A time of in-

credible pressure in this country following the 9/11 attacks, an Inspector General that does a thorough job of reviewing those facts and circumstances and makes recommendations, I find that evidence of the way the system works, and we take it very seriously. We'd be happy to provide the specifics of our response that we're going to provide to the Government Affairs Committee. And as I said, we concur with those recommendations, if not totally, almost completely.

Senator KENNEDY. Well, I appreciate that. So you will let us know what that report is and give us a copy, and then you are going to give us a reaction to the recommendations of each of the—

Mr. GARCIA. Yes, Senator. And just to add, as you say, much of this falls within my Bureau, but we're also committed to working with the Department of Justice, obviously has a role in this area going forward. We are trying to draft an MOU, as suggested in the report. We've had contact with DOJ through the Department of Homeland Security, and I look forward to working with my colleagues in DOJ.

Senator KENNEDY. On these proposed detention standards, I don't know what your—are they being just decided in the Department? Have you gotten any outside guidance on those?

Mr. GARCIA. My understanding is they're an internal standard, and I'll make sure this is—

Senator KENNEDY. You might find out—I don't know the extent. I should know the answer. I don't—whether they have ever asked or whether any Justice Departments have asked for any input by the Committees in the development of these, or maybe it is just completely internal. But there may be some suggestions on this. You can take a look at it and let us know.

Mr. GARCIA. I don't know the answer to that. We'll find out, Senator.

Senator KENNEDY. On our National security entry/exit registration, NSEERS, it required Muslim and Arab visa holders who were students, workers, researchers, and tourists to be fingerprinted, photographed, and questioned. Is it effective to target persons based on their religion or national origin rather than specific evidence of criminal activity or connection with a terrorist organization? Is this an effective use of resources? And what effect is it having on the Arabs and Muslims whose cooperation we need more than ever in the battle against terrorism?

Mr. GARCIA. Senator, NSEERS had a list of countries whose nationals were required to register in the categories that you mentioned—visitors—and also required registration based on specific criteria. One of the public criteria that has been discussed is travel patterns. So, for example, if someone had a travel pattern perhaps indicating travel to Afghanistan, they were also required to register regardless of their nationality. But it was certainly not race- or religion-based in any way.

I appreciate that that system—and it's ongoing in terms of the port of entry—raises sensitivities, raises concerns. I believe that everyone—the vast, vast majority of the folks we encounter are law-abiding. Everyone needs to be treated with dignity and respect. I understand that it raises issues in terms of feeling in the community. We have done work, outreach work, and, quite frankly, Sen-

ator, when I first came in to INS and we had the first domestic registration out in California, it wasn't handled appropriately. And there were problems in Los Angeles and detention issues that, going forward, we tried to put resources there, give people the ability to basically say come back at a later time and avoid the problems we saw in Los Angeles in that early registration period, which I think we successfully did.

I think it's an effective measure, an effective tool in gaining control of the border in terms of entry/exit. It has a number of different values: one, in terms of public safety and a number of criminals were apprehended, and I think the number is upwards of 140 in the process; and, two, in making sure that we screen folks who might pose a national security concern, and there are a number of individuals who did pose concerns that were, I think, primarily turned away at the border and ports of entry. So it had a dual role in my mind, although—and an effective role, although I do understand that it raises a number of issues that we must be sensitive to.

Senator KENNEDY. I appreciate your comments on it because you have obviously thought about it. But I am just wondering whether you are forgetting the results in terms of evaluation. That is certainly one part. But the spin-off that it has at a time that you are trying to recruit individuals in various groups in different populations is certainly something that you want to give attention to as well.

I thank the Chair. I just have two more questions.

In the IG's report, were you surprised at the end, after all of the detainees on immigration issues, that there weren't any—that all they had, at least as I understand it, were violations of immigration law and not the association in terms of terrorist activity?

Mr. GARCIA. Well, as I understand it, it was a sample of about 760 or so. Was I surprised? And I'll answer this based on my background. No, I wasn't surprised. Terrorism charges are very difficult to make. I don't want to say that 760 people with association with terrorism couldn't be proved. Given the way the procedure went forward as outlined in the report, some of these folks clearly were taken into custody as a result of leads that in the end didn't seem to have much to do with the 9/11 attacks. So it doesn't surprise me then at the end there was no connection to terrorism there, and that's one of the criticisms the IG made, that there needed to be a better parsing or organization putting people into high risk when there really were facts and circumstances to support that categorization. So I think in that sense that result is fairly predictable.

Also, this was an exercise in disruption, and if—it's very hard to prove a negative. There were no attacks, and there were no follow-up bombings. There was the anthrax attacks. But in terms of bombings, there were not. And it's very hard to prove any connection there. But, again, it's hard to disprove a connection between a disruptive exercise and the fact that you did not have follow-up attacks.

Senator KENNEDY. Just finally on the issue of unaccompanied minor children. The Security Act transferred issues relating to unaccompanied alien children from Immigration and Naturalization

to the Office of Refugee Resettlement because that office has the expertise to work with children. And the Department of Homeland Security would focus on law enforcement functions. Obviously, these responsibilities overlap in some cases.

It is my understanding the Office of Refugee Resettlement has not had the full cooperation of the Department of Homeland Security in negotiating a memorandum of understanding on their respective responsibilities for protecting unaccompanied children. Passing the Act, Congress clearly intended ORR to have all care, custody, and placement responsibility for 5,000 children each year who are detained for longer than 72 hours in order for them to seek immigration relief. Many other children are arrested each year by the Department of Homeland Security. Most of them from Mexico and Canada are repatriated within hours upon a request for voluntary departure.

Can you tell us about what is holding up the agreement?

Mr. GARCIA. Yes, Senator. Thank you. I know—

Senator KENNEDY. And will the DHS resolve the remaining issues and the best interests, putting the interests of children first?

Mr. GARCIA. First let me say I know and appreciate your interest and leadership on this issue. DHS fully supports the transfer of this function to ORR and HHS, and, in fact, has been working very hard to transfer that function over. You know, in the March time period, we transferred $20 million, 20 FTEs fully funded, including 7 full-time positions on board at headquarters that were responsible for this program over to ORR. That being done, we still have not had full assumption of the responsibilities of that program by ORR.

The sticking point seems to be to me the fact that ORR does not want to become involved in the transportation of the minors. I see that as a key element of what you and Congress, you, Senator, and Congress had in mind in transferring that program over. And many times INS has been criticized for the transportation function of minors.

I see that part of it also going to ORR along with the budget and the position. At the moment, as you point out, the key has to be taking care of the children who come in. So we are performing that function. In many cases, we are assigning people to facilities where ORR won't certify the facility, but there's nowhere else to place the child. So we still assume responsibility for placement.

I believe these are important issues that need to be worked out. I have talked to the group working on this. I've asked them if they cannot make progress now to begin to elevate this, DHS certainly has an interest in seeing this program where it belongs. I certainly have an interest in doing an orderly transfer but, most importantly, seeing the children that come in as unaccompanied minors are properly cared for. So I would—

Senator KENNEDY. Well, if you could give it a little personal attention—

Mr. GARCIA. I certainly will.

Senator KENNEDY. —when you return, I would be very, very grateful to you.

Mr. Chairman, thank you very much. I appreciate very much the answers to these questions. These are complicated, difficult issues,

but they affect real people, real lives, and we want to work with you on these issues and others. We congratulate you on your appointment.

Mr. GARCIA. Thank you, Senator.

Senator CHAMBLISS. Mr. Garcia, even though it is in its infancy, certainly the Department of Homeland Security is already one of the most significant agencies in our country because, as Senator Kennedy says, it involves protecting the safety and security of Americans. And I am pleased that people of your caliber are willing to step forward and provide public service in the capacity which you have been and I am confident will continue to do.

At this time, I would like to ask unanimous consent that we close the record in 48 hours for questions to be submitted, and Senator Leahy has already indicated he has some additional questions, so if minority staff will make sure that he understands that those need to be submitted within 48 hours.

Also, I would like to ask unanimous consent to include any Senators' statements in the record. Hearing no objection, so ordered.

Mr. Garcia, thank you very much.

Mr. GARCIA. Thank you, Mr. Chairman.

Senator KENNEDY. Mr. Chairman, I am going to have to depart from the hearing, but I wanted to just add my welcome to Mr. Goldsmith. I would like to be able to submit my questions if I could to him, and I want both him and the Committee to know that all of us have a very keen awareness of the importance of OLC. It is an extremely important responsibility and job, and we look forward to working with him. But I thank you very much for the opportunity to submit questions. We will do this in a timely way and a way which will not delay the consideration of the nominee.

Senator CHAMBLISS. Is 48 hours sufficient for you to do that?

Senator KENNEDY. Forty-eight hours is fine.

Well, could I consult with you on the 48 hours?

Senator CHAMBLISS. I am sorry. I misunderstood.

Senator KENNEDY. I apologize. We both need our marching orders here. We will try to do it in a timely way and will talk with you about it.

Senator CHAMBLISS. Sure.

Senator KENNEDY. Thank you.

Senator CHAMBLISS. Mr. Goldsmith, if you would come forward, please, sir. If you will raise your right hand before you sit down, please, sir? Do you solemnly swear the testimony you are about to give before this Committee will be the truth, the whole truth, and nothing but the truth?

Mr. GOLDSMITH. Yes, sir.

Senator CHAMBLISS. I would like to welcome Mr. Jack Goldsmith, who is the nominee to be the Assistant Attorney General at the Office of Legal Counsel in the Department of Justice. Most recently, Mr. Goldsmith has served as special counsel in the General Counsel's Office at the Department of Defense. Since 1994, Mr. Goldsmith has been a law professor at the University of Virginia Law School. Mr. Goldsmith has had an impressive legal career, having clerked for Fourth Circuit Judge Harvie Wilkinson, then clerked for U.S. Supreme Court Justice Anthony Kennedy, after which he went on to his third judicial clerkship at the Iran–U.S. Claims Tribunal.

Mr. Goldsmith graduated from Washington and Lee University summa cum laude, received a master's degree at Oxford University, first-class honors, and received his J.D. from Yale Law School.

It is hard to improve on Mr. Goldsmith's background. I am sure he will serve the Department of Justice and the President of the United States very well.

Mr. Goldsmith, we welcome you here today. We will be happy to submit any written statement that you wish to submit for the record, and we will be glad to take any summary of your written statement if you want to do so at this time.

STATEMENT OF JACK LANDMAN GOLDSMITH III, NOMINEE TO BE ASSISTANT ATTORNEY GENERAL, OFFICE OF LEGAL COUNSEL, DEPARTMENT OF JUSTICE

Mr. GOLDSMITH. Thank you very much, Mr. Chairman. I'd just like to make a few thank-you's if I could. First of all, to you and this Committee for having this hearing to consider my nomination. I'd also like to thank the President and the Attorney General for nominating to be Assistant Attorney General, Office of Legal Counsel. I'd like to thank Senator Allen for his kind introductory remarks. And last, but not least, I'd like to thank my family for traveling from all around the country to be here with me today and for their unceasing support.

I have no further statement, sir.

[The biographical information of Jack Goldsmith III follows:]

QUESTIONNAIRE FOR NONJUDICIAL NOMINEES

I. BIOGRAPHICAL INFORMATION (PUBLIC)

1. Full name (include any former names used.)

Jack Landman Goldsmith III

Former names:

Jack Landman Rivet (9/71-9/73)
Jack Landman O'Brien (9/75-9/84)

2. Address: List current place of residence and office address(es.)

Residence:

Arlington, VA 22204

Office:

The Pentagon, Room 3C967
1600 Defense Pentagon, Washington, DC 20301-1600

3. Date and place of birth.

September 26, 1962 – Memphis, Tennessee

4. Marital Status: (include maiden name of wife, or husband's name). List spouse's occupation, employer's name and business address(es).

Married to Leslie Anne Williams, a self-employed poet who works from home.

5. Education: List each college and law school you have attended, including dates of attendance, degrees received, and dates degrees were granted.

Hague Academy of International Law, 1992 – Diploma, Private International Law
Yale Law School, August 1986-May 1989 – J.D., 1989
Oxford University, September 1984-July 1986 – B.A., 1986; M.A., 1991 (I received my B.A. from Oxford in 1986; after a period of several years, the B.A. converts to an M.A. as well. I received the M.A. in 1991.)
Washington & Lee University, September 1980-June 1984 – B.A., 1984

6. Employment Record: List (by year) all business or professional corporations, companies, firms, or other enterprises, partnerships, institutions and organizations, nonprofit or otherwise, including firms, with which you were connected as an officer, director, partner, proprietor, or employee since graduation from college.

Department of Defense, 2002-2003 (Special Counsel to the General Counsel)

American Journal of International Law, 2003 (Board Member)

University of Chicago Law School, 1997-2002, and Fall 1996 (Professor)

Criterion Economics LLC, 2001-2003 (I had a contractual relationship as an "expert" associated with this firm. I never did any work for the firm, and I never received any compensation from it. I ended my relationship with the firm in April 2003.)

University of Virginia School of Law, 1994-1997 (Associate Professor)

Covington & Burling, 1992-1994, and Summer 1988 (Associate and Summer Associate)

Iran-U.S. Claims Tribunal, 1991-1992 (Legal Assistant)

U.S. Supreme Court, 1990-1991 (Law Clerk)

U.S. Court of Appeals for the Fourth Circuit, 1989-1990 (Law Clerk)

Office of Solicitor General, 1989 (Intern)

General Electric Corporation, 1988-1989 (Intern)

Miller, Cassidy, Larocca, & Lewin, 1988 (Summer Associate)

Hughes, Hubbard & Reed, 1987 (Summer Associate)

Panchos Mexican Restaurants, 1984 (temporary employee)

7. Military Service: Have you had any military service: If so, give particulars, including the dates, branch of service, rank or rate, serial number and type of discharge received.

No.

8. Honors and Awards: List any scholarships, fellowships, honorary degrees, and honorary society memberships that you believe would be of interest to the Committee.

None.

9. Bar Associations: List all bar associations, legal or judicial-related committees or conferences of which you are or have been a member and give the titles and dates of any offices which you have held in such groups.

American Bar Association

10. Other Memberships: List all organizations to which you belong that are active in lobbying before public bodies. Please list all other organizations to which you belong.

Council on Foreign Relations
Chicago Council on Foreign Relations
American Society of International Law
International Law Association
Institute for Transnational Arbitration (Academic Council)
Federalist Society (1989-1990)

11. Court Admission: List all courts in which you have been admitted to practice, with dates of admission and lapses if any such memberships lapsed. Please explain the reason for any lapse of membership. Give the same information for administrative bodies which require special admission to practice.

District of Columbia Bar, member since 1994
Supreme Court Bar, member since 1998

12. Published Writings: List the titles, publishers, and dates of books, articles, reports, or other published material you have written or edited. Please supply one copy of all published material not readily available to the Committee. Also, please supply a copy of all speeches by you on issues involving constitutional law or legal policy. If there were press reports about the speech, and they are readily available to you, please supply them.

Please see attached list.

13. Health: What is the present state of your health? List the date of your last physical examination.

Excellent health. I was last examined two years ago.

14. Public Office: State (chronologically) any public offices you have held, other than judicial offices, including the terms of service and whether such positions were elected or appointed. State (chronologically) any unsuccessful candidacies for elective public office.

None.

15. Legal Career:

a. Describe chronologically your law practice and experience after graduation from law school including:

1. whether you served as clerk to a judge, and if so, the name of the judge, the court, and the dates of the period you were a clerk;

Judge J. Harvie Wilkinson, U.S. Court of Appeals, Fourth Circuit, 1989-1990.
Justice Anthony M. Kennedy, U.S. Supreme Court, 1990-1991.
Judge George Aldrich, Iran-U.S. Claims Tribunal, 1991-1992.

2. whether you practiced alone, and if so, the addresses and dates;

I have never practiced alone.

3. the dates, names and addresses of law firms or offices, companies or governmental agencies with which you have been connected, and the nature of your connection with each;

1989: Solicitor General's Office, 950 Pennsylvania Avenue, N.W., Washington, DC, 20530-0001. Summer Intern.

1992-1994: Covington & Burling, 1201 Pennsylvania Ave., N.W., Washington DC, 20004. Associate.

1994-1997: University of Virginia School of Law, 580 Massie Road, Charlottesville, VA, 22903. Associate Professor.

1997-2002: University of Chicago Law School, 1111 E. 60th Street, Chicago, IL, 60637. Professor.

2002-2003: Department of Defense, 1600 Defense Pentagon, Room 3C967, Washington, DC, 20301. Special Counsel to the General Counsel.

b. 1. What has been the general character of your law practice, dividing it into periods with dates if its character has changed over the years?

I practiced law for eighteen months at Covington & Burling from November 1992 through June 1994. My practice focused on two general areas. The first related to international litigation and arbitration. Most of my cases concerned insurance coverage, and my main (but not exclusive) clients were corporations with large insurance portfolios. Most of the work I did in these cases involved contract interpretation, choice of law, choice of forum, statutes of limitations, and jurisdiction. Approximately a third of my cases were in state court, a third in federal court, and a third in an international forum (such as an international arbitration). I drafted many briefs and legal memoranda during this period.

My second area of practice at Covington & Burling concerned export control regulations and related federal sanctions regulations. I advised corporations about how to comply with these regulations. I also advised a client that was under investigation for alleged non-compliance with these regulations.

Also during my time at Covington & Burling, I was appointed by the U.S. Court of Appeals for the District of Columbia Circuit to write the brief and argue the appeal in Henthorn v. Department of Navy, 29 F.3d 682 (D.C. Cir. 1994). I argued on behalf of my client, a federal prisoner, that the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, entitled him to minimum wage compensation for work he performed for the Navy while he was incarcerated.

Since I entered the legal academy in 1994, I have done a variety of consulting projects. This work usually consists of writing memos for law firms in connection with specific legal challenges they face with their clients. The subject matter of this work concerns procedure, jurisdiction, choice of law, international law, or foreign relations law.

Finally, since September 2002, I have been Special Counsel to the General Counsel of the Department of Defense. In that capacity I have advised the General Counsel and other senior leaders of the Department of Defense on various constitutional and international law issues.

2. Describe your typical former clients, and mention the areas, if any, in which you have specialized.

As I stated above, I have specialized mainly in procedure, jurisdiction, choice of law, international law, and foreign relations law.

Typical former clients while at Covington & Burling were corporations with extensive insurance coverage.

Typical law firms for which I have done consulting work include:

Hunton & Williams (firm's client: tobacco company)
Kaye Scholer LLP (firm's client: drug company)
Eichhorn & Eichhorn (firm's client: electric energy company)
Cassels & Graydon, Ontario, Canada (firm's client: professional sports league)
Winston & Strawn (firm's client: drug company)
Latham & Watkins (firm's client: technology company)
Welsh & Katz (firm's client: hotel company)

c. 1. Did you appear in court frequently, occasionally, or not at all? If the frequency of your appearances in court varied, describe each such variance, giving dates.

I have only appeared in court once, when I argued the appeal in Henthorn v. Department of Navy, 29 F.3d 682 (D.C. Cir. 1994), described above. I never tried a case.

2. What percentage of these appearances was in:

(a) federal court;
(b) state courts of record;
(c) other courts.

The only case was in federal court.

3. What percentage of your litigation was:

(a) civil:
(b) criminal.

All of my litigation – with the exception of one potential criminal investigation of a client while I was at Covington & Burling – was civil. I have not directly participated in any litigation since I began teaching in 1994.

4. State the number of cases in courts of record you tried to verdict or judgment (rather than settled), indicating whether you were sole counsel, chief counsel, or associate counsel.

None.

5. What percentage of these trials was:
   (a) jury;
   (b) non-jury.

Not applicable.

16. Litigation: Describe the ten most significant litigated matters which you personally handled. Give the citations, if the cases were reported, and the docket number and date if unreported. Give a capsule summary of the substance of each case. Identify the party or parties whom you represented; describe in detail the nature of your participation in the litigation and the final disposition of the case. Also state as to each case:

   (a) the date of representation;
   (b) the name of the court and the name of the judge or judges before whom the case was litigated; and
   (c) the individual name, addresses, and telephone numbers of co-counsel and of principal counsel for each of the other parties.

The only litigated matter that I personally handled is the appeal in Henthorn v. Department of Navy, 29 F.3d 682 (D.C. Cir. 1994), described above. The case was argued before the D.C. Circuit in 1994, before Judges Sentelle, Ginsburg, D., and Williams. I had no co-counsel. Opposing counsel were Sally M. Rider, Assistant United States Attorney in the District of Columbia (she argued the case for the United States); Eric H. Holder, Jr., U.S. Attorney, and John D. Bates and R. Craig Lawrence, Assistant U.S. Attorneys. Ms. Rider is now administrative assistant to Chief Justice Rehnquist, U.S. Supreme Court, 1 First Street, N.E., Washington, D.C., 20543, (202) 479-2000. Mr. Holder is now at Covington & Burling, 1201 Pennsylvania Ave., N.W., Washington, D.C., 20004, (202) 662-600. Mr. Bates is now Judge Bates, a federal district court judge in the District of Columbia, E. Barrett Prettyman U.S. Courthouse, 333 Constitution Avenue, N.W., Washington, DC 20001, (202) 354-3430. Mr. Lawrence is still an Assistant U.S. Attorney, District of Columbia Judiciary Center, 555 Fourth Street, N.W., Washington, D.C. 20530, (202) 514-7566.

Although I have not personally handled other litigation matters, I have worked with the following attorneys on litigation and litigation-related matters:

David Strauss, University of Chicago Law School, 1111 East 60th Street, Chicago, IL, 60637. Phone: 773-702-9494.

Mike O'Neill, Eichhorn & Eichhorn, 200 Russell Street P.O. Box 6328 Hammond, IN, 46325. Phone: 219-931-0560.

Darryl Lew, White & Case LLP, 601 Thirteenth Street, N.W., Suite 600 South, Washington, DC 20005-3807. Phone: 202-626-3600.

Bruce Braun, Winston & Strawn, 35 W. Wacker Drive, Chicago, IL, 60601-9703. Phone: 312-558-5600.

Peter Nichols, Covington & Burling, 1201 Pennsylvania Ave., N.W., Washington, D.C., 20004. Phone: 202-662-600.

Barry Fisher, Fleishman & Fisher, 1875 Century Park East 2130, Los Angeles, CA, 90067. Phone: 310-557-1077

Mitchell Dolin, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C., 20004. Phone: 202-662-6000.

Peter Trooboff, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, D.C., 20004. Phone: 202-662-6000.

John Ellicott, Covington & Burling, 1201 Pennsylvania Avenue, N.W., Washington, DC, 20004. Phone: 202-662-6000.

Robert Breisblatt, Welsh & Katz, 120 South Riverside Plaza, 22nd Floor, Chicago, IL, 60606. Phone: 312-655-1500.

In addition, all of my former colleagues at the University of Chicago Law School, 1111 East 60th Street, Chicago, Illinois, 60611, know me well and can attest to my legal skills.

17. Legal Activities: Describe the most significant legal activities you have pursued, including significant litigation which did not progress to trial or legal matters that did not involve litigation. Describe the nature of your participation in this question, please omit any information protected by the attorney-client privilege (unless the privilege has been waived).

My primary legal activities during the last seven years have grown out of my role as a professor at the University of Chicago Law School and the University of Virginia

School of Law. My activities as a law teacher fall into three categories. The first category is teaching. The main courses I have taught are Civil Procedure, Commercial Arbitration: Domestic and International, Conflict of Laws, Constitutional Law, Foreign Affairs & The Constitution, Public International Law, and International Litigation. I have also taught numerous seminars. The second category concerns scholarship. The main focus of my scholarship has been on foreign relations law (constitutional, statutory, and interpretive aspects), international law, conflict of laws, and regulation of the Internet. Finally, I spent a great deal of my time in the academy counseling students about various matters, including career advice, law review work (I was the faculty advisor to the Chicago Journal of International Law, and informally advised the Chicago Law Review), clinical and moot court work, and paper supervision.

Since September 2002, I have been Special Counsel to the General Counsel of the Department of Defense. As stated above, in this job I advised the General Counsel and others in the Department of Defense on various constitutional and international law issues.

Finally, there are two cases on the public record on which I did significant legal work during the last two years.

First, I co-wrote a certiorari petition for the U.S. Supreme Court with my then-colleague David Strauss in Southern Co. v. Alderson, *cert denied*, 2002 U.S. LEXIS 3783 (2002). The petition argued that the Supreme Court should grant certiorari to review the appropriate standard for general personal jurisdiction under the Due Process Clause of the Fourteenth Amendment. The Court denied the petition.

Second, I wrote an *amicus brief* in Taiheiyo Cement Corp. v. Superior Court, 105 Cal. App. 4th 398; 129 Cal. Rptr. 2d 451 (Ct. App. 2003), on behalf of the Chinese American Citizens Alliance, the Korean-American Federation of Los Angeles, the Korean American Coalition, and the Korean American Chamber of Commerce of Los Angeles. (The brief was also signed by Fredric D. Woocher (counsel of record) and Erwin Chemerinsky.) The brief argued that a California statute authorizing suits for compensation for unpaid labor and personal injuries suffered by persons enslaved in Japanese labor camps during World War II was not preempted under the doctrine of "dormant foreign affairs preemption." The Court agreed with my position, but did not rely on my brief in its opinion.

II. FINANCIAL DATA AND CONFLICT OF INTEREST (PUBLIC)

1. List sources, amounts and dates of all anticipated receipts from deferred income arrangements, stock, options, uncompleted contracts and other future benefits which you expect to derive from previous business relationships, professional services, firm memberships, former employers, clients, or customers. Please describe the arrangements you have made to be compensated in the future for any financial or business interest.

Deferred Income arrangements:

I have three IRA-related accounts:

1. TIAA-CREFF: $45,027.43
2. Vanguard: $39.903.87
3. Harris Bank: $8,667.42

Future compensation:

I am the co-author of two casebooks with Aspen Press: (1) Conflict of Laws: Cases and Materials (5th ed. 2002) (with Lea Brilmayer); and (2) Foreign Relations Law: Cases and Materials (2003) (with Curtis Bradley). I receive royalties on both books.

I am also a co-editor of a forthcoming book by Princeton Press, *Orwell and Our Future*, from which I will receive future royalties.

2. Explain how you will resolve any potential conflict of interest, including the procedure you will follow in determining these areas of concern. Identify the categories of litigation and financial arrangements that are likely to present potential conflicts-of-interest during your initial service in the position to which you have been nominated.

In the event of a potential conflict of interest, I will consult with the ethics officials in the Department of Justice.

3. Do you have any plans, commitments, or agreements to pursue outside employment, with or without compensation, during your service in the position to which you have been nominated? If so, explain.

I plan to remain on the Board of Editors of the American Journal of International Law. I have cleared this arrangement with ethics officials in the Department of Justice.

4. List sources and amounts of all income received during the calendar year preceding your nomination and for the current calendar year, including all salaries, fees, dividends, interest, gifts, rents, royalties, patents, honoraria, and other items exceeding $500 or more. (If you prefer to do so, copies of the financial disclosure

report, required by the Ethics in Government Act of 1978, may be substituted here.)

Form 278 attached.

5. Please complete the attached financial net worth statement in detail (add schedules as called for).

See attached net worth statement.

6. Have you ever held a position or played a role in a political campaign? If so, please identify the particulars of the campaign, including the candidate, dates of the campaign, your title and responsibilities.

No.

III. GENERAL (PUBLIC)

1. An ethical consideration under Canon 2 of the American Bar Association's Code of Professional Responsibility calls for "every lawyer, regardless of professional prominence or professional workload, to find some time to participate in serving the disadvantaged." Describe what you have done to fulfill these responsibilities, listing specific instances and the amount of time devoted to each.

A. As a law professor, I devoted a great deal of time to providing advice and guidance to students on a range of matters, including professional development, public and private service jobs, and moot court and clinical activities. These activities took up approximately 150 hours/year.

B. In 2003, I wrote the *amicus brief* in Taiheiyo Cement Corp. v. Superior Court, 105 Cal. App. 4th 398; 129 Cal. Rptr. 2d 451 (Ct. App. 2003), on behalf of the Chinese American Citizens Alliance, the Korean-American Federation of Los Angeles, the Korean American Coalition, and the Korean American Chamber of Commerce of Los Angeles. The brief argued that a California statute authorizing suits for compensation for unpaid labor and personal injuries suffered by persons enslaved in a Japanese labor camp during World War II was not preempted by the doctrine of "dormant foreign affairs preemption." This brief took approximately 50 hours to write.

C. In 1995-1996, I taught second grade children in a public elementary school in Charlottesville, VA, how to read. I did this once/week for an hour for at least one semester, and possibly two. (I cannot remember.)

D. In 1993, I was the court-appointed attorney for a prisoner in Henthorn v. Department of Navy, 29 F.3d 682 (D.C. Cir. 1994). I argued on behalf of my client, a federal prisoner, that the Fair Labor Standards Act (FLSA), 29 U.S.C. § 201 *et seq.*, entitled him to minimum wage compensation for work he performed for the Navy while he was incarcerated. I did approximately 150 hours of work on this project.

2. Do you currently belong, or have you belonged, to any organization which discriminates on the basis of race, sex, or religion - through either formal membership requirements or the practical implementation of membership policies? If so, list, with dates of membership. What you have done to try to change these policies.

I attended Washington & Lee University from 1980-1984 when it was a single-sex institution.

Jack Landman Goldsmith III – Publications and Academic Talks

Books

Foreign Relations Law: Cases and Materials (Aspen) (2003) (with Curtis A. Bradley)

Conflict of Laws: Cases and Materials (5th ed. Aspen) (2002) (with Lea Brilmayer)

International Dispute Resolution: The Regulation of Forum Selection (1997) (editor) (I do not have a copy of this book)

Articles

Liberal Democracy and Cosmopolitan Duty: Notes Toward a Realistic Cosmopolitanism (forthcoming, Stan. L. Rev., 2003)

U.S. Civil Litigation and International Terrorism, in *Civil Litigation and International Terrorism* (John Norton Moore, ed.) (forthcoming 2003) (with Ryan Goodman).

The Self-Defeating International Criminal Court, 70 U. Chi. L. Rev. 89 (2003).

The Limits of Idealism, Daedalus 47 (Winter 2003) (with Stephen Krasner)

Military Tribunals and Legal Culture: What a Difference Sixty Years Makes, 19 Const. Comm. 261 (2002) (with Cass Sunstein)

Moral and Legal Rhetoric in International Relations: A Rational Choice Perspective, 31 J. Leg. Stud. S115 (2002) (with Eric A. Posner)

Empirical Methodology and Legal Scholarship, 69 U. Chi. L. Rev. 153 (2002) (with Adrian Vermeule)

The Constitutional Validity of Military Commissions, 5 Green Bag 2d 249 (2002) (with Curtis A. Bradley)

Further Thoughts on Customary International Law, 23 Mich. J. Int'l L. 191 (2001) (with Eric Posner)

The Internet and the Legitimacy of Remote Cross-Border Searches, 2001 Univ. of Chi. Leg. Forum 103

Statutory Foreign Affairs Preemption, 2000 Sup. Ct. Rev. 175

The Internet and the Dormant Commerce Clause, 110 Yale L. J. 785 (2001) (with Alan O. Sykes)

Treaties, Human Rights, and Conditional Consent, 149 Penn. L. Rev. 399 (2000) (with Curtis A. Bradley)

Should International Human Rights Law Trump U.S. Domestic Law?, 1 Chi. J. Int'l L. 327 (2000)

The Internet, Conflicts of Regulation, and International Harmonization, in *Governance in the Light of Differing Local Values* (Engel and Keller, eds. 2000)

Sovereignty, International Relations Theory, and International Law, 52 Stan. L. Rev. 959 (2000)

Unilateral Regulation of the Internet: A Modest Defence, 11 Eur. J. Int'l L. 135 (2000)

Understanding the Resemblance between Modern and Traditional Customary International Law, 40 Va. J. Int'l L. 639 (2000) (with Eric Posner)

Pinochet, Head-of-State Immunity, and International Human Rights Litigation in U.S. Courts, 97 Mich. L. Rev. 2129 (1999) (with Curtis A. Bradley)

A Theory of Customary International Law, 66 U. Chi. L. Rev. 1113 (1999) (with Eric Posner)

The New Formalism in United States Foreign Relations Law, 70 Colo. L. Rev. 1395 (1999)

Against Cyberanarchy, 65 U. Chi. L. Rev. 1199 (1998)

The Abiding Relevance of Federalism to U.S. Foreign Relations, 92 Am. J. Int'l L. 675 (1998) (with Curtis A. Bradley)

Notes Toward a Theory of Customary International Law, in Proceedings of the American Society of International Law 53 (1998) (with Eric Posner)

What Internet Gambling Legislation Teaches About Internet Regulation, 32 Int'l Lawyer 1115 (1998)

Regulation of the Internet: Three Persistent Fallacies, 73 Chi.-Kent L. Rev. 1119 (1998)

International Human Rights Law and the United States Double Standard, 1 Green Bag 2d 365 (1998)

Federal Courts and the Incorporation of International Law, 111 Harv. L. Rev. 2260 (1998) (with Curtis A. Bradley)

The Internet and the Abiding Relevance of Territorial Sovereignty, 5 Ind. J. Glob. Leg. Stud. 475 (1998)

The Abiding Relevance of Federalism to U.S. Foreign Relations Law, 92 Am. J. Int'l L. 675 (1998) (with Curtis A. Bradley)

Erie and the Irrelevance of Legal Positivism, 84 Va. L. Rev. 673 (1998) (with Steven Walt)

Federal Courts, Foreign Affairs, and Federalism, 83 Va. L. Rev. 1617 (1997)

The Current Illegitimacy of International Human Rights Litigation, 66 Fordham L. Rev. 319 (1997) (with Curtis A. Bradley)

Customary International Law as Federal Common Law: A Critique of the Modern Position, 110 Harv. L. Rev. 815 (1997) (with Curtis A. Bradley)

Book Review, 91 Am. J. Int'l L. 391 (1997) (reviewing Andreas Lowenfeld, International Litigation and the Quest for Reasonableness (1997))

Interest Analysis Applied to Corporations: The Unprincipled Use of a Choice of Law Method, 98 Yale L.J. 597 (1989)

INFORMAL ESSAYS AND EDITORIALS

Swift Justice for Bin Laden, Financial Times (November 6, 2001) (with Bernard Meltzer)

Missile Defense Defense, American Lawyer (April 2001) (with John Yoo)

Yahoo! Brought to Earth, Financial Times (November 26, 2000)

Do States have the Power to Conduct International Affairs?, CNN Interactive (June 27, 2000)

Yugoslavia and the Paradox of International Human Rights Law, published in 40 non-U.S. newspapers worldwide (1999).

Seattle and Sovereignty, The Wall Street Journal (Dec. 6, 1999) (with John Yoo).

ADDRESSES, WORKSHOPS, and CONFERENCES

University of Chicago Law School, April 21, 2003. Talk on Humanitarian Intervention (based on now-discarded notes).

Princeton University, April 11, 2003. Paper: International Institutions, Politics, and Sovereignty (based on now-discarded notes)

Georgetown Law Center Workshop, February 10, 2003. Paper: U.S. Human Rights Exceptionalism: A Redescription and Modest Defense (very early draft paper, not yet ready for publication).

PIPES Workshop, University of Chicago, February 16, 2003. Paper: International Agreements: A Rational Choice Approach (with Eric Posner) (draft paper included)

Kennedy School, Carr Center, December 4, 2002. Paper: U.S. Human Rights Exceptionalism: A Redescription and Modest Defense (based on now-discarded notes)

NYU International Law Conference, November 15, 2002. Paper: Treaties and Soft Law: A Rational Choice Approach (with Eric Posner) (draft paper included under title: "International Agreements: A Rational Choice Approach")

University of Chicago Law School Workshop, July 13, 2002. Paper: The Self-Defeating International Criminal Court (now published, see above)

PIPES Workshop, University of Chicago, March 28, 2002. Paper: Reining in the Net: How Governments are Putting Borders in Cyberspace, and Making it a Better Place (very early draft of uncompleted manuscript; not yet ready for publication)

NYU Law School, December 4, 2001. Paper: Cosmopolitan Duties and Political Institutions Chicago-Kent Law School, Conference on International Intellectual Property Law, October 19, 2001. Paper: The Internet, Intellectual Property, and Borders (based on now-discarded notes)

Princeton University, Program on Law and Public Affairs, October 16, 2001. Paper: Reining in the Net: How Governments are Putting Borders in Cyberspace, and Making it a Better Place (very early draft of uncompleted manuscript; not yet ready for publication)

University of Chicago, Conference on the Events of 9/11, October 6, 2001. Presentation: War or Crime? (based on now-discarded notes)

University of Chicago, Conference on Rational Choice and International Law, April 27-28, 2001. Paper: Moral and Legal Rhetoric in International Relations: A Rational Choice Perspective (with Eric Posner) (now published; see above)

University of Virginia Law School, April 20, 2001. Paper: Cosmopolitan Duties and Political Institutions (now published; see above)

William & Mary Marshall-Wythe Law School, April 19, 2001. Paper: Treaties, Human Rights, and Conditional Consent (now published; see above)

University of Chicago, International Law Workshop, November 20, 2000. Paper: Treaties, Human Rights, and Conditional Consent (now published; see above)

University of Chicago, October 10, 2000, Conference on Jurisdiction. Paper: Cybercrime and Enforcement Jurisdiction (now published as "The Internet and the Legitimacy of Remote Cross-Border Searches")

UCLA Law School, Faculty Workshop, October 6, 2000. Paper: Moral and Legal Rhetoric in International Relations (now published; see above)

University of Chicago Law School, Faculty Workshop, October 5, 2000. Paper: The Internet and the Dormant Commerce Clause (with Alan Sykes) (now published; see above)

University of Texas Law School, Austin, Texas, Faculty Workshop, September 29, 2000. Paper: Treaties, Human Rights, and Conditional Consent (now published; see above)

International Law Association, London, England, Annual Conference, July 28, 2000. Panel: The Environment, Corporations, and Human Rights Litigation (based on now-discarded notes)

Northwestern University Law School, Chicago, Illinois, Conference on Political Science and International Human Rights, May 5-6, 2000. Paper: A Rational Choice Approach to International Human Rights Law (based on now-discarded notes)

American Society of International Law, Washington D.C., Annual Meeting, April 2000. Paper: The Role of Scholars in International Law (based on now-discarded notes)

American Enterprise Institute, Washington, D.C., April 4-5, 2000, Conference on International Governance and American Sovereignty. Paper: Should International Human Rights Law Trump United States Domestic Law? (now published; see above)

Duke Law School, January 21-22, 2000, Conference on Persuasion and International Law (based on now-discarded notes)

Hoover Institute, Stanford University, December 6-7, 1999, Conference on Cyber-crime and Cyber-terrorism. Presentation: Resolving Jurisdictional Conflicts (now published as "The Internet and the Legitimacy of Remote Cross-Border Searches")

University of Michigan Law School, September 24-25, 1999, Conference on the Role and Limits of Unilateralism in International Law. Paper: Unilateral Regulation of the Internet: A Modest Defense (now published; see above)

Internet Law and Policy Forum, July 26-27, 1999, Montreal, Canada, Conference on Jurisdiction and Building Confidence in a Borderless Medium (based on now-discarded notes)

Federal Trade Commission, June 8-9, 1999, Washington, D.C.,Workshop on Consumer Protection in the Global Electronic Marketplace (based on now-discarded notes)

National Academy of Sciences, June 3-5, 1999, Woods Hole, Massachusetts. Paper: The Internet, Jurisdictional Conflict, and International Harmonization (now published as The Internet, Conflicts of Regulation, and International Harmonization, in *Governance inthe Light of Differing Local Values* (Engel and Keller, eds. 2000)

Vanderbilt Law School, April 15, 1999. Paper: Against Cyberanarchy (now published; see above)

Georgetown Law Center, Law and Economics Workshop, March 15, 1999. Paper: A Theory of Customary International Law (now published; see above)

University of Kansas Law School, Workshop, February 25, 1999. Paper: A Theory of Customary International Law (now published; see above)

University of Colorado, Symposium on Foreign Relations Law at Century's End, January 22, 1999. Paper: The New Formalism in U.S. Foreign Relations Law (now published; see above)

University of Chicago, Work-in-Progress, September 8, 1998. Paper: A Theory of Customary International Law (with Eric Posner) (now published; see above)

District of Columbia Bar Association, July 21, 1998. Panel Discussion on the Supreme Court's decision in Breard v. Greene, 118 S. Ct. 1352 (1998) (based on now-discarded notes)

American Enterprise Institute, Washington, D.C. May 27, 1998. Panel Discussion on the Relationship Between International Law and Domestic Law (based on now-discarded notes)

University of Chicago, Work-in-Progress, April 23, 1998. Paper: Against Cyberanarchy (now published; see above)

University of Chicago, Conference on The Challenge of Modern Democracy, April 11, 1998. Paper: Democracy and International Human Rights Law (based on now-discarded notes)

American Society of International Law, Washington D.C., April 2, 1998. Paper: Notes Toward a Theory of Customary International Law (with Eric Posner) (now published; see above)

Southern Methodist University, Internet and Jurisdiction, Friday March 27, 1998. Paper: The Feasibility and Legitimacy of Internet Gambling Regulation (now published as "What Internet Gambling Legislation teaches about Internet Regulation")

Chicago-Kent Law School Internet Conference, Friday March 13, 1998, Commentator (based on now-discarded notes)

Computers, Freedom, and Privacy Conference in Austin, Texas, February 1997. Debate (with David Post) on National Governance and the Internet (based on now-discarded notes)

University of California, Boalt Hall, September 1997. Paper: Against Cyberanarchy (now published; see above)

Can Old Laws Apply to a New Medium?, On-line debate with David Post on Hotwired, July 9, 1997, available at www.hotwired.com/synapse/braintennis/97/34/index0a.html.

Georgetown Law School, Economic Law Conference, April 1997. Paper: National Deference to Rulemaking Processes in Cyberspace: A Skeptical View (now published; see above)

Fordham Law School, Conference on Human Rights, February 1997. Paper: The Current Illegitimacy of International Human Rights Law) (with Curtis Bradley) (now published; see above)

University of Chicago Work-in-Progress, December 1996. Paper: Customary International Law as Federal Common Law: A Critique of the Modern Position (now published; see above)

University of Virginia Summer Workshop, August 1996. Paper: Federal Courts and Foreign Affairs (now published as "Federal Courts, Foreign Affairs, and Federalism")

University of Virginia Faculty Workshop, April 1996. Paper: Customary International Law as Federal Common Law: A Critique of the Modern Position (now published; see above)

NCAIR Virtual Magistrate Project, May, 1996 Washington, DC. Paper: Grounding the Virtual Magistrate (with Lawrence Lessig) (paper attached)

Marshall-Wythe School of Law at the College of William and Mary, March 1996. Paper: Customary International Law as Federal Common Law: A Critique of the Modern Position (now published; see above)

FINANCIAL STATEMENT

NET WORTH

Provide a complete, current financial net worth statement which itemizes in detail all assets (including ba accounts, real estate, securities, trusts, investments, and other financial holdings) all liabilities (including debt mortgages, loans, and other financial obligations) of yourself, your spouse, and other immediate members your household.

ASSETS				LIABILITIES			
Cash on hand and in banks	293	000		Notes payable to banks—secured			
U.S. Government securities—add schedule				Notes payable to banks—unsecured			
Listed securities—add schedule				Notes payable to relatives			
Unlisted securities—add schedule				Notes payable to others			
Accounts and notes receivable:				Accounts and bills due			
Due from relatives and friends				Unpaid income tax			
Due from others				Other unpaid tax and interest			
Doubtful				Real estate mortgages payable—add schedule			
Real estate owned—add schedule				Chattel mortgages and other liens payable			
Real estate mortgages receivable				Other debts—itemize:			
Autos and other personal property	11 2	000 000					
Cash value—life insurance							
Other assets—itemize:							
Condominium in trust (paternal grandfather)	400	000					
Longboat Key, FL (remainder interest)							
				Total liabilities			
IRA Accounts	93	597		Net worth	799	597	
Total assets	799	597		Total liabilities and net worth	799	597	

CONTINGENT LIABILITIES				GENERAL INFORMATION			
As endorser, comaker or guarantor	NO			Are any assets pledged? (Add schedule.)	NO		
On leases or contracts	NO			Are you defendant in any suits or legal actions?	NO		
Legal Claims	NO			Have you ever taken bankruptcy?	NO		
Provision for Federal Income Tax	NO						
Other special debt	NO						

U.S. Department of Justice

Washington, D.C. 20530

JUN 1 1 2003

Ms. Amy L. Comstock
Director
Office of Government Ethics
Suite 500
1201 New York Avenue, NW
Washington, DC 20005-3919

Dear Ms. Comstock:

In accordance with the provisions of Title I of the Ethics in Government Act of 1978 as amended, I am forwarding the financial disclosure report of Jack L. Goldsmith, III, who has been nominated by the President to serve as Assistant Attorney General, Office of Legal Counsel, Department of Justice. We have conducted a thorough review of the enclosed report.

The conflict of interest statute, 18 U.S.C. § 208, requires that Mr. Goldsmith recuse himself from participating personally and substantially in a particular matter in which he, his spouse, or anyone whose interests are imputed to him under the statute has a financial interest. We have counseled him to obtain advice about disqualification or to seek a waiver before participating in any particular matter that could affect his financial interests.

Mr. Goldsmith is currently on a leave of absence from the University of Chicago Law School. He continues to be covered under certain of the University's employee benefit plans as described in Schedule C, Part II. As of July 1, 2003, Mr. Goldsmith will resign from the University of Chicago Law School and become an employee of the University of Virginia Law School. When confirmed, he will be on an unpaid leave of absence from the University of Virginia Law School, and will not be covered by employee benefit plans offered by the University of Virginia. Mr. Goldsmith will recuse himself or seek a waiver before participating personally and substantially in any particular matter that will have a direct and predictable effect on the financial interest of the University of Chicago Law School while employed by them. For a minimum of one year after leaving the University of Chicago Law School, he will not participate in any particular matters involving specific parties in which the University of Chicago Law School is or represents a party unless authorized to participate. Mr. Goldsmith will recuse himself or seek a waiver before participating personally and substantially in any particular matter that will have a direct and predictable effect on the financial interests of the University of Virginia Law School while he has an agreement for employment and while employed by them.

We have advised Mr. Goldsmith that because of the standard of conduct on impartiality at 5 CFR 2635.502 he should seek advice before participating in a particular matter having specific parties in which a member of his household has a financial interest or in which someone with whom he has a covered relationship, is or represents a party. Mr. Goldsmith has a covered relationship with Princeton Press, Oxford University Press, and the Journal of International Law, and those entities to which he has provided consulting and other services within the past year, as reported on Schedule A of his public financial disclosure report.

Mr. Goldsmith has contracts with three book publishers. Two law text books have been published by Aspen Publishing, and Mr. Goldsmith receives royalties as provided under the contracts with Aspen Publishing. Mr. Goldsmith is an editor for a book to be published by Princeton Press, for which he has received an advance against royalties, and for which he will continue to receive royalties as provided under the contract with Princeton Press. Mr. Goldsmith has completed all work on these books, and has advised Aspen Publishing and Princeton Press to make no use of his official title or position in connection with the books and related materials or any promotional efforts. Mr. Goldsmith also has two contracts with Oxford University Press for two books he will write with co-authors. The contracts will provide that he receive no advances and no royalties for the first edition or any future editions of these two books. Mr. Goldsmith has advised Oxford University Press to make no use of his official title or position in connection with the books and related materials or any promotional efforts.

Based on the above agreements and counseling, I am satisfied that the report presents no conflicts of interest under applicable laws and regulations and that you can so certify to the Senate Judiciary Committee.

Sincerely,

Paul R. Corts
Assistant Attorney General
for Administration and
Designated Agency Ethics Official

Enclosure

SF278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Executive Branch Personnel PUBLIC FINANCIAL DISCLOSURE REPORT

Form Approved
OMB No. 3209-000

Date of Appointment, Candidacy, Election or Nomination (*Month, Day, Year*)	Reporting Status (*Check appropriate boxes*)	Incumbent [ ]	Calendar Year Covered by Report	New Entrant, Nominee, or Candidate [X]	Termination Filer [ ] / Termination Date (*If Applicable*) (*Month, Day, Year*)
Reporting Individual's Name	Last Name: Goldsmith III			First Name and Middle Initial: Jack L.	
Position for Which Filing	Title of Position: Assistant Attorney General, Office of Legal Counsel			Department or Agency (*If Applicable*): Department of Justice	
Location of Present Office (or forwarding address)	Address (*Number, Street, City, State, and ZIP Code*): 1600 Defense Pentagon, Washington DC, 20301-1600			Telephone No. (*Include Area Code*): 703-693-6946	
Position(s) Held with the Federal Government During the Preceding 12 Months (If Not Same as Above)	Title of Position(s) and Date(s) Held: Special Counsel to the DoD General Counsel -- September 2002 to present				
Presidential Nominees Subject to Senate Confirmation	Name of Congressional Committee Considering Nomination: Senate Judiciary Committee			Do You Intend to Create a Qualified Diversified Trust? [ ] Yes [X] No	
Certification I CERTIFY that the statements I have made on this form and all attached schedules are true, complete and correct to the best of my knowledge.	Signature of Reporting Individual: Jack Goldsmith III			Date (*Month, Day, Year*): June 10, 2003	
Other Review (If desired by agency)	Signature of Other Reviewer			Date (*Month, Day, Year*)	
Agency Ethics Official's Opinion On the basis of information contained in this report, I conclude that the filer is in compliance with applicable laws and regulations (subject to any comments in the box below).	Signature of Designated Agency Ethics Official/Reviewing Official: RRG			Date (*Month, Day, Year*): 6-11-03	
Office of Government Ethics Use Only	Signature			Date (*Month, Day, Year*)	

Comments of Reviewing Officials (*If additional space is required, use the reverse side of this sheet*)

(*Check box if filing extension granted & indicate number of days* _____) [ ]

(*Check box if comments are continued on the reverse side*) [ ]

Fee for Late Filing
Any individual who is required to file this report and does so more than 30 days after the date the report is required to be filed, or, if an extension is granted, more than 30 days after the last day of the filing extension period shall be subject to a $200 fee.

Reporting Periods
Incumbents: The reporting period is the preceding calendar year except Part II of Schedule C and Part I of Schedule D where you must also include the filing year up to the date you file. Part II of Schedule D is not applicable.

Termination Filers: The reporting period begins at the end of the period covered by your previous filing and ends at the date of termination. Part II of Schedule D is not applicable.

Nominees, New Entrants and Candidates for President and Vice President:

Schedule A--The reporting period for income (BLOCK C) is the preceding calendar year and the current calendar year up to the date of filing. Value assets as of any date you choose that is within 31 days of the date of filing.

Schedule B--Not applicable.

Schedule C, Part I (Liabilities)--The reporting period is the preceding calendar year and the current calendar year up to any date you choose that is within 31 days of the date of filing.

Schedule C, Part II (Agreements or Arrangements)-- Show any agreements or arrangements as of the date of filing.

Schedule D--The reporting period is the preceding two calendar years and the current calendar year up to the date of filing.

Agency Use Only

OGE Use Only

SF278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Goldsmith III, Jack L.

SCHEDULE A

Page Number: 2

Assets and Income — BLOCK A

For you, your spouse, and dependent children, report each asset held for investment or the production of income which had a fair market value exceeding $1,000 at the close of the reporting period, or which generated more than $200 in income during the reporting period, together with such income.

For yourself, also report the source and actual amount of earned income exceeding $200 (other than from the U.S. Government). For your spouse, report the source but not the amount of earned income of more than $1,000 (except report the actual acount of any honoraria over $200 of your spouse).

None ☐

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

	Assets and Income	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
Examples	Central Airlines Common			x													x						x										
	Doe Jones & Smith, Hometown, State		x																													Law Partnership Income $130,000	
	Kempstone Equity Fund				x									x										x									
	IRA: Heartland 500 Index Fund						x							x											x								
1	Personal Residence/Chicago, IL (Sold on 6/2/2003)	X																X								X							
2	University of Chicago TIAA CREF			X										X							X												
3	University of Chicago 401k Vanguard Growth and Income			X										X							X												
4	Princeton University																															Honorarium $2,000.00	5/2003
5	University of Chicago 401k Vanguard International Growth Fund		X											X							X												
6	IRA - Harris Bank (cash account)		X																		X												

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Goldsmith III, Jack L.

SCHEDULE A continued

Page Number: 3

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

#	Assets and Income (Block A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000*	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
	None ☐																																
1	Trust (Paternal Grandfather) Condominium, Longboat Key, FL Remainder Interest						X														X												
2	University of Chicago																															Salary $125,000	
3	State Line Energy																															Consulting Fees $13,181.25	
4 S	Self-employed (poet)																															Salary	
5	Pfizer, Inc.																															Consulting Fees $26,975.67	
6	University of Virginia																															Honoraria $2,700.00	1/2002 5/2002
7	Financial Times																															Honorarium $217.33	1/2002
8	Patton Boggs																															Consulting Fees $2,762.50	
9	Princeton Press (co-editor of essays on Orwell)																															Advance $416.66	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF278 (Rev. 03/2000)
5 C.F.R. Part 2634
U.S. Office of Government Ethics

Reporting Individual's Name: Goldsmith III, Jack L.

SCHEDULE A continued

(Use only if needed)

Page Number: 4

Assets and Income — BLOCK A

Valuation of Assets at close of reporting period — BLOCK B

Income: type and amount. If "None (or less than $201)" is checked, no other entry is needed in Block C for that item. — BLOCK C

None ☐

#	Assets and Income (BLOCK A)	None (or less than $1,001)	$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000 *	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Excepted Investment Fund	Excepted Trust	Qualified Trust	Type: Dividends	Type: Rent and Royalties	Type: Interest	Type: Capital Gains	Amount: None (or less than $201)	$201 - $1,000	$1,001 - $2,500	$2,501 - $5,000	$5,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	Over $5,000,000	Other Income (Specify Type & Actual Amount)	Date (Mo., Day, Yr.) Only if Honoraria
1	Plotkin Jacobs																															Consulting Fees $2,200.00	
2	Riggs Bank (Checking/Savings)					X													X		X												
3	Heritage Foundation																															Commentary Fee $375.00	
4	Aspen Publishers (two casebooks: Conflicts of Law; and Foreign Relations Law. Value of contracts																	X							X							Royalties $10,098.79	
5	not readily ascertainable.) CATO Institute																															Honorarium $1,000.00	6/2003
6	University of Chicago (face value)(Term Life Insurance)							X																									
7	SunTrust Bank (Savings/Checking)				X														X		X												
8	First Chicago Bank (Savings/Checking)					X													X		X												
9																																	

* This category applies only if the asset/income is solely that of the filer's spouse or dependent children. If the asset/income is either that of the filer or jointly held by the filer with the spouse or dependent children, mark the other higher categories of value, as appropriate.

Prior Editions Cannot be Used.

SF 278 (Rev. 03/2000)
5 C.F.R Part 2634
U.S. Office of Government Ethics

Do not Complete Schedule B if you are a new entrant, nominee, Vice Presidential or Presidential Candidate

Reporting Individual's Name		Page Number
Goldsmith III, Jack L.	**SCHEDULE B**	5

Part I: Transactions

None ☐

Report any purchase, sale, or exchange by you, your spouse, or dependent children during the reporting period of any real property, stocks, bonds, commodity futures, and other securities when the amount of the transaction exceeded $1,000. Include transactions that resulted in a loss. Do not report a transaction involving property used solely as your personal residence, or a transaction solely between you, your spouse, or dependent child. Check the "Certificate of divestiture" block to indicate sales made pursuant to a certificate of divestiture from OGE.

	Identification of Assets	Transaction Type (x)			Date (Mo., Day, Yr.)	Amount of Transaction (x)												
		Purchase	Sale	Exchange		$1,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over $50,000,000	Certificate of
	Example: Central Airlines Common	x			2/1/99			x									
1																	
2																	
3																	
4																	
5																	

* This category applies only if the underlying asset is solely that of the filer's spouse or dependent children. If the underlying asset is either held by the filer or jointly held by the filer with the spouse or dependent children, use the other higher categories of value, as appropriate.

Part II: Gifts, Reimbursements, and Travel Expenses

For you, your spouse and dependent children, report the source, a brief description, and the value of: (1) gifts (such as tangible items, transportation, lodging, food, or entertainment) received from one source totaling more than $260; and (2) travel-related cash reimbursements received from one source totaling more than $260. For conflicts analysis, it is helpful to indicate a basis for receipt, such as personal friend, agency approval under 5 U.S.C. § 4111 or other statutory authority, etc. For travel-related gifts and reimbursements, include travel itinerary, dates, and the nature of expenses provided. **Exclude** anything given to you by the U.S. Government; given to your agency in connection with official travel; received from relatives; received by your spouse or dependent child totally independent of their relationship to you; or provided as personal hospitality at the donor's residence. Also, for purposes of aggregating gifts to determine the total value from one source, exclude items worth $104 or less. See instructions for other exclusions.

None ☐

	Source *(Name and Address)*	Brief Description	Value
	Examples: Nat'l Assn. of Rock Collectors, NY, NY	Airline ticket, hotel room & meals incident to national conference 6/15/99 (personal activity unrelated to duty)	$500
	Frank Jones, San Francisco, CA	Leather briefcase (personal friend)	$300
1			
2			
3			
4			
5			

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Reporting Individual's Name		Page Number
Goldsmith III, Jack L.	**SCHEDULE C**	6

Part I: Liabilities

Report liabilities over $10,000 owed to any one creditor at **any time** during the reporting period by you, your spouse, or dependent children. Check the highest amount owed during the reporting period. **Exclude** a mortgage on your personal residence unless it is rented out; loans secured by automobiles, household furniture or appliances; and liabilities owed to certain relatives listed in instructions. See instructions for revolving charge accounts.

None ☐

	Creditors (Name and Address)	Type of Liability	Date Incurred	Interest Rate	Term if applicable	$10,001 - $15,000	$15,001 - $50,000	$50,001 - $100,000	$100,001 - $250,000	$250,001 - $500,000	$500,001 - $1,000,000	Over $1,000,000*	$1,000,001 - $5,000,000	$5,000,001 - $25,000,000	$25,000,001 - $50,000,000	Over
Examples:	First District Bank, Washington, DC	Mortgage on rental property, Delaware	1991	8%	25 yrs.			x								
	John Jones, 123 J St., Washington, DC	Promissory note	1999	10 %	on demand					x						
1	Harris Bank, Chicago, Illinois	mortgage on personal residence (paid in full on 6/2/2003)	2002	5.35%	5 yr. ARM					X						
2	University of Chicago, Chicago, Illinois	second mortgage on personal residence (paid in full on 6/2/2003)	1999	6.2%	15 yrs.			X								
3																
4																
5																

Category of Amount or Value (x)

* This category applies only if the liability is solely that of the filer's spouse or dependent children. If the liability is that of the filer or a joint liability of the filer with the spouse or dependent children, mark the other higher categories, as appropriate.

Part II: Agreements or Arrangements

Report your agreements or arrangements for: continuing participation in an employee benefit plan (e.g. 401k, deferred compensation; (2) continuation payment by a former employer (including severance payments); (3) leaves of absence; and (4) future employment. See instructions regarding the reporting of negotiations for any of these arrangements or benefits

None ☐

	Status and Terms of any Agreement or Arrangement	Parties	Date
Example:	Pursuant to partnership agreement, will receive lump sum payment of capital account & partnership share calculated on service performed through 1/00.	Doe Jones & Smith, Hometown, State	7/85
1	I am currently on a leave of absence from the University of Chicago Law School, where I am covered by employee benefit plans, including health and dental insurance, disability insurance, life insurance and a retirement plan.	Univ of Chicago Law School	9/97
2	Before my nomination, I had agreed to leave the University of Chicago and join the University of Virginia Law School on July 1, 2003. My current plan is to leave the Department of Defense and join UVA law school as scheduled, in a paid status,	Univ of VA Law School	7/03
3	on July 1, 2003. If confirmed, I will take an unpaid leave of absence from UVA, without benefits.		
4	See attachment		
5			
6			

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Reporting Individual's Name		Page Number
Goldsmith III, Jack L.	**SCHEDULE D**	7

Part I: Positions Held Outside U.S. Government

Report any positions held during the applicable reporting period, whether compensated or not. Positions include but are not limited to those of an officer, director, trustee, general partner, proprietor, representative, employee, or consultant of any corporation, firm, partnership, or other business enterprise or any non-profit organization or educational institution. Exclude positions with religious, social, fraternal, or political entities and those solely of an honorary nature.

None ☐

	Organization (*Name and Address*)	Type of Organization	Position Held	From (Mo., Yr.)	To (Mo., Yr.)
Examples:	Nat'l Assn. of Rock Collectors, NY, NY	Non-profit education	President	6/92	Present
	Doe Jones & Smith, Hometown, State	Law firm	Partner	7/85	1/00
1	University of Chicago, Chicago, Illinois (on leave of absence)	Law School	Professor	6/1997	Present
2	American Journal of International Law (Unpaid)	Legal Publication	Board of Editor	4/2003	Present
3					
4					
5					
6					

Part II: Compensation In Excess Of $5,000 Paid by One Source

Report sources of more than $5,000 compensation received by you or your business affiliation for services provided directly by you during any one year of the reporting period. This includes the names of clients and customers of any corporation, firm, partnership, or other business enterprise, or any other non-profit organization when you directly provided the services generating a fee or payment of more than $5,000. You need not report the U.S. Government as a source.

Do not complete this part if you are an Incumbent, Termination Filer, or Vice Presidential or Presidential Candidate

None ☐

	Source (*Name and Address*)	Brief Description of Duties
Examples:	Doe Jones & Smith, Hometown, State	Legal services
	Metro University (client of Doe Jones & Smith), Moneytown, State	Legal services in connection with university construction
1	University of Chicago	Law Professor
2	Mentor Graphics, Inc.	Legal Consulting
3	Phillip Morris, Inc.	Legal Consulting
4	State Line Energy, Inc.	Legal Consulting
5	Pfizer, Inc.	Legal Consulting
6	Aspen Publishers	Royalties

Prior Editions Cannot Be Used.

Attachment to Schedule C Part II - Jack Landman Goldsmith III

I have or expect to have the following book contracts during my tenure if appointed as AAG:

1. Aspen Publishing, "Conflict of Laws: Cases and Materials," 5th edition came out in 2002. Co-author is Lea Brilmayer. I receive royalties, and will continue to receive royalties as provided under the existing contract. There is no agreement to publish a future edition.

2. Aspen Publishing, "Foreign Relations Law: Cases and Materials," co-author Curtis Bradley. The 2003 edition was published in late 2002. I receive royalties and will continue to receive royalties as provided under the existing contract. There is no agreement to publish a future edition.

3. Book contract with Oxford Univ. Press, tentative title is "A Theory of International Law", co-author is Eric Posner. I have re-written the contract to forgo all royalties for this and future editions.

4. Book contract with Oxford Univ. Press. Tentatively titled "Against Cyber-Anarchy". With co-author Tim Wu. I have re-written the contract to forgo all royalties, for this and future editions.

5. Book contract with Princeton Press, editor on "Orwell and Our Future." I receive and will continue to receive royalties as provided under the existing contract. My work on the book is complete.

AFFIDAVIT

I, Jack Goldsmith III, do swear that the information provided in this statement is, to the best of my knowledge, true and accurate.

June 12, 2003
(DATE)

Jack Goldsmith III
(NAME)

(NOTARY)

County/City of Arlington
Commonwealth of Virginia
The foregoing instrument was acknowledged before me this 12th day of June, 2003
by Kimberly M. Lenzer
Notary Public
My commission expires Nov 30, 2004

Senator CHAMBLISS. Well, I have just a couple of things I want to ask you about.

As legal counsel, you are going to be asked to participate in all of the significant challenges facing the Justice Department: review of Executive orders and Presidential proclamations, provide legal advice to the executive branch on constitutional questions and review legislation. That is a substantial workload and a very heavy responsibility being placed on your, Mr. Goldsmith. Would you care to comment on how you will accomplish all you are asked to do? Would you outline your priorities as head of the Office of Legal Counsel?

Mr. GOLDSMITH. Thank you, Mr. Chairman. It is indeed a heavy responsibility, sir, and it's one I take very seriously. My main goal, if confirmed as head of Office of Legal Counsel, would be to continue the extraordinary traditions of the office in providing objective legal advice, independent of any political considerations. That is the—in my opinion and in the opinion of all of the former heads of OLC that I've consulted with, that is the main task of the office, the primary responsibility, and it's something that I assure you I'll always keep in mind in everything I do there.

More generally, sir, my job, if confirmed, would be to provide first-rate legal advice to the Attorney General primarily, and as his delegate, to the other heads, to the other departments on legal issues that arise, and to do so in a timely fashion.

Senator CHAMBLISS. You are presently serving as special counsel to the general counsel in the Department of Defense. In that capacity, I presume you played a significant role in the war against terrorism. In addition to these issues, would you outline other responsibilities as well—substantive as well as management responsibilities that you are going to undertake in your new position?

Mr. GOLDSMITH. Sir, most of my substantive responsibilities will be defined by the tasks I'm asked to perform. It will depend on what the Attorney General asks me to do and what the other departments in the executive branch—the specific legal advice they seek. As to substance, it really depends on what we're asked to do.

As to management, the Office of Legal Counsel is blessed with an extraordinary group of lawyers, very hard-working lawyers, and my goal will be to make sure that they continue to produce the first-rate legal advice that they've always provided.

Senator CHAMBLISS. All right. Well, Mr. Goldsmith, I think you are fortunate. It looks like everybody ran off and left us.

[Laughter.]

Senator CHAMBLISS. You have outlined the questions that I had, and it is the custom of the Committee that the record remain open for 7 days for questions to be submitted, so I am certain that there will be other questions that will be forthcoming. But unless anybody has anything further, we will close the hearing at this time.

Thank you very much for being here.

Mr. GOLDSMITH. Thank you, Mr. Chairman.

Senator CHAMBLISS. We look forward to moving ahead with your nomination.

Mr. GOLDSMITH. Thank you, sir.

[Whereupon, at 3:45 p.m., the Committee was adjourned.]

[Questions and answers and submissions for the record follow.]

QUESTIONS AND ANSWERS

SENATOR RICHARD J. DURBIN SUBMITTED QUESTIONS FOR NOMINATION HEARING OF MICHAEL GARCIA TO BE ASSISTANT SECRETARY FOR THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT

1. I have supported the creation of an automated entry/exit system that will ensure that we can identify and track the arrival and departure of visitors to our country. However, serious logistical concerns loom as DHS moves forward with implementation of US-VISIT.

QUESTION:

A. In your testimony, you indicated that US-VISIT is being "run" by the office of Asa Hutchison, the Undersecretary of the Border and Transportation Security Directorate (BTS). You explained that the Bureau of Immigration and Customs Enforcement (BICE), a component of BTS, would continue to be involved in US-VISIT, "primarily as an enforcement agency." Please explain in detail BICE's role in administering US-VISIT, including enforcement and any other activities.

RESPONSE: The role of BICE is to investigate and take appropriate action against those who fail to comply with the requirements of US VISIT.

B. Collecting detailed information, including fingerprints and photographs, from all foreign visitors will pose significant challenges. Numerous studies have concluded that such a data collection effort will create significant delays at the border, harming our economy. What steps are you taking to ensure that data collection will not greatly slow the flow of traffic at the border?

RESPONSE: These issues, including technical requirements, are being considered at the DHS level.

C. It is important that US-VISIT not infringe upon civil liberties or discriminate on the basis of race, religion, or national origin. What steps will DHS take to ensure that US-VISIT will not infringe upon civil liberties or discriminate on the basis of race, religion, or national origin?

RESPONSE: The US VISIT Program is being management at the Bureau of Transportation Security (BTS) level. Therefore, this question would better be answered by BTS.

2. US-VISIT has absorbed the National Security Entry-Exit Registration System (NSEERS). I have expressed concerns about NSEERS' discriminatory nature, utility, and implementation.

QUESTION:

A. In your testimony, you claimed that NSEERS did not discriminate on the basis of race or religion. However, the NSEERS "call-in" program (also known as domestic registration) explicitly targeted only visitors from Arab and Muslim countries, requiring them to

register with local INS offices. Isn't this discrimination on the basis of national origin and religion? Why or why not?

RESPONSE: BICE does not discriminate against particular communities based on race, religion, or national origin. As part of the NSEERS program, intelligence was used in order to identify areas from which terrorist groups and their recruits were most likely to originate. Those countries with known al-Qaeda activity, other terrorist activity, and/or state-sponsored terrorism or other law enforcement concerns formed the basis for creating the list of countries covered under the NSEERS program. The State Department has identified certain countries --including North Korea -- as state sponsors of terrorism. Citizens of those countries must also register under NSEERS. Thus, the decision as to which countries fell under the NSEERS program was not made on the basis of ethnic origin or religion, but instead upon reliable intelligence information designed to identify potential threats to the national security of the United States. In fact, since the implementation of NSEERS last September, individuals from more than 150 countries have registered.

QUESTION:

B. In response to criticism that the "call-in" program was discriminatory, Justice Department officials said that it would eventually be expanded to include visitors from all countries. Subsequent media reports indicated that it would not be expanded to additional countries. Will the "call-in" program be expanded to include visitors from other countries? Why or why not? If so, which countries will be added? If not, why did the initial plans to expand the program to other countries change?

RESPONSE: The US VISIT Program is being management at the Bureau of Transportation Security (BTS) level. Therefore, this question would better be answered by BTS. However, it is my understanding that at this time, the DHS has no plans to add any other countries to the call-in program.

QUESTION:

C. You acknowledged that NSEERS "raises issues in terms of feeling in the community." What issues do you believe that NSEERS raises in the community? Do you believe these concerns are justified? Please explain. Do you believe that NSEERS alienates communities whose cooperation law enforcement needs to combat terrorism by singling out a large group of mostly innocent Arabs and Muslims? Why or why not?

RESPONSE: Undoubtedly, NSEERS registration raises anxiety in those communities most affected by its requirements. As has been publicly noted in the media, some in the community are concerned over perceived discrimination, civil rights issues, and fairness. It is very important to recognize that these concerns and feelings do exist, that people will act upon those feelings, and that as public servants, we must act to assuage and overcome these fears. DHS will make every effort not to alienate those communities whose help is needed to combat terrorism. As described previously and below, extensive outreach was performed to answer questions and help alleviate concerns.

QUESTION:

D. You explained that the INS did outreach work to publicize NSEERS. Please describe the nature and timing of this outreach work. Many INS field offices had dedicated community relations officers who played an important role in working with immigrant communities. What is the status of these community relations officers now that they are DHS employees? Will they continue to work full-time on community outreach? Why or why not?

RESPONSE:

Beginning in September 2002, INS community relations officers both in the field and at Headquarters conducted thousands of presentations, forums, training sessions, and town hall meetings for a multitude of community-based organizations and foreign embassies/ consulates whose constituents were impacted by NSEERS.

Many of the presentations, forums, training sessions, and town hall meetings were conducted during evening hours and our community relations officers worked long hours each day to ensure that all potential registrants complied with NSEERS requirements.

Additionally, INS community relations officers carefully cultivated relationships within the Arab and Muslim communities. For, example, officers worked closely with the Arab American Institute and the American-Arab Anti-Discrimination Committee as well as different embassies to explain NSEERS and to minimize misinformation and build credibility.

BICE recognizes the critical need for community relations officers. Community Relations officer ultimately enhance the level of homeland security by building goodwill and trust within immigrant communities. The community relations program will continue and the current community relations officers will be equitably distributed among the three bureaus. (BICE, CBP, CIS) It is expected that this distribution will provide opportunities for the expansion of the community relations program in each of the new DHS divisions.

QUESTION:

E. According to a recent article in *The New York Times*, the Justice Department has placed more than 13,000 people who registered pursuant to NSEERS in deportation proceedings. How many people have actually been placed in deportation proceedings after registering through NSEERS? How many of these people have been deported? Does deporting those who comply with NSEERS deter other immigrants and visitors from complying with NSSERS and other similar programs? Why or why not? If a goal of NSEERS is to track possible terrorists, does deporting those who comply with the program undermine the goal of the program, particularly if it reduces future compliance? Why or why not?

RESPONSE: As of July 9th, 13,709 individuals had been placed in removal proceedings as a result of NSEERS.

These individuals were placed in removal proceedings not because they complied with NSEERS, but because they were in the United States in violation of law. Some of these people were convicted criminal felons, while others had overstayed their permitted time and others had committed fraud. The total number of aliens registered in NSEERS who were removed is 49.

The results of NSEERS show that apprehension of violators has not deterred compliance. In fact, our records indicate that large numbers of people continued to appear for registration. Since the apprehension of violators apparently has not deterred program compliance, it has not undermined the goal of NSEERS to identify potential terrorists.

QUESTION:

F. Do you agree that many who were required to register in the "call-in" program were technically "out of status" due to long delays in processing adjustment of status applications? Why or why not? Do you agree that the INS placed many such individuals in deportation proceedings? Why or why not? If so, how many such individuals have been placed in deportation proceedings? If so, will those who are out of status due to INS processing delays be granted relief from deportation pending processing of their applications? Why or why not?

RESPONSE: Of the individuals who were out of status, some may have pending applications with the Bureau of Citizenship and Immigration Services (BCIS). In reaching a determination whether or not to place an out of status individual into removal proceedings, one factor considered by officers in the field was whether or not an application was pending for the adjustment of status of that individual. Because of the individual nature of each case, it is not possible to provide a number of people who may be eligible for adjustment of status. Indeed, some seek adjustment after the commencement of their removal proceedings.

In situations where an out of status alien may have a pending adjustment application, it is important to understand that having a pending application is not the same as having been granted a legal status to live in the United States. It is also important to note that in many adjustment cases, a needed visa number may not be available until years in the future and thus, no adjustment or relief is immediately available for an arrested alien present in the U.S. in violation of law. This backlog of visa numbers is not caused by BCIS, but instead from the intense demand of people seeking to immigrate to the United States.

Some of the factors considered in reaching a custody decision include the likelihood that the adjustment application is legitimate, that the application will be approved, the availability of a visa number if needed, any past criminal history, and how likely the alien is to appear for a removal hearing. In many cases, aliens who are charged with having violated their status are released on their own recognizance or on low bonds. In some instances, it may take a few days for an alien to post a bond, and the alien will be detained until the bond is posted. In other cases, an alien with a serious criminal history may be subject to mandatory detention, regardless of any pending adjustment application.

Those placed into deportation proceedings retain all applicable rights afforded under the law.

QUESTION:

G. Do you agree that the INS inadequately publicized the "call-in" program and disseminated inaccurate and/or mistranslated information? Why or why not? Do you agree that, as a result of inadequate publicity and inaccurate and/or mistranslated information, many individuals who were required to register did not do so or registered late? Why or why not? How many individuals who registered late have been placed in deportation proceedings? How many individuals who did not register have been placed in deportation proceedings? In light of NSEERS implementation problems, will those who did not register or registered late be granted relief from deportation proceedings and/or given another opportunity to register? Why or why not? What will you do to avoid such implementation problems in the future?

RESPONSE: Within the time constraints imposed by the implementation schedule, INS made every effort to disseminate "call-in" information to affected communities as quickly as possible.

Notices in English to the impacted communities containing "call-in" information were published on the INS website often within 48 hours of being published in the Federal Register. The "call-in" notices were translated to a number of languages (Bengali, Bahasa, Pashto, Arabic, Farsi, Urdu) and the translated notices were published on the INS website, often within 3-5 days of the Federal Register notification. Although every effort was made to ensure accuracy, I believe in one instance an inaccurate date was given in a translation. Additional safeguards were put in place to ensure accurate translation.

Once the notices were translated, they were also disseminated to the press serving the affected communities and to different embassies for publication on their websites.

NSEERS policy allows for late registration with good cause. The individuals who have been placed in removal proceedings as a result of NSEERS were criminals, violated their immigration status, or otherwise remained in the U.S. in violation of law. As noted above, over 13,000 individuals have been placed into removal proceedings. However, an estimate on the number who failed to register in unknown.

SENATOR RUSSELL D. FEINGOLD SUBMITTED QUESTIONS FOR NOMINATION HEARING OF MICHAEL GARCIA TO BE ASSISTANT SECRETARY FOR THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT

1. The findings of the U.S. Department of Justice Inspector General's recent report on the treatment of September 11 detainees held on immigration violations highlight that there should have been better communication and coordination between the FBI and the then-INS concerning decisions to arrest, detain, and hold individuals without bond in connection with the Department's September 11 investigation. Now that immigration enforcement has been transferred from the Justice Department to the Department of Homeland Security, it seems that effective communication will be even more critical between the FBI, which remains a part of the Justice Department, and immigration enforcement officers, now under the Bureau of Customs and Immigration Enforcement (BICE).

QUESTION:

A. What steps have you taken, including issuing regulations or entering into memoranda of understanding, to ensure that communication and coordination between BICE and the FBI is prompt, smooth, and effective?

RESPONSE: BICE has drafted a Memorandum of Understanding between the Department of Justice and the Department of Homeland Security that proposes a number of formal systems that would allow the agencies to communicate and cooperate more effectively regarding national security matters of mutual concern. This Memorandum includes provisions that address issues such as the method the FBI can use to request that BICE place an immigration detainer on an alien and the quantum of evidence that must be presented to BICE in order to have the agency act on such a request. BICE believes that discussion on this document will result in a smoother more efficient system.

QUESTION:

B. What steps have you taken to ensure that BICE immigration attorneys have access to information in a prompt manner from the FBI or other federal, state, or local law enforcement agencies that seek to hold individuals on immigration violations in connection with the September 11 or other terrorism investigation?

RESPONSE: See answer A above.

2. Since September 11, the Justice Department and now the Homeland Security Department have placed increased emphasis on removing persons who are unlawfully present in the U.S. The September 11 attacks were a tragic reminder that the federal government must do more to secure our borders and prevent future terrorist attacks. The aggressive enforcement of the immigration laws post-September 11, however, appears to target mostly Arab and Muslim males, not based on evidence of criminal activity but simply because they share the same race, ethnicity,

or religion as the September 11 hijackers. I am especially concerned because the administration's policies may target those Arabs and Muslims whom we need in the fight against terrorism here at home and who are most likely to be open to learning about and promoting our values in the Muslim world – Arab and Muslim students, businessmen, and other visitors who have an interest in learning about America and doing business with us.

QUESTION:

A. How do you respond to concerns that increased enforcement of the immigration laws has resulted in the selective enforcement of the laws with respect to persons who are nationals of predominantly Arab or Muslim nations?

RESPONSE: BICE believes that the enforcement of the immigration laws in as uniform a manner as possible is its primary mission. BICE is committed to implementing programs based on rational and fact-based analysis and to enforcing the law fairly and equally against all persons in the US.

QUESTION:

B. How do you believe our nation's security needs should be met while at the same time respecting the flow of businesspeople, students, and other visitors to the US?

RESPONSE: Our nation's security depends on a healthy economic outlook as well as the country's ability to control the persons who visit our country. Recognizing this fact, BICE continues to work to create efficient and effective mechanisms, which will allow the flow of business people, students and other visitors to the US while at the same time permitting law enforcement action against those individuals who intend our nation harm.

3. In June 2003, the Department of Justice issued guidelines for all federal law enforcement agencies banning racial profiling.

QUESTION:

A. How do you plan to implement and train BICE agents in what these guidelines mean and how they should be applied?

RESPONSE: Immediately after receipt of the Department of Justice guidelines banning racial profiling the guidelines were distributed to BICE's principal field officers throughout the nation. Currently, BICE is developing a training program for the guidelines and it is anticipated that the training will be provided to our officers in the various field locations and to new officers during their training at the Federal Law Enforcement Training Center.

QUESTION:

B. What will be the avenue for redress for victims of racial profiling by BICE agents?

RESPONSE: As you may be aware, the Department of Homeland Security has an Inspector General that is responsible for oversight of all entities within DHS. Additionally, BICE has an

Internal Affairs Division, which is responsible for the investigation of all allegations of misconduct. Both of these entities have the responsibility to ensure that all BICE employees adhere to the policies of the agency. In addition, the statute provides for a Civil Rights Officer within DHS that has recently been filled. As such, victims of racial profiling may make complaints of such activity to any of these three entities, which will initiate an investigation of the complaint and recommend corrective action

QUESTION:

C. How do you believe the DOJ racial profiling guidelines apply to BICE law enforcement activities at ports of entry?

RESPONSE: There should be no difference in the application of guidelines in consideration of the location of law enforcement activity. Application of enforcement at ports of entry primarily falls within the responsibility of the Bureau of Customs and Border Protection (BCBP).

QUESTION:

D. How do you believe the DOJ racial profiling guidelines apply to BICE law enforcement activities in the interior of the U.S. (e.g., workplace inspections, any future domestic registration initiatives)?

RESPONSE: There should be no difference in the application of guidelines in consideration of the location of law enforcement activity. As such, the DOJ racial profiling guidelines apply to all law enforcement activity, regardless of the location.

QUESTION:

E. The DOJ racial profiling guidelines contain a broad exemption for national security or border integrity law enforcement decisions. (i) How do you believe this exemption would apply to BICE law enforcement activities at ports of entry? (ii) How do you believe this exemption would apply to BICE law enforcement activities in the interior of the U.S.?

RESPONSE: Application of enforcement at the border primarily falls within the responsibility of the Bureau of Customs and Border Protection (BCBP).

The exemption for national security or border integrity in the DOJ racial profiling guidelines must be utilized with care and discretion. We will go forward with this guidance in mind when applying any exemptions.

QUESTION:

F. As you know, then-U.S. Customs Service Commissioner Ray Kelly took constructive steps to address concerns about racial and ethnic profiling by Customs agents, including developing a policy for Customs agents that focused on suspicious behavior as the basis for searches and seizures and improving procedures for collecting data on searches and

seizures. Do you intend to continue to apply the policy on searches and seizures issued by then-Commissioner Kelly? If not, please explain why.

RESPONSE: To the extent that BICE agents will be involved in personal searches (inspection operations) at the border, the agency is currently reviewing the policy that was previously developed by former Customs Commissioner Kelly for its applicability to BICE. However, the vast majority of the personal searches conducted by BICE are contingent on an actual enforcement action, such as an arrest, and thus Mr. Kelly's policy would not be applicable. Rather, the primary entity affected would be BCBP.

QUESTION:

G. Do you intend to apply the Kelly policy to all BICE law enforcement agents, not only Customs agents? If not, please explain why.

RESPONSE: Any policy that is developed and implemented by BICE will be applicable to all of the various disciplines within the agency.

QUESTION:

H. How will the DOJ's racial profiling guidelines interface with the Kelly policy? Will the DOJ guidelines replace or supplement the Kelly policy?

RESPONSE: The DOJ racial profiling guidelines are binding on BICE. To the extent that BICE develops our own guidelines, former Customs Commissioner Kelly's policy will be considered in the development of BICE's formal racial profiling policy.

4. You have stated that the National Security Entry-Exit Registration System (NSEERS) has concluded and will be replaced by the new Visitor and Immigrant Status Indication Technology (VISIT) system.

QUESTION:

A. But you have also acknowledged that NSEERS registrants, almost all of whom were male visitors from predominantly Arab or Muslim nations, will continue to be required to leave the U.S. only from designated ports of entry. How long do you plan to continue this requirement that NSEERS registrants leave only through designated ports of entry?

RESPONSE: According to the current Federal Register notice, visitors who have been registered under the NSEERS program can only leave through a designated port of departure. A change in the Federal Register would have to be made. It is my understanding that such modifications for the Federal Register are under consideration.

QUESTION:

B. You have acknowledged that those persons who were required to register under NSEERS during the last year will continue to be required to comply with the 30-day and annual re-registration requirements. Under VISIT, will visitors born in or holding passports from the same countries designated by the NSEERS program be required to comply with the 30-day and annual re-registration requirements?

RESPONSE: The US-VISIT program office is under the jurisdiction of the Border and Transportation Security Directorate of the Department of Homeland Security. As NSEERS is brought under the US-VISIT aegis, the requirements may change in accordance with any national security concerns.

It is my understanding that the 30-day and annual re-registration requirements are currently undergoing review at DHS, and options are under consideration by BTS/DHS.

QUESTION:

C. Under VISIT, will visitors born in or holding passports from the same countries designated by the NSEERS program be required to comply with the requirement that they leave the U.S. only through designated ports of entry?

RESPONSE: See answer to question A above.

QUESTION:

D. Educating visitors and the affected immigrant communities about the NSEERS and VISIT programs and their requirements should be a part of the Department's efforts. Providing visitors with a flyer describing the program at the time of registration into VISIT or NSEERS is one step, but it may not be sufficient for people to understand the requirements and to convey the consequences of non-compliance. For example, an NSEERS registrant's failure to depart the U.S. from a designated port of entry can result in drastic consequences, such as being barred from re-entry to the U.S. What steps is BICE taking to educate NSEERS registrants and VISIT registrants about the requirements placed by these programs, so that registrants understand the programs' requirements?

RESPONSE:

It is my understanding that the US-VISIT program will be undertaking an ambitious outreach program as US-VISIT goes into effect. For example, US-VISIT may create a video to be shown on international flights, outlining US-VISIT requirements, the consequences of non-compliance, and how to complete US-VISIT registration. In addition, US-VISIT is working closely with the U.S. Department of State, the Transportation Security Administration, and other government and private agencies to ensure the fullest outreach.

While the US-VISIT program is under BTS, BICE will assist in every possible way to facilitate the public outreach and success of the US-VISIT program.

QUESTION:

E. I understand that you have decided to absorb employees previously designated to handle community relations into enforcement functions. How is BICE communicating with visitors and the immigrant communities about the ongoing NSEERS requirements and any VISIT requirements? Which individuals in the BICE structure have the role of community outreach?

RESPONSE: BICE recognizes the critical need for community relations. An effective community relations program serves to enhance the BICE mission by building goodwill and trust within immigrant communities. The BICE community relations program is ongoing and community relations staffs are located in Washington DC, Phoenix, Chicago, Dallas, San Antonio, and Atlanta.

US-VISIT is under the jurisdiction of the Border and Transportation Security (BTS) Directorate and BICE will assist in the implementation of a US-VISIT outreach strategy. It is my understanding that the outreach strategy will include media events, informational seminars, videos and a US-VISIT web page that will contain up-to-date information and announcements. US-VISIT will also be working closely with the U.S. Department of State, the Transportation Security Administration, foreign embassies, and other government and private agencies in order to maximize outreach efforts and increase community support.

**SENATOR DIANNE FEINSTEIN SUBMITTED QUESTIONS
FOR NOMINATION HEARING OF
MICHAEL GARCIA TO BE ASSISTANT SECRETARY
FOR THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT**

1. Removal of High-Risk Criminal Aliens

Last November, the Justice Department's Inspector General issued a report regarding the former Immigration and Naturalization Service's (INS) inability to remove aliens who are issued final orders of removal. According to the report, for example, the INS removed only 11 percent of the study sample of non-detained aliens ordered to leave the country. Among the potential high-risk groups of non-detained aliens within that sample, the INS had the following results:

- from countries that the U.S. Department of State identified as sponsors of terrorism (e.g., Cuba, Iran, Iraq, North Korea, Sudan and Syria)-only 6 percent were removed; and
- of those with criminal records-only 35 percent were removed.
- At the time, INS had only 1500 investigators (both in the U.S. and in overseas offices) to track down over 300,000 absconders.

QUESTION:
A. Since the issuance of this report and now that this responsibility has fallen to the new bureau, what assessments have you made in terms of getting the personnel you need to improve the agency's track record of locating and removing such criminal aliens with final orders of removal?

RESPONSE: I am committed to our fugitive operations program that is designed to address the problem of locating, apprehending, prosecuting and/or removing (deporting) aliens who have final orders of removal and have absconded. Our goal is to eliminate this backlog of fugitives and ensure that the number of aliens deported equals the number of final orders issued by the immigration courts in any given fiscal year.

As part of the supplemental funding of the PATRIOT ACT legislation, the former INS was authorized an enhancement of forty positions solely for the purpose of apprehending fugitive aliens. Those positions were distributed to seven specific district offices based on the location of the highest concentration of "special interest" cases. Single teams were deployed to Newark, Detroit, Miami, Chicago, Los Angeles, San Francisco and two teams were assigned to New York

A FY '03 enhancement will establish additional fugitive teams to be placed in Baltimore, Richmond, VA, Boston, Houston, Rock Island, IL, the Pacific Northwest (Seattle/Portland), and Southern California (SND/LOS). Additional resources will also be assigned to the Law Enforcement Support Center as the permanent core of the current Resolution Unit tasked with the case management of the thousands of criminal aliens being placed into NCIC.

In order to effectively enhance the process of locating fugitive aliens, BICE has developed several tools and initiatives. First and foremost, BICE has developed a new training program to provide the fugitive officers the expertise in locating fugitives by way of computer-based searches as well as through the use of other high technology surveillance equipment as well as standard investigative techniques.

BICE has also prioritized absconders posing the greatest public safety concerns and especially sexual offenders who prey on children. To increase awareness, BICE has developed its Most Wanted list of fugitive criminal aliens. It is maintained at www.bice.immigration.gov (click on the Most Wanted list icon). Law Enforcement Officers can click on the alien number on the poster for an individual wanted poster of the subject. Contacts with these individuals may be reported to the number on the poster (800-Be Alert or 800-232-5378). Fugitive officers are on call 24/7 to respond to these encounters. I am happy to report that we have since located and taken into custody 9 of the initial Top 10. We will continue to prioritize our efforts by targeting aliens convicted of crimes of violence and sexual predators who prey on children.

In addition, BICE has taken steps to participate in existing and developing new fugitive task forces. For this reason, BICE has developed an expansion program to include locating new teams in areas with existing and future US Marshals Service fugitive task forces. Each team supervisor is encouraged to reach out to local law enforcement entities for the purpose of creating a fugitive task force in their areas of operation as a mutual support tool. Several BICE offices nationwide have already incorporated this concept and have found it to be effective. It is anticipated that by the end of 2005, BICE will cover every major metropolitan area in the United States with a fugitive team.

QUESTION:
B. The Administration's FY04 budget was unclear in the amount of funding it was seeking for interior enforcement operations. Specifically, how many new investigators and special agents do you intend to bring on board in FY 04 to improve the ratio of immigration officers to the number of absconders? Right now, that ratio is 1500 officers to 300,000 absconders.

RESPONSE: The FY04 President's budget request for the Bureau of Immigration and Customs Enforcement (BICE) includes $16.2 million in the base Detention and Removals Program for Fugitive Operations; there are no enhancements requested. However, in FY03, an enhancement of $10 million and 69 positions was included for Fugitive Operations. The President's FY04 budget also included an enhancement of $35.7 million, 355 positions (225 Investigations, 22 Intelligence and 108 Legal Proceedings) for US VISIT. This enhancement will enable BICE to track down and prosecute overstays identified as part of the US VISIT departure control system.

2. Passport Theft

I was disturbed by a recent Washington Post article, which reported that according to the FBI, Osama bin Laden's al Qaeda network, whose operatives have used fraudulently obtained passports for international travel, has acquired stolen blank Saudi passports.

In its weekly intelligence bulletin to local law enforcement officials, the FBI said the unissued Saudi passports are authentic and have key security features that allow them to pass routine examination. It said past FBI intelligence bulletins have noted the use by Islamic extremists of fraudulent Pakistani passports and al Qaeda's use of altered or fraudulent Colombian identification cards and passports. The FBI said new Saudi passports first issued in early 2002 incorporated features designed to hinder alteration.
The Enhanced Border Security and Visa Entry Reform Act mandates the entry of information on previously lost or stolen passports, including the corresponding identification number, into existing data systems used by immigration inspectors to determine the admissibility of a foreign visitor.

QUESTIONS
A. Mr. Garcia, during your tenure as acting Assistant Secretary for the new Bureau of Immigration Enforcement, could you describe the status of the agency's efforts in timely entering data on stolen passports?

RESPONSE: This matter is within the jurisdiction of the Bureau of Customs and Border Protection (BCBP). However, see information in response to question below.

QUESTION:
B. Has the information regarding the stolen Saudi passports been entered into the IBIS data system? If so, what steps have you taken to ensure that all immigration inspectors are aware that individuals may be seeking to fraudulently enter the U.S. with these and other stolen passports? If not, why not?

RESPONSE: This matter is within the jurisdiction of the Bureau of Customs and Border Protection. However, from what I understand from BCBP, lookouts are created on all reported lost and stolen passports, including the referenced Saudi passports. These lookouts are established in the Treasury Enforcement Communication System (TECS) for all passports whenever a passport or document number is available for record input. Whenever a name is associated with the lost and stolen passport, the lookout information is also included in NAILS and IBIS. TECS, NAILS & IBIS are all used to screen arriving passengers and documents at time of entry.

On a daily basis, a National Targeting Center (NTC) report is issued including a summary of pertinent Intelligence reports and activity. Both the Daily NTC Reports and the underlying Intelligence reports are provided to front line Inspectors, and summaries are included in Field Musters, briefings for the front line Inspectors. The referenced stolen passports have been included in two NTC Reports and intelligence reports.

3. Foreign Students

In May, KCBS-TV, a local California television station sent an undercover investigator to the schools to inquire about their foreign student admission policies. At each school, the investigator explained to the designated school official that she had a friend or a relative who wished to obtain a student visa to enter the U.S. to work, but who probably would not be able to show up for classes-a clear violation of immigration law.

The KCBS-TV news footage illustrates a major type of problem the Bureau of Immigration and Customs Enforcement must more vigorously address: educational and exchange institutions that are established for the purpose of furthering an illicit enterprise.

QUESTIONS
A. In March 2003, the GAO recommended the establishment of a unit within the Bureau and in each of its field office responsible for analyzing SEVIS (foreign student tracking data) to identify non-compliant schools and possibly fraudulent activity. Have you established such a unit?

RESPONSE: Yes. On June 9, 2003, BICE established a Compliance Enforcement Unit (CEU) at the Headquarters level, responsible for coordinating nationwide compliance efforts in SEVIS and other programs. The CEU is responsible for enforcement initiatives related to SEVIS. One such initiative, directed towards identifying schools involved in fraudulent activity, utilizes the data within SEVIS to detect anomalies that would be indicators of illegal activity. Examples of such anomalies that would trigger further investigation are: proportionately high number of student violators, high number of student transfers after initial entry, and high number of I-20's (i.e. foreign students) issued relative to total enrollment. Leads identified through this initiative are forwarded to field offices for investigation. Additional resources will be devoted as funding becomes available.

QUESTION:
B. If so, are they separately staffed with full-time investigators whose sole responsibility is to certify and monitor these schools?

RESPONSE: As noted above, this function is located at BICE Headquarters level. As additional resources become available, additional personnel will be added.

QUESTION:
C. The GAO recommended that the agency establish procedures for using the foreign student tracking system to identify patterns of potential fraud and noncompliance and refer those instances for follow-up investigative and enforcement action. What steps have you taken to follow up with institutions exhibiting patterns of potential foreign student visa fraud? Do you believe you have the necessary number of full-time staff to commit to these types of investigations? If not, have you assessed how many additional full-time staff you need?

RESPONE: As described above, the CEU utilizes the data within SEVIS to detect anomalies that would be indicators of illegal activity. Examples of such anomalies that would trigger

further investigation are: proportionately high number of student violators, high number of student transfers after initial entry, and high number of I-20's (i.e. foreign students) issued relative to total enrollment. Leads identified through this initiative will be forwarded to field offices for investigation.

A student fee regulation is under consideration to address enforcement resource needs.

4. Foreign Student Visa Fraud

In September 2001, five officials at three California institutions were convicted of taking bribes, providing counterfeit education documents and fraudulently applying for more than 100 foreign student visas. I forward this information to the INS and to date, it is unclear what steps the INS took to find and deport the foreign nationals involved in this scheme. Nor is it clear that the agency further investigated these schools, particularly during the certification process to determine whether the schools had taken sufficient ameliorative actions to prevent such infractions from occurring again.

QUESTION:
A. During your tenure as Commissioner of the INS and, presently, as the acting Assistant Security for the Bureau of Immigration and Customs Enforcement, please describe the steps your agency is taking to exercise oversight over legitimate educational institutions that may have within them individuals willing to take a bribe and engage in fraudulent conduct to facilitate an alien's illegitimate entry into the United States.

RESPONSE: SEVIS has an audit trail feature that can identify the school official responsible for issuing a SEVIS document in a suspected transaction. This audit trail feature in conjunction with anomalies identified within the SEVIS data would tend to provide sufficient lead information from which to predicate an investigation. The individuals involved in the illicit activity, and not the institution, would be the focus of the investigation.

QUESTION:
B. Have you conducted spot checks on the institutions who are currently enrolled in the SEVIS (foreign student tracking) program, with a prior history of fraud or noncompliance with the rules of the program? If not, do you plan to conduct them?

RESPONSE: As schools enrolled in SEVIS, DHS conducted a review process, including on-site investigations and review of each school's evidentiary documentation for continued admittance of F and M students. In that SEVIS certification process, the total number of approved schools on record has been reduced from 74,000 to 5,600.

QUESTION:
C. In the past year, how many schools has your agency identified and shut down because they exhibited a pattern of engaging in fraudulent visa operations.

RESPONSE: Although the agency has not shut down any schools, we believe that regulatory requirements and the on-site review process may have deterred schools of questionable legitimacy from even applying for approval.

In addition, several schools that applied in SEVIS for certification were denied (based on the on-site review of the school, they were determined to be ineligible because they did not meet the regulatory requirements to admit foreign students).

Finally, there are schools that have applied for certification but have not been approved pending on-going BICE investigations for possible fraudulent activity. The investigation of these schools, and the on-going monitoring of all SEVIS approved schools, is facilitated by the SEVIS certification process and availability of real time information in the system.

5. SEVIS - Foreign Student Tracking System

Educational institutions have expressed concern over the manner in which the foreign student tracking system is being implemented. In particular, the have raised the following concerns:

A. Technical glitches: School administrators have encountered numerous technical glitches as they attempt to comply with the electronic reporting requirements. For example, there have been occasions when University of California, Davis staff have input information for foreign students into the SEVIS tracking database. System indicates the information is complete and creates a "Creation Successful!" screen. However, hours or days later, the system indicates the student's information is only in "draft" form in the system, and if they don't catch it, the individual would not be in the system and would not be eligible to obtain a visa, apply for change of status, etc. This requires the university officials to go back and double and triple check the government system's work.

B. SEVIS documents not readable at ports of entry: Another serious concern is that SEVIS-issued immigration papers still cannot be read electronically at ports of entry, thus, legitimate students are being subjected to interrogations that are usually reserved for persons suspected of unlawful entry or posing a security risk.

C. SEVIS Help Desk: Schools have complained that SEVIS help desk staff, although courteous and polite, have been largely unhelpful in assisting school administrators in troubleshooting technical glitches in the program or answering specific questions regarding immigration regulations.

QUESTION: What specific steps have you taken to address each of these concerns raised by the educational institutions?

RESPONSE: Technical glitches: There have been some problems detected in the SEVIS application. BICE has been working aggressively to resolve all such issues and have been in

constant communication with the educational associations and institutions. We have a weekly teleconference with educational organizations and schools, and the Department of State also participates. Regarding the specific problem outlined above with the University of California, we are unaware of this specific issue but will contact the school to obtain additional information and find a solution.

SEVIS documents not readable at ports of entry: Paper 1-20 forms and the barcode on the form is not a key element of the process. Foreign students and exchange visitors are being placed into secondary inspection by the Bureau of Customs and Border Protection (BCBP) so that Inspectors can access SEVIS directly to input entry information. This is an interim process as the former Entry/Exit new IBIS class-of-admission screens are deployed (currently deployed at 5 air Ports of Entry) where the automated IBIS/APIS interface is sending electronic entry info directly to SEVIS. I am unaware that students are being subjected to "interrogations" in Secondary beyond what they would likely be asked in Primary, unless the Inspector feels further questioning is appropriate.

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.

6. Foreign Student Tracking System

Some schools have complained that the staff originally assigned to SEVIS have been moved to the section of the Department of Homeland Security (Bureau of Citizenship and Immigration Services), which is not where the SEVIS tracking system is being managed (rather, it is located within the Bureau of Immigration and Customs Enforcement). This means new staff will have a lack of understanding and history about how the system works. They also have expressed concern that they have been unable to meet with you to discuss some of the problems they have been experiencing with the system.

QUESTION:
A. Given these concerns, please explain what you are doing to ensure that appropriately trained staff are assigned full-time to the SEVIS program? How many staff are currently assigned now?

RESPONSE: A transition period existed between March 1 and June 1, 2003, for the SEVIS program to be transferred by BCIS to BICE. Subject matter experts from BCIS worked closely with BICE personnel to ensure a smooth transition and have made themselves available when needed since June. The BICE technical team and the prime technology contractor will continue to serve to support BICE management of SEVIS. Currently, we have 3 FTE onboard and are in the process of filling eight vacancies resulting in 11 total positions. In the interim, we are using contract support personnel while we build the permanent staff. Of the three current FTE, one is the Program Director and the other two have IT background and in depth knowledge of the SEVIS program. Future hires will have proven expertise in the areas of programmatic planning, policy development and technology development/implementation.

QUESTION:
B. What specific steps have you taken to encourage better cooperation between BICE and the Bureau of Citizenship and Immigration Services?

RESPONSE: BICE and BCIS have developed a detailed transition plan of the Student and Exchange Visitor Program (SEVP), including the Student and Exchange Visitor Information System (SEVIS), to BICE. This plan calls for certain specific responsibilities to remain with BCIS as well as some that are the responsibility of BCBP. The SEVP program 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 assumes responsibility for policy and program development, school certification required for access to SEVIS, the on-going 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 is responsible for enforcement actions against individual students and exchange visitors who should violate their status.

BCIS retains 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 also retains responsibility for change of status applications submitted by potential exchange visitors. BCIS will carry out these responsibilities using policy and guidance developed by BICE.

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.

7. <u>Tracking Financial Records of Foreign Students</u>

Please describe the procedures, if any, currently in place to require BICE personnel to cross-check the records of prospective and existing foreign student records with the Financial Crimes Enforcement Network (FinCEN) within the Department of Treasury to ascertain a foreign student's source of funding and to flag an account or institutions with possible links to illicit or terrorist-related financial transactions.

QUESTION: If there are no such procedures, would you agree that such checks should be undertaken by the Bureau?

RESPONSE: At present, the BICE Compliance Enforcement Unit vets potential SEVIS violators through law enforcement, immigration, and consumer databases. BICE is currently working with the Foreign Terrorist Tracking Task Force to expand the number of SEVIS

students screened for potential ties to terrorism or other illegal activity. Currently these systems have the capability to identify persons and institutions under investigation for illicit money transactions.

The BICE Compliance Enforcement Unit is presently working with the BICE Financial Crimes Division and the BICE Office of Intelligence to develop a comprehensive screening process designed to identify possible links to illicit or terrorist related funding or transactions.

8. Interior Enforcement

In 1999, the INS launched an interior enforcement strategy designed to deter illegal immigration, prevent immigration-related crimes, and remove those illegally in the United States. Last year, the General Accounting Office (GAO) reported that the INS could do a better job of using its limited interior enforcement resources to implement its strategy.

For example, the INS needed better data to determine staff needs, reliable information technology to assist it with its overall strategic mission, clear and consistent guidelines and procedures for staff, and effective collaboration and coordination within the agency as well as with other agencies. GAO viewed these types of reforms as key to the agency's ability to fulfill its full potential.

QUESTION:
A. According to the GAO, staff shortages have contributed to the INS's inability to promptly identify and remove the majority of criminal aliens after they have served their sentences. How many full-time staff did your agency request in the FY04 budget to address these critical staff shortages?

RESPONSE: There are no additional Institutional Removal Program (IRP) resources requested in the President's FY04 budget. However, please see response to question 9 below for additional detail on the IRP.

QUESTION:
B. The GAO also reported that with respect to alien smuggling, the INS lacked field intelligence staff to collect and analyze information vital to the agency's ongoing investigations. How many staff are assigned full-time to intelligence-related duties? How are they allocated-do all districts within the bureau now have full-time intelligence staff?

RESPONSE: BICE recently reorganized its intelligence resources in a single unit. The new robust Office of Intelligence provides critical collection, analysis, and dissemination in support of not only immigration investigations, in support of BICE operational components. The primary entities providing intelligence support are the Field Intelligence Units (FIUs) located in six strategic locations throughout the United States. FIUs are located in New York City, Chicago, Tucson, Houston, Miami, and Los Angeles.

Each FIU has a defined area of responsibility that provides support to every BICE operational entity. There are 220 analysts, agents, and intelligence officers within the FIU organizational structure. The FIUs are directly responsible for field level intelligence analysis, and for tactical intelligence gathering in support of investigative and interdiction operations.

The FIUs provide intelligence support to investigative entities, but they are not the only BICE component that provides support of that type, the Intelligence Collection and Analysis Teams (ICATs) and intelligence analysts assigned within each Office of the Special Agent in Charge also provide that essential assistance.

For further discussion of strategy related to alien smuggling, see response to question 1 from Senator Grassley.

9. Institutional Hearing Program

According to the OIG, the INS had failed to interview nearly 20% of the inmates at state prison intake facilities, and this situation is worsening given the chronic vacancies in the immigration agent positions. In their report, OIG identified a total of $2.3 million in IRP-related detention costs, of which $1.1 million was attributable to failures in the Institutional Removal Program process within the INS's control.

QUESTIONS:

Mr. Garcia, now that the Institutional Removal Program is under your jurisdiction, please describe specific steps have you taken or do you intend to take to:

(1) determine the total foreign-born inmate population at the federal, state and county levels;

(2) commit the necessary staff and resources to collect this data; and

(3) strengthen the management of the program to ensure that criminal aliens who should be deported are not released back into the communities.

RESPONSE: BICE currently has federal, state, and local foreign-born prisoner/inmate population data that has been gathered from a variety of sources. For example, federal prison population is provided by the Federal Bureau of Prisons (BOP), while state and local information is reported by the Bureau of Justice Statistics (BJS) and is supplemented, where needed, by State Criminal Alien Assistance Program (SCAAP) data provided by the Bureau of Justice Assistance (BJA). The information regarding the state and local prisoner/inmate population, though useful in making estimates, does not tell the "whole story" since BJS only reports state and local information based on data gathered on June 30th and December 31st each year. This limited availability of prisoner/inmate population information, particularly at the local level, makes it impossible for BICE to ascertain the number of criminal aliens held at state and local facilities during a given year. Because of these limitations, BICE is in the process of awarding a contract,

which directs a contractor to analyze state and local foreign-born prisoner/inmate data over a period of time. This "detailed" information will then be used to justify future budget enhancements needed to expand IRP/ACAP operations into facilities that have the largest criminal alien populations.

BICE has recently made significant strides in strengthening the management of the IRP program. I have approved and fully support the Office of Detention and Removal's (DRO) phased transition plan that will provide a seamless transfer of IRP functions from the Investigations (INV) to the DRO program. The plan consists of 1) identification of all resources currently used to support IRP operations (completed), 2) taking management control of all Immigration Agent (IA) positions (in progress), 3) moving vacant IA positions to IRP sites identified as having the highest potential for foreign born inmates (in planning), 4) combining the IA and Detention Enforcement Officer (DEO) positions into the new Immigration Enforcement Agent position to create a more robust work force with greater career potential (in progress), 5) replacing current Special Agent (SA) positions with new IEA's as they complete training, 6) requesting additional IEA positions in the out years to staff new IRP sites, and 7) as discussed above, accurately identify the total Federal, State, and local IRP workload and develop enhancement requests to fully address operational needs.

I am confident that the current aggressive management of the IRP will address those critical operating issues that have plagued operations for a number of years. To address these issues BICE has additionally: 1) established an IRP management branch at Headquarters DRO; 2) created a new program element in the BICE's finance system to track IRP resources; and 3) is well underway in the procedure to reclassify the Immigration Agent and Detention Enforcement Officer (DEO) position. BICE is working with the Department of Justice to implement changes to SCAAP to require as a grant condition the full cooperation of state and local governments in BICE's efforts to process and deport incarcerated criminal aliens.

Furthermore, BICE has begun a 90-day IRP pilot program at New York City's Rikers Island Facility. This pilot will provide a 90 day snapshot to ascertain what resources are required to ensure that all foreign born inmates at the facility are identified and detainers placed as appropriate by BICE personnel during the inmate's confinement. The data from this pilot will be used to determine future resource requirements necessary to ensure a 100% interview rate of potential deportable aliens at similar urban correctional facilities.

**SENATOR CHARLES E. GRASSLEY SUBMITTED QUESTIONS
FOR NOMINATION HEARING OF
MICHAEL GARCIA TO BE ASSISTANT SECRETARY
FOR THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT**

1. QUESTION: I hope to hear from Mr. Garcia about how our border agents are doing to dismantle smuggling operations, and more importantly, what tools and resources are needed to continue this fight.

RESPONSE: BICE has taken a new approach to alien smuggling. This approach is best exemplified by our response to a recent – tragic – alien smuggling case in Victoria, Texas in which 19 persons died in the back of a tractor-trailer. In response, BICE dispatched agents trained in alien smuggling investigations as well as financial crimes investigators and assets from our Air and Marine Division. Additional resources were dedicated from BICE's new Intelligence Division. These new components of BICE, working together with the US Attorney's Office in Houston, succeeded in gathering evidence sufficient to charge 14 people with this heinous crime, including the alleged ringleader of the operation who was lured back into the United States. One three-year-old victim of the smugglers who had been separately transported to the U.S. by the same smugglers was rescued by BICE agents in an undercover operation. The US Attorney praised the BICE effort as an example of the new and more efficient way that BICE was approaching this criminal activity. We plan on building upon the success of the Victoria case in developing standard practices for our nationwide approach to anti-smuggling. This is one of my top priorities at BICE.

It is also worth noting that all anti-smuggling units, including those previously assigned to the Border Patrol, now fall under the operational control of BICE; this re-alignment addresses concerns previously expressed by the GAO with respect to separate chains of command for these anti-smuggling units.

I believe we must continue to develop a strong expertise in anti-smuggling but we must also find additional financial crimes resources to address the money laundering aspect of this organized criminal activity. We must also have dedicated intelligence assets accumulating and disseminating all relevant information on these organizations through channels accessible to our investigators.

2. QUESTION: I am also interested to know if the Bureau has outlined an interior enforcement strategy. I would like the Department of Homeland Security to develop and report to Congress on a comprehensive interior enforcement strategy to combat illegal immigration inside the United States. Without a plan, I'm afraid states like Iowa will be ignored by the Department and will be a refuge for terrorists.

RESPONSE: BICE in the process of developing a comprehensive interior enforcement strategy that takes full advantage of the tools and authorities now available within our agency.

This strategy will address all aspects of our enforcement authority and is being coordinated and driven through our reorganized headquarters structure. Through our four program divisions, BICE is taking a new and creative approach to our enforcement responsibilities in the interior, one that will prioritize the most egregious violations. We must also make the best use of our limited resources to ensure that we properly address all vulnerabilities to our homeland security that fall within our jurisdiction.

Presently, our priorities include alien smuggling, financial crimes, and strategic (export control) enforcement. BICE is also committed apprehending alien absconders, particularly those with violent criminal histories. In this regard, we recently launched an initiative aimed a prioritizing those individuals and have had considerable success with respect to apprehending sexual predators, with highest priority placed on those who prey on children. We also launched a top ten most wanted campaign for criminal alien absconders and I am pleased to report that 9 of those individuals have been apprehended.

3. QUESTION: Finally, I take Congressional oversight of border security very seriously. I plan to continue efforts to improve the way things are operated. I also plan to follow-up with the Department of Homeland Security, including the Bureau of Immigration and Customs Enforcement, so I would appreciate cooperation as we try to fix vulnerabilities. I hope to have assurances from Mr. Garcia that he'll do everything in his power in this endeavor to ensure the proper functioning of the Department.

RESPONSE: If confirmed, I will work closely with Congress to provide a level of enforcement the American people expect and deserve from the newly created agency.

**SENATOR EDWARD M. KENNEDY SUBMITTED QUESTIONS
FOR NOMINATION HEARING OF
MICHAEL GARCIA TO BE ASSISTANT SECRETARY
FOR THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT**

COORDINATION

1. QUESTION: Unfortunately, the Homeland Security Act divided immigration functions among three different bureaus of the new Department. How can we have a uniform immigration policy and accountability for immigration officials? What specific review and coordination procedures are you putting in place to make sure that the bureaus' policies and their application of laws are consistent?

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. Additionally, I have appointed an individual to serves as the BICE liaison to BCIS to maintain communication and offer a direct avenue to my office on any pertinent issues. There are also high-level working groups made up of BICE and BCIS representatives looking at specific issues.

Although immigration functions are divided among three different bureaus, they will still be coordinated by DHS. Differences in policies or application of the law that may arise will be coordinated at the Department level.

2. QUESTION: In your testimony before the Committee, you mentioned the high-level working groups and the liaison positions you have established to coordinate communication with BCIS and BCBP. You also mentioned your frequent informal meetings with Director Aguirre, whom you pass in the hallways. These high-level working groups, liaison positions, and informal meetings are helpful, I am sure. However, they do not alone constitute real coordination.

Can you describe in detail what kinds of coordination already exist at the local and national levels between the three bureaus? When people attempt enter, exit, or remain in the country at what points do BICE officials communicate with BCIS and BCBP officials? How do they share information? At what points in the policymaking process do senior officials share information and how?

RESPONSE: Coordination between the bureaus exists at the national level through the headquarters liaisons that meet daily to address, discuss and resolve a myriad of issues. Recently, for example, the BICE liaison worked with BCBP, as well as the Department of State, to resolve a time-sensitive request for parole. In another case, BICE and BCIS liaisons worked together to ensure the relief of deferred action was available to an individual seeking benefits. Memoranda of Understandings are being drafted to ensure each bureau has access to information contained in the databases of the three bureaus. At the local levels, BICE has named liaisons, located at ports-of-entry, who work together to resolve quickly issues arising in the field. Local

liaisons raise those issues that have nationwide implications to headquarters to ensure that uniform practices and procedures are adopted and implemented. In the case of an individual of interest to BICE who attempts to enter the country, bureau officials communicate pertinent information amongst themselves as soon as viable, information is available to identify the particular individual. Information is shared in person or via phone calls and electronic mail with the goal of conveying information quickly to protect the homeland. Senior officials hold regular leadership meetings in which policy matters are discussed.

3. QUESTION: With the thousands of immigration officials spread across the country reporting to three different bureaus, there is wide room for varied interpretation of immigration laws. In the past, varied interpretations have meant, for example, that asylum seekers in one region are almost always detained, while asylum seekers in another region are almost never detained. You mentioned that policy personnel in BICE and BCIS speak to each other, but there is no formal review by BICE of BCIS policies.

Can you describe in more detail what specific policies and procedures you, your liaisons, or your working groups will create to ensure that there is uniform decision-making between bureaus and appropriate use of prosecutorial discretion?

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, including the appropriate use of prosecutorial discretion. They will also advise their principals, who hold regular leadership meetings.

4. QUESTION: How will you deal with issues of benefits, such as deciding whether an individual is lawfully present, or determining whether an individual is eligible for asylum or adjustment of status, when you are detaining or seeking to remove the individual? How will you ensure that these actions are consistent with the benefit determinations made by the Bureau of Citizenship and Immigration Services?

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.

Deferred Action Status

In 1996 Congress passed immigration laws which erected new barriers to gaining permanent residence for many immigrants. Exceptions were made for immigrant victims of domestic violence. One of the exceptions gives them deferred action status so they can remain in the U.S. and work to become self-sufficient and escape their abusers. Deferred action involves an exercise of prosecutorial discretion, and it has traditionally been viewed as humanitarian relief.

5. QUESTION: Which bureau is responsible for these deferred action determinations?

RESPONSE: On June 30, 2003, Secretary Ridge delegated deferred action authority to BCIS and all deferred action determinations, as they relate to Violence Against Women Act applications, are being made by BCIS.

6. QUESTION: If this is the responsibility of BICE, how will you ensure that locating this power in your BICE as opposed to the BCIS will not undermine its humanitarian nature?

RESPONSE: Per the answer above, this is a responsibility of BCIS.

UNACCOMPANIED MINOR CHILDREN

The Homeland Security Act transferred issues relating to unaccompanied alien children from the Immigration and Naturalization Service to the Office of Refugee Resettlement, because that office has the expertise to work with these children. The Department of Homeland Security would focus on law enforcement functions, but obviously, these responsibilities overlap in some cases. In your testimony, you stated that the issue that has prevented the Department of Homeland Security and Office of Refugee Resettlement from negotiating a Memorandum of Understanding on their respective responsibilities in this area is transportation. As Senator Brownback and I described to you in our May 29 letter, we intended in the legislation regarding this issue that DHS would be responsible for the transportation of the children in question to their first placement or for repatriation. ORR would be responsible for all other transport, such as transporting placed children to their immigration hearings and to medical facilities or other facilities. ORR would also be responsible for all other post-arrest functions and all release decisions.

7. QUESTION: Can you provide specific details about the progress of the negotiations on this transportation issue? When and how do you expect to resolve the issue and finish the transfer of responsibilities to ORR?

RESPONSE: ORR has not shared any potential operational strategies with BICE. We continue to discuss these issues with ORR and my Director of Operations is now personally engaged in the issue.

In order to assist in the transfer of duties related to unaccompanied minors between BICE and ORR, BICE has ensured that all funds have transferred to ORR as required, transferred all Office of Juvenile Affairs employees as mandated, which assisted greatly with any training needs of ORR and has continued to perform nearly all related functions that were mandated to transfer since ORR will not assume these functions. Additionally, as I noted during the confirmation hearing, the welfare and safety of the children is our top priority.

DHS is still performing the vast majority of the operational functions including:

- Decisions on initial placements for juveniles;
- Transporting juveniles to facilities;
- Transporting juveniles to immigration hearings;
- Transporting juveniles to secondary facilities or special placements;
- Identifying sponsors for juveniles;
- Locating family members for juveniles;
- Performing records checks of potential sponsors prior to releasing the juvenile into their custody;
- Compiling and reviewing sponsor worksheets and sponsor identification information;
- Validating documents that are supplied by the sponsor proving relationship to the juvenile, identity, address, etc;
- Preparing release and/or transfer documents;
- Serving all documents on juveniles in custody to include pro-bono attorney lists and "notice of rights;"
- Preparing case summaries on juveniles in custody for ORR's review;
- Interviewing potential sponsors for juveniles;
- Responding to attorney requests for information;
- Informing juveniles of the status of their immigration case;
- Discussing potential sponsors with juveniles; and
- Interacting with juvenile facilities where problems arise resulting in juveniles having to be moved because of behavioral problems to include assaults.

Until the responsibilities are transferred, BICE will continue to perform the duties. The transition period was set to end on October 1, 2003. It was envisioned that BICE would continue to provide initial transportation duties after that date.

STATE AND LOCAL ENFORCEMENT OF IMMIGRATION LAWS

Last year, the Office of Legal Counsel of the Justice Department prepared a legal opinion authorizing the use of state and local law enforcement in pursuing undocumented aliens, but the Department has refused to make it public. It's a major change in long-standing immigration enforcement. It increases the risk of racial profiling and civil rights abuses against both non-citizens and citizens. It undermines the ability of police departments to work with immigrant communities, and deters many immigrants from reporting acts of domestic violence and other violent crime. For these reasons, police chiefs and police associations across the country have come out against this policy.

8. QUESTION: What effect will this new policy have on the relationship between law enforcement officers and immigrant communities? Won't it undermine the trust for immigrant communities to report crimes?

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. The INA sets forth a voluntary mechanism under Section 287(g) to allow state and local law enforcement to enter into an agreement with DHS to enforce certain aspects of immigration law.

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.

Further questions concerning the DOJ, Office of Legal Counsel decision should be addressed to the Department of Justice.

9. QUESTION: Large numbers of police officers are guardsmen and reservists who have been called up to serve in the war effort. Police departments are already stretched thin trying to fight crime. The Administration has drastically cut back on needed federal funds for police and first

responders. How can we ask them to take on new responsibilities for enforcing the immigration laws?

RESPONSE: As mentioned above, Section 287(g) is a voluntary agreement that local law enforcement can opt to enter into to enforce provisions of immigrations law. As first responders, however, state and local law enforcement can assist us in finding criminal aliens, absconders, frequent violators, etc. when they encounter such individuals during their routine operations.

SPECIAL REGISTRATION (NSEERS) PROGRAM

The National Security Entry-Exit Registration System required Muslim and Arab visa holders who are students, workers, researchers, and tourists to be fingerprinted, photographed and questioned. As I mentioned in the hearing, I am extremely concerned that targeting persons based on their national origin, rather than specific evidence of criminal activity, is neither an effective use of resources nor a fair policy in a country that values equality under the law.

10. QUESTION: What effect does the targeting of nationals from Arab and Muslim countries have on those Arabs and Muslims whose cooperation we now need more than ever? Can you explain in detail the outreach work that you mentioned in the hearing?

RESPONSE: As I noted at the confirmation hearing, appropriate outreach is a critical part of addressing concerns of affected communities facing this new procedure. INS was required to implement NSEERS requirements within a short timeframe. As a result, INS community outreach staff conducted limited proactive work with Arab and Muslim communities. Once NSEERS was implemented in September 2002, INS community relations officers located throughout the United States worked tirelessly to ally fears within affected Arab and Muslim communities that not everybody within these communities was a "target" and to dispel misinformation relating to NSEERS.

The intent of INS community relations efforts was to build goodwill and trust within affected communities and to encourage compliance with NSEERS requirements. Thousands of presentations, forums, informational training sessions, and town hall meetings were conducted by community relations officers in support of these effort in 2002 and continuing into 2003. Community Relations officers also served as advocates, within INS and now within BICE, for these affected communities and for foreign embassies/ consulates whose constituents were impacted by NSEERS.

Currently, the BICE Community Relations Staff continues to cultivate relationships with Arab and Muslim communities. For example, the Washington DC Community Relations staff recently participated in the national American-Arab Anti-Discrimination Committee Conference. The BICE Community Relations Staff also continues to work with Arab/Muslim groups to eliminate misunderstandings relating to NSEERS late registrants and NSEERS waivers.

11. QUESTION: Does BICE plan to continue any current policies or implement new ones that target Arabs and Muslims or natives of Arab and Muslim communities for extra scrutiny based solely on their race, religion, or national origin? If so, can you please describe the policy and why this targeting is needed in order to protect national security?

RESPONSE: BICE does not discriminate against particular communities based on race, religion, or national origin. As part of the NSEERS program, intelligence was used in order to identify areas from which terrorist groups and their recruits were most likely to originate. Those countries with known al-Qaeda activity, other terrorist activity, and/or state-sponsored terrorism --including North Korea-- formed the basis for creating the list of countries covered under the NSEERS program.

In fact, since the implementation of NSEERS last September, individuals from more than 150 countries have registered.

DETENTION

OIG Report: Last month, the Office of the Inspector General in the Justice Department released a report on the treatment of September 11 detainees that found significant problems in the way the detainees were handled. The Department of Justice used terrorism as an excuse to adopt harsh tactics that trampled the rights and liberties of immigrants. Their detention is now the responsibility of your Bureau.

12. QUESTION: What steps is the Bureau taking to see that the problems found by the report are corrected? Will detainees be able to contact their families and consult with attorneys?

RESPONSE: BICE has drafted a new detention standard regarding staff communications and visitations that is currently in the clearance process. This standard requires that Detention and Removal personnel visit on a weekly basis each detainee housed at a Service Processing Center, contract facility, and/or BOP facility. Officers must also review any and all special housing arrangements affecting BICE detainees within these facilities (special housing is a term analogous to the SDUs). This complements existing special management unit standards, which require notice to Officers in Charge when aliens have been placed in segregation for more than thirty days. The central goal of this new standard is to ensure detainees are housed in accordance with applicable classification standards. Finally, the standards include specific timeframes during which officers must respond to certain enumerated detainee requests.

With regard to detainees in DHS controlled facilities, all have access to counsel, telephone calls, and visitation privileges consistent with their classification. DHS does not control access provided to immigration detainees being held at Bureau of Prison (BOP) facilities.

Additionally, under the new BICE field structure, BICE Headquarters management officials have taken control of those field elements charged with completing Post Order Custody Reviews and have established a clear chain-of-command. BICE is confident these actions will result in greater accountability and responsiveness.

BICE is in the process preparing a final response to the IG report.

13. QUESTION: The report found that the INS raised serious and repeated concerns with senior Justice Department officials about the legality of the detention policy. But, Justice Officials ignored the concerns. If you have concerns about the legality of a DOJ policy that you have to carry out, how would you see that your concerns are considered and not ignored?

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), though, 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 binding on DHS. Should any questions arise regarding interpretation of those decisions, our Principal Legal Advisor would discuss with DOJ.

ALTERNATIVES TO DETENTION

Congress appropriated $3 million in the current year to be spent on alternatives to detention. The legislation expressly states that these funds "shall not be available for new or existing detention facilities." This means that the funds cannot be used for *alternative detention*, but rather must be used for *alternatives to detention* -- release programs, like the Vera Institute for Justice's Appearance Assistance program. In your answers submitted to the Governmental Affairs committee, you mentioned that these funds are being used to support programs that seem like various forms of detention, including the Family Residential Services and Female Residential Services.

14. QUESTION: Do you agree that alternatives to detention, rather than alternative detention, can be successful in assuring the appearance of detainees when the government requires them to be available?

RESPONSE: We cannot detain every alien charged with an immigration violation. To ensure that aliens appear and are available for hearings, BICE has embarked on two new initiatives – electronic monitoring and the intensive supervision appearance program (IASP). The pilot for electronic monitoring is up and running in one city and is being expanded to two others this fiscal year. IASP is in the procurement stages and will be initiated in eight cities. It is anticipated through the IASP that BICE will partner with industry and Non-Governmental Organizations to provide a spectrum of supervision tools to cover the variety of individual

circumstances to ensure appearance at hearings and for removal. Although these programs are in their initial phases, they have been thoroughly researched and will be continuously monitored to determine success by analyzing appearance rates at court proceedings.

15. QUESTION: Can you explain if and how the Family Residential Services and Female Residential Services qualify as "alternatives to detention", even though they require detention in secure residential facilities? Do you believe these program fulfill the requirements of the law?

RESPONSE: The purpose of both the Family Residential Services and Females Residential Services are to provide a program of minimum security residential and other services to aliens who are required by law to be held in the custody of BICE. These programs are designed to provide a staff-secure/soft detention 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. In FY 2002 Congress appropriated money for alternatives to detention. At the time, it is my understanding that INS believed that these family and female residential services met the Congressional intent. However, in FY 2003, Congress clarified the intended use of these appropriations by specifying that there were not to be used for any new or existing detention facilities including non-secure and or shelter care facilities. Therefore, these programs will no longer be funded from the alternatives to detention appropriation.

16. QUESTION: What release-based alternatives to detention do you intend to implement under this appropriation?

RESPONSE:

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.

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.

The two programs below are not "released-based" but are alternatives to traditional detention.

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 HQDRO. A solicitation for 3 new sites will be published in June 2003.

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

DETENTION, PAROLE, AND TREATMENT OF ASYLUM SEEKERS

17. QUESTION: In general, your bureau will primarily act as an internal enforcement agency. However, it will also come into contact with asylum seekers fleeing persecution and torture. Have you met with any asylum seekers who have been in detention? Have you visited jails and detention facilities where these asylum seekers are held?

RESPONSE: I have had the opportunity to visit two BICE detention facilities, the Krome Service Processing Center in Miami, FL and the Service Processing Center in El Paso, TX. I did not have the opportunity to meet with any asylum seekers being detained at either site.

18. QUESTION: What training will those who are in charge of the care and custody of asylum seeker be receiving to guarantee that asylum seekers' needs are met and understood?

Arriving asylum seekers will now interact with all three immigration bureaus within DHS. BCBP will handle inspections. BICE will oversee detention. BCIS will conduct credible fear interviews and oversee other asylum issues.

RESPONSE: BICE is committed to providing for the safe, secure and humane confinement of all persons detained in accordance with immigration laws, regardless of whether the person has applied for asylum or not. For example, all aliens in BICE detention have access to counsel, telephone calls, and visitation privileges. Thus, there is no specialized training provided regarding care and custody of asylum seekers.

19. QUESTION: As you may know, for many years the INS failed to maintain consistent or fair procedures for paroling asylum seekers. Some districts have detained asylum seekers even though they have shown a credible fear of persecution, pose no danger to the public, have family ties, and seem to clearly merit parole. I am concerned that these practices have continued under BICE. What specific policies and procedures are BICE and DHS putting in place to coordinate among the three immigration bureaus on asylum issues?

RESPONSE: BICE and DHS are in the process of creating a working group to focus specifically on the issue of asylum. This working group will combine policymakers as well as attorneys to ensure that asylum issues are addressed and coordinated in a manner that upholds our international treaty obligations, acts within the immigration and nationality act and at the same time incorporates the unique sensitivities of the asylum program.

20. QUESTION: I am concerned about the blanket detention of Haitian asylum seekers. Under this Department of Homeland Security policy, Haitian asylum seekers have been denied the chance to show in their individual cases that they merit release on parole. This is a discriminatory policy that treats Haitians unfairly simply because of their national origin. Is the Department of Homeland Security reassessing this policy? When will DHS and BICE begin giving Haitians meaningful access to fair parole procedures?

RESPONSE: DHS detention policy regarding aliens who arrive by sea outside a designated port of entry, and without proper documentation, was set forth in a Federal Register Notice on November 12, 2002. See 67 Fed. Reg. 68,924. The policy does not target a particular nationality, such as Haitians, but rather focuses on the means of arrival to the United States and the potential for mass migration posed by aliens who arrive by sea. As set forth in the Notice, aliens arriving by sea are subject to expedited removal proceedings and will normally be detained during such proceedings. The expedited removal process allows asylum-seekers who demonstrate a credible fear of persecution or torture ample opportunity to seek relief from removal before an immigration judge. Additionally, the Notice provides that during this process, aliens may be released, on a case-by-case basis, for humanitarian reasons. The purpose of this policy is to prevent loss of life by helping to deter foreign nationals from undertaking dangerous sea voyages to the United States. In addition, surges in illegal migration by sea, including potential mass migration, threaten national security by diverting valuable United States resources from counter-terrorism and homeland security responsibilities. Finally, the policy ensures the removal from the country of those not granted relief.

21. QUESTION: As you may know, for many years the INS failed to maintain consistent or fair procedures for paroling asylum seekers. Some districts have detained asylum seekers even

though they have shown a credible fear of persecution, pose no danger to the public, have family ties, and seem to clearly merit parole. I am concerned that these practices have continued under BICE. What specific steps are you and others in DHS taking to ensure that asylum seekers will have access to a fair and consistent parole process and that they are not needlessly detained at taxpayer expense?

RESPONSE: Asylum seekers are treated the same as all other aliens in determining whether they receive parole. Factors considered include whether they have a verifiable identities, ties to the community, flight risk and danger to the community. BICE strives to ensure that all aliens in BICE custody have access to a fair and consistent parole process.

22. QUESTION: What steps are you or others in DHS taking to assess whether DHS policies and practice with regard to detention, parole, and other asylum issues are in accord with US obligations to asylum seekers under U.S. and international law?

RESPONSE: DHS has reviewed its policies and practices with regard to detention of asylum seekers and believes that they are in accord with U.S. law and its obligations under international law. Detention of asylum seekers while the merits of their asylum claims are being determined is permitted for various reasons, such as when identity cannot be firmly established, when risk of flight is a concern, or when public safety issues are involved. Nevertheless, DHS is sensitive to this issue and in fact most asylum seekers who demonstrate a credible fear are released pending a determination on their claims.

23. QUESTION: INS had a statutory requirement to proved statistics on detention of asylum seekers (FY 1999 Omnibus Consolidated and Emergency Supplemental Appropriations Act, P.L. 105-277, §§ 903-904). It never complied with this requirement. What steps are BICE and DHS taking to comply with this statutory requirement?

RESPONSE: It is my understanding that the Office of Statistics within DHS is nearing completion of the compilation of data in order to comply with the reporting requirements. They have worked closely with the Executive Office for Immigration Review (EOIR) to obtain compatible data from EOIR systems to match with the BICE Deportable Alien Control System (DACS) information.

**SENATOR PATRICK LEAHY SUBMITTED QUESTIONS
FOR NOMINATION HEARING OF
MICHAEL GARCIA TO BE ASSISTANT SECRETARY
FOR THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT**

1. QUESTION: In discussing your answers to the Senate Governmental Committee's inquiry on the Texas plane incident, you stated at Tuesday's hearing that you "regret any confusion that was caused and the miscommunication surrounding that position, and I take responsibility for some of that confusion." What do you believe you did to contribute to the confusion and what steps do you think you should have taken to remedy the situation? Who else do you think is responsible for the miscommunication and contributed to the "confusion?"

RESPONSE: At all times in responding to questions from the Senate Governmental Affairs Committee, I was guided by a sincere desire not to in any way interfere with an ongoing criminal investigation, one of high sensitivity and one which I had referred to the IG. At no time did I intend to evade answers or to in any way challenge the authority of Congress to inquire into such matters. As I stated at the hearing, I responded based upon what I reasonably believed was the guidance from the Office of the Inspector General and counsel. I regret any confusion that may have occurred and commit myself to better communications with the OIG and to a more fulsome understanding of the rules and policies governing the referral process. In the future, I would work with the OIG and the General Counsel's office to ensure direct communication among the interested parties.

2. QUESTION: I am sure that the shift from the Department of Justice and other agencies to DHS has caused many BICE employees around the nation to feel uncertain about their futures with DHS. In your acting position, how are you ensuring that morale and productivity do not suffer as a result?

RESPONSE: I have done extensive outreach to BICE employees including holding town halls meetings, sending out regular updates and announcements via internal e-mail. Additionally, I plan to visit every BICE office, including the LESC, by the end of the year. I have instructed my program managers to keep their staffs both in the field and at Headquarters informed of transition-related developments. The program directors accompany me on field visits.

3. QUESTION: Will the reorganization lead to a decrease in the number of BICE employees in Vermont?

RESPONSE: No. In fact, resources permitting, I envision an increase in Vermont staff via the LESC.

4. QUESTION: What steps would you take to keep employees informed about any changes in their responsibilities or agency structure?

RESPONSE: See answer to Question 2 above.

5. QUESTION: The Inspector General report on the 9/11 detainees recommends that DHS work closely with the Justice Department and the FBI to develop a better way of sharing information, and enter into a Memorandum of Understanding ("MOU") with DOJ and the FBI to "formalize policies, responsibilities, and procedures for managing a national emergency that involves alien detainees." What steps have you or others at DHS taken, or do you plan to take, to improve information-sharing and develop such an MOU?

RESPONSE: Currently, a draft MOU is being developed and circulated for concurrence. We look forward to working with our DOJ colleagues on finalizing and implementing the agreement.

QUESTION:

A. The report also recommends that DHS document when a charging decision against an alien is made, so we can better determine how frequently aliens are held for more than 48 hours without any charge. Do you agree with this recommendation? If so, what are the plans for implementing it?

RESPONSE: BICE is committed to ensuring its officers make determinations to charge an individual as expeditiously as possible and, in fact, consistently strives to serve Notices to Appear (NTAs) in 48 hours. At the same time, BICE underscores the necessity to have flexibility in the process based on individual case circumstances as permitted by the regulations. To this effect, BICE will begin noting in the file the time when a decision to charge has been reached to document our compliance with this requirement. Further, when additional time is required, notations will be made citing the circumstances necessitating the additional time. Procedures and a form to annotate this determination will be developed and disseminated to the field. BICE legal counsel will prepare these implementing procedures.

QUESTION:

B. Do you plan to implement the recommendation that DHS specify the "extraordinary circumstances" that justify holding an alien for more than 48 hours without charge, and what the "reasonable period of time" beyond 48 hours should be? How?

RESPONSE: See answer above to question 5 (A).

6. QUESTION: Adjudicators at the Vermont Service Center in St. Albans frequently will find that an application they are reviewing is fraudulent, and in some cases will discover a pattern that implicates a single person who is obviously promoting immigration fraud. In the past, it has been very difficult to get Federal prosecutors to bring cases against these alleged wrongdoers.

The U.S. Attorney's office in Vermont, however, has expressed an interest in bringing some of these cases – would you and your inspectors work with the Service Center and with prosecutors in Vermont to make such prosecutions possible?

RESPONSE: Yes. BICE Investigations is presently developing a Benefit Fraud Enforcement Initiative that will provide an enhanced Investigative presence to the Vermont Service Center. Special Agents will be tasked with conducting proactive investigative inquiries related to benefit fraud schemes and presenting for prosecution criminal wrongdoers.

**SENATOR JEFF SESSIONS SUBMITTED QUESTIONS
FOR NOMINATION HEARING OF
MICHAEL GARCIA TO BE ASSISTANT SECRETARY
FOR THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT**

1. STATE AND LOCAL POLICE:

Local police and state troopers often encounter illegal aliens on our streets and highways. Just this week, local police in Santa Clara, California apprehended one of the Top 10 "Most Wanted Fugitive Criminal Aliens" in the country - Datinder Singh Munder. Immigration officials went to Santa Clara a few weeks ago to look for Munder. When they couldn't find him, they asked local police to keep an eye out for him. Officer Kenia Soto recognized Munder while on duty and was able to make the arrest.

Last month in Alabama, state police were responsible for capturing an illegal alien smuggling millions of dollars worth of illegal drugs. On June 3, Alabama State Trooper Charlton Martin stopped a Chevrolet Malibu on I-65 near Auburn University. A drug-sniffing dog found 24 pounds of brown heroin. The car was occupied by Lucia Chavez-Flores, an illegal alien from El Salvador, who had already been deported once and was back in the U.S. with out permission. (Her A number was 077613864).

These are just a couple of examples of how local law enforcement agencies can be effective in the efforts to curb illegal immigration and apprehend criminal aliens.

Despite the proof that state and local police are invaluable tools in immigration enforcement, there remains a lack of cooperation between federal immigration officials and state and local police.

QUESTION:

A. Do you agree that state and local law enforcement should be utilized to the greatest extent practicable in aiding federal immigration enforcement officials? Please explain your answer in detail.

RESPONSE: To control illegal immigration, the Federal government must work with state and local law enforcement. Resources, applicable laws and policies control the extent to which state and local law enforcement can participate. In most areas of the United States, state and local law enforcement have formal or informal agreements to work with representatives of BICE.

State and local police are the first responders. Most law enforcement officers have access to the BICE Law Enforcement Support Center via the computer network of the National Law Enforcement Telecommunications System. A simple computer query can verify the immigration status of aliens encountered during routine enforcement operations. The response received can establish the legal or illegal status of the individual. BICE can then determine if an arrest or detention should be affected.

QUESTION

B. What is the stated policy when undocumented aliens are discovered during a routine state or local police investigation?

RESPONSE: Federal policy does not control referrals to BICE when an undocumented alien is encountered. In some jurisdictions, nothing will happen and the undocumented alien is never reported to BICE. In other areas, established relationships exist which will result in a query to the BICE Law Enforcement Support Center or a call to a local BICE enforcement office.

QUESTION:

C. What authority and current resources do BCIS and Bureau of Immigration & Customs Enforcement (BICE) have to address interior immigration enforcement?

RESPONSE: The Bureau of Immigration and Customs Enforcement has the duty and responsibility to enforce all immigration laws and regulations within the United States. There are less then 2,000 BICE Special Agents currently assigned to immigration enforcement duty. These officers are responsible for both administrative and criminal enforcement. As we are now one unified law enforcement Agency, with 5,500 special agents, additional investigative resources are available to assist as needed. BCIS resources are devoted to service-related functions.

QUESTION:

D. Do any current laws hinder BCIS or BICE's ability to cooperate with state and local law enforcement authorities?

RESPONSE: I am unaware of any federal laws that hinder such cooperation.

QUESTION:

E. How do you intend to address the lack of cooperation that exists between state and local law enforcement officers and immigration officials?

RESPONSE: Immigration law is complex so the first part must be education. State and local police need to be given instruction in immigration law and procedure. This will ensure that aliens legally in the United States are not unduly detained and those aliens who would break our laws are referred to BICE. Many of the local BICE offices have conducted training locally. BICE together with the International Chiefs of Police, has for the last ten years, presented throughout the country a two-day course entitled "Responding to Alien Crime". The BICE Forensic Documents Laboratory provides training throughout the world on document fraud and abuse. Recently, BICE Special Agents gave over six hundred members of the Alabama State Troopers classroom training on all aspects of immigration. This educational outreach by BICE

must be expanded so that every state and local officer will know what to do when encountering a foreign born individual.

Secondly, resource distribution must be addressed. Thirdly, the whole process of identification, apprehension, detention and removal must be evaluated. The process must become more efficient so that the resources available are best utilized. The time an alien is detained should be the absolute minimum. This can be done while insuring that all rights and legal obligations are preserved.

QUESTION:

F. Can you ensure state and local police that BICE will take custody of illegal aliens when contacted by state and local police?

RESPONSE: BICE enforcement resources in the interior are limited. Many areas of the United States are experiencing an unprecedented increase in the immigrant population. The apprehension, processing, and detention of illegal aliens are time and labor intensive. ICE continually seeks to improve its responsiveness to state and local enforcement authorities.

QUESTION:

G. In your hearing before the Governmental Affairs Committee last month and in your statement before the Judiciary Committee this week, you stated, "If confirmed I would bring to the task of leading this new law 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." Can we infer from your statement that this commitment will include cooperation with state and local police to apprehend all immigration violators?

RESPONSE: Yes, I believe cooperation with state and local law enforcement is essential to the mission of BICE.

2. NCIC:

The NCIC database is ingrained in law enforcement culture. It's a great enforcement tool, and is user-friendly to the police on the streets. It would be even more effective if the estimated 400,000 absconders, which include over 80,000 convicted criminal aliens, were included in the NCIC database.

QUESTION:

A. Will you commit to including all 400,000 absconders in the NCIC database and provide us with a timetable on when that might take place? What are the largest impediments to a swift entry timetable?

RESPONSE: All fugitives will be added to the National Crime Information Center (NCIC) system. Because these cases are administrative in nature, there was some concern regarding the entry of these types of cases into NCIC as well as the authority of local law enforcement agencies to apprehend these persons. In lieu of this, we are working on the development of a new "database" called the Immigrant Violator File (IVF). This file will work the same as the Wanted Persons File but is slightly less stringent in that the person does not have to be amenable to prosecution. However, there are strict guidelines established by the Department of Justice, Federal Bureau of Investigation and the Criminal Justice Information System Review Board that we must comply with.

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. Review of cases and entry of theses cases into NCIC is dependent on manpower and resources.

QUESTION:

B. Will you also commit to including all aliens who have received final deportation orders in the NCIC database? Within what kind of timetable could that information be listed?

RESPONSE: It may not be appropriate to enter all "final order" cases into NCIC as some individuals could be protected by existing laws, regulations and procedures. These types of cases include aliens granted Temporary Protected Status (TPS) and Deferred Enforced Departure.

QUESTION:

C. Do you intend to list more immigration violators on NCIC? After all of the absconders are listed, which are the next immigration violators that you intend to list on NCIC?

RESPONSE: Our plans to expand NCIC entries are detailed above.

3. GENERAL IMMIGRATION VIOLATIONS

There seems to be an attitude among many federal immigration and homeland security authorities that sneaking across the border, overstaying a visa, or working without authorization aren't serious offenses. But some seemingly minor offenses, such as illegal entry, are federal crimes - many are felony offenses. If these actions were vigorously prosecuted I believe we would take a large step in preventing subsequent immigration violations and crimes often

committed by these individuals, including working illegally, alien smuggling, and drug smuggling.

QUESTION:

A. Do you agree that we should treat such immigration violations as serious offenses that need to be enforced? Do you intend to fully enforce all of our immigration laws by prosecuting all immigration violations?

RESPONSE: Resources permitting, all violations of our immigration laws should be addressed. Given resource constraints within DHS as well as within DOJ, priority must be given to the most serious offenses. As resources increase, enforcement activities should see a corresponding increase.

QUESTION:

B. Would you agree that most illegal aliens involved in other dangerous federal crimes, such as drug smuggling and alien smuggling were first guilty of immigration violations?

RESPONSE: Most aliens become illegal aliens because they crossed our borders without inspection, used fraudulent documents or violated the terms of their legal entry.

QUESTION:

C. Does it follow that if these individuals had been prosecuted on their immigration violations, they might not have been in the country to participate in their subsequent crimes?

RESPONSE: Removal of immigration violators in most instances --barring illegal reentry-- prevents further opportunity for crimes to be committed in the U.S. for any who would do so.

QUESTION:

D. Do you believe all state, local and federal law enforcement entities are obligated to alert or notify BICE when, in the course of their routine law enforcement duties, they encounter individuals that are out of status with BICE or are guilty of criminal or civil immigration violations?

RESPONSE: Increased use of the Law Enforcement Support Center needs to be promoted. This will result in more immigration violators being apprehended as a result of being stopped or arrested by state and local officials.

4. PRIORITY PROGRAMS:

In early public statements regarding your goals for BICE, you prioritized three programs: 1) NSEERS (The National Security Exit Entry Registration System); 2) SEVIS (Student and Exchange Visitor Information System; and 3) the Absconder Initiative.

QUESTION:

A. What progress has been made in these programs since those early statements?

RESPONSE: There has been progress in the area of Fugitive Operations. Since March 1, 2003, the date that BICE was established, we have apprehended over 1,900 fugitives:

A recent operation, Operation Predator, targeted sexual offenders and resulted in the apprehension of more than one hundred fugitives.

Through a FY'03 enhancement of $10 million to "investigate and deport the more than 300,00 alien fugitives who have been ordered removed or deported from the United States but have failed to comply with those orders", we have created seventy new Detention and Removal (DRO) positions to accomplish the task. The positions will be used to establish permanent DRO staff at the LESC and to field an additional eight fugitive teams. Additionally, we have established a resident fugitive operations training course at the FLETC to train entire teams on the process of locating and apprehending fugitives.

Our criminal alien most wanted program has been a huge success. Of the original ten most wanted subjects, nine have been taken into custody. Regarding the tenth subject, we have credible information that he has fled the United States. Two cases were highlighted on America's Most Wanted with both fugitives being located

We are currently working with other agencies to expand our "most wanted" program. We are meeting with the Federal Protective Service to develop a way to compare people entering Federal Buildings against our fugitive database. In addition, we anticipate the placement of wanted posters in federal buildings throughout the United States.

Progress has also been made in the NSEERS and SEVIS programs since BICE was created. For example, within the Investigations Program, a Compliance Enforcement Unit (CEU) was created to handle the enforcement portions of NSEERS and SEVIS. Procedures for retrieval of lead data have been standardized, along with procedures for analysis of those leads and referring leads to the field for enforcement.

In particular with regard to SEVIS, a tremendous amount of progress has been made in just the last few weeks. A SEVIS Program Office with permanent full-time staff has now been established to oversee SEVIS policy development, training, outreach and strategic planning. The SEVIS Program Office also oversees the I-17 certification process that allows schools to access SEVIS and to admit foreign students. At the time BICE was created, the automated database, SEVIS, had issues with regard to data integrity, transfer of data, and reliability. Since then, BICE has aggressively instituted system modifications and upgrades to improve reliability

and correct the data integrity and data transfer issues. There is now increased staffing of the SEVIS help desk and a special e-mail address and 1-800 number were created to facilitate timely reporting of student violators who may pose a national security risk.

QUESTION:

B. Which of these programs will remain under your authority as part of BICE, and which programs will be directly under the Undersecretary for Border and Transportation Security, Asa Hutchinson? Please explain how the decision to maintain jurisdiction over certain programs and to relinquish jurisdiction over other programs was made. For the programs that remain under BICE, what do you see as the next step for each of these programs? What can Congress do to promote the efficiency and effectiveness of these programs?

RESPONSE: The SEVIS program and enforcement for NSEERS remain under BICE. For both SEVIS and NSEERS, the next steps are as twofold: 1) ensuring a standardized process for identification of violators and referral of leads to the field and 2) incorporation of data from these programs into the DHS/BTS US-VISIT program.

The SEVIS Program Office will also focus on updating and clarifying SEVIS policies and procedures, developing a web based training module, and expanded outreach and liaison with the educational and exchange program communities.

Support from Congress is critical to the continued success of these programs.

SUBMISSIONS FOR THE RECORD

Statement by Senator Charles Grassley
July 7, 2003

Today, we will also consider the nomination of Michael Garcia to be Assistant Secretary of the Bureau of Immigration and Customs Enforcement. Mr. Garcia faces many challenges in keeping illegal immigrants out of the United States – not only by safeguarding the border but also by enforcing our laws in the interior parts of our country.

Before serving as Acting Commissioner of our Immigration and Naturalization Service, Mr. Garcia served as Assistant Secretary of Commerce for Export Enforcement. In this role, he and his colleagues fought terrorists as they sought to obtain the tools and technology to launch attacks against our people. As Mr. Garcia has stated, our export enforcement officials have been the "gatekeepers of the technology that terrorists seek." Now, Mr. Garcia becomes a gatekeeper of more than 8,000 miles of border.

Mr. Garcia understands that intelligence is key to breaking the code of terrorists. It is rarely discussed, but we have immigration intelligence officers to collect and analyze information. This information must be communicated to our officers in the field as well as other offices that need such critical information to protect our homeland.

One way that this intelligence is used is to dismantle smuggling operations. The smuggling of human beings is not just a border issue. As we saw last October, 11 bodies were transported by rail from Mexico to Denison, Iowa. Just recently, 19 people died in Victoria, Texas, trying to make their dreams come true. I'm aware that many tragedies are often averted, and I appreciate the work of our border agents, but more will come as smuggling operations get more sophisticated.

I hope to hear from Mr. Garcia about how our border agents are doing to dismantle smuggling operations, and more importantly, what tools and resources are needed to continue this fight.

I am also interested to know if the Bureau has outlined an interior enforcement strategy. I would like the Department of Homeland Security to develop and report to Congress on a comprehensive interior enforcement strategy to combat illegal immigration inside the United States. Without a plan, I'm afraid states like Iowa will be ignored by the Department and will be a refuge for terrorists.

Finally, I take Congressional oversight of border security very seriously. I plan to continue efforts to improve the way things are operated. I also plan to follow-up with the Department of Homeland Security, including the Bureau of Immigration and Customs Enforcement, so I would appreciate cooperation as we try to fix vulnerabilities. I hope to have assurances from Mr. Garcia that he'll do everything in his power in this endeavor to ensure the proper functioning of the department.

A response to these three issues will be appreciated. I look forward to working with Mr. Garcia and wish him well.

News Release

JUDICIARY COMMITTEE

United States Senate • Senator Orrin Hatch, Chairman

July 8, 2003

Contact: Margarita Tapia, 202/224-5225

Statement of Chairman Orrin G. Hatch
Before the United States Senate Committee on the Judiciary
Hearing on the nominations of

MICHAEL J. GARCIA TO BE ASSISTANT SECRETARY OF HOMELAND SECURITY FOR THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT
and
JACK LANDMAN GOLDSMITH III TO BE ASSISTANT ATTORNEY GENERAL FOR THE OFFICE OF LEGAL COUNSEL, UNITED STATES DEPARTMENT OF JUSTICE

It is with great pleasure that I welcome two outstanding nominees to the Committee this afternoon.

Michael J. Garcia is the President's nominee for Assistant Secretary of Homeland Security for the Bureau of Immigration and Customs Enforcement, or B-I-C-E. Since March 1st of this year, the B-I-C-E has taken over the interior enforcement responsibilities previously handled by the former Immigration and Naturalization Service.

One of the most important areas over which this Committee has oversight is the protection of our national security through enforcement of our immigration laws. Since September 11, 2001, we as a nation came to the realization that we were indeed vulnerable to the evil designs of terrorists; terrorists who wish to harm us and take away our freedom and security. We have also learned that many terrorists who took thousands of innocent American lives actually penetrated our borders by abusing and violating our immigration laws. Now more than ever, we need to take immigration enforcement seriously.

For the past several months, Mr. Garcia has assumed the primary responsibility of protecting our national security through the strict and effective enforcement of our immigration laws. In December 2002, Mr. Garcia became the Acting Commissioner of the Immigration and Naturalization Service. On March 1, 2003, when the immigration enforcement functions of the INS transferred to the B-I-C-E, Mr. Garcia continued to function in the same critical role as Acting Assistant Homeland Security Secretary for the newly created bureau.

Mr. Garcia brings with him an impressive background in law enforcement. For most of his legal career, he was an Assistant U.S. Attorney in the Southern District of New York, where he successfully prosecuted the terrorists who were responsible for the first World Trade Center bombing and the bombing of the U.S. embassies abroad. In August 2001, he was confirmed by the senate as Assistant Secretary of Commerce for Export Enforcement. In that capacity, he led a law enforcement agency whose primary responsibilities included preventing the transfer of sensitive technology to terrorists or to countries that supported terrorism.

Mr. Garcia became our country's top immigration enforcement administrator at a most critical time in the history of immigration enforcement. Effective immigration enforcement has always been a difficult but crucial task. In addition, he has had to manage the transition of a significant portion of the INS, a 50-year-old and 36,000 employee agency, to the B-I-C-E, a newly created agency within a newly created department. Considering the enormity of the task especially considering all the challenges that INS faced historically, the transition is going as well as one can reasonably expect. I commend Mr. Garcia for his leadership in this process.

Mr. Garcia is also taking over immigration enforcement at a time when the war against terror is fought on the technological front. As the mandated by the USA PATRIOT Act and the Enhanced Border Security and Visa Reform Act, there will be greater data sharing among the various law enforcement agencies, as well as a more accurate tracking of non-immigrant visitors who are in our country. Consistent with congressional mandate, the Department of Homeland Security will begin implementing a new system called US-VISIT, which is an integration of the existing computerized databases. I and many others in this Committee believe that it is of paramount importance that immigration enforcement be fully transitioned from a paper driven system to an automated, state-of-the-art system. I implore Mr. Garcia to make this transition one of his top priorities at the B-I-C-E. I am confident in Mr. Garcia's leadership ability and trust that he will make this transition a smooth and efficient one.

Finally, I wish to emphasize that while we must do all we can to defend our country against future terrorist attacks, the recently released Justice Department Inspector General's report concerning the treatment of the 9/11 detainees includes a number of recommended reforms that I believe are worthy of serious consideration. Among other things, the IG recommends that the Department of Homeland Security, along with the Department of Justice, develop a crisis management plan that clearly identifies its duties should a similar national emergency ever occur. I look forward to hearing from Mr. Garcia about the steps the B-I-C-E and the Department of Homeland Security are taking to address the problems identified in the IG report.

In addition to Mr. Garcia, the Committee today has the pleasure of considering the nomination of Jack Goldsmith to head the Justice Department's Office of Legal Counsel. In this capacity, he will be charged with assisting the Attorney General in his function as legal advisor to the President and all the executive branch agencies.

The Office of Legal Counsel is a very important component of the Department of Justice. In addition to serving as, in effect, outside counsel for the other agencies of the executive branch, the Office of Legal Counsel also functions as general counsel for the Department itself. All Executive orders and proclamations proposed to be issued by the President are reviewed by the Office of Legal Counsel for form and legality, as are various other matters that require the President's formal approval. The Office of Legal Counsel reviews all proposed orders of the Attorney General and all regulations requiring the Attorney General's approval. The Office also is responsible for providing legal advice to the executive branch on all constitutional questions and reviewing pending legislation for constitutionality.

Mr. Goldsmith is an ideal choice for this position. He has an outstanding background, having graduated with highest honors from Washington and Lee University, as well as from Oxford and from Yale Law School. We often see nominees who have completed two judicial

clerkships, which is considered a particularly noteworthy feat. Mr. Goldsmith, however, went a step further and completed *three* clerkships: After clerking for Fourth Circuit Judge J. Harvie Wilkinson, he clerked for Supreme Court Justice Anthony M. Kennedy and for the Iran-U.S. Claims Tribunal in the Netherlands.

Mr. Goldsmith then entered private practice with the distinguished firm of Covington & Burling. In 1994, he turned to teaching, first as an Associate Professor at the University of Virginia School of Law, and in 1997 as a Professor at the University of Chicago Law School. Mr. Goldsmith has an outstanding record in the academic world. His activities as a law professor have been focused on teaching, scholarship and counseling students.

As a teacher, Professor Goldsmith has a broad spectrum of experience. Among the courses he has taught are Civil Procedure, Constitutional Law, Commercial Arbitration, Conflict of Laws, Foreign Affairs & the Constitution, Public International Law, and International Litigation.

Professor Goldsmith's scholarship is also quite impressive. He is a prolific writer, having co-authored two textbooks and numerous articles. The range of his scholarship is extraordinary. He has written on a variety of topics, including foreign relations, international law, human rights, and numerous Internet issues. He is well respected by his colleagues in the academic world. For example, Harvard professor Ryan Goodman describes his scholarship as "methodically rigorous, sharply reasoned, and sensitive to constitutional history and doctrine. It is no wonder that he is a leading, if not the preeminent, scholar in foreign affairs law."

In addition, beyond the respect he commands for his scholarship, those who work with and know Jack Goldsmith speak highly of his character and professionalism. I would note that many of his letters of support contain a statement to the effect that although the author may disagree with Mr. Goldsmith's views on particular topics, the author is nevertheless impressed with his integrity, graciousness, demeanor, ethics, devotion and qualifications. For example, in her letter, Anne-Marie Slaughter, Dean of Princeton University's Woodrow Wilson School of Public and International Affairs, wrote, "But even when I disagree, I admire the personal and professional integrity that characterizes all of his work. I am confident that Jack will make an outstanding Assistant Attorney General." Stanford professor Lawrence Lessig wrote a strong recommendation, noting that Mr. Goldsmith is a lawyer "who is serious and devoted to the law itself, and not to the law as a means to some political end."

Mr. Goldsmith is clearly a nominee who has the experience, capability and personal characteristics to lead the Office of Legal Counsel. Most recently, he has served as Special Counsel to the General Counsel of the Department of Defense, where he provided advice and guidance on various constitutional and international law issues. This experience has undoubtedly prepared him well to provide similar counsel to the Attorney General.

I congratulate both Mr. Goldsmith and Mr. Garcia on their nominations. I look forward to hearing from them.

# # #

from the office of

Senator Edward M. Kennedy

of Massachusetts

FOR IMMEDIATE RELEASE
July 8, 2003

CONTACT: Stephanie Cutter
(202) 224-2633

STATEMENT OF EDWARD M. KENNEDY AT THE NOMINATION HEARING FOR MICHAEL J. GARCIA

I want to commend Senator Chambliss for calling today's hearing on Mr. Garcia's nomination.

As we all know, the Department of Homeland Security faces many complex challenges in strengthening our borders. The Department needs a firm hand to deny entry to dangerous people and dangerous goods, but it also must extend a welcoming hand to the millions of legal immigrants who are essential to the nation's economy.

Immigration officers admit more than 500 million citizens, permanent residents, and visitors, students, and temporary workers each year. They're responsible for apprehending unlawful entrants, investigating fraud, enforcing employment sanctions, and removing criminal offenders. They also process hundreds of thousands of applications for citizenship, permanent residence, asylum and refugee status.

All of these enforcement and services responsibilities are spread out in three different bureaus of the new Department of Homeland Security, and they need to be carefully coordinated. As head of the Bureau of Immigration and Customs Enforcement, Mr. Garcia will be instrumental in influencing these policies.

Mr. Garcia has an impressive record of tracking down and prosecuting terrorists. During his 7 months managing the former INS and now BICE, his commitment to the enforcement mission of the Bureau has been clear.

As the recent report by the Inspector General of the Justice Department shows, however, there are "significant problems" with the way the Justice Department treated the September 11 detainees. Harsh security tactics often trampled the rights and liberties of the detainees. Immigration detention will now be the responsibility of Mr. Garcia in the Department of Homeland Security. We must make sure that the problems found by the Inspector General's report are corrected, so that detainees are able to consult with their families and attorneys and can seek any immigration relief available to them.

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Mr. Garcia will also have to work closely with the other immigration bureaus to see that their service and enforcement functions are closely coordinated, and avoid conflicting policies and interpretations of the law.

At his hearing before the Governmental Affairs Committee, Mr. Garcia spoke of his dedication to the missions of the Department and mentioned the use of high-level working groups and liaisons to coordinate communication among the three bureaus, but he gave few details about how individual agents of the bureaus would coordinate their work. We need to be sure that the service functions of our immigration laws are not lost in the reorganization that is taking place, and vulnerable groups, like asylum seekers, unaccompanied immigrant children, and victims of domestic violence are protected.

I look forward to Mr. Garcia's responses on these important issues.

We will also be hearing from Jack Landman Goldsmith who is nominated to be Assistant Attorney General of the Office of Legal Counsel in the Justice Department. I look forward to hearing Mr. Goldsmith's responses as well.

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Statement of
The Honorable Patrick Leahy
United States Senator
Vermont

July 8, 2003

PRINTABLE VERSION

Statement of Senator Patrick Leahy,
Senate Judiciary Committee
Nominations Hearing
July 8, 2003

Today, the Senate Judiciary Committee holds a hearing for the 8th and 9th Executive Branch nominees given hearings in the past six months, in addition to 12 circuit court nominees and 26 district court nominees who have been given hearings this year.

This rapid pace for hearings for both short-term and lifetime appointees represents a stark change from the pace of consideration of nominees by a Republican majority when a Democrat was in the White House. Today's hearing is scheduled back to back with a hearing tomorrow for five more district court nominees and another Executive Branch nominee whose paperwork was not even submitted until the Wednesday before the 4th of July.

I mention this because the Committee is moving at such a rapid pace that I am very concerned that the Senate's role as a check on the Executive Branch is being reduced to that of a rubber-stamp, no matter the concerns or issues raised about these nominees for powerful positions that affect the lives of millions of Americans.

The hearing today includes two nominees, for two very different positions, one in the Department of Homeland Security (DHS) and the other in the Department of Justice. Both of these important positions would warrant separate hearings if the Committee were truly interested in allowing Members an opportunity to fully explore the weighty responsibilities these nominees are being selected to exercise in these two Departments.

If confirmed, both nominees will be in a position to make initial interpretations of the legal rights of all Americans as well as immigrants, such as whether this Administration will allow individuals to have public hearings or whether their

fate will be decided by secretive tribunals behind closed doors.

Today marks the second confirmation hearing this committee has held for a DHS position. I do want to thank Chairman Hatch, Senator Kennedy and Senator Chambliss for working together and with me to seek and obtain unanimous consent that the nomination of Michael Garcia to lead the Bureau of Immigration and Customs Enforcement (BICE) be referred to the Judiciary Committee after consideration by the Government Affairs committee.
Immigration policy remains the responsibility of this committee, and oversight over the way the new powers of this new department are being used is very important.

Like me, Mr. Garcia is a former prosecutor.

As an Assistant United States Attorney, he prosecuted cases involving terrorism, immigration and document fraud, and was involved in several high-profile cases, including the trial of four defendants following the first World Trade Center Bombing in 1993, the trial of Ramzi Yousef, and the prosecution of four defendants following the 1998 bombings of U.S. Embassies in East Africa.

Shortly before 9-11, Mr. Garcia was appointed Assistant Secretary for Export Enforcement with the Department of Commerce and served there until December 2002, when he was appointed Acting Commissioner of the Immigration and Naturalization Service (INS). He has served as the acting Assistant Secretary of BICE since March 2003.

The Assistant Secretary of BICE is responsible for the enforcement of immigration and customs laws within the United States, as well as the protection of certain Federal buildings and air and marine interdiction. These are weighty responsibilities.

If confirmed, Mr. Garcia will also be responsible for a number of Vermonters who worked for the INS and for Customs before the transition to DHS. I have asked Undersecretary Asa Hutchinson and Eduardo Aguirre, the head of the Bureau of Citizenship and Immigration Services ("BCIS"), about their restructuring plans and the impact of those plans on Vermont employees.

They each have assured me that reorganization will make use of those workers and that Vermont will not suffer job losses as a result. Mr. Garcia, you will find that the Vermonters you inherited from the legacy INS offices in Vermont,

including the Eastern Regional and Administrative Centers, are some of the hardest working and most dedicated people in the country. I am confident that they will exceed your expectations.

I ask that you make sure they know what you expect of them, and that you keep them in the loop as you adopt reorganization plans.

In particular, I recently sent a detailed letter about the legacy of INS Detention and Removal (D&R) personnel who are based at the former INS Eastern Regional office.

I appreciate the quick follow-up by DHS staff on the issues raised in that letter but I do look forward to a more thorough reply from you. I also know you are well aware that Vermont is home to the Law Enforcement Support Center (LESC). This database is available 24 hours a day, 365 days a year, to provide information about criminal aliens to local, state and federal law enforcement officials. The center has become a national resource for federal and local law enforcement.
I look forward to working with you on integrating the LESC into the mission of the Homeland Security Department.

When Congress passed the Homeland Security Act, many of us made clear that as we divide immigration services and immigration enforcement, we need to ensure open and clear communication between the two due to the overlap between the agencies' responsibilities.
For example, both BICE and BCIS will play a significant role in the Student Exchange and Visitor Information System (SEVIS), which tracks foreign students in the United States. Although BICE will be primarily responsible for the program, BCIS will still adjudicate petitions from foreign students.

In addition to the need to work together on day-to-day concerns, it is important for both BICE and BCIS to be strong, and not have either enforcement or services become a DHS priority at the expense of the other. I look forward to hearing your thoughts about how services and enforcement can work together and that balance can be retained.

I understand from your staff that you have an ambitious plan to reduce the "absconder rate" of aliens who have been ordered removed from the country to zero within six years. Of course, a major reason that the absconder rate is currently so high is that we simply do not have room to house these aliens while they await removal. Solving that problem will take a tremendous dedication of resources, and I hope to hear today how you think those resources can be

provided.
In addition, because one of your responsibilities will be the detention and removal of unlawful aliens, I would be remiss not to mention the recent OIG report on the treatment of September 11 detainees. This report addresses the treatment many permanent residents and other aliens received in detention and the long delays in removing aliens who had final removal orders. I hope that the report is instructive for you, and that its recommendations will guide your actions in this area.
Finally, there is one other area of concern that has been brought to my attention which I hope you will address today. During your hearing before the Governmental Affairs Committee, you were asked about the role of BICE in the search for an airplane of a Texas legislator in May, while you were serving as Acting Assistant Secretary.

I and many Americans were troubled by the use of the resources and technology of the Department of Homeland Security for partisan political purposes, to track down Democratic state legislators who had left the state in protest of Republican plans to change the rules and boundaries for electing Members of Congress.

I must say that I am concerned about the discrepancy between the reasons you gave for refusing to answer questions asked of you by the Senate Governmental Affairs Committee and the response provided to the Committee by the Inspector General's office. I hope you can clarify this issue and discuss any steps you have taken to prevent your bureau's resources and power from being misused ever again to aid a partisan scheme. I look forward to your testimony.

I also would like to comment on some of the concerns raised by the record of the President's nominee to be the Assistant Attorney General, Jack Goldsmith III. Mr. Goldsmith is a law professor at the University of Virginia who clerked for Judge J. Harvie Wilkinson on the United States Court of Appeals for the Fourth Circuit and for Justice Anthony Kennedy on the Supreme Court.

In his writings on matters of international law and human rights, Professor Goldsmith has often taken a narrow view of human rights law and our international obligations. For example, Professor Goldsmith has written and advocated in opposition to precedents relating to the Alien Tort Claims Act (ATCA).

This may sound like an obscure area of the law but it has been an important tool to allow victims of torture and abuse to file claims against foreign governments, multi-national corporations, and torturers. For example, the ACTA has been relied upon to bring federal suits against notorious violators of human rights like war criminal Radovan Karadzic and the former prime minister of the Philippines,

Ferdinand Marcos, as well as banks and companies that profited from Nazi war crimes.
In his opposition to the ATCA, he has echoed the views of Robert Bork that this important federal statute should be limited to only those offenses against the law of nations that were in effect at the time it was enacted in 1789, such as piracy on the high seas. Such a narrow reading of the plain language of this federal law is troubling both in the context of human rights law and because of what such an approach bodes for his view of other laws affecting the rights of people in the United States and abroad.
This is important because if confirmed to lead the Justice Department's Office of Legal Counsel his primary responsibility will be to provide interpretations of the scope of people's rights and the government's power in many areas of law.

Professor Goldsmith has also taken a very narrow view of human rights law generally.

He has been a vocal supporter of the President's authority to try suspected terrorists by military tribunal, despite the concerns raised by many Americans about these practices and the inconsistent decisions of the Administration in bringing some cases in federal court while referring other similar cases to military tribunals, along with the Administration's decision to ignore the Geneva Convention on the treatment of prisoners of war.
Goldsmith has also been a vocal opponent of the International Criminal Court.

These are just a few of the concerns raised by Professor Goldsmith's writings. Members of the Senate have expressed other concerns about the veil of secrecy that has been drawn by Attorney General Ashcroft over the operations of the Office of Legal Counsel.

I have sent a letter to the Attorney General regarding this practice and I hope Professor Goldsmith will shed some light on it today. The Office of Legal Counsel and the Department of Justice, along with the Department of Homeland Security, face many challenges in the defense of our nation in these troubled times, but no one should forget that the defense of our nation includes the defense of the civil rights and civil liberties guaranteed to all Americans by our Constitution.
I hope that Mr. Garcia and Professor Goldsmith will be able to provide the Committee with some assurances about their commitment to following the requirements of our Constitution and interpreting the law fairly.

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STATEMENT TO THE JUDICIARY COMMITTEE ON THE NOMINATION OF JACK LANDMAN GOLDSMITH III TO SERVE AS ASSISTANT ATTORNEY GENERAL FOR THE OFFICE OF LEGAL COUNSEL
July 8, 2003

Chairman Hatch, Senator Leahy, and my other distinguished colleagues on the Senate's Judiciary Committee, I thank you for holding this confirmation hearing.

Today, I am pleased to introduce a Virginian, Jack Goldsmith, who has been nominated to serve as Assistant Attorney General for the Office of Legal Counsel within the Justice Department. He is joined today by his family, including his wife Leslie and his son Jack.

Mr. Goldsmith's background makes him highly qualified to serve in this position. He graduated Summa Cum Laude from

Washington & Lee University in 1984, and he earned his J.D. from Yale Law School in 1989. Mr. Goldsmith has earned other degrees from respected institutions such as Oxford University and the Hague Academy of International Law.

Subsequent to earning his law degree, Mr. Goldsmith served as a law clerk to Judge J. Harvie Wilkinson on the United States Court of Appeals for the Fourth Circuit. He also served as a law clerk for the Honorable Anthony Kennedy on the United States Supreme Court. Following his clerkships, he then practiced law in the Washington, DC law firm, Covington & Burling until 1994.

After practicing law in Washington, DC, he became a professor of law at the University of Chicago Law School.

From 2002 until earlier this year, he served as Special Counsel to the General Counsel within the Department of Defense. After which, Mr. Goldsmith returned to teaching law, and he currently is a professor of law at the University of Virginia School of Law.

Mr. Chairman, Jack Goldsmith is obviously a very accomplished American, and well qualified to serve as Assistant Attorney General for the Office of General Counsel. I am certain he will prove to be a strong asset for the Justice Department.

I am pleased to introduce him to the Committee, and I look forward to the Committee reporting his nomination favorably.

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