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CBP AND ICE: DOES THE CURRENT ORGANIZATIONAL STRUCTURE BEST SERVE U.S. HOMELAND SECURITY INTERESTS?

HEARING

BEFORE THE

SUBCOMMITTEE ON MANAGEMENT, INTEGRATION, AND OVERSIGHT

OF THE

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CBP AND ICE: DOES THE CURRENT ORGANIZATIONAL STRUCTURE BEST SERVE U.S. HOMELAND SECURITY INTERESTS?

Wednesday, March 9, 2005

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON MANAGEMENT,
INTEGRATION, AND OVERSIGHT,
COMMITTEE ON HOMELAND SECURITY,
Washington, D.C.

The subcommittee met, pursuant to call, at 10:05 a.m., in Room 2212, Rayburn House Office Building, Hon. Mike Rogers [chairman of the subcommittee] presiding.

Present: Representatives Rogers, Shays, Harris, Reichert, McCaul, Dent, Cox (Ex Officio), Meek, Jackson-Lee, Pascrell, Christensen and Thompson (Ex Officio).

Mr. ROGERS. I want to welcome all of you to this the inaugural meeting of the Homeland Security Committee's Subcommittee on Management, Integration, and Oversight; And I would also like to welcome our Ranking Member, Kendrick Meek of Florida, and Mr. Thompson of Mississippi to this committee. I know we are going to have a lot on our plates. It is going to be an interesting committee, and I look forward to the challenges we face.

It is going to be our responsibility to address the serious management challenges facing the Department of Homeland Security, and I must add that improving the management and operation of the Department is no small challenge, but we accept that challenge with a commitment to do what is best for our Nation.

The purpose of today's hearing will focus on one of the most important management challenges facing the Department and involves one of the most important functions, protecting our borders and enforcing our immigration and customs laws.

The Border and Transportation Security Directorate, or BTS, of the Department of Homeland Security is divided into two now separate bureaus, the U.S. Customs and Border Protection, or CBP, and the U.S. Immigration and Customs Enforcement, or ICE. In particular, we will explore whether the current Division of Border Security, within CBP, and Immigration and Customs investigations, within ICE, is the best way to structure these important functions or if the separation has caused more operational, administrative, and budgetary problems that negatively impact the Homeland Security missions of these agencies.

I believe that we are best served today by attempting to gain an understanding of the challenges facing these agencies, whether the

current organization is the best structure to face these challenges, and discussing possible solutions to the problems that we identify.

Shortly before the Department of Homeland Security officially opened its doors, the Administration used the reorganization authority provided to the Secretary of DHS in the Homeland Security Act to split up the Customs Service and the Bureau of Border Security and reconfigure them into two new bureaus within the BTS directorate: Customs and Border Protection, CBP, and Immigration and Customs Enforcement, or ICE. Essentially, the reorganization merged Customs and Immigration enforcement at the border into one agency, while separating out Customs and Immigration investigations into another agency. It is important to note that this was not a simple border security versus interior enforcement split, since ICE agents often operate at or near the borders and Border Patrol agents are not limited geographically to the borders.

As a result, CBP now consists of the Office of Border Patrol and the Office of Field Operations, the latter of which is staffed by INS inspectors, former Customs inspectors, and former Department of Agriculture inspectors. These CBP officers, as they are now called, are responsible for carrying out the duties and functions formerly carried out by these three separate agencies.

ICE is comprised of former INS investigators and former U.S. Customs investigators, who are referred to as ICE agents, and are responsible for the enforcement of both immigration and customs laws. ICE also contains the Office of Detention and Removal, the Office of Intelligence, the Federal Protection Service, and the Federal Air Marshals.

The issues at hand today—as with all reorganizations there will always be growing pains, but 2 years later the concerns with the current structure seem to be growing and not receding. Through the committee's oversight activities we have learned of several anecdotal examples of poor operational coordination between the Border Patrol and ICE's Office of Investigations that have or could have led to security or operational compromises.

In addition, we have heard of concerns that inspectors are not receiving investigative support as readily as before the reorganization and that reorganization may have created bureaucratic walls that impede effective and efficient communication and information sharing.

We have also learned of serious budgetary problems facing in particular ICE and the challenges that appear to be attributable to the inexact division of resources within INS when INS was divided in three separate parts: CPB, ICE, and the U.S. Citizenship and Immigration Service. ICE's budget shortfalls have forced ICE to impose hiring freezes and to release aliens that otherwise should be detained.

Today, we will start a dialogue on the future of CBP and ICE by examining the effects of the Administration's reorganization, both pros and cons, 2 years after its implementation. As we undertake this review, we must examine this issue in the larger context of the BTS Directorate and its role with respect to ensuring coordination and achievement of the missions of ICE and CBP, and we will also examine how a proposed new DHS regional field structure would impact upon operational efficiencies and what the effect of the De-

partment's new secretarial-level policy office will have upon the operations of these two bureaus.

We hope our witnesses today can provide some insight, not only into the challenges and concerns that exist within the current organization of CBP and ICE, but also some potential solutions. I thank them all for providing us with their testimony today.

At this time I would now recognize my friend and colleague from Florida, the Ranking Member, Mr. Meek, for any statements that he may have.

Mr. MEEK. Thank you very much, Mr. Chairman; and I think that you really framed the meaning for this meeting and also for the ongoing dialogue.

Mr. Chairman, I want to congratulate you on our first meeting and also the whole committee on becoming a standing committee here in this Congress. As you know, many of us were on the oversight committee, the Select Committee last year, and I think this is a step in the right direction for the protection of the homeland.

I also would like to thank those members of the Department of Homeland Security for all the hard work that they have been doing since the creation of the Department, and I can tell you that it was done in a way to get us to this point so that we can have a subcommittee like we are having now to review some of the functions of the Department.

As you know, today's subject will pretty much focus on CBP and ICE and seeing how we could possibly make the functions work better, but I am definitely looking forward to many of our witnesses that are here today and hearing their comments and also their findings.

Mr. Chairman, I just would pretty much like to just share some of the concerns that I have and would hopefully like to see some of the witnesses address or hear them address.

What do they think, as it relates to the Department as it is moving now and these two agencies and the reason why they were integrated in the first place, on the positive, the reason why it was done?

And, also, I think not necessarily negative, but how can we move towards a more creative functional agency if it was merged together? How would we deal with some of the issues of the upper echelon of the agency, in military talk, brass? How would that integrate itself together? And will it jeopardize the security of the homeland and the function of this enforcement arm of Department of Homeland Security?

We have a number of members here, Mr. Chairman, that I know that are going to have some insightful questions for our panel. I know our panel is quite large, so I will reserve the rest of my comments and enter it for the record so that we can have it on record for future meetings.

But I am honored to be here and pleased to be your ranking member on this committee. I know that we are going to do good work together, and I know that we are going to get out in the field, and we are going to see what these gentlemen are going to share with us this morning firsthand.

[The information follows:]

PREPARED OPENING STATEMENT OF MIKE ROGERS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF ALABAMA, AND CHAIRMAN, SUBCOMMITTEE ON MANAGEMENT, INTEGRATION AND OVERSIGHT

Today's hearing marks the inaugural hearing of the Subcommittee on Management, Integration and Oversight, which I am honored to chair. I want to thank Chairman Cox and Ranking Member Thompson for their leadership in establishing this Subcommittee, which will focus on improving the management and operations of the Department of Homeland Security—no small challenge. And I would also like to take this opportunity to welcome the Subcommittee Ranking Member, Mr. Meeks of Florida. I look forward to working with you and the other Members of this Committee in a bipartisan fashion to address the serious management challenges facing of one our Nation's most critical agencies.

Today's hearing will focus on one of those important management challenges—whether the two now-separate bureaus within the Border and Transportation Security Directorate (BTS) of the Department of Homeland Security—U.S. Customs and Border Protection or "CBP," and U.S. Immigration and Customs Enforcement or "ICE"—should be reorganized to enhance the homeland security mission. In particular, we will explore whether the current division of border security, within CBP, and immigration and customs investigations within ICE, has caused operational, administrative, and budgetary problems negatively impacting upon the homeland security missions of these agencies.

When Congress passed the Homeland Security Act of 2002 and created the Department of Homeland Security, it placed the responsibility for immigration inspections, investigations, detention, removal, and border patrol functions into one new Bureau of Border Security, within the Directorate of Border and Transportation Security, or BTS. Congress also transferred the functions of the Customs Service to DHS intact, as a stand-alone agency, into BTS. The Act also separated the immigration and alien services functions of the former INS from immigration enforcement, by creating a stand-alone agency within the Department called U.S. Citizenship and Immigration Services (USCIS).

Shortly before the Department officially opened its doors, however, the Administration used the reorganization authority provided to the Secretary of DHS in the Homeland Security Act to split up the Customs Service and the Bureau of Border Security, and reconfigure them into two new bureaus in the BTS Directorate: CBP and ICE. Essentially, the reorganization merged customs and immigration enforcement at the border into one agency, while separating out customs and immigration investigations into another agency. But it is not a simple border security vs. interior enforcement split, since ICE agents often operate at or near the borders, and Border Patrol agents are not limited geographically to the borders.

As a result, CBP now consists of the Office of Border Patrol and the Office of Field Operations—the latter of which is staffed by former INS inspectors, former Customs inspectors, and former Department of Agriculture inspectors. These "CBP Officers," as they are now all called, are responsible for carrying out the duties and functions formerly carried out by these three separate agencies.

ICE is comprised of former INS investigators and former U.S. Customs investigators, who are referred to as ICE agents, and are responsible for the enforcement of both immigration and customs laws. ICE also contains the Office of Detention and Removal, the Office of Intelligence, the Federal Protective Service and the Federal Air Marshals.

As with all reorganizations, there will always be growing pains. But two years later, the concerns with the current structure seem to be growing, not receding. Through this Committee's oversight activities, we have learned of several anecdotal examples of poor operational coordination between the Border Patrol and ICE's Office of Investigations that have or could have compromised important operations. We have heard concerns that inspectors are not receiving investigative support as readily as before the reorganization, and that the reorganization may have created bureaucratic walls that impede effective and efficient communication and information sharing.

We also have learned of serious budgetary problems facing ICE in particular, challenges that appear to be attributable to the inexact division of resources when INS was divided into three parts (CBP, ICE, and U.S. Citizenship and Immigration Services). ICE's budget shortfalls have forced ICE to impose hiring freezes and to release aliens that otherwise should be detained.

In light of these reported problems, I was encouraged last week when incoming Homeland Security Secretary, Michael Chertoff, indicated that the Department will begin "a comprehensive review" of its organization, operations, and policies, and that ". . . analysis of the threats and risks [posed to the United States by terrorists]

will drive the structure, operations, policies and missions of the department, and not the other way around."

Such a review is, indeed, necessary, and this Subcommittee should not jump to any particular conclusion about the optimal structure for CBP and ICE. Instead, we will start a dialogue today on the future of CBP and ICE by examining the effects of the Administration's reorganization—both the pros and cons—two years after its implementation. As we undertake this review, we must examine this issue in the larger context of the BTS Directorate, and its role with respect to ensuring the coordination and achievement of ICE and CBP's missions. And we also must examine how a proposed new DHS regional field structure would impact upon operational efficiencies, and what the effect of the Department's new, Secretarial-level policy office will be upon the operations of these two bureaus.

We hope our witnesses today can provide some insight not only into the challenges and concerns that exist with the current organization of CBP and ICE, but also as to some potential solutions. I thank them all for providing us with their testimony today.

At this time, I will now recognize the Ranking Member, Mr. Meeks, for any opening statement he may wish to make.

PREPARED STATEMENT OF THE HONORABLE KENDRICK MEEK, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF FLORIDA, AND RANKING MEMBER, SUBCOMMITTEE ON MANAGEMENT, INTEGRATION AND OVERSIGHT

Mr. Chairman, I would like to first congratulate you on being appointed chairman and I look forward to working with you throughout this term. I believe that the Management, Integration, and Oversight Subcommittee is one of the most important in that it oversees the Department of Homeland Security. On this, the first meeting of the subcommittee, I am eager to begin our work on ensuring that DHS is functioning at a level to best protect the American people.

I would also like to extend a warm welcome to the panelists.

Dr. Carafano—You and your colleague at the Center for Strategic & International Studies have written a very interesting report that helped move the current debate on DHS internal restructuring—specifically Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP). While many frontline officers and investigators have expressed concern about the current structure and the operational, communication and coordination problems between ICE and CBP, your paper has helped focus more Members of Congress on this issue. Thank you for that.

Mr. Klug—I really look forward to your testimony especially given your experiences in New York before and after 9/11. I would very much like an ICE agent's view on how the Department is working—and where and how it can be more effective.

Mr. Bonner—I welcome your testimony—I share a number of your concerns about the lack of sufficient funding for the Border Patrol.

Mr. Venturella, Mr. Cutler, and Mr. Callahan—I look forward to hearing your testimony. Thank you for taking the time to be with us today.

The mission of the Department of Homeland Security is vital—the difference between the success and failure of DHS are American lives. The reason we need DHS to succeed is just that simple. The mission of this particular subcommittee is to determine what problems prevent DHS from achieving its mission.

This is why I am delighted that the first hearing before this Management and Oversight Subcommittee is on a topic critical to our homeland security—determining whether the current structure of CBP and ICE—agencies charged with key border security functions—facilitates coordination, communication and information sharing between key border agencies.

Two years after its creation, we have an opportunity to evaluate whether the existing structure of Border and Transportation Security works. The DHS 2.0 report states that there may be too many layers of bureaucracy at DHS and recommends the merger of CBP and ICE. I am not convinced that creating an agency or moving boxes around on a chart alone secures America or our borders. A clear mission, the ability to coordinate operations and communicate effectively, sufficient staffing, access to relevant information and intelligence, access to needed technology—these will help our men and women secure our nation's borders.

Additionally, I think that it is critical that we have some coordination of the immigration function within the DHS. Who in DHS is responsible for national immigration policy? We know that every immigration benefit is connected to an enforcement action at our ports of entry or overseas, or at one of our Citizenship and Immigration Service offices within the United States. While the Homeland Security Act abolished the Immigration and Nationality Service and separated it into enforce-

ment and services bureaus, I am very concerned about the further separation of immigration enforcement into ICE and CBP. I hope that our panel will address that issue in their testimony.

Additionally, as you provide testimony I hope that you'll keep four questions in mind.

(1) What do you think was the basis for the Administration decision to integrate functions of the U.S. Customs Service and Bureau of Border Security and form CBP and ICE?

(2) What are the problems that were created by the current structure of CBP and ICE?

(3) Is it possible to resolve existing problems within the current structure or is it necessary to make structural changes?

(4) If structural change is necessary then what type of restructuring do you recommend?

I look forward to your testimony.

Mr. ROGERS. I agree. I do look forward to it, and we do intend to be a very active subcommittee and spend some time in the field. So we will be seeing a lot more of you folks in the future.

Before I recognize our next member, I would ask everybody or remind everybody that the rules of the full committee are the rules here and that all cell phones should be turned off or turned to the vibrate position, please.

With that, I now recognize the gentleman from Mississippi, the ranking member of the full committee, Mr. Thompson.

Mr. THOMPSON. Thank you very much, Chairman Rogers and Ranking Member Meek. I would like to welcome the witnesses also.

I think it is fair to say that all the Members of this committee want to hear what needs to be done to make America safer by improving enforcement and customs and immigration laws. That said, I am interested in finding out how we improve coordination between CBP officers, Border Patrol agents, and ICE special agents.

In case anyone doubts the need for better coordination, let me offer a few examples of the problems that are occurring all too frequently because of conflicts and miscommunication among BTS organizations.

ICE and the Border Patrol continue to fight over controlled deliveries. The lack of coordination has resulted in, at best, the jeopardizing of investigations and, at worst, danger to law enforcement personnel. At a northern point of entry, a Border Patrol agent stopped a vehicle, ran a computer check and discovered an active ICE investigation. The agent searched the vehicle, found automatic weapons and silencers and referred the case to DEA. The DEA, not the Border Patrol, subsequently notified ICE.

I could give you some other examples of a lack of coordination, Mr. Chairman, but I am sure the testimony will highlight it. I think it is clear that this subcommittee hearing is timely. It is important for the safety of this country as well as the men and women in uniform, and I look forward to the testimony.

Mr. ROGERS. Thank you, Mr. Thompson.

The Chair now recognizes the chairman of the full committee, our friend and colleague, Mr. Cox, from California.

Mr. COX. I want to thank you, Mr. Chairman; and let me begin by commending Chairman Rogers and Ranking Member Meek for your willingness to lead this critically important subcommittee.

Thank you also for holding today's hearing to examine the potential merger of two operational components of the Department of Homeland Security: Customs and Border Protection, or CBP, and

U.S. Immigration and Customs Enforcement, known as ICE. They are both responsible for immigration enforcement, but today they are doing that job separately.

I would also like to welcome and thank each of our distinguished witnesses for appearing before the subcommittee to discuss this important issue with us.

Our responsibility as Members of this committee requires us to conduct vigorous oversight and to regularly assess the direction and management of the Department of Homeland Security. Is the Department making acceptable progress towards integration of its operations? Is the Department optimally structured to achieve its core missions of preventing terrorism, protecting against terrorism, and being prepared to respond to acts of terrorism?

This subcommittee will take the lead in examining these issues. I look forward to working with Chairman Rogers, Ranking Member Meek, and the other members of this subcommittee as we explore such questions.

We created the Department of Homeland Security with the express purpose of enhancing the Nation's ability to prevent and to deal with terrorist acts. It was that overarching purpose that drove our decision to consolidate existing Federal agencies into a single new department. The main organizational task for the Department now is to realign the missions of those legacy agencies to more directly support our national Homeland Security efforts.

Today, we are investigating whether the Immigration and Naturalization Service and the U.S. Customs Service, both of which were transferred to DHS, have been reorganized in a way that is optimal for improving our immigration security efforts. The good news is that these immigration control agencies are now within the same department, and they have a clear and critical new mission: to prevent foreign terrorists and their weapons from entering the United States and to prevent those terrorists from having free reign within our country.

Abolishing the INS and moving its functions into this new department was meant to correct the fundamental problems that existed within the INS itself. The old INS had multiple and sometimes conflicting roles as provider of immigration services and enforcer of immigration laws. The Homeland Security Act abolished the INS and split immigration services from immigration enforcement.

But the Congress did not have the last word on the organization of Customs and Immigration enforcement functions within DHS. Utilizing its reorganization authority under the Homeland Security Act, the administration acted in January, 2003, to merge the Customs and Immigration border inspection and patrol functions, along with Agriculture inspection functions, into what is now CBP. In doing so, the Administration also created a new entity called ICE, which contains the Customs and Immigration enforcement agencies whose investigative responsibilities include crimes, as opposed to, for example, the inspection of cargo and people crossing the border.

Two years later, questions remain about whether DHS has organized itself and is managing its immigration enforcement and border security resources in the most efficient, sensible, and effective

manner. Anecdotal evidence suggests that the division of Customs and Immigration inspectors from their related investigative colleagues may be building administrative walls and hampering cooperation and information sharing between ICE and CBP in critical mission areas.

Some observers also have suggested that the distinction between the so-called interior enforcement activities of ICE and the so-called border security functions of CBP are artificial constructs that contribute to needless administrative overlaps, programmatic turf battles, mission gaps, and sometimes dangerous operational conflicts.

In addition, it appears that at least some of ICE's very troubling budget shortfalls over the last 2 fiscal years have been attributable to erroneous budget allocations that occurred upon division of CBP and ICE into two distinct components of the Border and Transportation Security Directorate.

In light of these concerns, we must ask ourselves whether the organizational structure currently in place is contributing to these problems and whether a merger or reallocation of responsibility may help to resolve them.

Ultimately, our goal is to see that immigration enforcement and border inspection activities operate within an organizational structure that provides for strong policy guidance and coordination, fair and efficient allocation of funding, and clearly-defined and seamless operational roles. It is also critical that we fully fund the authorized levels of both Border Patrol and Immigration Enforcement agents.

As the committee moves toward the development of comprehensive reauthorization legislation for the Department, I anticipate that our findings in this hearing, and others to follow, will play an important role in determining the path ahead. I look forward to an honest exchange of ideas on this issue as we explore the best way to protect our Nation from those who would do us harm.

PREPARED OPENING STATEMENT OF THE HONORABLE CHRISTOPHER COX, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF CALIFORNIA, AND CHAIRMAN, COMMITTEE ON HOMELAND SECURITY

Thank you, Mr. Chairman. Let me begin by commending Chairman Rogers and Ranking Member Meek for their willingness to lead this critically important Subcommittee. Thank you also for holding today's hearing to examine the potential merger of two operational components of the Department of Homeland Security. Customs and Border Protection, or CBP, and U.S. Immigration and Customs Enforcement, known as ICE, are both responsible for immigration enforcement. But today, they are doing that job separately. I'd also like to welcome and thank each of our distinguished witnesses for appearing before the Subcommittee to discuss this important issue with us.

Our responsibility as Members of this Committee requires us to conduct vigorous oversight, and to regularly assess the direction and management of the Department of Homeland Security. Is the Department making acceptable progress toward integration of its operations? Is the Department optimally structured to achieve its core missions of preventing terrorism, protecting against terrorism, and being prepared to respond to acts of terrorism? This Subcommittee will take the lead in examining these issues. I look forward to working with Chairman Rogers, Ranking Member Meek, and the other Members of this Subcommittee as we explore such questions.

We created the Department of Homeland Security with the express purpose of enhancing the Nation's ability to prevent and to deal with terrorist acts. It was that over-arching purpose that drove our decision to consolidate existing Federal agencies that drove our decisions to consolidate existing Federal agencies into a single new Department. The main organizational task for the Department now is to re-

align the missions of those legacy agencies to more directly support our national homeland security efforts.

Today we're investigating whether the Immigration and Naturalization Service and the U.S. Customs Service-both of which were transferred to DHS-have been re-organized in a way that is optimal in order to improve our immigration security efforts. The good news is that these immigration control agencies are now within the same Department. And they have a clear and critical new mission-to prevent foreign terrorists and their weapons from entering the United States and to prevent terrorists from having free reign within our country.

Abolishing the INS and moving its functions into this new department was meant to correct the fundamental problems that existed within the INS itself. The old INS had multiple and sometimes conflicting roles—as provider of immigration services, and enforcer of immigration laws. The Homeland Security Act abolished the INS and split immigration services from immigration enforcement.

But the Congress did not have the last word on the organization of customs and immigration enforcement functions within DHS. Utilizing its re-organization authority under the Homeland Security Act, the Administration acted in January 2003 to merge the customs and immigration border inspection and patrol functions, along with agricultural inspections functions, into what is now CBP. In doing so, the Administration also created a new entity called ICE, which contained the customs and immigration enforcement agencies-whose investigate crimes as opposed to inspecting cargo and people crossing the border.

Two years later, questions remain about whether DHS has organized itself and is managing its immigration enforcement and border security resources in the most efficient, sensible, and effective manner. Anecdotal evidence suggests that the division of customs and immigration inspectors from their related investigative colleagues may be building administrative walls, and hampering cooperation and information sharing, between ICE and CBP in critical mission areas. Some observers also have suggested that the distinction between the 'interior enforcement' activities of ICE and the 'border security' functions of CBP are artificial constructs that contribute to needless administrative overlaps, programmatic turf battles, mission gaps, and sometimes dangerous operational conflicts. In addition, it appears that at least some of ICE's very troubling budget shortfalls over the last two fiscal years have been attributable to erroneous budget allocations that occurred upon the division of CBP and ICE into two discrete components of the Border and Transportation Security Directorate.

In light of these concerns, we must ask ourselves whether the organizational structure currently in place is contributing to these problems, and whether a merger or reallocation of responsibility may help to resolve them. Ultimately, our goal is to see that immigration enforcement and border inspection activities operate within an organizational structure that provides for strong policy guidance and coordination, fair and efficient allocation of funding, and clearly defined and seamless operational roles. It also is critical that we fully fund the authorized levels of both Border Patrol and immigration enforcement agents.

As the Committee moves toward the development of comprehensive reauthorization legislation for the Department, I anticipate that our findings in this hearing and others to follow, will play an important role in determining the path ahead. I look forward to an honest exchange of ideas on this issue, as we explore the best way to protect this Nation from those who would do us harm.

Thank you, Mr. Chairman, and I yield back the balance of my time.

Thank you, Mr. Chairman. I yield back.

Mr. ROGERS. Thank you, and thank you for you comments.

I would remind the other Members that they can provide opening statements for the record. When we have smaller panels, I will work with the Ranking Member to arrange for other members to give 1—or 2-minute opening statements, but today we have a very large panel, and we are going to be here for awhile just getting through their testimony. So we will refrain today.

We are pleased to have with us a distinguished panel of witnesses before us on this important topic. Let me remind the witnesses that their entire written statements will appear in the record. Therefore, we ask that, due to the number of witnesses on the panel, that you strive to limit your oral testimony to 5 minutes.

Mr. ROGERS. At this time, the Chair recognizes Dr. James Carafano of The Heritage Foundation to testify.

STATEMENT OF DR. JAMES CARAFANO, SENIOR RESEARCH FELLOW, THE HERITAGE FOUNDATION

Mr. CARAFANO. Thank you, Mr. Chairman. I am a New Yorker. We talk pretty quick. So I can get through this in 5 minutes.

The Heritage Foundation and the Center for Strategic International Studies issued a report called DHS 2.0. One of the recommendations was merger of the Customs and Border Protection and ICE agencies. This recommendation was made by about 30 individuals from academia, think tanks, some people from the Hill working together. It is a collaborative recommendation.

The inspiration behind the overall report was simply recognition that, in Washington, bureaucracy can be created but never destroyed. But it can be reorganized. And when you are in a long-term conflict, you need organizations that are built and structured to be there for the long term.

We took an object lesson from the creation of what became the Department of Defense in 1947, which had fundamental flaws which everyone recognized when the Department was created. Some of those were fixed in 1949 that actually enabled a secretariat that could actually have the capability to run the services underneath them. Some of them didn't get fixed until the Goldwater-Nichols Act of 1986, a mere 3 years before the end of the Cold War, almost 40 years.

We think we can do a lot better. We think that the war on terrorism is going to be a long, protracted conflict; and so we need an organization that is structured for the long term and that fixing the things that will make it more efficient and effective are better done now regardless of the short-term pain because in the end it will make us all safer in the long term.

Specifically on the CBP/ICE recommendation, the genesis of the recommendation was really two points. One is that, in doing the literature search and in interviewing individuals who had been involved in putting together the Homeland Security Act of 2002, we simply could find no compelling argument for splitting the organizations to begin with.

If you look, for example, in the Hart-Rudman Commission which made a recommendation about creating a Department of Homeland Security before 9/11, there is absolutely no discussion at all about a necessity to split internal enforcement or investigation from border security.

The second thing is, in looking at the operation of the Department and recognizing all the problems of the reorganization and getting started and everything else, we simply couldn't determine any substantive benefit that had been made from splitting the Department, nor could we determine any substantive potential benefit of having them remain separate.

But there is an argument that the Department has gone through an enormous amount of reorganization and turmoil, and there is a question there, is there pain in further organization. So I think it is worthwhile to ask the question, is the pain worth the gain and

is the gain substantial enough to overcome the short-term problems of further disruption?

So I would offer up three criteria that we should use to measure whether this is a good idea or not, and I would just like to run through those very briefly.

The first one is, will it improve the overall management of the Department, which we think is the absolutely most crucially important thing. The only notion or the only idea worth creating this Department was that we were going to gain the benefits of integrating the activities of 22 agencies.

One of the most compelling findings of our report is that the way we structured the four under secretary positions doesn't help that. What we have done is created four stovepipes, rather than using the under secretary positions for doing the cross-cutting integration of Department activities. We would much prefer restructuring the Department to have the under secretary positions be responsible for activities that integrate across the Department, rather than trying to command separate agencies. So, therefore, we would argue that the BTS under secretary would be better served doing something else and that we had a single border services agency.

The second criteria that we would use to measure whether this is a good idea or not is will this create strong operational agencies? We think that the right model for this Department is to split activities between operating agencies and support activities. The operational agencies are responsible for going out and catching and stopping terrorists and doing the other statutory requirements of the Department, and then there are support activities that are responsible for supporting the Department overall and integrating them. We think when you separate that you have stronger core competencies and a more focused department.

So one of the other recommendations we made in our report was to create the deputy as a chief operating officer and have the agencies report directly to him and just have strong operating agencies. If we want to do that, we have got to reduce the number of operating agencies in the Department to something that is manageable, that the deputy can actually handle; and right now there are too many operating agencies in the Department. So consolidating CBP and ICE would give the deputy, I think, a reasonable span of control.

The third and I really think the most important criteria is what we call "envision the future." One of the problems we had in debating the CBP and ICE merger is nobody could really articulate for us how we want to address the problem in 5 to 10 years of—from the point of origin overseas of a bad thing or a bad person, through the border, to internal enforcement. How do you address that end-to-end problem? How do you decide where you get your biggest bang for the buck? Where do you want to be 5 or 10 years from now in terms of securing the United States? And, lacking that, it was actually kind of difficult to answer these organizational questions.

We said, if somebody can sit down and articulate to us, describe for me a vision of how you want to do border security in 5 or 10 years, then we could articulate for you the right organization to do that.

I think that the only solutions are comprehensive solutions that really provide as much as possible the integration of activities from the point of foreign origin through internal enforcement. So I think what you really want is an operational agency with as broad jurisdiction as possible. So, for example, I would argue not only for the integration of CBP and ICE, for also for all the visa issuance and monitoring activities into one single agency. Because in law enforcement, law enforcement doesn't have separate jurisdictions because they like it, they have separate jurisdictions because they don't have any other choice. In a perfect world, they would have as broad as jurisdictions as they possibly could to do that activity.

Then, finally, my last point is, is where do we go from here? And we argued for really a three-step process. Actually, we argued for something different, because we didn't have any confidence in the Congress in creating permanent Homeland Security committees, and then we were proved absolutely wrong. But now that we have permanent committees and we have a good partner with DHS to work on these problems, we would recommend a three-step process.

Step one would be to fix management first, to key on the most critical management activities in DHS that can make it a more effective integrated Department. I think this primarily relates to integration at the under secretary level. And the Congress and DHS Secretary, fix those first, get the management issues the best. We think that eliminating the BTS under secretary would be part of that.

The second one is we think there is a need for something equivalent to the QDR in DHS, a quadrennial security review in which the Department every 4 years sits down and maps out its resources, its requirements, its strategy, and provides a comprehensive assessment to the Congress of where it wants to go. Then we would see that QSR being done in the near term in DHS, and that that would then serve as a basis for further integration of the Department.

Then the last thing we recommended was a one-time national security review, kind of an independent assessment to the Congress of the work of the QSR and, quite frankly, we think the work of the QDR as well to really say, does all this come together into one coherent package? And to really give the Congress something to chew on in looking at a way ahead in the future.

With that, I look forward to your questions.

Mr. ROGERS. Thank you.

[The statement of Mr. Carafano follows:]

PREPARED STATEMENT OF DR. JAMES JAY CARAFANO, SENIOR RESEARCH FELLOW, THE HERITAGE FOUNDATION

Mr. Chairman, I am honored to testify before the committee today.[1] Thank you for the opportunity to discuss the proposal to merge the Department of Homeland

[1] The Heritage Foundation is a public policy, research, and educational organization operating under Section 501(C)(3). It is privately supported, and receives no funds from any government at any level, nor does it perform any government or other contract work. The Heritage Foundation is the most broadly supported think tank in the United States. During 2003, it had more than 200,000 individual, foundation, and corporate supporters representing every state in the United States. Its 2003 income came from the following sources:

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Security's (DHS) Customs and Border Protection (CBP) and Immigration-Customs Enforcement (ICE) agencies. This was one of the key recommendations of the task force chaired by myself, on behalf of The Heritage Foundation, and David Heyman of The Center for Strategic and International Studies. The task force's report, *DHS 2.0: Rethinking the Department of Homeland Security,*[2] evaluated the department's capacity to fulfill its mandate as set out in the Homeland Security Act of 2002.

In my testimony, I will address, 1) the report's proposal for merging CBP and ICE and how it was developed, 2) standards that could be used to evaluate the recommendation, and 3) possible next steps for the department and Congress.

Before I discuss the recommendation to create a single border services agency, I would like to share with the committee our rationale for undertaking this study and why the task force feels it is imperative this issue receive prompt attention from Congress and the department's new leadership.

We have learned much since 9/11. Americans have had time to dwell on the challenges of protecting the nation against foreign threats in the 21st century and to think about the kinds of institutions we need to address these dangers in the decades ahead. In particular, it is time to reconsider the role of the newly established Department of Homeland Security in this effort. Experience reminds us that it takes only a few years for bureaucracies to become entrenched. After that they are impossible to change. The creation of the Department of Defense is a case in point. During the debates over the 1947 National Security Act and again as president, Eisenhower lobbied for reorganizing the Pentagon to ensure the armed forces would work closely together. He failed to overcome the political opposition and the service parochialisms that blocked reforms. As a result, fundamental problems in joint operations went unaddressed until 1986 and the passage of the Goldwater-Nichols Act.[3] The lesson is clear. Fix them at the beginning or live with the mistakes for a long time.

The Recommendation to Merge CBP and ICE

The proposal to consolidate CBP and ICE was developed by a task force with members from academia, research centers, the private sector, and Congress and chaired by homeland security experts at The Heritage Foundation and The Center for Strategic and International Studies. The task force examined the effectiveness of the new department in four areas: management, roles and missions, authorities, and resources.

Based on analysis, conducted through seminars, an extensive literature search, and interviews, the task force developed 40 major recommendations for improving the oversight, organization, and operation of DHS. The findings and recommendations of the task force can be found on The Heritage Foundation's web site at http://www.heritage.org/Research/HomelandDefense/sr02.cfm.

Specifically regarding challenges related to border security the task force observed that before the creation of DHS, seven agencies, among others, were involved in securing our borders, enforcing our immigration laws, and protecting our transportation system. They were: (1) U.S. Customs; (2) the Immigration and Naturalization Service (INS); (3) the Executive Office of Immigration Review (EOIR); (4) the Bureau of Consular Affairs; (5) the U.S. Coast Guard; (6) the Transportation Security Administration (TSA); and (7) the Animal, Plant, Health Inspection Service (APHIS). Agency missions overlapped. It was difficult to resolve operational or policy conflict without resorting to a cumbersome, inefficient, and ineffective interagency process.

The creation of the DHS was supposed to consolidate agencies with overlapping missions and to better integrate the national border security effort. And it has succeeded to some degree. The INS has been abolished. Immigration border inspectors and Border Patrol Agents have been merged with most of U.S. Customs and the border inspectors of APHIS to create CBP. Customs and Immigration Investigators and

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[2] The task force co-chairmen and participants would like to acknowledge the helpful support provided by the Center for the Study of the Presidency and the use of its online Homeland Security Database and Information Exchange Site, which facilitated the task force's deliberations. The site is located at http://www.thepresidency.org/hsdatabase.htm.

[3] James R. Locher III, *Victory on the Potomac: The Goldwater-Nichols Act Unifies the Pentagon* (College Station: Texas A&M University Press, 2002), pp. 25–31.

Detention and Removal Officers were combined into a new organization, ICE, responsible for "internal enforcement." The two agencies were assigned to a Border and Transportation Security (BTS) directorate under the Undersecretary for Border and Transportation Security.

In "consolidating" responsibility for border, immigration, and transportation security, DHS actually increased the number of involved agencies to eight and created more problems that now need solving. In addition, it has failed to clearly delineate the agencies' missions within DHS that also have border, immigration, or transportation security responsibilities.

Additionally, the task force concluded that the split of responsibilities between CBP and ICE was done without a compelling reason. The task force was not able to find any convincing argument that there were unsolvable problems in the legacy agencies of having border agents and internal enforcement investigators working in the same organization. Indeed, in various interviews, not one person was able to coherently argue why CBP and ICE were created as separate operational agencies. In addition, the Hart-Rudman Commission, which recommended creating a national homeland security agency before the 9/11 attacks, saw no need to split border and internal enforcement authority.[4] Some have analogized the separation to deciding to break up the New York Police Department into two separate agencies—one housing the uniformed "beat cops" (analogous to CBP's uniformed officers), and the other housing the detectives (analogous to ICE's plain-clothes investigators).

The reorganization exchanged one seam in U.S. security for another. Before the creation of DHS, "people" and "things" entering the country were handled under separate systems. There were no common policies, programs, or standards. Dealing with dangers that involved both required coordination between two different agencies. Today, travelers and goods are handled by an integrated system, but border operations and interior enforcement are now bifurcated into two different organizations creating a new requirement for interagency coordination.

Complicating the border security picture is the mission of TSA. While most Americans associate TSA with ground screeners at airports, the Aviation and Transportation Security Act creating TSA also charges TSA with responsibility "for security in all modes of transportation," including ensuring the "adequacy of security measures for the transportation of cargo." This has injected TSA into the realm of border security, and created friction with other DHS agencies historically in charge of securing the movement of cargo into the United States—CBP and Coast Guard. In addition, BTS has not been particularly effective in clearly delineating the relative responsibilities of CBP and TSA.

Another complicating factor is that under the Homeland Security Act, responsibility for ensuring that terrorists do not obtain visas to enter the United States is shared between DHS and the State Department's (DOS') Bureau of Consular Affairs. Integration of their activities and supporting intelligence services represents a significant interagency challenge.[5] For example, the process for negotiating a Memorandum of Understanding between DOS and DHS delineating their respective responsibilities took over a year.

DHS 2.0 proposed rationalizing border security and immigration enforcement by merging CBP and ICE and eliminating BTS. The directorate has neither the staff nor infrastructure to integrate the operations of CBP and ICE on a consistent basis. Nor does it have a policy operation with sufficient influence with the secretariat to resolve interagency conflicts. Merging CBP and ICE into a single border services agency will bring together all of the tools of effective border and immigration enforcement—Inspectors, Border Patrol Agents, Special Agents, Detention and Removal Officers, and Intelligence Analysts—and realize the objective of creating a single border services agency.

With the merger of CBP and ICE into a single agency, there is no need for the BTS "middle management" layer. All operational agencies should have a direct reporting relationship to the Secretary via the Deputy. This will allow for a better, DHS-wide (including the Coast Guard) policy and operational strategic approach to border security matters.

Additionally, splitting responsibility for visa issuance and management between DHS and DOS was a mistake. Operations could be managed more efficiently under one department and would place responsibility and accountability in one place. The

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[4] The United States Commission on National Security/21st Century, "Road Map for National Security: Imperative for Change," (February 15, 2001), p. 12, www.au.af.mil/au/awc/awcgate/nssg/phaseIIIfr.pdf.

[5] James Jay Carafano and Ha Nguyen, "Better Intelligence Sharing for Visa Issuance and Monitoring: An Imperative for Homeland Security," October 27, 2003 (Backgrounder #1699), www.heritage.org/Research/HomelandDefense/BG1699.cfm.

choice is difficult. Arguably DOS is better positioned to consider the diplomatic, economic, and cultural issues at stake in issuing visas. On the other hand, if DHS were responsible it could seamlessly integrate visa management into a merged border services agency, thus overseeing the movement of people and goods from the foreign point of origin to the interior of the United States. Any consideration of a CBP/ICE merger should also rethink the management of activities for visa issuance and monitoring.

All the Right Moves?

Perhaps the most valid criticism of the *DHS 2.0* proposal to create a single border services agency is that it would heap more turmoil on organizations that have already seen substantial disruption. In short, critics argue the pain of further change is not worth the gain. Three measures could serve as a guide for determining whether further reorganization is warranted. Any proposed changes should:

- **Improve** overall management of the department as a first priority;
- **Divide** department activities between operational responsibilities and support functions under different chains of command.
- **Implement** a future vision of the department.

The proposal to create a single border services agency should be judged against these standards. I would like to address each in turn.

Focusing on Management

In a recent report the DHS Inspector General identified department-wide management as a significant issue of concern. "Integrating its many separate components into a single, effective, efficient, and economical department," the IG wrote, "remains one of DHS" biggest challenges."[6] The weaknesses in DHS management are critical because they cut against the core rationale for passing the Homeland Security Act: gaining the synergy of having most of the key federal agencies with homeland security responsibilities grouped in one department.

The creation of a single border services agency should only be undertaken if it will help address the most significant management challenges of DHS.

The task force concluded that merging CBP and ICE provides an opportunity to substantially strengthen the DHS secretariat. Currently, the undersecretary positions in DHS are used to command subordinate agencies, rather than contributing to the cross-cutting integration of department activities and strengthening coordination with other federal agencies, state and local governments, the private sector, and foreign governments. Merging CBP and ICE into a single agency would eliminate the need for a BTS Undersecretary and allow the department to use that position to enhance the capacity of the secretariat to provide stronger leadership for the department overall.

DHS 2.0 proposed to have the new border services agency report directly to the Deputy Secretary, who would act as the department's chief operating office (COO), as well assume the responsibilities of the Undersecretary for Management. This change would address one of the key concerns expressed in the DHS IG report on the major management challenges of the department—confusing and duplicative reporting chains. Currently, DHS employs a concept called "dual accountability," where agency staff are asked to report both through their undersecretaries and chief officers in the secretariat.[7] This dual reporting system has proven contentious and inefficient. Eliminating the "middle management" over operating agencies will create a single chain of command and allow the deputy to more effectively direct financial, information management, acquisition, and personnel initiatives that cut across the DHS.

Consolidation is also important for making the deputy's duties manageable. If the deputy is to serve as an effective COO, his span of control needs to be reasonable. This would require consolidation of existing organizations within the DHS. The merger of ICE and CBP help reduce the scope of COO responsibilities.

The need for a BTS directorate over ICE and CBP, can also be eliminated by moving oversight functions, such as policy, planning, and stakeholder outreach, into the secretariat where they more properly belong. To address this, our report also called for reconfiguring two undersecretary positions. First, *DHS 2.0* proposed an Undersecretary for Policy and Planning, which would include an Assistant Secretary for International Affairs. Second, the report recommended eliminating the Undersecretary for Emergency Preparedness & Response (EP&R) and replacing this position with an Undersecretary for Protection and Preparedness who would oversee critical

[6] Office of the Inspector General, "Major Management Challenges Facing the Department of Homeland Security," Department of Homeland Security, December 2004, p. 1.

[7] Office of the Inspector General, "Major Management Challenges," p. 2.

infrastructure protection, preparedness, and state and local governments/private sector coordination efforts. This would consolidate the following agencies: the Infrastructure Protection component of the Information Analysis and Infrastructure Protection Directorate; Office of State and Local Government Coordination and Preparedness (OSLGCP); the non-operational transportation infrastructure protection mission of TSA, the "preparedness" piece of the EP&R Directorate; the Office of Private Sector Liaison, and; grant making authority for DHS.

One consideration for the Congress and the department's new leadership is the potential of using the creation of a single border services agency as a catalyst for overall reforms in the department, improvements that would enhance the capacity of the secretariat to integrate and coordinate activities across DHS.

Operating Responsibilities and Support Functions

A second measure that should be used to judge the value of creating a single agency is whether this initiative would sharpen the operational effectiveness of the department. Dividing functional responsibilities in the department between "operational" agencies and "support" organizations is a sound management principle because it focuses agencies on critical missions. It also helps to develop strong institutional cultures. The Defense Department explicitly follows this model. Combatant commanders are charged with "running the war." The services are responsible for "raising, training, preparing, and sustaining" the force. It is a model that works well because it encourages organizations to focus on their core competencies. A DHS analogy would be to establish robust operational agencies that concentrate on stopping terrorists and conducting the department's other statutory missions apart from the staffs and directorates responsible for conducting planning, coordination, policymaking, budgeting, and support activities for the department as a whole.

A single border services organization responsible for visa issuance and monitoring, managing points of entry, patrolling the borders, and interior enforcement should only be established if it will create a stronger and more effective operating agency.

In recent hearings before the Senate Homeland Security and Government Affairs Committee, Michael Wermuth, director of Homeland Security at RAND, was skeptical of the proposal to merge CBP and ICE concluding that "a good argument can be made that the skills required for the performance of those separate tasks require different recruiting, retention, training performance evaluation, operational procedures, and other related activities."[8] Indeed, both agencies are currently struggling with the challenge of cross-training skills and building a common culture among agency personnel. Wermuth argued for a comprehensive assessment to determine whether a single organization could appropriately manage the plethora of skills and activities involved in overseeing the movement of goods, people, and services across America's borders.

Concerns over the capacity of an integrated agency to train, manage, and retain personnel are worthwhile considerations. These, however, are not issues of organizational design, but challenges for human capital and information technology programs. Indeed, creating a single operating agency might enhance prospects for establishing more robust personnel programs, offering a wider range of career progression and professional development options, opportunities for both cross-training and specialization, and an increased capacity to shift and surge resources. In addition, creating a single agency may offer advantages for integrating and consolidating information technology programs. Any consideration to merge CBP and ICE must be made in tandem with discussions over the scope and structure of the human capital and information technology initiatives that will be instituted to support consolidating the agencies.[9]

Envisioning the Future

A third way to evaluate the benefit of further organizational innovation is to measure how change will contribute to the long-term development of the department. One hotly debated issue relates to the division of roles and missions within

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[8] Michael A. Wermuth, Testimony before the Senate Homeland Security and Government Affairs Committee, January 26, 2005, p. 5, hsgac.senate.gov/—files/WermuthCT233.pdf.

[9] James Jay Carafano, "The Homeland Security Authorization Bill: Streamlining the Budget Process" April 15, 2004 (Executive Memorandum #923), www.heritage.org/Research/HomelandDefense/em923.cfm. For example, one area where consolidation may contribute to improving operational performance is in the implementation of Chimera. The Enhanced Border Security and Visa Entry Reform Act of 2002 requires the integration of all data systems related to visa issuance and monitoring into Chimera, an interoperable, interagency computer-based data management system. The law assigns the DHS primary responsibility for developing an overarching information architecture to share immigration and intelligence data and calls for creating an eight-member commission to oversee Chimera. To date, little progress has been made in implementing the system.

the department. The creation of DHS was supposed to consolidate agencies with overlapping and complementary missions. Since its formation, DHS has made some positive efforts to group the right activities under the right organization. Moving the Office of Air and Maritime Interdiction under CBP and shifting the Federal Marshal Service to ICE are cases in point. However, a broader assessment needs to be made across the department. There is reluctance to undertake such a review based on the argument that the organizations have not yet absorbed all the change heaped upon them. Such thinking is shortsighted. The war against terrorism will be a protracted conflict and DHS needs to be structured and resourced for a long campaign.

DHS needs to be organized not to accommodate the present, but to build toward the ideal organization of the future. Therefore, the department needs to articulate how it envisions conducting its missions five to ten years from now and let this vision drive the organizational design, particularly the structure of border security operations.

The department's current organization reflects an outdated vision of how to protect America's borders. Visa issuance, border security, and internal enforcement are divided into three separate agencies, suggesting that threats and countermeasures can be neatly segmented in discrete activities. There are, however, no frontiers in 21st century national security, nor are all border security issues best handled at the border. Protecting the United States against terrorist threats and significantly reducing transnational crime (e.g. drug, arms, and human trafficking) and environmental dangers (such as contagious diseases and invasive species), as well as illegal entry and unlawful presence in the United States requires activities that address these challenges from the point of foreign origin through transiting the border, and within U.S. territory. Distinguishing clear lines of responsibility between foreign, border, and domestic security is a thing of the past. Nor can responsibilities for security, promoting economic growth, and protecting the liberties of American citizens (as well as visitors and international business partners) be considered in isolation.

DHS' future vision must not only speak to how to integrate activities, but how to establish priorities and make trade-offs, focusing investments on where the nation can get the biggest "bang" for its security "buck." At least three major issues should be addressed.

First, the vision must make hard choices in deciding between investments in monitoring legal means of trade and travel and combating illegal entry into the United States. Improving the monitoring of legal means to enter the country, including improving physical infrastructure at points of entry and promoting programs like US–VISIT[10] and the Smart Borders Initiative,[11] should have the highest priority. Most goods, services, and people enter and exit the United States through legitimate networks. These networks are the lifeline of the U.S. economy and must be appropriately managed and protected. Likewise, virtually all known terrorists who have entered the United States came in through legal channels.[12] In addition, as the United States improves its capacity to reduce entry into the country at places *other* than legal points of entry, illicit activities attempting to penetrate legal networks of trade and travel will likely increase. Effective border services must already be in place to meet this challenge, if the United States hopes to improve its overall security.

Second, strategic choices need to be made on how to best affect the flow of illegal entry and unlawful presence in the United States, as well as transnational criminal activities and environmental threats. Too often the assumption is made that the best place to reduce illegal and illicit activity is by interdicting it at the border. In

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[10] The purpose of the United States Visitor and Immigrant Status Indicator Technology (US–VISIT) program is to establish a system that can collect, maintain, and share biometric and biographic data on foreign nationals for border and immigration enforcement. The goal of the system is to screen all foreign nationals from non-visa-waiver countries entering and exiting the United States. See James Jay Carafano, "The Homeland Security Budget Request for FY 2005: Assessments and Proposals," Backgrounder #1731 March 5, 2004, www.heritage.org/Research/NationalSecurity/bg1731.cfm.

[11] *The National Strategy for Homeland Security* calls for the employment of technologies to establish "smart borders" that promote the efficient flow of people, goods, and conveyances while providing greater security. Office of the President, "The National Strategy for Homeland," (July 2002), p. 22, www.whitehouse.gov/homeland/book/nat—strat—hls.pdf. In December 2001, the "United States and Canada agreed on a Smart Border Declaration and a 30 point action plan to implement smart borders. Office of the Press Secretary, "US-Canada Smart Border/ 30 Point Action Plan Update," (December 6, 2002), www.whitehouse.gov/news/releases/2002/12/20021206-1.html. See also, Andre Belelieu, "Canada Alert: The Smart Border Process at Two: Losing Momentum" *Hemisphere Focus,* Center for Strategic and International Studies, XI/31 (December 10, 2003), pp. 1–8, www.csis.org/americas/pubs/hf—v11—31.pdf.

[12] Carafano and Nguyen, "Better Intelligence Sharing for Visa Issuance and Monitoring: An Imperative for Homeland Security."

practice, internal enforcement policies and programs, followed by working with point of origin and transit countries, probably offer a greater return on investment. In the long term, for example, initiatives such as effective workplace enforcement (which discourages the employment of individuals who are unlawfully present in the United States), domestic counterterrorism investigations (including means to track down criminal aliens),[13] and the Millennium Challenge Account[14] (which promotes policies that advance economic growth, sound governance, and the rule of law in foreign countries) will have a greater impact on illegal entry and unlawful presence than hiring additional border guards.

Third, addressing the challenge of illegal entry between the points of entry cannot be ignored, but clear priorities have to be established. Investments must be made in resources that create a system-of-systems approach to security. Rather than trying to control the entire border, the United States needs a system that direct the right capabilities to the right place at the right time to provide an appropriate response. Key investments include a combination of high speed and armed airborne assets and robust airborne sensor capabilities. These assets need to be linked to an intelligence and early warning network that provides knowledge of activities in the maritime domain and along the border, as well as to means to effectively analyze and share that knowledge. Modernizing CBP's air and marine interdiction capabilities in concert with increasing funding for the Coast Guard's Integrated Deepwater acquisition program, for example, ought to take precedence.[15]

To address these three issues, DHS must conduct a national assessment to determine the system-of-systems it requires. Any system will need to include all the "layers of security" that impact on securing the border. Congress and the administration should use this analysis to determine where their efforts should be directed and whether creating a single border services agency with jurisdiction over all activities related to the transiting of U.S. borders would improve the department's allocation of assets and effectiveness.

Next Steps

DHS 2.0 called for the President and Congress to establish a non-partisan commission to review the performance of the department and assess its capacity to fulfill the missions outlined in the Homeland Security Act and report back within six months. Without permanent oversight committees in the Senate and House, the task force felt Congress would be unable to effectively address the challenge of restructuring the DHS. Things have changed. The task force applauds the action taken in both chambers to create permanent committees. With Congressional oversight of the department's management now consolidated in appropriate committees, Congress could consider alternative paths for moving forward. One would have Congress legislate key management reforms and establish a routine authorization process. Then, Congress, jointly with the leadership of DHS, can address reorganization issues, such as merging CBP and ICE, in a more deliberative manner through a

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[13] For example, terrorist investigations involving immigration violations are an area in which much could be done immediately to improve the role of state and local law enforcement. Domestic counterterrorism comprises law enforcement efforts primarily by the Federal Bureau of Investigation and ICE to identify, prevent, and prosecute terrorists. One improvement would be to form cooperative partnerships among federal, state, and local law enforcement agencies for immigration investigations related to terrorism. While using state and local law enforcement officers to enforce federal immigration laws has been controversial, such programs may be appropriate for some states and localities. In June 2002, the INS and the State of Florida created a pilot program that could serve as a model for enhanced and appropriate cooperation. The program trained selected state and local law officers to assist in domestic counterterrorism immigration investigations. The Florida officers were required to be members of the state counterterrorism task force and could engage in these activities only when taking part in counterterrorism operations supervised by the federal INS officers. When the INS became part of the DHS, the program's memorandum of understanding was renewed. The Florida pilot program represents an ideal model for the limited and appropriate use of state and local support in expanding the DHS' investigatory capacity. Congress should provide sufficient resources to allow the DHS to offer similar programs to other states and U.S. territories. See, James Jay Carafano, Paul Rosenzweig, and Alane Kochems, "An Agenda for Increasing State and Local Government Efforts to Combat Terrorism," February 24, 2005 (Backgrounder #1826).

[14] In March 2002, President George W. Bush proposed the creation of the Millennium Challenge Account (MCA), a new foreign assistance program to low-income countries that demonstrate a strong commitment to "ruling justly," "investing in people," and "establishing economic freedom." Ana I. Eiras, "Make the Rule of Law a Necessary Condition for the Millennium Challenge Account," March 7, 2003 (Backgrounder #1634), www.heritage.org/Research/TradeandForeignAid/BG1634.cfm.

[15] Robin F. Laird, et al, "The Challenges to Developing a Effective Maritime Security Architecture," in James Jay Carafano and Alane Kochems, eds., *Making the Seas Safer*, Heritage Special Report No. 3, (February 17, 2005), pp. 20–27, www.heritage.org/Research/HomelandDefense/loader.cfm?url=/commonspot/security/getfile.cfm&PageID=74871.

combination of reviews conduct by DHS and an independent panel answering to the Congress.[16] This strategy might proceed as follows.

Step #1: Legislate Undersecretaries for Policy and Protection and Preparedness and abolish the Undersecretaries for Emergency Preparedness and Response and Management. Establish Chief Operating Officer functions under the Deputy Secretary.

Step #2: Implement an authorization process for DHS. An authorization bill for the DHS could serve as a critical statutory management tool providing the means to exercise stronger oversight of important DHS activities such as key personnel programs, performance of critical missions, major research programs, and information technology investments.

Step# 3: Establish a requirement for periodic reviews. Congress should establish a requirement that DHS conduct quadrennial reviews of the department's strategies, force structure, resources, and appreciation of the threat. The Quadrennial Homeland Security-Review (QHSR) should be timed to coincide with the mid-point of the presidential term. The first QHSR should be specifically tasked to establish a future security vision. That vision will inform the decision over whether to merge CBP and ICE.

Step #4: Create a one-time National Security Review Panel. In parallel with the first QHSR, the Congress should establish a non-partisan National Security Review Panel (NSRP). The NSRP should be charged with providing an independent assessment of the QHSR as well as assessing the efforts of the DHS in the context of larger national security programs and strategies.

Conclusion

The creation of the DHS was supposed to consolidate agencies with overlapping missions and to better integrate the national border security effort. Any proposal, including merging CBP and ICE should be evaluated against whether it will improve the overall management of DHS, whether it will further delineate department activities between operational and support functions with each under a separate chain of command, and whether the action implements a future strategic vision of the department.

Once again, thank you, Mr. Chairman and the rest of the Committee for holding this hearing and for inviting me to participate. I look forward to answering any questions you might have.

Mr. ROGERS. The Chair now recognizes Mr. Klug, who is a former Special Agent in Charge of ICE.

Mr. KLUG. Former Associate Special Agent in Charge, but I appreciate the promotion. Thank you.

Mr. ROGERS. Thank you.

Mr. KLUG. I am a New Yorker, also, so I will speak quickly.

STATEMENT OF KENNETH C. KLUG, FORMER SPECIAL AGENT IN CHARGE, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

Mr. KLUG. Good morning, Mr. Chairman and distinguished members of the subcommittee. It is an honor and a privilege to appear before you today to present testimony in furtherance of reuniting the enforcement and regulatory functions of what were the U.S. Customs Service and the Immigration and Naturalization Service.

The majority of my 25-year career was spent with the United States Customs Service. The final 2 years was spent with Immigration and Customs Enforcement. The majority of my time in the last 4 years of my tenure was spent rebuilding the Special Agent in Charge New York office which had been destroyed during the terrorist attacks of September 11, 2001.

[16] James Jay Carafano, Baker Spring, and Jack Spencer "National Security Requires a National Perspective—and Congressional Action," February 17, 2005 (Executive Memorandum #959), www.heritage.org/Research/NationalSecurity/em959.cfm.

When the inspectors and special agents were separated into Customs and Border Protection, CBP and ICE, their collaboration, cooperation, and teamwork immediately began to diminish. Since the separation of the two agencies, there has been a sharp decline in the traditional Customs/Border-related investigations, resulting in a drastic reduction in narcotics, illegal merchandise, munitions, and currency seizures.

The decision to split Customs and Immigration into ICE and CBP seriously undermined rather than strengthened the new Department's law enforcement's critical mission. The decision to separate the two agencies reflects an absence of understanding in the matter of processes, relationships, and how the border environment and Federal law enforcement functions most optimally.

Inspectors are first to see passengers and merchandise at the border crossings. Agents investigate violations emanating from cross-border movements. As such, the Nation has a vested interest in these two law enforcement forces being united in leadership, resources, strategy, method, and communications.

Instead of streamlining the flow of information vital to our national security, the new structure places roadblocks in the way. The separation of inspectors and special agents caused a gap in the flow of information, detracting from border enforcement and port security. The creation of ICE was tantamount to building a house without a foundation. The administration failed to conduct a comprehensive review in the beginning relative to the complexity or feasibility of combining these two diverse agencies. No study, cursory or in depth, was requested to be produced in anticipation of the proposed separation, as far as I understand.

I am certain that if an independent group such as the Government Accountability Office had conducting a study at that time, it would have undoubtedly led to an understanding of the symbiotic relationship and intermeshed roles of the agents and inspectors. Consequently, the separation of CBP and ICE would have never occurred.

Furthermore, I believe that an understanding of the current flawed situation inevitably will lead to the conclusion that a merger would correct this irrational design that has hampered DHS's ability to progress in the arena of border enforcement.

From the onset, we were told that ICE was created to protect the Nation's border foremost against terrorism. We in the New York field office that had firsthand witnessed the death and destruction on September 11 welcomed the opportunity to contribute to this effort. We were anxious to engage in the fight and looked forward to our role in this important mission. We awaited direction from the agency in the form of a mission statement. No such statement was forthcoming, and inexplicably to date no succinct mission statement regarding our role in the war on terrorism has been issued. Additionally, no specific enforcement priorities have been identified.

Like many of my colleagues, I left the agency rather than stay and watch it helplessly while it declined. My understanding is that ICE currently has in excess of 800 vacancies which have been caused by the mass exodus of disillusioned employees and a hiring freeze.

CBP inherited Customs' cutting edge computer technology and administrative systems. ICE inherited the INS computer systems that were archaic at best. When we advised ICE's new management team that the systems were not adequate, they repeatedly told us that we didn't understand the systems and they were in fact superior. Of course, the contrary was true.

As Congress has repeatedly stated in the past, the Immigration systems provided the user with no ability to track the use of funds or live within its allotted budget. Even today, the ICE administration systems fail to track the budget, procurement, property and travel and fail to support the agency. This has been repeatedly evidenced by the continuing need to have independent auditors from the private sector review the ICE funding levels and anticipated expenditures. After 2 years, this agency does not have accountability over the funds provided by this committee.

A merger of ICE and CBP would greatly reduce the duplication of effort and costs associated with the current separations of information technology systems.

I have yet to hear one individual within DHS articulate a single sound reason for the continued separation of Customs and Border Protection and the Immigration and Customs Enforcement. One very vague explanation is that CBP will handle border enforcement and ICE will be responsible for interior enforcement. This reasoning is fatally flawed. Border enforcement and interior enforcement cannot be separated. This is the same defective logic which created the agency in the first place; and, once again, this reasoning displays a complete lack of understanding of the agencies' roles and jurisdictional responsibilities.

In a similar fashion to CBP, ICE's jurisdictional responsibilities relate to a must-have nexus to the border. ICE's jurisdictional responsibilities directly relate to cross-border movement of people and merchandise. Illegal aliens cross our borders. Those involved in immigration fraud cross our borders. Narcotics cross our borders. Trademark-restricted merchandise crosses our borders. Illicit funds cross our borders. Munitions and high technology cross our borders. And terrorists cross our borders. ICE is responsible for pursuing criminal investigations into all of these critical areas. However, we have separated the agencies responsible for investigating these important violations, and that undermines our national security.

The situation is analogous to separating the uniformed police officers from the detective force. By merging CBP and all of the entities involved in border and immigration enforcement, responsibilities would be brought together with a single mission and chain of command. We will not realize the objective of creating a single border enforcement agency until special agents, inspectors, border patrol agents, intelligence analysts, retention and removal officers are brought together under one roof. Under a unified command structure, a single border agency would be far more productive.

There are a myriad of reasons why initial separation of these agencies never made sense and a number of additional justifications as to why combining CBP and ICE is best for this Nation and its war on terrorism. One thing is certain. Whatever the decision of Congress is regarding the merging of these two agencies, it should be done quickly. Should we continue on the current configu-

ration, that would mean maintaining the duplicity of tasks, wasting tax dollars, and perpetuating the downward slide of its employees and morale. Simply stated, *a house divided cannot stand.*

Mr. ROGERS. Thank you, Mr. Klug.

[The statement of Mr. Klug follows:]

PREPARED STATEMENT OF KENNETH C. KLUG

Good morning Mr. Chairman and distinguished members of the subcommittee. It is an honor and a privilege to appear before you today to present testimony in furtherance of reuniting the enforcement and regulatory functions of what were the U.S. Customs Service and the Immigration and Naturalization Service. The majority of my twenty-five year law enforcement career was spent with the U.S. Customs Service. I held positions in several field offices on both the regulatory and enforcement sides of the Customs Service. I spent the final two years of my career with the Immigration and Customs Enforcement (ICE) before retiring in July 2004. Most of my efforts during the latter years of federal service were focused on rebuilding the Special Agent-in-Charge New York office, which had been destroyed as a result of the terrorist attacks on September 11th, 2001.

For over two centuries, the U.S. Customs Service has facilitated the flow of our nation's commerce while protecting American's business and populous from contraband and more recently terrorist threats. U.S. Customs has always been at the forefront of protecting our nation's borders. A notable example is when a Customs Inspector in Port Angeles, Washington intercepted terrorist Ahmed Ressam who had driven off the ferry from Victoria, B.C., destined for Los Angeles airport with 135 pounds of bomb making ingredients hidden in the trunk of his car. U.S. Customs personnel apprehended him after a foot chase through the streets of Port Angeles almost certainly averting a major disaster. The U.S. Customs Service garnered many similar front page headlines with numerous successful investigations and its many innovative impact programs.

Legacy Customs was comprised of two disciplines, the regulatory side, which included the uniformed inspectional force that the traveling public is familiar with and the investigative function which included the offices of Intelligence, Air and Marine units. The two sides of the agency shared a symbiotic relationship that led to many successful investigations in the enforcement of numerous domestic and international laws. When the Inspectors and the Special Agents were separated into Customs and Border Protection (CBP) and ICE, their collaboration, cooperation and teamwork immediately began to diminish. The current ICE administration paints a favorable picture of the existing situation. It uses superfluous adjective and adverbs along with rhetoric to disguise its current problems. The reality is that ICE statistics are embarrassing compared to those numbers produced before the merger. Since the combining of the two new agencies there has been a sharp decline in the traditional "Customs" related investigations resulting in a drastic reduction in narcotics, illegal merchandise, munitions and currency seizures

It is the belief of many of my colleagues in the Office of Investigations, that the concept of ICE and the subsequent division of the Customs Service was fatally flawed from its inception. Frankly, the creation of ICE was tantamount to building a house without a foundation. Many in the law enforcement community found it quizzical as to why all other agencies that were incorporated into DHS, such as Secret Service, FEMA, Coast Guard, etc. maintained their identity in the transition. The logic behind the concept of ICE became even more arcane when the Federal Protective Service (F.P.S.), an agency responsible for guarding government buildings, was taken from under the General Services Administration and placed within ICE. To date, not a single individual I have spoken with in the federal government can supply any reason for incorporating F.P.S. into this border protection agency. Furthermore, the administration did not conduct a comprehensive review or issue a written report relative to the complexity or feasibility of combining these diverse agencies. Apparently no study, cursory or in depth, was requested or produced in anticipation of the proposed separation. I am certain that if a study had been conducted by an independent group such as the G.A.O., the separation would have never been recommended and consequently not have occurred. Many of my coworkers believed then and continue to feel that the proposed division of Customs and INS was a result of the lack of specific knowledge on the part of those individuals in the administration who proposed it. They certainly had to be unaware of the precise missions of the two agencies. The months following the creation of ICE proved to substantiate that belief. All of our trepidations over the ill conceived creation of

ICE quickly began to be realized during the first few months of the new agency's history.

From the onset we were told that ICE was created to protect the nation's borders, foremost against terrorism. We in the New York field office who had witnessed firsthand the death and destruction on September 11th, welcomed the opportunity to contribute to this effort. We were anxious to engage in the fight and looked forward to our role in this important mission. We anticipated ICE's development and communication of our new mission. We awaited a statement that clearly outlined our long and short-term goals. We believed that organizationally, the structure of ICE would be changed to reflect our new mission. We looked forward to the publication of objectives in furtherance of achieving our mission. We believed that the new policies would be distributed to all employees. Two years after the creation of ICE, none of these necessary precursors have been identified let alone accomplished. The best ICE has been able to do thus far is produce a nebulous statement as to what the agency purpose has become. Inexplicably, to date no succinct mission statement has been issued and no specific priorities have been identified.

Customs was always on the cutting edge of computer technology and administrative systems. ICE inherited the INS computer systems that were archaic at best. When we voiced our comments on the need to improve or change these systems to ICE's new management team, we were repeatedly told by ICE management that we didn't understand the new systems. In fact ICE management informed us that they were superior to the Customs systems. Of course the contrary was true, as Congress had repeatedly said in the past, the Immigration systems provided the user with no ability to track the use of funds or to live within their allotted budget. Even today the ICE administrative systems that track budget, procurement, property, travel and even time and attendance fail to support the efficiencies of the service or promote accountability. This has repeatedly been evidenced by the continuing need to have independent auditors from the private sector review the ICE funding levels and anticipated expenditures. After two years this agency does not have accountability over the funds provided by this Committee. To further exacerbate the situation the agency has failed to identify a clear mission, establish measures of effectiveness and identify the funding level required to pursue its mission. In effect, there is no accountability for the proper expenditure of appropriated funds.

Instead of engaging in the war on terrorism we found ourselves fighting with ICE management to upgrade computer systems and update its programs. We were not requesting anything more than to bring us back to a level of technology that had successfully supported our mission in the past. It became apparent at this point in time that the organization was unable or unwilling to entertain suggestions to improve antiquated technology and flawed policies. Consequently I decide along with many of my contemporaries to retire from the agency, rather than stay and watch helplessly as it deteriorated. This loss of experience and talent has further undermined the agency's ability to succeed. Every current Customs employee I speak with today express their desire to leave ICE, either by retiring when eligible or transferring to another agency. ICE currently has in excess of 800 vacancies which have been caused by the mass exodus and a hiring freeze. If CBP were successful in forming an investigative arm, all of the former Customs Criminal Investigators I have spoken with would readily apply for transfer.

In the interim, morale continues to fall rapidly within ICE. Contributing to this downward trend is the discontinuance of some positive employee initiatives. The Tuition Assistance Program which helps subsidizes education costs, has been ceased. The small monetary recognitions which were distributed to deserving employees in the Customs Service during award ceremonies have disappeared under the new regime. While other divisions within DHS enjoy adequate budgets and recognize their employees for their efforts, ICE employees have difficulty securing sufficient funding to pursue operational objectives and receive no recognition for their often times exemplary performance. The impression, whether true or not, is that the ICE hierarchy has mismanaged the budget. When the ICE hierarchy was informed of the low morale caused by the absence of these programs, they were either non responsive or dismissive of our concerns. From speaking to many people who remain with the agency, ICE continues to flounder.

A merger would reverse this disturbing situation and makes sense on a number of different planes. The over riding reason is an improvement in the efficiencies and effectiveness of government while eliminating duplication of effort. Considerable cost savings of tax dollars could also be realized. Some examples of how a merger will benefit productivity while reducing costs are as follows:

1. It would be beneficial to have one air and marine unit under a single command to support the Immigration/Customs enforcement function.

2. Duplicated intelligence organizations would be melded into a single cohesive unit producing a more efficient and comprehensive intelligence product for the new agency.
3. The separate Internal Affairs units would join together bolstering the efficiency and integrity of the new agency.
4. The forfeiture fund process would be more effective under a single management and result in a more lucrative source that would augment the new agency's budget.
5. Human Resource functions will be integrated into one unit, unifying hiring and recruitment of core area positions.
6. Training staff and regiments would be integrated, resulting in a cost savings and a more effective program.
7. A single Information and Technology division would upgrade all systems databases and make them interoperable creating a more powerful and cost efficient tool.
8. Foreign posts could be filled by one individual representing all Homeland Security interests instead of one for CBP and one for ICE.
9. A single border agency would provide a central point of contact for intelligence and communication on all Immigration and Customs matters with other federal, state and local agencies thus eliminating the current confusion.
10. The business and trade communities would have their issues and concerns better served by the unification of the regulatory and investigative functions.
11. The merger would eliminate the cumbersome necessity of complying with the Third Agency Rule for the exchange of information that is critical to the protection of our borders.
12. The exodus of talent from the agency would stop and the agency would be able to attract highly qualified candidates

I have yet to hear from any individual within DHS articulate a single sound reason for the continued separation of Customs and Border Protection from Immigration and Customs Enforcement. One very vague explanation is that CBP will handle "border enforcement" and ICE will be responsible for "interior enforcement". This reasoning is fatally flawed. "Border enforcement" and "interior enforcement" cannot be separated. This is the same defective logic which created the agency and once again this reasoning displays a complete lack of understanding of the agencies roles and jurisdictional responsibilities. In a similar fashion to CBP, ICE's jurisdictional responsibilities relate to, or must have a nexus to, the border.

ICE's jurisdictional responsibilities directly relate to the cross border movement of people and merchandise. Illegal aliens cross our borders, those involved in immigration fraud cross our borders, narcotics cross our borders, trade mark restricted merchandise crosses our borders, illicit funds cross our borders, munitions and high technology cross our borders and terrorists cross our borders. ICE is responsible for pursuing criminal investigations in all of these critical areas. However, we have separated the agency responsible for investigating these important violations that undermine our national security from those actually standing on the border. This situation is analogous to separating the uniformed officers from the detectives. A recent decision by CBP to not allow ICE to have immediate access to passenger manifests on aircraft arriving from foreign countries illustrates the types of difficulties encountered as a result of the current structure. Although ICE has a critical need for information on the arrival of foreign passengers to identify criminal violators, smugglers, fugitives and even terrorists, ICE is treated as a "third agency" and must submit a formal written request for the information, a time consuming process that could cost lives

By merging CBP and ICE all of the entities involved in border and immigration enforcement responsibilities will be brought together with a single mission and chain of command. We will not realize the objective of creating a single border enforcement agency until Special Agents, Inspectors, Border Patrol Agents, Intelligence Analyst and Detention and Removal Officers are brought together.

There are a myriad of other reasons why the initial separation of these agencies never made sense and a number of additional justifications as to why combining CBP and ICE is best for this nation and its war on terrorism. I find it hard to believe that anyone can propose a counter argument, with as much cause, to maintain these agencies as separate entities. One thing is certain, whatever the decision of congress is regarding the merging of the two agencies, it should be done quickly. Should we continue with the current configuration it would mean maintaining the duplicity of tasks, wasting tax dollars and perpetuating the downward slide of ICE and its employee's morale. Simply stated, *a house divided against itself cannot stand.*

Mr. ROGERS. The Chair now recognizes Mr. Randy Callahan, Executive Vice President of the American Federation of Government Employees, AFL/CIO, and a current ICE investigator. Mr. Callahan.

STATEMENT OF RANDY ALLEN CALLAHAN

Mr. CALLAHAN. Thank you, Mr. Chairman. I am actually an immigration enforcement agent. It is a little bit different than a criminal investigator, and I can go into more detail on that if you need that.

I am here today as the Executive Vice President of Council 117 of the American Federation of Government Employees. It is also known as the National Homeland Security Council Number 117. And my background, I started in 1996 as an immigration inspector and a year later became a detention enforcement officer, which was reclassified in August of 2003 as immigration enforcement agent.

The Council that I represent represents approximately 15,000 employees of the former Immigration and Naturalization Service, which, as we have discussed, is split into three separate bureaus: Customs and Border Protection, ICE, Immigration and Customs Enforcement, and U.S. Citizenship and Immigration Services.

In our view, there are both advantages and disadvantages with each proposed organizational structure, the current one and the proposed merger, and I will try to go into that. Those proposing to combine ICE and CBP argue that two-bureau structure is overly duplicative and bureaucratic. Proponents view ICE and CBP as mutually responsible for the enforcement of our Nation's immigration and customs laws and their workforces should be combined. Certainly a review of the many occupational positions within the two bureaus assigned to enforce these laws would suggest this.

CBP officers, formerly known as immigration customs and agriculture inspectors, are the first line of defense at all air, land and seaports of entry into the United States. Border Patrol agents are assigned to CBP and are responsible for the areas along the border between U.S. ports of entry. Deportation officers are assigned to ICE in the Detention and Removal Operations Division, and they are responsible for maintaining dockets of the removal cases and immigration proceedings. They are also responsible for fugitive operations, finding people that have been released from custody on the condition that they show up to their removal proceeding and failing to do so.

Immigration enforcement agents are assigned to ICE in either the Investigations or the Office of Detention and Removal Operations Divisions. They are a combination of two positions that were part of the Immigration and Naturalization Service, detention enforcement officer and immigration agent; and they have a wide range of duties that include holding people in custody until their removal proceedings, removing them from the country once an order of removal has been issued. They participate in fugitive operations, and they assist other Immigration officers.

Why are there so many different types of positions to enforce the same set of laws? Wouldn't it make more sense to have an all-encompassing position that is trained to enforce the law? In some ways, the answer is yes. Having one position or having one organi-

zational structure would allow for greater flexibility in deploying the force, could provide a career progression ladder and could provide pay parity or parity for pay and benefits.

This last reason may well be the reason why the positions haven't been combined as of yet. CBP officers are not provided the law enforcement retirement benefits or law enforcement salary rates. In fact, the Immigration enforcement agents are the lowest paid on the GS scale. Then it goes up from there. The Border Patrol agents are paid less than deportation officers, et cetera.

Combining ICE and CBP could potentially eliminate several levels of management and combine budget control offices. Potential savings of salary and benefits by eliminating these management level positions is fairly significant.

Combining ICE and CBP may also result in greater cooperation among the divisions. As it is right now, we have the problem of a serious lack of cooperation between legacy and components. People are still holding on to that: I am a Customs employee or I am an Immigration employee. So until that environment is changed, you are going to continue to have those internal struggles.

For this reason, if it is decided to combine the two bureaus into one, we would recommend that whoever is picked to lead that bureau has a background in both divisions. That way they understand the importance of both ICE, Immigration and Customs Enforcement.

Now, supporting the status quo. Why was the INS split up in the first place? After the attacks of September 11th, the country demanded to know how the terrorists were able to enter the country. Investigation into the 9/11 attacks determined that there were several missteps by the Immigration and Naturalization Service that allowed the terrorists to plan and execute their plot. Couple that with the approval of student visas of the terrorists subsequent to the attacks and you can understand why there was a call for dismantling the INS.

One of the reasons why the division was done the way it was done was because, in the old INS, there was regular shifting of funds between the divisions and what would happen is, as an example, it would depend on the office.

In my office in San Diego, for example, there were a lot of times where detention removal resources and funds were used to support the inspections on border operations. Our western region director had a background in the Border Patrol and would use those resources to help Border Patrol operations. As a result, interior enforcement or fugitive operations were greatly diminished. We weren't going out and finding fugitives to the scale that we needed to. For this reason, it seems that it makes sense to separate those chains of command and have them concentrate on specific jurisdictions.

The problem still exists. We have mentioned or it has been mentioned before about the ICE budget problems. As I understand it, there is approximately $300 million of ICE funds that were used by both CBP and CIS. How that all happened, I don't know. I haven't seen the audit report yet. But if the organizations were combined, how much more of that money would have been used to

support border operations or the Immigration Services Division? That, I don't know, and I really would rather not think about it.

How do employees look at the merger? It is a mixed bag. You have got some that are for it and some that are opposed to it. We definitely need to look more into it to find out what the best structure is. But the bottom line is, no matter what the organizational structure, we need good leaders to focus on the mission, and we need adequate staffing and resources to get the mission accomplished.

Thank you.

Mr. ROGERS. Thank you very much, Mr. Callahan.

[The statement of Mr. Callahan follows:]

PREPARED STATEMENT BY RANDY CALLAHAN

Mr. Chairman, Honorable Members of the Subcommittee:

My name is Randy Callahan. I am currently an Immigration Enforcement Agent with the Department of Homeland Security's Bureau of Immigration and Customs Enforcement, Office of Detention and Removal Operations. I began my career in 1996, when I was hired by the Immigration & Naturalization Service as an Immigration Inspector. In 1997, I became an Immigration Detention Enforcement Officer. In August of 2003, the Detention Enforcement Officer was reclassified into my current position.

I am here today as the Executive Vice—President of Council 117 of the American Federation of Government Employees, also known as the National Homeland Security Council. The Council represents approximately fifteen thousand employees of the former Immigration and Naturalization Service, which, as you know, was split into three separate Bureaus: Customs and Border Protection (C.B.P), Immigration and Customs Enforcement (I.C.E) and Citizenship and Immigration Services (C.I.S) in March of 2003. On behalf of the bargaining unit members of these Bureaus, I thank you for inviting me to present NHSC's views on the current organizational structure of C.B.P and I.C.E and whether or not it best serves the homeland security interests of U.S. citizens.

In our view, there are both advantages and disadvantages with each proposed organizational model. I shall attempt to present the pros and cons of each.

Arguments in Support of an I.C.E/C.B.P Merger:

Those proposing to combine I.C.E and C.B.P argue that the two Bureau structure is overly duplicative and bureaucratic. Proponents view I.C.E and C.B.P as mutually responsible for the enforcement of our nation's immigration and customs laws and their work forces should therefore be combined. Certainly, a review of the many occupational positions within the two Bureaus assigned to enforce immigration and customs law would suggest this.

C.B.P Officers, formerly known as Immigration or Customs Inspectors, are the first line of defense at all air, land, and sea ports of entry into the United States. They facilitate the legal entry of imported goods, as well as bona fide immigrants and non-immigrants, while identifying persons attempting to enter the country illegally using fraudulent methods. In addition, C.B.P Officers gather intelligence on smugglers, seize vehicles used by drug and alien smugglers, and prepare prosecution cases for the U.S. Attorney's office.

Border Patrol Agents are assigned to C.B.P and are responsible for the areas along the border between U.S. ports of entry. Their job is to prevent illegal border crossings, and to intercept drugs and people being smuggled into the country. I.C.E Criminal Investigators work in the Office of Investigations (OI) and are responsible for breaking up human and drug smuggling organizations, as well as identifying, locating, and arresting terrorists and terrorist organizations working within the country.

Deportation Officers are assigned to I.C.E in the Detention and Removal Operations (DRO) division. They are responsible for locating and apprehending fugitive aliens, preparing travel documents for aliens that have been ordered removed from the country, and maintaining file dockets of removal proceedings.

Immigration Enforcement Agents (IEA) are assigned to I.C.E in either the office of Investigations or the Office Detention and Removal Operations. They are a combination of two positions that were part of the Immigration & Naturalization Service: Detention Enforcement Officers and Immigration Agents. They are largely responsible for holding in custody people arrested by other Immigration Officers and

who are facing removal proceedings. Immigration Enforcement Agents assist Deportation Officers with fugitive operations, escorting aliens ordered removed from the country to their country, and basically serve at the will of C.B.P.

C.B.P uses Immigration Enforcement Agents as prisoner transport officers at both Border Patrol Sectors and ports of entry. Soon, the office of Detention and Removal will take over the Alien Criminal Apprehension Program (ACAP) from I.C.E's Office of Investigations. ACAP is a program where Criminal Investigators or Immigration Enforcement Agents assigned to the Office of Investigations identify aliens in violation of immigration laws at state and local prisons, or jails. Once state or local authorities have completed their review, illegal aliens are transferred to I.C.E, where they are placed into removal proceedings.

Why are there so many different types of positions to enforce the same set of laws? Would it not make more sense to have one 'all-encompassing' position that is trained to enforce the law? In some ways, the answer is yes. Having one position would allow for greater flexibility in deploying the work force, would provide a career progression ladder, and would provide parity for pay and benefits. This last reason may well be why the positions have not been combined to date. C.B.P Officers are not provided law enforcement retirement benefits or the law enforcement salary rate. In fact, Immigration Enforcement Agents are paid at the lowest full performance GS level; Border Patrol Agents are paid less than Deportation Officers, who are paid less than Criminal Investigators. It is likely more cost effective for the government to keep the positions separate, though it is not necessarily best for the mission of the Bureaus or the Department.

Combining I.C.E and C.B.P could potentially eliminate several levels of management and combine budget control offices. Instead of having two Bureau heads, two directors of operations, two budget directors, two offices of labor relations, etc., it would be possible to consolidate these offices into one. The potential savings in salary and benefits by eliminating these management level positions is fairly significant.

Combining I.C.E and C.B.P may also result in greater cooperation between divisions. Indeed, as it stands right now, there is a serious lack of cooperation between legacy components (INS and Customs) of the two Bureaus. The leadership of the former INS and Customs Service are, as we speak, locked in a heated battle for control of the purse strings. As President Bush acknowledged when discussing the position of Intelligence Czar, the larger the budget one controls in Washington, the more influence one has. The combined budget of I.C.E and C.B.P will give a great deal of additional power to the individual chosen to lead the merged Bureau. For this reason, I recommend that this person have a strong background in both immigration law enforcement and customs law enforcement. Only will such an individual have the ability to ensure that both sets of laws enforcement priorities.

Arguments in Support of Maintaining the Status Quo:

I have already given you the current organizational structure and a few reasons why I believe that combining the two Bureaus might make sense. Now, I will offer you some arguments in support of the status quo, arguments that have advantages in terms of mission effectiveness.

In looking at this issue, the question must be asked: Why was the INS split up in the first place? After the attacks of 9/11/01, the country demanded to know how the terrorists were able to enter the country. The investigation into the 9/11 attacks determined that there were several missteps by the Immigration and Nationalization Service that allowed the terrorists to plan and execute their plot. Couple that with the approval of student visas for a few of the terrorists subsequent to the attacks and you can understand why there was a call for dismantling the INS.

When the Department of Homeland Security was being created, a review of the functions of the different agencies was conducted to determine where each one belonged in the new structure. Because of longstanding problems with INS management, it was judged that there was a need to divide the agency's responsibilities. It was also determined that the INS had failed to put sufficient emphasis on the enforcement of immigration laws in the interior parts of the U.S.

I know of countless situations in which the INS would shift funds and resources to focus on the favored projects of certain INS managers. For example, the former INS District Director in San Diego frequently used funds and resources from the Detention and Removal branch and the Investigations branch to support inspections operations at the San Diego Ports of Entry. In addition, the former INS Western Regional Director used the same resources to support Border Patrol operations in Arizona. These reallocations of funds meant that there was less money available for fugitive operations. It was In an attempt to prevent these types of problems in the future, that the office of Detention and Removal Operations and Investigations were

separated from the Border Patrol and Inspections in the new Department. Clearly, the designers of the Department of Homeland Security were correct when they decided to separate these components of I.C.E and C.B.P.

Yet the problems still exist. As things now stand, C.B.P and Citizenship and Immigration Services (C.I.S) have expropriated over $300M of I.C.E's funds under the current organizational structure. How much more money would C.B.P successfully siphon out of Detention and Removal and Investigation Operations if I.C.E and C.B.P were merged is a question I and my colleagues at I.C.E feel compelled to raise.

One of the main reasons it appears that I.C.E is failing is because it is being starved of necessary resources. It may be that this hearing would not be necessary if I.C.E had all of the funds appropriated by Congress. I already alluded to a $300 million shortfall in I.C.E's budget, because funds were transferred to C.B.P and C.I.S. I now hear that the Border and Transportation Security Directorate (BTS) took funds from all BTS components in order to support certain BTS activities. If that is the case, and Congress did not approve this reallocation of funds, then I hope you will address the issue with BTS. The problem may lie less with the organizational structure, and more with the people filling key leadership positions.

How Do Employees View the Merger:

I've laid out arguments both in favor of, and against the existing organizational structure, and I believe that a merger can work. But what do the employees in the field want? Frankly, it's a mixed bag. C.B.P managers strongly support a merger. They want access to the I.C.E dollars and the power that comes with them. They believe that in a merger of the two Bureaus, C.B.P will emerge as the lead agency. The primary concern of C.B.P employees is that there be someone to pick up their detainees and transport them to a detention facility or wherever they need to go.

Criminal Investigators that were Customs employees prior to the creation of I.C.E also generally support a merger. I have heard that they believe they will have a larger share of the budget pie under C.B.P than they currently have with I.C.E. I hear also that there is an attitude among former Customs CI's that immigration enforcement is somehow beneath them. It may be that because immigration law is so complex and their training in it so limited, they have no desire to conduct investigations of immigration violations. Or, it may be that they simply want nothing to do with immigration matters. However, since all of the terrorists on 9/11 were immigrants, this is a dangerous situation that must be rectified.

Legacy Immigration Criminal Investigators largely want to remain in I.C.E. While they were recently taken out of the collective bargaining unit, and I am no longer able to represent them, I still field calls from Criminal Investigators who are frustrated with the way they are treated now that they can not be part of the union, but who feel they definitely have it better in I.C.E than they would in C.B.P.

Deportation Officers and Immigration Enforcement Agents also want to remain in I.C.E. They fear that the progress they have made in security funding for fugitive operations will be for naught, if C.B.P is allowed to divert DRO resources to support C.B.P initiatives. As one of my colleagues put it, "The border is, has been, and always will be, the squeaky wheel. Businesses and illegal immigrant rights activists don't cry when someone doesn't show up for their removal hearing, but man do they ever scream when the border wait is longer than forty-five minutes." The squeaky wheel will always get the grease, and the grease will be taken from Detention and Removal if C.B.P management can arrange it.

Conclusion:

The employees of I.C.E and C.B.P will work within whatever organizational structure is determined by Congress and the Secretary of Homeland Security. We strongly believe that, no matter what the structure, the mission of DHS is doomed to fail if management continues to cling to its respective legacy components (INS, Customs) and battles for overall control of the Bureaus is allowed to continue. Whatever is decided on this issue, it is essential that Congress also ensures that I.C.E components receive the funds appropriated for them and not allow these funds to be continually diverted for other purposes.

Mr. Chairman, on a final, unrelated note, my ability to testify at this hearing stems from my right to be part of a union. It is an honor for me to be here and I hope to be able to speak on behalf of I.C.E employees for a long time to come. My colleagues in the I.C.E Office of Investigations, the Federal Air Marshal Service, the TSA, and other agencies that make up the Department of Homeland Security do not have the same right. Please correct this injustice by allowing them to join a union and by strengthening whistle blower protections. Employees should not

have to suffer silently as they watch fraud, waste and abuse occurring in front of them. Thank you again for the opportunity to provide this testimony.

Mr. ROGERS. Our next witness is Mr. T.J. Bonner, President of the National Border Patrol Council. Mr. Bonner.

STATEMENT OF T.J. BONNER, PRESIDENT, NATIONAL BORDER PATROL COUNCIL

Mr. BONNER. Thank you, Chairman Rogers, Ranking Member Meek, other distinguished members of the subcommittee.

I have been a Border Patrol agent for the past 27 years and am proud of that. The Department of Homeland Security is very fortunate to have inherited tens of thousands of dedicated, talented employees. Unfortunately, many of these people are leaving as soon as they are able to retire, and many of them have their resumes out there looking for other jobs. They are stifled by the current organizational structure which does not allow them to do their jobs.

Organizations in and of themselves are incapable of accomplishing the mission. It is always the employees who carry out the mission. An organizational structure can either facilitate the accomplishment of the mission or impede the accomplishment of the mission. In this case, the dual enforcement structure of CBP and ICE has proven to be a major barrier to the accomplishment of the extremely vital mission of the Department of Homeland Security, stopping terrorists from entering our country and carrying out their dastardly deeds.

A long time ago, before Homeland Security was even contemplated, before the Department of Homeland Security was contemplated, there was talk about merging or rather splitting up the enforcement and service functions of the Immigration and Naturalization Service. The National Border Patrol Council supported that idea. It made perfect sense. That concept was carried over in the Homeland Security Act, and we supported it then, also.

We did not, however, support the further administrative bifurcation of interior and border security because it simply made no sense. Everything is integrated. All of the crime that our agents deal with, whether it be Border Patrol agents, inspectors, special agents, it all emanates outside of this country, or if it is emanating within this country, it is importing people or goods illegally into the country.

There needs to be coordination and cooperation between all of these agencies. Unfortunately, that does not exist today. It has worsened since the merger of the 22 agencies into the Department of Homeland Security, especially because of the artificial bifurcation of the two enforcement bureaus.

We support merging Customs and ICE—I am sorry, CBP and ICE and believe that this can be done in a manner that would benefit the country. It has to be done, however, thoughtfully and carefully. It has to be done in such a manner that it encourages people to cooperate and that it is structured in such a manner that that happens as a natural consequence, not because of the will of some managers or employees fighting against the current of the river, swimming upstream as it were. It has to be something that naturally flows from that.

For example, right now there are no defined career paths within either of the bureaus that leads to an intermingling of the various occupations. Amazingly, the criminal investigators in ICE are selected, by and large, from people straight out of college or right off the street. They are not drawn from the ranks of Border Patrol agents, CBP inspectors or Immigration enforcement agencies. That would make perfect sense, but it doesn't happen.

I can't think of a single major metropolitan police department where this happens, where they don't go to the ranks of their uniformed officers looking for their detectives. This would yield a better product because you would have knowledgeable, skilled employees filling these ranks. Also, it would cut down on the attrition problems that we have within these ranks, Border Patrol agents, CBP inspectors. Because, right now, your reward for putting in 10, 15 years on the border is to watch someone straight out of college get a higher paying, more challenging job than your job. So what is the incentive for these people to stick around?

I would also like to touch on the need for specialization. One face at the border, while it sounds—it has a lot of facial appeal, the concept has simply not worked. Expecting one class of employees to be knowledgeable in immigration, customs, and agricultural law is asking too much of a single human being. So what we have ended up with is a generation of generalists rather than specialists. This is going to be disastrous a few years down the road.

Right now, we still have people who were trained very well in these specialized disciplines, so we haven't seen the full effects of one face at the border. But when we end up with a bunch of generalists, we are going to see a lot of things slipping by these inspectors at the border that should not be slipping by them; and having specialists in the secondary areas will not cure that defect because the people on the primary inspection lines are the ones who have to be able to recognize that something is wrong in order to send it over to the secondary inspection line.

Finally, no discussion of this problem would be complete without at least touching upon the fact that the new personnel regulations that have been forced upon these employees will have the effect of driving away the best and the brightest. As I mentioned earlier, it is the employees who will make or break this agency. To the extent that these personnel regulations push people away from this agency and make service in the Federal Government less attractive, the Department will not be able to meet its mandate to protect this country.

In summary, the National Border Patrol Council fully supports the idea of merging ICE and CBP but urges that it be done carefully, listening very carefully to the people at all levels of the organization, those on the front lines, those mid-level managers and upper-level managers, figuring out what makes sense and proceeding along those lines but ensuring that the structure facilitates cooperation and coordination and that it allows for specialization within the various occupations. Because, bear in mind, we still have to enforce all of the laws that are out there on the books: the immigration laws, the custom laws, the agricultural laws, the maritime laws. All of the laws of those 22 agencies that were merged

into the Department of Homeland Security still need to be enforced by someone.

Thank you very much for your time, and I look forward to your questions.

Mr. ROGERS. Thank you, Mr. Bonner.

[The statement of Mr. Bonner follows:]

PREPARED STATEMENT OF THE NATIONAL BORDER PATROL COUNCIL OF THE AMERICAN FEDERATION OF GOVERNMENT EMPLOYEES AFL–CIO, PRESENTED BY T.J. BONNER, NATIONAL PRESIDENT

The National Border Patrol Council, which represents approximately 10,000 frontline Border Patrol employees, appreciates the opportunity to share its views and concerns regarding the organizational structure of the Department of Homeland Security.

The Homeland Security Act of 2002 merged 22 diverse agencies within the Executive Branch of the Federal Government with the goal of fostering better coordination and cooperation among them in order to better protect the United States against the threat of terrorism. Three years later, it is appropriate to evaluate the effectiveness of one the more controversial after-the-fact organizational changes—the creation of two separate enforcement bureaus within the Directorate of Border and Transportation Security instead of a single bureau as originally called for in Section 442 of the Act. As contemplated therein, the Bureau of Border Security would have been responsible for coordinating and carrying out all of the functions of the Customs Service and the Transportation Security Administration, the law enforcement functions of the Immigration and Naturalization Service and the General Services Administration, and certain agricultural inspection functions of the Department of Agriculture. For reasons that were more political than practical, two bureaus were created in its place: the Bureau of Customs and Border Protection (CBP) and the Bureau of Immigration and Customs Enforcement (ICE). The legacy Customs Service management structure took control of CBP, and the legacy Immigration and Naturalization Service (I&NS) management structure took control of ICE. Although the stated rationale for the bifurcation of the enforcement functions was to allow CBP to primarily focus on enforcement at the borders and ICE to primarily focus on enforcement in the interior, it is obvious to even the most casual observer that this distinction is almost completely artificial. In order to effectively carry out their statutory missions, both of these bureaus need to be able to seamlessly operate without regard to artificially-imposed boundaries. It is now apparent that the dual structure was mainly created to allow the existing Customs and I&NS bureaucracies to survive largely intact. The survival of an existing bureaucracy in a consolidation can be either productive or counter-productive, depending upon whether or not it is compatible with the new mission and contributes to its accomplishment. In the current structure, unfortunately, the new bureaucracies have impeded the accomplishment of the Department's anti- terrorism and other law enforcement missions. These important objectives require a high level of coordination and cooperation among all of the Department's employees. The current bifurcated structure places needless barriers between these employees and provides major disincentives for them to coordinate their efforts and cooperate with each other. In fact, the level of coordination and cooperation has decreased significantly since the consolidation.

Long before the Department of Homeland Security was even contemplated, there was a great deal of concern in Congress about the ability of the I&NS to effectively discharge its dual enforcement and service missions under a unified structure with a single chain of command. The National Border Patrol Council supported splitting the service and enforcement programs in order to enable both of them to operate at peak efficiency while at the same time facilitating coordination and cooperation between the two branches. The Council also supported the same goal under the Homeland Security Act, but did not endorse the dual split of the enforcement bureaus. It maintains that such a move was a mistake from the beginning, and should be rectified as soon as possible. Of course, merely merging these two bureaus will not cure the ills that plague them. A fundamental restructuring of every key aspect of the organization must also occur if meaningful improvements are expected.

The new consolidated structure must be fully integrated at all levels of the organization. It must not only eliminate impediments to coordination and cooperation, but must also facilitate the achievement of these goals. Such critical matters should not be dependent on the will and strength of a few high-level leaders, but must be the natural result of a well-planned organizational structure. In order to ensure the success of the new structure, it must be carefully constructed, paying close attention

to the input of employees at all levels and components of the existing bureaus. To be successful, this new structure and culture must first be embraced by the leaders at the top of all of the integrated programs, and then be filtered down to employees at all levels of the organization. The only way that this will happen is if the changes make sense to all employees and truly represent a significant improvement.

Weak links in the organizational chain should not be allowed to frustrate the accomplishment of the overall mission. For example, the current structure places all of the funding and responsibility for the detention of illegal aliens into a single bureau, even though all of the programs in both bureaus are dependent upon this resource. Allowing mismanagement and under-funding in one program to disrupt the entire operation is untenable. A proper organizational structure would ensure that all aspects of the operation are carefully planned and integrated, and that all of the resources are properly distributed to ensure that such disparities rarely, if ever, occur. Unanticipated shortfalls in one or more key areas would be compensated for by shifting funds and resources from other areas.

The chains of command and lines of authority in the new organization must be structured horizontally as well as vertically in order to ensure that all of the components seamlessly interface with each other as well as to facilitate cooperation. Currently, all of the Department's criminal investigators belong to one bureau, while all of the front-line personnel who enforce the laws pertaining to the legal and illegal entry of people and goods entering the United States belong to a different one. Under this system, there is absolutely no incentive for these employees to coordinate their investigations or to cooperate with each other. To the contrary, it actually encourages competition and isolationism.

Another factor that discourages coordination and cooperation among the Department's employees is the absence of defined career paths within the various organizational components that would allow for the easy interchange of experience and skills between them. For example, in a properly-constructed organization, criminal investigator positions and other higher-graded occupations should be selected from the ranks of entry-level occupations such as Border Patrol agents, CBP inspectors, and Immigration Enforcement agents. This would not only provide the Bureau with experienced employees who would require minimal training to perform well in these complex assignments, but would also boost morale and slow attrition among the ranks of the other occupations. Amazingly, the Department hires almost all of its criminal investigators straight out of college. This has no parallel in any other law enforcement agency in the country. Every single major police department hires its detectives from the ranks of its uniformed officers.

It would be a serious mistake to assume that the employees in the various occupations within the consolidated bureau are interchangeable and that some of these occupations should therefore be merged. Occupational distinctions should be based upon operational requirements and realistic employee expectations, not on uniformity for uniformity's sake. In addition to its over-arching mission of anti-terrorism, the Department continues to be responsible for enforcing immigration, customs, maritime, and agricultural laws. All of these laws are complicated and arcane, and it is unrealistic to expect one employee to be an expert in more than one discipline. While it is helpful for all employees to be familiar with those laws that they might encounter during the normal course of their duties, it is unwise to attempt to create a workforce of generalists rather than specialists.

The best example of this theory going awry is the "One Face at the Border" initiative undertaken by CBP shortly after its creation. While the phrase has a certain facial appeal, its underlying premise is fundamentally flawed. The complexities of the three major types flaws and regulations that are enforced at the border virtually guarantee that no individual can become an expert in all of these areas. Efforts to homogenize the inspectors at our Nation's ports of entry will ultimately result in a workforce composed of "jacks of all trades, but masters of none." The plan to place specialists in the secondary referral areas as an adjunct to these generalists in the primary inspection areas will also prove ineffective. If the primary inspectors have insufficient knowledge of the applicable laws, they will be incapable of identifying suspicious people and cargo for referral to the secondary areas. For similar reasons, the current attempt to force all criminal investigators to handle cases involving all of the various laws within the Department's jurisdiction is also doomed to failure. Specialization must be embraced and encouraged at all levels of the organization.

Finally, it must be recognized that organizational structures in and of themselves are wholly incapable of carrying out an agency's mission - they merely facilitate the accomplishment of the mission by the agency's employees. The more skilled and dedicated the employees are, the more effectively the mission will be accomplished. Unfortunately, the Department of Homeland Security is in the process of implementing a new personnel system that will make it very difficult to recruit and re-

tain the best and the brightest employees. Although the new rules purport to be progressive measures that will reward and encourage superior performance and hold all employees accountable, they are in fact throwbacks to the corrupt, cronyism-based nineteenth century civil service system that nearly ruined public service in this country. All employees want to be paid and treated fairly, and to have a say in the decisions that affect their working conditions. Because this new personnel system does not meet those basic needs, it will discourage highly-skilled and dedicated employees from serving their country in this vital agency.

In summary, the National Border Patrol Council strongly supports the merger of the Department of Homeland Security's two enforcement bureaus, but cautions that such a consolidation must be undertaken thoughtfully. Otherwise, it will not correct the problems that exist in the current bifurcated structure, and could actually worsen the situation. In order to be effective, the new structure must foster the coordination and cooperation that are so essential to the accomplishment of the Department's anti-terrorism and other law enforcement missions. It must also facilitate specialization in the various laws that the Department is charged with enforcing in order to maximize the odds that terrorists and weapons of mass destruction will be intercepted. Finally, it must ensure that employees are treated fairly and that their input is heeded so that the Department is able to continue its tradition of attracting the best and brightest to protect America against the threat of terrorism.

Mr. ROGERS. The Chair now recognizes Mr. Michael Cutler, former Senior Special Agent, U.S. Immigration and Naturalization Service.

STATEMENT OF MICHAEL CUTLER

Mr. CUTLER. Thank you for having me. Good morning. As a New Yorker, I will also try to speak quickly for you.

Mr. ROGERS. We are going to have to get some southerners on this panel.

Mr. CUTLER. I think so. We are kind of taking over today.

Chairman Rogers, Ranking Member Meek, distinguished members of the Congress, members of the panel, ladies and gentlemen, I welcome this opportunity to provide testimony today on the critical issue of determining if the current organizational structure of ICE and CBP best serves U.S. Homeland Security interests.

This issue is of great concern to me on two levels. First of all, I am an American; and, second of all, I am a former INS Senior Special Agent, having worked for the agency in New York for some 30 years.

We all know the significance of September 11, 2001, but how many Americans remember February 26, 1993? I believe that few Americans would readily remember that second date perhaps because we have a short memory as a Nation, perhaps because the events of that date were so drastically and horrifically eclipsed by September 11, 2001. We recently marked the 12th anniversary of the first attack on the World Trade Center, which in fact occurred on February 26, 1993. Six people lost their lives on that day simply by going to work. At least a thousand people were injured, and it has been estimated that the damage to the World Trade Center complex was an estimated half billion dollars. Our Nation did little to protect itself after that attack, and the terrorists essentially of their own volition waited more than 8 years before they attacked this country again at that very same location. Therefore, we should take very little comfort that there have been no attacks committed within our country's borders since September 11, 2001. Indeed, we are continually warned about the potential for future attacks on our Nation that might involve weapons of mass destruction. I fear a future attack might serve to eclipse the attacks of 9/11.

The fact that the issue of reorganizing the agencies which bear the responsibility of securing our Nation's borders is the focus of this hearing encourages me that this subcommittee is intent on making the protection of our borders and the enforcement of the immigration laws the priorities, as well they should be. But I would implore you and your colleagues who represent us in both Houses of Congress to act swiftly and resolutely to secure our Nation's borders which at present are anything but secure. The clock is ticking, and the time is on the side of our Nation's enemies.

To quote the first two sentences of the preface of a report entitled, *"9/11 Terrorist Travel, a staff report of the National Commission on Terrorist Attacks Upon the United States,"* and I quote: "'It is perhaps obvious to state that terrorists cannot plan and carry out attacks on the United States if they are unable to enter our country. Yet, prior to September 11, while there were efforts to enhance border security, no agency of the U.S. government thought of border security as a tool in the counterterrorism arsenal.

The failure of our Nation to impose even a modicum of control over who is able to enter our Nation even now is a clear indication of the inability of the United States to protect its citizens from the potential of another terrorist attack.

And it is not only terrorists who threaten our well-being. It is estimated that some 30 percent of the Federal inmate population is comprised of aliens.

When I worked at the former INS, I became an advocate for the concept of what I have come to refer to as the "immigration law enforcement tripod." Under this concept, the Border Patrol enforces the law between ports of entry, the inspectors enforce the laws at ports of entry, and the special agents comprising the interior enforcement component of immigration law enforcement, along with deportation officers, back up the other two divisions of what was the Immigration Service. I had recommended that the service side of the INS should be spun off as a separate entity that would rely on special agents to conduct field investigations when appropriate, to seek to uncover immigration benefit fraud, a critical issue that has all been ignored and neglected.

As we know, since the formation of DHS, the immigration benefits program has been indeed placed under a separate bureau; and, in addition, enforcement elements of the former INS have been merged with U.S. Customs Service to form the Bureau of Immigration and Customs Enforcement. Additionally, other agencies have been added to the DHS, among them the Secret Service, the Transportation Service Safety Administration, and the GSA Police.

To further complicate matters, the current structure divides interior enforcement of the immigration laws from the enforcement of the immigration laws along the border and at ports of entry. The inspectors and Border Patrol agents are now part of CBP, and we need to fortify our Nation's exterior borders but not create bureaucratic borders between these two law enforcement agencies that share responsibilities for a common mission.

It is my opinion and the opinion of many of my former colleagues at the former INS that this management structure is unwieldy and ineffective. The enforcement of the immigration laws is critical and shares little with the other agencies which have been combined

with the former INS. The mission of each of these agencies is critical but unique.

The mission of the former U.S. Customs Service bears little in common with the work and priorities and orientation of the former INS. In fact, prior to the merger, Customs was a division of the Treasury Department and the INS was a division of the Department of Justice. Its primary responsibility was to prevent contraband from entering the United States and to collect tariffs and duties. Customs is responsible for the movement of goods and currency across our Nation's borders. The INS was concerned with the movement of people across our Nation's borders and has been involved with issues that more closely paralleled what the employees of State Department, the Labor Department, and the FBI are involved with.

To reinforce this point, I would point out that, while it was relatively rare for INS agents, at least in New York, to work with their Customs counterparts, it was relatively common for us to work with agents of the other agencies that I just mentioned. The primary similarity between Customs and the INS was the border, and once you remove the border from the equation, the differences became obvious and profound.

Since the merger of INS into ICE, the new special agents who are now being trained are no longer even receiving Spanish language training. It is estimated that some 80 percent of the illegal alien population of the United States is Spanish speaking. This language training was an integral part of the curriculum for all new law enforcement officers at the old INS.

Mr. CUTLER. You cannot investigate people that you cannot communicate with. It is worth noting that most of the special agents in charge of ICE offices came from the U.S. Customs Service, further eroding the immigration mission. I have come to think of the current situation, quite frankly, as the Customization of immigration and law enforcement. I have been told that few employers of illegal aliens are found under the auspices of the Employer Sanctions Program in the United States last year.

Additionally, the investigation of immigration benefit fraud has been relegated, from what I have been told, to being pursued by very few field agents and some computer systems. We are currently engaged in a war on terror where control of our Nation's borders is critical to the outcome of this battle where the stakes are so high.

In order for the borders to be secured, we need to have a coordinated enforcement program that creates a seamless effort from the borders to the interior. This can best be done, in my estimation, by putting the CBP and ICE under one roof. It is also essential that separate chains of command be established with the Immigration and Enforcement Program with specific training and funding and accountability. This is the era of the specialist; one size does not fit all.

It is critical that our Nation gains control of its borders and the entire immigration bureaucracy if we are to protect our Nation from illegal immigration. Illegal immigration has a profound impact on more aspects of this Nation has does any other issue. It impacts on everything from education, the environment, health care,

and it also involves criminal justice and national security. It is vital, in my view, that this mission be effectively dealt with. The current structure does not provide the framework or leadership to enable this to happen.

Morale among the former INS personnel is at an all-time low. Clearly this situation needs to be remedied, and a reorganization such as I have outlined, I believe, would represent a major step in the right direction.

Thank you for your time. I look forward to your questions.

Mr. ROGERS. Thank you very much for your comments, Mr.Cutler.

[The information follows:]

PREPARED STATEMENT OF MICHAEL W. CUTLER

Chairman Rogers, Ranking Member Meek, distinguished members of Congress, members of the panel, ladies and gentlemen. I welcome this opportunity to provide testimony today on the critical issue of determining if the current organizational structure of ICE and CBP best serves U.S. homeland security interests.

This issue is of great concern to me on two levels. First of all I am a citizen of the United States. Secondly, I am a former INS senior special agent, having worked for that agency for some 30 years.

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"It is perhaps obvious to state that terrorists cannot plan and carry out attacks in the United States if they are unable to enter the country. Yet prior to September 11, while there were efforts to enhance border security, no agency of the U.S. government thought of border security as a tool in the counterterrorism arsenal."

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uncover immigration benefit fraud, a critical issue that is all but ignored and neglected.

As we know, since the formation of the Department of Homeland Security the immigration benefits program has, indeed, been placed in a separate bureau and in addition, enforcement elements of the former INS have been merged with the U.S. Customs Service to form the Bureau of Immigration and Customs Enforcement. Additionally, other agencies have been added to the DHS; the Secret Service, the Transportation Safety Administration and the GSA Police. To further complicate matters, the current structure divides interior enforcement of the immigration laws, from the enforcement of the immigration laws along the border and at ports of entry. The inspectors and Border Patrol agents are now part of CBP or Customs and Border Protection. We need to fortify our nation's exterior borders but not create bureaucratic borders between these two law enforcement agencies that share responsibilities for a common mission.

It is my opinion, and the opinion of many of my former colleagues at the former INS, that this management structure is unwieldy and ineffective. The enforcement of the immigration laws is critical and shares little with the other agencies which have been combined with the former INS. The mission of each of these agencies is critical, but also unique. The mission of the former U.S. Customs Service bears little in common with the work and priorities and orientation of the former INS. In fact, prior to the merger, Customs was a division of the Treasury Department and the INS was a division of the Department of Justice. Its primary responsibility was to prevent contraband from entering the United States and to collect tariffs and duties. Customs is responsible for the movement of goods and currency across our nation's borders.

The INS was concerned with the movement of people across our nation's borders and has been involved with issues that more closely paralleled what the employees of State Department, the Labor Department, and the FBI are involved with. To reenforce this point, I would point out that while it was relatively rare for INS agents to work with their Customs counterparts it was relatively common for us to work with agents of the other agencies I have just mentioned. The primary similarity between Customs and the INS was the border. Once you remove the border from the equation the differences become obvious and profound.

Since the merger of INS into ICE the new special agents who are now being trained are no longer even receiving Spanish language training. It is estimated that some 80% of the illegal alien population is Spanish speaking. This language training was an integral part of the curriculum for all new enforcement officers at the old INS. You cannot investigate people you cannot communicate with. It is worth noting that most of the Special Agents-in-Charge of the ICE offices came from the U.S. Customs Service further eroding the immigration mission. I have come to think of the current situation as the "Customization of immigration law enforcement." I have been told that few, if any employers of illegal aliens were fined under the auspices of the employer sanctions program in the United States last year. Additionally, the investigation of immigration benefit fraud has been relegated, from what I have been told, to being pursued by very few field agents and computer systems.

We are currently engaged in a war on terror where control of our nation's borders is critical to the outcome of this battle where the stakes are so high. In order for the borders to be secured we need to have a coordinated enforcement program that creates a seamless effort from the borders to the interior. This can best be done, in my estimation, by putting the CBP and ICE under one roof. It is also essential that separate chains of command be established for the immigration enforcement program with specific training and funding and accountability. This is the era of the specialist. One size does not fit all. It is critical that our nation gains control of its borders and the entire immigration bureaucracy if we are to protect our nation from illegal immigration. Illegal immigration has a profound impact on more other aspects of this nation than does any other issue. It impacts on everything from education, the environment, health-care and the economy to criminal justice and national security. It is vital, in my view, that this mission be effectively dealt with. The current structure does not provide the framework or leadership to enable this to happen. Morale among the former INS personnel is at an all-time low. Clearly this situation needs to be remedied. A reorganization such as I outlined would represent a major step in the right direction.

I look forward to your questions.

Mr. ROGERS. Our next witness is Mr. David Venturella, former Director of the Office of Retention and Removal Operations, and we look forward to your comments.

STATEMENT OF DAVID VENTURELLA

Mr. VENTURELLA. Thank you. For the record, I am from Chicago, so I may need an extra 30 seconds.

Mr. ROGERS. We will work with you.

Mr. VENTURELLA. Mr. Chairman and honorable committee members, I would like to thank you for the opportunity to testify today, an honor to appear before you to discuss the matter at hand.

In an 18-year career in law enforcement, I have worked as an entry-level deportation officer with the former Immigration and Naturalization Service to overseeing the detention and removal operations of criminal and illegal aliens as the Acting Director of Detention and Removal Operations within U.S. Immigration and Customs Enforcement.

The creation of Homeland Security was one of the greatest and most significant realignment efforts in the Federal Government in over 40 years. The goal of the established Department to break through the layers of bureaucratic red tape and turf wars that existed between various law enforcement agencies and focus the mission of government on protecting our Nation and its people will be achieved by asking the questions such as the ones presented here today. The question of this hearing should be should we possibly merge ICE and CBP, and is there a benefit to doing so?

While I applaud this committee and others for recognizing that ICE and CBP are not functioning at their optimum level and looking at options to fix that situation, it is my humble opinion that an option to merge the two organizations is not necessary at this time and may well cause the Department to move backwards.

The creation of DHS provided an opportunity to take a fresh look at how the former Customs Service and Immigration and Naturalization Service could maximize their effectiveness by aligning all of the right pieces to carry out its important missions. Unfortunately, that has not occurred. In particular, the potential envisioned by the creation of an enforcement agency has not been fully realized. Instead, I would recommend a thorough examination of the components of each bureau and redistributing programs to provide a logical alignment of operations, assets, as well as the integration of appropriate resources.

In that vein, I would suggest strongly placing customs and agriculture and port assets under our Customs Bureau, and immigration and enforcement assets under an immigration bureau. The Federal Protective Service and the Federal Air Marshals should be moved elsewhere in the Department. They don't fit. It doesn't make sense. The experiment of forcing square pegs into round holes and joining numerous programs under one roof has served merely to diminish the Department's focus on enforcement.

While the leadership at ICE had the most difficult job in the three immigration bureaus in addressing the critical infrastructure issues, which are hampering its ability to execute just basic functions, the fact remains that neither ICE nor CBP have plans to complement one another, nor are they capable of successfully moving forward. It is vital to recognize that the two bureaus barely interact. When they do, they argue over budget, operation and jurisdiction.

This is not to say that there have not been successes at integration. The Arizona Border Control Initiative, the expansion of expedited removal between ports of entry, and the publication of joint detention priorities are a few of the areas where the two bureaus working with the Border and Transportation Security Directorate have been able to work together to increase the effectiveness and inefficiency of operations. However, all too often BTS, which has insufficient resources to properly integrate the agencies, has been forced to waste their scarce resources and staff mediating disputes between these agencies instead of developing strategy and integrating operations to fulfill the Department's mission.

Whether the decision is ultimately made to merge ICE and CBP or not, real issues will remain unless the underlying vision and mission occur in a unifying manner. If ICE and other Homeland Security agencies do not have the proper strategic planning, mission focus and strong leadership, their goals will remain unreachable, and our country will remain vulnerable.

Aside from the organizational issues that are being contemplated today, this committee must look at major policy issues. Throughout my 18 years of service in the former Immigration and Naturalization Service and Immigration and Customs Enforcement Bureau, this country has lacked a clear policy in immigration matters.

Congress and the administration must send DHS a clear signal on immigration policy. This lack of direction has made the missions of the current agencies responsible for enforcing these statutes more confusing and complicated. Unfortunately for the Department, there are many dedicated individuals who often, without the appropriate resources, clear mission and strategy, continue to perform the impossible day in and day out. Within that same breadth, the Department, and in particular ICE, has lost many talented individuals who can no longer wake up each day to face those trying circumstances.

Now it is time to reexamine not just organizational issues, but again the larger issues, policy, strategy and mission.

Again, thank you for the opportunity to testify. I welcome the opportunity to answer any questions you may have.

Mr. ROGERS. Thank you for that statement.

[The information follows:]

PREPARED STATEMENT OF DAVID VENTURELLA, FORMER ACTING DIRECTOR OF THE OFFICE OF DETENTION AND REMOVAL OPERATIONS

Mr. Chairman and honorable Congressional Members, I would like to thank you for the opportunity to testify today and I am honored to appear before you to discuss the matter at hand.

In an eighteen year career in law enforcement, I have worked as an entry-level deportation officer with the former Immigration and Naturalization Service, to overseeing the detention and removal efforts of criminal and illegal aliens in the United States as the acting Director of Detention and Removal Operations within U.S. Immigration and Customs Enforcement, or ICE.

The creation of the Department of Homeland Security was one of the greatest and most significant re-alignment efforts in the federal government in over 40 years. The goal of the established Department to break through the layers of bureaucratic red tape, end the turf wars that existed between various law enforcement agencies and focus the mission of government on protecting our nation and its people will be achieved by asking questions such as the one presented here today.

The question of this hearing is. . .should we possibly merge ICE and CBP and is there a benefit to doing so? While I applaud this committee and others for recognizing that ICE and CBP are not functioning at their optimum level and are looking

at options to fix that situation, it is my humble opinion that an option to merge the two organizations is not necessary at this time and may well cause the department to move backwards. The creation of DHS provided an opportunity to take a fresh look at how the former Customs Service and Immigration and Naturalization Service could maximize their effectiveness by aligning all of the right pieces to carry out its important missions; unfortunately that has not occurred. In particular, the potential envisioned by the creation of an enforcement agency has not been fully realized. Instead, I would recommend a thorough examination of the components of each bureau and redistributing programs to provide a logical alignment of operations, assets as well as the integration of appropriate resources. In that vein, I would suggest that you strongly consider placing customs and agriculture assets under CBP and immigration enforcement assets under ICE. The Federal Protective Service and the Federal Air Marshals Service should be moved elsewhere in the department. The experiment of forcing square pegs into round holes and jumbling numerous programs under one roof has served merely to diminish ICE's focus on enforcement.

The leadership at ICE had the most difficult job of the three immigration bureaus in addressing the critical infrastructure issues which are hampering the ability to execute basic functions. The fact remains that neither ICE nor CBP do not have plans that compliment one another nor are they capable of successfully moving forward. It is vital to recognize that the two bureaus barely interact and when they do, they argue over budget, operations and jurisdiction.

That is not to say that there have not been successes in integration. The Arizona Border Control Initiative, the expansion of expedited removal between ports of entry, and the publication of joint detention priorities are a few of the areas where the two bureaus, working with the Border and Transportation Security (BTS) Directorate have been able to work together to increase the effectiveness and efficiency of operations. However, all to often, BTS, which has had insufficient resources to properly integrate the agencies has been forced to waste its scarce staff and resources mediating disputes between the bureaus instead of developing strategy and integrating operations to fulfill the Department's mission. Whether the decision is ultimately made to merge ICE and CBP or not- the real issues will remain unless the underlying mission, vision and planning occur in a unified manner.

If ICE, CBP and other Homeland agencies do not have the proper strategic planning, mission focus and strong leadership, their goals will remain unreachable and our country will remain vulnerable.

Fortunately for the Department, there are many dedicated individuals, who, often without the appropriate resources, clear mission and strategy, continue to perform the impossible. Within that same breath, the Department, and in particular, ICE has lost many talented individuals who could no longer wake up each day to face those same trying circumstances.

It is time to re-examine not just organizational issues, but the larger issues of policy, strategy and mission.

Again, thank you for the opportunity to testify regarding this important issue. I welcome the opportunity to answer any questions that you may have.

Mr. ROGERS. I thank all of you for what I think are very thoughtful statements and helpful, very diverse.

I would like to start off the questioning and would remind everybody that we are going to try to stick to the 5-minute rule on the committee with our questions as well, and I will try to set the pace for that.

In listening to the statement, I thought about an article that I read recently by Asa Hutchinson just as he was about to leave his post. The Under secretary was urging that we not undo 2 years of productive growth and development. He considered this period, while painful and flawed, part of a developmental process that we needed to stick—to adhere to.

I would like to know from you, Mr. Venturella, would you agree with that? Are we in the right path? Is this just growing pains that we are experiencing?

Mr. VENTURELLA. We are certainly feeling growing pains, sir. When I was in the Department, we were feeling growing pains. Are we on the right path? I just don't know what that path is, and I

think that is the problem, where are we going and how are we getting there. Spell it out to us.

Again, there are great individuals working in all of these bureaus who, if they had the proper direction, the proper focus, would carry out and execute perfectly. But that doesn't exist. You know, I don't want to blame any individuals, it is just, again, some of these—the misalignment of bureaus and operations and functions has taken the focus away from the Department on what is our strategy, what are we going to do the next 3 to 5 year out, and focus on these start-up issues.

Mr. ROGERS. Okay. Mr. Carafano, in your remarks, I think it would be fair to say you disagree with former Secretary Hutchinson. Would you tell us why he is wrong, and those just aren't growing pains that we are living with?

Mr. CARAFANO. Yes. I have great respect for what Under Secretary Hutchinson did as the Under Secretary for DHS. But he was very much focusing on standing up the organization that he was handed. I mean, he didn't get a vote on what it should look like.

I think the most salient comment was made by David. I mean, we don't—there is no vision of where we are going. Therefore, it is kind of a circular debate as is this growing pains or not because we really don't know where we are going.

In my statement I tried to articulate four or five pieces of what I thought envisioning the future ought to look like and that would serve the basis for reorganization. The top three is—one is first you have to focus on the legal means of entry in the United States. Those are our vital lifelines. They have to be protected. Virtually every known terrorist that entered the United States has come in through a legal means, so those legal means and infrastructure that support them at the border, I think, ought to be our number one priority.

Internal enforcement and point of origin and point of transit, because the worst place to stop this is at the border. It is better to keep the flow from the border to begin with, and internal enforcement and external pressure, I think, will provide much more bang for the buck.

The third point I try to make is on the border, I think, where we really need to put our priority is between the points of entry. Therefore, I think what is really required is a systems-to-systems approach is what gets the right assets to the right place at the right time to interdict threats. And what I argued before, there is, I think, a lot of that going to be airborne, whether it is the air and maritime interdiction capabilities, which is now in CBP, or in pumping up the Coast Guard's domain, awareness and capabilities to react.

But I think we need that kind of document on the table from the Department, because otherwise we are really just—everybody can make a great compelling case based on what they are particularly concerned about, but what is most important is how do we reduce illegal entry and unlawful presence overall, and how do we keep terrorists and other bad things out of the country.

Mr. ROGERS. Excellent.

Finally, I would like a quick answer of Mr. Klug. You talked about how we needed to merge in order to enhance our border secu-

rity specifically. What is our biggest vulnerability, in your opinion, without the merger?

Mr. KLUG. I believe it is the flow of intelligence that surrounds port security that is our greatest vulnerability.

Mr. ROGERS. Okay. Thank you.

I now would like to recognize my Ranking Member, my friend Mr. Meek from Florida, for questions.

Mr. MEEK. Thank you, Mr. Chairman. I want to thank the Members for speaking from their heart today about the direction that we are going in, direction that we may take in the future. I can tell you that I was sitting here and I was waiting for the real what we should do. I am hearing both sides.

Mr. Chairman, I think we put together a very good panel here, because we are going to have some insightful questions from members of this committee that will hopefully get us to some sort of conclusion, and that conclusion doesn't have to be today. I think it is an ongoing discussion and action.

But I can tell you what I do fear. It is a very difficult task that we are talking about here, the enforcement of protecting the homeland and also at our airports and seaports. I mean, this is a big job. This is not small. So if anyone may hear your statements and say, why aren't they coming to hard conclusions, I think you have said it best if we are heading in the direction that we are heading.

I don't know quite what direction we should go into now, but I can tell you there are two reasons why we are here today. One is the GAO report that was produced, and also the Department of Homeland Security 2.0, and looking at the conclusions of both of those reports, I can tell you that it is not something that the Department, from what I can see,

Mr. Chairman, has embraced, or even having a serious discussion about looking at how we can deliver.

But, Doctor, I want to just ask you a quick question, and I know that you have had a lot to say here today, and I can see that you spent quite a bit of time on it.

Originally we started out looking at this with four principles, four guiding principles, of putting these—in having these two agencies separate, and the creation of the Department of Homeland Security. One was delivery, control of delivery; and also prevention of alien smuggling; and, three, detention and removal; and guidance of communications. I want to just—I want you to elaborate, and anyone else can elaborate with the time that is left, on the end of the fourth point, not necessarily in that order, the guidance of communications.

I think being a past creature of law enforcement myself, I know, when we talk about those stovepipes, is very hard, they are steel, they are galvanized, they are tribunal, almost. You have to either be a part of that agency to receive information. As we talk about protecting the homeland, communication and information is important.

So, in your report, in your 2.0 report, did you have any findings, or did you come about to any conclusions on how communications will be improved if we were to change our present structure right now?

Mr. CARAFANO. Most of the input was anecdotal, but basically it was a lot of stories of coordination that simply wasn't required before, because now people are in separate buildings. People don't have TDY to go and talk to other people. People have to talk to a boss to coordinate, when they didn't have to before.

The other common thing that we heard a lot of was that in the old CBP, it was often the investigators that really had the big picture and really could work with the border people in terms of providing them the context of how what they are doing fit in the overall picture, and that made much more better internal enforcement investigations.

Mr. MEEK. Anyone else care to elaborate on that?

Mr. KLUG. I would like to echo what the Doctor said, quite true, that intelligence and that expertise that was inherent in the Customs Service relative to port security, much of that expertise was lost when the two agencies were split. And that symbiotic relationship I spoke about in my testimony weren't flowery words, it was the passionate truth.

We are collocated. On a formal and informal basis we exchange intelligence information, and that led to many successful seizures of narcotics. We could have continued to take that expertise if we are combined or continue to be combined and focused on the war on terrorism. We lost that when the two agencies were split, and we are continuing to increase that schism as the days go on.

Mr. MEEK. Yes, sir.

Mr. CUTLER. Well, before I became a special agent, I was an inspector at Kennedy Airport. The nice thing was that I maintained that special relationship with the inspectors. They were a great resource for me as an agent, when I made the transition to becoming a special agent.

But I speak to my colleagues today who are agents assigned to ICE. There has been literally a barrier that has now gone up. They will tell me of instances of law violations are being discovered by inspectors who are calling the FBI before they are calling ICE. They are saying, why aren't we notified if we are supposed to be part of the same organization? There is a sense of organization, there is a sense of we are us, and you are you, and this didn't happen before. That is why I was saying before that we need to build up the exterior borders of the United States to protect ourselves from those who would come here and harm us. But on the other hand, we need to remove all of these barriers that we have erected within the Immigration and Customs law enforcement community, because it is a community, and we do have to rely on each other.

But I think the other part of the problem is, though, that we just don't have the resources to do an effective job. I just want to make one fast point about that. Once again, I have to tell you that I am a New Yorker for a reason. New York has claimed to be the safest big city in the United States. We have 8 million people confined to a small area, but we have a police force of nearly 40,000 police officers. We have about 2,000 agents dedicated to enforcing the immigration laws for the entire country, where we have an illegal alien population that might be twice as great as the number of people who live in the city of New York.

Without the resources, without the detention space, without a clear mission, without the political will—and this has been a problem from before the merger, we got into this mess—the folks who are here illegally in the United States didn't come here last Thursday. This problem was building for a very long time, so that what we need to understand is historically no one has wanted to deal with immigration. People called Social Security the third rail. I think if there is a third rail, it has been immigration. So I think we really need to come to grips with resources as well as management and structure.

Mr. ROGERS. Thank you.

Mr. MEEK. Thank you, Mr. Chairman.

Mr. VENTURELLA. I do have one final point.

Mr. ROGERS. Go ahead.

Mr. VENTURELLA. Those barriers have been created, but once again it is because of the leadership that has allowed those barriers to be created. They have forced a schism between the bureaus. On paper, yes, these are our bureaus, but it takes leadership to break those down. That hasn't occurred. Again, we have lost focus on what the goal and the mission is for the Department of Homeland Security.

Mr. ROGERS. The Chair recognizes the gentleman from Mississippi, Mr. Thompson.

Mr. THOMPSON. Thank you very much, Mr. Chairman. Let me compliment the witnesses on their testimony and let me make some suggestions for you, Mr. Chairman. It just appears at some point we ought to bring some people from the administration—

Mr. ROGERS. I agree.

Mr. THOMPSON.—in and let hear see the other side.

Mr. ROGERS. Exactly. It was on purpose that we brought folks from the outside first to get their perspective before we had the folks from the inside. But we do intend to do just that. I agree with you.

Mr. THOMPSON. Because there are some things that are very troubling for me. What I hear from people in the field is that they want it to work, but the mechanics for that to happen just don't happen to exist at this point.

One of the things I would like to assure Mr. Klug is that we need to see the audit of ICE, and we hope to get that audit report at some point and review it, because those things help us.

Mr. Chairman, I think we also need to get someone in here from ICE to explain that audit to the committee, since we are an oversight committee, and we should examine some very glaring issues raised in this audit from an oversight and management standpoint.

Mr. ROGERS. I agree.

Mr. THOMPSON. I guess the last thing is what I got from everyone at the table is that you think, given the right direction, the merger is good. But unless you get it right, it is suspect. Why don't we start with the good doctor and give me a personal observation on that.

Mr. CARAFANO. I think that is correct. I mean, I think a reorganization without a comprehensive vision that tackles tough political issues like illegal entry and unlawful presence in the United States is not helpful.

I would certainly agree with the argument that it is a resourcing question as well as an organizational question, and I think that is part of the study is you never are going to have all the money you want. The question is do you have an organization that is designed to put the resources where you are going to get the biggest bang for the buck to address the problem? Any time you ask that decision among multiple agencies and the Department, it is just more complex, because you are worried about making your agency healthy as well as getting the mission done.

So when you create an operational agency, which has a core competency of addressing the problems from end to end—and I actually include visa issuance in this—from visa issuance to internal enforcement, then hopefully you have somebody at the top who can look at the problem strategically and not only say, how can I best put my organizational piece to do that, but how can I best apply the resources to do that.

I don't think ICE is ever going to, ever, ever going to have the capacity to do internal enforcement, so I truly believe it is the one thing we really, really have to do if the Federal Government wants to make a substantive contribution to this problem. It is never going to happen as an independent, tiny little agency sitting by itself, hanging out at the end of DHS. It is never going to have the pull, the politics, the cover that it needs to do its job.

Mr. KLUG. I am here today at my own expense. I came in from New York. I don't represent a foundation, I don't represent a union. I come here, I am no longer an employee, so unlike the committee, I cannot be promoted to another position.

I am here out of concern for what I thought was a very broken agency, or had become a broken agency. I am here for concern of the general American public. I have no other agenda other than to speak to the distinguished members of this committee to say that what has occurred would have separated these two agencies was a flawed idea, and that I am hoping that the agency and I am hoping—and I am not so presumptuous enough to think that I have the whole picture. I realize that I have an opinion predicated upon a relatively short career of 25 years, but that opinion I am passionate about.

That is why I am here today, and I think that the best thing for the American public is to merge these two agencies back together, because that merger would be much more conducive to what I think the intent of Congress was when it formed the Department of Homeland Security, and that was to protect our borders.

Mr. ROGERS. Time has expired on this line of questioning. I would like to recognize the chairman of the full committee, Mr. Cox of California,

Mr. COX. Thank you, Mr. Chairman, and once again thank you to each of our witnesses. Like the Ranking Member of the full committee, the gentleman from Mississippi, I look forward to hearing from the Department of Homeland Security and administration witnesses on this topic.

But I want to thank each of you, because what we have found both in this committee, and in our other work in the Congress, is that when people leave their service and the Administration, when they leave the government and get a chance to reflect on their du-

ties, they are oftentimes more candid with us, and we are trying to solicit views both from within the government and out of the government. We put a lot of weight on not only what the government says in defense of its own structures, but also what others who spend full time examining these issue think and what they have concluded. Therefore, the views of academics, of think tanks, of professional associations and so forth are of very significant importance to this committee. ?

And as has been just pointed out, some of you are traveling here at your own expense, and we very much appreciate this. Make no mistake, we will be hearing from and having very serious discussions with, in formal hearings and other fora, the Administration on these topics.

What got us here, of course, is that after Congress passed the Homeland Security Act, there was a DHS-initiated reorganization plan. So the Homeland Security Act didn't lay it out this way. This is not what Congress did, but there was a subsequent decision after 2002 the Homeland Security Act passed. 2003 was the date of the reorganization plan. There was a subsequent decision to do something that may have very profound long-term consequences, and that is to separate before what had not been separated, immigration enforcement at the border from immigration enforcement throughout the rest of the country.

Now, we are all familiar with the problem that we have in our Federal system of the bank robber who flees the jurisdiction, runs across county lines, and, you know, different county sheriffs to go after them across the State lines, and different State jurisdictions have to go after them; and some of those different turf rivalries in different situations of the State, and not too dissimilar with experiences we have had between the Federal Government and State and local authorities. Some of those things can get in the way of doing the job.

What we found post-9/11 in the 9/11 Commission report, and with everything else that has been brought to the table to analyze these questions, is that information-sharing and accountability and responsibility at the highest levels are vitally important if we are going to stop the terrorists from exploiting these holes in our system.

What we are here today to find out is whether or not we have such holes in our system; whether or not, as someone flees across the border and gets beyond a certain distance so that they are no longer within the purview of what we have artificially called the border piece, they fall into another's jurisdiction. Even though it is all the same Department, the hand-off isn't working.

So I want to put the question to you in that very stark way. Are we missing people who could be picked up because of the lack of hand-off between CBP and ICE? I will put that question to anybody who wants to leap at it.

Mr. Cutler.

Mr. CUTLER. Yes, I think we are. We have to look at the fact that there are so many competing interests, because things are driven by interests, as we all know.

There is a Visa Waiver Program in effect right now, just to give you an idea, where people from 27 countries plus Canada don't

even need to get visas in order to enter the United States. It is bad for two reasons. Number one, we don't get the right opportunity to make use of biometrics and other methods to properly vet people applying for entry in the U.S., notwithstanding US–VISIT and so forth. The other thing is Congress passed legislation a few years ago that made a crime of visa fraud punishable, if it is involving narcotics trafficking, by 20 years in jail; 25 years in jail for visa fraud if someone is a terrorist. But if you have a visa waiver program, those folks are able to come to our country—a guy like Richard Reid, the shoe bomber, would have been eligible to enter this country without a visa. So if you look at the way the various agencies work in fragmented ways that are often contradictory, and competing methods, that is one problem.

The other problem that we deal with is immigration benefits fraud. What we saw the terrorists do—and they are very sophisticated and very adept at this—is they want to come to our country and hide in plain sight. The easiest way to hide in plain sight is to get lawful status in the United States. If you can get a green card, or especially if you can get a U.S. passport, that gives you free access not only to our borders, but to virtually all the borders of the countries throughout the world.

The 9/11 Commission found that the ability to travel freely and frequently was vital for those characters to prepare to attack us.

Mr. COX. Mr. Bonner, do you remember not too long ago that in the San Diego sector there was an edict issued that the Border Patrol officers would go so far and no further and it was then publicly reversed? What is the situation now in California, and is there an informal point beyond which the Border Patrol can't go?

Mr. BONNER. Yes, there is. And that remains in effect, and basically that point is the immediate border vicinity places—

Mr. COX. Defined as what?

Mr. BONNER. It is not strictly defined, but probably 25 to 50 miles is about the strength of our jurisdiction.

Mr. COX. Well, that is a big fudge factor, 25 miles. Now, what happens, let us say we are out 25 miles, and then we have got the next band of 25 to 50. What is going on in there? Who is working that area? Is that ICE, is that CBP, is it both; and, if so, are they seamlessly working together?

Mr. BONNER. No, they are not seamlessly working together. There is very little cooperation between the two agencies. The current detention fiasco where we have a policy when we catch Central Americans, people from countries other than Mexico, we do not have bed space to hold those people, so we release them into the United States. Then CBP points the finger at ICE and says, your end of the boat is sinking.

This is everybody's problem, yet this bifurcated structure pretends that it is just isolated to that one area, when, in fact, we all depend on those resources in order to accomplish the mission of the agency.

Similarly, on the interior enforcement, we are told as Border Patrol agents, the ICE agents will handle this. Well, we know that there are less than 2,000 ICE agents to cover the entire country, and we know they are not handling that problem. We say, we have the resources, why can't we go there and work citizen capabilities

and the intelligence that we have? And we are told that it is not your job. Well, whose job is it? There is just no coordination, no hand-off here.

Mr. COX. Apparently no one.

Yes, Mr. Carafano.

Mr. CARAFANO. Just a very quick example, because it is also an example of efficiencies. Sea Hawk, which is the operation in Charleston, South Carolina, single best port security operation I have ever seen. Everybody comes to the table; Federal, State and local share assets, share information, absolutely fabulous.

At the meeting every morning there is a CBP agent, there is a ICE agent there. Why? Because there are two separate agencies, because—one guy actually in terms of allocating resources for what needs to be done and allocating and sharing tasks and intelligence can do that very well.

So we have doubled the force requirement at this center simply because we have two agencies there. There is a lot of that, I think, inefficiency at many administrative levels when you only need one representative to handle this array of tasks.

Chairman COX. Mr. Carafano, could you help us understand what precisely is the counterterrorism aspect of this problem? What is the cost? What are the consequences of this cumbersome hand-off right now between what we are artificially calling border and interior?

Mr. CARAFANO. Well, I think the single greatest one is the vast majority of bad things and bad people come in through illegal points of entry. What you want to do—those have got to be as robust as possible. What you want to do is you want to take as many people who are not coming through the legal ports and convince them—them that they need to come through the legal—so you want to get as many people going through the legitimate gates as possible. That is where we are really simply failing.

We are doing a fair job, there is a lot better we can do, about increasing the infrastructure at the ports of entry, increasing the procedures, making things flow, but still—surveying things; but we are doing a very, very awful job about convincing people that they need to go that route rather than the black route. Because we get the people—we get the majority of people going through the legal ports of entry. The few bits and services that are not coming through are the really bad people we want to go after, and then we can use our targeted assets to go after them much more efficiently.

But we have got to do a better job of not just strengthening the legal points, but getting the illegal flow down, diverting it through the legal mechanism. We are never going to do that unless we increase internal enforcement. And the lack of cooperation between the border and internal enforcement is part of the problem, and the lack of resources for internal enforcement is a big part of the problem.

Mr. COX. Would any other part of the panel wish to comment on that question on the counterterrorism aspect of this discussion?

Mr. VENTURELLA. We miss opportunities every day in the area of counterterrorism, because of the lack of intelligence that we gather from these activities, the lack of intelligence that is passed on to

the appropriate agencies. We are missing that opportunity to gather that intelligence and determine the right strategies and right initiatives to tackle these problems.

We miss that opportunity every day, from the Border Patrol who arrests an individual, finds out there is no detention space, and lets that person go. We have lost that individual. We have lost that opportunity to gain whatever intelligence we could on this on the way, the manner these individuals came to the United States to help law enforcement and to secure that border.

Mr. COX. Thank you.

Is the green light stuck on?

Mr. ROGERS. That is what I was going to tell you, the lights aren't working out here.

Mr. COX. I yield back, in that case, Mr. Chairman.

Mr. ROGERS. I will at the 5-minute point tap the gavel so you know time is up, and if you will wrap up your point so we can move back to the next Member.

I guess we are back in order. I recognize the gentleman from Pennsylvania Mr. Dent.

Mr. DENT. Thank you, Mr. Chairman, and thanks to all of you for your very thoughtful testimony here today. I am tempted to ask you who is enforcing the border between ICE and CBP, but I won't do that. My question though deals with this.

Mr. Cutler, when you were talking about these bureaucratic borders that you have experienced, and you have cited one example a few moments ago with the FBI and I guess it was ICE, would you give us some more specific examples of these bureaucratic examples that you have been experiencing as a professional all these years?

Mr. CUTLER. Well, I left the agency before the merger, so I am relying on folks that are there. But basically the way it stands is that a wall has truly been erected between the people at CBP and the people at ICE. It used to be that as an immigration agent we were part of INS, and it included the inspectors, it included the special agents. We all worked for the same district Director, so we were all part of the same office.

They have separate chains of command at this point, so everyone now has a sense of competition, this is my territory, you are in my domain, and I control this; and people tend to be very territorial. The result of that is it that becomes that kind of a competition for resources, for intelligence, to take the credit for having made the accomplishments, and we can't afford that if we are fighting a war on terror or if we are fighting a war on drugs.

People have to cross our borders to get to the interior. It is a continuing flow. They don't materialize in the middle of the United States. If they land at an airport, they are going to see an inspector. If they run the border, then they have managed to evade the Border Patrol, or because of a lack of resources, the Border Patrol did what T.J. referred to, this catch and release program where they are so overwhelmed by the numbers of illegal aliens that they have to permit them to travel onward with the orders that they are to appear for a hearing. What is the rate that shows up, 10, 12 percent, if that many? So what we wind up doing is overburdening the interior because we can't deal with it at the border.

We need to understand that this is a whole system. You can't address it piecemeal. It is kind of putting a watch together. It is great if you have all of these great components, but if you don't fit them into that watch case and screw them together so that everything measures, that watch isn't going to run. We have never put all of these components together in a unified program to make certain that the program works either.

Mr. DENT. Mr. Bonner or Mr. Callahan, do either of you have specific examples you might like to share with us in this committee?

Mr. BONNER. Sure. The Border Patrol used to have criminal investigators within its ranks that reported up through its chain of command. We would work very closely with these criminal investigators to take down smuggling operations at the highest levels, and there was a tremendous amount of cooperation. The agents at the field level knew what was going on in these investigations and very highly coordinated.

After the merger those agents were taken and put into ICE, and the cooperation—it was as if a wall was erected from that point forward; unless you knew people in the organization and would go around the walls and make clandestine phone calls to try and share information, there was simply no information being shared. Now we are not cooperating and coordinating our operations, and it is a shame, because a lot is still going on at the border in the way of smuggling, but we are not being nearly as effective as we used to be in stopping that.

Mr. DENT. Thank you, Mr. Callahan.

Mr. CALLAHAN. While there are territorial aspects of it, while it is not just within the bureau, you have a fight for control within each bureau between the legacy components, the INS components and the Customs components. They are fighting for control of the budget, they are fighting for control of the bureau, and, depending on which office you go to, the focus is primarily what that person's background is. In some offices it is Immigration, but in a majority it is Customs, and the immigration falls to the wayside. You really need to look at the leadership and bring in leaders that are going to focus equally on both aspects and on the antiterrorism aspects of the enforcement.

Mr. DENT. My final question deals with the Canadian situation, Canadian border. Mr. Cutler, you pointed out the 2,000 Border Patrol for the whole Nation.

Mr. BONNER. Two thousand special agents.

Mr. DENT. Two thousand special agents, I am sorry, on the border of Canada, more than 2,000 miles long. I guess the question I have, it is probably directed more to Mr. Bonner and Mr. Callahan, do you believe the consolidation of ICE and CBP would enhance the resources along the northern border, especially given the—well, specifically given known terrorist cells up there. Do you think this merger would help us in the northern border?

I need you to give a quick answer because time has expired.

Mr. BONNER. Sure, it certainly would help. I would point out that the northern border is 4,000 miles long between the continental U.S. and Canada. Currently we have currently fewer than one—well, we have approximately 1,000 Border Patrol agents to patrol

that entire area 24 hours a day, 7 days a week. We need more resources. I believe that a more cohesive structure would allow the Bureau to focus its resources where they are needed.

Mr. DENT. Thank you.

Mr. ROGERS. The Chair now recognizes the gentleman from New Jersey, Mr. Pascrell.

Mr. PASCRELL. Thank you, Mr. Chairman. You know,

Mr. Chairman, what I have heard this morning is not very comforting.

Mr. ROGERS. I agree.

Mr. PASCRELL. Number two, the 9/11 Commission called for an addition of 2,000 Border Patrol agents. The President's budget called for an addition of 200. So we keep on sliding back here and failing to come to grips with the major issue of personnel.

I want to ask two questions, if I may, Mr. Chairman, two areas. Number one, what is the relationship, if any, between—and I know we are dealing with enforcement agencies—between Citizenship and Immigration Services, and what we are talking about today, ICE and the Customs and Border Protection? Are there any discussions between the two groups? Because if you are trying to get people into the legal process of becoming citizens, you are doing a lot—not you, personally—you are doing a lousy job, and it would seem to me that we would want to strengthen that relationship between enforcement and those folks who have had the responsibility all the time of trying to get people into the legal process, which we want, which makes jobs easier for enforcement.

What am I missing? Mr. Callahan?

Mr. CALLAHAN. Actually CIS is a missing cog in this whole equation. The adjudicators, asylum officers and information officers identify criminal aliens and that quite frequently, and they actually issue out notices to appear in removal proceedings, and what is supposed to happen is they are supposed to call up the enforcement branch, usually investigations—it could be the detention removal office—to have that person come down and actually take them into custody. How frequently does that happen? I can't really say. I don't think it is happening as often as it needs to. But the short answer, we could do a better job at it.

Mr. PASCRELL. Yes.

Mr. CUTLER. Well, you know, there was a program called Citizenship USA under the prior administration that wound up where tens of thousands of criminals got to be U.S. citizens.

The reality is we need integrity to the benefits program. The GAO did a study 3 years ago that found fraud to be rampant and pervasive. Without resources, without people knocking on doors to make certain that there is any kind of validity to an application, whether it is residency based on a marriage, residency based on a job, or application for citizenship where the person uses multiple identities, you have people involved making claims of political asylum who aren't entitled, who make false statements. The only way you are able to determine the validity of statements made or the validity of an application is to have enough people to knock on the doors and burn shoe leather and make field investigations.

Most people think of interior enforcement to be purely reactive, to go out and arrest people who shouldn't be here legally. The

fraud component is huge. And to go back to what I said originally, the ideal situation for a U.S. terrorist is to be a U.S. citizen. Someone said that a spy is someone who couldn't attract the attention of a waitress in a greasy spoon diner. The same thing is true as of a terrorist. They want to be able to hide in plain sight. The easiest way to do it is to get U.S. citizenship or residency, and if that program lacks integrity—and right now I understand there are 6 million applications for benefits pending at CIS. How could you possibly have integrity? These folks are adept at using the system to accomplish their goals. That is why you need the resources, and you need a coordinated effort.

One last thing about the coordination between CIS and investigations, I have been told that when they need their help to provide them with documents for an undercover operation or whatever, they are not getting CIS to cooperate with ICE either. So that is another area of vulnerability that hurts the operational end of things and makes us again vulnerable to terrorists.

Mr. PASCRELL. Thank you, Mr. Chairman. I hope we will heed what is being said here.

I just have one other question, if I may. The Federal Protection Services, the primary mission is one of protection, community policing, crime prevention, as I understand it, much like a traditional uniformed police department. ICE, on the other hand, is charged primarily with investigations and prosecutions and alien removal.

Now, I would like to hear your thoughts on whether there is more efficient placement of the Federal Protection Services within the Department that exist now, and, for example, given that the FPS protects infrastructure and doesn't assist State and local police with information-sharing, wouldn't placement within—on this interesting chart—with the Information Analysis and Infrastructure Protection Directorate seem more logical? Would anyone care to respond to that?

Mr. ROGERS. A quick answer, time has expired.

Mr. VENTURELLA. Very quickly. In my statement, I propose that FPS should be moved out of ICE. I think there needs to be serious consideration whether it actually fits into the Department. It is a very hard placement in looking at the various functions of responsibilities in Homeland Security. So I would raise the question, maybe it should be moved out of the Department.

Mr. PASCRELL. Altogether.

Mr. VENTURELLA. Altogether.

Mr. PASCRELL. Wow. Thank you, Mr. Chairman.

Mr. ROGERS. Thank you.

The gentleman from Connecticut Mr. Shays is recognized.

Mr. SHAYS. Thank you very much.

When we passed the Department of Homeland Security, it just seemed illogical to us on the face of it to separate Customs and INS, just to address that issue, I mean, because then other things happened afterwards. Was there logic in bringing them both together? Shaking the head without speaking is not helpful.

Mr. CUTLER. No. As I said during my testimony, Congressman, I think it was a mistake.

Mr. SHAYS. Okay. I want to know—I am trying to sort out who thinks what. Do others disagree with that view?

Mr. CARAFANO. Yes. Yes, I disagree. You can—there are many, many skill sets and activities within the whole border services activity. If you parse them all out into their own little tidy area, you would have an infinite number of agencies.

I think, again, it goes back to envisioning the future. If the future, again, is to have as broad jurisdiction as possible, to have as many integrated activities as possible, then that argues for a larger thing. I actually disagree—I agree with one criticism at the border. I think one face at the border is not what we are looking for in terms of one superman who can do everything. What we want, however, I do think, is an integrated and coordinated handling of people and things with standards in the program.

Mr. SHAYS. That is what I want. That is what I want. Tell me again why that just doesn't happen. Is it a cultural problem?

Mr. CUTLER. I think it is a cultural problem. It is also a very different type of investigation. If you are worried about people coming across the border, and you are worried about processing applications and dealing with visas and that whole complex area, that is very different from the movement of goods and currency.

Yes, there is going to be overlap. I mean, goodness, everything overlaps into something else eventually, but that is why, again, going back to what I said is that Treasury used to be the parent organization of Customs, and INS had been under DOJ. It is a very different perspective.

Mr. SHAYS. I will just say to you on the surface, and we will get into this, and hopefully will resolve it, thank God we now have a committee that can do it, can resolve it.

Mr. CUTLER. Yes.

Mr. SHAYS. It does seem to me this is more of a cultural battle, and it does seem to me it is a budgetary issue. I mean, we screwed up in who got money and who didn't get money, and that is part of the challenge as well. I am struck by the fact that investigations just in one group, both enforce—correct? ICE and both enforce—not a nod of your head.

Mr. CUTLER. Yes.

Mr. SHAYS. But we have put the investigation on one side. Should investigation again be on both sides—nodding the heads. Anybody disagree with that?

Mr. KLUG. No. Look, again, I am a proponent of the merger of CBP and ICE, so I am looking at one investigative unit of the two agencies combined.

Mr. SHAYS. You would put them all together, wouldn't you?

Mr. KLUG. Yes, I would.

Mr. SHAYS. How many of you would put them all together? I mean, who wouldn't again? Who would not put—okay, you are the lone wolf here. Is this an employee issue?

Mr. CUTLER. I am no longer an employee, as is the case of Mr. Klug. I am a former agent here on my own expense. I am here because I want to see the mission accomplished, and I don't see it being accomplished under the same situation. Now, perhaps they could be under the same umbrella, but I really believe you need separate chains of command with budget and accountability and training that is specific to each of the two tasks.

Mr. SHAYS. In my world I would like people to have skills that could do both sides of it. I would like it to not be just, you know—yes, sir.

Mr. COX. I am sorry, would you yield for a second?

Mr. SHAYS. Yes.

Mr. COX. I want to understand the witness's answer. What you want to keep separate with separate chains of command is Customs on one hand—

Mr. CUTLER. That is immigration.

Mr. COX.—and Immigration Enforcement on the other hand. But what you are not saying is you want to keep the border interior separated.

Mr. CUTLER. No, no, no. I want those integrated, absolutely. We should not be drawing that distinction, absolutely not.

Mr. COX. Thank you, Chris.

Mr. CARAFANO. Just very quickly, I just want to point to something that is in my prepared testimony. I think this is an issue not of organizational design, but an issue of human capital development. I think that we have to separate those out, because I think a lot of the points that he has raised, and a lot of the points that you have raised, can be addressed through career patterns, the career progressions and the operational assignments that you can give somebody. But that can all take place within the rubric of one unified agency.

What I would hate to see is—which is the point the Department tried to argue—this is too complicated to fit in. Well, that is like saying the Army couldn't fit everything in. It is not true.

Mr. SHAYS. I hear you. I am sorry, I missed your opening statement, so I didn't hear that. Yes, sir.

Mr. CALLAHAN. Yes, sir. The investigations and the inspections program both, what they have done is created a jack-of-all-trades and a master of none. You need to have some specialization. I think breaking off or splitting up—at least the management levels of it, I am sorry, splitting off the line employee part of it, where you have line employees that are working on investigations that Customs traditionally handled and investigations that Immigration traditionally did, is a good idea and integrating the management aspects of it. The same with inspections.

Mr. SHAYS. Just very quickly, does anyone here believe that establishing the Department of Homeland Security was a mistake?

Mr. VENTURELLA. No.

Mr. SHAYS. I am going to assume that all of you think it made sense, so now we have to make it work. I am seeing nodding of the heads.

With that, I would yield back.

Mr. ROGERS. Thank you. The gentleman's time has expired. The gentlelady from the Virgin Islands, Mrs. Christensen is recognized.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

I can see that this subcommittee is going to be very busy, because the issue we are discussing today goes beyond CBP and ICE. It is an issue of whether what we did in the legislation or the Department as implemented is effective or not, and it goes to the heart of the matter.

I am going to try to get through three questions real quickly. I would appreciate as abbreviated answers as possible. I hope we have more than one round.

Dr. Carafano, in reading—I am going to ask you about someone else's testimony. Mr. Venturella said merging now, if I understand you correctly, would set us back instead of moving us forward; it would lose valuable time.

Recognizing the need for effective border and INS control now, does the need to fix it quickly override the recommendation to merge, or do you disagree that merging now would impede improving the operations that we need today?

Mr. CARAFANO. Yes. I would go back to my testimony. I think we have got to answer the three basic questions, will it help improve the overall management of the Department, will it create a strong operating agency, will it take us towards the ultimate organization that we want to do this in the future. If the answer is yes, then I would say do that as quickly as possible.

I do think the pain is worth the gain, because this is a long-term problem. The pain we feel—you know, took 5 years to plan 9/11, 3 years to plan Madrid. The next problem may not happen. If this was a 1-year problem, I would say let us live with it, but this is a generational issue.

Mrs. CHRISTENSEN. I am clear where you are in the merger. I wanted to ask Mr. Klug and maybe Callahan and Bonner if they could answer quickly. As I read your testimony, it causes me to wonder whether the issue is whether there are two separate agencies operating without coordinating, or is the main issue the structuring within each agency, having—having this FPS and ICE, unequal infrastructure, unequal funding, unequal pay? What is the core of the issue for you? I will ask Klug first then.

Mr. KLUG. I believe that you created two new agencies. I believe those agencies—an actual byproduct of the agency is parochialism. That is predicated upon two agencies now fighting for resources and budget resources.

Mrs. CHRISTENSEN. So could it be fixed by just evening out the resources, lowering salaries? That was—

Mr. KLUG. They will always be competitive, they will always believe that the measurement of success will predicate the amount of money and resources they will get. That is where the parochial comes in. If we supply this information and the other agency gets the headlines, they are going to be seen by Congress as more prominent and more noteworthy, and they will get the resources in budget.

Mrs. CHRISTENSEN. So the problem is that it needs to be merged, not that there is an inequality. Does anybody disagree? Mr. Venturella.

Mr. VENTURELLA. Again, I disagree with the notion that the merger is the cure-all for all of this. Again, I look at leadership of those two bureaus and within the Department. Why is this pettiness allowed to occur? Why has it festered for 2 years, and why haven't you done something about it? We can better organize the Department. There is no question about that; make it more efficient, accomplish the mission.

But, again, it is going to take strong leadership to make that happen, and I don't see that. And it is a shame, because there are individuals here that currently work for those bureaus who day in and day out struggle with the pettiness with the division that has been created.

Mrs. CHRISTENSEN. Well, won't the merger fix that?

Mr. VENTURELLA. I don't think so. Again, I think you need strong leadership, you need somebody who is visionary, and you need to have a plan. If you ask any of these individuals what is the mission, what is the plan, you will get different answers. There should be one statement coming from these individuals.

Mrs. CHRISTENSEN. Let me try to get to my third question. When we are concerned—this is to Mr. Klug. We are concerned that ICE and CBP were created from Customs and legacy and INS components of Customs, and ICE inspectors lost their best source of intelligence and law enforcement information. Given that Customs inspectors are charged with assessing the risk of cargo containers and working with industry to secure these supply chains, I worry that CBP programs will not achieve their full potential because of the disconnect between ICE and their inspectors.

So what was the relationship before, between inspectors and investigators, and what is it now? Are there any benefits to the current structure, and what has the impact been on the cargo security mission of CBP?

Mr. KLUG. I believe I mentioned in my testimony earlier that the symbioism that existed between the two agencies, there is a rift occurring, and that is basically that—and some of the gentlemen alluded to it before—that when there is a discovery, when there is intelligence and there is some information, it is passed to other agencies as opposed to ICE. For example, narcotics issues, we have heard instance of where the Drug Enforcement Administration was called rather than ICE. We have heard the FBI being called with information.

Mrs. CHRISTENSEN. Specifically I asked about the cargo security.

Mr. KLUG. The cargo security. Again, the intelligence and information that is guarded on both sides of the house remains separated, rather than combined, so the intelligence that is gathered by the ICE agents, by the ICE intelligence analysts, is separate, in a separate component, in a separate database. That is the intelligence gathered by CBP and their intelligence analysts. So two separate analytical groups, both gathering intelligence, and then exchanging it freely, or certainly as freely as it was when it was one intelligence unit.

Mr. ROGERS. All right. The gentlelady's time has expired.

The Chair recognizes the gentlelady from Florida.

Ms. Harris.

Ms. HARRIS. Thank you, Mr. Chairman.

I am going to ask Mr. Klug, with reference to your last question, you said it has to do more with leadership or vision problem between the two agencies. Could that be fixed if questions of leadership and vision were clarified?

Mr. KLUG. I believe that a stronger mission statement would be helpful. In ICE currently, I believe, it is a very vague mission

statement that we had. Leadership comes and goes; institutions remain.

Ms. HARRIS. Right.

Mr. KLUG. So trying to find strong leaders and predicate your hopes of the success of an agency on the next successor.

Ms. HARRIS. Do you think the old INS and Customs worked more efficiently than this does today?

Mr. KLUG. Yes, absolutely.

Ms. HARRIS. Do you basically think that it was just ill conceived, and how it was set up that they are trying to do their missions, but it was both ill conceived?

Mr. KLUG. Which I believe it was ill conceived, yes.

Ms. HARRIS. Let me go to Mr. Cutler, back to some of your questions, some of your statements. Do you think we could better reconcile the policies and practices of these two agencies so they were cooperating instead of competing? Or, again, do you think it is just ill-conceived from the outset?

Mr. CUTLER. Are you referring to the CBP and ICE?

Ms. HARRIS. Yes.

Mr. CUTLER. Yeah, I think that you could put ICE and CBP together because it is a continuum. People are trying to move from the border to the interior. I mean, that is the goal. Which is, by the way, why when Border Patrol is forced to do catch and release, that is so troubling; because the goal that the aliens had in the first place when they ran the border was to get to the interior.

Ms. HARRIS. Given more time, do you think these two could work these issues out to be able to have a continuum, or do you think on the face of it it just isn't going to work that way?

Mr. CUTLER. No. I think by compartmentalizing the way they have, it is not working. And I don't think that the passage of time is the issue. I think it is a matter of recognizing that everyone has to feel that they are on the same team. The only reason I wanted to divide the immigration chain off is to make sure that people get the specific training, because it is a very arcane set of laws. It is a big body of law, and it is on both sides. But as far as the border and interior, we should not be drawing that distinction because it is a continuous process.

Ms. HARRIS. This may be a question better asked of the administration. But in your time there right now, presently I understand there is a 300 million shortfall in ICE, and there is that same amount of surplus over at CBP. Is there anything you can tell me about that, or anything anyone else can?

Mr. CUTLER. All I can say is this goes back to the idea that if they were able to have the funding available, with the understanding that it is a continuous process from the border to the interior, I think you would eliminate some of those problems.

Ms. HARRIS. Thank you, Mr. Cutler.

Mr. CARAFANO. I just—there is a resource issue, and I do think combining the organizations will help solve that. And I will give you one very small example. The 287(g) program is a provision of the INA code which allows for State and local enforcement agents to work under an ICE investigator. It is a terrific problem. Florida has one of the two pilot programs. It has been great. It is dying on the vine because ICE simply doesn't have money to train a new

set of investigators because they have moved on. I mean, so those things are just dying because you have an agency which is fighting for its little piece of the pie rather than being considered as part of this comprehensive problem of an end-to-end thing, and then somebody at the top saying, you know, where can we put the investment to get the biggest bang for the buck.

Ms. HARRIS. Let me ask you, we have spent millions of dollars branding, promoting, marking, just making the delineations and the communications and the IT. Obviously, you feel it is worth the millions to go back or to reorganize again. And do you think that the short term and the time that we won't be as effective is worth the long-term gains? Do you think there are savings in management?

Mr. CARAFANO. I think there is definitely savings in management. But I think the difficult real political things will never get done in the current organization. I will give you another example, which is Shamira, requiring the Homeland Security Act of 2002, a single integrated IT system that would start from visa issuance all the way through internal enforcement. Zero progress has been made to doing this, and zero progress will be made because it is too complex a program coming across too many different departments and agencies to ever get anywhere. If you had one guy or one woman who was responsible for—if you had emergency BP in ICE, and if you had emergency BP in ICE with visa enforcement in it, and you had one person who had 85 percent of that responsibility for that program, then you might actually see something happen.

Ms. HARRIS. One last question. Mr. Venturella, you said that the staff had never been kind of more discouraged. And I am really concerned about that, particularly when we read that we are having record seizures of drugs and interception of smugglers and money. What is it; what is not working? I mean, I know the accomplishments are there.

Mr. VENTURELLA. To answer very simply, again, the creation of Homeland Security was an opportunity to do things better, to accomplish a unified mission, protecting this homeland. Everything that—and any one of us can stand up and say, day in and day out this is why I get up and go to work, because I have a mission I can stand behind. And I just don't see that coming to fruition. Again, 2 years have been wasted for an opportunity that we had to make things better.

Ms. HARRIS. Do you have FBI or State Department interference? Do you think there is a better continuum?

Mr. VENTURELLA. I don't look at that as interference. I look at that as an opportunity to work with law enforcement and to work with the diplomatic community to accomplish the mission. And—I would leave it at that.

Ms. HARRIS. Thank you.

Mr. ROGERS. Thank you. The gentlelady's time has expired.

The Chair recognizes the gentleman from Texas, Mr. McCaul.

Mr. MCCAUL. Thank you, Mr. Chairman.

And thank you, distinguished panelists, for being here today. It has been insightful. And I can't say it is the first time I have heard these responses.

When I go back to my district, and I am in a border State, the number one issue is border security. I believe the Federal Government has failed us in this mission. And it is no longer just a question of immigration; it has become a question of national security in the post-9/11 world.

Oftentimes in my prior job I worked with Federal law enforcement on the border, and I heard two things that I heard from the panelists today; and that is, not enough agents, not enough space to lock out the people that we apprehend on the border.

It is astonishing to think there are 40,000 New York police officers, and yet we only have 2,000 Border Patrol special agents on the border. The catch and release program, Mr. Cutler, that you referred to, which, as you know, when you are at Kennedy Airport, Ramzi Yousef slipped through our system with that catch and release program.

These are issues that I am concerned about. I know the intel bill authorized these additional agents and bed space. I have sent a letter to appropriations for the funding for these issues. I see these two issues as probably the most two important to facing border security.

But what I would like to hear, because we are here on the topic of merger, is whether this merger would in fact expedite the processing and deportation of illegal aliens. Would it essentially tear down the stovepipes and the walls, or are we just moving boxes around?

Mr. CUTLER. Well, I believe it would help. And there are two reasons why it would help. Number one, again, I don't think that these folks should be thinking, well, I work for this little group and he works for that group over there. We need to understand we are under the same roof, doing the same job.

But also please understand, you can't control the border purely at the border. Nobody would break into an amusement park if they couldn't go on the rides. Once people get past the Border Patrol or they get past that inspector at the airport, they know that there is virtually no chance that anyone is going to look to stop them from doing whatever they want to do in the United States. There are no employer sanctions, there are no real fraud investigations being conducted. So if you can get into the interior, you get involved in a marriage fraud, you get whatever you want to do, and you are here. And under those situations, the pressure on the border is tremendous.

I know that Mr. Bonner testified last week about the lack of Border Patrol agents, that 2,000 were authorized, 210 are going to be hired, according to what the President wants. Tomorrow I will be testifying before that same subcommittee, the Immigration Subcommittee, about 143 new special agents to be hired versus the 800. I thought the 800 was anemic; 143, I don't want to tell you what I think that constitutes. It won't even cover attrition.

So we need the resources, but we need to coordinate the resources to take the pressure off the border also. This is a closed system, Okay? If you tighten the border to the point where nobody can get across the border, the people that want to come here aren't going to throw their hands up and say, let us go to New Zealand. They will land at an airport, they will sky-dive. They are going to

do whatever it takes to get them here. And we similarly have to look at this as an overall system and have a systemic approach to solving the problem. And we can't do it by fractionalizing components that are responsible for the same mission.

Mr. MCCAUL. Mr. Bonner, do you have any comments on that?

Mr. BONNER. I agree wholeheartedly. I think that if you are looking for a solution to these problems, you have to look at it globally. You can't just focus all of the resources on the border. You have to understand why people are coming here. Ninety-eight percent of the people coming to this country do so because they are looking to improve their economic life. As long as we allow employers to continue to hire people, they will continue to come, and we are just shoveling sand against the tide. That law has to be toughened up. Make it simple for an employer to figure out who has a right to work in this country. And if they choose to hire people who have no right to work in this country, take out a big hammer and smack them real hard with it, and then everyone else will sit up and take notice, and a lot of the problems that we have on our borders, people coming across illegally, will be solved.

Mr. MCCAUL. I agree. And I think there has been a lack of will to enforce or support these laws. We have an estimated 10 to 15 million illegal aliens in this country in the interior, and I see little movement in the area.

Mr. CALLAHAN. If I can add, moving the boxes around isn't enough. You have to ensure that the budgets or the appropriations language that comes out specifically goes into more detail on how much is going to be spent, and where; and don't allow them to move funds from interior enforcement, detention removal program, and investigations over to the border just because, as we know, the squeaky wheel gets the grease. And the border is the squeaky wheel. And that is what happens more often than not. So merging and merging these people together or these organizations together will give whoever leads it the chance to move funds over to that squeaky wheel.

Mr. ROGERS. The gentleman's time has expired.

Mr. MCCAUL. And would it enhance communication as well?

Mr. CALLAHAN. Possibly.

Mr. ROGERS. Thank you. The gentleman's time has expired.

Mr. CALLAHAN. Thank you.

Mr. ROGERS. The Chair recognizes the gentleman from Washington, Mr. Reichert.

Mr. REICHERT. Thank you, Mr. Chairman.

I think everyone in this room and on the panel and on the committee recognizes we have got to get this right. We absolutely have to get this right. And I want to thank all of you for being here today, and I especially want to thank all the men and women who serve out there today protecting our country.

I want to let you know that I have had the opportunity of working with all the agencies that we have talked about today on a professional level, along with the FBI and Secret Service and ATF and DEA and all those others. And it seems to me that on the street level the work usually gets done. I mean, the people on the street get it done. They are working together usually, and they are cooperating.

But what I hear today is that in fact what has really happened is it has even collapsed in that arena; that the people who are working—and correct me if I am wrong—but the people who are working day to day even are having difficulty communicating, sharing information, and deciding whose job is whose. And when that happens, we have got a serious, serious problem.

You have laid out the problem very, very clearly. And just let me go over just some of the things that I heard today.

Number one, there is no vision. There is no mission. There is no goals. There is no resources. There is no plan. And I would imagine I didn't hear this mentioned today, but I would bet you there is low morale. That was a good guess on my part.

So my question is—and really today the purpose that we are here, and I was just looking at, does the current organizational structure best serve the U.S. homeland security interests? And what I am hearing today is no. And then we also—then adding onto that a second question. We are considering an additional reorganization.

My question to you is, shouldn't we fix the current structure the way it exists today and then move on to a reorganization? Because I think that eventually we have to come—the cultural mindset from pre-9/11 has to change. We are in a different world today, and there has to be a cultural change in every agency that serves this country.

So the first question is, reorganization now, an additional reorg, will it make it worse? And the second question is, I just want to hear maybe a one—or two-word or one- or two-sentence comment on what you think, very briefly, your solution would be to making this system work.

Two tough questions in a very short amount of time.

Mr. CARAFANO. I will just address the second. I really think that the biggest problem is you have 400 secretaries who are responsible for kingdoms as opposed to 400 secretaries who should be used to provide integrative functions to make all 22 agencies operate together. So, in my mind, that is the single thing that has got to be fixed first.

Mr. KLUG. I do believe that the agencies, the reorganization should happen now. I do believe that, in its current configuration, it cannot be fixed. I think it is on a downward slide. I think morale is on a downward slide. And, again, I ask Congress to act quickly in merging the two agencies.

Mr. CALLAHAN. Well, I think that the reorganization itself isn't enough. You have to have leadership in place that are going to focus on every aspect of the mission and not concentrate just on one area or another area.

Mr. BONNER. I think that you are just rearranging the deck chairs on the Titanic if you try and work within the current system. You have to break down those barriers. Right now the successes we have are in spite of the system, not because of the system. And it has to be changed.

Mr. CUTLER. I think we need to have the political will to bring about the changes. I think that there has been a lack of political will to enforce the laws the way they need, and I think we have a lack of resources, and that is why you have no goal. I think we

have to address all of it, but I don't think the current structure meets the needs. So you have to do all of those things and understand that our survival really is at stake.

Mr. VENTURELLA. Again, I think there needs to be reorganization, but not just ICE and CBP. Departmentwide, you need to take a fresh look. In the automobile industry, you would be in the process of a recall: You have a design flaw, you need to fix it because people could lose their lives. You need to fix it.

Mr. REICHERT. Thank you. Just let me make one comment. It takes a lot of courage, I know, for you to come and explain this so clearly and honestly as you did. And we appreciate it. That is the only way that we are going to be able to help. I agree with the committee chair, Chairman Cox's comments, that now you have a committee that is here to help you, and hopefully we can get this thing fixed. So thank you all for being here today.

Thank you, Mr. Chairman.

Mr. ROGERS. Thank you.

We had a great morning, very productive. And you all have been very helpful, and the members clearly are interested and have a lot more questions than they have time. Even though we are running long, I would like, though, for the members who do have an additional question to have a brief opportunity to ask it, so we are going to go around one more time with members being given 2 minutes to ask any follow-up questions. And I would yield the first question to the Ranking Member, Mr. Meek from Florida.

Mr. MEEK. Thank you, Mr. Chairman.

Hearing a lot about leadership, and I can tell you right now as it relates to this full committee—and I don't want to speak for the Chairman or the Ranking, but definitely for this subcommittee—we definitely have our work cut out. Leadership starts here in the Congress. And we have to 9 times out of 10 do some very unpopular things as it relates to bureaucracies and what people are used to. But I can tell you the latter is another commission being pulled together like the 9/11 Commission looking at the failures of which you shared with us today. Some of the information that you shared with us today is very alarming and disturbing. And I am glad that all of you are free to speak to that, and I want to commend all of you as Americans, and especially those of you that are either in a foundation or not in a foundation or pay for your own ticket, appreciate you coming here. It is going to make a better security situation for us.

Mr. Chairman, I can tell you when we do have the Department come, I would definitely like to see attrition numbers of frontline men and women that are out there doing the hard work, what has actually happened prior to the transition and after. I think that will be revealing from what I am hearing here at this table. And I can tell you right now, in the future I can see more officers being this Congress pushing for more officers out there doing good work. But if we don't have the leadership on the management level and the leadership here in the Congress to set an environment that they want to serve their country in that capacity, then it will be for naught.

So I just wanted to make a statement. I know some other members are going to ask a question. I know that the time is running

out, and I want to stick to it. I know you have a burning question, but if you could probably answer it in one of the future questions, I would appreciate it.

Mr. ROGERS. Thank you. And the Chair recognizes Chairman Cox.

Mr. COX. Thank you very much. I just want to take the opportunity once again to thank our panel. And as I was going over your testimony, in addition to the oral testimony that you provided, the written testimony as well, I was struck by Mr. Callahan's very clear statement of the way things stand right now. And you are in a good position, Mr. Callahan, to comment on this, since you are in the midst of all of it. I just want to ask you all to comment on what he has described to us.

As it stands right now—I am reading from Mr. Callahan's testimony—there is a serious lack of cooperation between legacy components, INS and Customs, of the two bureaus. That, of course, is what we have got to eliminate. We can't have turf jealousy, competition, even the old structures, as a result of this merger of 22 legacy agencies into the new DHS.

He goes on to say: The leadership of the former INS and Customs Service are, as we speak, locked in a heated battle for control of the purse strings. So at least in this description, we are being told that the competition exists even at the top. And, of course, the leadership of the former INS and Customs Service is literally that: people from those two former parts of government. So I would like to hear from each of you whether or not you see this as a current ongoing problem for the management of DHS.

Mr. CARAFANO. If I could, just for an example. There was an enormous debate over whether to move air and marine interdiction from ICE to CBP, a debate which made actually no sense if you just looked at the operational needs and where the most efficiencies were. But yet they were debating over it because it was bodies and spaces and airplanes, and they both wanted them, because that is what bureaucracies do. But if somebody had looked at it holistically, you would have just said, well, this just makes perfect sense.

Mr. ROGERS. Thank you.

The Chair recognizes the gentleman from Mississippi, Mr. Thompson.

Mr. THOMPSON. Thank you, Mr. Chairman. It appears that our retreat on Monday and Tuesday is paying off. I see very little disagreement, and I want to compliment the Chairman for providing leadership.

A couple issues. Number one is I understand that OIG is looking into the problems between ICE and CBP, Mr. Chairman, at the request of Senator Collins. I need to get some agreement with you—I am told that some employees are reluctant to come before the committee because of potential retribution from the administration. And I would not want any citizen of this country to feel like they can't come before this committee and tell the truth. And however we need to communicate that, through the Secretary or whomever, I think we really need to do it. I am told that some individuals who are not in the union are reluctant to say things. And I just think we need to get to the bottom of it.

The other thing I want to do—is, one, when the Secretary comes, I think he needs to explain to us from a budgetary standpoint why the administration didn't request full funding of the 9/11 bill. There are just too many things left out here that we all agree on, from Border Patrol agents to beds for detainees and other things, that we absolutely ought to be funding.

Lastly if I could get someone to brief me on this notion, maybe after the hearing, on detainees who are released and turned loose never to be seen again. I am told there are several hundred thousand of these individuals walking around the country.

Mr. ROGERS. Thank you. The gentleman's time has expired.

The gentleman from Connecticut, Mr. Shays.

Mr. SHAYS. I would like to ask if anyone on the witness table believes this is not a solvable problem. So all of you concur that it is a solvable problem? That is the sense

Mr. CUTLER. It has to be.

Mr. SHAYS. It does have to be. And it is so. I mean, this is not something—but I will take a little bit of time. You know, there will be a—I think, Mr. Chairman, thank you for having this hearing and thank you for the witnesses. I appreciate each and every one of your insights. I found in my National Security Subcommittee I learn the most, frankly, from those who aren't directly in government, because there is a candidness that I don't see elsewhere. I want to thank you, Mr. Venturella, for your candidness as well. All of you have been very helpful. Thank you.

Mr. ROGERS. Thank you.

The Chair recognizes the gentlelady from the Virgin Islands, Mrs. Christensen.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman. I do think this is an important hearing as well. And just like my other colleagues, I feel that my district could be the poster child for the insecurities that exist at our border, and we need to fix the system.

And I would also add that, taking away from some of the discussions I have had at home with my local and Federal law enforcement, it is clear that they would definitely welcome and support any fix, whether it is a merger or any other way of fixing it. And I find—I want to thank everyone for your testimony. It has been very, very helpful as we move forward.

I probably would ask one question. Mr. Bonner, you and several others spoke about—to me—against the trend, when you spoke about the need for specialization in this one face at the border environment that they are in. Can't this be overcome? Can't we continue the one face at the border and overcome this need by just increased training?

Mr. BONNER. I think you are asking an awful lot for one human being to be expert in all of these three very complex and arcane areas. I mean, if you stack the laws and the regulations and all of the other information up, each of them is over 6 inches tall, and we are talking a lot of on-the-job training that is necessary to get to the level where I would feel comfortable that those inspectors on the front line are doing their job as it should be done, picking off those people who should not be entering our country.

Mr. CARAFANO. It really depends. I mean, a small post at the Canadian border, which has very few people that cross every day,

doesn't need the same kind of staffing and resources as LaGuardia and New York City. So one of the arguments I would make as well as you want a large robust agency, is you want to have the capability in your workforce to tailor it to meet the different needs in the different parts, both on the border and internally.

Mrs. CHRISTENSEN. Thank you, Mr. Chairman.

Mr. ROGERS. Thank you.

Mr. MEEK. Mr. Chairman, just before we adjourn.

Mr. ROGERS. Certainly.

Mr. MEEK. Ms. Jackson-Lee had to leave, but she wants to enter her statements and concerns for the record, if there is no objection.

Mr. ROGERS. There will be no objection.

[The information follows:]

Mr. ROGERS. I do want to thank you all for your testimony, it has been very helpful, and thank the members for their questions. And if any members do have any additional statements or questions, they can submit them. And I would ask if there is a question, if you would submit a written response within 10 days. We are going to keep our committee record open for 10 days to accept those.

And with that, I thank the panelists and committee members, and we are adjourned.

[Whereupon, at 12:26 p.m., the subcommittee was adjourned.]

APPENDIX

MATERIAL SUBMITTED FOR THE RECORD

QUESTIONS AND RESPONSES OF T.J. BONNER SUBMITTED BY THE HONORABLE BENNIE THOMPSON

Question: **1. With all of the attention that was paid within both ICE and CBP to bringing their own INS and Customs components together as part of DHS's genesis, is it fair to say that not enough attention has been paid to inter-bureau coordination? No response has been received.**

Question: **2. Absent issues which receive headquarters attention, namely anything connected to terrorism, minority staff field investigations over the last year found that the degree of local CBP and ICE coordination was heavily dependent on whether or not the supervisors had a good personal relationship. Given this dynamic, for a merger to be worthwhile wouldn't it have to affect more than just the headquarters components? No response has been received.**

Question: **3. Even though the initial decision to split ICE and CBP may not have been ideal, would we be discussing a merger if BTS management had taken action to ensure proper coordination between the components? No response has been received.**

Question: **4. Would you agree that many of the problems and concerns which lead you to the call for the merger of CBP and ICE arise from the only common supervisor being at the Undersecretary or even, if CIS is involved, the Deputy Secretary level? No response has been received.**

Question: **5. With or without a merger, isn't the key issue making sure that policies and procedures are in place to encourage Border Patrol agents, CBP officers, and ICE agents to share information, coordinate operations and resolve procedural disagreements at the lowest possible level? No response has been received.**

Question: **6. DHS has trumpeted the success of the Arizona Border Control (ABC) initiative in reducing the flow of migrants through the Arizona desert. Much of the success has been attributed to the command structure of the ABC initiative—a task force of CBP and ICE personnel headed by the Border Patrol sector chief. Do you believe that creating additional task forces under the direction of a local supervisor (an ICE agent-in-charge or a Border patrol chief) is a viable way to ensure that ICE and CBP coordinate their law enforcement efforts? No response has been received.**

Question: **7. If task forces are a good idea for border control, wouldn't it also make sense to extend this model to other missions such as interior enforcement, alien and other smuggling through airports? No response has been received.**

Question: **8. Would the problems we have discussed here today be lessened if the Administration decided to fully fund the border security enhancements called for in the 9/11 bill? No response has been received.**

Question: **9. Who do you think is responsible for overall immigration policy within DHS? Is it one person? Would the Department be better off if one individual reporting in the Secretary could coordinate overall immigration policy? No response has been received.**

Question: **10. What do you believe was the basis of the decision by the Administration to reconstitute the U.S. Customs Service and Bureau of Border Security into CBP and ICE? No response has been received.**

Question: **11. Will you please address the One Face at the Border initiative? Do you think this program is this program working? Do you have concerns about the ability of inspectors to learn customs and immigration law? Can you please discuss your concerns in primary inspections and secondary inspections? No response has been received.**

12. We are concerned that when ICE and CBP were created from Customs and legacy INS components that Customs inspectors lost their best source of intelligence and law enforcement information. Given that Customs inspectors are charged with assessing the risk of inbound cargo containers, and working with industry to secure these supply chains, I worry that CBP programs will not achieve their full potential because of the disconnect between ICE agents and CBP inspectors.

Questions:
a. What was the relationship between customs inspectors and investigators before the creation of DHS? No response has been received.
b. What is the existing relationship? What kinds of walls exist and how has CBP tried to compensate for the loss of Customs agents? No response has been received.
c. Are there any benefits to the current structure? No response has been received.
d. What is the impact on CBP's cargo security mission? No response has been received.

QUESTIONS SUBMITTED FOR THE RECORD BY THE HONORABLE KENDRICK B. MEEK FOR T.J. BONNER

Question: **1. What do you believe was the basis of the decision by the Administration to have CBP and ICE created as separate operational agencies? No response has been received.**

Question: **2. If, for whatever reason, DDS ultimately decides not to merge ICE and CBP, what is the next most important action that could be taken to improve the effectiveness of CBP and ICE? No response has been received.**

Question: **3. For a merger between COP and ICE to address the concerns you have raised, what additional steps beyond combining the headquarters operations would have to be part of the merger? No response has been received.**

QUESTIONS AND RESPONSES BY JAMES JAY CARAFANO, PH.D. SUBMITTED BY THE HONORABLE BENNIE THOMPSON

Question: **1. With all of the attention that was paid within both ICE and CBP to bringing their own INS and Customs components together as part of DHS' genesis, is it fair to say that not enough attention has been paid to inter-bureau coordination?**

Response: 1. Absolutely. There have been some instance of good coordination between CBP and ICE, particularly with regard to the Arizona Border Initiative, but in general it's a problem. In part, because there are new coordination requirements that did not exist before the creation of the department when border inspectors and investigators were in the same agency, and in part because ICE lacks resources. Freezing credit cards and eliminating TDY funds, for example, prevented agents from undertaking the travel needed to effect coordination.

More fundamental to the coordination challenges is that the existing artificial seam between border and internal enforcement makes no sense. Distinguishing clear lines of responsibility between foreign, border, and internal enforcement security is a thing of the past. National security, economic growth, and the liberties of American citizens (as well as visitors and international business partners) can no longer be considered in isolation. The visa-issuing activities of the Department of State and the Customs and Border protection (CBP) and Immigration and Customs Enforcement agencies in the Department of Homeland Security (DHS) should be merged into a single border services agency under the DHS.

Question: **2. Absent issues which receive headquarters attention, namely anything connected to terrorism, minority staff field investigations over**

the last year found that the degree of local CBP and ICE coordination was heavily dependent on whether the supervisors had a good personal relationship. Given this dynamic, for a merger to be worthwhile wouldn't it have to affect more than just the headquarters components?
Response: 2. Merging CBP and ICE, even just at the headquarters' level, sends an important message that the Secretary expects these groups to work together and emphasizes as desired a cooperative culture. The merger ideally should be part of a much larger reorganization of DHS that would eliminate extraneous bureaucracy and consolidate policy and planning into a single office.

I do, however, agree with, your point. DHS requires a sophisticated professional development program. We made an argument for such a program in The Heritage/CSIS report *DHS Report 2.0: Rethinking the Department of Homeland Security.*

Question: **3. Even though the initial decision to split ICE and CBP may not have been ideal, would we be discussing a merger if BTS management had taken action to ensure proper coordination between the components?**
Response: 3. BTS does lack the staff to properly integrate the activities of the agencies, but that misses the point. If we had the right organization to begin with we would not have to create a bureaucracy to manage a problem that doesn't need to exist.

Question: **4. Would you agree that many of the problems and concerns which lead you to the call for the merger of CBP and ICE arise from the only common supervisor being at the Undersecretary or even, if CIS is involved, the Deputy Secretary level?**
Response: 4. Again, I think problems and concerns arise from an artificial layer of coordination between inspectors and investigators that is unnecessary.

Question: **5. With or without a merger, isn't the key issue making sure that policies and procedures are in place to encourage Border Patrol agents, CBP officers, and ICE agents to share information, coordinate operations and resolve procedural disagreements at the lowest possible level?**
Response: 5. Absolutely, the key to addressing border security is to deal with international, border, and internal enforcement as a single integrated mission. Addressing the challenge of illegal entry between the points of entry cannot be ignored, but Congress needs to establish clear priorities and invest in resources that create a system-of-systems approach to security. Rather than trying to control the entire border, the United States requires a network of assets that direct the right capabilities to the right places at the right times to provide appropriate responses. This will require a combination of investments in high-speed and armed-airborne assets and in robust airborne sensor capabilities linked to an intelligence and early warning network. The network would provide knowledge of activities at sea and along the border, as well as the means to analyze and share that knowledge effectively. Modernizing the CBP's air and marine interdiction capabilities in concert with increasing funding for the Coast Guard's Deepwater acquisition program ought to take precedence.

Question: **6. DHS has trumpeted the success of the Arizona Border Control (ABC) initiative in reducing the flow of migrants through the Arizona desert. Much of the success has been attributed to the command structure of the ABC initiative—a task force of CBP and ICE personnel headed by the Border Patrol sector chief. Do you believe that creating additional task forces under the direction of a local supervisor (an ICE agent-in-charge or a Border patrol chief) is a viable way to ensure that ICE and CBP coordinate their law enforcement efforts? .**
Response: 6. ABCI task forces would be much easier to initiate if it were done within a single agency. Even then, while the task forces make an important contribution, they are not the answer. They are an effective tactic, but not an adequate strategy. We need full integration of all ICE/CBP activities, not just cooperation in special task forces.

Question: **7. If task forces are a good idea for border control, wouldn't it also make sense to extend this model to other missions such as interior enforcement, alien and other smuggling through airports?**
Response: 7. Yes, but again this could be mores effectively done under the leadership of a single agency.

Question: **8. Would the problems we have discussed here today be lessened if the Administration decided to fully fund the border security enhancements called for in the 9/11 bill?**

Response: 8. No. Just hiring border guards is not the answer. A much more comprehensive solution is required.

The Administration and Congress need to agree on a bipartisan approach to border security that gives precedence to the efforts that will make the nation significantly safer and more prosperous while protecting individual freedoms. Five steps should top the "to do" list.

Step #1: The U.S. needs a single border services agency. The government's current organization reflects an outdated vision of how to protect America's borders. Responsibilities for visa issuance and monitoring, border security, and internal enforcement of customs and immigration are divided among three separate agencies in two departments on the erroneous assumption that threats and countermeasures can be neatly segmented in discrete activities. However, there are no frontiers in 21st century national security, nor are all border security issues best handled at the border.

Protecting the United States against terrorist threats and significantly reducing transnational crime (e.g., drug, arms, and human trafficking); environmental dangers (e.g., contagious diseases and invasive species); and illegal entry and unlawful presence in the United States requires addressing these threats from their points of foreign origin through transiting the border to their U.S. destinations. Distinguishing clear lines of responsibility between foreign, border, and domestic security is a thing of the past. National security, economic growth, and the liberties of American citizens (as well as visitors and international business partners) can no longer be considered in isolation. The visa-issuing activities of the Department of State and the Customs and Border Protection (CBP) and Immigration and Customs Enforcement agencies in the Department of Homeland Security (DHS) should be merged into a single border services agency under the DHS.

Step #2: Monitoring and servicing legal entry into the United States should be the highest priority. Improving the infrastructure and programs that oversee and support lawful means of trade and travel should be funded first. This includes upgrading immigration services and physical infrastructure at the busiest points of entry and fully funding programs like US-VISIT (tracking the entry and exit of visa holders); Smart Borders Initiatives (employing technology to speed the flow of people and goods); and Secure Flight (checking airline passengers against terrorist watch lists).

Most goods, services, and people enter and exit the United States through legitimate means. These networks are the lifeblood of the U.S. economy and must be appropriately managed and protected. Likewise, virtually all known terrorists who have entered the United States came in through legal channels. In addition, as the United States improves its capacity to reduce illegal entry, illicit attempts to penetrate legal networks of trade and travel will likely increase. Effective border services must already be in place to meet this challenge if the United States hopes to improve its overall security.

Step #3: Internal enforcement and international initiatives should take precedence over interdiction at the border. Too often, policymakers have assumed that the best place to reduce illegal and illicit activity is at the border. In practice, internal enforcement policies and programs, followed by working with point-of-origin and transit countries, probably offer a greater return on investment. For example, approximately 85 percent of illegal immigrants who receive final removal orders abscond.

Focusing on deporting people already ordered removed from the country is a good starting point. In the long term, initiatives such as effective workplace enforcement to discourage employment of individuals unlawfully present in the United States, domestic counterterrorism investigations including means to track down criminal aliens, and the Millennium Challenge Account (foreign aid that encourages countries to adopt polices that promote economic growth, sound governance, and the rule of law) will have a greater impact on illegal entry and unlawful presence than will simply hiring additional border guards.

Step #4: Border security must become a system of systems. Addressing the challenge of illegal entry between the points of entry cannot be ignored, but Congress needs to establish clear priorities and invest in resources that create a system-of-systems approach to security. Rather than trying to control the entire border, the United States requires a network of assets that direct the right capabilities to the right places at the right times to provide appropriate responses. This will require a combination of investments in high-speed and armed-airborne assets and in robust airborne sensor capabilities linked to an intelligence and early warning network. The network would provide knowledge of activities at sea and along the border, as well as the means to analyze and share that knowledge effectively. Modernizing the

CBP's air and marine interdiction capabilities in concert with increasing funding for the Coast Guard's Deepwater acquisition program ought to take precedence.

Step #5: The federal government should engage state and local governments and the private sector while respecting the principles of federalism and a free-market economy. Very little of this effort should rely on throwing money at the problem through federal grants or establishing unfunded Washington mandates. Rather, the federal government should take measured steps to strengthen the means of state and local law enforcement to conduct security and criminal-related immigration investigations, to maintain strong legal authorities for sharing law enforcement information, and to promote the development of effective national intelligence and early warning systems. Cooperative efforts with the private sector should focus on removing the barriers to effective information sharing between the government and non-government entities--information that is essential for conducting risk assessments and implementing effective vulnerability reduction measures that promote economic growth and protect the privacy of citizens and proprietary information of companies.

Question: **9. Who do you think is responsible for overall immigration policy within DHS? Is it one person? Would the Department be better off if one individual reporting in the Secretary could coordinate overall immigration policy?**

Response 9. The answer is simple. No one is in charge. Yes, I think it should be one person. That person should be within an Undersecretary for Policy and Planning. We discussed the scope of this position in The Heritage/CSIS report *DHS Report 2.0: Rethinking the Department of Homeland Security.*

Question: **10. What do you believe was the basis of the decision by the Administration to reconstitute the U.S. Customs Service and Bureau of Border Security into CBP and ICE?**

(1) The intent to abolish legacy INS. (2) The notion that internal enforcement would be improved by integrating immigration and customs investigators into a single agency.

Question: **11. Will you please address the One Face at the Border Initiative? Do you think this program is working? Do you have concerns about the ability of inspectors to learn customs and immigration law? Can you please discuss your concerns in primary inspections and secondary inspections?**

Response: 11. I think "one face at the border" should not mean that one agent is required to do everything, in all circumstances. I think it should reflect the intent to establish common practices, policies, and guidelines for handling people and things, simplifying charges and taxes into a single system, and eliminating unnecessary duplication of support assets. I think having inspectors cross-trained is good professional developments and there are some situations (such as a small crossing point) where a single inspector might make sense or for some primary inspection functions, but in general I would want secondary screening and major threat areas to be staffed by professionals trained with expertise in particular areas.

Question: **12. We are concerned that when ICE and CBP were created from Customs and legacy INS components that Custom inspectors lost their best source of intelligence and law enforcement information. Given that Customs inspectors are charged with assessing the risk of inbound cargo containers, and working with industry to secure these supply chains, I worry that CBP programs will not achieve their full potential because of the disconnect between ICE agents and CBP inspectors.**

a. What was the relationship between customs inspectors and investigators before the creation of DHS?

It is my understanding that there was a great deal of cooperation. Furthermore, there were more career development opportunities. It was not unusual for border inspector or border patrol agent to become a customs investigator. Now, many of the ICE investigators are hired straight out of college and lack useful field experience.

b. What is the existing relationship? What kinds of walls exist and how has CBP tried to compensate for the loss of Customs agents?

CBP and ICE try to compensate by creating task forces.

c. Are there any benefits to the current structure?

The research and interviews conducted in support of the Heritage/CSIS report *DHS Report 2.0: Rethinking the Department of Homeland Security did not find any compelling advantages to the current structure.*

d. What is the impact on CBP's cargo security mission?

CBP's cargo security mission has led to an inability to really maximize the information that might be available from ICE that might help with local targeting assessments.

QUESTIONS AND RESPONSES BY JAMES JAY CARAFANO, PH.D. SUBMITTED FOR THE RECORD BY THE HONORABLE KENDRICK MEEK

Question: **1. What do you believe was the basis for the decision by the Administration to have CBP and ICE created as separate operational agencies?**
Response: 1. The intent to abolish legacy INS. (2) The notion that internal enforcement would be improved by integrating immigration and customs investigators into a single agency.

Question: **2. If, for whatever reason, DHS ultimately decides not to merge ICE and CBP, what is the next most important action that could be taken to improve the effectiveness of CBP and ICE?**
Response: 2. The next most important action would be to fix ICE's financial problems and ensure that the agency has adequate staff, resources and the authority to implement aggressive internal enforcement operations.

Question: **3. For a merger between CBP and ICE to address the concerns you have raised, what additional steps beyond combining the headquarters operations would have to be part of the merger?**

Response: 3. Additions steps should include:
1. A robust professional development and executive education program.
2. A long term investment strategy to give the agency adequate resources and capabilities to perform its mission and invests in critical infrastructure at major border crossings and points of entry.
3. An integrated border security strategy that addresses the international dimension, the border, and internal enforcement.

QUESTIONS AND RESPONSES OF MICHAEL CUTLER SUBMITTED FOR THE RECORD BY THE HONORABLE BENNIE THOMPSON

Question: **1. With all of the attention that was paid within both ICE and CBP to bringing their own INS and Customs components together as part of DUS's genesis, is it fair to say that not enough attention has been paid to inter-bureau coordination?**
Response: 1. It is my belief that when you look at numerous issues concerning, the merging of the former Customs Service and the former INS into these two agencies, it becomes readily apparent that the result has left many employees from both former agencies frustrated and disappointed, although I believe that the former INS employees are in a worse position than are their counterparts from Customs. At present, most of the ICE field offices are headed by former Customs officials who lack a true understanding and appreciation, for the nature of the work that the former INS was responsible for. The immigration laws, both administrative as well as criminal, can be of great value in prosecuting the "War on terror" as well as the "War on drugs." Moreover, these statutes provide real leverage in combating a wide variety of criminal activities and can also be instrumental in cultivating informants who can act as the eyes and ears of law enforcement agencies when used to best advantage. Because of the problems that are currently being faced in integrating these two very different agencies into both ICE and CBP many opportunities are being lost to maximize the potential that could otherwise be realized to great advantage.

Question: **2. Absent issues which receive headquarters attention, namely anything connected to terrorism, minority staff field investigations over the last year found that the degree of local CBP and ICE coordination was heavily dependent on whether or not the supervisors had a good personal relationship. Given this dynamic, for a merger to be worthwhile wouldn't it have to affect more than just the headquarters components?**
Response: 2. I certainly believe that headquarters is essential for providing leadership and clearly defined goals, however, a head without a body won't go anywhere on its own. In order for any organization to be effective, leadership is essential at all level of the hierarchy to establish goals and to make certain that all members of the organization are contributing to the overall mission. The vast majority of field offices are headed by Special Agents-in-Charge who came from the former u.S. Customs Service. Perhaps, in part because of this, the immigration laws are being, in many instances, being neglected in the overall mission. Part of this problem stems

from a lack of resources, both monetary as well as manpower, however, the fact foreign language training is no longer a part of the curriculum for new agents is a very telling omission as is the fact that to my understanding, there is no effort being made to provide in-service document training for special agents. These decisions were presumably made at the headquarters level. Until the merger of INS and Customs, all INS enforcement officers were mandated to successfully complete a Spanish language-training program because it is estimated that some 80% of the illegal alien population are individuals who are Spanish speaking. It is interesting to note that the United States military is now actively attempting to recruit both uniformed as well as civilian personnel who have foreign language skills or to train personnel in foreign languages including so-called strategic languages. It is hard for me to understand why special agents of ICE, the agency that is most likely to encounter individuals who do not speak English within our borders, are not being given appropriate language training. Additionally, for law enforcement officers in general and for immigration enforcement officers in particular, document training is vital because identity documents serve as the "lynchpin" that holds any immigration law enforcement program together. It is especially important for those who are charged with enforcing the immigration laws to know precisely who they are dealing with to determine alienage and deportability of criminals and other individuals they come into contact with.

These issues represent only a "tip" of the proverbial iceberg in illustrating how at present, the bureau of Immigration and Customs Enforcement at the headquarters level is failing to provide absolutely vital training to its law enforcement officers at a time when our nation's security hangs in the balance. On the local level, as I pointed out in response to the first question, the great majority of the field offices are being lead by former Customs officials. I have also been told that at some offices, there are problems in coordinating the activities of special agents of ICE and the CBP managers within whom they interact on a routine basis. Among these issues are the facts that ICE agents have been told to make prior notification before going to an airport on matters of official business and CBP inspectors have on various instances at various locations, notified agencies other than ICE about violations of laws that they encountered that are clearly within the purview of ICE. It is inefficient for CBP inspectors to call the FBI or DEA when the first call should have been to ICE. These failures in coordination and cooperation are demoralizing and counterproductive and are symptomatic of a breakdown in the professional relationship that these two agencies must have if they are to succeed in securing our nation's porous borders.

Question: **3. Even though the initial decision to split ICE and CBP may not have been ideal, would we be discussing a merger if BTS management had taken action to ensure proper coordination between components?**

Response: 3. I believe that creating two agencies that have a common goal was flawed from the outset. Humans, like most creatures, are territorial and turf battles among agencies has historically plagued various efforts in our government. Additionally, I have often stated that immigration law enforcement needs to be thought of as an "Enforcement Tripod." Under this concept, the inspectors at ports of entry enforce the immigration laws at ports of entry, the Border Patrol enforces these laws between ports of entry and the special agents and deportation employees enforce the laws from within the United States and back up the other two components and constitute the third leg of the tripod. The interior enforcement component has always been the least funded and the one that has been nearly ignored for the past several decades, resulting in the collapse of the entire immigration effort that we are all too aware of today. In order for enforcement and administration of immigration laws to be effective, the three legs need to be of equal length and they also need to work in a coordinated fashion creating a virtually seamless operation. Creating a bureaucratic barrier between the components of what should be a single, coordinated agency hampers the essential mission of securing our nation's borders and endangers our security.

Question: **4. Would you agree that many of the problems and concerns which lead you to the call for the merger of CBP and ICE arise from the only common supervisor being at the Undersecretary or even, if CIS is involved, the Deputy Secretary level?**

Response: 4. Certainly this is a problem, but I think that this problem needs more than a change in the way that the components are supervised. I believe that the structure of the agency is at the root of many ofthe problems. I also believe that while I would like to see ICE and CBP merged into one agency, I would like to see separate chains of command and separate funding and separate accountability for the immigration program. As I pointed out during the hearing, I believe that the

merger of Customs and Immigration into one agency has created an unwieldy bureaucracy. The cultures and objectives of the former Customs and the former INS are very different from on another. Once you get past the point that they have both been traditionally involved with enforcing laws at the border, you find that they share little else in common. I believe that these two entities should coordinate their efforts to secure our border, but I am greatly concerned that the way that these efforts are currently being made, that too many gaps in the system threaten our security just as holes in a fence would fail to establish a secure perimeter around a parcel of land.

I would not object to having the enforcement personnel who are primarily concerned with the enforcement of immigration laws from working side by side with those who are charged with enforcing the customs laws in one agency, I just want to make certain that neither side of the operation suffers because of the experience and orientation of the management at a particular office. Perhaps this would not be as critical had the attacks of September 11 not taken place, but inasmuch as we needed to be up to speed yesterday, we cannot afford a lengthy gestation period for this offspring to come into the world. I believe that what I am recommending would facilitate the effective enforcement of all of these critical laws in a much quicker pace, provided that the resources that are currently lacking are provided to accomplish these vital missions.

Question: **5. With or without a merger, isn't the key issue making sure that the policies and procedures are in place to encourage Border Patrol agents, CBP officers, and ICE agents to share information, coordinate operations and resolve procedural disagreements at the lowest possible level?**
Response: 5. I absolutely agree that this is the destination that this process needs to take us, I just do not believe that the current structure of separate agencies (ICE and CBP) is the vehicle that will get us there. I believe that we need to rethink the structure of the agency that is charged with this most vital mission, securing our nation's borders and effectively enforcing the immigration laws that are supposed to protect our citizens from aliens who threaten our nation's security and our citizens' lives.

Question: **6. DHS has trumpeted the success of the Arizona Border Control (ABC) initiative in reducing the flow of migrants through the Arizona desert. Much of the success has been attributed to the command structure of the ABC initiative—a task force of CBP and ICE personnel headed by the Border Patrol sector chief. Do you believe that creating additional task forces under the direction of a local supervisor (an ICE agent-in-charge or a Border Patrol chief) is a viable way to insure that ICE and CBP coordinate their law enforcement efforts?**
Response: 6. I believe in the effectiveness of task forces having worked on various task forces for a significant portion of my career. However, I also think that a single agency will do a better job of accomplishing a goal than by creating a task force. When I was assigned to the Organized Crime Drug Enforcement Task Force, I was supposed to provide my insight, expertise, law enforcement authority and access to immigration resources to aid in the investigation of aliens who were involved in major drug trafficking organizations with the ultimate goal being the arrest, successful prosecution of the individuals involved in drug trafficking and related crimes.Additionally, I was also involved in the forfeiture of their assets, the deportation of aliens involved in drug trafficking after they served out their sentences, if applicable and the dismantling of drug trafficking organizations. There were, however, instances when the goals of my agency, the INS were not the same as the goals of the other agencies such as the DEA, the FBI the A TF or local or state police. In these instances I was often caught in the middle between the goals of the INS and the goals of the other agencies. However, task forces certainly operate more effectively than do individual agencies that are not participating in a task force that can help to facilitate the coordination of their operations.

Question: **7. If task forces are a good idea for border control, wouldn't it also make sense to extend this model to other missions such as interior enforcement, alien and other smuggling through airports?**
Response: 7. I certainly think that such task forces would be a beneficial development, but I also think that where such crimes as alien smuggling is concerned, it would be easier to create a seamless effort ifCBP and ICE were merged to track the movement of the aliens and the smugglers from outside the United States, to our border or port of entry all the way to the ultimate destination within the United States, whether it be a safe house or the destination to which the smuggled alien was ultimately destined to enable the enforcement program to track down and ar-

rest and prosecute all of the defendants involved in the case. There would be fewer problems and a greatly reduced likelihood that the two agencies would "trip" over each other. If task forces are good, a single agency would be better.

Question: **8. Would the problems we have discussed here today be lessened if the Administration decided to fully fund the border security enhancements called for in the 9/11 bill?**

Response: 8. Certainly I was outraged that the Administration did not fully fund the border security enhancements called for in the 9/11 bill. In fact, on March 10, the day after the hearing that I testified before the Committee on Homeland Security, I testified before the House Subcommittee on Immigration, Border Security and Claims about a component of this very issue, the fact that the Administration only requested funding to hire some 143 special agents for ICE as compared with the 800 that was authorized by Congress. Having said this, I nevertheless have to respond to this question by saying, "No." I am certain that this answer will surprise you but I think you will quickly understand my reasoning.

I think that we need to be mindful of the sound of the ticking clock. Weare well into the fourth year on this "War on terror" and our borders are, to my thinking, nearly as porous as they were on September 10, 2001. That our nation has not suffered an attack on our soil in the time since September 11,2001 gives me little comfort inasmuch as the terrorists who set off the bomb at the World Trade Center on February 26. 1993 waited more than 8 years to attack that facility again without significant interference from our government. Vice President Cheney compared the attacks of September 11, 2001 with the attack on Pearl Harbor committed on December 7, 1941. While the comparison was apt, our reaction to these two attacks could not have been more different. In short order, after December 7, our nation created fleets of cutting edge aircraft, battleships, submarines and aircraft carriers. We even created and successfully deployed nuclear weapons with brand new technology and less than four years after that day that, as President Roosevelt declared, would live in infamy, our nation, with the backing of our allies ended that war.

Today we still have virtually no control over our borders. We still have a visa waiver program. We are still not requiring biometric passports from countries that participate in this program. We still have only 2,000 special agents to enforce the immigration laws from within the interior of the United States. Recently, I saw a video clip in which Vice President Cheney publicly declared that our nation has millions of illegal aliens. He went on to say that we didn't know who they are, that we didn't know where they are and they we didn't know what they are up to. The enforcement of the immigration laws is the solution to that problem. Not the continuing debate about amnesty for illegal aliens or the sanctuary policy of many cities and local communities. I know that I am going a bit off the question, but I believe it is essential to make the point that indeed we need to have much better coordination among all components of the elements of the agencies and bureaucracies that are charged with securing our nation's borders, however all of the coordination in the world will not secure the borders when you simply do not provide the funding or the resources and leadership to make certain that the job get done. To think that 2,000 special agents who work in proper coordination with the Border Patrol can get the job done is absolutely outrageous!

New York City has been found to be the safest big city in the United States based on the crime statistics compiled by the FBI. New York has approximately 8 million residents who all are confined to the relatively small space that makes up the 5 boroughs of the city of New York.The New York City Police Department (NYPD) has nearly 40,000 police officers. It has been estimated that there may well be more than twice as many illegal aliens in the United States than there are residents in New York City. These aliens are scattered across a third of the North American Continent that comprises the United States. They are policed by some 2,000 special agents. What would happen to New York's crime rate if the number of police officers of the NYPD was reduced to 2,000?

Three years ago the GAO issued a report on the issue of immigration fraud. The report made it clear that fraud was a pervasive problem. In short, our nation has given many thousands of aliens resident alien status and even United States citizenship to which they would not have been entitled had all of the relevant facts been known. The way to combat such fraud is to have sufficient numbers of special agents who can do the appropriate field investigations to determine the bona fides of applications for immigration benefits. Such investigations are rarely if ever done today. Simply put, there are not enough agents to do this most basic job. Because of this, many more aliens are emboldened to file fraudulent applications, confident that their application will most likely not be investigated or even given the sort of scrutiny that is critical. Additionally, even if by some quirk, it is determined that

their application is fraudulent, the lack of special agents, coupled with the lack of jail space will mean that even if the application is denied, there is almost no chance that an agent will be assigned to track that alien down to either seek his prosecution or his removal from the United States. Consequently, we have a vicious cycle where more aliens file more applications further exacerbating the problem.

With an estimated illegal alien population that may well exceed 15 million, with 30% of the federal inmate population in federal penitentiaries being identified as being foreign born, with a backlog of millions of applications for immigration benefits now pending adjudication, how does anyone even suggest that 2,000 special agents or even 10,000 special agents can even begin to make a dent in this critical situation? I haven't even mentioned the involvement of aliens in crime that is dealt with on the local level. Nor does this include the crisis in health care and education. It also does not include the fact that it has been estimated that last year more than 16 billion dollars was electronically transferred from the United States to Mexico by illegal aliens working in our country and sending money to their home country. Finally, I have read that illegal aliens from Mexico represents less than one third of the illegal alien population in the United States. Consequently, even more money is being sent from the United States to the respective nations from which these other aliens come, further draining money from our economy.

It may be costly to hire an adequate number of special agents to constitute a deterrent to aliens who would come to this country in violation of our immigration laws, or who legally enter our country with the intention of ultimately violating our laws, either by accepting unlawful employment or by engaging in criminal activities such as membership in violent gangs, drug trafficking or terrorism. It is, however, far costlier for our nation to not address this problem which has been growing exponentially, spurred on by the knowledge that aliens who are present in our country in violation of our laws have little, if anything to fear.

I would like to insert a quote that I referred to when I testified before the House Subcommittee on Immigration, Border Security and Claims on March 10,2005. This quote is from page 49 of a report entitled, *"9/11 and Terrorist Travel, A Staff Report of the National Commission on Terrorist Attacks Upon the United States"*.

"Thus abuse of the immigration system and a lack of interior immigration enforcement were unwittingly working together to support terrorist activity."

I am therefore compelled to ask what it will take to change the way that we deal with this issue that has a direct bearing on the future of our nation? Can we afford to not secure our nation's borders especially as our government focuses on securing the borders of Iraq as we attempt to secure that nation against terrorists and insurgents? Should the American people expect a smaller effort from the government of the United States to secure their borders than the citizens of Iraq are currently enjoying where their borders are concerned?

I recall that when I testified at a hearing before the House Immigration Subcommittee on Immigration and Border Security that focused on the Administration's proposed budget for immigration enforcement, on February 25 of last year, that Representative Lamar Smith, the former chairman of the House Subcommittee on Immigration and Claims and currently a member of that subcommittee, stated, "And while it's a step in the right direction that we're increasing the amount of money—as I recall, it was something like from $20 million to $40 million, roughly—for worksite inspections, that's a little bit like having two candles instead of one candle in a blackout. It's a step in the right direction, but it's not doing near what we should."

I would make the same point about the staffing levels authorized by Congress for this fiscal year. I am afraid we don't need a couple of more candles, given the seriousness of the situation; we need to break out the floodlights!

Question: **9. Who do you think is responsible for the overall immigration policy within DDS? Is it one person? Would the Department be better off if one individual reporting to the Secretary could coordinate overall immigration policy?**

Response: 9. I believe that this is a difficult question to answer. Immigration policy needs to be fair, consistent and ultimately, effective. Immigration policy is one of the most critical issues that the federal government needs to address. It has been said that you only get one opportunity to make a first impression. The way our nation enforces and administers the immigration laws serves as that critical first impression for people throughout the world. We need to balance fairness and compassion with justice and integrity. America is and hopefully will always be seen as the "Land of opportunity." We must, however, not permit it to become the land of opportunity to those who would harm us. We must deprive the criminals and the terror-

ists the opportunity to victimize our citizens and attack our nation. At present several individuals head up components of the immigration mission. Eduardo Aguirre is the head of Citizenship and Immigration Services, Mike Garcia headed ICE and Robert Bonner has headed CPB. I do not believe that a triumvirate is the best way to go. The concern I do have is that if the person who is ultimately responsible for the immigration system is a person who favors the service side, as was clearly the case with former INS Commissioner Meisner, that the enforcement program will suffer. It might make sense to have two distinct chains of command, one reporting to the person in charge of CIS and the other to what I hope will become a combination of ICE and CBP. The person charged with running the enforcement mission should be someone with extensive law enforcement experience, who thoroughly understands law enforcement. I would further suggest that they would then report to a person who would be in the position of balancing and coordinating both missions. The critical issue here is that we need to make certain that CIS be given clear marching orders that while the efficient processing of applications is important the backlog of applications should never get more attention than the integrity of the process. National security has to be the primary consideration for both sides of the operation. Having stated my misgivings about the situation that existed under the former INS, I also think that by putting a single person in charge of both sides of the operation, that individual will feel truly accountable. Sometimes people feel that there is safety in numbers. When a person can hide in a committee or a bureaucracy, it may become easier to not feel quite as accountable as a person who is ultimately the one person who bears ultimate responsibility. I recall that President Truman had a sign on his desk that said, "The buck stops here." Perhaps that sense of accountability should exist for the person who will take charge of the immigration system. (Indeed immigration needs to be thought of as a system and not as a collection of loosely assembled components if it is to be successfully managed and lead.)

Question: **10. What do you believe was the basis of the decision by the Administration to reconstitute the U.S. Customs Service and Bureau of Border Security into CBP and ICE?**
Response: 10. I have no idea and, in fact, I have often asked myself that very same question.

Question: **11. Will you please address the One Face at the Border initiative? Do you think this program is working? Do you have concerns about the ability of inspectors to learn customs and immigration laws? Can you please discuss your concerns in primary and secondary inspections?**
Response: 11. I do not have an extensive background in customs law, however, I do have an extensive background in immigration law enforcement. Immigration laws are complex and are constantly evolving. The decisions that the inspectors at airports and other ports of entry have to make, especially in secondary where arriving aliens may make claims concerning political asylum and credible fear are conceivably life and death decisions. On the other hand, we have also seen that mistakes that err on the side of permitting aliens into the United States who are involved with crime and terrorism. Several times these sorts of decisions inadvertently facilitated the actions of the terrorists of September 11. It is absolutely critical that the inspectors who stand watch on our nation's borders have extensive and effective training in laws, in procedures and in terms of intelligence including developments in document fraud. I am most concerned with the training given to inspectors who handle secondary inspections, since the primary inspector does not need quite as much background as does the secondary inspector.

I have also been told that the senior immigration inspectors at many ports of entry are no longer as involved as they had been in seeking criminal prosecutions against aliens who seek to enter the United States in violation of law. This issue has been a development since the implementation of "One Face on the Border."

As I stated during the hearing, this is the age of the specialist. I believe that our security would be enhanced by making certain that the inspectors, especially in secondary, have the specialized training that they need. In view of these extremely critical and sensitive issues our nation would be better served by having separate customs and immigration inspectors handle secondary inspections.

Question: **12. We are concerned that when ICE and CBP were created from Customs and legacy INS components that Customs inspectors lost their best source of intelligence and law enforcement information. Given that Customs inspectors are charged with assessing the risk of inbound cargo containers, and working with industry to secure these supply chains, I worry that CBP programs will not achieve their full potential because of the disconnect between ICE agents and CBP inspectors.**

a. What was the relationship between customs inspectors and investigators before the creation ofDHS?
b. What is the existing relationship? What kinds of wall exist and how has CBP tried to compensate for the loss of Customs agents?
c. Are there any benefits to the current structure?
d. What is the impact on CBP's cargo security mission?

Response: 12. As I have stated previously, my knowledge about customs is extremely limited. I have heard anecdotal instances where CBP inspectors called other agencies when they encountered law violations that were under the purview of ICE such as drug seizes and the like. Clearly this is not helpful or in anyone's best interests. I regret I cannot provide answers or insight on the other issues that relate to customs enforcement issues you raise in this question.

Please note:

If I can be of further assistance to you or other members of the Committee or members of your respective staffs, please do not hesitate to contact me. I welcome the opportunity to contribute to efforts intended to enhance the security of our nation.

QUESTIONS AND RESPONSES BY MICHAEL CUTLER SUBMITTED FOR THE RECORD BY THE HONORABLE KENDRICK B. MEEK

Question: **1. What do you believe was the basis of the decision by the Administration to have CBP and ICE created as separate operational agencies?**

Response: 1. I can only speculate on the motivation to go in this direction inasmuch as I was not contacted when this decision was made, nor have I spoken with anyone who may have been involved in that decision making process. It may be that the thought was that the border was seen as an entity apart from the interior of the United States. If indeed that was the reason, it was, in my estimation, flawed because the two are truly an extension of each other. In fact, what is often is overlooked is the fact that an airport located in the heart of the United States is as much a part of the border as would be a land border port. Airports provide direct access into the United States which is why the enforcement of the immigration laws from within the interior of the United States is as critical to the success of the immigration enforcement mission as are enforcement efforts conducted by the Border Patrol operating in proximity to our nation's land borders.

Question: **2. If, for whatever reason, DDS ultimately decides not to merge ICE and CBP, what is the next most important action that could be taken to improve the effectiveness of CBP and ICE?**

Response: 2. It is my belief that we need to place as much emphasis on the enforcement of the immigration and customs laws from within the interior of the United States as we do on the border. (I will focus on the issue of immigration law enforcement rather than customs law enforcement only because of my own background as a former INS law enforcement officer.)

Interior enforcement efforts need to be greatly ramped up because we need to think of immigration law enforcement as a system rather than as a collection of separate and unrelated parts. You cannot control the flow of illegal aliens into the United States purely at the border for a host of reasons. First of all, nearly 50% of the illegal aliens currently in the United States did not evade the inspections process but did, in fact, enter the United States through a port of entry and then, in one way or another went on to violate the terms of their admission into our country.They may have simply stayed in the United States for a longer period oftime than they were given when they were admitted, they may have accepted unauthorized employment, or they may have committed felonies. In any event, these aliens fall squarely within the scope of the interior enforcement program that has been historically ignored, under-funded and understaffed.

It is also worth remembering the controversial "Catch and Release" program of the Border Patrol where illegal aliens arrested by Border Patrol agents are permitted to head for the interior of he United States supposedly to turn themselves over to the immigration authorities for removal hearings. Not surprisingly, only a very small percentage of these illegal aliens do this. They simply head to their intended destinations and blend into the huge alien communities throughout our nation. They are welcomed by communities that have implemented "sanctuary policies" they are even able to apply for loans to conduct business as usual as our country ever increases efforts to blur the distinction between resident alien and illegal alien. Securing work is not difficult. Last year no company paid a single fine for knowingly employing illegal aliens, although the law clearly states that such companies are supposed to be fined under the auspices of the Employer Sanctions Program. An effective interior enforcement program would deter many would be illegal

aliens from coming to our country. Conversely, the lack of meaningful interior enforcement encourages many aliens to come to this country in violation of law and when members of the political establishment publicly speculate about a guest worker program or other such amnesty program for illegal aliens, still more aliens are emboldened to run our borders and otherwise violate the immigration laws of this country.

To quote John F. Shaw, the former Assistant Commissioner for Investigations of the Immigration and Naturalization Service when he testified before the House Subcommittee on Immigration and Claims on March 4, 1999:

"In its determined efforts to establish control of the border by tightening security on the perimeter, Congress has seemingly ignored the critical, complementary roles and responsibilities of Interior Enforcement. . . and these fall mainly on the shoulders of Investigations. I believe that the concept of Interior Enforcement, supported by a well articulated strategy document, ought to be as familiar in the nomenclature of immigration enforcement as the concept, or term, Border Control. Although, I must admit that even in-house at INS, the Commissioner has said that Interior Enforcement is a term of usage invented by Investigations and devoid of meaning."

That, according to the former head of the investigations program for the former INS would state that his boss, Commissioner Doris Meisner would indicate her disdain for the interior enforcement program of the INS after the first attack on the World Trade Center on February 26, 1993 shows how great the problem is where dedicating adequate resources to this critical mission is concerned.

If we do nothing else, I would urge that the interior enforcement of the immigration laws be given at least as much emphasis as we are giving the Border Patrol. When FBI Director Robert Mueller testified before the Senate Intelligence Committee in February of this year, he spoke of his concerns about possible terrorist sleeper cells operating within our nation. As I stated during the testimony that I provided when I testified before the House Subcommittee on Immigration, Border Security and Claims on March 10, 2005:

"Sleeper agents are not like cicadas; they do not simply slip into our country and then burrow into a hole for months or years awaiting their instructions to emerge to carry out a deadly terrorist attack. Sleepers are, in fact, aliens who, upon entering our country, manage to hide in plain sight by finding a job, attending a school or doing other such "ordinary things" that do not call attention to them. Someone once said that an effective spy is someone who could not attract the attention of a waitress at a greasy spoon diner. The same can be said of an effective terrorist. It is vital that we regain control of our borders and the entire immigration bureaucracy and enforcement program if we are to protect our nation against terrorists and criminals. This requires that we have an adequate number of law enforcement officers who are dedicated to this critical mission."

I believe it absolutely imperative that we do not seek a false economy of not fully funding a robust interior enforcement program if we are to secure our borders against terrorists, drug traffickers, members of violent gangs and others who would threaten our nation and our citizens. I also want you to know that my concept of fully funding this program does not coincide with what has been authorized by Congress. Our nation needs many for special agents, they need adequate resources including jail space and operating funds and need effective training including foreign language training, intelligence training, document training and true leadership to operate effectively. Our agents who enforce the immigration laws are in the best position to defend our nation from terrorists and other criminals by cultivating informants and by being the people who are most likely to spot trends as they develop. Admittedly this is not a cheap proposition, but when you consider the costs that accrued since 9/11, without even getting into the massive, horrific loss of human life on that horrendous day, our nation would be wise to find the money and protect our citizens. When I spoke with the investigators who were involved in the investigation conducted in the aftermath of the first attack on the World Trade Center, some of them told me that they were actually surprised that the bomb did not bring down the tower that was struck, sideways. There would have been no escape from that tower had that occurred. Other building would have undoubtedly been hit. It is virtually impossible to know what that carnage would have been, however, it would have been many, many times greater than the level of loss of life that we experienced on September 11. We have been hearing constant warning about terrorists seeking to obtain and deploy weapons of mass destruction. The cost in terms of dollar amounts and more importantly, human lives, has the potential to eclipse the horror this nation experienced on 9/11.

I would also remind you that 30% of the federal inmate population incarcerated in federal correctional facilities are identified as being foreign born. It is therefore safe to say that many more people die in our country each and every year because

of crimes committed by alien criminals than were killed as a result of the terror attacks of September 11. Alien criminals are involved in everything from drug trafficking (an activity that has, in many instances, been linked to terrorist organizations) ethnic organized crime groups, including violent gangs and whitecollar criminal activities which again, have been shown, in some instances, to have links to terrorist organizations.

I know that you have asked me a relatively short question, and that I have responded with a rather lengthy response. I have done this because of how certain I am as to the rightness of my response and I want to make it abundantly clear that there are definite reasons that I hold these beliefs.

Question: **3. For a merger between COP and ICE to address the concerns you have raised, what additional steps beyond combining the headquarters operations would have to be part of the merger?**

Response: 3. I believe that beyond adequate funding for both the enforcement of the border components of the program and the interior enforcement efforts, we need to have coordination of both elements at the field office level and also need to coordinate these efforts with the benefits program to address the concerns of the GAO when that agency prepared a report on a study on the issue of immigration benefit fraud in February 2002, that stated that fraud was a pervasive problem throughout the immigration benefit program. The 9/11 Staff Report on Terrorist Travel made it clear that in preparing to attack our nation, these enemies of our nation traveled frequently and extensively and probably could not have attacked us had they been unable to travel in that fashion. A United States passport would go a long way to facilitate the travel of a terrorist not only to easily cross our nation's borders, but to enter into many other countries inasmuch as the United States passport is considered the "gold standard" of passports throughout much of the world. Immigration benefit fraud can put an alien on the road to that highly coveted United States passport. While we are on the topic of the United States passport, we also need to seek simple solutions to problems as well. When an alien naturalizes, the law states that the new citizen may take any name that he or she desires at the time of naturalization. When a naturalized citizen applies for a United States passport, the only name that the passport generally reflects is the name that is on the naturalization certificate. I believe that it would make sense to make certain that the United States passport should also contain the name that the alien used prior to being naturalized so that if such a person was wanted in a foreign country under his/her original name, they wouldn't be able to circumvent a name-based watch list in another country. This would enhance the security of that other country and may also help our nation keep better track of those who may pose a threat. This would not cost anything and may make us a bit safer. There are other such things that can be done at little or no cost to improve security.

The 9/11 Staff Report on Terrorist Travel noted the many identity documents that the terrorists used. I believe that the issuance of driver's licenses to illegal aliens must stop immediately. I have heard many people who favor open borders voice concerns about the use of driver's licenses as national identity documents. Frankly, they are too late. We have been using these documents in that fashion for quite some time. Any significant purchase in a store will most times trigger a request to see a driver's license whether you pay by check or credit card. Entry into sensitive buildings in the private sector as well as government often requires the display of a driver's license. Boarding an airplane or train also triggers that request. The only problem is, driver's licenses are not secure identity documents, we only pretend that they are. I have often said that the only thing worse than no security is false security. The demand of a driver's license at present is the equivalent of whistling past a graveyard. It may give us comfort, but it changes nothing. Only criminals and undercover agents would lie about their true identities. Undercover agents who work for our government are no threat to our well-being. Criminals and terrorists are. The argument that illegal aliens will drive with or without driver's licenses shows the level of contempt that currently exists for our laws. We currently take away driving privileges from motorists who are arrested for drunk driving to protect the rest of the population. We often hear about a drunk driver who drives a car without a license, gets into an accident and kills someone. I wonder if those who argue that illegal aliens will drive whether or not they have a license would argue against taking licenses from convicted drunk drivers on the same grounds—"That they will drive anyway."

It is crucial that we deter illegal immigration and not by simply posting more Border Patrol agents along our nation's borders. We need to create an effective immigration system that is fair, consistent, and effective and prevents illegal aliens who get past the Border Patrol or the inspector at the port of entry from conducting busi-

ness as usual. This would deprive an alien who has no lawful right to be in the United States the reasons to come here in the first place. A prudent homeowner would not allow a stranger in without looking though the peephole to make certain that the person knocking on the door is of no danger should he be allowed in. This country should do no less. Our nation's military is currently attempting to secure the borders of Iraq to stop terrorists and insurgents. It appears to be working. We should do no less for our nation and our citizens. An effective, coordinated effort, aimed at the enforcement and administration of the immigration laws would go a long way to protect our homeland.

Please note:

If I can be of further assistance to you or other members of the Subcommittee or members of your respective staffs, please do not hesitate to contact me. I welcome the opportunity to contribute to efforts intended to enhance the security of our nation.

QUESTIONS AND RESPONSES BY KENNETH C. KLUG SUBMITTED FOR THE RECORD BY THE HONORABLE BENNIE THOMPSON

Question: **1. With all of the attention that was paid within both ICE and CBP to bringing their own INS and Customs components together as part of DHS's genesis, is it fair to say that not enough attention has been paid to inter-bureau coordination?**

Response: 1. It is clear that much could be done in the area of inter-agency coordination. First and foremost the agency heads should be held accountable for maintaining effective working relationships. By all accounts there is a rift between CBP and ICE at the highest levels.

Question: **2. Absent issues which receive headquarters attention, namely anything connected to terrorism, minority staff field investigations over the last year found that the degree of local CBP and ICE coordination was heavily dependent on whether or not the supervisors had a good personal relationship. Given this dynamic, for a merger to be worthwhile wouldn't it have to affect more than just the headquarters components?**

Response: 2. Absolutely, the entire organization needs to report through their respective chains of command to Headquarters and Headquarters needs to hold principal field officers accountable for maintaining effective and complimentary working relationships. This is analogous to nothing more than establishing a detective division within the existing CBP structure.

Question: **3. Even though the initial decision to split ICE and CBP may not have been ideal, would we be discussing a merger if BTS management had taken action to ensure proper coordination between the components?**

Response: 3. Perhaps, but it's difficult to speculate. Clear leadership would have offset some if not many of the difficulties encountered. BTS could have required the components to establish clear cut mission statements, communicate expectations, provided resources, and held agency heads accountable for maintaining effective working relationships. BTS has also treated ICE in a disparate fashion with regard to resources. TSA held a widely publicized award ceremony and the Under Secretary for BTS participated in the CBP awards ceremony. Conversely ICE inadequate funding levels resulted in no awards for personnel. This added to the already debilitated morale of employees.

Question: **4. Would you agree that many of the problems and concerns which lead you to the call for the merger of CBP and ICE arise from the only common supervisor being at the Undersecretary or even, if CIS is involved, the Deputy Secretary level?**

Response: 4. I would agree. Furthermore, due to the size of the organization and their responsibilities the Undersecretary and/or Deputy Secretary are too far removed from the day-to-day operations of the respective organizations.

Question: **5. With or without a merger, isn't the key issue making sure that policies and procedures are in place to encourage Border Patrol agents, CBP officers, and ICE agents to share information, coordinate operations and resolve procedural disagreements at the lowest possible level?**

Response: 5. These are important issues but the separation has also caused duplication of effort, duplicative administrative processes and the inefficient utilization of resources.

Question: **6. DHS has trumpeted the success of the Arizona Border Control (ABC) initiative in reducing the flow of migrants through the Arizona desert. Much of the success has been attributed to the command structure**

of the ABC initiative—a task force of CBP and ICE personnel headed by the Border Patrol sector chief Do you believe that creating additional task forces under the direction of a local supervisor (an ICE agent-in-charge or a Border Patrol chief) is a viable way to insure that ICE and CBP coordinate their law enforcement efforts?
Response: 6. Many question the success of the ABC. Personally I feel that the flood of migrants should have been monitored more closely from the onset. Had enough attention been paid to the slowly rising pattern more effected action could have been taken earlier, negating the need for the task force and consequently the tax dollars spent on it. Although task force initiatives may be worthwhile in some instances, agencies should not be relying solely on the efforts of principal field officers. Direction and leadership need to come from Washington and not negotiated in the field.

Question: **7. If task forces are a good idea for border control, wouldn't it also make sense to extend this model to other missions such as interior enforcement, alien and other smuggling through airports?**
Response: 7. Again this is the underpinning of the fallacy. There is no "interior enforcement strategy" and you cannot separate the functions. They are both border related. If carried to the logical conclusion under the "interior enforcement strategy", are the functions at inland international airports and seaports interior enforcement? Certainly not, their duties are border related. ICE does not have jurisdiction unless people or merchandise cross a **b–o–r–d–e–r.**

Question: **8. Would the problems we have discussed here today be lessened if the Administration decided to fully fund the border security enhancements called for in the 9/11 bill?**
Response: 8. I am not well versed enough in this arena to answer this question but will restate that ICE has experienced significant financial hardship and operations have been adversely impacted.

Question: **9. Who do you think is responsible for overall immigration policy within DHS? IS it one person? Would the Department be better off if one individual reporting in the Secretary could coordinate overall immigration policy?**
Response: 9. I would suggest along with many others, that a comprehensive review of the nations immigration policy is in order. A bipartisan approach similar the 9-11 Commission should be taken. To illustrate the problem of dealing with the problem without a comprehensive plan, many suggest that we continue to hire additional BP officers in order to control the border. This approach has not and will not work. This will do little good if we do not have the funding or the facilities to house apprehended aliens. They are literally "caught and released". It does little good to issue appearance notices when the vast majority fail to appear.

Question: **10. What do you believe was the basis of the decision by the Administration to reconstitute the U.S. Customs Service and Bureau of Border Security into CBP and ICE?**
Response: 10. As I stated in my March 9th, 2005 written testimony to the subcommittee "It is the belief of many of my colleagues in the Office of Investigations, that the concept of ICE and the subsequent division of the Customs Service was fatally flawed from its inception. Frankly, the creation of ICE was tantamount to building a house without a foundation.Many in the law enforcement community found it quizzical as to why all other agencies that were incorporated into DHS, such as Secret Service, FEMA, Coast Guard, etc. maintained their identity in the transition. The logic behind the concept of ice became even more arcane when the Federal Protective Service (F.P.S.), an agency responsible for guarding government buildings, was taken from under the General Services Administration and placed within ICE. To date, not a single individual I have spoken with in the federal government can supply any reason for incorporating F.P.S. into this border protection agency. Furthermore, the administration did not conduct a comprehensive review or issue a written report relative to the complexity or feasibility of combining these diverse agencies. Apparently no study, cursory or in depth, was requested or produced in anticipation of the proposed separation. I am certain that if an independent group such as the G.A.O. had conducted a study, the separation would have never been recommended and consequently not have occurred. Many of my coworkers believed then and continue to feel that the proposed division of Customs and INS was a result of the lack of specific knowledge on the part of those individuals in the administration who proposed it. They certainly had to be unaware of the precise missions of the two agencies. The months following the creation of ICE proved to substantiate that belief."

Question: **11. Will you please address the One Face at the Border initiative? Do you think this program is this program working? Do you have concerns about the ability of inspectors to learn customs and immigration law? Can you please discuss your concerns in primary inspections and secondary inspections?**
Response: 11. Inspectional (CBP) personnel would best address this question.

Question: **12. We are concerned that when ICE and CBP were created from Customs and legacy INS components that Customs inspectors lost their best source of intelligence and law enforcement information. Given that Customs inspectors are charged with assessing the risk of inbound cargo containers, and working with industry to secure these supply chains, I worry that CBP programs will not achieve their full potential because of the disconnect between ICE agents and CBP inspectors.**

a. What was the relationship between customs inspectors and investigators before the creation of DHS?

Customs Agents and Inspectors were closely aligned, roles clearly established and programs were integrated. That does not appear to be the case with INS Inspectors and Agents.

b. What is the existing relationship? What kinds of walls exist and how has CBP tried to compensate for the loss of Customs agents?

The relationships vary by location. In many instances legacy relationships exist and are working. Unfortunately, these will deteriorate over time due to attrition. In other location the entities do not interact.

Many walls have surfaced. As an example CBP has decided that the release of a passenger baggage declaration or a customs entry for imported merchandise is subject to the "third agency rule". In some instances agents have been escorted from Inspectional areas and CBP has pulled back from joint intelligence operations such as ICAT and the EXODUS command center.

CBP has compensated for the loss of the agents by establishing their own intelligence division, foreign offices and investigators referred to as 1895–Es.

There is much duplication of effort.

c. Are there any benefits to the current structure?

Any perceived benefit is clearly outweighed by the negatives.

d. What is the impact on CBP's cargo security mission?

Inspectional personnel would best address this question, however, many of the functions that were performed by the agents are now being performed by the inspectors.

QUESTIONS AND RESPONSES BY KENNETH C. KLUG SUBMITTE FOR THE RECORD BY THE HONORABLE KENDRICK B. MEEK

Question: **1. What do you believe was the basis of the decision by the Administration to have CPB and ICE created as separate operational agencies?**
Response: 1. As I stated in my March 9th, 2005 written testimony to the subcommittee "It is the belief of many of my colleagues in the Office of Investigations, that the concept of ICE and the subsequent division of the Customs Service was fatally flawed from its inception. Frankly, the creation of ICE was tantamount to building a house without a foundation. Many in the law enforcement community found it quizzical as to why all other agencies that were incorporated into DHS, such as Secret Service, FEMA, Coast Guard, etc. maintained their identity in the transition. The logic behind the concept of ICE became even more arcane when the Federal Protective Service (F.P.S.), an agency responsible for guarding government buildings, was taken from under the General Services Administration and placed within ICE. To date, not a single individual I have spoken with in the federal government can supply any reason for incorporating F.P .S. into this border protection agency. Furthermore, the administration did not conduct a comprehensive review or issue a written report relative to the complexity or feasibility of combining these diverse agencies. Apparently no study, cursory or in depth, was requested or produced in anticipation of the proposed separation. I am certain that if an independent group such as the G.A.O. had conducted a study, the separation would have never been recommended and consequently not have occurred. Many of my coworkers believed then and continue to feel that the proposed division of Customs and INS was a result of the lack of specific knowledge on the part of those individuals in the administration who proposed it. They certainly had to be unaware of the precise missions of the two agencies. The months following the creation of ICE proved to substantiate that belief."

Question: **2. If, for whatever reason, DHS ultimately decides not to merge ICE and CBP, what is the next most important action that could be taken to improve the effectiveness of CBP and ICE?**
Response: 2. Not to merge the agencies would be a grave mistake. What has been need and should be instituted immediately is to identify clear mission statements, priorities and roles and responsibilities for the respective entities. Currently the impacted elements have been required to negotiate Memorandums of Agreement. This is no substitute for leadership. There are redundant systems and the entities are "mission creeping". The Border Patrol has reestablished it's prosecutions units that conduct investigations and OFO is contemplating expanding their investigative functions as well. Should the current organizational structure continue the Department and BTS needs to clarify missions and expectations.

Question: **3. For a merger between CBP and ICE to address the concerns you have raised, what additional steps beyond combining the headquarters operations would have to be part of the merger?**
Response: 3. We will not realize the goals of "one face at the border" until all entities with a responsibility for border enforcement are under one roof, pursuing the same priorities and reporting to one management structure. Although there may be separate functions within the component parts the efficiencies of Government will not be addressed unless they are marching in the same direction.

QUESTIONS AND RESPONSES BY DAVID J. VENTURALLA SUBMITTED FOR THE RECORD BY THE HONORABLE BENNIE THOMPSON

Question **1. With all of the attention that was paid within both ICE and CBP to bringing their own INS and Customs components together as part of DHS's genesis, is it fair to say that not enough attention has been paid to inter-bureau coordination?**
Response: 1. It is my opinion that very little has been done to coordinate the strengths and capabilities of ICE and CBP in an effort to protect our homeland. With the lone exception of the ABC initiative, DHS, in particular has not provided the direction and leadership necessary to capitalize on this opportunity.

Question **2. Absent issues which receive headquarters attention, namely anything connected to terrorism, minority staff field investigations over the last year found that the degree of local CBP and ICE coordination was heavily dependent on whether or not the supervisors had a good personal relationship. Given this dynamic, for a merger to be worthwhile wouldn't it have to affect more than just the headquarters components?**
Response: 2. Coordination must start at the top. DHS and the headquarter components of ICE and CBP must develop the culture and structure that will facilitate coordination and communication at all levels. ICE has done little to foster communication and coordination within its own organization and even less with CBP. The leadership at ICE has failed to recognize the important elements that make an organization successful.

Question: **3. Even though the initial decision to split ICE and CBP may not have been ideal, would we be discussing a merger if BTS management had taken action to ensure proper coordination between the components?**
Response: 3. I agree with your assessment. BTS and the Department should have taken a more active role.

Question: **4. Would you agree that many of the problems and concerns which lead you to the call for the merger of CBP and ICE arise from the only common supervisor being at the Undersecretary or even, if CIS is involved, the Deputy Secretary level?**
Response: 4. I do not agree with that assessment. The problems that exist today are the result of weak leadership, poor planning and poor organizational decisions made early on by the Department. For example, the "shared service" concept was well intended but the lack of oversight by the Department has only served to widen the rift between ICE, CBP and CIS.

Question: **5. With or without a merger, isn't the key issue making sure that policies and procedures are in place to encourage Border Patrol agents, CBP officers, and ICE agents to share information, coordinate operations and resolve procedural disagreements at the lowest possible level?**
Response: 5.

Question: **6. DHS has trumpeted the success of the Arizona Border Control (ABC) initiative in reducing the flow of migrants through the Arizona**

desert. Much of the success has been attributed to the command structure of the ABC initiative—a task force of CBP and ICE personnel headed by the Border Patrol sector chief. Do you believe that creating additional task forces under the direction of a local supervisor (an ICE agent-in-charge or a Border Patrol chief) is a viable way to insure that ICE and CBP coordinate their law enforcement efforts?

Question: **7. If task forces are a good idea for border control, wouldn't it also make sense to extend this model to other missions such as interior enforcement, alien and other smuggling through airports?**

DHS and BTS operational policy and procedural guidance on many important issues have not been forthcoming. In the two years the Department has been in existence, only a handful of instructions have been generated. As a result, ICE and CBP are allowed to act independent of one another thereby creating redundant operations and processes. This lack of direction only exacerbates the problems that exist between ICE and CBP.

Response: 6 and 7. Task forces are one way of executing an operation; however, the impact of task force operations is very short in duration and does little to sustain the positive results achieved when the task force is dissolved.

What is lacking in the Department is a long-range strategy that is supported by initiatives which compliment on another. Without a comprehensive border and interior enforcement strategy, initiatives such as ABC are only marginally successful as it relates to securing the border.

Question: **8. Would the problems we have discussed here today be lessened if the Administration decided to fully fund the border security enhancements called for in the 9/11 bill?**

Response: 8. With or without the enhancements, the vulnerabilities we have in border security and interior enforcement would still occur because there is a lack of a common mission and strategic focus. Throwing money at the problem will not solve the problem.

Question: **9. Who do you think is responsible for overall immigration policy within DHS? IS it one person? Would the Department be better off if one individual reporting in the Secretary could coordinate overall immigration policy?**

Response: 9. Prior to the creation of the Department of Homeland Security, the responsibility of immigration policy was located under one person and one organization. As we all recall, this didn't work well either. The structure of the organization did not contribute to this failure; rather, it was the lack of leadership and vision that failed this country. I do support the creation of a directorate for policy and planning that would report to the Secretary with the Deputy Secretary having responsibility for policy implementation and operational execution.

Question: **10. What do you believe was the basis of the decision by the Administration to reconstitute the U.S. Customs Service and Bureau of Border Security into CBP and ICE?**

Response: 10. I believe the Administration saw a logical break—border (CBP) versus interior (ICE) when it started to realign and distribute functions. I also believe they envisioned a new tool to secure the borders and improve overall enforcement that could potentially occur as a result of the merger of custom statutory authorities and assets with immigration authorities and assets. Because of the lack of leadership and vision, the development of these powerful tools has not come to fruition.

Question: **11. Will you please address the One Face at the Border initiative? Do you think this program is this program working? Do you have concerns about the ability of inspectors to learn customs and immigration law? Can you please discuss your concerns in primary inspections and secondary inspections?**

Response: 11. It is my opinion that "The One Face at the Border" initiative only addresses operational efficiencies and morale issues. It is not a strategy to improve security at our ports of entry and at our borders. In fact, without the inclusion of the U.S. Coast Guard, this initiative is incomplete.

I do not have any concerns about the ability of inspectors to learn both customs and immigration law. When I was attending my basic training at the Federal Law Enforcement Training Academy as a deportation officer, I had to learn basic customs law. I believe inspectors from the former Customs Service and Immigration and Naturalization Service have been provided a basic foundation in both sets of statutes and learning the nuance of the laws would not pose a concern.

I have no specific concerns regarding inspectors performing their duties during the primary and secondary process. I remain concerned about the information an inspector, in particular at a land border port of entry, has available to make their decisions.

12. We are concerned that when ICE and CBP were created from Customs and legacy INS components that Customs inspectors lost their best source of intelligence and law enforcement information. Given that Customs inspectors are charged with assessing the risk of inbound cargo containers, and working with industry to secure these supply chains, I worry that CBP programs will not achieve their full potential because of the disconnect between ICE agents and CBP inspectors.

Questions:

a. What was the relationship between customs inspectors and investigators before the creation of DHS?

b. What is the existing relationship? What kinds of walls exist and how has CBP tried to compensate for the loss of Customs agents?

c. Are there any benefits to the current structure?

d. What is the impact on CBP's cargo security mission?

Response: 12. I cannot to respond to these specific questions regarding the relationship of Customs Inspectors and former Custom Agents.

QUESTIONS AND RESPONSES BY DAVID J. VENTURELLA SUBMITTED FOR THE RECORD BY THE HONORABLE KENDRICK B. MEEK

Question: **1. What do you believe was the basis of the decision by the Administration to have CPB and ICE created as separate operational agencies?**

Response: 1. I believe the Administration saw a logical break—border (CBP) versus interior (ICE) when it started to realign and distribute functions. I also believe they envisioned a new tool to secure the borders and improve overall enforcement that could potentially occur as a result of the merger of custom statutory authorities and assets with immigration authorities and assets. Because of the lack of leadership and vision, the development of these powerful tools has not come to fruition.

Question: **2. If, for whatever reason, DHS ultimately decides not to merge ICE and CBP, what is the next most important action that could be taken to improve the effectiveness of CBP and ICE?**

Response: 2. As I stated in my testimony, I would recommend a thorough examination of the components of each bureau and redistributing programs to provide a logical alignment of operations, assets as well as the integration of appropriate resources. In that vein, I would recommend placing customs, immigration and agriculture port assets under CBP and immigration enforcement assets under ICE. The Federal Protective Service and the Federal Air Marshals Service should be moved elsewhere in the department. The mismatch of functions and overlapping areas of responsibilities has served merely to diminish DHS's focus on enforcement.

Question: **3. For a merger between CBP and ICE to address the concerns you have raised, what additional steps beyond combining the headquarters operations would have to be part of the merger?**

Response: 3. While I do not support the merger of the two bureaus, for this organization to be successful, someone with a sense of vision needs to lead the new bureau. This leader must be able to see down the road, examine the threats to our country and develop a plan on how take the current organization beyond in current capabilities to an organization that can overcome the threats of the future.

PREPARED STATEMENT OF THE HONORABLE SHEILA JACKSON-LEE, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF TEXAS

Chairman Rogers and Ranking Member Meek, I appreciate your effort in holding this very important hearing to analyze the proposed efficiencies of the new consolidated bureaus of the Border and Transportation Security. The purpose of establishing the Department of Homeland Security was to facilitate greater communication and coordination. According to a report from the General Accounting Office (GAO), DHS has had mixed results in this regard. While many of the field officials with whom GAO spoke were pleased with the communication and coordination they had with other DHS immigration programs, problems still exist. The purpose of the hearing today is to learn about the communication problems within DHS between the bureaus of Customs and Boarder Patrol (CBP) and Immigration and Customs Enforcement (ICE).

I am particularly interested in the way the cooperation between CBP and ICE has affected the government's efforts to deal with commercial alien smuggling operations. CBP and ICE issued general guidelines on each bureau's roles and responsibilities regarding how they would transfer the assets of anti-smuggling investigators from the Border Patrol to ICE, and how they would handle anti-smuggling investigations after the transfer of these investigators to ICE. A memorandum jointly issued by CBP and ICE in April 2004 for SACs and Border Patrol sector chiefs in field locations outlined each program's basic responsibilities. ICE would assume responsibility for administrative support; funding of the anti-smuggling investigators; and all investigations and complex cases such as international in nature or related to organizations or national security. The Border Patrol would have lead responsibility for cross-border and border related interdiction activities, such as surveillance to interdict illegal border crossings.

According to the GAO report, these efforts have not been fully successful. Visits to the field and conversations with DHS employees suggest the reason for this is that alien smuggling cases traditionally arose from inspectors, border patrol agents or adjudicators noticing patterns or trends. The dissolution of INS has cut the connections between the agents who investigate alien smuggling and frontline personnel. In the same vein, fewer Customs investigations were generated based on leads from inspectors.

Mr. Chairman and Ranking Member, I would hope that the questions that this body will pose to the witnesses will bring us closer to initiating action to address the problems and areas of vulnerability that exist in our border security program.