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SETTING POST–SEPTEMBER 11TH INVESTIGATIVE PRIORITIES AT THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT

HEARING

BEFORE THE

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS

OF THE

COMMITTEE ON GOVERNMENT REFORM

HOUSE OF REPRESENTATIVES

ONE HUNDRED NINTH CONGRESS

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CONTENTS

	Page
Hearing held on March 28, 2006	1
Statement of:	
Ryan, Joseph F., Ph.D., Chairperson, Department of Criminal Justice and Sociology, PACE University; Caroline Fredrickson, director, Washington Legislative Office, American Civil Liberties Union; and Joseph R. Webber, Special Agent in Charge (retired), Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security	74
Fredrickson, Caroline	99
Ryan, Joseph F.	74
Webber, Joseph R.	109
Stana, Richard M., Director, Homeland Security and Justice Issues, U.S. Government Accountability Office; Richard L. Skinner, Inspector General, U.S. Department of Homeland Security; and Robert A. Schoch, Deputy Assistant Director, National Security Division, Office of Investigations, U.S. Immigration and Customs Enforcement, Department of Homeland Security	10
Schoch, Robert A.	43
Skinner, Richard L.	33
Stana, Richard M.	10
Letters, statements, etc., submitted for the record by:	
Fredrickson, Caroline, director, Washington Legislative Office, American Civil Liberties Union, prepared statement of	102
Kucinich, Hon. Dennis J., a Representative in Congress from the State of Ohio, March 28, 2006 article	6
Ryan, Joseph F., Ph.D., Chairperson, Department of Criminal Justice and Sociology, PACE University, prepared statement of	77
Schoch, Robert A., Deputy Assistant Director, National Security Division, Office of Investigations, U.S. Immigration and Customs Enforcement, Department of Homeland Security:	
July 30, 2004 memorandum	64
Prepared statement of	45
Shays, Hon. Christopher, a Representative in Congress from the State of Connecticut, prepared statement of	3
Skinner, Richard L., Inspector General, U.S. Department of Homeland Security, prepared statement of	35
Stana, Richard M., Director, Homeland Security and Justice Issues, U.S. Government Accountability Office, prepared statement of	12
Webber, Joseph R., Special Agent in Charge (retired), Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security, prepared statement of	113

SETTING POST–SEPTEMBER 11TH INVESTIGATIVE PRIORITIES AT THE BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT

TUESDAY, MARCH 28, 2006

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC.

The subcommittee met, pursuant to notice, at 2:05 p.m., in room 2247, Rayburn House Office Building, Hon. Chris Shays (chairman of the subcommittee) presiding.

Present: Representatives Shays, Platts, Kucinich, and Van Hollen.

Staff present: Lawrence Halloran, staff director and counsel; Robert A. Briggs, analyst; Marc LaRoche, intern; Elizabeth Daniel, professional staff member; Andrew Su, minority professional staff member; Earley Green, minority chief clerk; and Jean Gosa, minority assistant clerk.

Mr. SHAYS. A quorum being present, the Subcommittee on National Security, Emerging Threats, and International Relations hearing entitled, "Setting Post-September 11th Investigative Priorities at the Bureau of Immigration and Customs Enforcement" is called to order.

Homeland security will never be about certainties. It will always be about probabilities, about risks and about choices. Which cargo containers to inspect? Which air baggage to screen? Or, as we ask today, who among the estimated 12 million non-citizens illegally residing within our borders should the Department of Homeland Security [DHS], choose to pursue?

In creating the Department of Homeland Security, the goal was to consolidate previously dispersed security functions to gain the seamlessness and synergies needed to confront post-September 11th threats. The DHS Bureau of Immigration and Customs Enforcement [ICE], brought under one bureaucratic roof for the first time the interior enforcement functions of Immigration and Naturalization Service, formerly part of the Department of Justice, and the investigative arm of the Treasury Department's U.S. Customs Service. The merger doubled the number of agents available to secure the homeland against those who would exploit our openness and hospitality.

But in 2004, we learned that suspected terrorists, who entered the country on revoked visas, were not being consistently tracked

or removed. Cumbersome, reactive processes at ICE raised questions about how the bureau sets investigative priorities to meet new threats to national security. At our request, the Government Accountability Office [GAO], examined how the ICE Office of Investigations is organized, how risks are evaluated and how the Department's largest investigative force allocates resources against a diverse, changing mission portfolio.

GAO found inherited structures and missions still tend to dominate ICE enforcement activities. Only a small percentage of investigative resources are focused on national security cases. Even that nexus to national security is often passively imputed to legacy lines of businesses, like munitions violations and illegal exports, rather than being driven by a proactive effort to target vulnerabilities. Drugs, financial crimes, general immigration violations, smuggling, human trafficking, document fraud and worksite enforcement draw the bulk of ICE attention.

These are important missions, but the challenge remains to incorporate a variety of inherited mandates into a coherent strategy based on clear-eyed risk assessment. Under that strategy, ICE should actively probe for systemic weaknesses that could be exploited to our detriment. We have to assume the terrorists are doing the same.

GAO did find some evidence national security risks are beginning to drive investigative priorities. While the bureau has authority to look into any employer suspected of hiring illegal aliens, ICE investigators have been instructed to focus their attention on critical infrastructure sites. Recent actions against non-citizens found working at nuclear facilities and defense plants demonstrate the effective fusion of the immigration and security missions.

Still, the effort to achieve the symbiosis more broadly and consistently presents profound challenges. Old field structures may not serve new missions. Traditional law enforcement methods do not always measure tangible outcomes against changing threats. Like sand in the gears, some cases still trigger bureaucratic turf battles and clog interagency communication and cooperation channels between ICE and other investigative forces inside and outside DHS. Miscast investigative priorities can appear to target enforcement activity arbitrarily or inappropriately on persons who pose little real threat to our security.

These issues will be addressed by two panels of witnesses who bring expertise, experience and insight to our discussion. We are grateful for their time and we look forward to their testimony.

[The prepared statement of Hon. Christopher Shays follows:]

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Statement of Rep. Christopher Shays
March 28, 2006

Homeland security will never be about certainties. It will always be about probabilities, about risks and about choices. Which cargo containers to inspect? Which airline baggage to screen? Or, as we ask today, who among the estimated twelve million non-citizens illegally residing within our borders should the Department of Homeland Security (DHS) choose to pursue?

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But in 2004 we learned that suspected terrorists who entered the country on revoked visas were not being consistently tracked or removed. Cumbersome, reactive processes at ICE raised questions about how the bureau sets investigative priorities to meet new threats to national security. At our request, the Government Accountability Office (GAO) examined how the ICE Office of Investigations is organized, how risks are evaluated and how the Department's largest investigative force allocates resources against a diverse, changing mission portfolio.

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GAO did find some evidence national security risks are beginning to drive investigative priorities. While the bureau has authority to look into any employer suspected of hiring aliens illegally, ICE investigators have been instructed to focus their attention on critical infrastructure sites. Recent actions against non-citizens found working at nuclear facilities and defense plants demonstrate the effective fusion of the immigration and security missions.

Still, the effort to achieve that symbiosis more broadly and consistently presents profound challenges. Old field structures may not serve new missions. Traditional law enforcement methods do not always measure tangible outcomes against changing threats. Like sand in the gears, some cases still trigger bureaucratic turf battles and clog interagency communication and cooperation channels between ICE and other investigative forces inside and outside DHS. And miscast investigative priorities can appear to target enforcement activity arbitrarily or inappropriately on persons who pose little real threat to our security.

These issues will be addressed by two panels of witnesses who bring expertise, experience and insight to our discussion. We are grateful for their time and we look forward to their testimony.

Mr. SHAYS. At this time, the Chair would recognize our distinguished ranking member, Mr. Kucinich.

Mr. KUCINICH. First of all, I want to thank the Chair for holding this hearing. I want to thank each and every one of you who has made a career of serving our government, who is dedicated to the service of the people. And I say that because I don't want you to take anything I am about to say personally.

When the Department of Homeland Security was formed, I didn't even like the name of it, because I thought the name of it had a whiff of something that wasn't particularly democratic. When the Department of Homeland Security was formed I predicted that it would take 10 years at least before anyone would know how to integrate all the parts. In their various constituent members, before the Department of Homeland Security, a lot of these various departments were doing a pretty good job. And the creation of the Department itself—this really—I mean we could take this discussion to a whole different level, which was that trip necessary? Can you really create a functional working Department of Homeland Security within the mandate of the legislation a few years ago. But inasmuch as this is where we are, even though the Department's 3 years-old, its structure, missions, character, still in progress. At the macro and micro levels of DHS, there's still much confusion; much excess needs to be cut; overlap and duplication needs to be eliminated. Management reform urgently needed.

The consequences of this poor organization are great, even though it was predictable. In 3 short years on the job, we've seen all kinds of problems from the ambiguous color-coded terrorist threat warnings, for the media consumption scare the hell out of the American people. It reflects on the Department. People get mad at the DHS, when really it was some PR guy working for the White House, who tried to force this through implementation at the Department level.

You see the people loosing confidence in the system already with the Homeland Security getting blamed for evacuation, rescue, recovery efforts during Hurricanes Katrina and Rita.

I mean think about it. What we've done is create a system that is guaranteed to not work. And we're blaming the people who run it, when the system wasn't going to work in the first place.

We hear now interagency communication needs to be improved; right. An article in today's New York Times illustrates how undercover GAO testers slipped radioactive materials over two points to the U.S. border. The Border Patrol agents stopped the testers; asked for their licenses, issued by the NRC. It couldn't verify with the NRC whether or not their licenses were valid or fraudulent. In fact, the testers had forged licenses. They were allowed to pass through anyway. If there had been effective communication, this wouldn't have happened.

[The information referred to follows:]

Submitted for the record by: Congressman Dennis Kucinich (Ohio) Nat'l Security Hearing - 03/28/06 2247 RHOB - 2:00pm - "Post 911"

The New York Times nytimes.com

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March 28, 2006

Testers Slip Radioactive Materials Over Borders

By ERIC LIPTON

WASHINGTON, March 27 — Undercover Congressional investigators successfully smuggled into the United States enough radioactive material to make two dirty bombs, even after it set off alarms on radiation detectors installed at border checkpoints, a new report says.

The test, conducted in December by the Government Accountability Office, demonstrated the mixed progress by the Department of Homeland Security, among other federal agencies, in trying to prevent terrorists from smuggling radioactive material into the United States.

Nationally, at a cost so far of about $286 million, about 60 percent of all containerized commercial goods entering the United States by truck or ship and 77 percent of all private cars are now screened for radioactive material.

But flaws in the inspection procedures and limitations with the equipment mean that nuclear materials may still be able to be sent illegally into the country through seaports or land borders, the study found. And because the program for installing radiation detectors is far behind schedule, many border crossing points, including many seaports, still have no detection equipment, the report says.

"We suffer from a massive blind spot in our cargo security measures," Senator Norm Coleman, Republican of Minnesota, said in a statement that accompanied the report, which will be released Tuesday morning at a Senate hearing.

In the test case, undercover investigators bought a small amount of radioactive material, most likely cesium. Then on Dec. 15, they drove across the border at undisclosed locations from Canada and Mexico, intentionally picking spots where the detection equipment had been installed.

The alarms went off in both locations, and the investigators were pulled aside for questioning. In both cases, they showed the agents from the Customs and Border Protection agency forged import licenses from the Nuclear Regulatory Commission, based on an image of the real document they found on the Internet.

The problem, the report says, is that the border agents have no routine way to confirm the validity of import licenses. The Nuclear Regulatory Commission, it says, also improperly allows the sale of small amounts of radioactive materials without a permit, substances that can be used in industrial equipment, like a medical device, but that can also be used to create terrorist weapons.

David McIntyre, a Nuclear Regulatory Commission spokesman, disputed the claim by the Congressional investigators that the amount of material bought and taken across the border would have been enough to build a dirty bomb. (Dirty bombs can force long-term evacuation by spreading low levels of radioactivity across an area after being detonated with a conventional explosive.)

But Mr. McIntyre said he agreed that Customs officials at the borders must be able to confirm quickly the validity of import licenses.

"We are working with Customs and the Department of Homeland Security to make sure this information is available to them 24/7," he said.

The investigation, part of a three-year inquiry by the Senate Homeland Security and Governmental Affairs Committee into the nation's vulnerability to nuclear smuggling, particularly at ports, found many other weaknesses in the radiation detection campaign.

The primary radiation monitors, which look like a standard tollbooth, cannot distinguish between naturally occurring radiation, sometimes found in ceramic tile or cat litter, and radioactivity in bomb-making substances.

Yet when Customs agents use hand-held radiation devices, which are supposed to clear false alarms by isolating the specific type of radiation, the standard procedure is to walk along the exterior of the container, rather than opening it. Used that way, the hand-held devices can produce unreliable results.

Installation of the radiation screening equipment is running behind schedule, largely because of delays in appropriating federal money, problems figuring out how to use the devices to screen rail cars and disputes with ports that are worried about slowing the movement of goods, the report says.

So far, about 670 of the planned 3,034 primary radiation detection monitors are in place, and at the rate they are being installed — 22 a month on average last year — the Homeland Security Department will not meet its September 2009 goal, the report said.

The investigators predict that the project, which the department estimates will cost $1.3 billion, is going to cost much more.

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Mr. KUCINICH. Now, I wonder in the old—before the Department of Homeland Security was formed, if in the formation of this Department, we have actually impeded the communication between the various constituent elements.

Now, the next national disaster, whether it is man made or natural when we created a department of Washington bureaucrats who are forced to bicker with each other. It's inevitably the American people pay the price.

Now, under DHS, the new immigration and customs enforcement missions prevent acts of terrorists by targeting the people, money, and materials that support terrorist and criminal activities.

And this organization, which is the largest investigative arm of the Department, is responsible for identifying and shutting down vulnerabilities in the Nation's border, and the economic transportation and infrastructure security. That's according to the Web site.

A GAO study found that 13 percent of ICE's investigations concerned with national security—the remaining investigations were related to narcotics, financial crimes, general alien investigations. Now are these numbers surprising? Are the numbers proportionate to the threats ICE should be investigating? How much more does ICE investigate threats of terrorism than previous customs service and INS? Are there border-related crimes, like drug smuggling, for example, being crowded out by this new organization? If they are crowded out by ICE's new priorities, then whose handling them? Are they being handled adequately?

I mean ICE has an enormous job, and our country has many vulnerabilities. I would like to highlight one such vulnerability as a case in point. There's an illegal tunnel that starts in Brazil and ends in the United States, an illegal product: Brazilian pig iron made with slave labor is channeled through this tunnel on a regular basis. It has been happening for years, and ICE knows about it. Oh, well, ICE tells the Congressman, it has supposedly been investigating the case in Brazil since 2004. No progress has been made since then. From July 2004 to May 2005 not a single ICE investigator has visited the Piaui region of Brazil where the slave made pig iron is produced. I have written ICE and the Customs Border Protection numerous times, to inquire about this investigation; never got a response. I can understand. I mean they are just so busy trying to figure out how to work. The job isn't getting done. When American minors are put out of work because they are forced to grossly and unfairly compete with slave labor, I would say this is an economic vulnerability, not to mention when ICE isn't doing its job investigating slave labor allegations. We aren't able to enforce their law, which prohibits the importation of products made with slave labor. The President calls for a 6-percent increase in the DHS budget, including a 21 percent increase in funding for ICE. I want to know exactly how this money is going to be used. How is it going to improve DHS and ICE's ability to address our country's many significant vulnerabilities and get the job done. The taxpayers deserve to know if they are getting their money's worth.

So I hope, Mr. Chairman, the hearing, which I appreciate that you have called, will be able to address some of these issues.

I want to thank the GAO and Inspector Skinner for their work. I look forward to the results of this hearing, and again, I wasn't for it at the beginning. Thanks.

Mr. SHAYS. Thank you very much. Just while the gentleman is here, I would just want to put on the record, because I will be saying it when he is not here, I think the Department makes a tremendous amount of sense. We just want it to work right. We want to be able to maximize the people who can work in this area, and I think it made sense to see that combination. We just want to make sure it is going to work the way we intended it.

So at this time, before the gentleman leaves, I ask unanimous consent that all members of the subcommittee be permitted to place an opening statement in the record, and the record will remain open for 3 days for that purpose. And without objection, so ordered.

I ask further unanimous consent that all Members be permitted to include their written statement in the record. Without objection, so ordered.

At this time, the Chair would recognize Mr. Richard M. Stana, Director, Homeland Security and Justice Issues, U.S. Government Accountability Office; Mr. Richard L. Skinner, Inspector General, U.S. Department of Homeland Security, and Mr. Robert Schoch, am I pronouncing the name correctly?

Mr. SCHOCH. You are, sir.

Mr. SHAYS. Thank you. Deputy Assistant Director, National Security Division, ICE Office of Investigations, U.S. Department of Homeland Security.

So we have a great panel here. I'd ask you for all three of you to stand. If there is anyone who might respond with you, you know, you might call on them, rather than my swearing them in later, if they would raise their hand and stand as well. Is there anyone that you would like possibly have join you?

OK. You guys are on your own.

[Witnesses sworn.]

Mr. SHAYS. Note for the record our witnesses have responded in the affirmative. I'm talking a little softly. I think it is having a hearing after lunch, but I want you guys to really make sure I stay awake, so speak loudly and forcefully and with passion and conviction and all of that.

Mr. Stana, am I pronouncing your name correct?

Mr. STANA. Yes.

Mr. SHAYS. Great.

Mr. STANA. Stana.

Mr. SHAYS. Nice to have you here.

Mr. STANA. Thank you.

Mr. SHAYS. Now, I am going to do one thing: I am going to adjust my chair. I am either going to shoot down low, and I don't want anyone to laugh, but my chair is leaning backward. So excuse me a second. OK. Still stinks, but here we go. Mr. Stana, you have the floor.

STATEMENTS OF RICHARD M. STANA, DIRECTOR, HOMELAND SECURITY AND JUSTICE ISSUES, U.S. GOVERNMENT ACCOUNTABILITY OFFICE; RICHARD L. SKINNER, INSPECTOR GENERAL, U.S. DEPARTMENT OF HOMELAND SECURITY; AND ROBERT A. SCHOCH, DEPUTY ASSISTANT DIRECTOR, NATIONAL SECURITY DIVISION, OFFICE OF INVESTIGATIONS, U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT, DEPARTMENT OF HOMELAND SECURITY

STATEMENT OF RICHARD M. STANA

Mr. STANA. Thank you. Chairman Shays and members of the subcommittee. I am pleased to be here today to discuss how ICE allocates its investigative resources. The events of September 11th demonstrated that terrorists can exploit vulnerabilities in our border control and internal enforcement systems to enable their criminal deeds.

ICE's mission is to prevent terrorist attacks within the United States, and reduce our vulnerability to terrorism while ensuring its mandated customs, immigration, and Federal protective enforcement functions are not diminished.

My prepared statement today is based on a report we did for this subcommittee on how ICE's Office of Investigations has structured itself and used its 5,600 investigators to perform its missions and address vulnerabilities.

In my oral statement, I would like to focus on three main points: First, OI's investigative activities and organizational structures largely reflect those of legacy Customs and INS. For the most part, OI has the same authority and is doing the kinds of investigations that Customs and INS did, although it seeks to focus on investigations that might have an impact on national security.

For example, in investigating employers that might have violated laws that regulate alien employment in the workplace, it is focusing on employers at critical infrastructure sites rather than on employers that historically employed large numbers of unauthorized workers.

As for OI's field structure, it was created by merging the existing customs and INS field offices located in cities near major ports of entry, high volume smuggling corridors, proximity to State and Federal prisons, and significant money laundering infrastructure.

OI recognizes that its field structure is geared more toward legacy missions and not ideally matched to the new DHS mission, but budget constraints have limited large-scale relocations of offices and investigators.

My second point is that although there is no firm standard for how OI should distribute its investigative resources, a large majority of its caseload did not have a direct nexus to national security.

About 10 to 15 percent of OI's investigative resources was devoted to investigations that it has identified as national security related. There is some question as to how many of these were actually national security related.

On the other hand, over half was devoted to legacy mission investigations involving drugs, financial crime, or general alien issues. Reasons for this distribution include the sources and types

of leads that OI receives, its budgetary commitment to drug investigations, and legacy mission functions and expertise.

For example, OI receives funding to support the President's National Drug Control Strategy, and has continued the legacy Customs practice of responding to violations relating to drug seizures at ports of entry.

As a second example, OI continues to perform the legacy INS practice of identifying aliens incarcerated in prisons and jails who are eligible for removal from the United States.

My final point is that OI lacks several key elements that could help it better insure that it focuses its limited resources on the greatest potential vulnerabilities. OI has taken some initial steps to introduce risk management into its operations, in part, by giving priority to leads with a potential impact on national security.

However, OI has not conducted a comprehensive risk assessment to determine what types of violations present the greatest risks for exploitation by terrorists and other criminals. Such an assessment could help OI prioritize its efforts and direct its resources toward those investigations that address the most significant vulnerabilities.

We also found that OI had not yet developed outcome-based performance measures. Such measures would provide a basis for gauging effectiveness and identifying areas for improvement.

We also found that OI did not have sufficient monitoring and communications systems to help ensure that the potential vulnerabilities it uncovers are fixed by the agencies and private partners that manage affected programs.

For example, we recently found that at the end of Immigration Benefit Fraud investigations, OI was not always notifying U.S. citizenship and immigration services personnel about potential systemic vulnerabilities in their adjudication process.

Such information could help U.S. CIS decide what policy and procedural changes may be needed to address the vulnerabilities.

We made recommendations to the Assistant Secretary for ICE to take specific actions related to risk management and performance measurement, as well as monitoring and communicating significant vulnerabilities to other agencies.

In closing, as DHS' primary investigative agency, OI can play a critical role in our Nation's effort to reduce our vulnerability to a terrorist attack or criminal operation.

While OI states that it places priority on national security, cases considered to be directly related to national security have consumed a relatively small portion of OI resources. Applying additional risk management principles, such as conducing a more comprehensive risk assessment to identify the most significant vulnerabilities, developing better performance measures, and enhancing its monitoring and communication activities could better ensure that OI directs its finite resources to areas of highest priority.

Mr. Chairman, this concludes my statement, and I would be happy to answer any questions that you or other members of the subcommittee may have.

[The prepared statement of Mr. Stana follows:]

United States Government Accountability Office

GAO

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HOMELAND SECURITY

Better Management Practices Could Enhance DHS's Ability to Allocate Investigative Resources

Statement of Richard Stana, Director
Homeland Security and Justice

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Highlights

Highlights of GAO-06-462T, testimony before the Chairman, Subcommittee on National Security, Emerging Threats, and International Relations, Committee on Government Reform, House of Representatives

HOMELAND SECURITY

Better Management Practices Could Enhance DHS's Ability to Allocate Investigative Resources

Why GAO Did This Study

Immigration and Customs Enforcement's (ICE) mission is to prevent terrorist attacks within the United States and reduce the vulnerability of the United States to terrorism while ensuring its mandated customs, immigration, and federal protective enforcement functions are not diminished. The ICE Office of Investigations (OI) supports that mission by investigating customs and immigration violations. This testimony addresses the following key questions that were answered in GAO-06-48SU, a restricted report issued with the same title: (1) What structure and activities has OI adopted to address its mission? (2) In fiscal year 2004 and the first half of fiscal year 2005, how did OI use its investigative resources to achieve its goals? (3) How does OI ensure that its resource use contributes to its ability to prevent the exploitation of systemic vulnerabilities in customs and immigration systems?

What GAO Recommends

GAO recommended that Homeland Security implement management practices to support resource allocation decisions, including a risk assessment, revised performance measures, and monitoring and communication systems to provide meaningful data about resource use.

The Department of Homeland Security concurred with GAO's recommendations.

www.gao.gov/cgi-bin/getrpt?GAO-06-462T.

To view the full product, including the scope and methodology, click on the link above. For more information, contact Richard Stana at (202) 512-8816 or stanar@gao.gov.

What GAO Found

OI's organizational structure and investigative activities reflect those of its legacy agencies—the U.S. Customs Service and the Immigration and Naturalization Service—and include activities to prevent terrorism. OI retained responsibility for enforcing customs and immigration laws, and its field structure was created by relying on the strategic priorities of its legacy agencies to determine the composition and locations of field offices. Senior OI officials said that OI seeks to accomplish its homeland security mission by focusing on cases that seem to have a connection to national security.

Data from ICE's case management system indicate that its investigative activities generally relate to legacy missions, with about half of OI resources during fiscal year 2004 and the first half of 2005 used for cases related to drugs, financial crimes, and general alien investigations—investigations unlikely to contain a nexus to national security. Overall, between 10 and 15 percent of investigative resources were used for investigations considered to have a link to national security. OI's current method of tracking these cases captures data about the cases where a nexus to national security is assumed due to the nature of the violation, primarily investigations of munitions control, illegal exports, visa violations, and terrorism. Additionally, the equivalent of about 400 of its 5,600 special agents worked full time to identify incarcerated aliens who were eligible for removal from the United States, a function that does not require the skills and training of criminal investigators. ICE plans to free investigators for more appropriate duties by shifting these functions to other ICE units and to study whether other functions could be shifted to employees in a noninvestigatory job series.

To make resource use decisions in pursuit of OI's goal to prevent the exploitation of systemic vulnerabilities in customs and immigration systems, OI primarily relies on the judgment of staff in its major field offices, in addition to national programs developed in headquarters that are implemented in multiple field offices. Although GAO found no evidence that OI has failed to investigate any national security-related lead that came to its attention, applying a risk management approach to determine what types of customs and immigration violations represent the greatest risks for exploitation by terrorists and other criminals could provide OI with greater assurance that it is focusing on preventing violations with the greatest potential for harm, while striking a balance among its various objectives. OI has taken some initial steps to introduce principles of risk management into its operations, but has not conducted a comprehensive risk assessment of the customs and immigration systems to determine the greatest risks for exploitation, nor has OI analyzed all relevant data to inform the evaluation of alternatives and allow risk-based resource allocation decisions. OI also lacks outcome-based performance goals that relate to its objective of preventing the exploitation of these systemic vulnerabilities. Finally, OI does not have sufficient systems to help ensure ongoing monitoring and communication of vulnerabilities discovered during its investigations.

Mr. Chairman and Members of the Subcommittee:

I am pleased to be here today to share our views on the progress the Department of Homeland Security's (DHS), U.S. Immigration and Customs Enforcement (ICE) Office of Investigations (OI) has made in pursuing its homeland security mission. OI was formed in March 2003, mainly from legacy INS and Customs investigative components. OI is responsible for conducting investigations covering a broad array of national security, financial, and smuggling violations, including illegal arms exports, financial crimes, trade violations, human trafficking, narcotics smuggling, child pornography/exploitation, and immigration fraud. OI is also responsible for conducting investigations aimed at protecting critical infrastructure industries. This testimony is an unrestricted version of our recent Law Enforcement Sensitive report we did for this subcommittee entitled *HOMELAND SECURITY: Better Management Practices Could Enhance DHS's Ability to Allocate Investigative Resources.*[1] In my testimony today, I will discuss the following topics:

- What structure and activities has OI adopted to address its mission?
- How did OI use its investigative resources in fiscal year 2004 and the first half of fiscal year 2005?
- How does OI ensure that its resource use contributes to its ability to prevent the exploitation of systemic vulnerabilities in customs and immigration systems?

To identify OI's structure and the activities it uses to address its mission we met with OI officials and reviewed documents used to support organizational decisions. To determine how OI used its investigative resources to address its goals, we analyzed case management data that showed the types of investigations performed nationally between October 2003 and March 2005—the most recent period for which comparable data were available. In addition, we interviewed the management staff of OI and the special agents-in-charge (SAC) at 7 of the 26 ICE OI field offices to learn how they set investigative priorities and allocate human resources to investigations. We selected the special agent-in-charge offices based on their size (the number of agents) and location, seeking to include a variety

[1]GAO, *HOMELAND SECURITY: Better Management Practices Could Enhance DHS's Ability to Allocate Investigative Resources*, GAO-06-48SU (Washington, D.C.: December 9, 2005).

of offices representing differing investigative focuses. Because our sample was a nonprobability sample, the opinions of these special agents-in-charge cannot be projected beyond those interviewed.[2] We also collected and analyzed data specific to the 7 offices we visited. We assessed the reliability of the investigative resource data—the hours spent on different types of investigations—by reviewing the internal controls of the case management system and through interviews with knowledgeable OI staff about these controls and the quality assurance procedures in place to ensure data reliability. We determined the investigative resource data were sufficiently reliable for our purposes. We determined how OI ensures that its resource use contributes to its ability to prevent the exploitation of systemic vulnerabilities in customs and immigration systems using information collected during interviews with OI officials, including the special-agents-in-charge and by examining documents used to support organizational decisions. We evaluated OI's current approach to resource allocation decision making by comparing this information with the standards for internal control in the federal government and to the risk management approach that we have advocated in our prior work.[3]

Summary

OI's organizational structure and investigative activities reflect those of its legacy agencies—the U.S. Customs Service and the Immigration and Naturalization Service. OI retained responsibility for enforcing customs and immigration laws and its field structure was created by relying on the strategic priorities of its legacy agencies—for example, proximity to high-volume smuggling corridors, to state and federal prisons, and significant money laundering infrastructure—to determine the composition and locations of field offices. Senior OI officials told us that rather than concentrating on any particular category of investigation, OI seeks to accomplish its homeland security mission by focusing on cases that seem

[2]Nonprobability sampling is a method of sampling where observations are selected in a manner that is not completely random, usually using specific characteristics of the population as criteria. Because each unit in a population does not have an equal chance to be selected, it is possible for a nonprobability sample to contain a systematic bias that limits its ability to describe the entire population.

[3]GAO, *Homeland Security: Summary of Challenges Faced in Targeting Oceangoing Cargo Containers for Inspection*, GAO-04-557T (Washington, D.C.: Mar. 31, 2004); *Transportation Security: Systematic Planning Needed to Optimize Resources*, GAO-05-357T (Washington, D.C.: Feb. 15, 2005); *Strategic Budgeting: Risk Management Principles Can Help DHS Allocate Resources to Highest Priorities*, GAO-05-824T (Washington, D.C.: June 29, 2005); *Standards for Internal Control in the Federal Government*, GAO/AIMD-00-21.3.1 (Washington, D.C.: November 1999).

to have a connection to national security. This would include placing a priority on activities to prevent terrorism.

Data from ICE's case management system indicate between 10 and 15 percent of investigative resources were used for investigations considered by ICE to have a link to national security. These investigations are primarily related to munitions control, illegal exports, compliance enforcement of visa violations, and terrorism. Most of OI's investigative activities generally relate to legacy missions, with roughly half of OI resources during fiscal year 2004 and the first half of 2005 used for cases related to drugs, financial crimes, and general alien investigations. Most of these investigations did not contain a nexus to national security. Moreover, with regard to the resources used for general alien investigations, the equivalent of about 400 of OI's 5,600 special agents were working full time to identify incarcerated aliens who were eligible for removal from the United States, an ICE responsibility. This activity does not require the skills and training of criminal investigators. ICE plans to free investigators for more appropriate duties by shifting these functions to other ICE units, and to submit a plan for the expanded use of a noninvestigatory job series for civil and administrative violations.

OI tries to ensure that its resources contribute to the prevention of exploitation of systemic vulnerabilities in customs and immigration systems by making most investigative resource use decisions in OI's major field offices, based on the judgment of the agents in charge, with priority on investigating national security-related cases that arise. Divisions and units within OI headquarters also develop and manage special programs that are implemented in multiple field offices. For example, Project Shield America is a National Security Division program where OI conducts outreach to private sector companies to prevent the illegal export of sensitive U.S. munitions and strategic technology. The Cornerstone program in the Financial and Trade Division is a similar outreach program to the financial industry. Operation Community Shield is a national law enforcement initiative that is designed to bring all of ICE's immigration and customs-related law enforcement powers to bear in the fight against violent street gangs. Although we found no evidence that OI has failed to investigate any national security-related lead that came to its attention, applying a risk management approach to determine what types of customs and immigration violations represent the greatest risks for exploitation by terrorists and other criminals could provide OI with greater assurance that it is focusing on preventing violations with the greatest potential for harm, while striking a balance among its various objectives. OI has taken some initial steps to introduce principles of risk management into its operations,

but has not conducted a comprehensive risk assessment of the customs and immigration systems to determine the greatest risks for exploitation, nor analyzed all relevant data to inform the evaluation of alternatives and allow OI to make risk-based resource allocation decisions. OI also lacks outcome-based performance goals that relate to its objective of preventing the exploitation of these systemic vulnerabilities. Finally, OI does not have sufficient systems to help ensure ongoing monitoring and communication of vulnerabilities discovered during its investigations. We made recommendations to address these deficiencies.

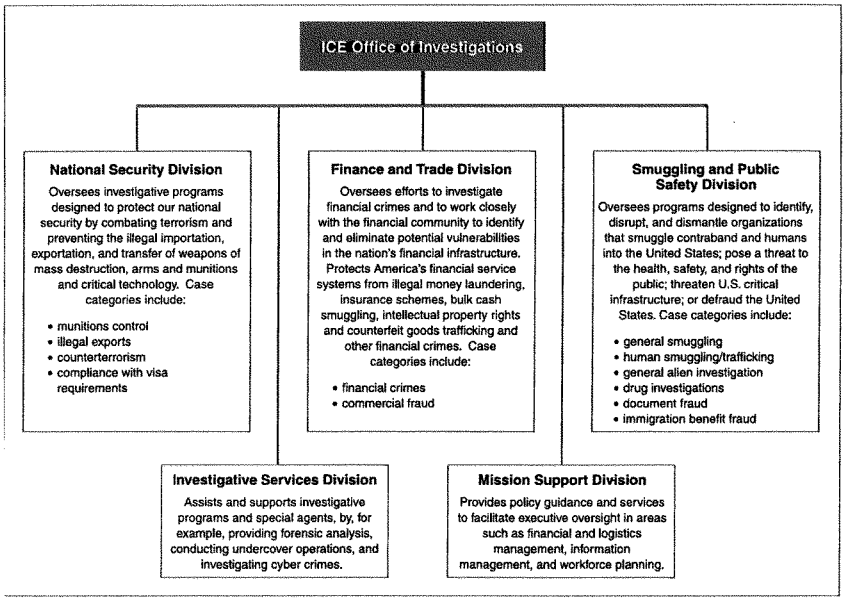
Background

ICE is the largest investigative arm of DHS. ICE is composed of four offices: (1) Investigations, (2) Intelligence, (3) Detention and Removal Operations (DRO), and (4) the Federal Protective Service. As of September 2005, OI had more than 5,600 special agents; about 94 percent of these are assigned to 26 major field offices, headed by Special Agents-in-Charge (SAC), and OI's foreign attaché offices. These offices and their subordinate units were created using the immigration and customs staff and locations in existence at the time ICE was formed.

At headquarters ICE, OI is divided into five divisions as shown in figure 1. Three of the five divisions—National Security, Finance and Trade, and Smuggling and Public Safety—were created to incorporate the core missions and functions of legacy immigration and customs investigations. These divisions and the units within them are to provide a functional line of communication from the Director of OI to the groups in the SAC offices that conduct investigations. Divisions and units within OI headquarters also develop and manage special programs that are implemented in multiple field offices. For example, Project Shield America is a National Security Division program where OI conducts outreach to private sector companies to prevent the illegal export of sensitive U.S. munitions and strategic technology. The Cornerstone program in the Financial and Trade Division is a similar outreach program to the financial industry. Operation Community Shield is a national law enforcement initiative that is designed to bring all of ICE's immigration and customs-related law enforcement powers to bear in the fight against violent street gangs.

The Investigative Services Division provides direct forensic, undercover, and other operational support to OI investigations carried out by the three core divisions, and the Mission Support Division provides policy guidance and services to facilitate executive oversight.

Figure 1. ICE Office of Investigations Organizational Structure



Source: GAO analysis of OI documents.

Carryover Organizational Structure and Investigative Activities from Legacy Agencies Affect OI's Investigative Focus

The headquarters and field organizational structures adopted by OI reflect the legacy functions of the customs and immigration services—e.g. drug investigations, human smuggling, and commercial fraud—and include activities to prevent terrorism within this structure. In April 2005, ICE completed an interim strategic plan that established as its mission to prevent terrorist attacks within the United States and reduce the vulnerability of the United States to terrorism while ensuring all of its mandated trade, immigration, and federal protective functions are not

diminished. According to ICE officials, the national security objectives are not accomplished through any particular type or category of investigation. Instead, these objectives are addressed by examining investigations on a case-by-case basis and determining the relationship of any single case to national security. For example, although OI has the authority to investigate any employer that might have violated laws that regulate alien employment eligibility, OI instructs investigators to focus on employers at critical infrastructure sites.

When ICE was created, it retained responsibility for enforcing the customs and immigration laws that were the purview of its legacy agencies. These include criminal statutes addressing the illegal import and export of drugs, weapons, child pornography, stolen antiquities, and other contraband, as well as alien smuggling, human trafficking, and the international laundering and smuggling of criminal proceeds. OI also is responsible for legacy customs enforcement of certain intellectual property and trade-related commercial fraud statutes and legacy immigration enforcement of laws prohibiting document fraud, benefit fraud, illegal entry into the United States or violations of the terms and conditions of entry, and employment without authorization.[4] OI's field structure was created by merging the existing Customs and INS field offices located primarily in cities near major ports of entry. In addition, ICE relied on the strategic priorities of the legacy agencies to determine the composition and locations of SAC offices—for example, high-volume smuggling corridors, proximity to state and federal prisons, and significant money laundering infrastructure.

There are some long-standing functions of the legacy agencies that OI continues to perform, which also drive some of the types of investigative activities that are conducted. For example, OI has continued the legacy Customs practice of responding to violations concerning seized drugs or merchandise or detained persons uncovered at ports of entry by Customs and Border Protection (CBP) inspectors. U.S. Customs had historically been involved with helping to implement the President's National Drug

[4]OI also has investigatory responsibilities for certain international terrorism offenses, such as providing material support to foreign terrorist organizations. Although anti-terrorism laws passed before and after the creation of DHS, such as the USA PATRIOT Act of 2001, Pub. L. No. 107-56, 115 Stat. 273, and the Intelligence Reform and Terrorism Prevention Act of 2004, Pub. L. No. 108-458, 118 Stat. 3638, did not give ICE additional authority, they did expand many of the criminal statutes ICE enforces, especially those concerning certain terrorism and money-laundering offenses.

Control Strategy. Consistent with this involvement, DHS now receives funding specifically to support activities related to the strategy. A senior OI official said OI will continue to be responsible for performing a significant level of drug investigations because there simply is no other agency available to conduct the large number of border-related drug investigations U.S. Customs has historically performed and that are now carried out by OI. Another carryover function that OI now performs is the legacy INS practice of identifying aliens incarcerated in prisons and jails that are eligible for removal from the United States.

OI Investigative Resources Were Used for Investigations Related to Its Legacy Missions, but Most Were Not Considered to Have a National Security Nexus

Between 10 and 15 percent of investigative hours were classified by OI as having a direct nexus to national security. Although there is no firm standard for how OI should distribute its investigative resources, ICE's interim strategic goals and objectives place a strong emphasis on national security-related activities. According to OI, the majority of the national security-related investigative hours were charged in a few case categories related to munitions control, illegal exports, compliance enforcement of visa violations, and terrorism. Most of the investigative hours within those case types that consumed roughly half of OI resources—drugs, financial, and general alien—were rarely classified as having a direct nexus to national security.[5] In its fiscal year 2007 budget justification, DHS requested funds to increase the level of resources dedicated to visa compliance enforcement by more than 40 percent through the addition of over 50 special agent and support staff dedicated to these types of investigations.

Roughly half of OI investigative resources during fiscal year 2004 and the first half of fiscal year 2005 were used for cases related to drugs, financial crimes, and general alien violations. The resource use in the other case categories pertains to investigations of a variety of customs and immigration violations including commercial fraud, general smuggling, human smuggling and trafficking, identity fraud, document fraud, and

[5]Although they do not fall into the categories that OI identified as having a national security link, OI officials told us that there may be other investigative categories that could be considered national security related. National Security Presidential Directive 25 designated international drug trafficking organizations and their linkages to international terrorist organizations as a threat to national security. If the OI resources dedicated to the investigation of drug trafficking that involves major criminal organizations are included in the national security-related measure, then the percentage of investigative resources devoted to national security might be as high as 18 percent in fiscal year 2004 and 19 percent in fiscal year 2005.

worksite enforcement. None of the investigative categories that apply to these violations individually accounted for more than 8 percent of investigative resource use during the period under study. In most instances these other case categories accounted for 5 percent or less of resource use.

Moreover, with regard to general alien investigations, the equivalent of about 400 OI investigators performed, as a central part of their daily duties, functions that are noninvestigative in nature (i.e., not consistent with the position description of a criminal investigator as defined by the Office of Personnel Management.) According to OI officials, some of these noninvestigative activities were formerly performed by legacy INS investigators and include identifying incarcerated criminal aliens who are eligible for removal, an ICE responsibility, and responding to state and local police agencies that have apprehended illegal aliens. According to ICE's interim strategic plan, ICE plans to shift this duty to ICE's Office of Detention and Removal Operations (DRO). A DRO official told us DRO planned to take over this role from OI incrementally by first assuming responsibility for this activity in several major metropolitan areas in 2005 and 2006.

OI investigators also perform worksite enforcement, which according to the OI Deputy Assistant Director responsible for this function, includes activities that might be more economically performed by noninvestigatory staff. This function—verifying that employees at critical and noncritical worksites are eligible to work in the United States—was described by OI officials as a compliance function that is not clearly aligned with the criminal investigator job description. Since the late 1990s, the level of investigative resources legacy INS and then ICE dedicated to this function has decreased. Since the terrorist attacks of September 11, 2001, INS and ICE have concentrated worksite investigative resources at critical infrastructure facilities. In its fiscal year 2007 budget justification, DHS requested funds to support the addition of 206 positions—171 of which are special agents—to conduct worksite enforcement. If these resources are approved and used for worksite enforcement, this would increase OI's worksite enforcement effort significantly compared to what was done in fiscal year 2005.

The fiscal year 2006 Department of Homeland Security Appropriations Conference Report[6] directs ICE to submit a plan for the expanded use of

[6]H.R. Conf. Rep. No. 109-241, at 47 (2005).

immigration enforcement agents to focus on civil and administrative violations, raising the possibility that additional noninvestigative duties may be shifted from OI investigators, making them available for criminal investigations.

OI Places Priority on National Security Investigations, but Key Management Practices Could Enhance OI's Resource Allocation Decision-Making

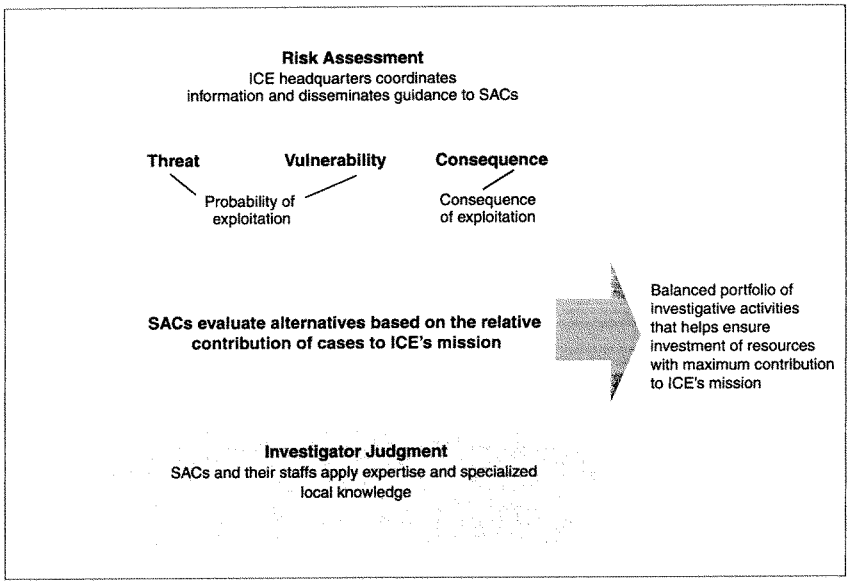
OI tries to ensure that its resources contribute to the prevention of the exploitation of systemic vulnerabilities in customs and immigration systems by making most investigative resource use decisions in OI's major field offices, based on the judgment of the agents in charge, with priority on investigating national security-related cases that arise. Although we found no evidence that OI has failed to investigate any national security-related lead that came to its attention, applying a risk management approach to proactively determine what types of customs and immigration violations represent the greatest risks for exploitation by terrorists and other criminals could provide OI with greater assurance that it is focusing most intensely on preventing those violations with the greatest potential for harm while striking an appropriate balance among its various objectives. According to the *Standards for Internal Control in the Federal Government*, one of the foundational components of a good control environment is risk assessment—including the assessment of risks, estimation of their significance, the likelihoods of their occurrence, and decisions about how to respond to them.

OI has taken some initial steps to introduce principles of risk management into its operations—for example, encouraging its field managers to think about violations in terms of vulnerabilities to the customs and immigration systems. In addition, OI classifies each investigation using the numeric designations 1, 2, and 3, with class 1 indicating the highest relative importance within that category of investigation. However, it has not conducted a comprehensive risk assessment of the customs and immigration systems to determine the greatest risks for exploitation or analyzed these data to provide information to evaluate alternative investigative strategies and allow OI to make risk-based resource allocation decisions. Such a system could provide OI with greater assurance that it is striking an appropriate balance among its various objectives while focusing most intensely on preventing those violations with the greatest potential for harm.

Application of a risk management approach by OI involves a risk assessment that would provide information in three areas: (1) threat—what strategic intelligence and experience suggest about how customs and immigration systems might be exploited by terrorists and other criminals;

(2) vulnerabilities—the ways that customs and immigration systems are open to exploitations and the kinds of protections that are built into these systems; and (3) consequence—the potential results of exploitation of these systems, including the most dire prospects. For example, ICE's strategic goal to prevent the unlawful movement across U.S. borders of people, money, and materials, includes as one of its strategies giving highest priority to closing those vulnerabilities that pose the greatest threat to our national security. However, OI has not performed a risk assessment to determine which vulnerabilities pose the greatest threat so that it can direct resources to those investigations that best address these vulnerabilities. Figure 2 demonstrates how the risk assessment and investigator's judgment would combine to inform case selection and resource allocation.

Figure 2. Potential Decision-Making Approach for Evaluation and Selection of Investigative Resource Allocation Alternatives



Source: GAO analysis of the application of risk management principles in the ICE investigative context.

ICE has begun to incorporate elements of risk management into its resource allocation decision making. OI has several ongoing programs within its National Security Division designed to identify and mitigate national security threats. One is Project Shield America, where special agents conduct outreach to the export industry to educate these businesses about U.S. export laws and to solicit their assistance in preventing the illegal foreign acquisition of their products. OI also uses the Threat Analysis Unit and Compliance Enforcement Unit within the National Security Division to screen nonimmigrant students, exchange students, and other visitors for the purpose of identifying potential

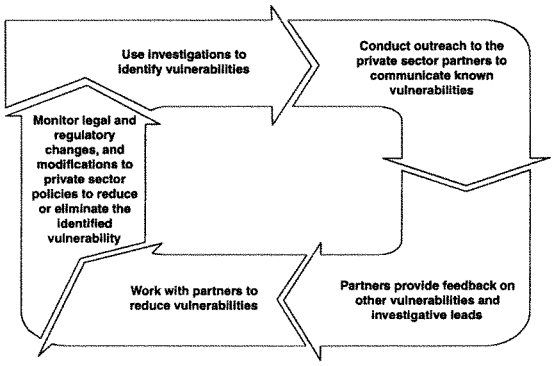
national security threats. The value of risk management goes beyond these types of resource allocation, however. Specifically, a more comprehensive risk management approach would enable OI to better ensure that its resources are effectively and efficiently applied to its national security and other missions by giving it a foundation for determining how resources might be best distributed within and across investigation types, for example, (1) how to best allocate its resources among case categories (e.g., visa violations, drug smuggling, and financial crimes); (2) the appropriate level of investment in national-security related investigations; and (3) the appropriate mix of case classifications within each category (i.e., the three-level classification of cases based on relative importance).

Effective risk management also requires outcome-based performance measures and goals. We found OI lacks outcome-based performance goals to monitor the full range of its efforts to prevent the systemic vulnerabilities that allow terrorists and other criminals to endanger the United States. Performance goals—consisting of a target (acceptable level of performance) and a measure (a means to assess the performance level)—are an essential management tool in managing programs for results. In addition, our *Standards for Internal Control in the Federal Government* and the Office of Management and Budget call for agencies to have performance measures and indicators that are linked to mission, goals, and objectives to allow for comparisons to be made among different sets of data (for example, desired performance against actual performance) so that corrective actions can be taken if necessary.

Currently, OI relies primarily upon statistics related to investigative resource use—such as arrests, seizures, and convictions—to monitor performance. In fact, ICE reports only one output performance measure for OI on the DHS Performance and Accountability Report—the percentage of investigations that result in an enforcement action (e.g., an arrest, conviction, or fine). Measuring the percentage of investigations that result in enforcement action provides only an indirect indicator of success in preventing systemic vulnerabilities that allow terrorists and other criminals to endanger the United States. Among other things, it lacks the ability to reflect successes of OI's programmatic activities that are designed to deter the exploitation of systemic vulnerabilities before a crime is committed—for example, a measure of the outcomes of actions taken to close or control identified vulnerabilities. Without outcome-based performance goals, it is difficult for OI to gauge the effectiveness of its operational activities and to use this information to assess what types of corrective actions might be required—such as changes to programs or work processes in order to better align activities with strategic objectives.

Finally, OI does not have sufficient systems to help ensure ongoing monitoring and communication of vulnerabilities discovered during its investigations. These controls could enhance OI's ability to take action to eliminate those vulnerabilities or to recommend mitigation practices to entities that control the applicable customs or immigration system. *Standards for Internal Control in the Federal Government* calls for agencies to establish monitoring and communication systems that assess the quality of performance over time and ensure that findings of deficiencies are corrected and result in improvements to the process. OI officials said they are trying to use Cornerstone—a program to identify and reduce systemic vulnerabilities in financial systems—as a model for creating such a feedback loop (see fig. 3). Cornerstone was created by ICE to encourage coordination with the financial industry. OI officials in headquarters and field offices conduct outreach to the private sector and partner with private industry as well as with state and other federal law enforcement and regulatory agencies. The private sector provides ICE with information regarding the vulnerabilities it has observed, and ICE uses this information to develop criminal investigations. ICE also disseminates information on vulnerabilities to financial sector stakeholders through the *Cornerstone Report*. When vulnerabilities are identified that cannot be addressed by the private sector alone, ICE officials told us that a joint law enforcement and regulatory approach is utilized to eliminate or minimize vulnerabilities.

Figure 3. The Cornerstone Process



Source: ICE Office of Investigations officials and documents.

With the exception of the Cornerstone program for financial investigations, OI does not have a complete system in place to help ensure that information gained during the course of investigations feeds back into the operations of other DHS components, other federal agencies, state and local partners, and relevant private sector entities to proactively reduce the vulnerabilities that facilitate violations. OI has taken initial steps to apply parts of the Cornerstone approach to all its investigative areas. For example, Project Shield America uses the same outreach techniques to the export sector as Cornerstone does to the financial sector, without the emphasis on changing policies and practices to reduce identified vulnerabilities. However, OI officials told us that OI does not have a process to help ensure that action is taken to mitigate the risks from the vulnerability identified during the course of its investigations across all SACs. A systemwide process for capturing the information and ensuring that OI takes appropriate actions in response to information, extending beyond financial crimes, would better support its ability to reduce vulnerabilities in immigration and customs systems by allowing OI to monitor the progress of efforts to reduce vulnerabilities and the identification of those involved in these efforts. Such a process is especially important for OI, since so many of its operations are collaborative, and the vulnerabilities identified through its investigations

may require legal or policy changes that are controlled by external stakeholders.

Conclusions

Although OI, as the primary investigative agency of the Department of Homeland Security states that it places priority on national security, from a practical standpoint, it is focused on enforcing all laws and regulations governing the customs and immigration systems. Before the creation of the DHS, these efforts, carried out by legacy INS and U.S. Customs service had a limited relation to national security—and indeed even since becoming a part of DHS, cases considered to be directly related to national security have demanded a relatively small portion of OI's resources. Particularly considering its wide-ranging mission, a more comprehensive risk management approach could provide OI with better information to evaluate its alternatives and balance its resource allocations most effectively across the broad array of violations it is responsible for investigating. Although OI has applied some of the principles of risk management to its operations, applying a comprehensive risk management approach would provide a stronger evidence-based foundation to help it ensure that its resource allocation best supports its ability to prevent those systematic vulnerabilities with the most potential to endanger the United States. Specifically, a more comprehensive risk management approach would enable OI to better ensure that its resources are effectively and efficiently applied to its national security and other missions by giving it a foundation for determining how resources might be best distributed within and across investigation types, for example, (1) how to best allocate its resources among case categories (e.g., visa violations, drug smuggling, and financial crimes), (2) the appropriate level of investment in national-security related investigations, and (3) the appropriate mix of case classifications within each category (i.e., the three-level classification of cases based on relative importance).

Lacking OI-wide outcome-based performance goals to assess its ability to prevent the exploitation of systematic vulnerabilities in customs and immigration systems that allow terrorists and other criminals to endanger the United States makes it difficult for OI to evaluate the results of its efforts in light of that objective. In addition, this lack may promote a tendency for OI to stay in the functional mindset of its legacy agencies. In particular, using data like the number of arrests, fines, drug and other seizures, prosecutions, and convictions gives OI some ability to assess the outputs of its activities. However, relying primarily on this type of performance data may make it more difficult for OI to determine if it should alter its investigative focus because favorable outputs (e.g., high

numbers of arrests) tend to reinforce the current focus whether or not it is helping accomplish the ICE mission. Without outcome-based performance goals that are tied to ICE's mission and objectives, the agency will lack a sufficient basis for assessing the alignment of resources that might offer the greatest contribution to this broad mission. Developing measures that can meaningfully gauge performance related to an expansive deterrence mission like ICE's is not an easy task. However, armed with information about the relative risk to the customs and immigration systems, OI could be in a better position to measure its performance and make resource use decisions based on the potential to mitigate the most crucial identified risks.

Finally, a critical part of the ICE mission is to reduce the vulnerability of the United States to terrorism. OI's Cornerstone program and efforts to extend this approach to other investigative areas are intended to reduce vulnerabilities by feeding lessons learned from criminal investigations back into the organization's systems and practices. However, these efforts do not include sufficient monitoring and communication systems to ensure that information is systematically fed back and that it consistently results in corrective actions. A feedback process that includes processes and procedures (for example, clearly established lines of reporting and authority and documented protocols) to help ensure that vulnerabilities OI uncovers during its investigations will result in mitigation measures or in recommendations for such measures to entities responsible for the applicable system would enhance OI's ability to reduce vulnerabilities in customs and immigration systems.

Recommendations

To put OI in a better position to allocate its investigative resources in a manner that maximizes their contribution to the achievement of ICE's mission, we recommended that the Secretary of Homeland Security direct the Assistant Secretary of ICE to take the following three actions:

- Conduct comprehensive threat, vulnerability, and consequence risk assessments of the customs and immigration systems to identify the types of violations with the highest probability of occurrence and most significant consequences in order to guide resource allocation for OI national programmatic activity and to expand the available information upon which SACs base their decisions to open new cases.
- On the basis of the results of the risk assessment, develop outcome-based performance goals (measures and targets) that reflect the

contribution of various investigative activities to ICE's mission and objectives and develop a reliable method for tracking national security-related activity and classification criteria for the case management system that express the contributions of each investigation.

- Develop an OI-wide system to monitor and communicate the more significant vulnerabilities in customs and immigration systems that are identified during the course of OI investigations. This process should include a method to mitigate the vulnerability internally or to ensure that the vulnerability and associated mitigation recommendations are communicated to external stakeholders with responsibility for the applicable system.

In response to our first recommendation, DHS agreed risk management is a valuable tool to establish priorities in a multiple threat environment and said ICE intends to take a broader, component-wide approach to assessing risk. DHS agreed that the ICE Office of Investigations resource decisions should be based on priorities derived from a strategic-planning process in which directors and unit managers from all ICE OI program areas participate, including mission support. DHS said priorities set forth in the strategic plan should be reviewed annually, revised as necessary, and communicated to each SAC.

While DHS agreed with our second recommendation, it said that ICE needs to maintain the flexibility to develop performance goals that reflect its mission and may not necessarily be measurable in an outcome-based manner. DHS said the Office of Management and Budget has acknowledged that for certain activities (e.g., law enforcement) "outcome-oriented" performance measures may be difficult to identify and performance may be tracked by using a variety of output as well as qualitative measures. DHS said each division within OI uses standard law enforcement statistics covering all of its program units that can be shared, understood, and compared over the years, including arrests, indictments and convictions, broken out by category. We agree that developing outcome-based performance measures for law enforcement activities can be difficult and that some output measures can be beneficial. However, we continue to believe that where possible OI should seek to develop outcome-based performance measures that would better demonstrate the value of its efforts. OI needs to allocate resources to the types of investigations that have the best chance of mitigating potential vulnerabilities in customs and immigration systems to terrorism.

With regard to our third recommendation, DHS said that OI headquarters' program managers regularly communicate with the SAC offices to obtain feedback on significant cases and identified vulnerabilities. This information is documented in reports that are transmitted two times a day to both the OI and DHS leadership. A weekly report also is prepared that summarizes the significant cases of the week. DHS said that OI has established designated liaisons to both U.S. Citizenship and Immigration Services and CBP and they communicate specific vulnerabilities and threats. While these efforts are useful, our recommendation envisions a more comprehensive strategy to identify and mitigate vulnerabilities in customs and immigration systems and processes. We are encouraged that OI intends to continue to expand such outreach and partnership efforts. In implementing our recommendation, we believe that OI should obtain and use feedback from all relevant governmental and nongovernmental organizations in its efforts to mitigate potential vulnerabilities.

Mr. Chairman, this concludes my statement. I would be pleased to respond to any questions that you or other members of the Subcommittee may have at this time.

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Mr. SHAYS. Thank you, Mr. Stana. Mr. Skinner.

STATEMENT OF RICHARD L. SKINNER

Mr. SKINNER. Mr. Chairman, members of the subcommittee, thank you for having me here today.

I will focus my remarks on the results of our assessment of the proposal to merge Customs and Border Protection [CBP], and Immigration and Customs Enforcement [ICE].

We issued a report on this subject in November 2005. The objective of our review was to determine the extent of CBP and ICE coordination problems, and whether a merger of the two organizations would solve those problems.

We interviewed more than 600 individuals from public, private, and non-profit sectors in 10 cities across the country and at 63 CPB and ICE facilities.

Since neither CPB nor ICE was given responsibility for the full scope of enforcement activities and because they both rely heavily on each other for assistance, it is imperative that they coordinate very closely.

However, as illustrated in our report, CBP and ICE were not coordinating their efforts in an effective manner.

We made 14 recommendations aimed at improving coordination and integrating operations. We identified coordination challenges that affected apprehension, detection, and removal operations; investigation and investigative operations; and intelligence activities.

With respect to apprehension, detention, and removal operations, organizational priorities have undercut coordination between CPB's alien apprehension efforts and ICE's detention and removal efforts.

The failure to coordinate interagency planning and budgetary processes has contributed to a resource imbalance.

CBP's front-end apprehension capabilities grew, and ICE's downstream detention and removal capabilities did not. This imbalance placed a strain on ICE's detention and removal resources and reduced the impact of CBP's alien apprehension.

With regards to investigations, the separation of enforcement functions between CPB and ICE hampered the coordination of interdiction and investigative efforts.

Now that inspections and investigations are in separate organizations, ICE does not accept as many cases or case referrals from CPB. Likewise, CBP relies less on ICE to investigate the violations it uncovers.

Due to the decline of ICE's acceptance rate, CPB has reportedly referring more cases to other law enforcement authorities, such as the Drug Enforcement Administration, without first notifying ICE.

Also, in the past, investigators and inspectors often develop referrals jointly. Now many of these referrals reportedly never get to an ICE investigator. Instead, CBP is now using its own investigative resources to investigate many cases.

Unless there is very close cooperation and coordination, the use of internal CBP investigative resources could adversely impact ICE's investigative activities even further.

Finally, with regard to intelligence activities, although CBP and ICE intelligence requirements overlap, coordination between the two is limited.

Both CBP and ICE require intelligence gathering regarding illegal aliens, criminal aliens, alien smuggling, drug trafficking, fraudulent travel documents, and import and export violations.

Despite their shared intelligence needs, however, the two organizations have separate intelligence structures and products. Because the intelligence collection and analysis activities of CBP and ICE are uncoordinated, it is difficult for intelligence analysts to connect the dots to create a comprehensive threat assessment for border security.

In conclusion, to resolve the coordination problems, we were prepared to recommend that ICE and CPB be merged. While we were conducting our review, however, the Secretary, after conducting his own review of the Department's operational and organizational structure, announced six new imperatives. One of the imperatives was to strengthen border security and in interior enforcement through an integrated mix of additional staff, new technology, and enhanced infrastructure investment.

Since the issuance of our report in November 2005, DHS dismantled the Border and Transportation Security Directorate. CBP and ICE now report directly to the Office of the Secretary. That created among other things the Secure Border Initiative, the ICE-CBP Coordination Council, and the Office of Intelligence and Analysis.

These efforts are intended to address some of the coordination issues that we identified in our report and to help better integrate CBP and ICE operations.

From what we know, of these emerging efforts, we believe that the Department is taking the necessary steps to addressing the coordination problems. However, these steps are still works in progress. We have not yet had the opportunity to assess whether the actions taken or proposed actually have been or will be effective in improving coordination between CPB and ICE.

Because the issues are so important, however, we have pledged to Congress that we would followup to determine how well the Department has progressed since our November 2005 report.

We expect to start early this summer.

Mr. Chairman, members of the subcommittee, that concludes my remarks. I will be happy to answer any questions you may have.

[The prepared statement of Mr. Skinner follows:]

STATEMENT OF RICHARD L. SKINNER

INSPECTOR GENERAL

U.S. DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM

SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND

INTERNATIONAL RELATIONS

U.S. HOUSE OF REPRESENTATIVES

MARCH 28, 2006

Good afternoon Mr. Chairman and Members of the Subcommittee. I appreciate the opportunity to join you today to discuss the coordination between two Department of Homeland Security (DHS) components critical to the security of our nation's borders - Immigration and Customs Enforcement (ICE) and Customs and Border Protection (CBP) - and the recommendations that we made to the Department to enhance their effectiveness. The information that I will discuss today is the result of our report, *An Assessment of the Proposal to Merge Customs and Border Protection with Immigration and Customs Enforcement* (OIG-06-04).

Our Report

This report resulted from a hearing in January 2005, before the Senate Committee on Homeland Security and Governmental Affairs, to discuss improving the Department of Homeland Security's (DHS) effectiveness. During that hearing, the Chairman asked our office to assess the merits of merging CBP and ICE.

In response, we undertook a review to examine the history of the two organizations, the roles and responsibilities assigned to them, and the degree to which they have met their inter-related goals. We interviewed more than 600 individuals from public, private, and non-profit sectors. To obtain a balanced viewpoint, we traveled to 10 cities across the country to talk to employees at 63 CBP and ICE facilities. We met with senior Border and Transportation Security directorate (BTS), ICE, and CBP leaders in Washington, DC, and program managers, field staff, and representatives from agencies that dealt with them, such as United States Attorneys offices. We reviewed budget plans, performance statistics, operating procedures, and other information pertaining to BTS, CBP, and ICE.

Rather than focusing only on the question of whether the two organizations should be merged, we sought to learn as much as possible about the operational interrelationships of ICE and CBP. There is much in our report relevant to this Subcommittee's concerns and today's hearing. It included 14 recommendations directed at better integrating the operations of the respective organizations. We delivered our report to the Department in November 2005. And while much of the focus has been on the Department's decision not to consolidate the two organizations following the Secretary's Second State Review (2SR), in our opinion the real focus of management and those overseeing these programs should be on resolving the underlying issues hampering the effectiveness of both CBP and ICE.

Coordination

ICE is the primary investigative organization within DHS. It has responsibility for investigating violations of immigration and customs laws and regulations. In addition, it has the responsibility for detaining and removing aliens that have violated immigration or criminal laws. CBP is responsible for maintaining security at the nation's borders. CBP inspectors screen arriving aliens and cargoes at the ports of entry (POE). Within CBP, the Border Patrol has responsibility for interdicting aliens and contraband illegally attempting to enter the Unites States between the ports of entry.

Our report identified that significant coordination issues existed between the two organizations regarding: (1) apprehension and detention and removal operations; (2) investigative operations; and (3) intelligence activities. Many interviewed felt that shortfalls in operational coordination and information sharing fostered an environment of uncertainty and mistrust between CBP and ICE personnel. Once collegial relationships between the different enforcement functions within the Immigration and Naturalization Service (INS) and the United States Customs Service (USCS) had subsequently deteriorated. To address the specific interests of the Subcommittee, however, I will limit my discussion today to issues we identified in coordinating investigations and intelligence activities.

Coordination of Investigative Operations

The division of enforcement functions between CBP and ICE hampered the coordination of interdiction and investigation efforts. Now that they are in separate organizations, ICE investigators do not accept as many case referrals from CBP inspectors and Border Patrol agents, according to many CBP employees. Many of those interviewed attributed ICE's declining acceptance rate of CBP referrals to the separate chains of command. In the past, when investigators did not respond to a referral, inspectors and Border Patrol agents could appeal up their common chain of command to direct an investigative response. Now, appealing up the separate chains of command is not as effective.

Likewise, according to many staff, CBP relies less on ICE to investigate the violations it uncovers. Many ICE investigators reported that CBP increasingly refers cases to other investigative agencies. In INS and the USCS, investigators had the right of first refusal for cases detected by inspectors. Due to the decline in ICE's acceptance rate, interagency competition, growing mistrust, and a decline in feedback on case progress, CBP referred more cases to the Federal Bureau of Investigation, Drug Enforcement Administration, and local law enforcement authorities for investigation without first notifying ICE.

Often in the past, investigators and inspectors developed referrals jointly. A subject would enter a POE and offer information to an inspector. The inspector would immediately contact an investigator often stationed at the POE, to follow-up. Now many of these referrals reportedly never get to an ICE investigator. Referrals often are sent to other law enforcement agencies including the Border Patrol.

A decline in the number of CBP referrals and the acceptance of them by ICE may have contributed to a decline in overall ICE investigative outputs in certain case categories. In FY 2003, more than six in ten drug smuggling investigations opened by ICE were opened in response to a CBP referral. When the number of investigations opened in response to a CBP referral fell in subsequent years, so did ICE's narcotics arrests, indictments, convictions, and seizures. Between FY 2003 and FY 2005, as the number of CBP referrals of this type declined, the number of arrests decreased by 24 percent, convictions by 51 percent, and seizures by 23 percent. While there may be many factors influencing this decline, this data combined with the volume of testimonial evidence suggests that

degradation of border enforcement operations occurred, in part, due to the ineffective coordination between CBP and ICE.

In addition, CBP developed its own investigative capabilities to use in lieu of ICE investigators. In October 2004, CBP announced a pilot program to increase the number of CBP enforcement officers – a former INS group that investigated some immigration cases, but was restricted to the POEs. CBP's pilot program broadened the scope of these CBP enforcement officers' authority to include criminal violations of the federal customs and drug statutes and expand their jurisdiction outside the POEs.

CBP reconstituted the Border Patrol's smuggling investigative capability, allowing Border Patrol agents to investigate some alien smuggling cases. A memorandum of understanding (MOU) that established procedures for coordinating investigations between Border Patrol agents and ICE investigators, gives ICE investigators primary responsibility for most smuggling investigations but allows Border Patrol agents to investigate some alien smuggling cases.

Despite the implementation of the MOU, significant problems have occurred in coordinating Border Patrol and ICE investigations. We identified several cases in which poor coordination between the Border Patrol and ICE resulted in compromised investigations. For example, during a joint ICE-Border Patrol investigation of a suspected alien smuggling ring, Border Patrol agents disregarded the ICE special agents' instructions regarding the requirement to obtain a search warrant. The Border Patrol agents collected the evidence without a search warrant and, as a result, criminal charges were dismissed. In another case, the surveillance of a residence believed to be associated with an alien smuggling ring was compromised when, without first coordinating with the ICE investigators, Border Patrol agents went to the residence and examined the trash on the street in front of the residence. Subsequently, the smugglers vacated the residence and the investigation had to be terminated. Finally, even though an MOU exists between the two organizations, Border Patrol and ICE have opened duplicate investigations on the same case, sometimes resulting in compromises. In one such case, ICE was investigating a nation-wide narcotics smuggling ring and had a residence under surveillance hoping to eventually dismantle the entire criminal enterprise associated with the smuggling ring. Unknown to the ICE investigators, Border Patrol agents initiated their own investigation of the same residence. Border Patrol agents raided the residence and seized the narcotics they found at the location. As a result, the smugglers discontinued using the residence, and ICE was unable to dismantle the entire criminal operation.

Diminished investigative coordination also may have reduced the number of controlled deliveries executed by the two organizations. A controlled delivery is a law enforcement operation in which a known contraband shipment is allowed to continue across the border to its final destination while under law enforcement surveillance and control. Controlled deliveries are pre-planned events that require approval by ICE investigations, CBP inspectors, and the Border Patrol. CBP allows the load of illegal contraband to cross the border into the United States; ICE investigators follow the load with the intent of

identifying additional members of the criminal enterprise. The success of these operations depends on close coordination between ICE and CBP. Failure to coordinate and cooperate during these types of operations can result in unnecessary danger to the ICE investigators, CBP inspectors, Border Patrol agents, and the general public. It can also mean lost opportunities to identify and arrest additional members of the targeted smuggling enterprise.

According to ICE statistics, the number of controlled deliveries involving narcotics declined significantly in recent years. The number of controlled deliveries we projected ICE would execute in FY 2005, based on controlled delivery figures through March 31, 2005, was 51 percent lower than the number of controlled deliveries conducted in FY 2002. While a number of elements may have contributed to this decline, field staff told us that part of the answer may lie in the lack of effective coordination between ICE and CBP.

A large number of CBP employees and ICE investigators expressed concern about the growing antagonism between the two organizations. They told us that they feared that coordination would deteriorate even further as legacy employees retired or resigned, and the remnants of good working relationships held over from the former INS and USCS will lapse.

Coordination of Intelligence Activities

CBP and ICE intelligence requirements overlap to a large extent, yet coordination of intelligence activities between them was limited. Both CBP and ICE require intelligence regarding illegal aliens, criminal aliens, alien smuggling, drug trafficking, fraudulent travel documents, and import and export violations. Despite their shared intelligence needs, the two organizations have separate intelligence structures and products. At the headquarters level, the only significant intelligence coordination effort we could identify between the two organizations related to intelligence received from outside agencies. Meanwhile, CBP and ICE field intelligence elements severed their intelligence coordination efforts altogether.

Two and one-half years after DHS' formation, CBP and ICE intelligence analysts told us that the two organizations had never co-authored any major intelligence products. As a result, the intelligence products each generates serve their respective needs and may not present a comprehensive picture of border security. Because the intelligence collection and analysis activities of CBP and ICE are uncoordinated, we were told that it was difficult for the intelligence analysts to "connect the dots" to create a comprehensive threat assessment for border security.

Recommendations

To address the issues that we identified in our report, we made 14 recommendations to improve coordination and integration of CBP and ICE operations.

Effective coordination and integration of CBP and ICE operations must begin at the strategic level. To that end, we recommended that DHS develop a vision of how ICE and CBP are to work together and contribute to the overall DHS mission. DHS leadership must work with both organizations to define and set their respective roles and responsibilities. Also, DHS should undertake an interagency procedural review process to ensure that ICE and CBP procedures support agreed-upon roles and responsibilities and are compatible with one another at touch points. Where necessary procedures do not exist, DHS should direct development of needed notification and information exchange protocols.

Further, we recommended that an entity at the DHS Headquarters level have authority over CBP and ICE with respect to policy and operational coordination. This would begin with the development of a formal mechanism to ensure that the Under Secretary for Management and the CFO collaborate with ICE and CBP management to develop a process for CBP and ICE to increase participation in one another's budget formulation and strategic planning processes. This should include avenues for CBP and ICE to comment on and influence one another's budgets and strategic plans. These efforts should be pursued with the aim of achieving an effective balance of resources and ensuring adequate support for major operational initiatives across institutional boundaries.

CBP and ICE cannot establish and execute their priorities in a vacuum. We recommended that DHS require CBP and ICE to align their priorities with an interagency bearing, e.g., detention bed space, investigative case selection, through a consultative process.

To resolve the frustration and anxiety expressed by CBP and ICE field staffs, we recommended that DHS leadership communicate roles and responsibilities to all levels of CBP and ICE so that they are understood throughout the organizations. It is paramount that CBP and ICE employees understand their individual and institutional roles and responsibilities and the relationship of these to the roles and responsibilities to those of the other organization. DHS must address the contentiousness between CBP and ICE. Field level activities must be monitored more closely at the highest levels within DHS to ensure that border security is not compromised by organizational antagonisms. Likewise, DHS leadership needs to develop a corporate culture in which all CBP and ICE employees feel vested and recognize the interconnectedness of their mission.

After DHS has taken the steps to coordinate and integrate CBP and ICE operations at the Headquarters level and communicated its vision and polices to the field, it must ensure compliance. Therefore, we recommended that DHS develop measures to monitor CBP and ICE field performance to ensure adherence to the department's vision and guidance, and accountability to related goals. To support this accountability, DHS leadership should develop performance measures and a reporting mechanism that convey an accurate picture of current operations to senior managers. In addition to performance metrics to measure internal CBP and ICE operations, a set of joint performance metrics should be developed to gauge the extent of interaction and coordination between CBP

and ICE, as well as the level of support each organization extends the other. The resulting metrics should assist the organizations in arriving at shared expectations about their respective obligations and level of support.

We were concerned that ICE and CBP operations will require intensive monitoring, including unanticipated integration and coordination issues as they arise. To that end, we recommended that DHS establish a forum at the senior management level for coordinating among staff from the Secretary and Deputy Secretary's Office, Under Secretary for Management, CFO, Under Secretary for Policy, Director of Operations Coordination, CBP Commissioner, and ICE Assistant Secretary to discuss issues related to the ICE-CBP relationship.

In addition, we recommended that DHS develop a headquarters-level joint CBP-ICE standing committee to manage the relationship between the two. This committee could address a revolving agenda on CBP-ICE touch points and develop interagency policies and procedures to guide CBP and ICE operations. The committee would oversee the implementation of interagency coordination efforts and MOUs. These bodies could respond to requests to deviate from plans, make adjustments, provide clarification, and resolve different interpretations of related guidance. In addition, the committee would closely monitor the development of redundant capabilities within CBP and ICE. While we do not suggest that all duplicative activity is necessarily bad, we believe that it must be controlled. The committee should document and distribute information on dispute scenarios and resolutions to help foster greater uniformity in interpreting policies and procedures and resolving related disputes.

Even under the best of circumstances, legitimate disputes will arise between CBP and ICE. To ensure swift resolution of disputes that have an immediate impact on field operations, we recommended that DHS develop dispute resolution mechanisms at the field-level. These mechanisms should be available for airing both routine and extraordinary interagency operational concerns and recommending remedial actions. When the resulting field-level mechanisms resolve a dispute, headquarters should be notified.

Finally, to improve the coordination of CBP and ICE intelligence activities, we recommended that DHS develop an operating environment that facilitates collaborative intelligence activities. Such an environment should promote ICE-CBP staff co-location when possible and where appropriate. In addition, CBP and ICE should pursue the development of joint intelligence products to reflect a more comprehensive picture of border security. Finally, CBP and ICE should jointly employ new technology systems for the exchange and analysis of intelligence information.

Conclusions

Ultimately, to resolve the coordination problems, we were prepared to recommend to the Department and the Senate Homeland Security and Governmental Affairs Committee that ICE and CBP be merged. While we were conducting our review, however, the Secretary

initiated his 2SR to examine DHS operations and structure. On July 13, 2005, after conducting his review of the operational and organizational aspects of the Department, the Secretary announced six 2SR imperatives. One of the imperatives was to strengthen border security and interior enforcement. The Secretary stated that the Department was developing a new approach to controlling the border, one that included an integrated mix of additional staff, new technology, and enhanced infrastructure investment. While the 2SR initiative did not result in a proposal to merge ICE and CBP, this decision did not diminish the usefulness of our report. The 14 recommendations in our report must still be addressed regardless of whether there was a merger or not.

Since our report, DHS has created the Secure Border Initiative (SBI), the ICE-CBP Coordination Council, and the Office of Intelligence and Analysis. These efforts are intended to address coordination issues and help integrate CBP and ICE operations. From what we know of these emerging efforts, we believe that the Department is taking the necessary steps toward addressing the coordination problems and, thus, our recommendations. However, these are still works in progress. We have not had the opportunity to assess whether the actions taken or proposed by DHS leadership actually have been or will be effective in improving coordination between CBP and ICE.

Because the issues are so important, we have pledged to Congress that we will go back and conduct a follow-up review to determine whether the issues we noted before continue to exist. We also will assess the progress of any corrective actions the department has taken. We expect to begin this effort early this summer.

In the meantime, however, we have several reviews underway that will assess operational coordination between CBP and ICE in a number of specific areas. Our review of CBP actions taken to intercept suspected terrorists at U.S. ports of entry is examining, in part, the interactions between CBP and ICE when a suspected terrorist is apprehended at a port of entry. Our survey of DHS intelligence collection and dissemination will examine the various field intelligence activities of DHS, including those of ICE and CBP, and how they interact with one another. Our review of terrorist financing activities is examining the investigative coordination between ICE and FBI. Our review of security activities on the Michigan-Canadian border is examining the cooperation and interactions between organizations, including CBP and ICE, with jurisdiction authority. Finally, our review of detention and removal of illegal aliens is examining the acquisition and management of detention bedspace provided by state, local, and contract providers. We plan to issue reports on each of these reviews over the next several months.

Thank you Mr. Chairman. That concludes my prepared remarks. I would be happy to take any questions the Subcommittee may have.

Mr. SHAYS. Thank you, Mr. Skinner. Mr. Schoch.

STATEMENT OF ROBERT A. SCHOCH

Mr. SCHOCH. Chairman Shays and distinguished members of the subcommittee, it is an honor for me appear before you today to discuss how the men and women of the U.S. Immigration and Customs Enforcement [ICE], protect the American people by identifying and closing critical border, homeland, and other national security vulnerabilities.

Among the Department of Homeland Security law enforcement agencies, ICE has the most expansive investigative authorities and the largest force of investigators.

Our mission is to protect the American people by combating terrorists and other criminals who seek to exploit our Nation's borders and threaten us here at home.

By leveraging the full enforcement potential provided by our unique unified blend of customs and immigration authorities, ICE agents and officers are making it more difficult for potential terrorists and transnational criminal groups to move themselves, their supporters, or their weapons across the Nation's borders through traditional human, drug, contraband, or financial smuggling networks, routes and methods. As a result, ICE contributes to our national security.

Protecting national security is at the heart of ICE's work, operations, and mission. ICE seeks to identify and close vulnerabilities in our immigration and customs system before they can be exploited by potential terrorists.

To illustrate ICE's national security work, I'd like to quickly share two representative cases with you.

First, in January 2006, based on information developed by the ICE special agent in charge in San Diego, along with the operational alliance tunnel task force, we discovered a highly sophisticated cross border tunnel that extended nearly a half mile, from a warehouse in Tijuana, Mexico, into a warehouse in Otai Mesa, CA. Equipped with lighting, ventilation, cement floor, this tunnel was designed to support drug smuggling.

Substantial criminal proceeds were invested in this tunnel, which reached a depth in some areas of 81 feet to avoid detection. This tunnel carried significant national security implications due to its potential use to support illegal and covert entry of persons or weapons into the United States.

Another example: In June 2004, ICE special agents in New Orleans initiated an investigation into smuggling activities by passengers and crew members of cruise ships arriving at the Port of New Orleans. During the course of the investigation, we identified two individuals, Cedric Carpenter and Lamont Ranson, U.S. citizens, one a former member of the military, as being involved in drug smuggling, distribution activities, as well as the manufacture and sale of false documents. Through consensually monitored telephone calls, and meetings with ICE confidential informants, Carpenter and Ranson actually agreed to provide false birth certificates, Social Security cards, driver's licenses for individuals they believed to be members of Abu Sayyaf, a State Department designated foreign terrorist organization with ties to Al Qaeda.

In addition, Carpenter and Ranson believed that these individuals that they were to provide the fraudulent documents to were on U.S. watch lists. These traditional criminal investigations are a few examples that demonstrate how ICE contributes to our national security by identifying and closing vulnerabilities that could potentially be exploited by terrorists.

In June 2003, the Office of Investigation launched an intensive effort to strengthen existing and, where necessary, develop new programs aimed directly at closing the vulnerabilities exploited by the September 11th conspirators. The 9/11 Commission found in its final report that had the immigration system set a higher bar for determining whether individuals are who or what they claim to be and ensuring routine consequences for violations, it could have excluded, removed, or come into further contact with several of the hijackers who did not meet the terms of their admitting short-term visitors.

Some examples are ICE national security division's compliance enforcement unit, which has now processed over 350,000 leads for review for potential investigations in the field for violations in the student violators. The Office of Investigations' Benefit Fraud Units work closely in coordination with the U.S. Citizenship and Immigration Services to protect the integrity of the legal immigration system by identifying fraudulent applications, systemic vulnerabilities, and fraud trends.

When applications, fraudulent applications and trends are identified, this information is passed to the SAC offices for further investigation and prosecution.

The Office of Investigation created a visa security program, which provides critical law enforcement and investigative expertise to our consular officers in several overseas posts.

ICE routinely conducts comprehensive threat, vulnerability, and consequence risk assessments of the customs and immigration systems to determine optimal application of resources.

In addition to all of our 26 special agent in charge offices having conducted their own internal risk assessment, threat assessment, headquarters Office of Investigation staff has coordinated assessments in a variety of areas to enhance our national security.

Threat assessments relate to financial crimes, identity benefit fraud, and the illegal export of arms and strategic technology. The results of these assessments are driving and shifting investigative resources within the SAC offices, and expanding existing certified undercover operations, as well as assisting the field offices in identifying new and emerging threats and vulnerabilities within their respective areas of responsibility.

These risk assessments serve as a foundation in the creation of outcome-based performance goals and measurement tools to assess the degree in which ICE is able to fill its mission relative to identified threats.

My colleagues at ICE are grateful for the chance, and I am grateful for the chance to serve the American people, and on their behalf I thank you for your continued support of our ongoing operations.

I would be pleased to answer any of your questions.

[The prepared statement of Mr. Schoch follows:]

U.S. Immigration and Customs Enforcement

STATEMENT

OF

ROBERT A. SCHOCH
DEPUTY ASSISTANT DIRECTOR
NATIONAL SECURITY DIVISION
OFFICE OF INVESTIGATIONS

U.S. IMMIGRATION AND CUSTOMS ENFORCEMENT
DEPARTMENT OF HOMELAND SECURITY

BEFORE THE

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS AND INTERNATIONAL RELATIONS
UNITED STATES HOUSE OF REPRESENTATIVES

MARCH 28, 2006
WASHINGTON, D.C.

INTRODUCTION

Chairman Shays, Ranking Member Kucinich, and distinguished Members of the Subcommittee: It is an honor for me to appear before you today to discuss how the men and women of U.S. Immigration and Customs Enforcement (ICE) protect the American people by identifying and closing critical border, homeland and other national security vulnerabilities.

THE ICE MISSION

Among the Department of Homeland Security (DHS) law enforcement agencies, ICE has the most expansive investigative authorities and the largest force of investigators. Our mission is to protect the American people by combating terrorists and other criminals who seek to exploit our Nation's borders to threaten us here at home. The men and women of ICE accomplish this by investigating and enforcing the Nation's immigration and customs laws. Working overseas, along the Nation's borders, and throughout the Nation's interior, ICE agents and officers are demonstrating that our unified customs and immigration authorities constitute an effective mechanism to identify, disrupt, and dismantle criminal and other threats that arise from our Nation's borders.

By leveraging the full enforcement potential provided by our unique, unified blend of customs and immigration authorities, ICE agents and officers are making it more difficult for potential terrorists and transnational criminal groups to move themselves, their supporters, or their weapons across the Nation's borders through traditional human, drug, contraband, or financial smuggling networks, routes, and methods. As a result, ICE's border and homeland security work contributes directly to national security

ICE STRUCTURE

ICE is presently comprised of four operating divisions, including the Office of Investigations (OI), Office of Detention and Removal (DRO), Federal Protective Service (FPS) and the Office of Intelligence. ICE/OI has approximately 5,600 1811-series special agents posted in 26 domestic Special Agent-in-Charge field offices and 56 international Attaché offices. ICE special agents investigate violations of our Nation's

money laundering, bulk cash smuggling, and illegal money remittance), export violations related to defense munitions items and strategic dual-use technology, drug and contraband smuggling, human smuggling and trafficking, identity document and immigration benefit fraud, visa violations, worksite enforcement, and intellectual property and trade-related commercial fraud.

ICE'S NATIONAL SECURITY WORK

Protecting national security is at the heart of ICE's work and the principal focus of our operations and mission. While the bulk of the work conducted by our agents and officers involves traditional immigration and customs enforcement cases, global terrorist attacks on and since September 11, 2001 -- New York, Washington, Madrid, London, Bali and others -- underscore the highly dangerous intersection between terrorism and travel. The speed and ease with which legitimate travelers now move worldwide affords potential terrorists with global access. Additionally, the massive international flow of tourists and immigrants also affords potential terrorists with unparalleled opportunities for concealment. This emergent reality was recognized by the 9/11 Commission which found "(i)n their travels, terrorists use evasive methods, such as altered and counterfeit passports and visas, specific travel methods and routes, liaisons with corrupt government officials, human smuggling networks, supportive travel agencies, and immigration and identity fraud." In direct response, ICE seeks to identify and close vulnerabilities in our immigration and customs systems before the vulnerabilities manifest into or support lethal national security threats, as well as investigating violations of immigration and customs laws.

To illustrate how ICE investigations contribute directly to the national security, I have included the following extracts from our case files:

- In January 2006, based upon information developed by the ICE Special Agent-in-Charge (SAC) in San Diego along with the Operational Alliance Tunnel Task Force, we discovered a highly sophisticated cross border tunnel that extended

nearly a half-mile from a warehouse in Tijuana, Mexico into a warehouse in Otay Mesa, California. Equipped with lighting, ventilation and a cement floor, this tunnel was designed to support drug smuggling. Substantial criminal proceeds were invested in this tunnel, which reached a depth of 81 feet in some areas to avoid detection. This tunnel carried significant national security implications due to its potential use to support illegal and covert entry of persons or weapons into the United States.

- On September 8, 2004, pursuant to arrest warrants obtained in the U.S. District Court for the District of Columbia, ICE SAC Washington D.C. agents arrested Neeran ZAIA and Basima SESI. The ZAIA human smuggling organization specialized in the smuggling of Iraqi, Jordanian, and Syrian nationals and was responsible for the movement of over 200 aliens throughout the investigation. Smuggling organizations like this one pose threats to our national security. This ICE-led investigation was initiated when a confidential informant familiar with the organization reported ongoing smuggling activities by ZAIA, who had been previously convicted for alien smuggling. Investigative efforts revealed that the aliens were smuggled from the Middle East to staging areas in Central and South America. Once in these staging areas, the conspirators would arrange to smuggle the aliens from these sites into the U.S. or its territories. The use of undercover investigative techniques resulted in the indictment of five conspirators and the significant disruption of the organization's ability to move and smuggle aliens. The defendants were charged with several violations to include 8 USC 1324(a)(2)(B)(ii)-Bringing Unauthorized Aliens to the U.S. for Commercial Advantage or Private Financial Gain and 18 USC 371-Conspiracy. This case in particular vividly demonstrates how ICE identified and closed a border vulnerability caused by a traditional criminal conspiracy that could be exploited by extremists and present a potential national security threat

- In October 2004, after an extensive ICE-led multi-national investigation Babar AHMAD and AZZAM PUBLICATIONS were indicted in the Federal District of

Connecticut on charges of conspiracy, money laundering and providing material support to terrorists among other charges. This investigation was initiated as part of Operation Green Quest when the ICE Resident Agent-in-Charge (RAC) in New Haven in conjunction with the FBI learned that a web site, AZZAM.COM (and its mirror sites QUOQAZ.NET, and AZZAM.CO.UK), had encouraged "jihad" against the United States and provided information on how to provide financial assistance to the Taliban and others. Specifically, the AZZAM web site detailed how one might bypass U.S. currency reporting requirements and deliver funds to the Taliban via Pakistan. Babar AHMAD was arrested in England based on an U.S. Provisional Arrest Warrant issued from the District of Connecticut. Search warrants executed at the residences of AHMAD, his parents, and sister, as well as AHMAD's university office in England resulted in discovery of terrorism related materials including: computers with numerous terrorism related files, documents, a balaclava, two manuals on guerilla warfare techniques, and a manual on constructing silencers for weapons. AHMAD has remained in custody pending the resolution of U.K. extradition proceedings. OI's vast experience and expertise in cyber crime and financial investigations played a central role in this very significant national security investigation.

- In June 2004, the ICE SAC New Orleans Port Security Group initiated an investigation into narcotics smuggling activities by passengers and crewmembers of cruise ships arriving at the Port of New Orleans. During the course of this investigation, ICE SAC New Orleans identified Cedric CARPENTER, a United States citizen, and Lamont RANSON, a United States citizen and former member of the United States military, as being involved in drug smuggling/distribution activities as well as the manufacture and sale of false documents. Through consensually monitored telephone calls and meetings with ICE confidential informants (CIs), CARPENTER and RANSON agreed to produce false birth certificates, social security cards, and driver's licenses for individuals they believed to be members of Abu Sayyaf, a State Department designated foreign terrorist organization with ties to Al-Qaida. In addition, CARPENTER and

RANSON believed that the individuals to whom they were to provide the fraudulent documents were on "watch lists." CARPENTER and RANSON requested to be paid $50,000 in cash and $50,000 in heroin in exchange for producing five sets of fraudulent documents. CARPENTER and RANSON claimed that they had associates in Mississippi and Oklahoma who provide them with "real papers" to utilize during the document production stage. CARPENTER informed a CI that he then "steals identities" to complete the process.

On August 27, 2004, a criminal complaint was issued by the United States District Court in the Southern District of Mississippi charging CARPENTER and RANSON with a violation of Title 21, United States Code, Section 846 - Attempt and conspiracy – controlled substance. On February 24, 2005, Lamont RANSON and Cedric CARPENTER waived indictment and were arraigned on superseding information, charging them with conspiracy to provide material support to members of a designated foreign terrorist organization (Abu Sayyaf), in violation of 18 U.S.C.§ 2339B, as well as other offenses.

These investigations highlight the dangerous intersection between traditional transnational criminal activities, such as human or drug smuggling, and other threats to national security.

ICE/OI has launched an intensive effort since 2003 to strengthen existing and, where necessary, develop new programs aimed directly at closing the specific vulnerabilities exploited by the 9/11 conspirators -- and other vulnerabilities that may be ripe for future exploitation by potential terrorists. This is in direct response to the major findings following the 9/11 attacks. Specifically, the 9/11 Commission in its final report found "that had the immigration system set a higher bar for determining whether individuals are who or what they claim to be – and ensuring routine consequences for violations – it could have excluded, removed, or come into further contact with several hijackers who did not appear to meet the terms for admitting short-term visitors." ICE's effort to block organized criminal business enterprises and potential terrorists who seek to exploit our

immigration and customs systems is a critical contribution to national security. Success for ICE is defined as preventing the criminal threat axes along our borders from supporting or advancing a subsequent terrorist attack.

Some examples of these programs include:

- The National Security Division's Compliance Enforcement Unit (CEU) receives information about, and assigns leads for field investigation concerning foreign student violators and those who overstay/violate the terms of their admission to United States.

- Within the CEU, is the Threat Analysis Section (TAS). Detailed and dedicated, analysis of DHS data (the role of the TAS) may have been able to establish connections between hijackers legally present in the United States and those who had been watch listed or who had violated their immigration status. For example, connections between several of the hijackers could have been made based on similar backgrounds, shared addresses, and common travel itineraries identified from DHS databases such as the National Security Entry Exit Registration System (NSEERS).

- Several of the 9/11 hijackers, as well as prior terrorists convicted in the first World Trade Center bombing and a conspiracy to blow up New York landmarks, committed immigration fraud. The Smuggling and Public Safety Division's Benefit Fraud Units work in close coordination with U.S. Citizenship and Immigration Services (USCIS) to protect the integrity of the legal immigration system by identifying fraudulent applications, systematic vulnerabilities and fraud trends. When fraudulent applications or trends are identified, the information is passed to the SAC Offices for further investigation and possible prosecution.

- The Visa Security Program, which is operated by OI's Office of International Affairs, provides law enforcement and investigative expertise to our consular

officers. Establishing this program in countries deemed by DHS to be high threat is a Department priority and is responsive to our visa security mandate under Section 428 of the Homeland Security Act of 2002. Working collaboratively with the Department of State (DOS) Consular Officers at overseas posts, ICE Visa Security Officers conduct in-depth investigative vetting of visa applications that raise security or visa fraud concerns, and they provide advice and training on security issues to DOS consular officers.

- The ICE Law Enforcement Support Center (LESC) is a national, single point of contact, law enforcement center that provides timely immigration status and identity information and real-time assistance to the entire local, state and federal law enforcement community on aliens suspected, arrested or convicted of criminal activity. The LESC operates 365 days a year, 24 hours a day assisting law enforcement agencies with information gleaned from DHS databases, the National Crime Information Center (NCIC), the Interstate Identification Index (III) and state criminal history indices. Three of the 9/11 pilots had been stopped by state and local law enforcement in the weeks and months leading up to the terrorist strikes in Washington, New York City Pennsylvania.

- The ICE Forensic Document Laboratory (FDL) is dedicated to the detection and deterrence of travel and identity document fraud. Its forensic function is closely integrated with an operational support and training division. The FDL is fully accredited by the American Society of Crime Laboratory Directors/Laboratory Accreditation Board.

ICE MISSION MANAGEMENT

As an integral part of ICE's planning and mission management, ICE continuously works with other agencies within the Department of Homeland Security, most particularly Customs and Border Protection (CBP), U.S. Citizenship and Immigration Services (USCIS), and the United States Coast Guard (USCG), to determine optimal application of

resources and share top priorities to ensure a coordinated response to protecting national security.

For example, most recently the Department's Secure Border Initiative (SBI) has served as a focal point for the joint planning and development of the investigative priorities in securing our border. In addition, ICE works closely with the Department of Justice on joint initiatives and assessments to ensure that ICE's investigative resources will result in cases the United States Attorney's Offices will accept for prosecution and cases that are focused on what those offices see as the core vulnerabilities in our national security. ICE routinely conducts comprehensive threat, vulnerability and consequence risk assessments of the customs and immigration systems to determine optimal application of resources to ensure the maximum contribution to national security. A number of recent examples include:

- In fiscal year 2004, the ICE/OI Financial and Trade Division tasked the Special Agent-in-Charge field offices (SAC's) with conducting extensive financial threat assessments within their areas of responsibility (AORs). Financial and Trade Division national program managers analyzed the results of the threat assessments to establish national priorities for the financial investigations program. The newly established national priorities, in turn, were then communicated back to the SACs as guidelines to set local investigative priorities. As a result of the threat assessment, ICE/OI identified unlicensed money service businesses and bulk cash smuggling as newly emerging threats.

- In fiscal year 2004, the ICE/OI Smuggling and Public Safety Division tasked SAC offices with conducting a threat assessment of criminal street gangs within their AOR. As a result of the assessment, ICE/OI initiated Operation Community Shield identifying the trans-national street gang Mara Salvatrucha (MS-13) as one of the most significant gang threats with a large foreign-born membership. Community Shield has since expanded upon the initial scope of its operation as additional threats have been identified and to date has resulted in the arrest of over

2,300 street gang members.

- In fiscal year 2005, the ICE/OI National Security Division tasked SAC offices with conducting an arms and strategic technology threat assessment within their AORs. The results of the threat assessment are now driving the shifting of investigative resources within SAC offices and the expansion of existing certified undercover operations to include arms and strategic technology violations, and the identification by SAC's of new and emerging arms and strategic technology related threats within their AORs.

- In fiscal year 2005, ICE/OI Financial and Trade Division Cornerstone Unit tasked each SAC office to prepare a bulk cash smuggling threat assessment for their respective AORs. The results were utilized to plan and execute a joint ICE/U.S. Customs and Border Protection (CBP) bulk cash smuggling initiative, "Operation Firewall", which targets bulk shipments of U.S. cash moving on the interstate highway system, at mail carrier hubs, private airfields, ports of entry and provides hands-on training with our foreign counterparts. Proactive operations began in August 2005 and will run throughout fiscal year 2006.

- In fiscal year 2006, the ICE/OI Smuggling and Public Safety Division tasked SACs with conducting an identity and immigration benefit fraud threat assessment within their AORs.

- In fiscal year 2006, ICE/OI Financial and Trade Division Cornerstone Unit tasked each SAC office to identify unlicensed money services businesses operating in their AORs. The results were utilized to formulate a Money Services Business Initiative. The egregious violators (large dollar movements) are to be targeted in criminal investigations. ICE and the U.S. Treasury Department's Internal Revenue Service and Financial Crimes Enforcement Network (FinCEN) will work to bring the violators not targeted for criminal investigation into compliance through an outreach program.

These risk assessments serve as the foundation for the creation of outcome-based performance goals and measurement tools to assess the degree to which ICE is able to fulfill its mission relative to identified threats. ICE/OI uses standard law enforcement statistics covering all of its program units that can be shared, understood, and compared over the years, including arrests, indictments and convictions, seizures and forfeitures. ICE adopted the OI case management system, which is an integral component of the TECS II platform. Since April 2004, TECS II has been the official case management system for all of OI. TECS II has undergone a series of modifications to better reflect the full spectrum of investigative activity performed by OI. We agree that at the time of the recent GAO review, TECS II was not configured to accurately reflect the OI commitment to national security-related investigations. Since the time of the review, OI has conducted an internal review of how national security-related investigative work is defined and is captured in the system and is taking steps to make the necessary system changes. Following the system changes, detailed field guidance will be prepared and disseminated to SAC offices. Based on the identified reporting and system changes, TECS II will more accurately reflect the number of OI investigative case hours dedicated to closing national security vulnerabilities.

To ensure uniformity and adherence to established goals and objectives throughout ICE, the agency has established procedures and mechanisms to identify and communicate the most significant vulnerabilities in our immigration and customs systems. Information related to immigration and customs is transmitted from SAC offices to OI headquarters programs through several mechanisms: the TECS II case management system, the Significant Event Reporting System (SEN) and through daily meetings and phone calls between headquarters' programs and SAC offices.

The results of all investigative activity are captured in reports of investigations and subject records within the TECS II case management module. Seizure and arrest reports are captured in the Seizure and Arrest Tracking System (SEACATS) module. Reports are included in the TECS II case record that is stored by case number consisting of a case

category, sub case category, and project/program codes. Case information is retrievable at all levels from reports drawn from the EDW (Enterprise Data Warehouse). These reports are made using reporting software applications, which allow for the mining and retrieval of investigative information from the TECS system. Case information is retrievable at all levels from broad reports of investigative activity by case category, such as munitions control, down to specific key word searches in reports of investigation. The architecture of the TECS II system allows OI personnel as well as ICE Office of Intelligence personnel the ability to mine data from completed and ongoing investigations to identify larger conspiracies, trends, and emerging threats and vulnerabilities.

In addition to the TECS II reporting requirement, field personnel are required to report significant case or intelligence information to ICE headquarters through the use of spot reports and significant incident reports. This information is recorded and transmitted electronically through the ICE Significant Event Notification System (SEN) a web-based real-time notification system that is monitored by ICE 24/7.

Finally, all OI national programs have program managers who communicate on a daily basis with their counterparts in SAC offices regarding significant case developments including newly discovered vulnerabilities.

All vulnerabilities identified through these various mechanisms are analyzed by the appropriate OI program and information and recommendations are provided back to the responsible immigration and customs systems stakeholders, both internal to the USG, through OI liaisons to CBP, U.S. Citizenship and Immigration Services, the Transportation Security Administration, US-VISIT, and the Department of State as well as external stakeholders.

CONCLUSION

While ICE is a new agency, with newly unified immigration and customs authorities, many of our agents and officers have a long history in the field, with extensive experience. We are building a new federal law enforcement agency with a national

security focus that is greater and more effective than the sum of its parts.

Since 2003 the path has not been without significant challenges. The men and women of ICE built a new agency while at the same time maintaining a high tempo of investigations and operations. Though we have made great strides, much work remains. The men and woman of ICE are proud of what they have accomplished in a very short time, but we want to do even better. And that is why we welcome the recent Government Accountability Office audit into ICE/OI. We are always seeking the best possible practices regardless of whether they originate inside or outside of our agency.

Similarly, on behalf of the men and women of ICE, I want to thank this committee for its time, attention and oversight.

My colleagues at ICE are grateful for the chance to serve the American people and, on their behalf; I thank you and your colleagues for your continued support of our ongoing operations.

I would be pleased to answer your questions.

Mr. SHAYS. Thank you. I'm going to start by having Mr. Van Hollen ask the first questions.

Mr. VAN HOLLEN. Well, thank you, Mr. Chairman. Thank all of you for your testimony this afternoon. Let me begin with Mr. Schoch, if I may, because you heard the testimony of the other gentlemen. You've seen the GAO report. You've seen the criticism that there's been lack of cooperation between, you know, Customs and Border Patrol on the one hand and ICE on the other, and we all know in this committee under the leadership of our chairman, Mr. Shays, has and the 9/11 Commission review obviously identified this lack of information sharing as one of the problems our country faced leading up to September 11th.

That was throughout the whole government, and here we have reports that say there's not even adequate coordination and information sharing between two, you know, agencies within the same department that was created after September 11th with the express purpose of trying to improve coordination, and so it's an alarming report, and analysis, and I would just—I wonder No. 1, do you agree with their analysis, and No. 2, if so, what recommendations—what steps are you taking to make changes?

Mr. SCHOCH. Not necessarily agree with their analysis. Let me speak to a few things. I have been leading in the National Security Division at ICE within the Office of the Investigations. Specifically, my counterparts at CBP in the Office of Anti-Terrorism have a number of efforts that we are doing to coordinate our operations to make sure that we are, you know, absolute harmony.

One is we staff the National Targeting Center that CPB runs, and we actually have ICE agents 24/7 operating there to make sure that any identifiable issue that is raised in the field all comes through there, and we are able to coordinate.

We actually have a working group. We meet monthly with my counterpart within the Office of Anti-Terrorism. We have working groups to look at information sharing. We have come up with protocols to deal with threat information and coordinating those, you know, systematically, synchronizing what responses we have. There are a number of efforts that ICE and CBP together are making to try to harmonize our efforts.

Mr. VAN HOLLEN. Right. Now, were these efforts in place before the report done by the GAO and the Inspector General's office or do they predate that or are they responses to it?

Mr. SCHOCH. A number of their recommendations have been looked at, and I know, for example, coordination council are in effect, but a number of these things myself we have been doing for as long as ICE and CBP have been two separate agencies within the Department. So these are ongoing efforts that we have been making, and I have personally been involved with.

Mr. VAN HOLLEN. Well, putting aside the recommendation to merge the two agencies, because, as was mentioned, the Secretary Chertoff's own reorganization plan may have made that particular recommendation moot, although I could still see how you could merge the two down the road. I'm not sure, but anyway, with the exception of that, are there any of the recommendations that have been raised by either of the other gentlemen to your right that you do not intend to implement?

Mr. SCHOCH. Let me talk specifically about the GAO report on our priorities. I think we actually, and I have been a part of the number of GAO audits and investigations if you will, and we find a lot of value in them, and I think this is the case here. Some of their recommendations to look at potentially a system, for example, on communicating back vulnerabilities, looking at better risk management—more comprehensive, while we are doing several threat assessment, risk assessment, they have made several findings that we actually looked at and willingly are going to be trying to look at some different changes.

For example, the data that they used to come up with the percentages they are using on national security, while we respect how they arrived at that, I disagree with the amount of resources we are putting, as it almost characterizes it as a small percentage when I would argue that everything that ICE almost is doing is in an effort to make sure that we do not ever relive a September 11th type event.

So there are a number of great recommendations that we are looking at.

Mr. VAN HOLLEN. Are there any that they have proposed that you do not intend to implement?

Mr. SCHOCH. I am more familiar with the specificity in the GAO. I looked at all of those, and I think we are evaluating those, and look at those favorably. In the merger document, I am not too familiar. I would have to look at those, and I know a lot of those come up to the department level.

Mr. VAN HOLLEN. OK. Thank you. If our other witnesses could just respond to.

Mr. STANA. Well, I will start, since we talked about the GAO report. I think the kinds of things that Bob Schoch mentioned are on target. I think you do want to create the mechanisms and the cross walks between organizational structures so that you can coordinate more closely. I would also say at the same time, though, sadly, this is nothing new between ICE and CBP. We have been looking at coordination issues for years, and I know the legacy INS this was a constant problem, even when the people were standing side by side at the different booths at the ports of entry. INS would put three people out. Customs would say, well, if you are only putting three out, I am only putting three out at some ports of entry.

So this is nothing that is new or that was brought on by ICE.

I would say this about the merger issue, though. Usually when organizations have mergers or they move the boxes around the organizational tree, it is most successful when it is done for one of two reasons: either your strategic plan has changed or your mission has been redefined. If you are moving the boxes around the organizational tree to handle basic management issues, like coordination, lack of guidance, training, information systems, financial systems are not working right. You are trying to move boxes around to fix management problems and that doesn't work.

In the 1990's, INS did that three times and it got to the point where the agents in the field didn't know which guidance was operational anymore, because they were constantly reorganizing.

So my suggestion would be if ICE needs anything, it is stability for a period of time and leadership and now with Julie Myers in

charge and we are going to have a new Customs Commissioner shortly, there is an excellent opportunity now to bring good management and leadership to bear to break down some of these coordination problems.

Mr. VAN HOLLEN. Thank you. Mr. Skinner, do you have any response?

Mr. SKINNER. Yes. I could say that the communications with the Deputy Secretary and as late as last night, and with Julie Myers and people in CBP, they have, in fact, agreed with all. We made 14 recommendations. They have agreed with all 14 recommendations. In many cases, they have claimed that they have already completed action on some of these recommendations. For example, the creation of a CBP-ICE Coordination Council.

We haven't had the opportunity to see if, in fact, the implementation of the recommendations have had a profound impact or the desired result, and that is something we are going to do this summer.

Mr. VAN HOLLEN. Right.

Mr. SKINNER. But as far as agreeing with our recommendations and taking actions, yes, they have.

Mr. VAN HOLLEN. OK. Thank you for your testimony.

Mr. SHAYS. Thank you. I am going to thank the gentleman and if he wants to interrupt the counsel, the counsel is going to be asking some questions, and feel free just to jump in if the gentleman would like to.

Mr. HALLORAN. Thank you. Good afternoon.

Mr. STANA. Good afternoon.

Mr. HALLORAN. Mr. Stana, in your testimony, you cite as an ICE mission to protect national security without diminishing the legacy missions. Is that realistic given the diversity of that portfolio and is it the same question—is it true to say that some or if not all of those legacy missions could consume almost all the investigative resources?

Mr. STANA. You know they have a large number of missions, as you know, and it is difficult to spread 5,600 investigators across all of those missions and keep everyone happy and all of them well staffed.

But it is like any agency that has fewer people than it has missions: You have to pick and choose.

Mr. Schoch is in charge of the National Security, and that is where the 10 to 15 percent of investigative resources that go to the most directly linked to national security investigations are done. And that is a good thing.

Now, within that, maybe not all of them have a direct link at the end of the day, when the results are in, but at least, as far as the subject matter goes, it does seem to comport with the overall mission of DHS.

It is the 85 to 90 percent that are in other areas that I would take issue with in some cases the necessity to keep pursuing at the same level we are pursuing, given that you have finite resources.

For example, well over half of the total investigative cases that OI does are related to Class III drug investigations. Class III, these are the least important drug investigations. Do we need to do them all? Should they respond to every port call that CBP makes to come and investigate some sort of a seizure that they make. Perhaps this

is part of the coordination problem that Mr. Skinner mentioned. They are not going to respond to every case. They are going to respond to the most important cases, as they should.

So, I would suggest that there is some room to reallocate resources, but not to neglect every mission or any particular mission.

Mr. HALLORAN. Right. To what extent would you say that imbalance you cite is function of structure; that they say at over at DOD if all you have is a hammer, everything looks like a nail. If your office is next to the port and that is your bread and butter business, as long as you are there, isn't that what you're going to do?

Mr. STANA. Well, there is a good deal of that, you know, frankly. If what you have done is drug cases in the San Diego sector for years and years and years, and you are used to calling ICE or its predecessor to come and investigate a case, that is what you are going to do. If you have 10 groups in a district that has done drug investigations for years, that is what you will do.

What a comprehensive risk assessment and management tool would do it would help to break out of the mold of doing what you have always done.

Mr. HALLORAN. Thank you. Mr. Skinner, could you talk a little more about the kind of mutuality of ICE, CBP co-dependence. Just walk a case through that process where they have to hand off as oppose to ones they might pursue separately.

Mr. SKINNER. For example, an interdiction at the port of entry, and car is pulled over and it could be loaded with illegal drugs or likewise—it could even be between ports of entry through our Border Patrol. In those cases, historically, when INS, for example, and Customs, before the reorganization, the inspector would discover the drugs, turn over the—or make the referral to the investigator who then would take the case and run with it. Often times they may even do it jointly.

As it stands now, the ICE or the investigators are not always being responsive, and it may go back to the fact that there is a breakdown in risk assessments. CBP, their priorities may be to intercept drugs, whereas ICE now their primary mission has been focused elsewhere, so they are not reacting, so that is creating some type of frustration between the two groups.

CBP now in turn is out of frustration are taking these cases as opposed to giving them to the ICE investigator are now giving them to other law enforcement officials, be it the DEA, the Drug Enforcement Administration, or the local police or State police or whoever is most to take the case or whoever is most convenient, and it may not even inform ICE.

Mr. HALLORAN. Are there memoranda of understanding between ICE and CBP as to how some of that might be handled?

Mr. SKINNER. There are memoranda of understanding, but it is not clear as to whether everyone is, in fact, has a full understanding of what those mean. They are open to interpretation from port to port to port, and our review found out there was extreme frustration, particularly coming from the CBP side that ICE was not being reactive or responsive to their investigative needs. So now, they have gone to other law enforcement agencies.

As a matter of fact, they have actually——

Mr. HALLORAN. Or doing it themselves?

Mr. SKINNER. Now, they have started a pilot program where they are going to be doing it themselves. This can create problems, because we are not bringing a synergy to the efforts here. If we are looking at national security issues, and if we are breaking it down into stovepipes, we are not able to and collectively see if there is some type of systemic or trend in drug trafficking or human trafficking that which, in fact, could be supporting a terrorist activity. And by not cooperating in this regard, I think is the danger that we face; that we are losing the synergy that could exist here.

Mr. HALLORAN. So, Mr. Schoch, is the Coordinating Council enough? How is that going to break through the kind of cultural barriers that Mr. Skinner just described?

Mr. SCHOCH. I think it is a start first of all. Second, there is clear guidance that is out there to all of our employees about response to the ports and about calls from CBP. For example, I actually put out, and I authored and it was put out by a director, a requirement of 100 percent response to every request from Customs, Border Protection on a watch list hit. Any person entering the United States that hits the watch list comes into a name match, if you will, an ICE agent is mandatory 100 percent response to that. There is clear guidance on that. We respond 100 percent on those, and we invest a lot of man hours into that function, because we fill, you know, the significance of that.

Within responses to the drug investigations or a drug interdiction, those investigations often start with the interdiction and a cultivation possibly of a person that was arrested, information they may have, phone numbers they may have. There is a lot of benefit to those responses, and I don't know the specific guidance that is out, but there is clear guidance between both the OFO, the Office of Field Operations, which affects the inspectors, and then the Office of Border Patrol. So there is guidance out there, and issues that may come up, come up through our SACs, come up to the programs—we have an entire program on contraband smuggling that deals with the drug enforcement at ICE headquarters responsible for that.

Mr. HALLORAN. How old is that 100 percent watch list?

Mr. SCHOCH. I would say it goes back over 2 years I believe.

Mr. HALLORAN. That is my point again. Since our hearing on visa revocations, which I think was May or April 2004, since then?

Mr. SCHOCH. It is—I would——

Mr. HALLORAN. The question is would it capture a visa revocation action at this point almost automatically?

Mr. SCHOCH. Yes.

Mr. HALLORAN. OK. Finally, let me ask Mr. Schoch again, the apparent conflict between the decentralized nature of your operations that your offices are out in the field. You've got a special agent in charge that can drive the investigative priorities, and then you have these headquarters initiatives. Your testimony mentioned the workplace inspection priority for critical infrastructure sites, so-called.

Did that come out of your office and was there resistance in the field to that or how was that rolled out?

Mr. SCHOCH. Actually, it is more of a collaboration between the field offices, the 26 SAC offices, and headquarters. A threat assess-

ment was done actually in 2004, and the SAC offices themselves identified critical infrastructure protection as a vulnerability that needed to be addressed. Then the office at headquarters, working with that information, was able to shape policy and basically have a uniformity to that and put that guidance out to the field. There is guidance that says that we look at national security and we look at public safety as the two utmost priorities in that program, and examples of cases where we've had individuals with fraudulent documents trying to get into White Sands Missile Base; people that were translators actually working at Fort Bragg, NC, actually teaching, you know, our special forces. Those are cases that, while they were not included in the GAO study as national security, we find threats, significant threats to our national security, and hundreds of cases in 2005 were conducted in these areas.

That is a uniform policy across the board.

Mr. HALLORAN. So finally, the threat assessment you referenced in that regard is that written, a single document that we might get?

Mr. SCHOCH. It was conducted in 2004. I would be happy to provide you with that.

Mr. HALLORAN. Thank you.

[The information referred to follows:]

Office of Investigations

U.S. Department of Homeland Security
425 I Street, N.W.
Washington, D.C. 20536

U.S. Immigration and Customs Enforcement

JUL 30 2004

MEMORANDUM FOR: All Special Agents in Charge

FROM: Marcy M. Forman
Acting Director,
Office of Investigations

SUBJECT: Action Plan Follow-up to Special Agent in Charge Conference – Washington, D.C., July 22, 2004

As I stated at the recent Special Agent in Charge Conference in Washington, DC, ICE furthers the Homeland Security mission by dealing with three essential elements critical to all terrorist and other criminal organizations: people, materials and funding. Our criminal investigative resources should be devoted toward identification of systematic vulnerabilities that can be exploited by terrorist and other criminal organizations that threaten our country and our economy. Any systematic vulnerability, whether involving smuggling of contraband or illegal aliens, deficiencies in the in-bond system, trade in counterfeit goods, or the use of money remitters to move illicit proceeds, represent vulnerabilities that can be exploited by terrorist and other criminal organizations.

To better address these systemic vulnerabilities, ICE will target the means by which terrorist and other criminal organizations use to *earn*, *move*, and *store* illicit funds through the Cornerstone Approach. In moving forward with Cornerstone, each violation within the spectrum of ICE's investigative purview – Financial Investigations, Export and Arms Control, International Trade, Commercial Fraud, Intellectual Property Rights, Cyber Crimes, Smuggling (alien/human trafficking, narcotics, contraband, weapons, bulk cash, etc.), and Immigration Violations (identity, document and benefit fraud) – has a financial component that impacts the economic integrity and security of the United States. The Cornerstone goal is to eliminate systemic vulnerabilities *before* these organizations can exploit them for their own purposes.

I am requesting two separate deliverables utilizing the attached sample action plan format. For the first action plan, each SAC office is directed to identify three systemic vulnerabilities within their area of responsibility to be addressed through the Cornerstone methodology.

The second deliverable is in light of the Fall Threat; I would like you to identify those vulnerabilities in the short term (however many appropriate) that may mitigate the potential for terrorist attacks within the 90-day threat period leading up to the elections. Identify immediate measures that you can take to preempt, prevent and disrupt.

As you complete the action plans, it is imperative you keep in mind the following:

- The Program is not limited to financial investigations. In addition to the financial industry, it is applicable to investigations involving the trade sectors such as importers, manufacturers, high tech industries, munitions manufacturers and the transportation sectors or vulnerabilities in the legal immigration system.
- Through private industry, and other federal, state and local law enforcement partnerships, we should work toward eliminating those vulnerabilities.
- Closing the high-risk vulnerability gaps may involve recommending security measures to the private sector or proposals to modify statutes or regulations.

As emphasized at the conference, the Cornerstone approach cannot succeed without the blending of authorities and maximizing the experience and knowledge of our staff. To be the preeminent federal law enforcement agency, we must generate and maintain trained, well developed human resources that have combined experiences. Integration of our workforce and interdisciplinary training of our agents are of paramount importance. In the very near future, you should expect a memorandum detailing OI's integration action plan format.

For agency continuity, I ask that you contact your local field counterpart in the Field Intelligence Offices and share your submissions. Jeff Casey, Director of the Office of Intelligence has also asked his FIU Directors to analyze their current intelligence information and provide him with a similar product. Coordination with the FIUs will be beneficial to both OI and Intel.

Please forward these two deliverables via Email, to Cornerstone Section Chief Joseph Gallion and Cornerstone Program Manager Carmen Pino. Mr. Gallion will share this information with Mr. Robert Schoch, Deputy Assistant Director for National Security Investigations. Both plans are due by close of business **August 18, 2004**. If you have any questions regarding this assignment, please contact Mr. Gallion at 202-344-1685.

Attachments

cc: Director of Operations
Director, International Affairs
Director, ICE Intelligence
Deputy Assistant Directors
ICE Attaches
HQ-Director of Public Affairs
HQ-Director of Congressional Affairs

Office of Investigations

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

DEC 20 2004

MEMORANDUM FOR: ALL SPECIAL AGENTS IN CHARGE

FROM: Marcy M. Forman
Director, Office of Investigations

SUBJECT: Guidance for Operation Jet Stream

Critical Infrastructure Protection (CIP) is a key element in ICE's commitment to homeland security. The CIP focuses on reducing the risk of terrorist attacks by deterring the employment of unauthorized workers at facilities deemed to be critical to the nation's infrastructure (i.e., airports, nuclear power plants, sports arenas, military bases, federal buildings, etc.). After the events of 9/11, CIP enforcement operations identified over 5,000 unauthorized workers who obtained employment by presenting counterfeit documents to their employers and/or providing false information to security officials.

Operation Jet Stream, an ICE national security initiative, was implemented in conjunction with the Transportation Security Administration (TSA) to supplement and ensure the continued success of CIP efforts. Operation Jet Stream selectively targets airport employees throughout the United States who have been issued Secure Identification Display Area (SIDA) badges and may present a national security concern or be subject to arrest by ICE for administrative or criminal violations. Although this new joint initiative is similar to Operation Tarmac, it is intended to augment, not replace, Operation Tarmac investigations being conducted in respective Special Agent-In-Charge (SAC) Office Areas of Responsibility (AOR).

Recently, TSA's Office of National Risk Assessment (ONRA) conducted an initial analysis of the SIDA badge population. TSA representatives then presented ICE LESC with a list of airport employees that required further investigation. Following extensive records checks, LESC forwarded target folders to NSTP for review. Currently, there are approximately 53 investigations for collateral assignment to various ICE field offices. Cases will continue to be generated as the LESC obtains additional information from TSA. NSTP will maintain programmatic oversight and coordinate this operation with the field.

Operation Jet Stream has been assigned Program Code 7BI in the Treasury Enforcement Communications System (TECS). Upon initiating Operation Jet Stream investigations in TECS, CIP will collaterally assign cases to ICE field offices for resolution. Concurrently, information relating to each investigation will be forwarded to the ICE Headquarters Threat

Analysis Section (TAS) for additional unclassified and classified record checks. TAS results, if any, will be posted to appropriate TECS cases through Reports of Investigation.

TSA has requested that ICE notify the local Field Security Directors (FSDs) of any enforcement action and that ICE make all efforts to recover the employee's SIDA badge. If ICE will not hold the badge as evidence, TSA requests that the SIDA badge be turned over to the FSD. Attachment "A" represents the list of FSDs for the airports affected by Operation Jet Stream.

All investigative activity, interviews and arrests stemming from Operation Jet Stream are to be thoroughly documented in both TECS and via a Significant Incident Report (SIR) submitted through the Significant Event Notification (SEN) system to the attention of Division 1, National Security Investigations, Critical Infrastructure Protection. Pursuant to the March 2003 memorandum from Assistant Secretary Garcia, all SIRs are required no later than 24 hours after an arrest. When completing SIRs in SEN, reference Operation Jet Stream in the Report Title field.

In keeping with the objectives of Operation Frontline, all offices are encouraged to work with their local U.S. Attorney's office to seek criminal prosecutions of those persons found to have gained access to secure areas through the use of fraudulent documents or false statements.

Although the 53 current target folders generated by this initiative only impact the SAC or RAC offices covering the 13 airports listed in the attachment, this message is being sent to all SAC offices because it is an ongoing initiative that may eventually impact all offices.

Please direct any comments or questions relating to this memorandum to CIP Section Chief Rick Burgess, National Security and Threat Protection Unit, at 202-616-7487.

Office of Investigations

U.S. Department of Homeland Security
425 I Street, NW
Washington, DC 20536

U.S. Immigration and Customs Enforcement

JUL 28 2005

MEMORANDUM FOR: SPECIAL AGENTS IN CHARGE

FROM: Marcy M. Forman
Director, Office of Investigations

SUBJECT: Approval of Worksite Enforcement Operations

This memorandum removes the requirement that Headquarters, Office of Investigations, approve worksite enforcement investigations targeting non-critical infrastructure employers.[1] Special Agents In-Charge (SACs) may now initiate these investigations at their own discretion, consistent with the regulations contained in 8 CFR 274a.9(b) and the general guidance set forth below concerning targeting priorities.

The size and geographical distribution of the undocumented worker population requires that each SAC office develop targeting criteria to ensure that resources are deployed against the highest priority threats to national security and public safety. Mindful of the fact that the threat situation in each SAC area of responsibility is unique, worksite enforcement investigations should be initiated to address the following two national priorities:

1. ***National Security:*** These investigations are generally predicated upon the threat to national security posed by unauthorized workers employed in critical infrastructure related facilities and do not necessarily target specific employer violations.

2. ***Public Safety:*** These investigations focus on *employers* involved in criminal activity or worker exploitation. This type of worksite enforcement investigation will often involve alien smuggling, document fraud, or other criminal or substantive administrative immigration or customs violations having a direct nexus to the employment of unauthorized workers. In all criminal worksite enforcement investigations there should be a concurrent financial investigation since the primary purpose of illegally employing unauthorized workers is to maximize profits.

Worksite enforcement operations and program accomplishments continue to receive intense scrutiny from Congress and the media. Please ensure that the predicates for your worksite enforcement program activities can be sufficiently articulated in terms of the national priorities specified above. Questions or comments concerning national worksite enforcement policy may be directed to the Headquarters Worksite Enforcement Unit Chief, William Riley at 202-305-3392.

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[1] INS HQOPS Memorandum 50/18: Worksite Enforcement Investigations April 24, 2003

Mr. SHAYS. Mr. Schoch, how many employees do you have?

Mr. SCHOCH. ICE has 5,600.

Mr. SHAYS. Right. And they are located in how many places?

Mr. SCHOCH. We have 26 field offices.

Mr. SHAYS. When we combined this office into one, did we maintain the same number of employees and just give them to the agency or did we weed out a number along the way? In other words, when we put A and B together, do you have the same number?

Mr. SCHOCH. I would say within, you know, maybe 100 or plus or minus, there's generally about the same number.

Mr. SHAYS. You know when you read about what have been the legacy, the drugs, financial dealings, general immigration, smuggling, human trafficking, document fraud, worksite enforcement, I look at that and I say that is pretty serious stuff, so logically you don't want to give up on them. But I am wrestling with why it has to take a long time to begin to break out of this legacy and begin to think anew and act anew. That is what I am wrestling with, and so explain to me why that is a challenge. Is it old cases that stay on the books? Weren't you able and aren't you able to just simply say, you know, we are going to devote more time in this way, and is it that they don't have proper schooling? What is it?

Mr. SCHOCH. Do you mean toward national security types?

Mr. SHAYS. Absolutely. That is what I mean.

Mr. SCHOCH. I think because, and while we appreciate the GAO study, we take exception to some of their findings, again, critical infrastructure type cases were not included in that 10 to 15 percent number that they arrived at. The case on the tunnel, for example——

Mr. SHAYS. But basically, both the Inspector General and GAO pretty much come to the same conclusion; agreed?

Mr. SCHOCH. I don't know if they reached the same conclusion on our focus on national security.

Mr. SHAYS. Well, why don't we have them to explain?

Mr. STANA. Well, I would start off by saying we stand by the number. In fact, there was a survey done of actual ICE investigators on how many of their cases actually involved a national security nexus, and we could argue about how well the survey was done, but the fact is that the agents themselves characterized it as far less than 10 to 15 percent.

Mr. SHAYS. OK.

Mr. STANA. So we can play with that——

Mr. SHAYS. So you felt you were being generous?

Mr. STANA. No, I think what we used information that on was text, and we made a point at one time that it was far lower, but at the end we weren't really satisfied with the methodological rigor that was used to survey the agents or the investigators themselves, so we will, for the sake of discussion, we will say it is 10 to 15 percent, but just know that counts what—how you characterize a case, not necessarily case results.

Mr. SHAYS. OK. And by case results, you mean what?

Mr. STANA. Well, I mean if you start off an investigation based on a tip that something may involve a terror organization, and you get into it and you find out no, it is something less than that. It still may be categorized for the purposes of the management sys-

tem as having a nexus to national security, but at the end of the day, it really does not. I'm not saying that is all of their caseload, but it is a substantial amount of their caseload.

Mr. SHAYS. Mr. Skinner, how do you and Mr. Stana disagree or do you disagree on your analysis? Where would you be different?

Mr. SKINNER. Well, I can't say we disagree, because we didn't do an analysis per se of how much time was being spent on national security or terrorist activities versus the more traditional interdiction——

Mr. SHAYS. Right.

Mr. SKINNER [continuing]. Activities. However, during the course of our review, in our interviews with over 600 individuals out the field, we did learn that the ICE is a big participant in the Joint Federal Terrorist Task Force. As a matter of fact, throughout the country, they participate on this. But there was also a degree of frustration and that is why invest so much of our time and resources in a terrorist investigation when in the long run, it is going to be turned over to the FBI. So there is this institutional competition that exists as to who has primacy for these investigations. I know there was frustration voiced in our interviews with many of these agents out there that they were not inclined to get real excited about these cases, knowing that if they invest any time in these cases, they are going to be turned over to the FBI.

At the same time, those that we interviewed were very enthusiastic about the terrorist task force that exists across the country, and ICE participates very, very—or a major player in all those task forces as well as other law enforcement agencies.

Mr. SHAYS. What logically do all three of you think it takes an organization like the Department of Homeland Security to try to benefit from the synergies that occur when you bring disparate groups that have a lot of commonality, but were in different agencies and now they are together? I sometimes feel like we are criticizing DHS without really being certain that we are accurate. I mean are you generally in your other work seeing some benefit to this bringing together into this agency, admittedly 180,000 people?

And, if so, would you say that ICE is ahead of schedule compared to others or behind, not schedule, is behind others in beginning to benefit from the creation of this new office? I mean we created a lot of new offices. We brought a lot of people together. Is ICE ahead of the curve or behind? Are they ahead of most? Are they behind most? Are they somewhere in the middle? How would you describe it?

Mr. STANA. I will start with me. I would say there was a benefit to bringing the groups together, if for no other reason than it provided a focus and a nexus for investigations on national security and terrorism, and I think there is a value there that you don't see everyday, but the kinds of cases that Bob Schoch talks about in his prepared statement underscore the benefit of bringing them together.

Second, I would say with respect to ICE, of all the components of DHS that I have been——

Mr. SHAYS. Right.

Mr. STANA [continuing]. Examining, I think they had the longest way to go. If you look at CBP, they have put together two units

that had basically a similar function or a function that meshed a little bit better. The Coast Guard came over, you know, in one piece. Secret Service came over in one piece. FPS came over. ICE came together where they had to spend an awful lot of time merging disparate cultures and functions. Even the agents themselves weren't even graded the same, so you had to get over lots of personnel issues, management information issues, and I think for the first couple or 3 years, they paid a price for that.

Like I said earlier, I think the best thing we can do right now is let the agency mature; let it stabilize. It has new leadership. Hopefully, it will be strong leadership to take care of the kinds of management problems we have talked about.

Are they on schedule? Probably. Most people think that it takes 5 to 7 years, and the kinds of coordination mechanisms that Bob mentioned are a step in the right direction. We think with more emphasis on identifying the vulnerabilities they ought to be addressing, they would be in much better shape.

Mr. SHAYS. Great. Thank you. Mr. Skinner.

Mr. SKINNER. I tend to agree with Mr. Stana. For one thing, I think the synergy that is brought to the table by forming the Department of Homeland Security and the ICE and CBP can have a tremendous impact on our ability to attack terrorism as well as our legacy activities. But I think we are nowhere near where we should be. I agree that CBP came out of the chute a lot faster. They were better organized. They implemented a one face at the border, and they had the funding to support their activities; whereas, ICE started in the hole. They immediately had budget problems, accounting problems, and they had severe cultural problems, those that were the investigative people as we alluded to earlier are accustomed to investigating human trafficking. They don't want to do anything else—versus those that are accustomed to investigating narcotics trafficking. It is very hard to break them out of that mold to do other things. They have a long way to go.

Are they where they should be? That is hard to tell. Again, I think they started in the hole——

Mr. SHAYS. No, basically, they are not where they should be, but you think they are getting there.

Mr. SKINNER. Yes, I do.

Mr. SHAYS. OK. Mr. Schoch, would you have any comments on anything we have——

Mr. SCHOCH. I would, sir. I think I would look at the benefits, and having one border security investigative agency I think is the biggest benefit that I have seen, having been a member of INS for 13 years. And the financial expertise, in particular, the former Customs had used for years to combat, you know, drug cartels, that now and almost immediately was applied to the legacy INS type human trafficking, human smuggling, organizations, identity benefit fraud. We are not just going out and arresting the person. We are looking at their assets and really hurting them in the pocketbook, where the financial criminal gain is at.

Also, what was mentioned is we weren't co-located different disparate grades, and the budget. I think a lot of those things are beginning to come together and I think I personally believe that we

are heading in the right direction as an agency, with new leadership and so forth.

Mr. SHAYS. Thank you, Mr. Schoch. Mr. Van Hollen, do you have any last questions? As much as time as you want.

Mr. VAN HOLLEN. Thank you, Mr. Chairman. Yes, I have a question for Mr. Schoch regarding the extent to which ICE is using its authority in terms of admitting people to the country to exclude individuals because they may espouse political positions that the administration does not like. We are going to have testimony a little later from a representative from the ACLU and unfortunately I have another meeting, so I am not going to be able to hear that. But I would like to get your response to that. I understand that as part of the Patriot Act, in 2001, the Congress included a provision that allows people to be excluded if they have essentially been encouraging people to support terrorist activities overseas. I understand that is the provision in the law. But I do want to focus on a particular case which they raise in their testimony of Professor Ramadan and ask you specifically on what grounds, on what basis, specifically, did you exclude him from coming to the country?

Mr. SCHOCH. Well, first of all, let me just try to clarify a couple things. The Customs and Border Protection makes determinations on admissibility. Their inspectors are on the front line making those determinations of whether or not somebody has the lawful right to be admitted into the United States. The Ramadan case in particular is being litigated now at the Department level I believe, and I am not at liberty to even discuss that. Any ICE investigation that we conduct, and Mr. Skinner pointed this out, we have actually the largest number of ICE agents, of agents, that contribute out of any Federal agency to the Joint Terrorism Task Force. We have almost 250 ICE agents on the Joint Terrorism Task Force. That is only second to the FBI. Any investigation that we come into that is open, where we believe there is any type of a threat to our national security—terrorism and so forth—potential individuals can get on watch lists; and, therefore, that watch list could trigger some type of an admissibility issue.

But as far as Ramadan, I can't with specificity, I cannot speak on that, because that is at the Department level as well as CPB makes those determinations on admissibility into the United States.

Mr. VAN HOLLEN. All right. Apart from being placed on a watch list, and as I understand your testimony, you can't comment today as to whether or not he was on a watch list; is that correct?

Mr. SCHOCH. That is right.

Mr. VAN HOLLEN. OK. But apart, just, you know, theoretically, apart from someone being placed on a watch list, is it the policy of ICE to deny anyone entry in the country based on their expression of political views other than someone who may have, you know, espoused terrorism?

Mr. SCHOCH. I think any of the decisions that are made in any of those areas are coordinated with our council and those again, the final admissibility decisions are made by Customs and Border Protection. ICE doesn't make determinations of admissibility, you know because the investigators are not, you know, at the front line as the inspectors are making those determinations.

Mr. VAN HOLLEN. All right. So that is in the other——

Mr. SCHOCH. That is correct.

Mr. VAN HOLLEN [continuing]. Agency that we have been talking about today.

Mr. SCHOCH. Right.

Mr. VAN HOLLEN. Right. Thank you, Mr. Chairman.

Mr. SHAYS. Thank you, and we are going to just have counsel ask one more line of questions, and then we are going to get to our next panel.

Mr. HALLORAN. Yes. If you could talk a little more about the active versus passive way in which ICE determines the national security nexus, the kind of the definitional issue that you disagree with GAO about a little bit. So the question might be better put how do you move from the case-by-case or line of business analysis of national security to a more comprehensive assessment of vulnerabilities that you need to address by proactively applying resources to them.

I mean you were going to mention before the tunnel case, and its national security implications. But nothing in your testimony says you had information at hand that says it was a national security threat; it was a drug route primarily; is that correct?

Mr. SCHOCH. Right.

Mr. HALLORAN. And so you kind of take credit for the weather there, and say that it could have been used for national security. So how do you move from kind of a what I think you would have to agree is in some respects a reactive posture to finding national security implications in cases, actually focusing resources on what does have a national security threat?

Mr. SCHOCH. I will give you an example specifically proactive. I manage the Arms and Strategic Technology Unit, ICE has the broadest export authority of any Federal agency, of any law enforcement agency. We look at violations of technology, very technical technology leaving this country that has to have an export license, by Commerce, for example, and also our military equipment—generation three night vision, for example or F–14 parts. We conducted in the fall of this year, we began and initiated a comprehensive—through all the 26 SAC offices a threat assessment to identify the resources that we are putting toward that program in the field, the threat that the SAC offices each felt that what were the threats, what were the vulnerabilities, and again very similar to how I mentioned the worksite was done, we worked in collaboration with the field offices and now, as a result, we have created different adjustments in resources in certain SAC offices as the result of that. More resources had to be put toward those investigations, as well as now we are driving national initiatives in certain areas as a result of that threat assessment. Very proactive, driven by headquarters, and that again, just to kind of exemplify some of the things that we are doing.

Mr. HALLORAN. Thank you.

Mr. SHAYS. Is there anything we need to put on the record before we go to our next panel? Is there any question you wish or happy we didn't ask that I would like you to ask? Nothing? OK, gentlemen. Thank you very, very much.

Mr. SHAYS. Our second and last panel is Dr. Joseph Ryan, Chair and professor of criminal justice and sociology at Pace University; as well as Ms. Caroline Fredrickson, director, ACLU, Washington Legislative Office; and Mr. Joseph Webber, Special Agent in Charge, Retired, Bureau of Immigration and Customs Enforcement, U.S. Department of Homeland Security.

By the way, I have my jacket off. If you gentlemen would like to take your jacket off as there is no TV here, we can relax a little bit. If you would like your coat off, feel free; your jacket off, you are more than welcome to. Ma'am, as well.

[Witnesses sworn.]

Mr. SHAYS. Note for the record, our witnesses have responded in the affirmative, and we will start with you, Dr. Ryan, and thank you all three of you for being here.

STATEMENTS OF JOSEPH F. RYAN, PH.D., CHAIRPERSON, DEPARTMENT OF CRIMINAL JUSTICE AND SOCIOLOGY, PACE UNIVERSITY; CAROLINE FREDRICKSON, DIRECTOR, WASHINGTON LEGISLATIVE OFFICE, AMERICAN CIVIL LIBERTIES UNION; AND JOSEPH R. WEBBER, SPECIAL AGENT IN CHARGE (RETIRED), BUREAU OF IMMIGRATION AND CUSTOMS ENFORCEMENT, U.S. DEPARTMENT OF HOMELAND SECURITY

STATEMENT OF JOSEPH F. RYAN

Dr. RYAN. Chairman Shays and members of the subcommittee, thank you for inviting me to testify.

In your invitation you asked me to provide my expertise on the application of risk management and outcome-based performance monitoring strategies that will permit the Bureau Immigration and Customs Enforcement resources to be used effectively in the interest of national security.

You also asked that I offer recommendations specific to ICE. Since I was not given access to the GAO report, my recommendations are not necessarily specific to ICE or can apply to any government agency.

In terms of identifying risk, the definition that I prefer is one used by financial managers: Risk is a chance that something will occur, come out worse than planned. In reality, police assume the same in terms of risk. They know and plan that crime will occur and hope that the worst does not occur. Unfortunately, the worst crime did occur on September 11, 2001.

One of the best ways you can conduct risk assessment is to follow Yogi Bera's maxim: You can observe a lot by watching. Yes, it can be that simple, but unfortunately in the public sector, you encounter difficulties. Risk management becomes difficult when there is no consensus——

Mr. SHAYS. Did Yogi ever say that, really?

Dr. RYAN. Yes.

Mr. SHAYS. He is brilliant——

Dr. RYAN. I did research it.

Mr. SHAYS. He is brilliant. The guy is brilliant. There are too many.

Dr. RYAN. Wonderful practice. Risk management becomes difficult when there is no consensus as to what you are trying to achieve or how you are going to manage the risk you identify. A major component in developing effective risk assessment requires leadership that recognizes the need for bringing all stakeholders together to jointly assess risk. At times, risk management requires making tough decisions. Inherent in public decisionmaking is that you cannot please all the people all of the time.

For example, the New York Times recently provided insight as to how the New York City Police Department claimed it was successful in managing large demonstrations that cause significant damage in other cities.

Unfortunately, some of these strategies have been criticized for inhibiting freedom of speech.

Intricately related to risk management is outcome-based performance monitoring. It is one of the tools that can be used to help you know if you have accomplished what you want to achieve. Outcome-based performance monitoring is, in reality, performance measurement. It involves measurement on a regular basis of the results and efficiency of services or programs. It also includes using results to make improvements in the organization and in the way it delivers its services.

Performance management is quite simple. The real challenge lies in data collection and analysis, which, in law enforcement, has been notoriously poor. Data collection in law enforcement is possible. New York City's COMSTAT effort is just one example. Key in this strategy is timely and accurate crime reporting.

COMSTAT involves meeting with commanders who are expected to be aware of local crime conditions, and to explain what they are doing to address them. If you use performance measures effectively, you can manage for results and improve the services that the organization provides and the morale of all involved.

One of the first problems encountered with productivity measures is that no one likes to be assessed. It is no longer an issue of whether performance measures should be conducted. Citizens expect results.

One of the most important strategies that a leader needs upon assuming a command position is define the agency's vision and mission statements. This statement tells you what the organization hopes to accomplish and where it should be heading. The key to overcoming resistance and effecting change is found in an agency's vision and mission statement. It is important to gauge the people most likely to be affected; that is, the ones who are already involved and who have the most at stake in getting the job done right.

You have to seek their advice and give them the power to fix what they, more than anyone else, know needs fixing.

When reframing an organization to achieve an agency's vision and mission, a leader needs to take a holistic view of all the issues that relate to the organization and implement changes that will move the agency forward.

September 11th changed the way law enforcement needs to operate. We are in a time of crisis and uncertainty. Leadership at this time in ICE is imperative.

In conclusion, I would like to offer the following five recommendations that I believe will help ICE effectively deploy its resources to enhance national security:

ICE should develop a vision and mission statement for their agency. It is important that key stakeholders be involved in determining what they should be accomplishing and how it should be accomplished. The vision and mission statements should be shared with all within ICE and training should be developed that will provide guidance on how the goals will be achieved. Once a consensus is developed for ICE's vision and mission statement, key stakeholders within ICE should begin to assess the risk they face.

An outcome-based performance monitoring system should be developed that parallels the vision and mission statement in an effort to ensure that ICE is achieving its agreed upon goals.

Last, ICE should identify key data elements that can be used as part of its outcome-based performance monitoring strategies, which can be used to improve the resources needed to enhance the national security. Thank you, and I am available for your questions.

[The prepared statement of Dr. Ryan follows:]

ONE HUNDRED NINTH CONGRESS

Congress of the United States
House of Representatives

COMMITTEE ON GOVERNMENT REFORM
SUBCOMMITTEE ON NATIONAL SECURITY, EMERGING THREATS, AND INTERNATIONAL RELATIONS
Christopher Shays, Connecticut
Chairman

March 28, 2006

Testimony provided by
Joseph F. Ryan, Ph.D.
Chairperson
Department of Criminal Justice and Sociology
Pace University
Retired New York City Police Detective

Developing Risk Management And Outcome-Based Performance Based Monitoring Strategies for the Bureau of Immigration and Customs Enforcement

Joseph F. Ryan, Ph.D.
Pace University

Chairman Christopher Shays and members of the Subcommittee on National Security, Emerging Threats, and International Relations, thank you for inviting me to testify.

In your invitation you indicated that the hearing seeks to examine how the Bureau of Immigration and Customs Enforcement's (ICE) resources can be used more effectively and cohesively in the interest of national security. You requested that I give my expertise on the application of risk management and outcome-based performance monitoring in the interest of national security.

In the interest of national security I will provide testimony that supports the implementation of risk management and outcome-based performance monitoring as a way of helping ICE to achieve mutually agreed upon goals, which will permit their resources to be used more effectively.

You also asked that I offer recommendations specific to the Bureau. Your letter referred to recommendations made in a GAO report entitled *Homeland Security: Better Management Practices Could Enhance DHS's Ability to Allocate Investigative Resources.* Since I was not given access to the GAO recommendations, my recommendations are not necessarily specific to ICE, but can apply to any government agency.

Introduction

In preparing my testimony I offer a bibliography containing references mostly to outcome-based performance monitoring, or performance measures. Literature dealing with risk management is still largely in the private sector, with scant attention being given to it in the public sector, other than information relating to emergency management related issues.

This might be attributed to the notion that the role of the law enforcement community is to deal with risks, especially crime. Therefore, they may take it for granted that everything they do is aimed at dealing with risks, although most of it is acknowledged to be reactive manner.

It might be overly simplistic to state that the private sector is more successful in recognizing risks than the public sector, there is one driving motive

that forces the private sector to face risks – profits. Businesses by nature are more focused on goal achievement and avoidance of risk simply because it translates to protecting ones monetary assets.

In teaching courses on management and conferring with colleagues who teach in various business schools, it is clear that if the private sector failed to recognize risks, they would have to face their loses and potentially go out of business. In teaching public sector management I have found that the public sector can change by experimenting with what I've labeled as the "Bloomberg Model."

This model is based on the current Mayor of the City of New York, Michael Bloomberg, who brings to city government expertise from his successful private enterprises. While it is hard to assess whether he is truly changing the way government operates, it is clear that in his efforts to change the city's Board of Education, any progress in changing an entrenched bureaucracy can be considered a success.[1]

One of Mayor Bloomberg's unique management strategies is his office, or lack of an office. Both his office and that of his Board of Education consists of open areas where staff sit in open cubicles. The goal is to ensure that all working efforts are interrelated and can be observed and heard, thus facilitating a team approach to getting things done.

I am not necessarily convinced that this is an endorsable public sector strategy, it is reflective of strategies that require involvement of key stakeholders in setting and achieving goals. This will be a key theme for both my discussions of risk management and outcome-based monitoring strategies.

My testimony will emphasize the need for government agencies to recognize risks relevant to their vision and mission, and then follow by addressing the concomitant need for outcome-based productivity monitoring. The later part is the instrument that will help the agency know if they are achieving their mission, and avoiding agreed upon risks. I will begin my discussion with what I consider the simplistic approach to risk assessment and management. It is a logical process in which the stakeholders in any agency can easily identify the risk(s).

Risk Management

The Carnegie Mellon Institute offers a broad definition of risk management. They define it as

> the management of the environment and nuclear risks, those technology-generated macro-risks that appear to threaten our existence. To bankers and financial officers, it is the sophisticated use of such techniques as currency hedging and interest rate swaps. To insurance buyers and

> sellers it is coordination of insurable risks and the reduction of insurance costs. To hospital administrators it may mean 'quality insurance.' To safety professionals it is reducing accidents and injuries.[2]

From these various perspectives on risk management, the preferred definition of risk for use in this testimony that most closely matches the goals of the law enforcement community in its broadest context (i.e., federal, state and local) is that used by the financial industry. Risk is defined for financial managers as "the chance that something will come out worse than planned."[3] Finance managers know and plan for risks and hope to avoid the "worse." Police assume the same in terms of risk. They know and plan that crime will occur and hope that the worst does not happen (i.e., their reason for existing); unfortunately the worst crime did occur on September 11, 2001.[4]

The reason for choosing the financial community's definition of risk is because it brings with it a consensus as to what is at stake; that is, monitoring assets, or not losing money. To avoid such risks, one would recognize the value of investing wisely, and where appropriate, to have insurance to cover potential losses.

Similarly in the law enforcement community there is recognition of risk; that is, protection of life and property. While this risk might not be as clearly articulated as it is in the business world, there is the inherent recognition that society needs law enforcement to ensure that crime (hopefully) does not occur. Toward this end, there is a consensus that the goal of law enforcement should be to protect life and property, prevent crime, and apprehend offenders. From my experience, I will offer examples of risk management and how it was effectively used to prevent the worse from happening.

Understanding Risk Management in Law Enforcement

During my time with the New York City Police Department (NYCPD), twelve years were spent within its Inspections Division. This Division was implemented in 1972 in response to the corruption uncovered by the Knapp Commission. Our anti-corruption activities included covert observations of police patrols, inspection of police records, review of crime statistics, and other relevant items that were reflective of the tasks of the unit being observed.

The Inspections Division is responsible for ensuring that all units of the NYCPD were "doing what they were supposed to be doing." While this experience relates more to outcome-based performance monitoring, one example will demonstrate the clear interrelationship between risk management and knowing whether you are accomplishing set goals by implementing outcome-based performance monitoring strategies.

This one example relates to our inspection of patrol vehicles for mandatory equipment. Depending on the location of the precinct, at the minimum each patrol car should have traffic cones; if a highway dissects the precinct, then flares are required; and if a body of water was connected, then a life preserver is also mandatory equipment.

The risks involved are quite clear; that is, if you were to respond to a report of a person drowning, it would be worthwhile to have a life preserver. The reality is that an officer might never encounter the need to save a drowning person, but if the worse did occur and there was no life preserver, the situation could be compounded in that two people might drown (the victim and the officer). Thus, our inspection of these patrol vehicles served to reduce the risk of a worst outcome.

While with the NYCPD and transitioning to a new career as a professor at Pace University, I was awarded a "visiting fellowship" with the National Institute of Justice, the research branch of the U.S. Department of Justice. During this time of 1993 to 1996, my task entailed chairing a planning/advisory group for the 1996 Summer Olympics in Atlanta, Georgia. This group consisted of experts from law enforcement at all levels of government. Our main objective was to assist law enforcement agencies in assessing risks that might be encountered in hosting approximately 2 million people during the 17 days of Olympic events. Several examples will illustrate the simplicity of accomplishing risk management, or in the words of Yogi Berra, "You can observe a lot by watching."

One of the more noteworthy examples involved the City of Conyers (GA) where the Olympic equestrian events were to be held. The city manager, the former chief of police for the City of Conyers, saw the need for his officers to develop insight on how to manage such activities and sent two officers to England; a country known for its history of handling equestrian events.

The lessons learned from their travels were simple: to minimize risks they realized that the crowds for this event were more of a genteel nature and would not require an inordinate amount of security personnel. Personnel were then strategically placed where they might encounter problems, such as, identified locations along the steeplechase route.

Another strategy took place in 1995 where the planning/advisory group attended the Super Bowl to observe how to manage, or move large groups of people. The simple strategy utilized was what is considered a "target hardening" strategy;" that is, to use large planter boxes in rows, strategically placed that would keep the flow of pedestrian traffic going in desired directions. This accomplished the goal of pedestrian movement and gave the added benefit of permitting the crowds to flow about without feeling that they were being directed. This would be an extremely important task if a mass evacuation was needed.

A possible vulnerability was observed on Lake Lanier, the site of the mile-long rowing events. Recognizing the length of this route, it was determined that the cost of fencing in all sides of this route would be costly. To address this risk a decision was again made to strategically place personnel along alternating sides of the lake within view of each other.

The planning for the 1996 Olympics was a success. The one notable exception was the bombing in the "Olympic Park." The original goal was to fence in the Park and permit limited access. However, pressure was exerted to keep the Park open to the citizens of Atlanta, since it was their city hosting the event. An open park obviously increases the risk.

How to Assess Risks in Law Enforcement

There is no magic to managing risks. What is required is a simple agreement from stakeholders as to what the risks are, and what can be done to first hopefully prevent the "worst" from happening, and if not to prevent, to minimize the extent of what might happen. At this point it is important to acknowledge who the stakeholders are.

For the purpose of this discussion, one might hypothesize that if ICE were to assess risks related to its "business," the stakeholders should be chosen from all levels of ICE, and it should also include other government agencies that are impacted by ICE's activities, such as other federal, state and local law enforcement agencies.

Closely related to risk management is the need to measure for results, which will be treated as part of the outcome-based performance monitoring strategies that I will address later. What is important at this point is the recognition of the need for data that will facilitate knowledge on how to avoid risks. For example, data relating to rape occurring on the street at nights has never (not in any of the research I did for NYCPD) disclosed a rape occurring when another person was present. Thus the simple risk avoidance strategy that can be deduced from this is that a woman should always have someone with her during late night hours.

DHS has clearly set the stage and model for recognizing risk management by acknowledging four tasks needed to face the reality of "when" the next attack will occur. To paraphrase their mission statement as it relates to risk management strategies, it would read as follows: hopefully terrorism can be **prevented**; if we are not able to prevent it, then we should be **protected** (e.g., target hardening); and if we are attacked we should have strategies in place that will permit a rapid **response** to minimize the extent of damage and injury; and lastly, we need be able to **recover** as quickly as possible.[5]

As noted above, a major component to developing effective risk assessment requires leadership that recognizes the need for bringing all stakeholders together to jointly assess risks. Carnegie Mellon provides a framework of seven principles to accomplish risk management: global perspective, forward-looking view, open communication, integrated management, continuous process, shared product vision, and teamwork.[6]

While all seven principles might not be appropriate to the public sector, the key elements that an effective leader must facilitate are: open communication, integrated management, a shared vision, teamwork, and recognition that risks assessment is a continuous process. This theme is common throughout the literature on successful organizations, as is captured in the acknowledged book on quality management; that is, *In Search of Excellence*.[7] Excellence requires that everyone be involved and that all tasks be accomplished with excellence as the standard.

A key factor in developing risk assessment is the intricately related development of vision and mission statements. I will address this topic under my discussion of outcome-based performance monitoring strategies. It is important to re-emphasize an agency's vision and mission because this is a major clue as to where to begin one's assessment of risks.

Concerns in Assessing and Managing Risks

There is a significant need for guidance in the public sector concerning implementing risk management strategies; that is, there are a number of concomitant potential negative outcomes brought on by what can best be described as a series of "balancing issues." One definition uncovered for risk management for public officials notes that it "is the process of making and carrying out decisions that will minimize the adverse effects of accidental losses upon a public entity."[8]

As noted earlier, one of the goals of law enforcement is the protection of life and property, which would likely be an issue in dealing with large demonstrations. The risk involved is that if strategies are not employed to control demonstrations, significant damage to life and property can occur as they did in Seattle during the World Economic Forum, or in Oakland (CA) at an anti-war demonstration.

In Oakland the police were warned that "terrorists or self-described terrorist" might disrupt the anti-war demonstration. With the police being on "edge," they fired "wooden dowels, bean bags and rubber pellets," resulting in, "58 people (being) injured." The end result, or risk, was a $2 million settlement with the protestors.[9]

In the context of risk management strategies, the New York City Police Department sought to prevent similar disruptions from occurring. Taking what they believed to be a "proactive" approach, police commanders staged "...'massive amounts' of armored vehicles, prisoner wagons and jail buses in view of the demonstrators,..." (hoping that this) would cause the demonstrators "to be alarmed." They also engaged in what was described as a pre-emptive "seizure of demonstrators on Fifth Avenue who were described as 'obviously potential rioters'", and used "...undercover officers to infiltrate political gathering and monitor behavior," as well as "distribute misinformation within the crowds." [10]

In court documents released as part of a lawsuit, "New York City Police commanders candidly discuss(ed) how they had successfully used 'proactive arrests,' covert surveillance and psychological tactics at political demonstrations ..., and recommend(ed) that those approaches be employed at future gatherings."[11]

The balancing issues are clear in these risk management strategies. The police believe they were successful in preventing risks from occurring, while lawyers for the demonstrators argued that, "the police tactics 'control and curtail the lawful exercise of First Amendment activities'." The lawyer defending the demonstrators stated that the "show of force sent a deliberate warning to people expressing their opinions. 'The message is, if you turn out, be prepared to be arrested, be prepared to be sent away for a long time,...It sounds like something from a battle zone'."[12]

Hoping for the worse not to occur, law enforcement must be prepared to acknowledge and develop strategies to manage risks. Obviously a balancing of multiple issues arises: protecting life and property while ensuring public support of their mission.

Outcome-based Performance Monitoring

To address "outcome-based performance monitoring," one has to define what it is. It is performance measures. It is assessing for whether what you want to achieve is so achieved, such as preventing identified risks. It is outcome measures; it is test results; it is assessment; it is everything that we don't want to be told about ourselves, unless you know you are great and want evidence to prove that you are.

Everyone is in the business of trying to measure things, such as schools "testing whether toddlers in Head Start know their letters or high school students are making progress in reading and math,"[13] as well as my University trying to assess learning outcomes, especially since today students are paying dearly for their college education.

Harry Hatry offers one of the clearest definitions of performance measurement: it is defined as "measurement on a regular basis of the results (outcomes) and efficiency of services or programs."[14] Hatry has added to this definition the need for both public and private agencies not just to measure, but to manage for results;[15]that is, to use the results to make improvements in the organization or in the way it delivers its services.[16]

Besides the obvious reason for outcome based performance monitoring, there is a growing awareness by the general public of the need for better and more responsible government, with citizens now getting attention as "customers." In 1998 one of the first books to address this issue was entitled, *Holding Government Bureaucracies Accountable.*[17] Later in 2000, a poignant book appeared with the title, *Does Your Government Measure Up?: Basic Tools for Local Officials and Citizens.*[18]

How to Conduct Outcome-based Performance Monitoring

Conducting outcome-based performance monitoring is quite simple. In most instances all you need to do is figure out what you want to measure and collect relevant data. For example, if you want to increase police summons activity all you need to do is collect data to show the percentage increase from one period to the next. Unfortunately, this is what many organizations do and in doing just this simple process, they are missing an opportunity to effect major changes. And having a police leader tell the community that they gave out 50 summonses at a location of a rape does little to assure the citizenry that the problem is being addressed.

While I make it sound as if outcome-based performance monitoring strategies is a simple process, the challenge lies in data collection and analysis. Data collection in law enforcement has notoriously been poor. The FBI's efforts to entice some of the more than 19,000 local law enforcement agencies to use NIBRIS (its revised method for defining crimes across jurisdictions), is significantly behind schedule. Lacking a firm data set as offered by NIBRIS, many of the sites that I have visited have crime reports containing minimal data that can be inputted in a records management system for analysis.

The foremost attempt to use data effectively is NYCPD's Compstat strategy.[19] Key in this strategy is a unit within the department that is responsible for "timely and accurate crime reporting" (which is the title of the unit). With this timely and accurate crime data, monthly meetings are held with local precinct commanders, and not only are they expected to be aware of local crime conditions. More importantly, they need to be prepared to explain what they are doing to address them.

I support Hatry's belief that if you use performance measures effectively, you can manage not only for results, but improve the services that the organization provides. I also strongly argue that if performance measures are implemented in the correct way (the correct being that all agree on what is to be measured to achieve the agency's mission), they will also improve the overall morale of all involved: success improves morale, while failure can have the opposite effect. The key to effective use of performance measures and to changing the organization, is good leadership.[20]

One of my many favorite texts on management is entitled *Reframing Organizations: Artistry, Choice and Leadership*.[21] Its main theme is that when reframing an organization the leader needs to be an artist with a holistic view who intuitively knows the right choice for the organization. If you move to another organization, you should not necessarily bring with you the same choices that you used to reframe your previous one. You need to restart the process each time.

William Bratton, the current chief of the Los Angeles City Police would be my candidate for an artist. To date he has been effective in the various chief positions he has held (Boston Police, NYC Transit Police and NYCPD). One of the strategies that he uses is what I, and a colleague at Pace University (Dr. Joseph Pastore, professor of management), would label as a "walkabout manager."

A walkabout manager does not limit presence to headquarters, rather it requires (in this instance) visits to precinct station houses and greet line officers. The net result of this is that the officers feel the leader cares about them and that he is one of them. At the end of the day they go home and tell their families that "the chief came out to see us." If you want people to follow you and help you achieve your goals, you need to get their buy-in.

One of the most important strategies that a leader needs upon assuming a command position is to find the agency's vision and mission statement. This statement will tell you what the organization hopes to accomplish and where it should be heading. If there is no vision and mission statement, then it is imperative that one is developed. Without this tool, your agency is going to miss the opportunities to recognize risks and fail to achieve its outcomes.

A vision is view of where you are going, and the mission tells you how you are going to get there. Experience has shown that poor managers are the ones who "plunge into a minefield without knowing where the explosives (i.e., in this instance the "risks") are buried—they launch new initiatives with little or no effort to map the fields."[22] As Bolman and Deal note, "Effective leaders help establish a vision, set standards for performance and create focus and direction for collective efforts."[23] They concluded that

> One of the most powerful ways in which leaders can interpret experience is by distilling and disseminating a vision—a persuasive and hopeful image of the future. A vision needs to address both the challenges of the present and the hopes and values of followers. Vision is particularly important in times of crisis and uncertainty.[24]

September 11, 2001 changed the way law enforcement needs to operate. We are in a time of crisis and uncertainty. Leadership at this time in ICE is imperative. I can only assume that the GAO Report and these hearings are focused on assisting ICE improve its delivery of service to enhance its strategy in ensuring national security.

In my travels to various police agencies during my evaluation of the COPS Program,[25] I encountered one agency that had implemented a vision and mission statement: the San Diego Police Department. SDPD's vision and mission statement was developed using a number of focus group meetings hosted by an outside consulting agency and involved all key stakeholders, in this instance, it included members of the community, other government organizations, patrol officers and command staff. Once the vision and mission statement was formulated, every officer and staff member was given a pocket size laminated card and a copy was also conspicuously posted in each police facility. A copy of their vision and mission statement is on their web site and is attached to this testimony (see Appendix A).

Upon our follow-up visit two years later to the SDPD, we asked the chief if they were still using their vision and mission statement, and if so, was it still relevant. The chief's response was that not only were they using it, they brought back the outside consultant agency to reconvene the focus group meetings to see if the two year old statement was still current to the changing needs of their community. All in the agency agreed that it was still applicable and that they will continue to revisit it every two years. In the words of the police chief, "a vision and mission statement is a living view of where they need to be heading."

The example set by the San Diego Police Department embodies the essence of text that I mentioned earlier, which is more than 20 years old, yet as relevant today as it was in 1982. *In Search of Excellence: Lessons Learned from America's Best-Run Companies,*[26] argued that it is the changing and improving of small things and controlling for the constant smooth running of them that will lead to bigger changes.

When implementing community policing strategies in New York City in 1984, we encouraged officers to tackle "small wins." We knew that they were not going to reduce crime overnight, but they could accomplish small tasks such as organizing a community to clean up littered lots. This strategy was also seen in various police agencies that I visited around the country when they, too, began

implementing community policing.[27] It is the small things that matter and lead to major changes.[28]

One of the key strategies that Bill Bratton pioneered when he became the chief of the NYC Transit Police was to have officers focus on minor crimes, such as fare-beaters and graffiti artists. These minor arrests resulted in defendants being arrested and found to be in possession of dangerous weapons, weapons that more than likely were to be used in committing more serious crimes.[29] In this instance Bratton became the vision creator,[30] and in turn significantly achieved his goal of reducing crime in the NYC transit system.

A common difficulty that is encountered in law enforcement is the inability to capture comparable data. I live in a county in New York State with 43 separate police agencies, which is also served by a county police department and by the state police. When I asked one of my graduate students to conduct a comparison analysis[31] of his police agency with two or three other communities, he was unable to find any that had similar data points of information (e.g., they had a different definition of burglary or auto thefts, and some information was collected by the state police in a completely different format).

When data is lacking and an agency finds itself in a unique position of not finding data that is comparable, a useful strategy is called benchmarking.[32] One benchmarking strategy is to find a similar agency that is attempting to accomplish similar goals. In this instance one might suggest that ICE could find another government agency that employs investigative strategies and examine/compare how success is measured.

Concerns in Conducting Outcome-based Performance Monitoring

No one likes to be assessed. In my experience with NYCPD, successful outcomes from an evaluation would likely lead to promotion, and obviously the other side is demotion and or loss of a command. This fear results in resistance. It was not uncommon when our covert observations were uncovered to be pulled over by a police patrol unit with flashing lights asking for us to identify ourselves. Once identified, the officers would alert their colleagues of our presence over the radio.

It is no longer an issue of whether outcome-based performance monitoring should be conducted. We are now living in a time when citizens as customers expect government agencies to deliver services for which they are paying. "Increased taxation without services" will be the crying call. In one police agency in my county where the police did not get along with the community, the town board voted no funding for the police department, and in 1999 effectively shut the police department down. The community simply turned to services they had been paying for in addition to the local police, that is, the county and state police.

Another factor that plays into the need for not only outcome-based performance monitoring, but for risk assessment is the issue of civil liability. Lawsuits against police have risen significantly over the years. In the period of 1967 to 1971, lawsuits increased 124%, many of them for poor police practices.[33]

The key to overcoming resistance and effecting change is how you develop your vision and mission statement. It is important that "you ... engage the people most likely to be affected—the ones who are already involved and who have the most at stake in getting the job done right. You have to seek their advice and give them the power to fix what they—more than anyone else—know needs fixing."[34]

Another important key to effecting change is once the vision and mission statements have been developed, the information needs to be shared with all (as it was with the San Diego Police Department), and training needs to be implemented that will provide insight to all as to how the tasks will be accomplished.

Recommendations

In offering recommendations it is important to note again that I was not given access to the GAO Report concerning ICE, therefore, I am not aware of the structural problems faced by this agency, nor of the recommendations that GAO offered. My recommendations will therefore be ones that I strongly believe can be adopted by any government or private agency that wants to effectively deploy its resources, especially in this instance, to enhance national security.

1. ICE should hire an outside consultant to help them develop a vision and mission statement for their agency. In doing so it is important that key stakeholders be identified and involved in the discussion as to ICE's vision and mission; that is, what ICE should be accomplishing and how it should be accomplished.

2. Similar to the SDPD, once this vision and mission statement is formulated, it should be shared with all in ICE and training should be developed that will provide insight on how goals will be achieved.

3. Once a consensus is developed for ICE's vision and mission, key stakeholders within ICE should begin to assess risks they face. The stakeholders need to include representatives from all levels of the agency, from front line members to command and senior staff.

4. Outcome-based performance monitoring system should be developed that parallels the vision and mission statement in an effort to ensure that they are achieving agreed upon goals.

5. ICE should identify key data elements that can be used as part of its outcome-based performance monitoring strategies and which can be used to improve the use of resources needed to ensure national security.

Thank you for listening to my testimony.

Endnotes

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[4] Thomas H. Keane, *The 911 Commission Report: Final Report of the National Commission On Terrorist Attacks Upon the United States*. Authorized Edition, 2005.
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[7] Thomas Peters and Robert H. Waterman Jr. *In Search of Excellence: Lessons from America's Best-Run Companies* (New York: Harper and Row, 1982).
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[11] Ibid.
[12] Ibid.
[13] Karen W. Arenson, "Testing Errors Prompt Calls for Oversight," *New York Times*, March 18, 2006, A1.
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[23] Ibid. 297.
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APPENDIX A

San Diego Police Department
Vision and Mission Statement

Mission Statement

Vision

We are committed to working together, within the Department, in a problem solving partnership with communities, government agencies, private groups and individuals to fight crime and improve the quality of life for the people of San Diego.

Values

The principles upon which we base our policing are:

Human Life - The protection of human life is our highest priority.

Ethics - We will demonstrate integrity and honor in all our actions.

Crime Fighting - Our efforts to address neighborhood problems will be based on a Partnership with the community.

Valuing People - We will treat each other with dignity and respect, protecting the rights and well-being of all individuals.

Loyalty - We will be loyal to the community, to the department and its members, and to the standards of our profession.

Open Communication - We will listen to one another's opinions and concerns.

Fairness - Our decisions will be based on common sense, and will be balanced, moral, legal, and without personal favoritism.

Diversity - We appreciate one another's differences and recognize that our unique skills, knowledge, abilities and backgrounds bring strength and caring to our organization.

Mission

Our mission is to maintain peace and order by providing the highest quality police services in response to community needs by:

Apprehending Criminals

Developing Partnerships

Respecting Individuals

| Police Department Home Page | Help Us Help You | In Your Neighborhood | Forms | Top of Page |
| Crime Prevention & Education | Crime Statistics/Maps | About SDPD | Join the SDPD |

| Home | Business | City Hall | Community | Departments | Information | Leisure | Services A-Z | Visiting |
| Search | Site Map | Contact the City | Privacy Notice | Disclaimers |

Mr. SHAYS. Thank you, Dr. Ryan. Ms. Fredrickson.

STATEMENT OF CAROLINE FREDRICKSON

Ms. FREDRICKSON. Chairman Shays, distinguished members of the subcommittee, on behalf of the American Civil Liberties Union, I am very pleased to appear before you today.

The Department of Homeland Security's Bureau of Immigration and Customs Enforcement and the State Department have resurrected the discredited practice of ideological exclusion, the practice of denying visas to non-citizens whose politics the government dislikes.

I respectfully submit to this subcommittee that attempting to suppress constitutionally guaranteed freedom of speech and freedom of association is not an effective use of ICE resources. It is not in the best interest of our national security and tramples Americans' first amendment rights.

We believe it is contrary to fundamental American values regarding freedom of expression as protected by the first amendment of the Constitution for the administration to suppress the exchange of ideas between Americans and people of different national origins and dissenting beliefs simply because they are different.

Ideological exclusion is a term of art, but its impact is real. The Federal Government is excluding people to prevent American citizens and residents from participating in conferences or exchanges of ideas with people whose ideas the administration finds distasteful.

By regulating, stigmatizing, and suppressing lawful speech, the provision skews and impoverishes academic and political debate inside the United States. It creates artificial barriers. It deprives Americans of information the need to make responsible and informed decisions about matters of political importance.

In particular, I would like to draw the subcommittee's attention to the Federal Government's exclusion of Dr. Tariq Ramadan, a Swiss citizen and arguably the most the prominent and respected European scholar of the Muslim World.

The Bush administration's decision to exclude Professor Ramadan stifles intellectual exchange about Islam and the Muslim World precisely at a time when robust dialog and debate about America's international policies and commitment to freedom and peace are of extraordinary importance to our Nation's future.

Ramadan, has ostensibly, but wrongly, been excluded under a provision passed in 2001 through the Patriot Act. The provision added to the list of aliens ineligible to receive visas those who have used their "position of prominence within any country to persuade others to support terrorist activity or a terrorist organization in a way that the Secretary of State has determined undermines the United States' efforts to reduce or eliminate terrorist activities."

The ideological exclusion provision now renders inadmissible any alien who has "endorsed or espoused terrorist activity or persuaded others to endorse or espouse terrorist activity or support a terrorist organization."

While this provision is theoretically directed at those who support terrorism, news reports suggest that the government has in-

voked the provision to exclude and stigmatize prominent critics of U.S. foreign policy.

The government revoked Professor Ramadan's non-immigrant visa in August 2004 under the ideological exclusion provision, preventing him from becoming a tenured professor at the University of Notre Dame.

Until recently, Professor Ramadan lawfully visited the United States to lecture, attend conferences, and meet with other scholars. The ACLU recently filed litigation challenging his exclusion and the provision itself.

The lawsuit was filed on behalf of the American Association of University Professors, the American Academy of Religion, and the Pen American Center.

Professor Ramadan has published more than 20 books and over 700 articles on democracy, human rights, and Islam. After September 11th, he publicly condemned the attacks, telling fellow Muslims, "now more than ever we need to criticize some of our brothers and say, you are unjustified if you use the Koran to justify murder."

While he has been critical of some U.S. policies, he has never endorsed, espoused, or persuaded others to support terrorism. He has been a consistent and vocal critic of both terrorism and those who use it.

While we await a ruling from the U.S. District Court in Professor Ramadan's case, we are pursuing a Freedom of Information Act request to learn more about the administration's use of this provision to deny admission to other scholars.

We believe the State Department and other government agencies are illegally withholding records concerning the practice of excluding foreign scholars and other prominent intellectuals from the United States because of their political views.

In November 2005, the ACLU filed a lawsuit to enforce our FOIA request, and the case is pending, and the ACLU has only received some of the documents it has requested.

It is a fundamental tenet of our society that protecting free expression of ideas outweighs any theoretical benefit of censorship. The Supreme Court has affirmed the fundamental right of Americans to receive ideas. As the court wrote in 1972, "it is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail. It is the right of the public to receive suitable access to social, political, aesthetic, moral, and other ideas and experiences. That right may not be constitutionally abridged."

The suppression of speech on the basis of its content is not made consistent with American values simply because the government is using immigration law rather than some other mechanism as the instrument of censorship. To the contrary, every court to confront the issue squarely has held that the content of a visitor's speech cannot by itself supply a legitimate and bona fide reason for exclusion.

The reinstatement of the practice of excluding people from our shores because they are exercising their freedom of conscience is much too reminiscent of the McCarthy era, when thousands of Americans and immigrants were black listed.

It is our view that America's precious anti-terrorism resources should be focused on preventing another attack, not on arbitrarily excluding people who pose no threat to our government or people and actually can do so much to enrich our intellectual and cultural life.

Thank you for the opportunity to testify.

[The prepared statement of Ms. Fredrickson follows:]

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Statement of

Caroline Fredrickson

Director,

Washington Legislative Office

American Civil Liberties Union

Before the

Subcommittee on National Security, Emerging Threats, and International Relations

Committee on Government Reform

United States House of Representatives

Concerning

Setting Post-9/11 Investigative Priorities

at the Bureau of Immigration and Customs Enforcement

March 28, 2006

Statement of Caroline Fredrickson
Director, Washington Legislative Office
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Before the Subcommittee on National Security, Emerging Threats, and International Relations
Committee on Government Reform
United States House of Representatives

Concerning
Setting Post-9/11 Investigative Priorities
at the Bureau of Immigration and Customs Enforcement
March 28, 2006

Chairman Shays and distinguished members of the Subcommittee, on behalf of the American Civil Liberties Union, and its hundreds of thousands of activists, members and fifty-three affiliates nationwide, I am pleased to appear before you today to present our views on excluding people from this country based on their political beliefs.

You invited me here to help this committee understand how the resources of the Department of Homeland Security's Bureau of Immigration and Customs Enforcement (ICE) can be used more effectively in the interest of national security. As part of that discussion, I will address how we believe DHS and the Department of State have resurrected the discredited practice of ideological exclusion – the practice of denying visas to non-citizens whose politics the government disfavors. Ideological exclusion can occur either when an individual is excluded under a law that is itself directed at ideology, or when a law that is ideology neutral is used to exclude someone with particular ideas. In my testimony, I will focus on one provision of law directed at ideology about which we are particularly concerned (which I will call the ideological exclusion provision), and discuss the federal government's exclusion of Dr. Tariq Ramadan, a Swiss citizen and arguably the most prominent and respected European scholar of the Muslim world.

In 2001, through the USA Patriot ACT, Congress added to the list of aliens ineligible to receive visas those who have used their "position of prominence within any country to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities." Through the REAL ID Act, the ideological exclusion provision now renders inadmissible any alien who has "endorse [d] or espouse [d] terrorist activity or persuade [d] others to endorse or espouse terrorist activity or support a terrorist organization."

While the ideological exclusion provision is ostensibly directed at those who support terrorism, news reports suggest that the government has invoked the provision to exclude and stigmatize prominent critics of U.S. foreign policy – individuals who may have never supported terrorism and in some cases have vocally opposed it, such as Professor Ramadan.

It is our view that it is contrary to fundamental American values regarding freedom of expression, as protected by the First Amendment of the Constitution, for the administration to suppress the exchange of ideas between Americans and people of different national origins and different beliefs simply because they are different. "Ideological exclusion" is a term of art but its impact is real. The federal government is excluding people

to prevent American citizens and residents from participating in conferences or exchanges of ideas with people whose ideas the administration dislikes. I respectfully submit to this committee that attempting to suppress constitutionally guaranteed freedom of speech and freedom of association is not an effective use of ICE resources, nor is it in the best interest of national security.

The ideological exclusion provision has compromised and continues to compromise the interests of U.S. citizens and residents. By regulating, stigmatizing, and suppressing lawful speech, the provision skews and impoverishes academic and political debate inside the United States. It creates artificial barriers between people of our nation and other nations. It deprives Americans of information and debates they need to make responsible and informed decisions about matters of political importance.[1]

The USA Patriot Act changed the law in this area to prevent the entry of nationals of other countries who have used their "position of prominence within any country to endorse or to espouse terrorist activity, or to persuade others to support terrorist activity or a terrorist organization, in a way that the Secretary of State has determined undermines United States efforts to reduce or eliminate terrorist activities."[2] Our client, Professor Ramadan, does not endorse, espouse, or persuade others to support terrorism, and he has never done so. To the contrary, he has been a consistent and vocal critic of both terrorism and those who use it.

The ACLU recently filed litigation challenging the exclusion of Tariq Ramadan and the ideological exclusion provision itself. The lawsuit was filed on behalf of the American Association of University Professors, American Academy of Religion, and the PEN American Center, all of which have invited Professor Ramadan to speak in the United States in the upcoming months. They are all being deprived of the opportunity to meet with him, hear his views and engage in debate.

The government revoked Professor Ramadan's visa under the ideological exclusion provision in 2004, preventing him from becoming a tenured professor at the University of Notre Dame, a prominent Catholic university. Until recently, Professor Ramadan lawfully visited the United States to lecture, attend conferences, and meet with other scholars. In August 2004, however, the administration revoked his nonimmigrant visa under the Patriot Act amendments to the Immigration and Nationality Act. The revocation prevented Professor Ramadan from teaching at the University of Notre Dame and more generally from lecturing, attending conferences, and meeting with scholars and other residents in the United States.

Professor Ramadan's scholarship—publishing more than 20 books and 700 articles on issues such as democracy, human rights, and Islam—resulted in Time Magazine naming him one of the most influential people for the 21st Century: "the leading Islamic thinker among Europe's second- and third-generation Muslim immigrants." After September 11, he publicly condemned the attacks, telling fellow Muslims, "Now more than ever we need to criticize some of our brothers [in faith and say] 'You are unjustified if you use the Koran to justify murder.'" While he has been critical of some U.S. policies, he has never endorsed or supported terrorism. After his U.S. visa was revoked, he was invited by staunch American ally British Prime Minister Tony Blair to join a government taskforce to examine the roots of extremism in the U.K.

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1 Complaint for Declaratory and Injunctive Relief, p 24.

2 http://www.aclu.org/images/general/asset_upload_file435_24555.pdf, p. 2. 8 U.S.C. § 1182(a)(3)(B)(i)(VI) (2004) (as amended by § 411(a)(1)(A)(iii) of the USA Patriot Act (2001)).

The Bush administration's decision to exclude Professor Ramadan stifles intellectual exchange about Islam and the Muslim world at a time when robust dialogue and debate about America's international policies and commitment to freedom and peace are of extraordinary importance to our nation's future. Unfortunately, this is not the first time our country has limited our First Amendment freedoms, but Congress should take this opportunity to re-examine this policy and its adverse effect on our people and our reputation.

It is widely acknowledged that during the Cold War, both Republican and Democratic administrations used our immigration laws to exclude prominent artists and intellectuals who disagreed with administration policy. I think it is fair to say that these artists did not represent any danger to our national security, any threat to the physical security of the American people. History demonstrates that they were excluded simply because the federal government wanted to prevent U.S. citizens and residents from meeting with them and hearing their ideas.[3] The following list gives just a small sample of those scholars, writers, journalists and political figures who were excluded from the United States for ideological reasons since the early days of the Cold War:

1952 PIERRE TRUDEAU (Later to become Prime Minister of Canada)
GRAHAM GREENE (Novelist)
1953 JAN MYRDAL (Author)
1957 YVES MONTAND (Actor, Singer)
1962 GABRIEL GARCIA MARQUEZ (Novelist, Nobel Laureate)
CARLOS FUENTES (Novelist)
1966 PABLO NERUDA (Poet, Nobel Laureate)
1969 DORIS LESSING (Novelist) ERNEST MANDEL (Economist)
1971 OSCAR NIEMEYER (Architect)
1980 DARIO FO (Playwright, Nobel Laureate) and FRANCA RAME (Actress)
1982 GENSUIKYO (Japanese Antinuclear Group) and GYOTSU SATO (Buddhist Monk, Leader of Gensuikyo) ANGEL RAMA (Scholar)
1983 NINO PASTI (Former NATO Deputy Supreme Commander, Former Italian Senator)
HORTENSIA BUSSI DE ALLENDE (Widow of Chilean President Salvador Allende)
1984 MARITZA RUIZ (Leader of El Salvador's Comadres)
1985 FARLEY MOWAT (Novelist)
1986 CHOICHIRO YATANI (Professor) PATRICIA LARA (Journalist)
1990 JIM HUNTER (Union Leader)
2002 JOHN CLARKE (Organizer for the Ontario Coalition Against Poverty)
2003 TOKYO SEXWALE and SIDNEY MUFAMADI (African National Congress Activists) plus CARLOS ALZUGARAY TRETO (Scholar, Former Ambassador to the European Union)
2004 TARIQ RAMADAN (Scholar, Author) and 61 CUBAN SCHOLARS
2005 DORA MARIA TELLEZ (Scholar, Former Nicaraguan Minister of Health) FERNANDO RODRIGUEZ (Human Rights Lawyer)

At the end of the Cold War, the Immigration Act of 1990 eliminated the ideological exclusion provision regarding visitors to this country. But in 2001 the Patriot Act reinstated the power to exclude visitors based on their views, although ostensibly now limited to support of terrorism. The exclusion of Professor Ramadan demonstrates that the provision is

3 http://www.aclu.org/safefree/general/21211prs20051110.html.

being construed broadly to deny entry to people who are not suspected terrorists and do not support terrorism, but who disagree with U.S. policies.

Before the passage of the USA Patriot Act, these ideological exclusions were not based on claims of espousing terrorism but on the even more ambiguous provision dating back to 1952 allowing for the exclusion of foreign nationals who espoused "subversive" ideas.

The Immigration and Nationality Act (INA) of 1952 (also known as the McCarran-Walter Act) was a law passed by the United States Congress restricting immigration into the United States. It came into being despite strong disagreement between President Harry Truman and the House and the Senate. Truman in fact vetoed an earlier version of the McCarran-Walter Act, which he regarded as "un-American" and discriminatory.

The fact is that the provision expanded upon by the Patriot Act was born of the ignoble era in which Joseph McCarthy's red-baiting flourished until it was rejected by Congress for its deplorable smear tactics, guilt by association, and chilling of fundamental First Amendment freedoms. It is one thing to exclude terrorists and al-Qaeda operatives, and another to return to allowing the federal government to bar people who criticize U.S. policy. This is certainly reminiscent of McCarthyism. The exclusion provision was promoted by Attorney General John Ashcroft who suggested quite infamously that anyone who criticized the Patriot Act was aiding terrorists. Mr. Ashcroft told the Senate Judiciary Committee, "To those who scare peace-loving people with phantoms of lost liberty, my message is this: your tactics only aid terrorists."[4] His comments were rightly condemned by the Senate Judiciary Committee members and the press.

As Edward R. Murrow so eloquently stated: "We must not confuse dissent with disloyalty. We must remember always that accusation is not proof. We must remember that Americans are not descended from fearful men -- not from men who feared to write, to speak, to associate and to defend causes that were, for the moment, unpopular." I think we would do well to remember that sentiment, at a time like this.

Larry McMurtry, author of the "Brokeback Mountain" screenplay that won an Academy Award, spoke in a similar vein when he testified on behalf of PEN American Center in May 1989 before the Subcommittee on Courts, Intellectual Property, and Administrative Justice of the House Judiciary Committee. He said: "We believe that the ideological-exclusion provisions of the McCarran-Walter Act serve no useful purpose and cause inexcusable damage to individual rights and to the ability of the United States to champion the cause of individual liberties around the world." That remains true today.

Therefore, while we await a ruling from the U.S. District Court in Professor Ramadan's case, we are pursuing a Freedom of Information Act (FOIA) request to learn more about the administration's use of this provision to deny admission to other scholars.

The ACLU filed the FOIA request in March 2005 to gather more information about the government's use of the Patriot Act's ideological exclusion provision as well as the government's practice of ideological exclusion more generally -- a practice that has led to the recent exclusion of Dora María Telléz, a Nicaraguan scholar who had been offered a position at Harvard University. Ms. Telléz was a leader in the 1979 movement that overthrew Nicaraguan dictator Anastasio Somoza, and due to the denial of a U.S. visa, she was forced to turn down a position as the Robert F. Kennedy visiting professor in Latin American studies at Harvard University. She had traveled to the United States several times

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4 "Ashcroft Defends Antiterror Plan and Says Criticism May Aid Foes," New York Times, Dec. 7, 2001

in the past on personal visits and business trips, and said she was shocked when officials told her she was denied entry because of supposed involvement with terrorism.

Similarly, in October 2004, 61 Cuban scholars, who were scheduled to attend the Latin American Studies Association's international congress, were denied entry less than two weeks before the congress convened. According to the State Department, the denials were in keeping with the Bush administration goal of hastening a democratic transition in Cuba. Back in 2002, John Clarke, an organizer for the Ontario Coalition Against Poverty, was stopped at the customs booth at the U.S.-Canada border while on his way to a speaking engagement in Michigan. After officials checked his identification, Clarke was asked if he was opposed to the "ideology of the United States." Officials then searched his car and Clarke was forced to wait until a State Department agent drove up from Detroit to interrogate him. He was turned away after five hours.

These are just a few of a growing number of examples. When the government complies with our FOIA request, we will undoubtedly learn of more such cases. In November 2005, the ACLU filed a lawsuit to enforce our FOIA request.[5] The case is pending and the ACLU has only received some of the documents it requested.

It is the ACLU's view that the State Department and other government agencies are illegally withholding records concerning the practice of excluding foreign scholars and other prominent intellectuals from the United States because of their political views. We believe strongly that the right to hear a full range of ideas and opinions is a vital part of American democracy. It is part of the vision of American in promoting the virtues of democracy abroad. Our government should not be in the business of censoring ideas.

Freedom of expression and association are bedrock American values. Eight-seven years ago Justice Oliver Wendell Holmes captured these values in the metaphor of a "marketplace of ideas."[6] As Justice Holmes wrote: "But when men have realized that time has upset many fighting faiths, they may come to believe even more than they believe the very foundations of their own conduct that the ultimate good desired is better reached by free trade in ideas -- that the best test of truth is the power of the thought to get itself accepted in the competition of the market. That at any rate is the theory of our Constitution. It is an experiment, as all life is an experiment."

It is a fundamental tenet of our society that protecting free expression of ideas in our democracy outweighs any theoretical benefit of censorship. And the ideological exclusion of scholars from this country based on their beliefs—not based on any proof of aiding terrorists—is a physical embodiment of censorship. It is a censorship that deprives our people of dialogue with those whose views may be different but whose views may make our people more tolerant of others and make others more understanding of our culture and American ideals. The Supreme Court affirmed the right to receive ideas.[7] The Court wrote in 1972: "It is the purpose of the First Amendment to preserve an uninhibited marketplace of ideas in which truth will ultimately prevail ... it is the right of the public to receive suitable access to social, political, esthetic, moral, and other ideas and experiences which is crucial here. That right may not constitutionally be abridged ..."

During the heyday of the House Un-American Activities Committee, countless Americans were blacklisted. And the State Department blacklisted foreign nationals for their political beliefs as well. Blacklisting now seems to be in vogue, but this time it's not the State Department and it's not about communism. It's ICE and it does not even appear to

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5 http://www.aclu.org/images/general/asset_upload_file988_21801.pdf

6 Abrams v. United States, 250 U.S. 616 (1919).

7 Kleindienst v. Mandel, 408 U.S. 753 (1972)

be focused on the letter of the law as amended by the Patriot Act. Our precious anti-terrorism resources, including those of ICE, should be focused on preventing another attack – not on arbitrarily or capriciously excluding people who pose no threat to our government, no threat to our people.

Conclusion

The suppression of speech on the basis of its content is not made consistent with American values simply because the government is using immigration law, rather than some other mechanism, as the instrument of censorship. To the contrary, every court to confront the issue squarely has held that the content of a visitor's speech cannot by itself supply a legitimate and bona fide reason for exclusion. And it's not just contrary to our values as a nation; it's simply not effective to pursue a policy of censorship at our borders as a matter of national priority and national security.

Thank you for the opportunity to testify on this important issue today.

Mr. SHAYS. Thank you very, very much. Thank you, and we will now go to Mr. Weber.

STATEMENT OF JOSEPH R. WEBBER

Mr. WEBBER. Mr. Chairman, thank you very much for the opportunity to be here today to discuss the investigative priorities of Immigration and Customs Enforcement [ICE]. I retired from the agency as the Special Agent in charge in Houston in September of last year, after 32 years of service and I appreciate that opportunity to serve.

I still have a fondness for the agency, a pride in its mission, and most respect for the employees. I also have a continued interest in homeland security issues, as I was in New York City on September 11th. The U.S. Customs House was approximately 30 feet north of the North Tower of the World Trade Center. I was entrapped in Building 7 of World Trade Center and evacuated by the New York City Fire Department, and, but for their assistance, I would not be here today.

So I have a very special motivation when it comes to homeland security. It is something that at times I think is still taken not seriously.

But it is indeed an honor to be here today to be heard and hopefully in some small way have an impact on the future of ICE.

With the reorganization of government and the creation of the Department of Homeland Security, ICE was formed in March 2003, presumably for the purpose of pursuing violations of our Nation's immigration and customs laws.

However, from the onset, the agency was embroiled in controversy. Some of the difficulties that ICE encountered are not unique and not without precedent. One only has to look to the private sector and observe the problems encountered in mergers and acquisitions. Many mergers and acquisitions fail. Productivity suffers, as employees try to re-acclimate to the new environment, see new ways of doing business.

Many employees focus on what the reorganization means to them personally and where they fit in the new organization.

In addition to the normal stressors associated with a reorganization, ICE faced a significant budget shortfall, and, in my opinion, a lack of direction.

Consequently, there were no funds to offset the difficulties encountered with the reorganization. There were insufficient funds for things like cross training. There were insufficient funds for colocation of personnel, travel, fuel for vehicles. And most importantly, there was a hiring freeze.

Unfortunately, some of the events that were reported in the media were true. Vehicles were parked. Copy machines were picked up, as the bills were not paid. And there was a lack of accountability in virtually all administrative systems.

Special agents in charge received a stipend budget on a quarterly basis, not knowing if additional funds would be received. Not only were there difficulties encountered identifying investigative priorities, it was difficult to establish spending priorities due to the budget shortfall.

In an ideal environment, managers ensure that the budget is appropriately matched to its priorities. We were falling short on both counts.

As if these hurdles were not obstacles enough, the agency was continually bashed in the press. In order to establish its new identity, the agency attempted to change its name. These attempts were blocked by the FBI, and it resulted in badges and credentials not being issued for a period of over 2 years.

And even, as we heard today, the continued existence of the agency was questioned, as DHS, as we heard earlier today, conducted a study as to whether to move the ICE back into CBP.

Some of this may seem unimportant to some, but when attempting to establish a new agency, a new identity, a new culture, it is of a critical importance to convey to all employees the agency mission, priorities, and vision. Combined, these stressors have taken their toll on ICE's most valued resource, the employees and their morale.

As indicated earlier, mergers and acquisitions are difficult to manage under the best of circumstances. Needless to say, these were not the best circumstances. However, sir, I am proud to report to the subcommittee that the ICE employees continue to do a remarkable job, pursue significant cases, and perfect significant cases, and we must not overlook the administrative staffs who have done a remarkable job with antiquated administrative support systems.

It was a rather long introduction, but I think it is important before we go to the priorities of the organization to kind of understand some of the turmoil that we were going through when ICE was established.

In government service, as in the public sector, there are never——

Mr. SHAYS. To be clear, how much more do you have in your statement?

Mr. WEBBER. I am sorry, sir.

Mr. SHAYS. No. Just tell me what you have in your statement?

Mr. WEBBER. I will try to shorten it.

Mr. SHAYS. Yes. You should shorten it, but do those key points.

Mr. WEBBER. I will. OK.

ICE, as we have heard earlier, ICE's jurisdictional authority can be very broad in that it could essentially anything that crosses the border illegally, be it merchandise or people can be subject to investigation by ICE.

When ICE was formed, the exercise of addressing the agency's priorities never took place. At the second Special Agent in Charge [SAC], Conference in Philadelphia, ICE specifically asked the Assistant Secretary that we dispense with the planned agenda and go immediately to a discussion relating to the agency's mission and the agency's priorities. And the response from the Assistant Secretary was, what is it you need, Joe? A PowerPoint? All the discussion relative to the establishment of a mission statement or priorities was quashed. There was no further discussion.

Mr. SHAYS. Wow.

Mr. WEBBER. Similar things had happened along that line. In one instance, the Deputy Assistant Secretary openly criticized the

Legacy Customs managers indicating they had spent too much time on drug cases. Of course, when pressed for what is the new number, what is the appropriate amount of time to spend on drug cases and also where to reinvest the energy, there were no answers.

There were no priorities established.

As we heard earlier, I believe it is very easy to establish priorities within ICE. It calls for some tough decisions. Some poor initiatives need to come off the table. They have an excellent case management system, where you can put a priority on a case category and then track how much effort is actually being put into it. And obviously anything that impacts the safety of our citizens should be considered a class one case. And all managers should be held accountable that is where their time is invested.

A very good example of how ICE's resources could be saved is there is a program, Institutional Removal Program, where essentially illegal aliens that are prison are identified and deported after completing their sentences. I am not arguing against the initiative at all. It is something that definitely should continue. However, it is not an investigator's job. It needs to be transferred to the Office of Detention and Removal. There is a separate office within ICE, Detention and Removal, whose function is to detain and remove aliens, but yet we have agents doing that function. About 10 percent of ICE's investigative resources are performing this function.

Again, I will attempt to shorten it. The other issue, sir, that I would like to leave with you is that of jurisdiction. And there have been turf battles, both within the Department and outside the Department. The interactions between CBP and ICE, be it the Border Patrol or Inspections, have been reduced to the establishment of working groups; working out MOUs between themselves versus leadership and policy coming from the Department or from the heads of the agencies.

I was involved in an incident in Houston where we were working a financial terrorism case, and I am precluded from getting into great depth about the case, but I can tell you that it proceeded to point where we submitted an affidavit for a wiretap to Washington, DC, main Justice. In that affidavit, which it was a consensus of everyone involved that there was sufficient probable cause to pursue the wiretap, terrorism was referenced on 49 occasions. Osama bin Laden by name was referenced on three occasions, and Al Qaeda once. That affidavit stalled in Washington for a period of over 127 days.

After not being able to move that case forward, I wrote a letter to GAO, the IG from DHS, and the IG from DOJ. I heard nothing, and essentially saying that a case involving our national security was being compromised. I heard nothing from the oversight agencies. I then wrote to Senator Grassley's office. Senator Grassley initiated an inquiry. And the IGs, the response from the FBI initially there was a Dateline story. The original response from the FBI was that it was nothing more than a dispute between agencies on how to pursue a given investigation and that all terrorism leads are vigorously pursued.

When questioned on the House Judiciary by Senator Grassley, Mr. Mueller would testify that the affidavit had, in fact, been de-

layed and that there were differences in recollection of events by some of the agents involved.

To cut to the chase, in addition to the troubles that ICE is having with prioritization, it has jurisdictional issues. If ICE is not going to be able to pursue cases that relate to our national security, there is a built-in disincentive to initiate these kinds of cases. If, as we heard earlier, if the agents are going to be required to turn it over to another agency.

[The prepared statement of Mr. Webber follows:]

Statement of Joseph R. Webber
Special Agent in Charge, Immigration and Customs Enforcement (Ret.)
Before the House Committee On Government Reform
Subcommittee on National Security, Emerging Threats and International Relations

Chairman Shays, Ranking Member Kucinich and distinguished members of the Committee, I thank you for the opportunity to be here today to discuss the Investigative Priorities of Immigration and Customs Enforcement also known as ICE. I retired from the agency as the Special Agent in Charge, Houston in September of last year, I still have a fondness for the agency, a pride in its mission and utmost respect for it's employees. It is indeed an honor to be here today, to be heard and hopefully in some small way to have an impact on the future of ICE.

With the reorganization of government and creation of the Department of Homeland Security (DHS), ICE was formed in March 2003. Legacy components from the U.S. Immigration Service and the U.S. Customs Service were brought together presumably for the purpose of pursuing investigations relating to violations with a nexus to our Immigration and Customs laws. From the onset the agency was embroiled in controversy.

Some of the difficulties encountered by ICE are not unique or without precedent. One only has to look to the private sector and observe the problems encountered in mergers or acquisitions. Many mergers in the private sector fail or productivity suffers as employees try to re-acclimate to the new work environment and new ways of doing business. Many employees focus on what the reorganization means to them personally and where they fit in the organization.

In addition to the normal stressors associated with a reorganization, ICE faced a significant budget shortfall and, in my opinion, a lack of direction. Consequently, there were no funds to offset the difficulties encountered with the reorganization. There were insufficient funds for such things as cross training, co-location of personnel, travel, fuel for vehicles and hiring. Unfortunately, some of the events reported in the media were true. Vehicles were parked, copy machines were picked up as the bills were not paid and there was a lack of accountability in virtually every administrative system. Special Agents in Charge received a stipend budget on a quarterly basis not knowing if additional funds would be received. Not only were there difficulties encountered in identifying investigative priorities, it was difficult to establish spending priorities due to budget uncertainties. In an ideal environment managers ensures that spending is appropriately matched to the agencies mission and priorities. We were struggling on both fronts.

As if these hurdles were not obstacles enough to overcome, the agency was continually bashed in the press. In order to establish its new identity, the agency attempted to change the name. Attempts to change the name of the organization were blocked by the Federal Bureau of Investigation (FBI) and as a result badges and credentials were not issued for over two years. Even the continued existence of the organization was questioned as DHS, Office of Inspector General (OIG) conducted a study which recommended that ICE be merged back into Customs

and Border Protection (CBP).

This may seem unimportant to some but when you are attempting to establish a new agency, a new identity, a new culture, it is of critical importance to convey to all employees the agency's mission, priorities and vision. Combined these stressors have taken their toll on ICE's most valued resource, the employees and their morale. As indicated earlier mergers and acquisitions are difficult to manage under the best of circumstances. Needless to say these were not the best of circumstances, however, despite the adversity ICE employees have done a remarkable job. Agents continue to pursue some of the most significant criminal organizations and perfect quality criminal cases. Let us not forget the administrative support staff who are often overlooked. They too have done a remarkable job under trying circumstances with antiquated administrative systems.

I believe this background is a necessary requisite before discussing Investigative Priorities. As from the inception ICE struggled has for it's very existence.

Investigative Priorities
When Everything is a Priority, Nothing is a Priority

In Government Service, as in the public sector, there are never sufficient resources to address all issues, and, hence the need to prioritize. The investigative missions of INS and Customs can be very broad and when used correctly the combined authorities can be a significant tool in protecting the Homeland. Essentially anything or anyone that crosses the border, inbound or outbound, illegally can be the subject of investigation by ICE. Drugs, human trafficking, alien smuggling, money, weapons, high technology, noncompliant automobiles, counterfeit or trademarked violation merchandise. The list spans the entire spectrum of criminal activity. But where to put the resources?

When ICE was formed the exercise of addressing the organization's investigative priorities and tailoring them to the new department never took place. At the second Special Agent in Charge (SAC) Conference in Philadelphia several SAC's including me suggested that we dispense with the prepared agenda and address the most important issue of identifying the agency's mission and priorities. The agency was at a critical stage and there was a clear need to form the new identity and culture The response from the Assistant, Secretary of ICE was "What do you need Joe, a PowerPoint (presentation)". Clearly the suggestion of carving out a mission statement and investigative priorities was not well received by the head of the agency and the discussion ended.

On several occasions when similar questions relating to priorities were asked, Headquarters' managers would responded "We haven't shut anything down" and once again the discussion would end. At yet another SAC conference the Deputy, Assistant Secretary was openly critical of legacy Customs managers by stating "You spend too much time on drug cases". When pressed for an answer as to what was the appropriate amount of time to invest in drug cases and equally important where to reinvest the resources, there were no answers. We were in a quagmire where rhetoric was supplied in response to our questions relating to the direction and priorities of the

new agency. Employee morale continued to suffer and as many studies have indicated job satisfaction is a critical motivator for Government employees.

Establishing investigative priorities in ICE should be a relatively easy process but it will call for tough decisions. Some programs may have to be scaled back and others shut down entirely but the focus must remain on the identification, disruption and dismantlement of the most significant criminal violators bringing illegal merchandise, contraband and people into our country. Further, emphasis must be added to any investigation that has the potential to cause harm to our citizens. Fortunately, ICE has an automated case management system. It is a relatively easy process to direct and monitor the use of investigative resources within ICE. Every agent enters their hours worked by case every month into the automated system. It is very easy to determine as an example how many hours were spent on alien smuggling cases last year or last month. Cases are also prioritized Class I, Class II, Class III. The case categories and prioritization needs to be reworked and any case with a nexus to our national security should be regarded as a Class I case. Everything else is should be regarded as Class II. No Class III cases should be opened. The information can be indexed and filed and should additional information be received that would warrant reclassification of the case it can be reopened. Managers at every level should be held accountable for insuring that the majority of their cases and case hours are at the Class I level.

There are many examples that can be cited where ICE investigative resources can be used in a more effective way. The efficiencies of the Office of Investigation could be improved by approximately 9% by immediately transferring functions that belong in other offices within ICE. One ICE component is the Office of Detention and Removal (DRO). As the title implies the primary mission of DRO is the detention and removal of illegal aliens from the United States. However, approximately 9% of ICE's investigative resources are involved in the process of identifying for removal illegal aliens already incarcerated in facilities throughout the country. This is an important function and it needs to continue, however, it is not an appropriate use of investigative resources. At an early executive conference the head of DRO publicly acknowledged that the institutional removal program belonged in DRO and that it was not an investigative function. He then related that he had developed a "ten year plan" to transfer the institutional removal program from the Office of Investigations into DRO where it belongs. It is clear that ICE's prioritization as to the appropriate use of it's resources is not limited to the Office of Investigations. It is time for "the thirty day plan" and this function needs to be transferred to DRO.

Jurisdictional Issues / Turf Battles

In addition to prioritizing case management ICE needs clear jurisdictional authority. From its inception ICE has encountered turf battles from within the Department and outside agencies.

The justification given for the separation of CBP and ICE is that CBP is responsible for the border and somehow ICE is responsible for "interior enforcement". There have been frequent references to the "interior enforcement strategy". I have not seen a copy of nor was I have I been briefed regarding the "interior enforcement strategy". Further, if individuals or merchandise do not cross the border illegally ICE does not have jurisdiction.

Efforts to address operational issues, that arose as a byproduct of the merger, between ICE and the Border Patrol and ICE and CBP Inspections involved the formation of working groups at the field level. Memorandums of Understanding (MOU's) have been negotiated by field level managers governing the interaction of the agencies within the same Department at the national level. Although there is some value in getting input from the field, policy decisions should be made at the Headquarters or Department level. Should the decision be made not to put the agencies back together, the Department needs to take a strong leadership role to ensure that there is no mission creep among the entities. Efforts need to be taken to ensure that the agencies communicate effectively, not duplicate efforts and stay within their mission (Patrol, Inspections, Investigations).

At about the time ICE was created the Drug Enforcement Administration (DEA) attempted to impose an overly restrictive MOU on ICE with regard to the conduct of drug investigations. The proposed MOU went far beyond coordination and communication and called for DEA to command and control ICE drug investigations. If it had been approved ICE would have jurisdiction over every commodity that crosses the border but one, drugs. Fortunately, this effort has seemed to die of its own weight but it is sure to resurface. ICE should be given clear jurisdictional authority to work drug cases and not have to periodically negotiate MOU's governing the investigation of any commodity crossing the border. To what extent that authority is used would be determined by the prioritization of investigations referenced above.

Shortly after ICE was established DHS and the Department of Justice (DOJ) entered into an MOU relating to the interaction of ICE and the FBI in conducting financial terrorism investigations. The legacy Customs component of ICE has extensive money laundering experience with many documented successes. In the aftermath of 9/11, ICE launched an initiative, Green Quest, targeting terrorist fund-raising. This is an excellent example of how ICE jurisdictional authorities can be turned to address national security issues. The MOU legislated Green Quest out of existence and requires that ICE coordinate it's investigations with the FBI and, further, the FBI has the prerogative to take control of an ICE case at any time. I would never suggest that ICE be allowed to unilaterally work terrorist fund-raising investigations without close coordination with the FBI. However, the MOU provides a disincentive for ICE to pursue terrorist fund-raising cases as illustrated by a recent Houston investigation. It cannot be over-emphasized the effect this MOU had upon morale of a new agency which had historically been recognized for its money laundering expertise.

In 2003 the Houston office initiated an investigation into a terrorist fund-rasing organization. For a multitude of reasons I cannot discuss the case in great detail but I can say that in October 2004 the investigation progressed to the point where an affidavit in support of a wiretap application was sent to Main Justice. That affidavit referenced terrorism on forty-nine occasions, Osama Bin-Laden on three occasions and al-Qaida once. Although there was a consensus by all involved that there was sufficient probable cause to pursue an intercept, the affidavit sat stalled in Washington for one hundred and twenty-seven days. During this time period there were over 700 communications that would have been subject to interception had the affidavit moved forward in a timely fashion.

Although the FBI would later argue that ICE had not properly coordinated the investigation pursuant to the MOU this case was coordinated with the FBI from the beginning. There was close coordination, communication and interaction between ICE and the FBI in Houston and in 2003 the ICE case agent gave a briefing at FBI Headquarters. In addition there were several correspondence regarding the case that went from FBI Houston to FBI Headquarters and visa versa.

After several attempts to move the case forward I sent a letter to the Government Accounting Office (GAO), DHS, IG and DOJ, IG alleging that the investigation had been mishandled and our national security interests were being compromised. I received no response from the oversight agencies and two weeks later I sent a separate letter to Senator Charles Grassley's office.

At one point the story aired on Dateline and in response the FBI issued a press release indicating that all national security leads are vigorously pursued, and that the issue was nothing more that a difference in opinion on how to proceed with the investigation. During questioning by Senator Grassley at a Senate Judiciary Hearing, the FBI Director would later acknowledge that there had been delays and that there was a difference in recollection by FBI employees regarding the events.

Senator Grassley initiated an inquiry and ultimately requested a joint investigation by DHS, IG and DOJ, IG. I recently had the opportunity to read a draft of the DOJ, IG and DHS,IG report. I regret to inform the Committee that not only did the oversight agencies fail to engage when the matter was originally forwarded to them they have also failed to pursue the investigation to it's logical conclusion and many leads have been left undeveloped.

Again I cannot discuss the report in detail for a number of reasons but I found one portion of the report quite disturbing. During the time period that the affidavit sat stalled in Washington the then Assistant Secretary for ICE and the then United States Attorney in Houston telephonically contacted the Deputy Attorney General requesting his assistance in moving the case forward. The Deputy Attorney General assigned his Chief of Staff to resolve the issue. After several additional telephone calls and additional delays the Chief of Staff held a conference call only involving DOJ officials and he elected to support the FBI position. When later interviewed by the IG's the Chief of Staff would relate that he viewed the matter as an operational issue and it was not his job to micro-manage the decision process. If Main Justice will not intervene in a terrorist fund-raising case after significant delays when will they intervene and who will manage the decision making process?

The report clearly indicates that there were significant delays in processing an affidavit in a terrorist fund-raising investigation and in many instances decisions were made unilaterally by the FBI with no input from ICE. I bring this matter to your attention for one reason. As long as the MOU remains in effect there will be a disincentive for ICE to pursue these types of investigations. If the logic is that ICE cannot pursue investigations with a national security nexus, how will ICE marry it's priorities to the mission of DHS and protect the Homeland?

Conclusion

With approximately 5,600 Special Agents ICE is the second largest investigative agency in Government. It has broad jurisdictional authorities and a highly motivated workforce. If given additional resources, clear mission and priorities and a level playing field in dealing with other agencies, ICE can make a significant contribution to our national security.

I once again thank the Committee for allowing me to testify and will be glad to answer any questions.

Mr. SHAYS. OK. Thank you very, very much.

I am going to start out with the professional staff.

Ms. DANIEL. Mr. Webber, we will start with you. You have a unique perspective in that you have a number of years of experience before ICE was formed and then you were there during its formulation and then for a little while thereafter.

A lot of your testimony speaks about coordination problems and turf battles, and I am wondering to what extent the problems of interagency coordination existed before the creation of ICE and were carried over. In particular, it was one thing that makes me think about this is it is curious that your agency needed the FBI's permission to change its name. I wondered if you could speak a little bit more about that in the broader context.

Mr. WEBBER. Well, first to the turf battle issues. Unfortunately, turf battles are an unfortunate reality in law enforcement. At a time, the competitive spirit works to a certain extent, and at times, it becomes counterproductive. It has been my experience, and I was a SAC. I have been 32 years on the job, and a SAC in three different cities—El Paso, New York, and Houston—that if an issue got to a high enough level, it would get resolved. That, to me, seems to be what is missing. And, of course, at the time, CBP and ICE it was all Customs and Immigration. And needless to say, the Commissioner of Customs, as an example, wouldn't want to hear that there was a dispute between a Port Director and a SAC. It just didn't happen.

Problems would not get escalated to headquarters like that. There was pressure to make sure that things got worked out at the local level.

As to the name issue, it is my understanding that when a proposed name change was floated to D.C., it was sent to the other agencies and the FBI opposed ICE's changing its name.

ICE is the only agency I believe in Federal Government that has an acronym on its badge. It doesn't say Immigration and Customs Enforcement. It says ICE. And there were efforts to change it to Investigations and Criminal Enforcement and the Bureau, as I understand it, blocked that move and badges and credentials weren't issued for over 2 years.

Ms. DANIEL. I am also interested in the ideas that you have to reform the problems that exist right now. You are obviously embroiled in something resulting from the memorandum of understanding between the FBI and ICE. There are a number of other memoranda of understanding or of agreement between other various DHS and outside components. Some believe that these simply don't work; that it is just a piece of paper, and when it gets out into reality, it sort of looses its umph.

If you contend that the memoranda of understanding are an ineffective way of resolving interagency problems, what do you recommend instead?

Mr. WEBBER. Well, from my perspective, and I think what the American public wants from us is they want law enforcement agencies working together, communicating, and working in a cooperative environment. That is very easy to say obviously, but hard to do.

From my perspective, it is leadership. I mean these are all executive agency entities. And particularly in a post September 11th environment, it shouldn't be tolerated. Last week's testimony on Moussaoui sentencing. Why in a post September 11th environment would anyone get in the way of pursuing a terrorist-related lead? The objective should be to get behind it and try to help, not impede.

Ms. DANIEL. OK. I would like to ask Ms. Fredrickson a question.

You were talking about the creation of artificial barriers and the ideological exclusion provision as something that ultimately compromises the ability of the American people who might otherwise hear what people have to say to make independent decisions. In cases like Dr. Ramadan's, according to the evidence you present, it seems that he has been one might say wrongly excluded. But the question is that then going through case by case, where do you draw the line in excluding or including? How do you avoid casting the net too wide, but specifically what criteria should the United States use to distinguish between the exercise of the freedom of speech and advocacy of ideologies that may genuinely pose a threat to U.S. national security?

Mr. SHAYS. Before you answer that, does he have a freedom of speech issue or is your claim that the American public has the right to hear his speech?

Ms. FREDRICKSON. Yes. The case law—and there is a very well established case law in this area—shows that this free speech right is clearly with the Americans and citizens and residents here who have the right to associate and hear ideas, and the Supreme Court has spoken very loudly on this, particularly relating to the exclusion of visitors—and the viewpoint exclusion in particular, and I think to answer your question, the issue here is about speech. And I think that is where the Supreme Court has drawn the line; the other courts have drawn the line. When that is the only reason someone is being excluded, that is unacceptable viewpoint discrimination. That is not allowed under the first amendment.

Mr. SHAYS. Even if it is—allegedly, maybe not in this case, but inciting people to riot, to overthrow the U.S. Government, to do damage to the government, they would have that right, even as non-Americans?

Ms. FREDRICKSON. Well, this is someone's point of view, but not actions associated with espousing, persuading people to take actions are in a different category. What has happened here is that the way that the provision has been interpreted in particular by the State Department in their manual is to set a very, very, very broad parameter for who can be excluded and that is—for people really the language—I don't have it right in front of me—but is pretty much for unacceptable ideas.

And so in the past, this particular provision has been used to exclude a wide variety of artists and scholars, and there was an ideological exclusion provision that existed prior to the Patriot Act was in the 1980's and early 1990's. I think it was removed from the law at that point, but previous to that, it had been used quite a bit in the 1950's and 1960's, and so to keep out some very, very well known individuals—novelists and so forth like Graham Greene, Dario Fo, and so forth, and people who pose no threat to our way

of government; have no national security implications in their writing. And I think Dr. Ramadan is an incredible case, because he, in particular, has been so involved in trying to advocate a moderate point of view in Islam. He was actually appointed by Tony Blair to a commission on how to reduce terrorism.

I think it shows that with that kind of provision in the law and the breadth of the interpretation imposed on it by the State Department, you reach results that are very profoundly dangerous for our way of government.

Ms. DANIEL. Dr. Ryan, you discussed that the first step to take in applying risk management and outcome-based performance monitoring and bringing that together is to assess the mission and vision statement of a particular entity.

The Bureau of Immigration and Customs Enforcement [ICE], is responsible for reducing national security vulnerability in a wide variety of investigative areas and often, as we have heard discussed a lot today, in coordination with many other entities at the same time.

So what steps should ICE take to apply risk management to multi-level governmental enforcement efforts to achieve one clear sort of both risk assessment and outcome-based performance measures?

Dr. RYAN. Well, I just have to back off for a second and say I really don't understand the structure of ICE, and that kind of decision needs to be given to ICE itself. The different levels in that bureaucracy need to address each of those questions—how are they going accomplish. The vision and mission statement is a very important tool.

I will give you one example: When the 1994 Crime Act was passed, a major segment of that, $6 billion, was allocated to hiring police officers, and the task was very simple: how do you get those officers out there? It was very clear, the direction was clear, and it was accomplished, so I have to back off. I am not sure exactly what ICE is trying to accomplish. It sounds like it is trying to accomplish many things, but I would submit to their expertise, and I did mention in my testimony, in my written testimony also, that a vision and mission statement should be made up by everybody in the agency, and including outside agencies if their activities impact on another agency.

Ms. DANIEL. Risk assessment is something that can be coordinated, though, at a multi-agency level?

Dr. RYAN. Well, once the agency itself, namely ICE, identifies its risk, OK, I mean, I'm sorry. I need to back up. The way an agency identifies its risk is everybody in the agency agrees what the risks are. They have to do it themselves. If the FBI is going to tell ICE what the risks are, that is a wrong direction. ICE needs to identify its own risk.

Ms. DANIEL. Mr. Webber, did you want to add anything to that?

Mr. WEBBER. No, I would agree wholeheartedly, and I think Dr. Ryan's comments earlier about the division, the mission, and the vision is the problem and that—when people come to work in the morning, they don't need to question what they are there for.

Ms. DANIEL. For my final question I would address something to all three of you. You are all here from very different backgrounds.

Dr. Ryan is from an academic and law enforcement angle. Ms. Fredrickson is from a legal and activist perspective, and Mr. Webber is from the Bureau itself, with, as I said earlier, a span of perspective.

What ties you together here is essentially the idea that wrong or badly defined investigative priorities in this kind of situation are almost as bad as none at all.

And you are all personally or professionally invested in how well ICE operates in the interest of national security, either as professionals whose work is connected to ICE or as private citizens who, like all of us, are affected by national security interests.

So from each of your respective vantage points, what would you put forth as the single most important reform that ICE can implement now in order to effectively make national security an investigative priority?

Dr. RYAN. Well, I will just start by going back to my testimony that the priority should be that ICE should set up its own vision and mission statement, and it should be shared with everyone in the organization, and it should be made public, so I, Joe Q. Citizen, can know what my government agency called ICE is doing for me.

Ms. DANIEL. Ms. Fredrickson.

Ms. FREDRICKSON. One of the things that the ACLU likes to say is that we don't have to make a tradeoff between our security and our civil liberties, and I think that the ideological exclusion provision in the law really demonstrates how wrong headed some of these provisions can be in actually undermining American freedom and undermining the exchange of ideas; that it can actually help us hopefully to win the hearts and minds of people in the Middle East.

So I think what I would suggest is that I think that the agencies really need to assess at what point we make that balance or when tradeoffs need to be made, and I think those kinds of decisions need to be scrutinized very, very carefully because I think that the tendency has been certainly since September 11th to lean way too far to the side of sacrificing our civil liberties with very little security benefits to show for it.

Ms. DANIEL. Mr. Webber.

Mr. WEBBER. Dr. Ryan's testimony I think provides a lot of insight. I think the agency needs to, although it is 3 years old now, it needs to get back to basics. It needs to get back to a clear cut mission, clear cut jurisdiction, clear cut priorities, and communicating it to all employees.

Ms. DANIEL. Thank you.

Mr. SHAYS. As I have been thinking about this panel, I think the points are so basic, it is almost like what do you say again? I can ask you to say it 100 different ways, but I would like to say that my view is obviously, as also pointed out to me, if you set the wrong priorities, that is probably worse than having any priority. But clearly, it is kind of basic, Dr. Ryan, that you would set priorities and that you would make them known to everyone in the agency, and they would work by it, and it would be shared and known by the public. There would be no reason not to, it strikes me.

Ms. Fredrickson, I know ACLU likes to say there is no tradeoff between freedom of speech and security, and I had this feeling like that is what you like to say, but the fact that you like to say it doesn't make it true. And, because I think there is constant tradeoffs, and I would love to just explore that a little bit with you. I feel I am being asked to make decisions every day about how far we go and backing off or go forward a little bit more that would tend to threaten speech.

Is it that we basically think that speech is so important that there will never need to be a tradeoff?

Ms. FREDRICKSON. Well, there are obviously some restrictions that exist in the law that are based on specific needs that are defended by specific types of examples and evidence. And those clearly need to exist. You know don't yell fire in a crowded theater; right? There are things that do actually make a lot of sense in terms of protecting us in a variety of ways.

Mr. SHAYS. Right.

Ms. FREDRICKSON. However, it is a fundamental value and a fundamental right in this country that is protected by the first amendment, and I think it is critically important that as we review new legislation and look at policies that are coming out of the agencies, we always remember that is the backbone of the American republic; that is what really defines us. And so we do live in a time when people feel like there is some danger at hand, but those are the times in this country when we have been at war or in other circumstances, and we have made the deepest incursions into civil liberties.

Mr. SHAYS. You don't think we are in danger now?

Ms. FREDRICKSON. I am not suggesting that. I am saying that at times of war and other circumstances——

Mr. SHAYS. Right.

Ms. FREDRICKSON [continuing]. There has been a tendency in this country to take the actions that we have most regretted in terms of our civil liberties. You only need to talk about the Japanese Americans to think about what are the possibilities of going too far down that road, and we really need to be very careful at not overreacting and really undermining the very reason that the United States is such a profound beacon for the world.

Mr. SHAYS. Right. But your basic point that I am hearing is that, in your judgment, we are doing some pretty dumb things that threaten our speech and are a waste of our time and energy. That would be a basic point that you would make, and you used it with one example.

Ms. FREDRICKSON. Well, I think that the Ramadan case is a very clear cut example.

Mr. SHAYS. Right. And you——

Ms. FREDRICKSON. And that's an absurdity, but, you know, from the ACLU's point of view, we raise very strong concerns about the current version of the Patriot Act that passed. We are very disturbed by the President's authorization of surveillance in violation of Foreign Intelligence Surveillance Act.

Mr. SHAYS. Right.

Ms. FREDRICKSON. The use of torture and other types of abuse at Guantanamo. I mean there are a whole range of areas where we

do think that the actions that have been taken are not consonant with our fundamental values as a Nation and actually have done little to enhance our national security, and in some cases, I would actually argue have damaged it by really undermining our ability to reach people in the Middle East and to talk to others and have a dialog about democracy and the value of human rights and civil liberties.

Mr. SHAYS. All right. Mr. Webber, I wondered if you can elaborate a little bit, because it is almost so absurd. Is it your contention that basically when you were told the story of, you know, what do we need, you were there?

Mr. WEBBER. I——

Mr. SHAYS. You know what do we need? A PowerPoint? Was the inference of the individual saying it that Assistant Secretary, you know, guys, let's just get our hands dirty and let's just get on with it? Or what came across was just this almost belittling of even having to set priorities and to have a clear understanding of where we are headed. I mean was there any reason? I am just curious why no one like said, hello, what do you mean, boss? Explain to me. I mean we are not going to set priorities. I mean I wonder if you had said that to him, he would have said, of course, I am not saying that. In other words, is this a fair description of what happened, because, if it is, it is a real indictment.

Mr. WEBBER. Sir, it is more than fair. It is a quote. I asked the question, and I framed it, and I think in a positive way, you know, let's roll up our sleeves. Let's carve out a mission statement. Let's carve out priorities. And I think I was——

Mr. SHAYS. And you actually talked about carving out priorities?

Mr. WEBBER. Yes, sir, specifically.

Mr. SHAYS. OK.

Mr. WEBBER. And the response was in a very condescending way, will you need a PowerPoint, as if don't you understand——

Mr. SHAYS. And then what happened?

Mr. WEBBER. And then that was the end——

Mr. SHAYS. Now, were you so taken back, you weren't inclined to pursue it more. I mean——

Mr. WATT. Well, other——

Mr. SHAYS [continuing]. I mean like say, you know, hello. No, I don't want a PowerPoint. I just want us to set some priorities here. I mean I don't know how you would have said it, but——

Mr. WEBBER. Well, actually there were several other SACs engaged in the conversation as well, and followup questions, and another response we would typically could get was, you know, we haven't shut anything down. You know, what are the priorities? Well, we haven't shut anything down.

Mr. SHAYS. So, in other words, we got to keep doing what we are doing?

Mr. WEBBER. Correct. We were continually pressing for what is the mission. I mean unfortunately and again the budget was a big problem, but you have two different cultures, and, you know, there was an inclination by some to stay in their comfort zone. There were Customs agents that didn't want to pursue immigration violations; immigration agents didn't want to pursue customs violations. And training I think was a critical component. We didn't have the

money for it. And co-location. We still had people in different buildings.

But if, at a minimum, if we could communicate this is the mission. These are the priorities, and this is what is expected of you. No one showed up at today's hearing with an investigative strategy. No one showed up with here is the roadmap. That is what we pursued, and, yes, in a very belittling way. It was, don't you get it? You need a PowerPoint?

The same with the incidents I discussed relative to—there was open criticism of the legacy customs: you spend too much time on drug cases. But when pressed, what is the right amount of time? And where to reinvest the savings? There were no answers.

Mr. SHAYS. So how did you react to Mr. Schoch's testimony?

Mr. WEBBER. Well, I actually like Bob quite a bit, and Bob is in difficult position. It is nice to be here as a citizen. No one edited my presentation, and tonight I can only get debriefed by my wife.

So it is a little bit different I think. But I looked at Mr. Schoch's written testimony and some of which he didn't cover in his oral testimony, but it repeatedly talks about we task the SACs to conduct a threat assessment on financial, on smuggling, and we task the SACs. What is missing in the equation, from my view is the leadership from headquarters. Where is that national threat assessment, and where are the national priorities?

I would also strongly argue as a SAC that there needs to be some flexibility for local threats. But you should be held accountable for what you use your resources for.

Mr. SHAYS. How did you react, Ms. Fredrickson, to his testimony?

Ms. FREDRICKSON. It makes a lot of sense to me.

Mr. SHAYS. No, not what Mr. Webber said, but what Mr. Schoch said?

Ms. FREDRICKSON. To Mr. Schoch——

Mr. SHAYS. I am going to ask you the same thing, Dr. Ryan.

Ms. FREDRICKSON. Well, I guess I was most clearly interested in his answer to Mr. Van Hollen's question about the Ramadan case. I was a little disappointed that he really didn't come anywhere close to providing an answer for that. I think there really is not a defensible answer in this case for excluding Mr. Ramadan, and I think it would be very hard to come up here and tell you that there were such an answer.

So I think it was a little disappointing, but understandable from his point of view I guess.

Mr. SHAYS. Yes. Beyond that issue. Any other point? Any other reaction?

Ms. FREDRICKSON. I mean we are not primarily in the business of risk assessment and so forth and making those kinds of determinations about governmental resources. So I would want to defer to——

Mr. SHAYS. Well, you know, I was thinking, though, actually, you should be, because really what one of your messages to us is, as I am hearing it, don't strain out gnats and swallow camels. In other words, while you are worrying about Mr. Ramadan, you are not worried about other things.

I would think that is kind of your message to us, not that you shouldn't be worried about anything, but that your priorities are wrong. Get your priorities right, which says to me that you have to be interested in what their priorities are in order to have a comfort level that they have it right. You know what I am saying?

Ms. FREDRICKSON. Yes. And certainly, to some extent, that is a fair assessment of our position in that we don't think that these are avenues that should be pursued because they don't actually enhance our national security, but beyond that, how the priorities are made between different types of threats that actually do challenge our national security, I would have to defer to the experts on that.

Mr. SHAYS. See what is interesting to me is that we have had hearings on the whole issue of declassification and over-classification and pseudo-classifications, and you all caught my interest when you said you didn't read the report, and I asked staff what they sent you, and they sent you this one page, and on the top of it is written law enforcement sensitive. Well, this is not a secret document. It doesn't have to follow any of the rules. They just stamped it as law enforcement sensitive, which means that when GAO looks at something law enforcement sensitive, they have to stamp it as law enforcement sensitive, which means that somehow you are not allowed to look at this, even though it doesn't require a classified security background in order to look at it. It is their own document that they basically said you can't see, which is really curious as hell to me. Dr. Ryan.

Dr. RYAN. In response to that or in response to——

Mr. SHAYS. Well, I do want to first in terms of what Mr. Schoch said. I am curious as to how you reacted to what he said.

Dr. RYAN. What I think is interesting is what was not said.

Mr. SHAYS. Right.

Dr. RYAN. Obviously, the GAO report came out and they were recommending a series of things that I am hear him saying we are looking upon them favorably. So what is favorably to look at it upon. I mean they were not specific in his—his responses were not specific.

Mr. SHAYS. OK. How about this issue?

Dr. RYAN. I think it is quite interesting—my background is law enforcement sensitive—and I read that one page. It is a management document. I don't think there was anything controversial. I mean I guarantee if I read the report right now, I would not be shocked that someone else in the world is going to find out this super secret information.

Mr. SHAYS. That I saw and what staff saw, there is no reason why you all couldn't have been able to read it, and it would have been helpful to have had you read it, and what I probably should have done is been aware of it, and I probably could have given it to you. Staff might have been more on questionable grounds. But it does raise, you know, some real issues about priorities and what we are protecting and who we are protecting them from.

My general view is that the problems we see in homeland security are not that we brought together the parts of 22 agencies and 180,000 people. It is really the ability of people to take this opportunity, as I would call it, and make it into something that can be more productive, and not because we never should have done it in

the first place. I mean I have no problem with Customs and INS investigative being together. It seems logical to me, and it seems to me there could be synergies and so on.

You are not in your head, Mr. Webber, do you disagree or——

Mr. WEBBER. No, sir. I agree.

Mr. SHAYS. OK.

Mr. WEBBER. I agree.

Mr. SHAYS. OK. Yes.

Mr. WEBBER. If I may, sir, I think what is missing is we haven't capitalized on that synergy.

Mr. SHAYS. Yes.

Mr. WEBBER. I think there is some great potential there.

Mr. SHAYS. Any last point that any of you would like to make. There may have been something in your testimony you want to emphasize and so on.

Dr. RYAN. You had made a comment earlier about my comments being so logical. I am sorry they are. And it is so simple that one thing I did do is I gave you in my written testimony a copy of the San Diego Police Department's vision and mission statement. You can go to their Web site and you can find it. I went to DHS' Web site, and I found their mission statement. I went to ICE's Web site, and I did not find a mission statement.

Mr. SHAYS. You know what? I was thinking as you were speaking, I was curious to know if Mr. Schoch would stay and listen to your testimony. Sometimes Department heads stay and listen to what the next panel says. And I wish he had, and I would have liked to have brought him up here. So I think what I will ask the staff to do, the professional staff, is to write a letter just based on that one comment that you ended up with and say that is what we found; it is based on your points, Mr. Webber, as well; that these are pretty basic stuff, and I really should have asked him exactly for that and why it isn't on—available on the Web and so on. Why we aren't seeing that very clearly delineated. You follow what the point is? Just basically your point: This is the San Diego Police Department?

Dr. RYAN. Yes, it is in the document.

Mr. SHAYS. Right.

From your own statement, we will take that and ask how come we are not seeing it here? Is it they don't have the capability; that they have done it and clearly just choose not to share it? Why not?

Any other comment? Ms. Fredrickson, any?

Ms. FREDRICKSON. No, I would just like to thank you for holding this hearing.

Mr. SHAYS. It was nice to have all three of you. Thank you, Mr. Webber, as well.

Take care.

Mr. WEBBER. Thank you.

Mr. SHAYS. With that, this hearing is adjourned.

[Whereupon, at 4:05 p.m., the subcommittee was adjourned.]

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